**Routing #** **CMS #**

STATE OF COLORADO
Colorado Water Conservation Board

SubRecipient Grant Agreement

with
 NAME

# PARTIES

This Subrecipient Grant Agreement (hereinafter called “Grant”) is entered into by and between Coal Creek Canyon Watershed Partnership, whose address isAddress, City, State, Zip (hereinafter called “Grantee”), unique entity identifyer (DUNS Number) Enter DUNS Number and the STATE OF COLORADO, acting by and through the Colorado Water Conservation Board, whose address is 1313 Sherman Street, #720, Denver CO 80203, (hereinafter called the “State” or “CWCB”).

# EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

# RECITALS

## Authority, Appropriation, and Approval

Authority to enter into this Grant exists in §37-60-101 through -121 C.R.S. and funds have been budgeted, appropriated and otherwise made available pursuant to Governor's Emergency fund, Executive Order #D2014-012, and funds made available by the U.S. Department Of Agriculture, Natural Resources Conservation Service (NRCS), CFDA # 10.923, Federal Award Identification Number (FAIN) 68-8B05-17-XXX, and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

## Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

## Purpose

The purpose of this grant agreement is to fund and implement approved projects under the NRCS Emergency Watershed Protection Program. Those projects support long-term expenditures of funded entities in response to and recovery from the September 2013 floods in Colorado.

## References

All references in this Grant 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.

## Selection

This grant is exempt from the Procurement Code under CRS §24-101-105 (1)(a)(II).

# DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

## Budget

“Budget” means the budget for the Work described in **Exhibit B**.

## Cost Sharing Funds

“Cost Sharing Funds” means the portion of project costs not paid by Federal funds. Cost Sharing Funds are the same as Matching Funds.

## Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in **§6** and **Exhibit A.**

## Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

**Exhibit A –** **Statement of Work**,

**Exhibit A-1 – Operation and Mantentance Plan,**

**Exhibit A-2** **– Quality Assurance Plan,**

**Exhibit A-3 – Statement of Work, Administrative Requirements**

**Exhibit B –** **Project Budget**,

**Exhibit C – Grant Assurances**

**Exhibit C-1 – Applicatble Federal Laws and State Grant Guidance**

**Exhibit C-2 – Emergency Watershed Protection Technical Assistance**

**Exhibit C-3 – General Terms and Conditions Grants and Cooperative Agreements (USDA/NRCS)**

**Exhibit C-4 – Supplemental Provisions for Federal Awards**

**Exhibit C-5 – Assurances Relating to Real Property Acquisition**

**Exhibit C-6 – NRCS Supplement to OSHA Parts 1910 and 1926-Construction Industry Standards and Interpretations**

**Exhibit C-7 –Colorado Supplemental Provisions (3/30/2013)**, and

**Exhibit D** **–** Option Letter.

## Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

## Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

## Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

## Matching Funds

“Matching Funds” means the portion of project costs not paid by Federal funds. Matching Funds are the same as Cost Sharing Funds.

## Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

## Program

“Program” means the NRCS Emergency Watershed Protection Program grant program that provides the funding for this Grant.

##  Recipient

“Recipient” means a Colorado State agency that receives an Award. In this agreement, the Recipient is the Colorado Water Conservation Board.

## Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit A and C.**

## Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

## Subcontractor

“Subcontractor” means third-parties, if any, who are not subgrantees, engaged by Contractor to provide goods, services or construction.

## Subgrantee

“Subgrantee” means third-parties, if any, engaged by Grantee to aid in performance of a federal program. A subgrantee may also be a subrecipient.

## Subrecipient

## “Subrecipient” means a non-federal entity that receives a Subaward from a Recipient to carry out part of a federal program, but does not include an individual that is a beneficiary of such program.

## Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A and C**, including the performance of the Services and delivery of the Goods.

## Work Product

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

# TERM

## Initial Term-Work Commencement

This agreement shall commence on the effective date, as detailed under the project schedule in **Exhibit A**. The agreement shall terminate Month Day, Year, unless sooner terminated or extended by a formal amendment to this grant as outlined in **§H.i**.

## Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in **§16,** may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

## State’s Option to Extend

The State may require continued performance for an additional period, at the same rates and same terms specified in the Grant. If the State exercises this option, it shall provide written notice to Grantee at least 30 days prior to the end of the current Grant term in form substantially equivalent to **Exhibit** **D**. If funded and exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant. The total duration of this Grant, including the exercise of any options under this clause, shall not exceed five years.

# STATEMENT OF WORK

## Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** on or beforeMonth Day, YearTBD. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

## Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplishedusing the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

## Employees

All persons employed by Grantee, Subcontractors or Subgrantees shall be considered Grantee’s, Subcontractor’s or Subgrantees’ employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

# PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this **§**7, pay Grantee in the following amounts and using the methods set forth below:

## Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is $XXX, XXX.XX, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A and B**. Final costs will be agreed upon during the pre-design conference. These costs consist of costs from contracts awarded to contractors, and eligible Grantee in-kind construction costs for materials, labor, and equipment. The Sponsor shall provide NRCS documentation to support all eligible construction costs. The maximum amount payable by the State to Grantee during each State fiscal year of this Grant shall be:

|  |
| --- |
| **$XXX,XXX.XX in FY2017** |
| **$XXX,XXX.XX minus the amount spent in FY 2017 in FY2018** |

## Payment

### Interim and Final Payments

All payments allowed under this Grant and in **Exhibit A** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit based on cost reimbursement as specificed in **§7.A.**, above. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

### Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

### Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State’s current fiscal year. Therefore, Grantee’s compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State’s performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State’s liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

### Erroneous Payments

At the State’s sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

## Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget.

## Matching Funds

Grantee shall provide Matching Funds as provided in **Exhibit B**,“Local Matching Funds”. Grantee shall have raised the full amount of Local Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Grantee’s obligation to pay all or any part of any matching funds, whether direct or contingent only extends to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Subrecipient and paid into the Grantee’s treasury or bank account. The Grantee represents to the State that the amount designated “Grantee’s Matching Funds” in **Exhibit B** has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. The Grantee does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Grantee. The Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency’s laws or policies.

**E. Reimbursement of Grantees’ Costs**

The State shall reimburse the Grantee’s allowable costs, not exceeding the maximum total amount described in **Exhibit B** and **§7**. The State shall reimburse the Grantee for the federal share or the “NRCS Funds” and the State Matching Funds” as shown on Exhibit B, of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit A, B and C**. However, any costs incurred by the Grantee prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the federal award funding is retroactive. Allowable costs shall be:

**i.** Reasonable and Necessary**.**

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

**ii. Net Cost.**

Actual net cost to the Grantee (i.e. the price paid minus any items of value received by the Subrecipient that reduce the cost actually incurred).

**F. Close Out.**

The Grantee shall close out this Grant within 90 days after the end date. Grant close out entails submission to the State by the Grantee of all documentation requred by this Grant, and Grantee’s final reimbursement request. The State shall withhold 5% of the allowable costs until all final project documentation has been submitted and accepted by State as substantially complete. If the project has not been closed by Natural Resources Conservation Service (NRCS) within 1 year and 90 days after the end date due to Grantee’s failure to submit required documentation that the State has requested from the Subrecipient, then the Grantee may be prohibited from applying for new federal awards through the State until such documentation has been submitted and accepted.

**G. Erroneous Payments.**

The closeout of a federal award does not affect the right of NRCS or CWCB to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the record retention period.

# REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§19**, if applicable.

## Performance, Progress, Personnel, and Funds

Grantee shall submit all financial, performance, and other reports to the State upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee’s performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibits A and C.**

## Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee’s ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State’s principal representative as identified herein. If the State’s principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the Department of Natural Resources.

## Noncompliance

Grantee’s failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds and/or termination as provided under this Grant.

## Subcontracts and Subgrants

Copies of any and all subcontracts or subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts or subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

## Violations Reporting

Grantee must disclose, in a timely manner, in writing to the State and to the NRCS, all violations of federal or state criminal law involving fraud, bribery, or gratuity violations potentially affecting the Grant. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

# GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

## Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the “Record Retention Period”) until the last to occur of the following: **(i)** a period of three years after the date this Grant is completed or terminated or a longer period as required in the exhibits, or **(ii)** final payment is made hereunder, whichever is later, or **(iii)** for such further period as may be necessary to resolve any pending matters, or **(iv)** if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved. If any litigation, claim, or audit related to the Grant starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or NRCS. NRCS, a cognizant agency for audit, oversight or indirect costs, and the State may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

## Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee’s sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or inequity in lieu of or in conjunction with such corrective measures.

## Monitoring

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee’s performance hereunder.

## Final Audit Report

If an audit is performed on Grantee’s records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

# CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this **§10** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

## Confidentiality

Grantee shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State’s principal representative.

## Notification

Grantee shall notify its agent, employees, Subcontractors, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

## Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

## Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents.

# CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee’s obligations hereunder. Such a conflict of interest would arise when a Grantee’s employee, officer or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or receives a tangible personal benefit from Grantee’s receipt of the federal award and/or entry into this Grant Agreement. Officers, employees and agents of the Grantee may neither solicit nor accept gratuities, favors, or anything of monetary value from Subcontracors or Subrecipients or parties to subcontracts or subgrants. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State’s interests. 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 to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the apparent conflict constitutes a breach of this Grant.

# REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

## Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with normal standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

## Legal Authority – Grantee and Grantee’s Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee’s authority to enter into this Grant within 15 days of receiving such request.

## Licenses, Permits, Etc.

Grantee represents and warrants that prior to performing any work required in **Exhibit A**, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

# INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

## Grantee

### Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the “GIA”), then 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 GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee’s liabilities under the GIA.

### Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to Subgrantees that are not "public entities".

## Grantee and Subgrantees

Grantee shall require each Grant with Subcontractors or Subgrantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

### Worker’s Compensation

Worker’s Compensation Insurance as required by State statute, and Employer’s Liability Insurance covering all of Grantee and Subgrantee employees acting within the course and scope of their employment.

### General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** $1,000,000 each occurrence; **(b)** $1,000,000 general aggregate; **(c)** $1,000,000 products and completed operations aggregate; and **(d)** $50,000 any one fire. If any aggregate limit is reduced below $1,000,000 because of claims made or paid, Subgrantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.

### Automobile Liability

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.

### Additional Insured

Grantee and the State shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

### Primacy of Coverage

Coverage required of Grantee and Subgrantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

### Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Grantee’s receipt of such notice.

### Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

## Certificates

Grantee shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. Certificates showing insurance coverage of Subcontractors shall be provided by Grantee to the State within seven business days of execution of a contract between Grantee and Subcontractor or Subgrantee. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Subgrantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any subgrant, Grantee and each Subgrantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

# BREACH

## Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

## Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§16**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§15**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

# REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in **§14(B)**. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

## Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

* + 1. **Obligations and Rights**

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders, subcontracts and/or subgrants with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant’s terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders, Subgrants, or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State’s property.

* + 1. **Payments**

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

* + 1. **Damages and Withholding**

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State’s damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

## Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State’s obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by **§15(A)** or as otherwise specifically provided for herein.

### Method and Content

The State shall notify Grantee of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

### Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.

### Payments

If this Grant is terminated by the State pursuant to this **§15(B)**, Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee’s obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

## Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

### Suspend Performance

Suspend Grantee’s performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State’s directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

### Withhold Payment

Withhold payment to Grantee until corrections in Grantee’s performance are satisfactorily made and completed.

