

STATE OF COLORADO
Department of Natural Resources, Division of Parks and Wildlife
Subgrant Agreement
with
Insert Grantee's Full Legal Name

1. PARTIES

This Subgrant Agreement is entered into by and between Insert Grantee's Name, Insert Grantee's Name (hereinafter called "Subgrantee"), and the STATE OF COLORADO, acting by and through the Department of Natural Resources, Division of Parks and Wildlife, 6060 Broadway, Denver, CO 80216 (hereinafter called the "State" or "DPW").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Subgrant Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date") but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay or reimburse Subgrantee 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, except as otherwise stated in **§5(A)**.

3. RECITALS

- A.** Authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment under under Contract Encumbrance No. _____ in the amount of \$Insert Grantee's Name; and
- B.** The Fish and Wildlife Service of the U.S. Department of Interior ("the Service") has made federal grant funds available to the State specifically for Hunter Education Improvement pursuant to the 2000 Federal Assistance Improvement Act amendment (P. Law 106-408) to the Federal Aid Wildlife Restoration Act of 1937, (64 Stat. 430, as amended 16 USC 669-669i) (**CFDA #** _____), for the enhancement of hunter education and shooting range development in Colorado ("Section 10 - Wildlife Restoration Funds"); and
- C.** The Fish and Wildlife Service of the U.S. Department of Interior obligate these Section 10 - Wildlife Restoration Funds to be reimbursable from the date the grant award is approved by the Service, (43 CFR 12.928 and 522 FW 25); and
- D.** The State desires to make the Section 10 - Wildlife Restoration Funds available to the Subgrantee on a reimbursable match basis for the purpose of enhancing hunter education and shooting range development opportunities in Colorado as part of its "Shooting Range Development Grant Program"; and
- E.** The State makes the Section 10 - Wildlife Restoration Funds available to Subgrantee in reliance on the representation by the Subgrantee that neither Subgrantee, nor any person or entity acting on its behalf, shall conduct activities with the Section 10 - Wildlife Restoration Funds for purposes or uses prohibited or otherwise restricted under 50 CFR 80; and
- F.** Required approval, clearance and coordination have been accomplished from and with appropriate agencies.

4. DEFINITIONS

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

A. Budget

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

B. Evaluation

"Evaluation" means the process of examining Subgrantee's Work and rating it based on criteria established in **§6** and **Exhibit A**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Project Narrative), **Exhibit B** (Budget), **Exhibit C-1** (Project Documentation Report), **Exhibit C-2** (Itemized Work Sheet), **Exhibit C-3** (Request for Reimbursement), **Exhibit C-4** (Performance Report), **Exhibit D** (Annual Report), **Exhibit E** (Volunteer Time Tracking Sheet), and **Exhibit F** (Federal Funding Accountability and Transparency Act (FFATA) Provisions).

D. Goods

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

E. Subgrant Agreement

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

F. Grant Funds

“Grant Funds” means available funds payable by the State to Subgrantee pursuant to this Subgrant Agreement.

G. Party or Parties

“Party” means the State or Subgrantee and “Parties” means both the State and Subgrantee. The Subgrantee’s officers, agents, and assigns shall not include Subgrantee’s contractors.

H. Program

“Program” means the Shooting Range in Colorado grant program that provides the funding for this Subgrant Agreement.

I. Review

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

J. Services

“Services” means the required services to be performed by SubgranteeSubgrantee pursuant to this Subgrant Agreement.

K. Subcontractor

“Subcontractor” means third-parties, if any, engaged by Subgrantee to aid in performance of its obligations.

L. Work

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

M. Work Product

“Work Product” means the tangible or intangible results of Subgrantee’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.

5. TERM and EARLY TERMINATION

A. Grant Performance Period

The term of this Subgrant Agreement shall commence on **Insert Grantee's Name** and shall continue through **Insert Grantee's Name** (the “Grant Performance Period”). However, payment for performance shall not begin until this Subgrant Agreement is approved by the State Controller, or designee (the “Effective Date”). The grant may be charged only for obligations incurred during the Grant Performance Period established upon grant award approval by the federal awarding agency (522 FW 25.7). This is the period of time during which federal funds are available for expenditure by the recipient (43 CFR 12.928).

