

RESOLUTION 2017-002
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT
WITH THE STATE BOARD OF THE GREAT OUTDOORS COLORADO
TRUST FUND REGARDING POUDBRE RIVER AND FLOODPLAIN
HABITAT RESTORATION AT KINGFISHER POINT NATURAL AREA

WHEREAS, as part of its 2015 Natural Areas Restoration Master Plan, the City of Fort Collins Natural Areas Department (“NAD”) is planning to restore river and floodplain habitat along the Poudre River through Kingfisher Point Natural Area; and

WHEREAS, the State Board of the Great Outdoors Colorado Trust Fund (“GOCO”) is a political subdivision of the State of Colorado, created by Article XXVII of the Colorado Constitution, which article appropriates a portion of the net proceeds of the Colorado Lottery to the Board and directs the Board to invest those proceeds in the state’s parks, wildlife, open space and recreational resources; and

WHEREAS, in 2016, GOCO offered a statewide grant program pursuant to which eligible entities could apply for grants for habitat restoration projects on eligible properties; and

WHEREAS, NAD submitted a detailed application (“Project Application”) to GOCO for a habitat restoration grant, describing the Kingfisher Point Natural Area work (“Project”); and

WHEREAS, GOCO approved the Project Application on December 8, 2016, subject to the execution of a detailed grant agreement; and

WHEREAS, the grant totals \$100,000, and will require equal matching funds, which NAD has available from City Open Space Yes and Larimer County Help Preserve Open Space tax revenues appropriated in the department’s 2017 budget; and

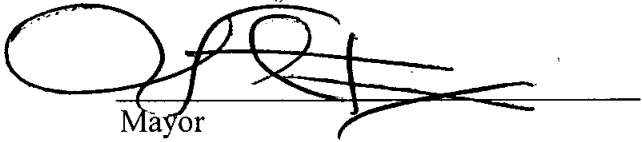
WHEREAS, NAD staff recommends the City Council authorize the City Manager to enter into an Intergovernmental Agreement in the form attached hereto as Exhibit “A”, and incorporated herein by reference, addressing the scope of river and floodplain habitat restoration to be accomplished through the awarded GOCO grant; and

WHEREAS, the City is authorized to enter into intergovernmental agreements to provide any function, service or facility, such as a grant agreement, as provided in Article II, Section 16 of the Charter of the City of Fort Collins and Section 29-1-203, C.R.S.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Manager is hereby authorized to enter into an Intergovernmental Agreement regarding the use of GOCO grant funds for river and floodplain habitat restoration in the Kingfisher Point Natural Area, in substantially the form of agreement attached hereto as Exhibit “A” and such other terms and conditions, or subsequent modifications or amendments, as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City and effectuate the purposes set forth herein, not otherwise inconsistent with this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 3rd day of January, A.D. 2017.




Mayor

ATTEST:

W Winkelman
City Clerk

GRANT AGREEMENT

PROJECT:

Project Title: Poudre River and Floodplain Habitat Restoration at Kingfisher Point Natural Area
Contract Number: LOG NUMBER
Final Completion Date: December 8, 2018

PARTIES TO AGREEMENT:

Board: The State Board of the Great Outdoors Colorado Trust Fund
1900 Grant Street, Suite 725
Denver, CO 80203

Grantee: City of Fort Collins Natural Areas Department
PO Box 580
Fort Collins, CO 80523

RECITALS

A. The State Board of the Great Outdoors Colorado Trust Fund (“GOCO” or the “Board”) is a political subdivision of the State of Colorado, created by Article XXVII of the Colorado Constitution, adopted at the November 1992 General Election, which article appropriates a portion of the net proceeds of the Colorado Lottery to the Board and directs the Board to invest those proceeds in the state’s parks, wildlife, open space and recreational resources.

B. In 2016, the Board offered a statewide grant program pursuant to which eligible entities could apply for grants for habitat restoration projects on eligible properties.

C. Grantee submitted a detailed application (“Project Application”) to the Board for a habitat restoration grant, which contemplates the execution of the project entitled and described above (“Project”). The parties acknowledge that they have on file a complete copy of the Project Application, which is incorporated by reference.