### Deny Payment

Deny payment for those obligations not performed, that due to Grantee’s actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

### Removal

Demand removal of any of Grantee’s employees, agents, Subcontractors, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State’s best interest.

### Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State’s option **(a)** obtain for the State or Grantee the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

# NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

## State:

|  |
| --- |
| Kevin Houck |
| Colorado Water Conservation Board |
| Room 718 |
| 1313 Sherman Street |
| Denver, CO 80203 |
| Email: kevin.houck@state.co.us |

## Grantee:

|  |
| --- |
| Name and Title of Person |
| Department Name |
| Address 1 |
| Address 2 |
| Town, State Zip |
| Email |

# RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State. Copies of all such materials and Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State shall have a non-exclusive license in such Work Product to copy, publish, display, transfer, and prepare derivative works, to the extent that such Work Product is not considered the proprietary and confidential commercial information of Grantee or a Subgrantee working with Grantee. Materials containing proprietary and confidential commercial information shall be marked as such and such information within those materials shall be clearly identified prior to being provided to the State.

# GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

# STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is $100,000 or greater, either on the Effective Date or at anytime thereafter, this **§19** applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Grant management system.

Grantee’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee’s performance shall be part of the normal Grant administration process and Grantee’s performance will be systematically recorded in the statewide Grant Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee’s obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee’s obligations. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel & Administration (Executive Director), upon request by the Colorado Department of Natural Resources, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

# GENERAL PROVISIONS

## Assignment, Subcontracts, and Subgrants

Grantee’s rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or Subgrantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subcontracting and/or subgranting arrangements and performance.

## Binding Effect

Except as otherwise provided in **§20(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective heirs, legal representatives, successors, and assigns.

## Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

## Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

## Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

## Indemnification-General

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

## Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

## Modification

### By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

### By Operation of Law

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

## Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

### Colorado Special Provisions,

### The provisions of the main body of this Grant,

### Exhibit A, Statement of Work,

### Exhibit B, Project Budget,

### Exhibit C, Grant Assurances, and

### Exhibit D, Option Letter.

## Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

## Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

## Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

## Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. 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.

## Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

## CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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# COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all Grants except where noted in italics.

## 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

## 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

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.

## 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

## 4. INDEPENDENT CONTRACTOR.

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee 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 Grantee or any of its agents or employees. Unemployment insurance benefits will be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee 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.

## 5. COMPLIANCE WITH LAW.

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.

## 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

## 7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

## 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

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

## 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.

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 Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee’s services and Grantee shall not employ any person having such known interests.

## 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

**[*Not applicable to intergovernmental agreements*]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

## 11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.

***[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]*** Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Grant and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

## 12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Grant.

SPs Effective 1/1/09

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# SIGNATURE PAGE Grant Routing Number

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

\* Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee’s behalf and acknowledge that the State is relying on their representations to that effect.

|  |  |
| --- | --- |
| **GRANTEE****INSERT-Legal Name of Grantee**By: INSERT-Name of Authorized IndividualTitle: INSERT-Official Title of Authorized Individual\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*SignatureDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | STATE OF COLORADOJohn W. Hickenlooper, GovernorDepartment of Natural Resources Robert W. Randall, Executive DirectorBy:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Christina Heltzel, CWCB Budget AnalystSignatory avers to the State Controller or delegate that Grantee has not begun performance or that a Statutory Violation waiver has been requested under Fiscal RulesDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 2nd Grantee Signature if NeededBy: INSERT-Name of Authorized IndividualTitle: INSERT-Official Title of Authorized Individual\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*SignatureDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **LEGAL REVIEW**Cynthia H. Coffman, Attorney GeneralBy:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature - Assistant Attorney GeneralDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

|  |
| --- |
| STATE CONTROLLER**Robert Jaros, CPA, MBA, JD**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

# EXHIBIT A– STATEMENT OF WORK

**EXHBIT A-1**

O&M 582-1

**US DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE**

**OPERATION AND MAINTENANCE PLAN**

Landowner/Operator:

Job Location Sec: T: R:

Prepared By: Date:

OVERVIEW

GENERAL RECOMMENDATIONS

* An effective operation and maintenance program includes:
* Maintain open channel vegetation for flow efficiency, erosion control and wildlife habitat and aesthetics.
* Repair or replace bank protection materials displaced by erosion, animals, vehicles and vandalism.
* Maintain grade control structures necessary for stream bottom and bank stability.
* Periodically remove sediment bars that may damage bank protection, reduce channel capacity, or damage stream channel stability. Sediment removal must consider wetland regulation, fill and removal permit regulation, fish and wildlife habitat needs, and period of the year work can be performed.
* Maintain improvements provided for wildlife habitat, and riparian vegetation.
* Maintain safety measures for protection of people and animals.
* Maintain travel-ways that provide access for operation and maintenance of open channel systems and associated measures.
* Maintain installed fences to control access.
* Repair any vandalism, vehicular or wildlife damage.

O&M 582-2

SITE SPECIFIC CONSIDERATIONS.

**EXHIBIT A-2 QUALITY ASSURANCE PLAN**

Prior to commencement of work and/or solicitation of bids, Grantee shall submit to CWCB for review by CWCB and NRCS and concurrence a Quality Assurance Plan (QAP), per the attached sample. The QAP shall outline technical and administrative expertise required to ensure the works of improvement are installed in accordance with the plans and specifications, identify individuals with the expertise, describe items to be inspected, list equipment required for inspection, outline the frequency and timing of inspection (continuous or periodic), outline inspection procedures, and record keeping requirements. A copy of the final QAP shall be provided to NRCS prior to commencement of construction.

**XXX Repair Project**

Project Sponsor

Prepared on

By

**QUALITY ASSURANCE PLAN**



 United States

 Department of

 Agriculture

Natural Resources

 Conservation Service

UNITED STATES DEPARTMENT OF AGRICULTURE

**NATURAL RESOURCES CONSERVATION SERVICE**

Denver, Colorado

 Overview••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••••2

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Quality Assurance Plan (QAP) ................................................................................................................. 4

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Inspection and Requirements Checklist .................................................................................................... 8

**Overview**

This quality assurance plan is for an EWP project using the following components (check all that apply and edit as necessary to match project components):

|  |  |  |  |
| --- | --- | --- | --- |
|  | Streambank Shaping (excavation & fill) |  | Bioengineering |
|  | In-Stream Rock Structures |  | Live Stakes |
|  | Toe Rock and/or Rock Riprap |  | Brush Mattresses |
|  | Toe Wood Along Bottom of Bank |  | Tree Planting |
|  | Large Woody Debris Structures |  | Boulder Clusters |
|  | Combination Rock & Wood Structures |  | Bottomless Culvert |
|  | Open Drainage Ditches |  | Constructed Riffles |
|  | Tree Revetments |  | Water Diversions |
|  | Bankfull Bench Construction |  | Sediment Removal |
|  | Stream Crossing |  | Grade Control Structures |

Personnel assigned to the project should have experience observing the installation of the components identified in the above table.

**QA Personnel**

**Technical Representative (Tech Rep):** someone with construction experience to assist with construction implementation of the project. This may be a soil conservation technician, soil conservationist, civil engineering technician, district conservationist, or consultant's representative.

**Surveyor**: someone with survey equipment and experience to assist with spot-checking structure grades and elevations; establishing survey control points for use by the contractor; and for completing as-built survey.

**Stream Restoration Specialist (SRS):** a person assigned to the project with specialized skills, training, education, and experience implementing stream restoration projects. Verify CWCB/NRCS partners available for this position at the time of contracting.

**Design Engineer**: the engineer, stream restoration specialist, or other qualified licensed person responsible for designing the project.

**Specific Personnel Recommended for this Project**

|  |  |
| --- | --- |
| District Conservationist: | Greg Langer, NRCS |
| Technical Representative: | Greg Langer, NRCS |
| Construction Inspector: | To be detennined. |
| Desigt1 Engineer: | Mark A. Morton, P.E., GMS, Inc., Consulting Engineers |
| Surveyor: | To be determined. |
| Utility (Water) Representative | Kevin Walker, Cascade Metropolitan District |

**Quality Control (QC)**

The Contractor is responsible for quality control (QC) to build the project according to the construction specifications and drawings. This responsibility is required by the general specifications section. Major QC items include:

1. **Surveys**: The Contractor is responsible for construction stakeout of the work, and meeting grades and elevations required by the drawings.

2. **Utilities**: VerifY that the Contractor has located utilities before starting work at the project site. Ask the Contractor, visit the site to see the utility markings, and request utility locate reference number.

3. **Pollution Control**: The Contractor is responsible for preventing pollution of surface and ground water from contamination or from sediment runoff. See specifications for pollution control.

4. **Dewatering**: The Contractor is required to divert or remove water from the work site, or to work in low flow conditions.

5. **Excavations and Embankments**: The Contractor needs to meet the grades and slopes required by the drawings.

6. **Rock and Aggregates**: The rock must come from a CDOT-approved quarry (with a copy of test results or certifications), or from a source approved by the design engineer.

7. **Material Certifications**: The Contractor shall provide documentation which certifies that the materials provided comply with the contract requirements. If specified for this project, material certifications for the following are required (items not required for this project are shown in light gray):

(a) Crushed aggregates- test results as required by specifications.

(b) Erosion Control Fabric- manufacturer's product data showing compliance with specifications.

(c) Geotextile- manufacturer's information showing compliance with specifications.

(d) Structure Rock - quality and test results as required by the specifications. (e) Seeding and mulching materials - documentation of seed mix

(f) Silt fence or Erosion Control Wattles- manufacturer's product data showing compliance with specifications.

(g) Trees & shrubs- invoice showing source and quantity.

(h) Erosion Control Wattles- manufacturer's product data showing compliance with specifications.

(i) Lumber and timber- manufacturer's certification of grade and species

**Quality Assurance Plan (QAP)**

The Natural Resources Conservation Service (NRCS) Quality Assurance Program will be conducted to assure that the specified contract quality of materials and workmanship is attained. The primary responsibility of the QA personnel is to observe the operations of the Contractor to assure compliance with the construction contract. This includes the physical examination of materials brought on to the site; observation ofthe placement of materials; observation ofthe construction techniques; observation of quality control and construction management operations by the Contractor; periodic and continuous observation of construction work. The Quality Assurance Plan may be updated to include changing project conditions and to reflect lessons-learned during construction.

The intensity/frequency of the quality assurance activities is shown in Table 1 - . Conduct periodic quality assurance observations and checks of the Contractor's Quality Control to verifY that measurable qualities of the work meet the contract requirements.

The following is a description of the **minimum** quality assurance activities required:

1. The design engineer and technical representative shall attend the **preconstruction meeting** that should be arranged by the landowner to include the contractor. Design engineer will give an overview of the project with the drawings and answer questions related to the design.

2. Spot check **construction staking** and survey control to ensure the work is properly staked before work starts. Assist the Contractor with establishing survey control for each major work item, particularly in the identification of normal flow and bankfull flow elevations.

3. Read the construction specifications, drawings, design report, and the QAP. Review required **submittals** for compliance with the contract requirements. Contact the design engineer if or landowner if there is a problem.

4. Regularly **communicate** with the contractor to stay abreast of work in progress and upcoming work activities, including work requiring quality control tests. Keep the design engineer informed of project status and concerns.

5. Be familiar with sensitive plant and animal species and know how to identifY them. Specific concerns for this project are: none.