B. Early Termination

This Subgrant Agreement is subject to early termination in accordance with the provisions of **§15** and other specific provisions below herein.

6. STATEMENT OF WORK

A. Completion

- i. Subgrantee shall complete the Work and its other obligations as described herein and in **Exhibit A** during the Grant Performance Period. Subgrantee shall undertake the Scope of Work (the "Project") described in this Subgrant Agreement and **Exhibit A**. Prosecution of the Project shall be under the general supervision of the Subgrantee. The State may, at its discretion, require that a representative of the State be present at the Project location while work is being conducted. For construction projects costing more than \$100,000, the Subgrantee shall retain a registered professional engineer who shall approve Project engineering plans and specifications, approve the feasibility determination, supervise construction, and furnish a report of final inspection to the State.
- ii. The Subgrantee shall provide and maintain permanent signs on or near the Project site for the life of a Project indicating that the Project is funded in part by the Section 10 - Wildlife Restoration Act (50 CFR 80.26 (a), (f), and (h); 041 FW 3 Signs).

B. Environmental Stewardship Plan

Grantee must have prepared an Environmental Stewardship Plan that contains the essential elements as outlined by the US EPA Region 2's Best Management Practices for Lead at Outdoor Shooting Ranges. The Grantee's Environmental Stewardship Plan is hereby attached and incorporated as Exhibit C.

C. Shooting Range Plan

Grantee must follow established guidelines set by the National Rifle Association (www.nra.org), National Shooting Sports Foundation (www.nssf.org), and/or the National Association of Shooting Ranges (www.rangeinfo.org) in designing and construction of the shooting range.

D. Project Useful Life

- i. As per United States Department of Interior 522 FW 18.5(A), Useful Life of Capital Improvements Funded by Federal Assistance Grants, the State has determined that the useful life for capital improvements is 20 years. The "useful life" of the Project shall extend 20 years beyond the Project final inspection acceptance date.
- ii. Pursuant to 50 CRF §80.18, the State as the Grantee must control lands on which capital improvements are made with Wildlife Restoration Act funds. This control shall be exercised by the Grantee using this Subgrant Agreement and these duties are passed to the Subgrantee for the Useful Life of the project.
- iii. The Subgrantee shall operate and maintain the Project, or cause the Project to be operated and maintained, for enhancement of hunter education and public shooting range use opportunities during the "useful life" period. The "RealProperty" to be operated and maintained shall include land, land improvements, structures, and appurtenances thereto, acquired or developed under this Project, excluding movable machinery and equipment. The Real Property shall be maintained by the Subgrantee in a reasonable state of repair and shall be open for use by the public at all reasonable hours of the day and time of the year as required by its intended purpose.
- iv. Subgrantee shall not at anytime convert any Real Property acquired or developed pursuant to this Subgrant Agreement to other than public recreational enhancement of hunter education and public shooting range use opportunities without the prior written approval of the State. In the event the Real Property is converted (Loss of Control), Subgrantee will replace or reimburse the State the current fair market value of the Real Property. Replacement of Real Property must be of equal value at current market prices and have equal benefits as the original Real Property. Non-public uses of the said facilities which do not materially interfere with the public uses shall not be deemed a conversion of such facilities within the meaning of this paragraph.
- v. Loss of Control is when such Real Property passes from management control of the Subgrantee. The control must be fully restored to the Subgrantee or the Real Property must be replaced using non-Federal Assistance funds. Final resolution for loss of control will require approval by the Federal awarding agency.

E. Employees

All persons employed by Subgrantee or Subcontractors shall be considered Subgrantee's or Subcontractor's employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Subgrant Agreement.

7. PAYMENTS TO SUBGRANTEE

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

A. Maximum Amount

The State shall reimburse Grantee up to a maximum amount of **\$Insert Grantee's Name**, which shall be from available Section 10 - Wildlife Restoration Funds for the completion of the Project described in **Exhibit A** during the Grant Performance Period.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Subgrant Agreement or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Subgrant Agreement or such Exhibit. Subgrantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State. Payments shall be made on a reimbursement basis, based upon the Subgrantee's submittal of receipts to the State evidencing allowable expenditures by the Subgrantee for services and materials used in prosecution of the Project, as determined by the State, with submittal of receipts and canceled checks evidencing allowable expenditures. Subgrantee may request payments monthly; however, the reimbursement amount for each request shall be no less than \$1,000 unless it is a request for final payment. The State shall in all cases retain ten percent (10%) of the total available Section 10 - Wildlife Restoration Funds until final inspection and approval of the completed project by authorized representatives of the State. Such payments shall also be subject to inspection and approval of the completed work by authorized representatives of the State.

