

STATE OF COLORADO GRANT AGREEMENT

SIGNATURE AND COVER PAGE

State Agency Department of Natural Resources Colorado Water Conservation Board (CWCBC) 1313 Sherman St, Room 718 Denver, CO 80203	Agreement Number CMS 125999 CTGGI 2019-2940
Grantee Colorado Open Lands 1546 Cole Blvd Lakewood, CO 80401 Entity Type Non-profit corporation	Agreement Performance Beginning Date Effective Date of this Agreement (the date the State Controller or an authorized delegate signs this Grant Agreement). Initial Agreement Expiration Date 04/01/2019 <u>3-1-2019</u>
Agreement Maximum Amount \$175,000.00	Agreement Description South Platte River ATM & Conservation Easement-Riverview Farm Purpose Real Property Grant for Purchase of Conservation Easement-Riverview Farm

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

COLORADO OPEN LANDS By: <u><i>Anthony Caligiuri</i></u> Signature Name: <u>Anthony Caligiuri</u> Title: <u>President</u> Date: <u>1/3/19</u>	STATE OF COLORADO John W. Hickenlooper, Governor Department of Natural Resources Colorado Water Conservation Board By: <u><i>[Signature]</i></u> Signature Name: <u>Lauren Ris</u> Title: <u>Deputy Dir</u> Date: <u>1/4/19</u>
2nd State or Grantee Signature (if needed) By: <u>N/A</u> Signature Name: _____ Title: _____ Date: _____	LEGAL REVIEW Cynthia H. Coffman, Attorney General N/A By: Assistant Attorney General Date: _____

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
 Robert Jaros, CPA, MBA, JD
 By: *[Signature]*
 Name: Maggie Van Clee
 Title: Purchasing Director
 CO Department of Natural Resources
 Effective Date: 1/10/2019

TABLE OF CONTENTS

	SIGNATURE AND COVER PAGE	1
1.	PARTIES	2
2.	TERM AND EFFECTIVE DATE	2
3.	AUTHORITY	3
4.	PURPOSE	4
5.	DEFINITIONS	4
6.	STATEMENT OF WORK	6
7.	PAYMENTS TO GRANTEE	6
8.	PURCHASE AND SALE OF EASEMENT	7
9.	PERFORMANCE CONTINGENCIES FOR THE STATE	8
10.	STATUS PENDING CLOSING	10
11.	CLOSING	10
12.	REPRESENTATIONS AND WARRANTIES	10
13.	CONFLICTS OF INTEREST	11
14.	DEFAULT-TIME IS OF THE ESSENCE-REMEDIES	12
15.	DISPUTE RESOLUTION	12
16.	NOTICES AND REPRESENTATIVES	13
17.	GOVERNMENTAL IMMUNITY	13
18.	STATEWIDE CONTRACT MANAGEMENT SYSTEM	13
19.	GENERAL PROVISIONS	14
20.	COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)	17
	EXHIBIT A, STATEMENT OF WORK	1
	EXHIBIT B, BUDGET AND SCHEDULE	1
	EXHIBIT C, SAMPLE OPTION LETTER	1
	EXHIBIT PLD-PRELIMINARY	1
	EXHIBIT PM-PRELIMINARY	1

1. PARTIES

This Agreement is entered into by and between Grantee named on the Signature and Cover Page for this Agreement (the “Grantee”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CWCB”). Grantee and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Agreement Expiration Date shown on the Signature and Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date or after the Agreement Expiration Date.

B. Initial Term

The Parties' respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Signature and Cover Page for this Agreement and shall terminate on the Agreement Expiration Date shown on the Signature and Cover Page for this Agreement (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State's Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of 1 year or less at the same rates and under the same terms specified in this Agreement (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Grantee in a form substantially equivalent to Exhibit C.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Grantee as provided in §16., may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Grantee, which shall be governed by §14.A.

i. Method and Content

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

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Grantee shall be subject to the rights and obligations set forth in §14.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

Colorado Revised Statutes (CRS) §§ 37-60-106, 38-30.5-102, and 39-29-109(2)(c). Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