6. Inspect **equipment and materials** to ensure they are clean and free of any material that could contain or hold seeds. This needs to be done before contractor starts work.

7. Make sure contractor is meeting **pollution control specifications** and only disturbing ground and vegetation as needed for construction.

8. Make sure the contractor has a **spill-response kit** on-site.

9. Take **digital photographs** of work progress to provide a representative photo record of the project.

 Photo-document key stages of major work items to record images of foundation preparations, installation of buried features, and completed work. Photographs should include date/time stamp. Share photographs with design engineer or SRS.

10. Review/observe **subgrade preparations** for all rock structures to ensure compliance with the drawings and specifications before contractor places the rock structure. Accomplish this in a timely manner to avoid delaying the contractor's work. Visually check the stability of the subgrade and foundation; rock, filter, fill, and/or geotextile.

11. Review/observe proper **placement and use of geotextile and coir fabric materials**. The fabrics must be installed properly to prevent backfill washout under the structures.

12. Verify the **backfill material** for rock structures is an acceptable mix of gravel and cobble per specifications.

**Preconstruction Meeting**

The Sponsor should work with the landowner, technical representative, inspector, and design engineer to establish a mutually agreeable date and time for meeting. Communications to the contractor should be by the landowner (or sponsor). Someone should be identified to take notes. Include a discussion of the following items in addition to standard pre-construction agenda items.

(1) Introductions and lines of communications.

(2) The design engineer will give an overview of the drawings and specifications.

(3) Point out temporary benchmarks and any layout work accomplished, such as staking for major work items (structures, project start, and end).

(4) Site conditions, special constraints, and site-specific safety concerns.

(5) Contractor is responsible for utility locates. Ask the contractor to provide a copy of confirmation for utility locates.

(6) Remind the contractor to limit disturbance to the site. Discuss **pollution control** requirements to include erosion and sediment control.

(7) **Permit requirements** and conditions. Other special environmental concerns?

(8) Equipment cleaning requirements.

(9) Discuss tree planting, seeding, and live stakes. Live stakes should be installed during dormant season, but that isn't always possible.

(10) Discuss working from bank or during low flow conditions whenever possible.

(11) Discuss any time restrictions, such as winter shutdown, high flow months, and avoiding disturbance during spawning seasons.

(12) Review equipment and material **cleaning requirements**. Importance of preventing spread of invasive species, such as didymo.

(13) Construction surveying requirements- contractor is responsible for meeting lines, grades, and elevations for structures and bank shaping.

(14) Discuss **fill material and rock source**- rock must be from a CDOT approved quarry or other source approved by the engineer.

(15) Identify and discuss access routes and staging areas.

(16) Discuss harvesting of on-site materials as applicable. Tree removal and use requires pre-approval by landowner.

(17) Get contractor's estimate of **construction duration**. Some contractors may have a construction schedule they are trying to meet.

(18) Discuss work sequencing including critical work activities, milestones and project deadlines.

(19) Discuss disposition and protection of utility systems throughout the project site and identify special construction requirements associated with utilities.

**Equipment**

The QA personnel should have a minimum of the following equipment available when needed:

1. Survey Equipment

a. GPS or total station surveying equipment for setting survey control points, temporary benchmarks, spot-checks, and for as-built survey.

b. Survey level

c. Hand level for quick elevation checks

d. Survey rod, reflector, receiver, etc.

e. Measuring tape, 200 foot minimum.

f. Weather resistant field books for taking notes and pens or pencils

g. Stakes, flags, ribbon, permanent markers, etc.

2. Photographic Equipment

a. Digital camera with the following minimum features: date/time stamping, video recording, and some zoom capability.

3. Special Clothing

a. Backpack and clothing suitable for working at remote sites with highly variable weather conditions,

b. Chest waders and personal safety equipment for working in stream, if necessary

c. Studded wading boots

d. Other clothing as appropriate to provide the required services

4. Other Special Equipment

a. Mobile telephone

b. Notebook computer or similar device for making notes while on-site (optional- nice-to­have).

**Performance Time**

For estimated project duration, see the performance time in the design report. The actual time for construction is subject to many changing variables, with site conditions at the top of the list.

**Desirable Skills for Technical Representative**

1. Skills

a. Ability to understand the plans and specifications. b. Ability to maintain construction records.

c. Basic photography.

d. Basic math and reading.

e. Ability to assist with basic layout, staking, quantity, and "as-built" surveys.

f. Ability to get to the project site and walk across uneven terrain.

g. Ability to operate the equipment required to meet the QAP requirements.

h. Good communications skills to communicate with the Contractor, landowners, and personnel of other federal, state, and local government agencies. Ability to communicate in person, by email, written reports, telephone, fax, and through legible handwritten documentation.

2. Training & Experience

a. On-the Job Training for stream restoration work.

b. Attend stream restoration related training when it is made available.

c. Some experience on a stream restoration project site.

d. Some knowledge or training in geomorphic stream design, such as Rosgen Level I or equivalent.

**Inspection and Requirements Checklist**

At a minimum, all work shall be periodically observed for compliance with the construction documents. The following are items of work and QA activities for this project. Not Applicable items are shown in light gray.

**Table 1 - Quality Assurance Activities and Frequencies**

|  |  |  |  |
| --- | --- | --- | --- |
| A. | **Description** | **Staff** | **Inspection****Frequency** |
|  |  |  |  |
|  | Field verification of design, setting or checking survey control for structures, and staking out structure locations | SRS and/or DesignEngr & Surveyor | Once |
|  | Attend **preconstruction meeting-** good opportunity for everyone to get familiar with project | Tech Rep and SRSor Design Engr | Once |
|  | Mobilization and coordination with the landowner | Tech Rep | Periodic |
|  | Approve clearing limits; make sure the contractor has coordinated access route with landowner; and make sure contractor doesn't disturb more vegetation than necessary. | Tech Rep | Periodic |
|  | Monitoring of materials and equipment being delivered to the project site- random weekly spot checks with documentation in job diary. Frequency will vary depending on Contractor's delivery schedule and level of trust established. | Tech Rep | Weekly |
|  | Pollution control work, including erosion & sediment control measures | Tech Rep | Weekly |
|  | Conformance with grades, structure geometry, & elevations. Make sure contractor is using a level, tape, or other survey equipment. If in doubt, contact Design Engineer. | Tech Rep | Periodic |
|  | Seeding and mulching of disturbed areas after grading is completed and before work shutdowns (before holidays & weekends) | Tech Rep | Weekly |
|  | Ensure the site is stabilized before predicted rain storms. Banks protected. Wood structures anchored. Equipment and materials out of flow path of rising stream levels. | Tech Rep | Periodic |
|  | Coordination of tree removal with landowner and trees for project use flagged and approved by landowner | Tech Rep | Once |
|  | Rock riprap and rock toe installation- verification of keys, proper geotextile installation, etc. | Tech Rep | Periodic |
|  | Geotextile installation | Tech Rep | Continuous |
|  | Crushed aggregate installation and compaction | Tech Rep | Periodic |
|  | Seeding, mulching, and erosion control fabric | Tech Rep | Periodic |
|  | Periodic site visits and at critical times during construction | Design Engr orSSR | Periodic |
|  | Tree planting and restoration of temporary access roads/staging areas | Tech Rep | Periodic |
|  | Call or email the Design Engr to discuss any work that doesn't seem right or to relay questions from the contractor | Tech Rep | As Needed |
|  | Pre-completion inspection of work while contractor still has equipment and materials on-site | Tech Rep & Design Engr or SRS | Once |
|  | Keep written field notes and take digital photographs of work progress | Tech Rep | Periodic |
|  | Final inspection and certification of work completed | Design Engr orSRS | Once |
|  | Construction staus updates to Design Engr or SRS via mail | Tech Rep | Weekly |
|  | Assist with data collection for as-built drawings | Tech Rep & Surveyor | Once |
|  | Submit as-built drawings to NRCS | Design Engr | Once |
|  |  |

**EXHIBIT A-3 – STATEMENT OF WORK – ADMINISTRATIVE REQUIREMENTS**

1.1 Program Overview. This grant will give financial support for a specific project under Emergency Watershed Protection (EWP) Assistance Phase II – 2013, Colorado Flood Recovery Project. Damage was caused by unusually heavy rainfall runoff and subsequent flooding in September, 2013, and resulting in Presidential Disaster Declaration #FEMA-4145-DR. Phase I of the recovery project consisted of installing exigent project measures and was completed in October, 2014. Phase II will consist of completing non-exigent projects. The specific work to be completed is described in **Exhbit A-1**. Those projects support long-term expenditures for approved projects in response to and recovery from the September 2013 floods. Federal funds are made available by the United States Department of Agriculture, Natural Resources Conservation Service, (NRCS) CFDA # 10.923. The State funds are provided from the State Disaster Emergency Fund.

1.2 Subaward Information**.** Funds for this subrecipient grant agreement are made available by the U.S. Department Of Agriculture, Natural Resources Conservation Service, Federal Award Identification Number (FAIN) #68-8B0516-TBD Federal Award Project Description: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This award is not for R&D. The indirect cost rate for the grantee is 0.

1.3 Project Expenses. All eligible expenses are listed in the budget table in **Exhibit B**. Expenses incurred by Grantee after the Effective Date are eligible for reimbursement under this Grant agreement.

1.4 Non-Federal Match: This Grant requires a non-federal Local Matching Funds of 12.5% of the total Grant budget. Documentation of expenditures for the non-federal Local Matching Funds is required with each drawdown request. The match **[ ]**  may or may not **[ ]**  include in-kind match.

1.5 Grantee accepts all financial and other responsibility for excess costs resulting from its failure to obtain, or its delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures described in **Exhibit A-1**.

1.16 This agreement may become null and void 120 calendar days after the date CWCB has signed and executed this agreement if a solicitation for bids has not been publicly advertised or a contract has not been awarded.

1.17 The furnishing of financial, administrative and/or technical assistance above the original funding amount by NRCS is contingent on there being sufficient unobligated and/or uncommitted funding in the EWP Program that is available for obligation in the year in which the assistance will be provided. NRCS cannot make commitments in excess of funds authorized by law or made administratively available. Congress may impose obligational limits on program funding that constrains NRCS’ ability to provide such assistance.

1.18 The furnishing of the administrative and technical services by CWCB and NRCS is contingent upon the continuing availability of appropriations by the Congress from which payment may be made and shall not obligate NRCS if the Congress fails to so appropriate.

1.19 In the event of default of a construction contract awarded pursuant to this Agreement, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this Agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the Agreement.

1.20Additional funds, including interest properly allocable as construction costs as determined by NRCS, required as a result of decision of the CO or a court judgment in favor of a claimant will be provided in the same ratio as construction funds are contributed under the terms of this Agreement. CWCB and NRCS will not be obligated to contribute funds under any Agreement or commitment made by the Sponsor without prior concurrence of NRCS.

1.21The State Conservationist may make adjustments in the estimated cost to CWCB and NRCS for constructing the EWP project measures. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment will be made to change the cost sharing assistance provided by CWCB and NRCS nor reduce funds below the amount required to carry out NRCS' share of the contract.

1.22 NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without complying with their responsibilities as set out in this agreement.

1. **DELIVERABLES:**

2.1Grantee shall submit narrative and financial reports describing project progress and accomplishments, any delays in meeting the objectives and expenditures to date as described in **§3** of this **Exhibit A-3**. Progress reports could include the number of planning efforts initiated, the number of planning efforts in progress, the number of planning efforts completed, and key issues and milestones reached during the quarter.