D. The Board approved Grantee’s Project Application on December 8, 2016, subject to the execution of a detailed grant agreement. The parties intend this agreement to be the detailed final grant agreement required by the Board (“Agreement”).

AGREEMENT

NOW, THEREFORE, in consideration of the parties' mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated into this Agreement.
2. **Representations and Warranties of Grantee.**
 - a. Grantee is City of Fort Collins, a duly organized in accordance with the laws of Colorado and has full and lawful authority to enter into, and comply with the terms of, this Agreement.
 - b. Grantee's governing body has authorized entering into this Agreement as evidenced by the resolution attached and incorporated as Exhibit A.
 - c. Grantee warrants that the land upon which the Project is to be performed is either (1) owned by a land trust or other private party and is permanently protected by a conservation easement or other permanent use restriction or (2) publicly owned open space.
3. **Grant and Project.** Subject to the terms and conditions set forth in this Agreement, the Board awards to Grantee a sum not to exceed \$100,000 ("Grant"). The Grant shall be used by Grantee solely to complete the Project, in substantial conformity with the final plans, specifications, designs and uses approved by the Board.
4. **Project Scope.** Grantee shall not materially modify the Project or the Budget, as defined below, without the prior written approval of the Executive Director of GOCO ("Executive Director") or the Executive Director's designee, such approval to be in GOCO's sole discretion. Any material modification to the Project undertaken without GOCO's prior written consent may be deemed a breach of this Agreement by GOCO, entitling GOCO to all remedies available under this Agreement. If Grantee determines with reasonable probability that the Project will not or cannot be completed as approved by GOCO, Grantee will promptly advise the Board in writing and cooperate in good faith to seek a resolution before any further funds are advanced.
5. **Approved Budget.** Grantee has completed a detailed budget that reflects all anticipated sources and uses of funds for the Project, including a detailed accounting of Grantee's anticipated direct costs and indirect costs associated with the Project, a copy of which is attached and incorporated as Exhibit B ("Budget"). The Project Application contains a budget that may not match the approved version attached as Exhibit B and which, therefore, shall not be relied upon by GOCO or Grantee. Where discrepancies exist, the approved Budget in Exhibit B shall control until such time as GOCO approves the final version.
6. **Insurance.** Grantee shall maintain general liability insurance for the entire period of the Project that covers all staff and volunteers participating in the Project, for protection in the event of injury and/or damage. The insurance limits shall not be less than \$1,000,000 per occurrence

and \$2,000,000 aggregate. If the Grantee contracts with another organization to complete the Project, it is the responsibility of the Grantee to ensure its contractor carries insurance that fulfills this requirement.

7. **Grantee Efforts.** Grantee shall complete the Project in a timely fashion, in a good and workmanlike manner, and consistent with this Agreement and GOCO's approvals related to the Project.

8. **Completion Date.** Grantee shall complete the Project and submit the Final Report described below no later than December 8, 2018 ("Project Completion Date"), which is two calendar years after the Board's approval of the Project. Grantee may request an extension of the Project Completion Date in compliance with GOCO's Overdue Grants procedure, which is attached as Exhibit C, as may be amended from time to time by GOCO in its sole discretion. If Grantee determines with reasonable probability that the Project will not or cannot be completed by the Project Completion Date or any extended completion date, Grantee will promptly advise the Board in writing and cooperate in good faith to seek a resolution before any further funds are advanced.

9. **Future Funding.** This Agreement and the Grant only apply to the Project specifically described in this Agreement. GOCO makes no representations regarding future funding for future phases of the Project or any other projects, whether or not described in the Project Application.

10. **Matching Funds.** Grantee shall obtain the matching cash and in-kind contributions for the Project as reflected in the approved Budget or any approved modifications and as required by GOCO, and shall provide evidence of match as GOCO may require in its reasonable discretion.

11. **Disbursement of Funds.** Once the Project is complete, Grantee shall submit a final report to GOCO detailing the accomplishments of and expenditures related to the Project ("Final Report"). The Project is complete when all restoration efforts proposed in the Project Application have been completed. The Final Report must be submitted using GOCO's Habitat Restoration Program Final Report Form (available at www.goco.org or by contacting GOCO). In its discretion, GOCO may request additional documentation before its approval of the Final Report. Upon GOCO's approval of the Final Report, GOCO shall pay the funds awarded through the Grant, subject to any reductions contemplated by any provision of this Agreement.