4. PURPOSE

This Grant supports the legislative policies, purposes, and uses enumerated in CRS §§39-29-109(2)(c) and 38-30.5-102 as the Property possesses some or all of the values, opportunities, and characteristics listed therein which are important to the Parties, the municipalities of the surrounding area, and the people of the State of Colorado. Grantee has entered or will enter into a contract with Owner for the purchase of a conservation easement burdening the Property at Riverview Farm. At Grantee's request, the State has agreed to provide funding to protect critical farmland while providing flexibility to future generations to keep farmland productive and sustainable.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Award"** means an award by the State to a Grantee.
- C. **"Budget"** means the budget for the Work described in **Exhibit B**.
- D. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- E. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- F. **"Closing and Closing Date"** means the completion or waiver of all conditions precedent in the purchase and sale contract by and between Grantee and the Owner and on which all related document, including Easement deed are contemporaneously executed, and "Closing Date" is the date on which the Closing occurs.
- G. **"Conservation Values"** means those values, opportunities, and characteristics referred to in §4., and set forth in detail in **Exhibit CE**.
- H. **"CRS"** means the Colorado Revised Statutes as amended.
- I. **"Easement"** means the Conservation Easement set forth in **Exhibit CE**.
- J. **"Effective Date"** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- K. **"End of Term Extension"** means the time period defined in §2.D.
- L. **"Exhibits"** means the following exhibits attached to this Agreement:
 - i. **Exhibit A**, Statement of Work.
 - ii. **Exhibit B**, Budget and Schedule.
 - iii. **Exhibit C**, Sample Option Letter.
 - iv. **Exhibit CE**, Conservation Easement, executed CE, to be attached at closing.
 - v. **Exhibit PLD-Preliminary**, Preliminary Property Legal Description.

- vi. **Exhibit PM-Preliminary**, Preliminary Property Map.
- vii. **Exhibit PLD-Final**, Final Property Legal Description, shall replace **Exhibit PLD-Preliminary** at closing.
- viii. **Exhibit PM-Final**, Final Property Map, shall replace **Exhibit PM-Preliminary** at closing.
- M. **“Extension Term”** means the time period defined in §2.C.
- N. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- O. **“Initial Term”** means the time period defined in §2.B.
- P. **“Owner”** means the owner of the Property from whom Grantee is purchasing the Easement.
- Q. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- R. **“Property”** means the real property legally described in **Exhibit PLD-Preliminary** and generally depicted on **Exhibit PM-Preliminary** or represented on **Exhibit PLD-Final** and **Exhibit PM-Final**, to be attached at Closing.
- S. **“Purchase Price”** means the total amount of money Grantee will pay Owner to purchase the Easement.
- T. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State which (i) is subject to disclosure pursuant to the CORA; (ii) is already known without restrictions at the time of its disclosure; (iii) is or subsequently becomes publicly available without breach of any obligation owed to the State; (iv) is disclosed, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- U. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- V. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- W. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- X. **“Title Commitment”** means the current standard ALTA form(s) in common use of a title insurance commitment issued by a Title Company authorized to do business in the State of Colorado, and insuring Grantee’s interest in the Easement in an amount not less than the Purchase Price, together with, as applicable, any updates of the Title Commitment that are issued.

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

6. STATEMENT OF WORK

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

7. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the Agreement Maximum shown on the Signature and Cover Page of this Agreement.

B. Payment Procedures

At Closing, Grantee shall deliver to Owner payment of the Purchase Price. That portion of the Purchase Price supplied by the State may be in the form of a State warrant or electronic funds transfer, which shall be at the State's discretion. The State's payment shall be made under explicit instructions (i) that said payment shall be returned to the State if for any reason acquisition of the Easement does not occur, and (ii) that said payment shall be returned to the State if the Easement approved by the State in its instruction letter or at Closing are not delivered to the escrow agent/title insurance company.

i. Payment Disputes

If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within 30 days following the earlier to occur of Grantee's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Grantee and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

ii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Grantee shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date

of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.E.

iii. Erroneous Payments

The State may recover, at the State's discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

C. Reimbursement of Grantee Costs.

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount for all allowable costs described in this Grant and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed. Grantee's costs for Work performed after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Contract and shown in the Budget if those costs are:

- iv. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- v. Equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

D. Close-Out.

Grantee shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement and Grantee's final reimbursement request or invoice.

8. PURCHASE AND SALE OF EASEMENT

Subject to the provisions of this Grant, by the Closing, the State shall provide the Title Company, on behalf of Grantee, with the Grant Funds to purchase the Easement, and Grantee shall purchase the Easement from Owner. The Easement shall burden the Property in perpetuity, and shall be substantially in the form set forth in Exhibit CE. Grantee shall maintain a complete file of all material records, communications, and other written materials, which pertain to the performance of the Grant, including the acquisition of the Easement, and shall maintain such records for a period of three years after the Closing Date. The State may audit such records at reasonable times and upon reasonable notice.