2.2 The following accomplishments and deliverables will be provided to the State and the NRCS:

2.2.1 Completion of the technical requirements for \_\_\_\_\_\_\_\_\_\_\_\_\_ (Project Name) as described in **Exhibit A-1**.

2.2.2 One copy of the final engineering plans, specifications signed and sealed by a licensed professional engineer for the project per **Exhibit C-3** **§1**,

2.2.3 Signed NRCS-ADS-78 supported by an attorney’s opinion (See **Exhibit C-3 §4** and **Exhibit C-6**),

2.2.4 One copy of the construction bid package with engineer’s cost estimate,

2.2.5 One copy of the quality assurance plan per **Exhibit A-4**,

2.2.6 One copy of the operation and maintenance plan per **Exhibit A-3** and **Exhibit C-3**, **§3**,

2.2.7 Certification that the project was installed in accordance with the plans and specifications,

2.2.8 As-built drawings of final construction sign by a licensed professional engineer within 30 days of completion of construction,

2.2.9 Quantities of the units of work applied for each site within 30 days of completion of Construction, and

2.2.10 Adhere to all work scope requirements outlined in **Exhibit A** and assurances outlined in **Exhibit C**.

1. **REPORTING REQUIREMENTS:**
	1. **Quarterly Financial Status and Progress Reports**. The project(s) approved in this Grant are to be completed on or before the termination date stated in **§5** of the Grant Agreement. Grantee may be required to submit quarterly financial status and programmatic progress reports for each project identified in this agreement using the forms provided by and/or in the manner requested by the Colorado Water Conservation Board throughout the life of the grant. One copy of each required report with original or electronic signatures shall be submitted in accordance with the schedule set by the project manager so that the State’s reporting rquirements (below) can be met. (The order of the reporting period quarters below are irrelevant to the grant. If the grant is open during the “report period” reports for that period are due on the dates listed. If the grant is for more than one year, reports are due for every quarter that the grant remains open.)

|  |  |
| --- | --- |
| **Report Period** | **Report Due Date****to CWCB** |
| October – December | January 15 |
| January –March | April 15 |
| April – June | July 15 |
| July – September | October 15 |

* 1. **Final Reports:** Grantee shall aid the State as necessary in the submission of final financial status and progress reports that provide final financial reconciliation and final cumulative grant/project accomplishments within 45 days of the end of the project/grant period. The final report may not include unliquidated obligations and must indicate the exact balance of unobligated funds. The final reports may substitute for the quarterly reports for the final quarter of the grant period. If all projects are completed before the end of the grant period, the final report may be submitted at any time before its final due date.
1. **TESTING AND ACCEPTANCE CRITERIA:**

The CWCB shall evaluate this Project(s) through the review of Grantee submitted financial and progress reports. The CWCB and NRCS may also conduct on-site monitoring to determine whether the Grantee is meeting/has met the performance goals, administrative standards, financial management and other requirements of this grant. The CWCB will notify Grantee in advance of such on-site monitoring.

1. **PAYMENT:**
	1. **Payment Schedule**: The CWCB will appove reimbursements as invoices and backup documentation is submitted by the Grantee. Invoices shall not be submitted more often than monthly.
	2. **Payment Amount:** Local Matching Funds shall be documented with every payment request. Excess Local Matching Funds documented and submitted with one reimbursement request shall be applied to subsequent requests as necessary to maximize the allowable reimbursement.
	3. **Adjustments:** If agreed to by the CWCB and NRCS, adjustments may be made to and between individual DSR costs without amending this agreement as long as the total estimated eligible construction costs described in Exhibit B is not exceeded.
2. **ADMINISTRATIVE REQUIREMENTS:**

**Required Documentation**: Grantees shall retain all procurement and payment documentation on site for inspection. This shall include, but not be limited to, purchase orders, receiving documents, invoices, vouchers, equipment/services identification, and time and effort reports.

* 1. Sufficient detail shall be provided with reimbursement requests to demonstrate that expenses are allowable and appropriate as detailed below:
		1. **Equipment or tangible goods**. When requesting reimbursement for equipment items with a purchase price of or exceeding $5,000, and a useful life of more than one year, the Grantee shall provide a unique identifying number for the equipment, with a copy of the Grantee’s invoice and proof of payment. The unique identifying number can be the manufacturer’s serial number or, if the Grantee has its own existing inventory numbering system, that number may be used. The location of the equipment shall also be provided. In addition to ongoing tracking requirements, Grantee shall ensure that equipment items with per unit cost of $5,000 or more are prominently marked in a manner similar to the following: Purchased with funds provided by the USDA, NRCS.
		2. **Services**. Grantees shall include contract/purchase order number(s) or employee names, the date(s) the services were provided and the nature of the services.
	2. **Procurement:** A Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantees should refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:
		1. Any sole source transaction in excess of $100,000 shall be approved by CWCB Procurement. Written documentation of purchases will be made available for review by CWCB staff upon request.
		2. Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee shall be alert to organizational conflicts of interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection shall be submitted in writing to, and be approved by the authorized Grantee official.
		3. Grantee shall verify that the Contractor is not debarred from participation in state and federal programs. Subgrantees should review contractor debarment information on <http://www.epls.gov>.
		4. When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subrantees shall use the phrase -“This project is supported by grants from the by the United States Department of Agriculture, Natural Resources Conservation Service, CFDA # 10.923 and State of Colorado funds are provided from the State Disaster Emergency Fund.”
		5. Grantee shall ensure that no rights or duties exercised under this Grant, or equipment purchased with Grant Funds having a purchase value of $5,000 or more, are assigned without the prior written consent of the USDA, Natural Resources Conservation Service.
		6. Grantee shall ensure that all funds are needed to supplement and not to supplant the Grantee’s own funds.
	3. **Additional Administrative Requirements:**

The Grantee must request approval in advance for any change to this Grant Agreement, using the forms and procedures established by the CWCB.

# EXHIBIT B – PROJECT BUDGET

BUDGET:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Project/Activity Line | NRCS Funds (75%) | State Matching Funds (12.5%) | Local Matching Funds (12.5%) | Total |
|  | $ | $ | $ | $ |
|  | $ | $ | $ | $ |
|  | $ | $ | $ | $ |
|  | $ | $ | $ | $ |
| Total Budget | $ | $ | $ | $ |

# EXHIBIT C – GRANT ASSURANCES

**ASSURANCES CONSTRUCTION PROGRAMS**

By accepting this grant, the grantee certifies that it:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will ensure the design engineer will provide on-site supervision at the construction site to ensure that the complete work conforms to the approved design plans and specifications throughout the project and will furnish progress reports and such other information as may be required by CWCB. The grantee must request written approval of the design engineer replacement from the CWCB administrative contact and must include the qualifications and the signature of the replacement signifying his or her willingness to serve on the project.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM’s Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§16811683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
10. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
11. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
12. Reserved.
13. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
14. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
15. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
16. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
17. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
18. Pay the contractor(s) as provided in the contract(s).
19. For in-kind construction services (materials, labor, and/or equipment supplied by the Sponsor), develop a Plan of Operations describing the construction services to be performed including estimated quantities and values. The Plan of Operations shall be concurred in by CWCB at the pre-design conference. Construction services for equipment shall not exceed published FEMA equipment rates unless otherwise documented and concurred in advance by CWCB rates considered fair and reasonable by the CWCB Technical and/or Administrative Contact.

The following documentation is required to support the Grantee's request for reimbursement of in-kind construction services:

* 1. Invoices covering actual costs of materials used in constructing the eligible EWP project measures.
	2. Records documenting the type, quality, and quantities of materials actually used in constructing the eligible EWP project measures.
	3. Daily time records for each employee showing name, classification, wage rate, hours, and dates actually employed for constructing the eligible EWP project measures.
	4. Equipment operating records showing the type and size of equipment, hourly rate, actual hours of operation and dates used to install the eligible EWP project measures. Equipment idle time is not eligible in-kind construction services, even if on the job site, and should not be included in the equipment operating records.
1. Submit billings for reimbursement to the CWCB on a monthly basis. Final payment request shall be submitted within thirty (30) calendar days of completion of the works of improvement. All requests for reimbursement shall include all appropriate and complete documentation to support the reimbursement request. The required supporting documentation for reimbursement of construction costs include invoices and proof of payment to the contractor showing the items and quantities installed and certified by the engineer of record along with any supporting documentation such as quantity calculations, rock weight tickets, etc.

The required supporting documentation for reimbursement of in-kind construction expenses will include employee time sheets, employee hourly rate, equipment operating logs, equipment hourly rate, and material quantities and invoices.

1. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this agreement. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, and litigation that may result from the project. Such actions will be at the expense of the sponsor including legal expenses.
2. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
3. Will arrange and pay for any necessary location, removal, or relocation of utilities. EWP program regulations prohibit NRCS from reimbursing the Sponsor or otherwise paying for any such costs; nor do the costs qualify as a Sponsor cost-share contribution.
4. Ensure that technical and engineering standards and specifications of NRCS are adhered to during construction of the Project, as interpreted by CWCB Technical Contact. Provide CWCB Technical Contact progress reports as necessary and agreed to. Progress reports should include technical on-site inspections of work accomplished for the period, work planned, results of material tests, deficient work products and/or tests with corrective actions taken, modifications anticipated, technical problems encountered, contractual issues and other relevant information.
5. Ensure that all contractors on NRCS assisted projects are performing their work in accordance with OSHA regulations, NRCS Supplement to OSHA Parts 1910 and 1926, and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) (see Attachment). The Sponsor is responsible for periodically checking the contractor’s compliance with safety requirements.
6. Arrange for and conduct a final inspection with the CWCB and NRCS representative of completed emergency watershed protection measures, and certify that the project was installed in accordance with contractual requirements.
7. Be responsible for ensuring their System for Award Management (SAM) registration is active throughout the life of the agreement so that reimbursements are not delayed.
8. That once the project is completed and all requests for reimbursement submitted, any excess funding remaining in the agreement (over and above the NRCS commitment of up to 75 percent of actual construction costs and within the not-to-exceed amount) will be de-obligated from the agreement.

**EXHIBIT C-1 –** **APPLICABLE FEDERAL LAWS AND STATE GRANT GUIDANCE**

The following are incorporated into this contract without limitation:

1. Age Discrimination Act of 1975, 42 U.S.C. Sections 6101, et seq.

2. Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634

3. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq.

4. Equal Pay Act of 1963, 29 U.S.C. 206(d)

5. Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b

6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794

7. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d

8. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e

9. Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, et seq.