ii. Preliminary or Pre-Agreement Costs

Certain preliminary costs for services, incurred by Subgrantee prior to the execution of the grant award, may be reimbursable or included as part of allowable in-kind contributions. Acceptable services may include, but are not limited to, preliminary design, feasibility surveys (both engineering and biological) and land appraisals. To be eligible, such costs shall be disclosed to the State as preliminary or pre-agreement costs in **Exhibit B**, and shall be subject to federal approval pursuant to 522 FW 16, and shall also be subject to the following cost principles: Appendix B of 2 CFR Part 225, sections 31 and 32.

iii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Subgrantee previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Subgrantee 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. Subgrantee 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.

iv. 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, Subgrantee'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 Subgrant Agreement in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Subgrant Agreement shall be made only from available funds encumbered for this Subgrant Agreement 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 Subgrant Agreement, the State may immediately terminate this Subgrant Agreement in whole or in part without further liability in accordance with the provisions herein.

v. Erroneous Payments

At the State's sole discretion, payments made to Subgrantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Subgrantee, may be recovered from Subgrantee by deduction from subsequent payments under this Subgrant Agreement or other Grants, grants or agreements between the State and Subgrantee 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.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget. Subgrantee may adjust budgeted expenditure amounts up to 10% within each line item of said Budget without approval of the State. Adjustments in excess of 10% shall be authorized by the State in an amendment to this Subgrant Agreement. The State's total consideration shall not exceed the maximum amount shown herein.

D. Matching Funds

- i. Subgrantee shall provide matching funds as provided in Exhibit B. Subgrantee's share of the cost of the subject Project shall be Insert Grantee's Name%, representing a dollar value of \$Insert Grantee's Name, all of which shall be the sole responsibility of the Subgrantee and shall not be reimbursable by the State or the Federal Government, and shall consist, at a minimum, of funds, allowable costs, and the value of third party in-kind contributions as set forth in Exhibit B. Third party in-kind contributions shall mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the Subgrantee. Cost sharing or matching shall mean the value of the third party in-kind contributions and the portion of the costs of a federally assisted grant project or program not borne by the Federal Government.
- ii. Subgrantee shall comply with all applicable federal statutes, regulations, policies, guidelines and requirements regarding all contributions, matching and cost-sharing, including, but not necessarily limited to 43 CFR Part 12, 50 CFR Part 80, [if non-profit, use: 2 CFR Parts 215 (formally OMB Circular No. 110), 2 CFR 230 (formally OMB Circular No. A-122)], [if higher ed, use: 2 CFR Parts 215 (formally OMB Circular No. 110) and 2 CFR 220 (formally OMB Circular No. A-21)], and OMB Circular No. A-133 as they relate to the application, acceptance, and use of federal funds for this federally assisted Project.
- iii. Subgrantee shall include in any contract, subcontract, subgrant, or agreement entered into in performance of the Project, the provisions required by 43 CFR 12.948. Subgrantee certifies that it has read and shall comply with all of the provisions of 43 CFR 12, as applicable. Subgrantee "will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements conform to applicable Federal law and the standards in this section" as required by 43 CFR 12.944. Subgrantee shall not make any award or permit any award (subgrant or contract) at any tier to any party, which is debarred or suspended under 43 CFR 12.75.

8. 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.