9. PERFORMANCE CONTINGENCIES FOR THE STATE

The State's performance hereunder is contingent upon successful completion or express waiver, of each of the following conditions in this §9. If one or more of these contingencies are not satisfied by Closing, and the Parties have not agreed in writing to allow additional time for satisfaction, then this Grant shall automatically terminate and Grantee and the State shall be released from all further obligations and liabilities under this Grant.

A. Appraisal and Other Due Diligence

i. Appraisal

Grantee shall, at no cost and expense to the State, have an appraisal completed in accordance with CRS §24-30-202(5)(b) that supports the Purchase Price and is satisfactory to and accepted by the Colorado State Controller. The appraisal shall be acceptable to any review appraiser if a review appraisal is requested by the State. Copies of all appraisals ordered by Grantee shall be provided to the State.

ii. Contract

Grantee shall provide the State with an executed copy of the contract between Grantee and Owner relating to the purchase of the Easement.

iii. Option Agreement

Grantee shall provide the State with an executed copy of the Option Agreement between Grantee and Owner relating to the Grantee's Option Agreement for the purchase of the Easement.

iv. Description and Maps

Grantee shall cause to be prepared, without cost or expense to the State, a legal description of the Property and Easement areas and site and area maps that are acceptable to and approved by the State.

v. Management Plan

Grantee shall, at no cost and expense to the State, create a management plan in conjunction with Owner and the State that is acceptable to and approved by the State. Grantee shall deliver the Management Plan to the State within six (6) months of Closing.

vi. Reports

Grantee shall, at no cost and expense to the State, cause qualified professionals to prepare a baseline report documenting the condition of the Property at the time of Closing, a geologist's remoteness report if needed and should the State deem them necessary, any additional environmental assessments on all or part of the Property if reasonably necessary to protect the interests of the State. Such reports shall be acceptable to and approved by the State. After Closing, Grantee shall, at its sole cost and expense, create an annual report detailing its monitoring of the Easement, and provide a copy of such report to the State within 30 days of the completion thereof.

B. Title Inspection and Review

The State's satisfaction with the title to the Property after the opportunity for physical inspection of the Property and after reviewing the documents and evidence of title thereto provided for in this §9B. If any of the State's objections made pursuant to this provision are not

rectified, then the State may terminate this Grant by written notice and both Grantee and the State shall be released from any further obligations.

i. Evidence of Title – Matters of Public Record

As soon as practicable, Grantee shall obtain, without cost or expense to the State, a Title Commitment. Grantee shall also deliver to the State copies of any abstracts of title covering all or any portion of the Property in Grantee's possession.

ii. Standard Title Exceptions

Grantee shall require Owner to provide a Mechanic's Lien Indemnification Agreement and meet all other requirements for the deletion of or insuring over standard exceptions for mechanic's liens and defects, liens, encumbrances, adverse claims or other matters, if any are created, first appearing in the public records or attaching subsequent to the effective date of the Title Commitment of Schedule B-II of the Title Commitment. Grantee shall require Owner to cause the Title Commitment to delete or insure over the standard exceptions regarding unpaid taxes, assessments, and unredeemed tax sales prior to the year of Closing. If the Grantee or the State determines that one or more of the following items must be deleted in the title insurance policy, then Grantee shall require Owner to cause the Title Commitment to delete or insure over the standard exceptions regarding (a) parties in possession, (b) unrecorded easements, and (c) survey matters.

iii. Exceptions - Title Review - Matters of Public Record

Grantee, without cost or expense to the State, shall promptly cause a copy of the Title Commitment together with the following documents to be delivered to the State: (a) copies of all plats, declarations, covenants, conditions, and restrictions burdening the Property, and (b) copies of other documents (or, if illegible, summaries of such documents) listed in the Additional Exceptions of Schedule B-II of the Title Commitment.

iv. Title Review and Inspection - Matters Not Shown by the Public Records

Grantee shall require Owner to deliver to Grantee and the State true copies of all lease(s), survey(s), and other similar documentary information in Owner's possession pertaining to the Property, and shall require Owner to disclose in writing to Grantee and the State all easements, liens, or other title matters not shown by the public record of which Owner has actual knowledge. The State and Grantee shall have the right to inspect the Property to determine if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

v. Unrecorded Burdens – Grantee's Liability

Grantee shall, at no cost to the State, cause Owner to discharge and/or cure any liens, charges, defects, encumbrances, claims, or causes of action (hereinafter called "burdens") existing on or before Closing and incurred by Grantee or Owner that attach to the Property which are not of record at the time of Closing and which were not disclosed pursuant to §9.B.iv. Grantee shall reimburse the State in an amount equal to CWCB's proportionate contribution to Purchase Price of any diminution in value of the Easement if any such burden cannot be discharged or cured. The State may bring an action to enforce this §9.B.v., if Grantee fails or refuses to do so within a reasonable time, and Grantee shall reimburse the State for its costs and reasonable attorney's fees incurred with regard to such action.

10. STATUS PENDING CLOSING

A. Maintenance of the Property

Grantee shall require Owner to maintain the Property in its present condition until closing. In the event of any damage prior to Closing, the State may, without liability, terminate this Grant.

B. Risk of Loss

The State may elect to terminate this Grant without liability to Grantee to provide Grant Funds in the event of loss or damage to the Property before closing, including, but not limited to, losses from acts of nature, such as fire, flood, and landslide.

11. CLOSING

A. Date and Time

The date and time of Closing shall be at the mutual agreement of Grantee and Owner, but not later than 5:00 p.m. on March 1, 2019. Closing shall occur at the offices of the title company. At Closing Owner shall deliver to Grantee a properly executed easement deed burdening the Property in perpetuity substantially in the form of Exhibit CE and suitable for recording, and the Grantee shall deliver to Owner payment of the Purchase Price. That portion of the Purchase Price supplied by the State may be in the form of a State warrant or electronic funds transfer, which shall be at the State's discretion. The State's payment shall be made under explicit instructions (i) that said payment shall be returned to the State if for any reason acquisition of the Easement does not occur, and (ii) that said payment shall be returned to the State if the Easement approved by the State in its instruction letter or at Closing are not delivered to the escrow agent/title insurance company.

B. Exhibits PLD and PM

At Closing Owner shall deliver Exhibits PLD-Final and PM-Final and at that time Exhibit PLD-Final (Final Property Legal Description) and Exhibit PM-Final (Final Property Map) will be incorporated into this Grant and shall replace and supersede Exhibit PLD-Preliminary and Exhibit PM-Preliminary attached to the Original Contract.

C. Closing at Title Company

The Closing shall be completed by the title company furnishing the Title Commitment and subsequent title insurance policy. Owner and Grantee shall sign and complete all customary or required documents at or before Closing.

12. REPRESENTATIONS AND WARRANTIES

A. Owner to Grantee

As a condition of entering into this Grant the State requires Grantee to obtain from Owner the following representations and warranties in the Letter of Intent between Grantee and Owner, each of which, shall also, notwithstanding anything to the contrary in §19.P or equivalent provision in any agreements or easements between Owner and Grantee, flow to and be enforceable by the State as a third-party beneficiary thereof:

i. Compliance with Law

Owner is in compliance with the laws, orders, and regulations of each governmental department, commission, board or agency having jurisdiction over the Property in

those cases where noncompliance would have a material adverse affect on the Property.

ii. Ownership of the Property

Owner is the sole owner in fee simple of the Property as of the Effective Date of this Grant, Owner is the record owner of the Property, and at closing Grantee shall receive good and marketable title to the Easement, subject to those matters of record revealed in the Title Commitment and those matters disclosed to Grantee and the State.

iii. Other Agreements

Owner is not a party to, or subject to, nor bound by any agreement, contract, or lease of any kind relating to the Property that would conflict with Owner's performance under the purchase and sale contract with Grantee other than those matters of record revealed in the Title Commitment and found acceptable to the State.

iv. Pending Actions

There are not any actions, suits, proceedings, or investigations pending or, to Owner's knowledge, threatened, against or affecting the Property, or arising out of Owner's actions or inactions related to the Property.

B. Grantee to the State

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

i. Grantee's Intent

Grantee intends that the Conservation Values of the Property be preserved and protected in perpetuity, and that any uses be prohibited that would diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of the Easement.

ii. Legal Authority–Grantee Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant, and, if Grantee is not a natural person, that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Grant, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

iii. Qualified Holder

Grantee is qualified to hold easements under CRS §38-30.5-101 et seq., which provides for conservation easements to retain or maintain land, water, airspace, or water rights, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or, life-sustaining ecological diversity.

13. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Agreement. Such a conflict of interest would arise when a Grantee were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Grantee acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

14. DEFAULT-TIME IS OF THE ESSENCE-REMEDIES

Time is of the essence hereof. If any note or check received or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

A. Grantee in Default

If Grantee is in default, all things of value received or performed hereunder shall be forfeited by Grantee and the Parties shall thereafter be released from all obligations hereunder. It is agreed that such forfeiture is the State's sole and only remedy for Grantee's failure to perform Grantee's obligations under this Grant. The State waives the remedies of specific performance and additional damages.

B. The State in Default

If the State is in default, all things of value received or performed hereunder shall be forfeited by the State and the Parties shall thereafter be released from all obligations hereunder. It is agreed that such forfeiture is Grantee's sole and only remedy for the State's failure to perform its obligations under this Grant. Grantee waives the remedies of specific performance and additional damages.

15. DISPUTE RESOLUTION

A. Initial Resolution

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

B. Resolution of Controversies

If the initial resolution described in §15.A., fails to resolve the dispute within 10 Business Days, Grantee shall submit any alleged breach of this Agreement by the State to the Procurement Official of the Department of Natural Resources as described in §24-101-

301(30), C.R.S. for resolution following the same resolution of controversies process as described in §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Grantee wishes to challenge any decision rendered by the Procurement Official, Grantee’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Grantee pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party’s principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State:

Alex Funk
CWCB
1313 Sherman St. Room 718
Denver, CO 80203
alex.funk@state.co.us
303-866-3441 x3201

For Grantee:

Carmen Farmer
Colorado Open Lands
1546 Cole Blvd
Lakewood, CO 80401
cfarmer@coloradoopenlands.org
970-829-1014

17. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State’s risk management statutes, §§24-30-1501, *et seq.*, C.R.S.

18. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §18., shall apply. Grantee agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State’s Agreement management system (“Contract Management System” or “CMS”). Grantee’s performance shall be subject to evaluation and review in

accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

19. GENERAL PROVISIONS

A. Assignment

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

B. Repayment of Grant Funds

Grantee shall repay to the State the Grant Funds and any appreciation in the value of the Easement (if any appreciation exists and only in an amount equal to the State's proportionate contribution to the Purchase Price), if the Easement is terminated or extinguished or its material provisions rendered unenforceable due to acts or omissions of Grantee, its employees, agents, successors or assigns, including, but not limited to, complying with or enforcing the provisions of the Easement.

C. Binding Effect

Except as otherwise provided in §19.A., all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

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

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Jurisdiction and Venue

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

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

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

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any Exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions in §20., of the main body of this Agreement.
- ii. The provisions of the other sections of the main body of this Agreement.
- iii. Exhibit A, Statement of Work.
- iv. Exhibit B, Budget and Schedule.
- v. Exhibit C, Sample Option Letter.
- vi. All other Exhibits.

L. Severability

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

M. Survival of Certain Agreement Terms

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

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Grantee. Grantee shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Grantee may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §19.A., this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-103.5-101, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Grantee's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Indemnification

i. General Indemnification

Grantee shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Grantee may be cause for legal action by third parties against Grantee, the State, or their respective agents. Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Grantee, or its employees, agents, assigns, or Subcontractors.

iii. Intellectual Property Indemnification

Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

20. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)

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

A. CONTROLLER'S APPROVAL. §24-30-202(1), C.R.S.

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

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

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

C. GOVERNMENTAL IMMUNITY.

No term or condition of this 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, §24-10-101, *et seq.*, C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW.

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

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

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

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

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

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

J. VENDOR OFFSET. §§24-30-202(1) and 24-30-202.4, C.R.S.

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

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to

§8-17.5-102(5)(c), C.R.S., Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to Grantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Grantee (i) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (ii) shall notify the Subcontractor and the contracting State agency within 3 days if Grantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or §§8-17.5-101 *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Grantee shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Grantee, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101 *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Agreement.

Colorado Water Conservation Board

Exhibit A - Statement of Work

Project Name:	South Platte River ATM & Conservation Easement-Riverview Farm
Grant Recipient:	Colorado Open Lands (COL)
Funding Source:	ATM Grant Program

Water Activity Overview:

Colorado Open Lands and Western Water Partnerships are working with a landowner in Weld County to permanently conserve a farm through a conservation easement, while permitting limited water leasing to municipalities. This conservation easement will be an unprecedented example of private and public partners coming together to provide the impetus for a new and innovative way to provide for the protection of critical farmland while providing flexibility to future generations to keep farmland productive and sustainable. In an industry where water is so imperative and subject to the unpredictable whims of nature, the option to lease the water on the property during dry years greatly contributes to the future viability of the farm while also ensuring that development pressures do not permanently remove the farm from production. In this particular context, permanently conserved lands in Weld County provide a solid foundation for the continued operation and sustainability of the agriculture industry as a whole in one of the most productive counties in the country.

Objective:

This project will permanently protect the 389 acre Riverview Farms property and associated water rights to augmentation ponds located in Weld County through the purchase of an conservation easement.

Tasks

Task 1 –Purchase of Conservation Easement

Description of Task:

The initial task consists of implementing a conservation easement on the 389-acre Riverview Farms and associated water rights to augmentation ponds located in Weld County, just west of Orchard on the north side of the South Platte River. The conservation easement will prohibit future non-agricultural development of the property, while permitting limited sharing of the water associated with the property. During certain periods (generally during dry years), the landowner will have the option to share water with a municipal or industrial user. However, the conservation easement will prohibit the permanent separation of the associated water rights from the property. Funds will be used solely toward the acquisition of the conservation easement. All other related costs for personnel, due diligence, etc. will be borne by COL, the landowner, and/or other funders and therefore are not documented in this application. The ATM Program Grant funds would be expended at closing on the conservation easement through a Title Company, only when all the due diligence is finalized.

The conservation easement funded through this application will be held by Colorado Open Lands and the implementation will be conducted according to:

- 1) All legal requirements
- 2) Best practices determined by national land trust standards, and
- 3) All due diligence requirements of Colorado Open Lands and the project's funders will be fulfilled prior to and as a condition of closing.

Grantee Deliverable:

The deliverable from this activity will be the completion of a perpetual conservation easement.

Exhibit B - Budget and Schedule: This Statement of Work shall be accompanied by a combined Budget and Schedule that reflects the Task identified in the Statement of Work.

Performance Measure:

At Closing, a properly executed easement deed burdening the Property in perpetuity substantially in the form of Exhibit CE (suitable for recording), Exhibit PLD-Final (Final Property Legal Description) and Exhibit PM-Final (Final Property Map) will be delivered to CWCB. At that time Exhibit CE, Exhibit PLD-Final and Exhibit PM-Final will be incorporated into this Grant. Exhibit PLD-Final and Exhibit PM-Final shall replace and supersede Exhibit PLD-Preliminary and Exhibit PM-Preliminary attached to the Original Contract.



COLORADO

Colorado Water
Conservation Board

Department of Natural Resources

Colorado Water Conservation Board

Alternative Agricultural Water Transfer Methods Competitive Grant Program

EXHIBIT B - BUDGET AND SCHEDULE

Project Name: South Platte River ATM and Conservation Easement-Riverview Farm

Grantee Name: Colorado Open Lands

Task No.	Description	Start Date	End Date	Matching Funds (cash & in-kind)	CWCB Funds (Basin & Statewide combined)	Total
Task 1 Purchase of Conservation Easement	Conservation Easement-Riverview Farm	1/25/2019	3/1/2019	\$0	\$175,000	\$175,000
						\$0
						\$0
						\$0
						\$0
Total				\$0	\$175,000	\$175,000

EXHIBIT C, SAMPLE OPTION LETTER

State Agency Department of Natural Resources Colorado Water Conservation Board (CWCBC) 1313 Sherman St, Room 718 Denver, CO 80203	Option Letter Number
Grantee Colorado Open Lands 1546 Cole Blvd, Lakewood, CO 80401	Original Agreement Number CMS 125999 CTGGI 2019-2940
Current Agreement Maximum Amount (Initial Term)	Option Agreement Number
	Agreement Performance Beginning Date
	Current Agreement Expiration Date

1. **OPTIONS:**
 - A. Option to extend for an Extension Term
2. **REQUIRED PROVISIONS:**
 - A. **For use with Option 1(A):** In accordance with Section 2.C., of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning _____ and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.
3. **OPTION EFFECTIVE DATE:**
 - A. The effective date of this Option Letter is upon approval of the State Controller or an authorized delegate.

<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, Governor Department of Natural Resources Colorado Water Conservation Board</p> <p>By: _____ Signature</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Signature</p> <p>Name: _____</p> <p>Title: _____</p> <p>Option Effective Date: _____</p>
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