10. Section 24-34-301, et seq., Colorado Revised Statutes 1997, as amended

11. The applicable of the following:

* 1. Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87);
	2. Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);
	3. Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122), and
	4. Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133); and/or the Colorado Local Government Audit Law, 29-1-601, et seq, C.R.S., and State implementing rules and regulations.
	5. Immigration Status -Cooperation with Federal Officials, CRS 29-29-101, et seq.
	6. Copeland Act, 40 U.S.C. S 276c and 18 U.S.C. SS 874.
	7. Contract Work Hours and Safety Standards Act, 40 U.S.C. SS 327-333, regarding labor standards for federally assisted construction subawards.
	8. Wild and Scenic Rivers Act of 1968, 16 U.S.C. SS 1271 et. seq., related to protecting components or potential components of the national wild and scenic rivers system.
	9. National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, Executive Order No. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469a-1 et. seq.
	10. Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5121 et seq., as amended.
	11. National Flood Insurance Act of 1968, 42 U.S.C. 4001 et. seq.
	12. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 104.
	13. Department of Defense Authorization Act of 1986, Title 14, Part B, Section 1412, Public Law 99-145, 50 U.S.C. 1521.
	14. USA PATRIOT Act of 2001, (Pub. L. 107–56).
	15. Digital Television Transition and Public Safety Act of 2005, (Pub L. 109-171)

12. Reserved

13. Privacy Reserved

14. Prohibition against use of Federal Funds for Lobbying, 31 U.S.C. 1352

15. None of the funds made available through this agreement shall be used in contravention of the Federal buildings performance and reporting requirements of Executive Order No. 13123, part 3 of title V of the National Energy Conservation Policy Act, 42 U.S.C. 8251 et. Seq., or subtitle A of title I of the Energy Policy Act of 2005 (including the amendments made thereby).

16. None of the funds made available shall be used in contravention of section 303 of the Energy Policy Act of 1992, 42 U.S.C. 13212.

17. Buy American Act, 41 U.S.C. 10a et seq.

18. Relevant Federal and State Grant Program Guidance including all OMB guidance related to Federal Awards is in Title 2 of the CFR, subtitle A, Chapter II, Part 200, and 7 C.F.R. part 624 – Emergency Watershed Protection.

 **EXHBIT C-2 – EMERGENCY WATERSHED PROTECTION TECHNICAL ASSURANCES**

By accepting this grant, the grantee certifies that it:

1. Shall ensure that engineering services required to plan or implement the Scope of Work, **Exhibit A** are performed as follows:
	1. Individuals and/or organizations providing engineering services shall employ a professional engineer licensed in Colorado who directly supervises the staff performing the services or who serves as a Principal.
	2. Project designs, drawings and specifications must meet NRCS standards and technical criteria, and shall be timely forwarded to the CWCB for submittal to the NRCS State Conservation Engineer for functional review and concurrence. Prior to contracting for construction, submit project documents to the CWCB representative in **§16** of this agreement.
	3. A Professional Engineer will seal engineering documents and the following statement shall appear with the engineer’s signature on the cover sheet of construction drawings and within all reports:
	 *“I certify to the best of my professional knowledge, judgment and belief, these plans (or this report, etc.) meets applicable NRCS standards.”*
2. Working through the CWCB representative in **§16** of this agreement, obtain NRCS concurrence if the Grantee desires to increase the level of protection over and above that described in the NRCS Damage Survey Report (DSR) or authorized by EWP Program rules. The Grantee or another entity will be responsible for paying 100 percent of the costs attributable to upgrades or additional work.
3. Develop O&M (Operation and Maintenance) Plans for projects that have structural elements, working through the to the CWCB representative in **§16** of this agreement, submit O&M plans to CWCB for CWCB and NRCS review, and ensure O&M tasks are carried out in accordance with the plan. In accordance with EWP program regulations, grant funds cannot pay for performance of O&M tasks, nor can they be counted as an in-kind contribution by the CWCB or the Grantee. Upon completion of the project, assume responsibility for operation and maintenance as outlined in **Exhibit A-1.**
4. Secure property rights and submit an ADS-78 form(s), *Assurances Relating to Real Property Acquisition*, to the CWCB for submittal to the NRCS Program Manager, see **Exhibit C-6**. This includes any rights associated with required environmental mitigation. An attorney’s opinion must be attached to the form certifying an examination of the real property instruments and files was made and found to provide adequate land title, rights, permission and authority for the purpose(s) of the project. All costs relative to obtaining property rights will be borne by the Grantee. In accordance with EWP program regulations, grant funds cannot reimburse these costs nor can they be counted as an in-kind contribution by the WCB or Grantee.
5. 6. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits and licenses needed for the Project
6. Ensure all applicable Federal, State, and local permits are obtained and work is performed in accordance with permit requirements. All costs relative to obtaining required permits will be borne by the Grantee or subrecipients. In accordance with EWP program regulations, NRCS cannot reimburse these costs nor can they be counted as an in-kind contribution by the CWCB or the Grantee.
7. Comply with all NEPA requirements, and Grantee must review the NRCS DSR prior to developing construction plans and starting construction and comply with NEPA restrictions identified in the DSR. NRCS may perform tasks associated with NEPA requirements, with CWCB support as needed.
8. Comply with all cultural resource requirements as determined by NRCS and CWCB in accordance with the National Historic Preservation Act.
9. Comply with Endangered Species Act requirements including implementation of U.S. Fish and Wildlife avoidance and minimization measures, and conservation measures identified for threatened and endangered species.
10. Procure and manage contracts for equipment or services in accordance with established Sponsor procurement policy and 2 CFR 200.317 through 200.326, “Procurement”. The sponsor will ensure all applicable requirements of this agreement are included in agreements with subrecipients.
11. Create and manage implementation agreements with local entities to construct Phase II recovery projects in accordance with established Sponsor procurement policy and 2 CFR 200.317 through 200.326, “Procurement”. The Grantee will ensure all applicable requirements of this agreement are included in any agreements with subrecipients.
12. Conduct all procurement activities in a manner that provides, to the maximum extent possible, free and open competition.
13. Submit monthly progress reports throughout the duration of this agreement to the CWCB representative in **§16** of this agreement.
14. Submit a request for reimbursement of costs incurred under this agreement to CWCB. Reimbursement requests shall be submitted on a monthly basis to the the CWCB representative in **§16** of this agreement, beginning at the end of the first full month after the agreement is signed. Final payment request shall be submitted within 30 calendar days after completion or expiration of this agreement.
15. All requests for reimbursement shall include all appropriate and complete documentation to support the reimbursement request such as: invoices; proof or payment to consultants; or employee time sheets along with the employee’s hourly rate, hours worked, and date work was performed. Use the Federal Travel Regulations as a guideline for requesting reimbursement of any travel costs incurred in completing tasks authorized under this agreement.
16. Receive payment under this Agreement using electronic funds transfer (EFT) procedures in accordance with 31 C.F.R. § 208.
17. Be responsible, without recourse to the State of Colorado, NRCS or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the Sponsor and others to carry out approved project activities. Matters concerning violation of law should be referred to the federal, state, or local authority having proper jurisdiction.
18. To the extent allowed by law, hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the Sponsor under this agreement or resulting from the work provided for in this agreement
19. Be responsible for all administrative expenses (including but shall not be limited to facilities, clerical expenses), and legal counsel necessary including the fees of such attorney or attorneys deemed necessary by NRCS to resolve any legal matters.
20. Be responsible for 100 percent of all ineligible construction costs, and 100 percent of any unapproved upgrade to increase the level of protection over and above that described in the DSR.
21. For contracts, provide CWCB a copy of solicitation notice, bid abstract, and notice of contract award, or other basis of cost and accomplishment
22. Take reasonable and necessary actions, including legal action, if required, to dispose of any and all contractual and administrative issues arising out of the contract(s) awarded under this agreement to include but not be limited to, disputes, claims, protests of award, source evaluation, and litigation that may result from the project, and bringing suit to collect from the contractor any moneys due in connection with the contract. Any monies collected will be distributed to the parties in the same ratio as contributions are made.
23. Retain all records dealing with the award and administration of contract(s) for three (3) years from the date of the sponsor’s submission of the final Request for Reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the three (3) year period, the records are to be retained until the litigation is resolved or the end of the three (3) year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the U.S. Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.
24. Submit requests for a time extension to this agreement, (if necessary), in writing to the CWCB representative in **§16** of this agreement no less than thirty-five (35) days prior to the expiration date of the agreement. Submit the written, signed request to the CWCB Technical Contact in addition to the Administrative Contact.
25. This agreement shall be effective upon signature by the Colorado State Controller. All work required under this agreement shall be completed in accordance with this agreement. Any work performed prior to receiving a fully executed agreement is not eligible for reimbursement. Any change in the effective dates of this agreement must be by written amendment and signed by the grantee, the State and the Colorado State Controller prior to the expiration date.
26. The furnishing of financial and other assistance under this subrecipient agreement is contingent on the availability of funds appropriated by Congress from which payment may be made and shall not obligate the United States Department of Agriculture, NRCS or the State upon failure of the Congress to appropriate funds.
27. This agreement may be executed in any number of counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. By signing this agreement the Grantee assures the CWCB that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.
28. Employees of NRCS shall participate in efforts under this agreement solely as representatives of the NRCS. To this end, they shall not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the Sponsor or any member of the Sponsor. They also shall not assist the Grantee or any member the Grantee with efforts to lobby Congress, or to raise money through fundraising efforts. Further, NRCS employees shall report to their immediate supervisor any negotiations with the Grantee, or any member of the Grantee, concerning future employment and shall refrain from participation in efforts regarding such party until approved by the NRCS.
29. Employees of the State or Grantee shall remain its employees while carrying out their duties under this agreement and shall not be considered as Federal employees or agents of the United States for any purpose under this agreement.

**EXHIBIT C-3**

**NATURAL RESOURCES CONSERVATION SERVICE**

**U.S. DEPARTMENT OF AGRICULTURE**

**GENERAL TERMS AND CONDITIONS**

**GRANTS AND COOPERATIVE AGREEMENTS**

**I. APPLICABLE REGULATIONS**

1. The recipient, and recipients of any subawards under this award, agree to comply with the following regulations, as applicable. The full text of Code of Federal Regulations references may be found at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.htm1#page1> and

<http://www.ecfr.gov/>.

* 1. 2 CFR Part 25, “Universal Identifier and System of Award Management”
	2. 2 CFR Part 170, “Reporting Subaward and Executive Compensation Information”
	3. 2 CFR Part 180, “OMB Guidelines To Agencies On Governmentwide Debarment And Suspension (Nonprocurement)”
	4. 2 CFR Part 182, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)”
	5. 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards”
1. The recipient, and recipients of any subawards under this award, assure and certify that they have and/or will comply with the following regulations, as applicable. The full text of Code of Federal Regulations references may be found at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.htm1#page1> and <http://www.ecfr.gov/>.
	1. 2 CFR Part 175, “Award Term for Trafficking in Persons”
	2. 2 CFR Part 417, “Nonprocurement Debarment and Suspension”
	3. 2 CFR Part 418, “New Restrictions on Lobbying”
	4. 2 CFR Part 421, “Requirements for Drug-Free Workplace (Financial Assistance)”
2. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and to the extent applicable to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference (the full text of Code of Federal Regulations references may be found at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.htm1#page1> and

<http://www.ecfr.gov/>.

* 1. 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles And Audit Requirements For Federal Awards”
	2. 48 CFR Part 31, “Contract Cost Principles and Procedures”

**II. UNALLOWABLE COSTS**

The following costs are not allowed:

1. Costs above the amount authorized for the project
2. Costs incurred after the expiration of the award including any no-cost extensions of time
3. Costs that lie outside the scope of the approved project and any amendments thereto
4. Compensation for injuries to persons or damage to property arising from project activities

This list is not exhaustive. For general information about the allow ability of particular items of costs, please see 2 CFR Part 200, “Subpart E - Cost Principles”, or direct specific inquiries to the NRCS administrative contact identified in the award.

**III. CONFIDENTIALITY**

1. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term “confidential information” means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of NRCS.
2. The recipient’s personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient’s personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).
3. The recipient agrees to comply with NRCS guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110-246), 7 U.S.C. 8791.