12. **Conditions for Disbursement of Funds.** The Grant is subject to the following requirements and conditions.

a. The Grant and all matching funds shall be used only for those eligible costs proposed in the Project Application. The Grant and all matching funds may not be used to pay for ineligible expenses including but not limited to non-fixed asset purchases (such as maintenance equipment), fundraising costs, any real property purchases, or any other costs deemed to be ineligible by the Board, at the Board's sole discretion.

b. Disbursement of Grant funds shall be made on the basis of costs actually incurred by Grantee. All costs exceeding \$1,000 must be supported by written documentation (receipts, bills, etc.). In its discretion and depending on the nature of the Project, GOCO may require documentation of mechanics' lien waivers or waivers of claims to public project performance bonds as a precondition to any disbursement under this Agreement.

c. Except as otherwise agreed to in advance by GOCO in accordance with the terms of this Agreement, no material modifications may be made to the Project. Material modifications to the Project to which GOCO has not agreed may result in a reduction in the Grant. "Material Modifications" may include, but are not necessarily limited to, a reduction in the total cost of the Project, a reduction in the size or number of restoration components to be completed, changes to the nature of the restoration or volunteer components of the Project, or any other variance from the Project as presented in the Project Application. It is the sole responsibility of Grantee to inform GOCO of any such modifications to the Project. GOCO strongly encourages Grantee to contact GOCO in writing when it becomes aware of or wishes to make any such modifications, however seemingly minor, to the Project.

13. **Payment of Grant Subject to Sufficient Net Lottery Proceeds.** Payment of the Grant is subject to GOCO's determination in its sole discretion that it has received and has available sufficient net lottery proceeds to fund the Grant and that Grantee has complied with this Agreement, including Grantee's fulfillment of all conditions precedent to funding. In determining the sufficiency of net lottery proceeds, GOCO may consider all facts and circumstances as it deems necessary or desirable in its discretion, including, but not limited to adequate reserves, funding requirements and/or commitments for other past, current and future grants, and past, current and future GOCO operating expenses and budgetary needs.

14. **Project Operation and Maintenance.** GOCO shall not be liable for any cost of maintenance, management or operation of the Project incurred after the original or any extended Project Completion Date.

15. **Compliance with Regulatory Requirements and Federal and State Mandates.** Grantee assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, permits, approvals, local, state and federal regulations and environmental laws, and other similar requirements. To the maximum extent permitted by law, Grantee will indemnify and hold the Board, Executive Director, and GOCO staff harmless from any liability for any failure to comply with any such applicable requirements.

16. **Nondiscrimination.** During the performance of this Agreement, Grantee and its contractors, subcontractors and agents shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, or any other basis prohibited by local, state or federal law. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination.

17. **Publicity and Project Information.**

- a. Grantee shall acknowledge Board funding in all publicity issued by it concerning the Project.
- b. Grantee shall cooperate with GOCO in preparing public information pieces, providing access to the Project for publicity purposes to the extent allowed by the landowner, and providing photos or other imagery of the Project from time to time, which GOCO reserves the right to use and duplicate in any print or electronic publication or platform for publicity, illustration, advertising, web content, and other purposes at any time without the need to seek pre-approval from the Grantee.
- c. Grantee shall give the Board the right and opportunity to use information gained from the Project.
- d. Grantee shall give the Board a minimum of 30 days' notice of Project grand openings, dedications, or other events.
- e. At no time shall Grantee represent in any manner to the public or to any party that it is affiliated with GOCO or acting on behalf of GOCO.