A. Performance, Progress, Personnel, and Funds

- i. Subgrantee shall utilize and comply with the following: Exhibit C-1, Exhibit C-2, and Exhibit C-3.
- ii. If volunteer labor is part of Subgrantee's match, Subgrantee will collect and file with DPW the appropriate documentation using Exhibit E. This documentation must accompany Subgrantee's requests for reimbursement (Exhibit C-3).
- iii. Using Exhibit C-4, Subgrantee shall file quarterly progress reports with the State detailing the status of the Project and extent to which it has been completed. The first such quarterly report shall be due three (3) months after Subgrantee receives the notice to proceed, and every three (3) months thereafter until final approval of the completed Project is performed by the State. Subgrantee shall notify the State's Shooting Range Coordinator ("State Coordinator") in writing at least ten (10) days prior to actual completion of the Project to arrange for final inspection of the Project. Subgrantee shall submit all required final documents along with the final payment request to the State Coordinator no later than 45 days after completion of the Project or within the timeframe allowed by the Federal awarding agency.
- iv. Subgrantee shall provide to the State Coordinator color photo slides, digital photos, or color prints of the work site: 1) prior to commencement of work, 2) during construction, and 3) upon completion of the Project.
- v. After the Project is completed, Subgrantee shall file an annual report with the State on the form provided as Exhibit D. The first annual report shall be due one year following final inspection of the Project and shall be due annually thereafter during the Project Useful Life.
- vi. The State Coordinator may waive in writing any quarterly or annual performance report if deemed unnecessary, provided the State will still be able to meet its performance reporting obligations to the Federal agency.

B. 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 Subgrant Agreement or which may affect Subgrantee's ability to perform its obligations hereunder, Subgrantee 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.

C. Noncompliance

Subgrantee'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 Subgrant Agreement.

9. SUBGRANTEE RECORDS

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

A. Maintenance

Subgrantee 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. Subgrantee 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 Subgrant Agreement is completed or terminated, 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 Subgrantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

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

C. Monitoring

Subgrantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Subgrantee pursuant to the terms of this Subgrant Agreement 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 Subgrantee's performance hereunder.

D. Final Audit Report

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

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Subgrantee 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.

A. Confidentiality

Subgrantee 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 Subgrantee shall be immediately forwarded to the State's principal representative.

B. Notification

Subgrantee shall notify its agent, employees, Subcontractors, 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.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Subgrantee or its agents in any way, except as authorized by this Subgrant Agreement or approved in writing by the State. Subgrantee 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 Subgrantee or its agents, except as permitted in this Subgrant Agreement or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Subgrantee for any reason may be cause for legal action by third parties against Subgrantee, the State or their respective agents. Subgrantee 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 Subgrantee, or its employees, agents, Subcontractors, or assignees pursuant to this **§10**.

11. CONFLICTS OF INTEREST

A. Definition and Appearance

Subgrantee 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 Subgrantee's obligations hereunder. Subgrantee acknowledges that with respect to this Subgrant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Subgrantee 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. Subgrantee shall comply with the provisions of CRS §18-8-308 and §§24-18-101-109.

B. Specific Prohibitions

Subgrantee and its respective officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Subgrantee's potential subgrantees, or parties to sub-contracts. Subgrantee's employees, officers, agents or any permitted sub-grantees shall not participate in the selection, award, or administration of this Subgrant Agreement or any sub-grant or sub-contract, if an actual or apparent conflict of interest would occur. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- i. An employee, officer, agent, or board member;
- ii. Any member of the employee's immediate family;
- iii. An employee's partner; or
- iv. An organization, which employs, or is about to employ, any of the aforementioned.

C. Disclosure Statement

Subgrantee 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 shall be considered a material default of this Subgrant Agreement and grounds for termination under the Termination for Default/Cause in Section 20 of this Subgrant Agreement.

D. Code of Performance

Subgrantee, and sub-grantees and subcontractors, if any, shall maintain a written code of standards governing the performance of their respective employees, agents, and contractors engaged in the award and administration of this Subgrant Agreement, or subcontract or subgrant, if any. Subgrantee shall provide a copy of such code to the State within 10 days of the State's written request therefore.

12. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

Subgrantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Subgrant Agreement.

B. Legal Authority – Subgrantee and Subgrantee’s Signatory

Subgrantee warrants that it possesses the legal authority to enter into this Subgrant Agreement 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 Subgrant Agreement, or any part thereof, and to bind Subgrantee to its terms. If requested by the State, Subgrantee shall provide the State with proof of Subgrantee’s authority to enter into this Subgrant Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Subgrantee represents and warrants that as of the Effective Date it has, 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. Subgrantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Subgrant Agreement, without reimbursement by the State or other adjustment in Subgrant Agreement Funds. Additionally, all employees and agents of Subgrantee performing Services under this Subgrant Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Subgrantee, 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 Subgrantee to properly perform the terms of this Subgrant Agreement shall be deemed to be a material breach by Subgrantee and constitute grounds for termination of this Subgrant Agreement.