**IV. PRIOR APPROVAL REQUIREMENTS**

The following are the most common situations requiring prior approval. However, the recipient is also bound by any other prior approval requirements of the applicable administrative provisions and Federal cost principles.

1. Purpose or Deliverables.—When it is necessary for the recipient to modify the purpose or deliverables, the recipient must submit a written request and justification for the change along with the revised purpose or deliverables of the award to the NRCS administrative contact. The request should contain the following:

 1. Grant or agreement number

 2. Narrative explaining the requested modification to the project purpose or deliverables

 3. A description of the revised purpose or deliverables

 4. Signatures of the authorized representative, project director, or both

1. Subcontractual Arrangement. — The recipient must submit a justification for the proposed subcontractual arrangements, a statement of work to be performed, and a detailed budget for the subcontract to the NRCS administrative contact. Subcontractual arrangements disclosed in the application do not require additional postaward approval.
2. Absence or Change in Project Leadership.—When a project director or the person responsible for the direction or management of the project—
	1. Relinquishes active direction of the project for more than 3 consecutive months or has a 25 percent or more reduction in time devoted to the project, the grantee must notify the NRCS administrative contact in writing, identifying who will be in charge during the project director’s absence. The notification must include the qualifications and the signature of the replacement, signifying his or her willingness to serve on the project.
	2. Severs his or her affiliation with the grantee, the grantee’s options include—
		1. Replacing the project director. The grantee must request written approval of the replacement from the NRCS administrative contact and must include the qualifications and the signature of the replacement signifying his or her willingness to serve on the project.
		2. Subcontracting to the former project director’s new organization. The grantee must request approval from the administrative contact to replace the project manager and retain the award, and to subcontract to the former project director’s new organization certain portions of the project to be completed by the former project director.
		3. Relinquishing the award. The grantee must submit to the NRCS administrative contact a signed letter by the grantee and the project director that indicates that the grantee is relinquishing the award. The letter must include the date the project director is leaving and a summary of progress to date. A final Standard Form (SF) 425 reflecting the total amount of funds spent by the recipient must be attached to the letter.
	3. Transfers the award to his or her new organization, the authorized organization’s representative at the new organization must submit the following to the NRCS administrative contact as soon as the transfer date is firm and the amount of funds to be transferred is known:
		1. The forms and certifications included in the application package
		2. A project summary and work statement covering the work to be completed under the project (deliverables and objectives must be the same as those outlined in the approved proposal)
		3. An updated qualifications statement for the project director showing his or her new organizational affiliation
		4. Any cost-sharing requirements under the original award transfer to the new institution; therefore, cost-sharing information must be included in the proposal from the new organization

**Note:** The transfer of an award from one organization to another can take up to 90 days to accomplish, which may result in a delay in the project director resuming the project at the new organization.

1. Budget Revisions.—Budget revisions will be in accordance with 2 CFR Part 200.308.

1. No-Cost Extensions of Time. —When a no-cost extension of time is required, the recipient must submit a written request to the NRCS administrative contact no later than 35 days before the expiration date of the award. The request must contain the following:
* The length of additional time required to complete the project and a justification for the extension
* A summary of progress to date
* An estimate of funds expected to remain unobligated on the scheduled expiration date
* A projected timetable to complete the portions of the project for which the extension is being requested
* Signature of the grantee and the project director
* A status of cost sharing to date (if applicable)

**Note:** An extension will not exceed 12 months. Only in exceptional cases will more than one extension be granted. Requests for no-cost extensions received after the expiration of the award will not be granted.

**V. PAYMENTS**

1. Payment by NRCS to the entity will be made monthly or quarterly (whichever is mutually agreed upon by both parties) on a reimbursable or advanced basis upon completion of work outlined herein. Payment will be executed upon the submission of a properly executed form SF-270. The SF-270 must cite the agreement number, remittance address, and billing period. The SF-270 must be sent to the NRCS administrative contact at the address identified in block 8 of the Notice of Grant/Agreement Award.
2. Unless otherwise specified in the award, the recipient must receive payments through electronic funds transfers.
3. Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant to procedures contained in the Federal administrative provisions and **31 CFR Part 205**.
4. The method of payment between the recipient and its contractors will be in accordance with the policies and procedures established by the recipient except that the contractors may not use the USDA Office of Financial Management/National Finance Center method to request payments. If the grantee makes advance payments to contractors, the grantee must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds. Payment requests from the grantee’s contractors will not be sent to NRCS for review or approval.
5. Accounting records for all costs incurred under this award must be supported by source documentation. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subcontract award documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the approved project period of this award, including any approved no-cost extension of time. Costs that cannot be supported by source documentation or that are incurred outside of the approved project period and budget may be disallowed and may result in award funds being returned to the Federal Government by the recipient.

**VI. FINANCIAL REPORTING**

1. Recipients must submit a Federal Financial Report (FFR), SF 425 and 425A, in accordance with the following schedule (recipients may download the applicable form at http://www.forms.gov):

 Quarterly Schedule Report Due Date

 October 1 to December 31 January 31

 January 1 to March 31 April 30

April 1 to June 30 July 30

 July 1 to September 30 October 30

Reports must be submitted on an accrual accounting basis. Failure to submit reports in accordance with the above schedule may result in suspension or termination of award.

1. A final Report must be submitted no later than 90 days after the completion of the award. For final FFRs, reporting end date must be the end date of the project or agreement period. The reports should be submitted to the NRCS administrative contact identified in award notifications.

**VII. PERFORMANCE MONITORING AND REPORTING**

1. The recipient is responsible for monitoring day-to-day performance and for reporting to NRCS. If the project involves subcontractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.
2. Every 6 months the recipient must submit a written progress report. Each report must cover—
	1. A comparison of actual accomplishments with the goals and objectives established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.
	2. The reasons why goals and objectives were not met, if appropriate.
	3. Additional pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit cost.

1. The recipient must submit a final performance report within 90 days after completion of project.
2. **SPECIAL PROVISIONS**
3. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.
4. Employees of NRCS will participate in efforts under this agreement solely as representatives of the United States. To this end, they may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, NRCS employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in efforts regarding such parties until approved by the agency.
5. Employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement.
6. **PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER**
7. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.
8. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to:

 Acquisitions Division

 Grants and Agreements Team

 1400 Independence Avenue, SW.

 Room 6823 South Building

 Washington, DC 20250

1. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.
2. The following acknowledgment of NRCS support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (World Wide Web pages, computer programs, etc.) that is substantially based upon or developed under this award:
* “This material is based upon work supported by the Natural Resources Conservation Service, U.S. Department of Agriculture, under number [recipient should enter the applicable award number here].”

In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

* “Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture.”

The recipient is responsible for ensuring that an acknowledgment of NRCS is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss in a substantial way work funded by this award.

**X. COST-SHARING REQUIREMENTS**

1. If the award has specific cost-sharing requirements, the cost-sharing participation in other projects may not be counted toward meeting the specific cost-share requirement of this award, and must come from non-Federal sources unless otherwise stated in the applicable program announcement.
2. Should the recipient become aware that it may be unable to provide the cost-sharing amount identified in this award, it must—
	1. Immediately notify the NRCS administrative contact of the situation.
	2. Specify the steps it plans to take to secure replacement cost sharing.
	3. Indicate the plans to either continue or phase out the project in the absence of cost sharing.

c. If NRCS agrees to the organization’s proposed plans, the recipient will be notified accordingly. If the organization’s plans are not acceptable to NRCS, the award may be subject to termination. NRCS modifications to proposed cost sharing revisions are made on a case-by-case basis.

1. Failure by the recipient to notify NRCS in accordance with paragraph (b) above may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by NRCS of some of the NRCS funds provided under the award, and possible termination of the award, and may constitute a violation of the terms and conditions of the award so serious as to provide grounds for subsequent suspension or debarment.
2. The recipient must maintain records of all project costs that are claimed by the recipient as cost sharing as well records of costs to be paid by NRCS. If the recipient’s cost participation includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.

**XI. PROGRAM INCOME**

Income derived from patents, inventions, or copyrights will be disposed of in accordance with the recipient’s own policies. General program income earned under this award during the period of NRCS support must be added to total project funds and used to further the purpose and scope of this award or the legislation under which this award is made.

**XII. NONEXPENDABLE EQUIPMENT**

Recipients purchasing equipment or products with funds provided under this award are encouraged to use such funds to purchase only American-made equipment and products. Title to nonexpendable equipment purchased with award funds will vest in the recipient upon completion of the award project and acceptance by NRCS of required final reports. When equipment is no longer needed by the recipient and the per-unit fair market value is less than $5,000, the recipient may retain, sell, or dispose of the equipment with no further obligation to NRCS. However, if the per-unit fair market value is $5,000 or more, the recipient must submit a written request to the NRCS administrative contact for disposition instructions.

**XIII. LIMIT OF FEDERAL LIABILITY**

The maximum financial obligation of NRCS to the recipient is the amount of funds indicated in the award as obligated by NRCS. However, in the event that an erroneous amount is stated on the approved budget, or any supporting document relating to the award, NRCS will have the unilateral right to make the correction and to make an appropriate adjustment in the NRCS share of the award to align with the Federal amount authorized.

**XIV. MODIFICATIONS AND TERMINATIONS**

NRCS may amend or modify the award through an exchange of correspondence between authorized officials of the recipient and NRCS. The award is subject to termination if NRCS determines that the recipient has failed to comply with the terms and conditions of the award. In the event that the award is terminated, the financial obligations of the parties will be those set forth in 2 CFR Part 200.339.

**XV. AWARD CLOSEOUT**

Award closeout is the process by which NRCS determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.

### EXHBIT C-4

### State of Colorado

### Supplemental Provisions for

**Federally Funded Contracts, Grants, and Purchase Orders**

**Subject to The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended**

**(Revised as of 3-20-13)**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

# Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

# “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

# Grants;

# Contracts;

# Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

# Loans;

# Loan Guarantees;

# Subsidies;

# Insurance;

# Food commodities;

# Direct appropriations;

# Assessed and voluntary contributions; and

# Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award ***does*** ***not***include:

# Technical assistance, which provides services in lieu of money;

# A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

# Any award classified for security purposes; or

# Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

# “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

# “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

# “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

# “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

# A governmental organization, which is a State, local government, or Indian Tribe;

# A foreign public entity;

# A domestic or foreign non-profit organization;

# A domestic or foreign for-profit organization; and

# A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.

# “Executive” means an officer, managing partner or any other employee in a management position.

# “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.

# “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”

# “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.

#  “Subaward” means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.

# “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.

# “Subrecipient Parent DUNS Number” means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.

# “Supplemental Provisions” means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.

# “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov.

#  “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:

# Salary and bonus;

# Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

# Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

# Change in present value of defined benefit and actuarial pension plans;

# Above-market earnings on deferred compensation which is not tax-qualified;

# Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

# “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

**1.17 “Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

# Compliance. Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

# System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.

# SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

# DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s information.

# Total Compensation. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

# The total Federal funding authorized to date under the Award is $25,000 or more; and

# In the preceding fiscal year, Contractor received:

# 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

# $25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

# The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

# Reporting. Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor’s obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at http://www.colorado.gov/dpa/dfp/sco/FFATA.htm.

# Effective Date and Dollar Threshold for Reporting. The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is $25,000 or more. If the initial Award is below $25,000 but subsequent Award modifications result in a total Award of $25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $25,000. If the initial Award is $25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $25,000, the Award shall continue to be subject to the reporting requirements.