18. **Liability.**

- a. Grantee shall be responsible for, and to the extent permitted by law (including any constitutional or statutory limitations on the ability of a governmental entity to provide indemnification), indemnify, defend and hold harmless the Board, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs (including reasonable legal fees) resulting from, growing out of, or in any way connected with or incident to Grantee's performance of this Agreement. Grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State of Colorado, the Board, its members, officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement.
- b. Grantee acknowledges that Grantee is the owner of the Project and the property upon which it is located, or has managerial control of the Project or the property, and that GOCO neither possesses nor controls the Project, the property, nor the operations of the Project.
- c. Anything else in this Agreement to the contrary notwithstanding, no term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protections provided to the Board under the Colorado Governmental Immunity Act ("CGIA") as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute that is subsequently enacted). This provision may apply to Grantee if Grantee qualifies for protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* The Board and Grantee understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the Board, its members, officials, agents and employees may be

controlled and/or limited by the provisions of the CGIA. The parties agree that no provision of this Agreement shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of the Board, its members, officers, agents and employees.

19. **Audits and Accounting.** Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. Grantee shall retain the accounts, documents, and records related to the Project for not less than five years following the final date of disbursement of funds under this Agreement. The Board, or its designated agent, shall have the right, upon reasonable notice to Grantee, to audit the books and records of Grantee that pertain to the Project and to the use and disposition of the Grant. While Grantee is not required to use GAAP (Generally Accepted Accounting Principles), Grantee shall use reasonable and appropriate accounting systems in maintaining the required records under this Agreement.

20. **Inspection.** Throughout the term of this Agreement, GOCO shall have the right to inspect the Project to ascertain compliance with this Agreement.

21. **Withdrawal of Board Funding; Termination of Agreement.** Anything in this Agreement to the contrary notwithstanding, with prior notice to Grantee, GOCO reserves the right to withhold or withdraw all or a portion of the Grant, to require a full or partial refund of the Grant, and/or to terminate this Agreement if GOCO determines in its sole discretion that:

- a. facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Grant as contemplated infeasible or impractical;
- b. any material modifications in the scope or nature of the Project have occurred from that which was presented in the Project Application approved by GOCO and such material modifications have not received the prior written approval of GOCO;
- c. any statement or representation made by Grantee in the Project Application, this Agreement, the Final Report, or otherwise is untrue, inaccurate or incomplete in any material respect;
- d. the results of GOCO's review of the Final Report is not acceptable to GOCO;
- e. the Project will not or cannot be completed by the Project Completion Date or any extensions granted, or delays in the implementation of the Project have occurred which, in the Board's judgment, make the Project impracticable;
- f. the Project will not or cannot be completed within the Budget or any approved modifications, or the total Project cost and/or Grantee's matching funding are reduced without GOCO's prior written approval;
- g. title to or encumbrances against the property are or become such that Grantee is unable to complete the Project.

22. **Breach.**

a. In the event that Grantee breaches any of the terms, covenants, representations, or conditions of this Agreement, the Board may elect to enforce any and all remedies available at law or in equity, including without limitation any of the following:

- i. Prior to payment of Grant:
 - A. Withdraw the Grant and terminate this Agreement; and,
 - B. Deny Grantee eligibility for participation in future Board grants, loans or projects.
- ii. After payment (partial or full) of Grant:
 - A. Deny Grantee eligibility for participation in future Board grants, loans or projects;
 - B. Seek specific performance of Grantee's obligations under this Agreement;
 - C. Receive reimbursement in full, or in part, of disbursement made under the Grant.

b. The foregoing remedies are cumulative and may be exercised independently or in combination and are not exclusive to one another or to any other remedies available at law or in equity. In the event GOCO must pursue any remedy under this Agreement and is the substantially prevailing party, GOCO shall be awarded its costs and reasonable legal fees, including costs of collection.

23. **Good Faith.** There is an obligation of good faith on the part of both parties, including the obligation to make timely communication of information that may reasonably be believed to be material to the other party.

24. **Assignment.** Grantee may not assign its rights or delegate its obligations under this Agreement without the express written consent of the Board, which consent shall be in the discretion of the Board. Any assignment shall require that, at a minimum, the assignee is eligible to receive grants from the Board and assumes Grantee's ongoing obligations under this Agreement.

25. **Applicable Law.** This Agreement shall be governed by the laws of the State of Colorado, and venue for any dispute under this Agreement shall lie exclusively in the City and County of Denver.

26. **No Joint Venture.** Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the parties other than

independent contracting parties. Neither party shall have the express or implied right to act for, on behalf of, or in the name of the other party.

27. **Severability.** If any provision in this Agreement is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Agreement is declared void or unenforceable, it shall be deemed severed from this Agreement, and the balance of this Agreement shall otherwise remain in full force and effect.

28. **Time is of the Essence.** Time is of the essence in this Agreement.

29. **Survival.** The terms and provisions of this Agreement and the parties' covenants under this Agreement shall survive the funding of the Grant and the completion of the Project.

30. **Fax and Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one agreement. In addition, the parties agree to recognize signatures to this Agreement made electronically and transmitted electronically or by facsimile as if they were original signatures.

31. **Third-Party Beneficiary.** The Board and Grantee acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Board and Grantee and that no third-party beneficiaries are intended.

32. **Notice.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the addresses shown on Page 1 of this Agreement.

33. **Construction.** Each party has reviewed this Agreement, and therefore any usual rules of construction requiring that ambiguities be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.

34. **Waiver.** The failure of either party to enforce a term of this Agreement shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach. No waiver shall be enforceable under this Agreement unless signed by the party against whom the waiver is sought to be enforced.

35. **Entire Agreement.** Except as expressly provided in this Agreement, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes to this Agreement shall be valid unless made in writing, approved by the Board, and signed by the parties.

36. **Termination of the Board.** If Article XXVII of the Colorado Constitution, which established GOCO, is amended or repealed to terminate GOCO or merge GOCO into another entity, the rights and obligations of GOCO under this Agreement shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of February 6, 2017.

STATE BOARD OF THE GREAT
OUTDOORS COLORADO TRUST FUND

GRANTEE:
City of Fort Collins

By: _____
Jim Spaanstra
Executive Director

By: _____
Name: _____
Title: _____

NOTE Signee should be same individual authorized to sign grant agreement in attached resolution (EXHIBIT A)

**EXHIBIT A
RESOLUTION**

**EXHIBIT B
PROJECT BUDGET**

(Submit a new budget if the project numbers have changed.)

N/A - No changes were made from the grant application

EXHIBIT C OVERDUE GRANTS PROCEDURE

GOCO understands that there are unforeseen circumstances that may interfere with a grantee's ability to complete a project by the project completion date set forth in the grant agreement. This procedure outlines the options available to grantees to extend a grant deadline.

- 1) Staff Extensions: Staff can grant an extension for at least 90 days and up to the date of the next scheduled GOCO Board meeting beyond that 90 days. A grantee may only request one staff extension per project.
 - a. The grantee must submit a request for a staff extension prior to the original project completion date via email or postal mail to the appropriate GOCO program staff.
 - b. Requests must include the following: a) grantee name; b) project title; c) contract number from the grant agreement; d) original project completion date; e) percent of project completed to date or due diligence items completed to date for land acquisitions; f) reason for delay; g) estimated date of project completion or closing; and h) estimated date of final report submission to GOCO, if applicable.
 - c. Staff will notify the grantee via email of the decision to grant or deny the request for a staff extension.
- 2) Board Extensions: If the grantee needs more time than a staff extension would provide, the grantee must request a board extension. A grantee can request a second board extension if needed, although this is not a favorable action.
 - a. The grantee must submit a request for a board extension prior to the original or staff-extended project completion date via email or postal mail. Requests must be sent to the appropriate GOCO program staff.
 - b. Requests must include the following: a) grantee name; b) project title; c) contract number from the grant agreement; d) original project completion date and, if applicable, staff-extended project completion date; e) percent of project completed to date or due diligence items completed to date for land acquisitions; f) reason for delay; g) estimated date of project completion or closing; and h) estimated date of final report submission to GOCO, if applicable.
 - c. The board will consider the request for board extension at its next scheduled meeting. Staff will notify the grantee via email of the board's decision to grant or deny the request for a board extension.
 - d. Requests for a second board extension must follow all of the procedures listed above.
- 3) To request a staff or board extension, use the *Project Extension Request* form.
- 4) GOCO expects the grantee to request the appropriate amount of time needed to complete the project. Failure to complete a project by the original due date, or by any extended due dates authorized by staff or the board, may result in the de-authorization of the grant and a suspension from applying in future grant cycles.