13. INSURANCE

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

A. Subgrantee

i. Public Entities

If Subgrantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Subgrantee shall maintain at all times during the term of this Subgrant Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Subgrantee shall show proof of such insurance satisfactory to the State, if requested by the State. Subgrantee shall require each Subgrant Agreement with Subcontractors that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subcontractor’s liabilities under the GIA.

ii. Non-Public Entities

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

B. Subcontractors

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

i. Worker’s Compensation

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

ii. 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, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Subgrantee a certificate or other document satisfactory to Subgrantee showing compliance with this provision.

iii. 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.

iv. Additional Insured

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

v. Primacy of Coverage

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

vi. Cancellation

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

vii. Subrogation Waiver

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

C. Certificates

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

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Subgrant Agreement, 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 Subgrantee, or the appointment of a receiver or similar officer for Subgrantee 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.

B. 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 Subgrant Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Subgrantee is in breach under any provision of this Subgrant Agreement, 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 Subgrant Agreement 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.

A. Termination for Cause and/or Breach

If Subgrantee 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 Subgrant Agreement and in a timely manner, the State may notify Subgrantee of such non-performance in accordance with the provisions herein. If Subgrantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Subgrant Agreement or such part of this Subgrant Agreement 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. Subgrantee shall continue performance of this Subgrant Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Subgrantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Subgrantee 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 Subgrant Agreement's terms. At the sole discretion of the State, Subgrantee shall assign to the State all of Subgrantee's right, title, and interest under such terminated orders or subcontracts. Upon termination, Subgrantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subgrantee in which the State has an interest. All materials owned by the State in the possession of Subgrantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Subgrantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Subgrantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Subgrantee was not in breach or that Subgrantee'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 Subgrant Agreement had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Subgrantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Subgrant Agreement by Subgrantee and the State may withhold any payment to Subgrantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Subgrantee is determined. The State may withhold any amount that may be due to Subgrantee 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. Subgrantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Subgrant Agreement 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 Subgrant Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Subgrant Agreement 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 Subgrant Agreement by the State for cause or breach by Subgrantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Subgrantee 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 Subgrant Agreement.

ii. Obligations and Rights

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

iii. Payments

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

C. 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:

i. Suspend Performance

Suspend Subgrantee's performance with respect to all or any portion of this Subgrant Agreement pending necessary corrective action as specified by the State without entitling Subgrantee to an adjustment in price/cost or performance schedule. Subgrantee 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 Subgrantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Subgrantee until corrections in Subgrantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Subgrantee'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.

iv. Removal

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

v. Intellectual Property

If Subgrantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Subgrant Agreement, Subgrantee shall, at the State's option **(a)** obtain for the State or Subgrantee 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.

16. 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.

A. State Coordinator:

Larry Strohl,
Shooting Range Program
Coordinator
Colorado Division of Parks and
Wildlife
6060 Broadway
Denver, CO 80216
Phone: 303-291-7346
Email: larry.strohl@state.co.us

With respect to the representative of the State, the State Coordinator shall have the authority to assure compliance with the terms of this Subgrant Agreement, inspect and reject services, approve invoices for payment, and act otherwise for the State.

B. Subgrantee:

Name
Department Name
Address
Town, State Zip
Phone
Email

17. 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 Subgrantee in the performance of its obligations under this Subgrant Agreement shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Subgrantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Subgrantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Subgrantee's obligations hereunder without the prior written consent of the State.

18. 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.

19. STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Subgrantee under this Subgrant Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Subgrantee 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.

Subgrantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Subgrant Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Subgrantee's performance shall be part of the normal Grant administration process and Subgrantee'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 Subgrantee's obligations under this Subgrant Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Subgrantee'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 Subgrant Agreement term. Subgrantee 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 Subgrantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Insert Dept or IHE Acronym, and showing of good cause, may debar Subgrantee and prohibit Subgrantee from bidding on future Grants. Subgrantee 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 Subgrantee, by the Executive Director, upon a showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and Subgrants

Subgrantee'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 Subcontractors approved by Subgrantee or the State are subject to all of the provisions hereof. Subgrantee shall be solely responsible for all aspects of subgranting arrangements and performance.

B. 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.

C. Captions

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

D. Counterparts

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

E. Entire Understanding

This Subgrant Agreement 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 effect whatsoever, unless embodied herein.

F. Indemnification-General

Subgrantee 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 Subgrantee, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Subgrant Agreement; 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.

G. Jurisdiction and Venue

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

H. Modification, Amendment, and Budget Changes

i. Modifications

This Subgrant Agreement is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Subgrant Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Subgrant Agreement shall be effective unless agreed to in writing by the Parties in an amendment to this Subgrant Agreement that is properly executed and approved in accordance with applicable law.

ii. **Subgrantee Requests for Project Modifications**

The Subgrantee shall notify the State Coordinator, in writing, of any proposed Project modifications or budget changes in the project as soon as possible, but at least 45 days prior to the expiration of the Grant Performance Period. The State's Coordinator shall determine if it is necessary to submit a request for a grant amendment with the Federal awarding agency. An amendment must be submitted to obtain the Federal awarding agency's prior approval for:

- a) Adding or deleting a project from the list;
- b) Increasing or decreasing the Federal funds obligated on the Federal Grant Agreement;
- c) Revising the rate of Federal participation shown on the Federal Grant Agreement;
- d) Modifying the Federal Grant Agreement period; or
- e) Any change to the Federal Grant or Subgrant Agreements.

Any such amendment shall also be processed as an amendment to the Subgrant Agreement, pursuant to State Fiscal Rules and Policies.

iii. **Budget Changes**

Budget Changes. Unless waived by the Federal awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the Federal awarding agency. Changes shall also be governed, as applicable, by the federal regulations in 43 CFR 12.925, as well as the State Fiscal Rules and Policies.

I. Order of Precedence

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

- i. **Colorado Special Provisions,**
- ii. **The provisions of the main body of this Subgrant Agreement,**
- iii. Exhibit A,
- iv. Exhibit B,
- v. Exhibits C-1 through C-4,
- vi. Exhibit E,
- vii. Exhibit D.

J. Severability

Provided this Subgrant Agreement 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.

K. Survival of Certain Grant Terms

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

L. 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. Subgrantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Subgrantee for them.

M. Third Party Beneficiaries

Enforcement of this Subgrant Agreement 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 Subgrant Agreement are incidental to the Subgrant Agreement, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach of a term, provision, or requirement of this Subgrant Agreement, 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.

O. CORA Disclosure

To the extent not prohibited by federal law, this Subgrant Agreement 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.

21. FEDERAL AUDIT PROVISIONS

- A.** Grantee shall comply with the Office of Management and Budget's (OMB) Circular No. A-133 Audits of States, Local Governments, and Non-Profit Organizations which defines audit requirements under the Single Audit Act of 1996 (Public Law 104-156).
- B.** All state and local governments and non-profit organizations expending \$500,000 or more from all sources (direct or from pass-through entities) are required to comply with the provisions of OMB Circular No. A-133. This Circular also requires pass-through entities to monitor the activities of subrecipients and ensure that subrecipients meet the audit requirements. To identify its pass-through responsibilities, the State of Colorado requires all subrecipients to notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed \$500,000.

22. GRANT ASSURANCES

This Subgrant Agreement involves the expenditure of federal funds. Therefore, Grantee shall at all times during the execution of this Subgrant Agreement strictly adhere to and comply with all applicable federal laws and regulations, as they currently exist and may hereafter be amended, which are subject to the terms and conditions incorporated either directly or by reference in this Subgrant Agreement. Grantee shall also require compliance with these statutes and regulations in subcontractor grant agreements permitted under this Subgrant Agreement. The federal laws and regulations are accessible on the internet at: <http://wsfrprograms.fws.gov/Subpages/ToolkitFiles/toolkit.pdf> and include but are not limited to:

- Program Legislation/regulation.
- Code of Federal Regulation/Regulatory Requirements of 43 CFR 12, as applicable.
- Code of Federal Regulation/Regulatory Requirements of 50 CFR 80, as applicable.
- Special terms and provisions specified in the Notice of Federal Financial Assistance Grant Award.
- Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). [All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees]
- The Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). [All contracts and subgrants for construction or repair in excess of \$2,000]
- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). [Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers]
- Standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h), Section 508 of the Clean Water Act (33 USC 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). [contracts, subcontracts, and subgrants of amounts in excess of \$100,000]
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- Office of Management and Budget Circulars 2 CFR Parts 215 and 220 (formally A-21), 2 CFR 225 (formally A-87), 2 CFR 215 (formally A-110), 2 CFR 230 (formally A-122), A-133, and 2 CFR 200, as applicable.
- The Hatch Act (5 USC 1501-1508) and Public Law 95-454, Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.
- USC 6101 *et seq.*, 42 USC 2000d, 29 USC 794, and implementing regulation, 45 CFR Part 80 *et seq.* These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.
- The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213, 47 USC 225 and 47 USC 611.

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). [If the Subgrantee is acquiring real property and displacing households or businesses in the performance of this contract]
- The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 *et seq.*).
- The Age Discrimination Act of 1975, 42 USC Sections 6101 *et seq.* and its implementing regulation, 45 CFR Part 91.
- Section 504 of the Rehabilitation Act of 1973, 29 USC 794, as amended, and implementing regulation 45 CFR Part 84.
- Title IX of the Education Amendments of 1972
- Executive Order 11987, Exotic Organisms
- Endangered Species Act of 1973
- National Environmental Policy Act of 1969 (NEPA)
- Floodplains and Wetlands Protection
- Animal Welfare Act of 1985
- National Historic Preservation Act of 1966
- Debarment and Suspension: **(1)** Executive Order 12549, Debarment and Suspension, Feb. 18, 1986; and **(2)** Department of Interior Rules, Government wide Debarment and Suspension (Nonprocurement), 43 CFR 42
- Restrictions on Lobbying **(1)** (P.L. 101-121), **(2)** 43 CFR 18
- Flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- Civil Rights Assurance. The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away from or otherwise denied access to or benefit from any program or activity that is directly associated with a program of the **RECIPIENT** on the basis of race, color, national origin, age, sex (in education activities) or disability.

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23. COLORADO SPECIAL PROVISIONS

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

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

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

B. 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.

C. 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Subgrant Agreement 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.

D. 4. INDEPENDENT CONTRACTOR

Subgrantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Subgrantee nor any agent or employee of Subgrantee shall be deemed to be an agent or employee of the State. Subgrantee 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 Subgrantee or any of its agents or employees. Unemployment insurance benefits will be available to Subgrantee and its employees and agents only if such coverage is made available by Subgrantee or a third party. Subgrantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Subgrant Agreement. Subgrantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Subgrantee shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

E. 5. COMPLIANCE WITH LAW.

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

F. 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Subgrant Agreement. 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 Subgrant Agreement, to the extent capable of execution.

G. 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 Subgrant Agreement or incorporated herein by reference shall be null and void.

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

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

I. 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 Subgrant Agreement. Subgrantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Subgrantee's services and Subgrantee shall not employ any person having such known interests.

J. 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.

K. 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] Subgrantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Subgrant Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Subgrant Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Subgrant Agreement or enter into a contract with a Subcontractor that fails to certify to Subgrantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Subgrant Agreement. Subgrantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Subgrant Agreement is being performed, (b) shall notify the Subcontractor and the granting State agency within three days if Subgrantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Subgrant Agreement, (c) shall terminate the contract if a Subcontractor 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 Subgrantee participates in the State program, Subgrantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Subgrantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Subgrantee 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 Subgrant Agreement for breach and, if so terminated, Subgrantee shall be liable for damages.

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

Subgrantee, 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 Subgrant Agreement.

SPs Effective 1/1/09

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THE PARTIES HERETO HAVE EXECUTED THIS SUBGRANT AGREEMENT

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

SUBGRANTEE
INSERT-Legal Name of Grantee

STATE OF COLORADO
John W. Hickenlooper GOVERNOR
Department of Natural Resources
Division of Parks and Wildlife

By: INSERT-Name of Authorized Individual
Title: INSERT-Official Title of Authorized Individual

* Signature

(for) Mike King, Executive Director

Date _____

Date _____

2nd Subgrantee Signature if Needed
By: INSERT-Name of Authorized Individual
Title: INSERT-Official Title of Authorized Individual

LEGAL REVIEW
Cynthia H. Coffman, Attorney General

* Signature

By _____
Signature – Assistant Attorney General

Date _____

Date _____

ALL SUBGRANT AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By _____
Susan Borup, DNR Controller

Date _____