# Subrecipient Reporting Requirements. If Contractor is a Subrecipient, Contractor shall report as set forth below.

**7.1 ToSAM.** A Subrecipient shall register in SAM and report the following data elements in SAM ***for each*** Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

# 7.1.1 Subrecipient DUNS Number;

# 7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

# 7.1.3 Subrecipient Parent DUNS Number;

# 7.1.4 Subrecipient’s address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

# 7.1.5 Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and

**7.1.6** Subrecipient’s Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

**7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

# 7.2.1 Subrecipient’s DUNS Number as registered in SAM.

# 7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

# Exemptions.

# 8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

# 8.2 A Contractor with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

**8.3** Effective October 1, 2010, “Award” currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates “Award” may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

**8.4** There are no Transparency Act reporting requirements for Vendors.

# Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

## EXHBIT C-5 – ASSURANCES RELATINGTO REAL PROPERTY ACQUISITION

U.S. Department of Agriculture NRCS-ADS-78

Natural Resources Conservation Service 5-88

ASSURANCES RELATING TO REAL

PROPERTY ACQUISITION

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

## PURPOSE – This form is to be sued by sponsor(s) to provide the assurances to the Natural Resources Conservation Service of the U.S. Department of Agriculture which is required in connection with the installation of project measures which involve Federal financial assistance furnished by the Natural Resources Consevation Service.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

## B. PROJECT MEASURES COVERED –

###  Name of project\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#  Identity of improvement or development\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Location\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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## REAL PROPERTY ACQUISITION ASSURANCE –

This assurance is applicable if real property interests were acquired fo the installation of project measures, and/or if persons, businesses, or farm operations were displaced as a result of such installation; *and* this assurance was not previously provided for in the watershed, project measure, or other type of plan.

If this assurance was note previously provided, the undersigned sponsor(s) hereby assures they have complied, to the extents practicable under State law, with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601-4655), as implemented in 7C.F.R. Part 21. Any exceptions taken from the real property acquisition requirements under the authority of 42 U.S.C. 4655 because of State law have been or is hereby furnished to the Natural Resources Conservation Service along with the opinion of the Chief Legal Officer of the State containing a full discussion of the facts and law furnished.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## PURPOSE –

The undersigned sponsor(s) hereby assures that adequate real property rights and interests, water rights if applicable, permits and licenses required by Federal, State, and local law, ordinance or regulation, and related actions have been taken to obtain the legal right to install, operate, maintain, and inspect the above-descibed project measures, except for structures or improvements that are to be removed, relocated, modified, or salvaged before and/or during the installation process.

This assurance is given with the knowledge that sponsor(s) are responsible for any excess costs or other consequences in theevent the real property rights are found to be inadequate during the installation process.

Furthermore, this assurance is supported by an attorney’s opinion attached hereto that certifies an examination of the real property instuments and files was made and they were found to provide adequate title, right, permission and authority for the purpose(s) for which the property was acquired. If any of the real peroperty rights or interests were obtained by condemnation (eminent domain) proceedings, sponsor(s) further assure and agree to prosecute the proceedings to a final conclusion and pay such damages as awarded by the court.

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name of Sponsor)

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

**Title**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Name of Sponsor)

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

**Title**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This action authorized at an official meeting\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_on\_\_\_\_\_\_\_\_\_\_\_\_\_\_

day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_,

at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (title)

This action authorized

at an official meeting\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_on\_\_\_\_\_\_\_\_\_\_\_\_\_\_

day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_,

at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (title)

**THIS IS A SAMPLE ATTORNEY’S OPINION**

**<SPONSOR OR REPRESENTING FIRMS LETTERHEAD>**

OPINION OF TITLE

<Date>

<Name>

State Conservationist

USDA-Natural Resources Conservation Service

<Address 1>

<Address 2>

<City, ST Zip>

RE: Assurances Relating to Real Property Acquisition

 Smith Creek Project, EWP, Smith County, State

Dear, <Name>:

As Attorney for the <Town/Village/County of \_\_\_\_\_\_\_>, I certify an examination of the real property instruments and files for the referenced project were made and they were found to provide adequate title, right, permission and authority for the purpose(s) for which the property was acquired.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

<Signature of Attorney>

<Title Block>

**EXHIBIT C-6**

NATURAL RESOURCES CONSERVATION SERVICE SUPPLEMENT TO OSHA PARTS 1910 AND 1926

CONSTRUCTION INDUSTRY STANDARDS AND INTERPRETATIONS

The Contractor shall comply with OSHA (Occupational Safety and Health Administration) Parts 1910 and 1926, Construction Industry Standards and Interpretations, and with this supplement.

Requests for variances or waiver from this supplement are to be made to the Contracting Officer in writing supported by evidence that every reasonable effort has been made to comply with the contractual requirements. A written request for a waiver or a variance shall include--

(1) Specific reference to the provision or standard in question;

(2) An explanation as to why the waiver is considered justified; and

(3) The Contractor's proposed alternative, including technical drawings, materials, or equipment specifications needed to enable the Contracting Officer to render a decision.

No waiver or variance will be approved if it endangers any person. The Contractor shall not proceed under any requested revision of provision until the Contracting Officer has given written approval. The Contractor is to hold and save harmless the Natural Resources Conservation Service free from any claims or causes of action whatsoever resulting from the Contractor or subcontractors proceeding under a waiver or approved variance.

Copies of OSHA Parts 1910 and 1926, Construction Industry Standards and Interpretations, may be obtained from:

Superintendent of Documents

U.S. Government Printing Office

Washington, D.C. 20402

1.0 GENERAL CONTRACTOR REQUIREMENTS:

1.1 SAFETY PROGRAM. Each Contractor is to demonstrate that he or she has facilities for conducting a safety program commensurate with the work under contract. The Contractor is to submit in writing a proposed comprehensive safety program to the Contracting Officer for approval before the start of construction operations. The program is to specifically state what provisions the Contractor proposes to take for the health and safety of all employees, including subcontractors and rental equipment operators. The program shall be site specific and provide details relevant to the work to be done, the hazards associated with the work, and the actions that will be necessary to minimize the identified hazards.

1.2 PRECONSTRUCTION SAFETY MEETING. Representatives for the Contractor are to meet with the Contracting Officer (CO) or the CO's representative before the start of construction to discuss the safety program and the implementation of all health and safety standards pertinent to the work under this contract.

1.3 JOINT SAFETY POLICY COMMITTEE. The Contractor or designated on-site representative is to participate in monthly meetings of a joint Safety Policy Committee, composed of the Natural Resources Conservation Service (Contracting Local Organization in locally awarded contracts) and Contractor supervisory personnel. At these meetings the Contractor's project manager and the Contracting Officer will review the effectiveness of the Contractor's safety effort, resolve current health and safety problems, and coordinate safety activities for upcoming work.

1.4 SAFETY PERSONNEL. Each Contractor is to designate a competent supervisory employee satisfactory to the

Contracting Officer to administer the safety program.

1.5 SAFETY MEETINGS. A minimum of one "on-the-job" or "toolbox" safety meeting is to be conducted each week by all field supervisors or foremen and attended by mechanics and all construction personnel at the jobsite. The Contractor is to also conduct regularly scheduled supervisory safety meetings at least monthly for all levels of job supervision.

1.6 SAFETY INSPECTION. The Contractor shall perform frequent and regular safety inspections of the jobsite, materials, and equipment, and shall correct deficiencies.

1.7 FIRST AID TRAINING. Every Contractor foreman's work crew must include an employee who has a current first aid certificate from the Mine Safety and Health Administration, American Red Cross, or other state-approved organization.

1.8 REPORTS. Each Contractor is to maintain an accurate record of all job-related deaths, diseases, or disabling injuries. The records shall be maintained in a manner approved by the Contracting Officer. A copy of all reports is to be provided to the Contracting Officer. All fatal or serious injuries are to be reported immediately to the Contracting Officer, and every assistance is to be given in the investigation of the incident, including submission of a comprehensive narrative report to the Contracting Officer. Other occurrences with serious accident potential, such as equipment failures, slides, and cave-ins, must also be reported immediately. The Contractor is to assist and cooperate fully with the Contracting Officer in conducting accident investigations. The Contracting Officer is to be furnished all information and data pertinent to investigation of an accident.

1.9 CERTIFICATION OF INSURANCE. Contractors are to provide the Contracting Officer or his or her authorized representative with certificates of insurance before the start of operations indicating full compliance with State Worker's Compensation statutes, as well as other certificates of insurance required under the contract.

2.0 FIRST AID AND MEDICAL FACILITIES:

2.1 FIRST AID KITS. A 16-unit first aid kit approved by the American Red Cross is to be provided at accessible, well-identified, locations at the ratio of at least 1 kit for each 25 employees. The first aid kits are to be moisture proof and dust tight, and the contents of the kits are to be replenished as used or as they become ineffective or outdated.

2.2 EMERGENCY FIRST AID. At least one employee certified to administer emergency first aid must be available on each shift and duly designated by the Contractor to care for injured employees. The names of the certified employees shall be posted at the jobsite.

2.3 COMMUNICATION AND TRANSPORTATION. Prior to the start of work, the Contractor is to make necessary arrangements for prompt and dependable communications, transportation, and medical care for injured employees. At least one stretcher and two blankets shall be readily available for transporting injured employees.

2.4 FIRST AID AND MEDICAL REPORTS. The Contractor is to maintain a record system for first aid and medical treatment on the jobsite. Such records are to be readily available to the Contracting Officer and are to include--

(a) A daily treatment log listing chronologically all persons treated for occupational injuries and illnesses;

(b) Cumulative record of injury for each individual;

(c) Monthly statistical records of occupational injuries, classified by type and nature of injury; and

(d) Required records for worker's compensation.

2.5 SIGNS AND DIRECTIONAL MARKINGS. Adequate identification and directional markers are to be provided to readily denote the location of all first aid stations.

2.6 EMERGENCY LISTING. A listing of telephone numbers and addresses of doctor, rescue squad, hospital, police, and fire departments is to be provided at all first aid locations.

3.0 PHYSICAL QUALIFICATIONS OF EMPLOYEES:

3.1 GENERAL REQUIREMENTS. Persons employed throughout the contract are to be physically qualified to perform their assigned duties. Employees must not knowingly be permitted or required to work while their ability or alertness is impaired by fatigue, illness, or any other reason that may jeopardize themselves or others.

3.2 HOIST OPERATORS. Operators of cranes, cableways, and other hoisting equipment shall be examined annually by a physician and provided with a certification stating that they are physically qualified to safely operate hoisting equipment. The Contractor is to submit a copy of each certification to the Contracting Officer.

3.3 HEAVY EQUIPMENT OPERATORS. It is recommended that operators of trucks and heavy construction equipment be given physical examinations to determine if they are physically qualified to perform their assigned work without endangering themselves or others.

3.4 MOTOR VEHICLE OPERATORS. Operators of motor vehicles engaged primarily in the transportation of personnel are to be 18 years of age or older and have a valid state operator's permit or license for the equipment being operated. The operators must have passed a physical examination administered by a licensed physician within the past year showing that they are physically qualified to operate vehicles safely.

4.0 PERSONAL PROTECTIVE EQUIPMENT:

4.1 HARDHAT AREAS. The entire jobsite, with the exception of offices, shall be considered a hardhat area. All persons entering the area are, without exception, required to wear hardhats. The Contractor shall provide hardhats for visitors entering hardhat areas.

4.1.1 LABELS. Hardhats shall bear a manufacturer's label indicating design compliance with the appropriate ANSI (American National Standards Institute) standard.

4.2 POSTING. Signs at least 3 by 4 feet worded as follows with red letters (minimum 6 inches high) and white background shall be erected at access points to designated hardhat areas:

CONSTRUCTION AREA - HARDHATS REQUIRED BEYOND THIS POINT

These signs are to be furnished and installed by the Contractor at entries to shops, construction yards, and job access points.

4.3 SAFETY GOGGLES (DRILLERS)

4.3.1 DRILLERS AND HELPERS. Drillers and helpers operating pneumatic rock drills must wear protective safety goggles.

5.0 MACHINERY AND MECHANIZED EQUIPMENT:

5.1 SAFE CONDITION. Before any machinery or mechanized equipment is initially used on the job, it must be inspected and tested by qualified personnel and determined to be in safe operating condition and appropriate for the intended use. Operators shall inspect their equipment prior to the beginning of each shift. Any deficiencies or defects shall be corrected prior to using the equipment. Safety equipment, such as seatbelts, installed on machinery is to be used by equipment operators.

5.2 TAGGING AND LOCKING. The controls of power-driven equipment under repair are to be locked. An effective lockout and tagging procedure is to be established, prescribing specific responsibilities and safety procedures to be followed by the person or persons performing repair work. Mixer barrels are to be securely locked out before permitting employees to enter them for cleaning or repair.

5.3 HAUL ROADS FOR EQUIPMENT

5.3.1 ROAD MAINTENANCE. The Contractor shall maintain all roadways, including haul roads and access roads, in a safe condition so as to eliminate or control dust and ice hazards. Wherever dust is a hazard, adequate dust-laying equipment shall be available at the jobsite and utilized to control the dust.

5.3.2 SINGLE-LANE HAUL ROADS. Single-lane haul roads with two-way traffic shall have adequate turnouts. Where turnouts are not practical, a traffic control system shall be provided to prevent accidents.

5.3.3 TWO-WAY HAUL ROADS. On two-way haul roads, arrangements are to be such that vehicles travel on the right side wherever possible. Signs and traffic control devices are to be employed to indicate clearly any variations from a right-hand traffic pattern. The road shall be wide enough to permit safe passage of opposing traffic, considering the type of hauling equipment used.

5.3.4 DESIGN AND CONSTRUCTION OF HAUL ROADS. Haul road design criteria and drawings, if requested by the Contracting Officer, are to be submitted for approval prior to road construction. Sustained grades shall not exceed 12 percent and all curves shall have open-sight line with as great a radius as practical. All roads shall be posted with curve signs and maximum speed limits that will permit the equipment to be stopped within one-half the minimum sight distance.

5.3.5 OPERATORS. Machinery and mechanized equipment shall be operated only by authorized qualified persons.

5.3.6 RIDING ON EQUIPMENT. Riding on equipment by unauthorized personnel is prohibited. Seating and safety belts shall be provided for the operator and all passengers.

5.3.7 GETTING ON OR OFF EQUIPMENT. Getting on or off equipment while the equipment is in motion is prohibited.

5.3.8 HOURS OF OPERATION. Except in emergencies, an equipment operator shall not operate any mobile or hoisting equipment for more than 12 hours without an 8-hour rest interval away from the job.

5.4 POWER CRANES AND HOISTS (TRUCK CRANES, CRAWLER CRANES, TOWER CRANES, GANTRY CRANES, HAMMERHEAD CRANES, DERRICKS, CABLEWAYS, AND HOISTS)

5.4.1 PERFORMANCE TEST. Before initial onsite operation, at 12-month intervals, and after major repairs or modification, power cranes, derricks, cableways, and hoists must satisfactorily complete a performance test to demonstrate the equipment’s ability to safely handle and maneuver the rated loads. The tests shall be conducted in the presence of a representative of the Contracting Officer. Test data shall be recorded and a copy furnished the Contracting Officer.

5.4.2 PERFORMANCE TEST—POWER CRANES (Crawler mounted, truck mounted and wheel mounted). The performance test is to be carried out as per ANSI requirements. The test is to consist of raising, lowering, and braking the load and rotating the test load through 360° degrees at the specified boom angle or radius. Cranes equipped with jibs or boom-tip extensions are to be tested using both the main boom and the jib, with an appropriate test load in each case.

5.4.3 PERFORMANCE TEST—DERRICKS, GANTRY CRANES, TOWER CRANES, CABLEWAYS, AND HOISTS, INCLUDING OVERHEAD CRANES. This equipment is to be performance tested as per ANSI requirements.

5.4.4 BOOM ANGLE INDICATOR. Power cranes (includes draglines) with booms capable of moving in the vertical plane shall be provided with a boom angle indicator in good working order.

5.4.5 CRANE TEST CERTIFICATION. The performance test required by 5.4.2 and 5.4.3 is fulfilled if the Contractor provides the Contracting Officer a copy of a certificate of inspection made within the past 12 months by a qualified person or by a government or private agency satisfactory to the Contracting Officer.

5.4.6 POSTING FOR HIGH VOLTAGE LINES. A notice of the 10-foot (or greater) clearance required by OSHA 1926.550, Subpart N, shall be posted in the operator’s cab of cranes, shovels, boom-type concrete pumps, backhoes, and related equipment.

5.4.7 BOOM STOPS. Cranes or derricks with cable-supported booms, except draglines, shall have a device attached between the gantry of the A-frame and the boom chords to limit the elevation of the boom. The device shall control the vertical motions of the boom with increasing resistance from 83° or less, until completely stopping the boom at not over 87° above horizontal.

5.4.8 SAFETY HOOKS. Hooks used in hoisting personnel or hoisting loads over construction personnel or in the immediate vicinity of construction personnel shall be forged steel equipped with safety keepers. When shackles are used under these conditions, they shall be of the locking type or have the pin secured to prohibit turning.

5.5 ROLLOVER PROTECTIVE STRUCTURES (ROPS)

5.5.1 ROLLOVER PROTECTIVE STRUCTURES. OSHA 1926, Subpart W, Overhead Protection, Sections 1001 and 1002 are applicable regardless of the year in which the equipment was manufactured and regardless of the struck capacity of the equipment.

5.5.2 EQUIPMENT REQUIRING ROPS. The requirement for ROPS meeting 5.5.1 above applies to crawler and rubber-tired tractors such as dozers, push-and-pull tractors, winch tractors, tractors with backhoes, and mowers; off-highway, self-propelled, pneumatic-tired earthmovers, including scrapers, motor graders and loaders; and rollers, compactors, water tankers (excluding trucks with cabs). These requirements shall also apply to agricultural and industrial tractors and similar equipment.

5.5.3 EQUIPMENT REQUIRING SEATBELTS. The requirements for seatbelts as specified in OSHA Subpart 0, Motor Vehicles, Mechanized Equipment, and Marine Operations, Section 1926.602 shall also apply to self- propelled compactors and rollers, and rubber-tired skid-steer equipment.

6.0 LADDERS AND SCAFFOLDING:

6.1 LADDERS. OSHA 1926, Subpart L - Section 450. Ladders shall be used as work platforms only when use of small hand tools or handling of light material is involved. No work requiring lifting of heavy materials or substantial exertion shall be done from ladders.

6.2 SCAFFOLDING. OSHA 1926, Subpart L - Section 451. Scaffolds, platforms or temporary floors shall be provided for all work except that which can be done safely from the ground or similar footing.

6.3 SAFETY BELTS, LIFELINE, AND LANYARDS. OSHA 1926, Subpart E, Section 104. Lifelines, safety belts and lanyards independently attached or attended, shall be used when performing such work as the following when the requirements of 6.1 or 6.2 above cannot be met.

(a) Work on stored material in hoppers, bins, silos, tanks, or other confined spaces.

(b) Work on hazardous slopes, structural steel, or poles; erection or dismantling of safety nets, tying reinforcing bars; and work from Boatswain's chairs, swinging scaffolds, or other unguarded locations at elevations greater than 6 feet.

(c) Work on skips and platforms used in shafts by crews when the skip or cage does not block the opening to within 1 foot of the sides of the shaft, unless cages are provided.

**EXHBIT C-7 – SUPPLEMENTAL PROVISIONS FOR FEDERAL AWARDS**

**Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”),**

**Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

**1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

**1.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38

**1.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

**1.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37

**1.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

**1.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.

**1.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.

**1.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86

**1.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.

**1.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.

**1.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

**1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing 22 guidance from relevant Federal agencies or the Colorado State Controller.

**2. Compliance**. Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

**3. Procurement Standards.**

**3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.

**3.2 Procurement of Recovered Materials**. If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**4**. **Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

**5. Single Audit Requirements.** If Subrecipient expends $750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

**5.1 Election**. Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

**5.2 Exemption**. If Subrecipient expends less than $750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

**5.3 Subrecipient Compliance Responsibility**. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor 23 with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

**6. Contract Provisions for Subrecipient Contracts.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

**6.1 Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will 24 take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

**4.2** Reserved.

**4.3 Rights to Inventions Made Under a Contract or Agreement.** If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**4.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended**. Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**4.5 Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**4.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 25 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**7. Certifications**. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

**8. Event of Default.** Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

**9. Effective Date.** The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

**10. Performance Measurement**

The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

# EXHIBIT D - OPTION LETTER

# SAMPLE OPTION LETTER

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| --- | --- | --- | --- |
| **Date:**  | **Original Grant CMS #:** | **Option Letter #** | **CMS Routing #** |

1. **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.
	1. Option to extend the end date
	2. Change in the amount of goods within current term
	3. Change in amount of goods in conjunction with renewal for additional term
	4. Level of service change within current term
	5. Level of service change in conjunction with renewal for additional term
	6. Option to initiate next phase of a contract
2. **REQUIRED PROVISIONS**. All Option Letters shall contain the appropriate provisions set forth below:
	1. **For use with Options 1(a-e):** In accordance with Section(s)       of the Original Grant between the State of Colorado, Insert Name of Department or Higher Ed Institution **,** andGrantee's Name,theState hereby exercises its option for an additional term beginning Insert start dateand ending on Insert ending date at a cost/price specified in Section      , AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Identify the Section, Schedule, Attachment, Exhibit etc.
	2. **For use with Option 1(f), please use the following:** In accordance with Section(s)       of the Original Grant between the State of Colorado, Insert Name of Department or Higher Ed Institution **,** andGrantee's Name,theState hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc for the term beginning Insert start dateand ending on Insert ending date at the cost/price specified in Section      .
	3. **For use with all Options 1(a-f):** The amount of the current Fiscal Year contract value is increased/decreased by $ amount of changeto a new contract value of Insert New $ Amt to as consideration for services/goods ordered under the grant for the current fiscal year indicate Fiscal Year.The first sentence in Section       is hereby modified accordingly. The total contract value including all previous amendments, option letters, etc. is Insert New $ Amt.
3. **Effective Date**. The effective date of this Option Letter is upon approval of the State Controller or      , whichever is later.

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| **STATE OF COLORADO****John W. Hickenlooper, Governor**Name of Agency or IHEBy: Insert Name & Title of Person Signing for Agency or IHEDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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| **CRS §24-30-202 requires the State Controller to approve all State grants. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.** |

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| **STATE CONTROLLER****Robert Jaros, CPA, MBA, JD**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |