



Boulder County Purchasing

1325 Pearl Street

Boulder, CO 80302

purchasing@bouldercounty.org

**REQUEST FOR PROPOSAL
COVER PAGE**

RFP Number:	7209-21
RFP Title:	Calwood Fire Aerial Mulching Project
Pre-BID Meeting:	See Instructions for Pre-BID
RFP Questions Due:	March 1, 2021 – 2:00 p.m.
Submittal Due Date:	MARCH 8, 2021; 2:00 PM
Email Address:	purchasing@bouldercounty.org

Documents included in this package:

Proposal Instructions
Terms and Conditions
Specifications
Insurance and W-9 Requirements
Submittal Section
Submittal Checklist
Evaluation Criteria
Proposal Section
Signature Page

Attachments:

A: Calwood Fire Location Overview Map
B: Calwood Fire Hazard Tree Removal Areas
C: Mulching and Mastication Areas
D: Calwood Fire Sub Watersheds
E: Mulching/Mastication Areas Table
F: Calwood Fire Photos
G: Sample Landowner Permission Form
H: NRCS EWP Agreement
I. NRCS EWP SOW Agreement-Draft

J: NRCS EWP Addendum
K: USDA General Terms/Conditions
L: Procurement Standards
M: Contract Provisions
N: Contracting Certification
O: Special Provisions Construction
P: Osha 1910 & 1926
Q: Pre-Bid Contractor Waiver
R: Heil Valley Hazard Trees
S: Sample Contract



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PROPOSAL INSTRUCTIONS

BACKGROUND:

The Calwood Fire began on October 17, 2020 and quickly grew to become the largest fire in Boulder County history, burning approximately 10,112 acres of private, County, State, and Federal land, and destroying 20 residences and damaging three.

The purpose of this post-fire mulch treatment is to provide adequate cover on treatment areas within the Calwood Fire to reduce erosion and sedimentation that may affect water quality, municipal water supplies, park and road infrastructure, as well as homes and lives of the citizenry located within, adjacent, or down slope of the fire perimeter.

There are three primary work site locations. The first is Boulder County's Heil Valley Ranch and some associated private parcels, located on Geer Canyon Drive off Lefthand Canyon Drive.

A secondary project area is located on the Calwood Environmental Education Center, located northwest of Jamestown off James Canyon Drive at 2282 County Road 87.

The third area is a treatment unit located approximately one half (½) mile, north of Lefthand Canyon Drive at the entrance to the Mountain Ridge Subdivision on Mountain Ridge Road on North Foothills Highway (Colorado State Highway 36).

To address these concerns of post-fire flooding, debris flows, and erosion, the County has entered into an Agreement with the Natural Resources Conservation Service (NRCS) to provide emergency stabilization to the most at-risk areas of the fire.

The Boulder County Parks and Open Space Department (BCPOS) is seeking proposals from qualified Contractors to treat approximately 1,632 acres of moderate and high severity burned lands with aerial application of wood shred mulch. The project requires Contractors who are specifically experienced and fully qualified in the aerial application of wood shred mulch over steep and rugged terrain, as well as the ability to utilize aerial forwarding systems (helicopter yarding) and ground-based systems via tree-length method to harvest burned trees.

The Contractor must have experience with and ability to masticate burned trees on slopes up to 40% and on rocky ground. In addition, the selected contractor will be responsible for all aspects of the project, including access improvement, felling operations, processing operations at the landing(s) to provide wood shreds for aerial mulching, and procurement and transportation of either logs or wood shreds to the project site from off-site sources. This includes removal of accumulated debris/slash at the landing areas and rehabilitation of all adversely impacted operation sites.

Aerial mulching using wood shreds will be applied over approximately 1,350 acres, and mastication will be implemented on approximately 282 acres. Some of the treatments are contingent upon land owner permission, and additional acres could potentially be masticated rather than receive the aerial application of mulch or mulched rather than masticated if enough materials are available.

CONTRACT LANGUAGE:

The successful proposer will be required to enter into a Contract for Services and meet all insurance requirements as required prior to any work beginning. The Project will commence only after a Notice to Proceed has been issued by the County.

All proposers are instructed to thoroughly review all the stated insurance requirements for this Project, the insurance requirements stated are the minimum and standard for Boulder County Government, for this Project. All hired contractors are required to meet the insurance requirements, as stated, for contracted services as part of the Boulder County contracting process. Owner/Sole Proprietors/Officer are not Exempt from the county's insurance requirements and coverage limits. Please refer to the Insurance Requirements in this RFP.

The evaluation of the qualifications shall be based on the requirements described in this RFP. All properly submitted qualifications will be reviewed, evaluated, and selected by the Selection Committee.

Boulder County reserves the right to reject submittals that do not include evidence of prior experience and current capabilities, including manpower and equipment, necessary to provide the required services and to successfully complete this type of work.

In the event the selected contractor is unable to commence work as agreed to, the Boulder County Commissioners may rescind the bid award and proceed to award the contract to another proposer based on the RFP, re-bid the work, or proceed in any lawful manner the County deems necessary.

Upon commencement of the Project, the County reserves the right to issue a Stop Work Order for any reason, in writing, as determined by the County, in its sole discretion. In the event a Stop Work Order is issued, work may only resume upon written notification of a Notice to Proceed from the County.

BOULDER COUNTY BID AWARD:

Boulder County requires the formality of issuing a formal bid award for this Project. The Boulder County Board of County Commissioners are required to approve the Project Bid Award, in a public meeting, prior to processing a contract for services. The Bid Award is contingent upon the funding source being approved. A period of ten (10) days follows in which the county is required to adhere to the Boulder County Appeals Process.

PROJECT FUNDING:

The completion of all aspects of the Project is contingent upon the source of funding being approved and available.

All aspects of this Project including administrative tasks, close out items and funding requests are required to be completed by September 9, 2021.

This project is supported by an Agreement with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) CFDA# 10.923 Emergency Watershed Protection (EWP) program. This project is contingent upon Boulder County finalizing an executed Agreement from the NRCS. Any associated contract will be subject to the terms and conditions of this Cooperative Agreement and the EWP program requirements.

The successful contractor will be required to enter into a Contract for Services. Additionally, the selected contractor shall execute the attached Natural Resources Conservation Services (NRCS) , Ft. Collins, Colorado Service, Emergency Watershed Protection Program Requirements for Procurement Contracts Addendum as part of any contract with the County, and comply with all NRCS requirements set forth in that addendum.

The Project shall be completed in compliance with the Contract documents prepared by the County and with all Federal and State regulations.

The Submittal Checklist gives a complete list of additional documentation required for evaluation of the Proposals in addition to the Proposal Section.

The selected contractor will comply with all state and local licensing requirements, including but not limited to, filing the State of Colorado Statement of Foreign Entity Authority paperwork, if contractor is not a Colorado company.

The selected contractor will be required to be in good standing with the Federal Government, any agency that is not in compliance or in violation of Federal law will not be considered by Boulder County. Boulder County will not conduct business with any entities listed on the Federal Debarment Checklist.

Boulder County is an Equal Opportunity Employer and no otherwise qualified individual and/or company shall be subject to discrimination on the basis of race, color, religion, creed, national origin, ancestry, sex, age, sexual orientation (incl. transgender status), physical or mental

disability, marriage to a co-worker and retaliation for engaging in protected activity (opposing a discriminatory practice or participating in an employment discrimination proceeding) in any phase of employment or selection for this Project.

Boulder County and duly authorized officials of the State and Federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the Contractors involving transactions related to this local program and contract.

This is a Federally funded disaster Project, the Colorado Unified Certification Program and the Minority Business Development Agency and the Minority Business Office shall be included when soliciting proposals.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

OSHA Compliance. Contractors on NRCS assisted projects shall perform their work in accordance with OSHA regulations, NRCS Supplement to OSHA Parts 1910 and 1926, and the Contract Work Hours and Safety Standards Act (40 USC 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5).

Debarment and Suspension (Executive Orders 12549 and 12689). Contractor attests that it is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Copeland "Anti-Kickback" Act (40 U.S.C. 3145). Contractor must fully comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Pursuant to the Act, Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The County shall report all suspected or reported violations of the Copeland "Anti-Kickback" Act to the Federal awarding agency.

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

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Contractor must fully comply with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708), including 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Contract is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

SAM.GOV (System for Award Management) REGISTRATION:

A copy of your business' registration in sam.gov submitted with your PROPOSAL is required.

DUNS NUMBER:

A copy of your business' DUNS number submitted with your PROPOSAL is required.

CERTIFICATE OF GOOD STANDING:

A copy of your business' State issued certificate submitted with your PROPOSAL is required. Contractor shall be authorized to do business in the State of Colorado and shall provide the county a current Certificate of Good Standing evidencing such authorization. Furthermore, contractor shall be responsible for all applicable sales and employment taxes.

PAYMENT AND INVOICING:

Payment will be processed based upon work completed, inspected and approved by the County. See Section County Inspections and Payment for additional information.

Final payment of required held retainage will be paid upon satisfaction of the required Notice of Final Settlement.

Contractor shall submit, in writing, to Boulder County, a request for payment. Invoices shall be submitted on company letterhead and include, but not limited to, depending on the activity completed, designated project name, date(s), type of work performed and should contain sufficient information detailing all expenses. Additionally, all invoices should contain the current date, invoice number, amount due and current return address. Contractors will also include any assigned Purchase Order numbers issued for the project and this Request for Proposal solicitation number.

BID BOND:

Due to COVID-19 Boulder County offices remain closed to the Public, therefore, Proposers should scan the cashier's check to be included with their PROPOSAL submittal AND mail the actual cashier's check, postmarked no later than the date of the bid deadline. Cashier's checks that are postmarked after the deadline will not be accepted and the bid will be rejected as incomplete.

A bid guarantee from each bidder equivalent to five percent (5%) of the bid price is required. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

PAYMENT BOND AND PERFORMANCE BOND:

Due to COVID-19 Boulder County offices remain closed to the Public, therefore, the County will accept a facsimile of the required Payment Bond and the required Performance Bond in lieu of the actual bonds from the selected contractor, for bidding purposes only.

Prior to work commencing, the selected contractor will be required to submit the actual bonds to the County either in-person or by mail delivery.

Both a Payment Bond and a Performance Bond are required for this project and each bond must equal 100% of the proposed cost. Please include the cost of this bonding into the total proposed cost in the Proposal section.

Payment and Performance Bond requirements are addressed in the attached Sample Contract. Bonds must be received and approved, by the County, prior to work commencing. Retainage on all invoices presented and a Notice of Final Settlement posting will be required for this Project.

OPTIONAL PRE-BID ON-SITE MEETING:

Interested Parties should contact the Boulder County Purchasing Department at purchasing@bouldercounty.org to reserve a place, reserved spaces will be on a first-come, first-serve basis.

Reservations will only be taken beginning on FEBRUARY 18, 2021 through the end of business, 4:30 p.m., on FEBRUARY 23, 2021.

All interested Parties, that timely request to participate in the optional Pre-BID, on-site project tour, will be permitted access to the project sites. A limited number of reservations will be accepted. Contractors are advised to make a reservation early in order to participate. The date, time and location of the Pre-BID meeting will be disclosed only to registered participants. No additional access to the project sites will be offered and/or granted by the County and access is strictly prohibited. The Pre-BID will last approximately four (4) hours and consist of driving and hiking to impacted project areas. Only two (2) designated representatives from a company will be scheduled and permitted to attend. All participants are required to sign a Waiver and Release Agreement upon reserving a space. All participants will be provided a copy of the County's Pre-BID safety plan.

The County will not provide transportation to project sites. Contractors are advised 4-wheel drive vehicles are required to be able to safely access all project sites. PPE requirements are addressed in the Safety Plan, participants are required to wear an OSHA approved hard hat and appropriate boots.

Due to the importance of the project and budgetary restraints, all interested Parties are strongly encouraged to attend the Pre-BID meeting to ensure the submittal of a complete proposal. Change order requests due to incomplete proposals or a miscalculation of required tasks by the selected contractor will not be entertained by the County and will be the sole financial responsibility of the selected contractor to complete the Project.

Boulder County reserves the right to decline a request for proposal withdrawal (claim of error) based on a proposer's failure to view the project site as encouraged by the County.

Attending the optional Pre-BID on-site viewing is not mandatory nor is it required to submit a proposal for the project, but instead, is highly encouraged.

Questions regarding additional information not covered in this Request for Proposal or additional questions not answered at the Pre-BID, are to be directed to purchasing@bouldercounty.org, in writing.

The county will post the answers to the submitted written questions in a posted, bid addenda, as directed, in this Request for Proposal.

Boulder County adheres to the Colorado State Department of Public Health & Environment guidelines as well as the guidelines set forth by the Boulder County Health Department as related to the COVID-19 pandemic, therefore, a limit of only two (2) people from individual companies may attend the meeting. For the safety of all potential proposers attending and staff, if you have recently been in close contact with anyone who has contracted COVID-19 or are experiencing symptoms, please refrain from attending.

Additional requirements are as follows:

- a. Information will not change hands. No documents, writing instruments, business cards, sign in sheets, etc.;
- b. All participants are required to wear face coverings;
- c. All participants are required to maintain at least 6 feet of physical distancing at all times;
- d. Participants will be allowed to take photos or videos of the site in order to review with sub-contractors or reference for proposal submission.

Please note that the County may reschedule the optional Pre-BID, terminate or modify the process at any time due to changing circumstances related to the current COVID-19 pandemic.

The County representatives will remain onsite for the duration of the site visits and leave only after the interested Party representatives have left the site. Access without County supervision is strictly prohibited.

ATTACHMENTS:

The following documents are part of this RFP:

1. Attachment A: Calwood Fire Location Overview Map
2. Attachment B: Calwood Fire Hazard Tree Removal Areas
3. Attachment C: Calwood Fire Mulching and Mastication Treatment Areas/Potential Landing Locations
4. Attachment D: Calwood Fire Sub Watersheds Map
5. Attachment E: Mulching and Mastication Treatment Areas Acreage Table
6. Attachment F: Calwood Fire Photos
7. Attachment G: Sample Landowner Permission Form
8. *Attachment H: NRCS EWP Agreement
9. Attachment I: NRCS EWP Statement of Work Agreement - Draft
10. Attachment J: NRCS EWP Addendum
11. Attachment K: USDA Terms and Conditions
12. Attachment L: Procurement Standards 2 CFR § 200.317 through §200.326
13. Attachment M: Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
14. Attachment N: Contracting Local Organization Certification
15. Attachment O: Special Provisions Construction
16. Attachment P: OSHA 1910 & 1926
17. Attachment Q: Pre-Bid Waiver
18. Attachment R: Heil Valley Ranch Hazard Trees Map
19. Attachment S: County Sample Contract

NOTE:

This project is supported by an Agreement with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) CFDA# 10.923 Emergency Watershed Protection (EWP) program. This project is contingent upon Boulder County finalizing an executed Agreement from the NRCS. *Attachment H was not available at the time this solicitation was posted, however, the attachment will be posted in the bid addenda.

WRITTEN INQUIRIES:

All inquiries regarding this RFP will be submitted via email to the Boulder County Purchasing Office at purchasing@bouldercounty.org on or before 2:00 p.m. **March 1, 2021**. A response from the county to all inquiries will be posted and sent via email no later than **March 3, 2021**.

Please do not contact any other county department or personnel with questions or for information regarding this solicitation.

SUBMITTAL INSTRUCTIONS:

Submittals are due at the email box only, listed below, for time and date recording on or before **2:00 p.m. Mountain Time on March 8, 2021**.

Please note that email responses are limited to a maximum of 50MB capacity. NO ZIP FILES OR LINKS TO EXTERNAL SITES WILL BE ACCEPTED. Electronic submittals must be received in the email box listed below. Submittals sent to any other box will NOT be forwarded or accepted. This email box is only accessed on the due date of your questions or proposals. Please use the Delivery Receipt option to verify receipt of your email. It is the sole responsibility of the proposer to ensure their documents are received before the deadline specified above. Boulder County does not accept responsibility under any circumstance for delayed or failed email or mailed submittals.

Email purchasing@bouldercounty.org; identified as **RFP# 7209-21** in the subject line.

All RFPs must be received, and time and date recorded by authorized county staff by the above due date and time. Sole responsibility rests with the proposer to see that their RFP response is received on time at the stated location(s). Any responses received after due date and time will be returned to the proposer.

The Board of County Commissioners reserves the right to reject any and all responses, to waive any informalities or irregularities therein, and to accept the proposal that, in the opinion of the Board, is in the best interest of the Board and of the County of Boulder, State of Colorado.

Americans with Disabilities Act (ADA):

If you need special services provided for under the Americans with Disabilities Act, contact the ADA Coordinator or the Human Resources office at (303) 441-3525 at least 48 hours before the scheduled event.



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TERMS AND CONDITIONS

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1. Proposers are expected to examine the drawing, specifications, schedule of delivery, and all instructions. Failure to do so will be at the proposer's risk.
 2. Each proposer will furnish the information required in the Request for Proposals.
 3. The Contract/Purchase Order will be awarded to that responsible proposer whose submittal, conforming to the Request for Proposals, will be most advantageous to the County of Boulder, price and other factors considered.
 4. The County of Boulder reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received, and to accept any portion of or all items proposed if deemed in the best interest of the County of Boulder to do so.
 5. No submittal will be withdrawn for a period of thirty (30) days subsequent to the opening of proposals without the consent of the County Purchasing Agent or delegated representative.
 6. A signed purchase order or contract furnished to the successful proposer results in a binding contract without further action by either party.
 7. Late or unsigned proposals will not be accepted or considered. It is the responsibility of proposers to ensure that the proposal arrives at the purchasing email address prior to the time indicated in the "Request for Proposals."
 8. The proposed price will be exclusive of any Federal or State taxes from which the County of Boulder is exempt by law.
 9. Any interpretation, correction or change of the RFP documents will be made by Addendum. Interpretations, corrections and changes of the RFP documents made in any other manner will not be binding, and proposer will not rely upon such interpretations, corrections and changes. The County's Representative will not be responsible for oral clarification.

10. Confidential/Proprietary Information: Proposals submitted in response to this “Request for Proposals” and any resulting contract are subject to the provisions of the Colorado Public (Open) Records Act, 24-72-201 et.seq., C.R.S., as amended. Any restrictions on the use or inspection of material contained within the proposal and any resulting contract will be clearly stated in the proposal itself. Confidential/proprietary information must be readily identified, marked and separated/packaged from the rest of the proposal. **Co-mingling of confidential/proprietary and other information is NOT acceptable. Neither a proposal, in its entirety, nor proposal price information will be considered confidential/proprietary. Any information that will be included in any resulting contract cannot be considered confidential.**

The Boulder County Attorney’s Office retains sole authority for determining whether the Colorado Open Records Act requires or permits Boulder County to disclose proposal or bid documents, or any information contained therein, pursuant to an open records request.

11. Boulder County promotes the purchase/leasing of energy efficient, materials efficient and reduced toxic level products where availability, quality and budget constraints allow. Proposers are expected whenever possible to provide products that earn the ENERGY STAR and meet the ENERGY STAR specifications for energy efficiency with power management features enabled. Proposers are encouraged to offer products and equipment with post-consumer recycled-content materials. Products should be packaged and delivered with a minimum amount of recycled packaging that adequately protects the product but is not excessive.



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SPECIFICATIONS

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There are three primary work site locations. The first is Boulder County's Heil Valley Ranch and some associated private parcels, located on Geer Canyon Drive off Lefthand Canyon Drive.

A secondary project area is located on the Calwood Environmental Education Center, located northwest of Jamestown off James Canyon Drive at 2282 County Road 87.

The third area is a treatment unit located approximately one half ($\frac{1}{2}$) mile and $1\frac{1}{4}$ mile, respectively, north of Lefthand Canyon Drive at the Mountain Ridge Subdivision and North Foothills Subdivision, off of North Foothills Highway, State Highway 36.

Soil burn severity maps are generally derived from satellite imagery and ground truthed based mostly on the characteristics of rate and extent of over story vegetation mortality and consumption. As a result, the lack of ground cover is among the most influential factors that contribute to hill slope erosion and peak flows resulting from single damaging rainfall storm events.

Using the soil burn severity assessment (USGS-USFS November 2 BARC), debris flow hazard maps (USGS), and hillslope erosion potential models (Colorado Forest Restoration Institute CFRI), the County identified treatment polygons located in areas that are predominantly in "moderate" and "high" soil burn severity classes with slopes that range from 20 to 60%.

County Responsibilities:

The County will supply:

1. **Electronic Files:** The County will provide digital mapping files, in the form of ArcGIS shapefiles and kml files, as needed by the Contractor in order to fulfill the terms of the Contract.
2. **Staging Areas:** The County will assist the Contractor in providing staging area(s) on County lands as needed to successfully implement the work. The County will assist the Contractor with locating potential staging areas on other public or private lands as needed. The Contractor, County, and local entities will agree upon the final staging area. See Attachment A: Calwood Fire Location Overview and Attachment C: Mulching and Mastication Treatment Areas for guidance.

3. Private Landowner Permission: The County will obtain permission from all landowners to conduct aerial mulching within the treatment polygons. See Attachment C: Calwood Fire Mulching and Mastication Treatment Areas.
4. The County will not authorize commencement of work until all permissions are secured.
5. Federal Lands: If applicable the County will secure all necessary inter-governmental agreements with the US Forest Service to perform aerial mulching or staging operations on said lands. The County will not authorize commencement of work until all permissions are secured.
6. Wood shreds: The County will furnish approximately 50 acres of hazardous tree removal, along access roads and trails, on site as a source of wood shred mulch. See Attachment B and Attachment R for Hazard Tree Removal Areas. Additionally, the County will provide access to severely burned trees for removal and processing for additional wood shred material, either by helicopter or ground-based equipment, sufficient to provide mulch for the Plumely and Marietta basins treatment areas (Attachment D and E).
 - a. The County will help facilitate the acquisition of additional material for wood shreds from off site sources, including other agencies and municipalities, as well as from the Boulder County Forestry Sort Yards, located in Nederland, Colorado.
7. Digital Message Boards: The County will provide the necessary digital road signs to inform travelers and Calwood Fire residents of aerial mulching operations. The Contractor will be responsible for other road signage required by local regulations or by the County.
8. The County will supply safety signs to be placed along appropriate trail corridors.

Contractor Responsibilities:

1. The Contractor shall furnish all materials, labor, supplies and services necessary to perform the requirements of the Contract. The selected Contractor is responsible for all costs incidental to, and including, but not limited to, equipment move-in and move-out, movement of equipment within the project area, and transportation of all Contractor equipment/property.
2. Any arrangements made by the Contractor for the use of private land, in association with this contracted project, will be the sole responsibility of the Contractor. Such agreements between Contractor and private landowner shall be in writing and shall be submitted to the County for review and approval prior to implementing the terms of the Contract and Work. Any private parcels with an existing County Conservation Easement over them will be subject to the terms and agreement of Boulder County as well.
3. Contractor is responsible for securing applicable permits and licenses required by Boulder County/Boulder County Community Planning & Permitting (CP&P), the State of Colorado, and United States Federal Government prior to commencing any work under the terms of the Contract, including, but not limited to, securing any required Rights-of-Way.
4. The Contractor will be responsible for complying with all City, County, State and Federal Transportation Regulations. The Contractor will be responsible for communicating with and obtaining all permits required for transport of equipment and material through all Municipalities affected by the project and the Boulder County Public Works Department.
5. The Contractor will be responsible for communicating with the Boulder County Public Works Department to coordinate and approve all actions related to transportation corridors.
6. The Contractor shall submit a traffic control plan and other required documents to Boulder County Public Works showing at minimum the proposed haul routes and staging areas and number of trucks they anticipate. The traffic control plan shall include proposed signage, and flagging, if trucks are loading or unloading in the right-of-way. The Contractor will supply

certified flaggers for traffic control during flight operations as required by the FAA, and as needed for trucking operations.

7. Contractor is required to comply with all Federal Aviation Administration (FAA) regulations.
8. Contractor will source all necessary wood shreds above and beyond what the County can provide to fulfill the terms of this contract. All wood shreds will be subject to the specifications herein.
9. Contractor and Contractor's subcontractors are not permitted to be on site or operate equipment on Sundays, with the exception of personnel for security of equipment.
10. All facilities will be provided by the Contractor and will require the approval of the Project Manager.

Scope of Work Summary:

The work consists of four (4) distinct operations.

1. Hazard tree removal from approximately 3.20 miles (50 acres) of identified roads and trails and tree harvesting from an additional approximately 120 acres of identified areas of severely burned lands on Heil Valley Ranch, utilizing both aerial and ground-based harvesting equipment as needed, and transport to central staging area(s), as well as hazard tree removal from approximately 60 acres of trails and roadsides on the Calwood Environmental Education Center;
2. Processing harvested trees using a horizontal grinder to achieve specifications (quantity, dimensions) for wood shreds;
3. Aerially applying specified quantities of wood shred mulch to approximately 1350 acres of moderate and high severity burned areas located within the Calwood Fire perimeter on County and private lands;
4. Mechanical mastication on 282 acres in two (2) mapped areas within the fire perimeter, on slopes conducive to ground operations. See Attachment C: Calwood Fire Mulching and Mastication Treatment Areas

The Contractor is responsible for providing a sufficient amount of material in the form of wood shreds to mulch the identified treatment units (approximately 1,350 acres) providing 70% cover of mulch across all treatment units. Material will be available in the form of hazard trees removed from access roads, trails, staging areas, and other areas of high tree mortality from within the project area, utilizing helicopter and ground equipment. The Contractor will need to source additional material from outside the project area. The County will help facilitate that as able.

Although not anticipated, the use of Colorado State certified weed-free straw mulch may be an alternate option, at the County's discretion, for some of the treatment areas.

The opportunity may arise that additional funding from other agencies will allow for mulching additional acreage not included within this scope of work. Any such work will require an amendment to this contract, any necessary agreements with those funding sources and landowners, and with pricing based on bid tab item #3, *Aerial Application of Wood Shred Mulch – Contractor Sourced Off Site*.

All treatment units will be identified and GIS mapping data will be supplied to the Contractor by the County. This includes furnishing wood shreds, and or certified weed-free straw, labor and equipment, supervision, transportation, operating supplies and incidentals, and reclamation of all staging areas, as outlined in the reclamation specifications.

Detailed specifications for each task follow.

Site Location and Description:

Operations equipment/supplies will not be allowed to remain on site during the non-operational period, except for the express purpose of move-in/move-out and equipment maintenance.

The sites to be treated are located within the Calwood Fire Area, Range 71 West, Township 2 North, west of Colorado State Highway 36, between Boulder and Lyons, Colorado (Attachment A - Calwood Fire Location Overview). The soils are highly erodible and the terrain is steep with canyons, ravines, and rock outcrops with elevations ranging from approximately 6,000 to 8,000 feet.

There are three (3) primary work site locations:

- A. The first is Boulder County's Heil Valley Ranch and some associated private parcels, located on Geer Canyon Drive off Lefthand Canyon Drive. The bulk of treatment units, nearly 1100 acres total, are located within this access.
- B. A secondary project area is located on the Cal-Wood Education Center, located northwest of Jamestown off James Canyon Drive at 2282 County Road 87. This treatment unit consists of approximately 60-80 acres of hazardous tree removal, aerial or ground yarding, processing, and aerial mulching of approximately 220 acres, using on site wood material.
- C. The third area is a treatment unit, slated for mastication, of approximately 102 acres above the Mountain Ridge and North Foothills Subdivisions, located approximately one half (½) mile and 1¼ mile, respectively, north of Lefthand Canyon Drive on North Foothills Highway, State Highway 36.

The roads leading to the project area are State and County paved roads with Geer Canyon Drive as the main access road to the interior of the project. The roads within the project area include dirt County and residential private roads that are steep and winding.

Forest Operations and Mastication:

Hazard Tree Removal and Tree Harvesting: Hazard Tree Removal includes the removal of trees from approximately 3.2 miles of trails and access roads, and over approximately 120 acres of severely burned terrain that is not receiving mulch. Boulder County staff has already felled and limbed trees in multiple areas. Removal of trees will require the use of both helicopter and ground based equipment.

- 1. The harvesting method is tree-length. Harvesting entails manual/mechanical felling and delimbing at the stump coupled with appropriate mechanical yarding system(s), which include ground-based and aerial. Aerial yarding is the only permissible yarding system for trail corridor areas. Other units and roadside areas may utilize ground-based yarding equipment. Tree-length logs will be processed at pre-designated landings, via tracked horizontal grinder equipped with 4" screens.
- 2. Areas that are slated for mastication treatment **REQUIRE** a self-leveling tracked carrier that is equipped to operate on adverse slopes and is equipped with a horizontal shaft mastication head. The mastication areas will be treated in a mosaic fashion, where approximately 70% of the area is treated. Areas of rock outcrops and very dense rock cover can be avoided. Of the treated area, mulch depth should not exceed 2-3" in depth.

3. Landing/processing areas for harvesting operations are extremely limited for this project. The County has identified one primary landing for work in Plumely and Marietta Canyons, as well as another previously used log deck area. See Attachment B: Mulching and Mastication Treatment Areas/Potential Landing Locations. An additional one or two landings will be required at Heil Valley Ranch, as well as one at the Calwood Education Center. Landing/processing areas, from a list of pre-selected areas, will be finalized in mutual agreement with the selected contractor.
4. Due to heavy public use, active forestry operations will only occur Monday through Friday and between dawn to dusk. Work on Saturdays may be allowed with written permission. Active forest operations are prohibited on Sundays as well as Federal holidays. Certain areas of the project area may be closed to the public during critical operational periods to ensure safety.
5. Primary felling methods are anticipated to be mechanical, with self-leveling tracked carrier, or manual. This is due primarily to adverse and broken terrain that predominates across the project area, coupled with high susceptibility to surface erosion in many areas. Tracked carriers are preferred to wheeled carriers. All areas proposed for mechanical felling must be authorized by the Project Manager or their designee.
6. Stump height will not exceed 6" on the uphill side. The stump height standard will be enforced, regardless of felling method used.
7. Logs will be delimbed at the stump. Branches and slash shall be left on site in the form of lop and scatter, averaging no more than 18" in depth.
8. Minimizing surface disturbance is paramount for this project due to adverse topography and highly erodible soils. Every effort will be made to minimize surface disturbance by maximizing the distance between skid/forwarding trails. All machinery will be restricted to operation on the pre-designated landings and skid/forwarding trails. All operational corridors associated with the project are subject to pre-authorization by the Project Manager or their designee. Landing/processing areas, from a list of pre-selected areas, will be finalized in mutual agreement with the selected contractor.
9. A detailed preliminary operational plan, encompassing all aspects of the project, will be required for bid submittal.
10. All equipment must be maintained and in good working order. Continuous and excessive oil, hydraulic, coolant, or fuel leakage will not be tolerated and will be cause to have the machinery removed immediately from the site. The contractor will be held liable for any site contamination, including removal of any contaminated soil by the contractor.
11. All bulk fuel storage/transfer tanks shall either be contained in a vehicle or, if stationary on-site, placed within a lined catchment basin or tank.
12. All equipment used on site shall be cleaned prior to arrival to ensure that noxious/invasive weed seed is not present. Machinery will be subject to the Project Manager's inspection before unloading on site.
13. Any equipment maintenance and repair on site shall be done in a responsible manner with proper prevention/mitigation measures taken to alleviate any site contamination.
14. Equipment operations, including landing operations, will only be conducted when surface conditions are dry (below the plastic limit), frozen, or at least 1' snow pack is present. All reasonable measures will be taken to avoid rutting and excessive soil compaction. Significant and unnecessary site damage, as deemed by the Project Manager, will be the responsibility of the contractor to rehabilitate at the direction of the Project Manager or their designee.
15. Excessive rub trees and site damage will not be tolerated.

16. Standard forestry “Best Management Practices” (BMPs’) as outlined by the CSFS, are to be adhered to for all harvesting/treatment activities. Contractor is responsible for a thorough working knowledge of the current updated [2010 BMP Standards for the State of Colorado](#). All exclusion areas for wildlife, riparian areas, etc. will be clearly marked by the Project Manager or their designee.
17. All operators shall have the skills to operate machinery in a responsible, safe, and efficient manner while being conscientious of natural resource and public values.
18. The contractor will maintain a clean operation. All trash, refuse, and waste will be disposed of properly and hauled off site promptly by the contractor. The contractor must provide on-site portable toilet facilities for their staff.

Aerial Operations Specifications:

1. The Contractor will supply all staff necessary to transport, load and operate equipment associated with the aerial mulching.
2. The Contractor will supply all special ground support and equipment needs, including ground to air radios.
3. The Contractor must supply aircraft that is capable of flying in difficult terrain and at an altitude low enough to correctly apply the mulch in an even and consistent manner.
4. The Contractor must be able to fly and apply mulch along physically unmarked property boundaries, utilizing GPS.
5. Aircraft shall be equipped with a GPS Guidance/Tracking System that is capable of sharing data, utilizing ESRI GIS shapefiles (.shp). Preferred spatial data format is State Plane Colorado North NAD 83 Coordinate System.
6. Distribution Log: The aircraft must be equipped with a GPS unit with spatial accuracy of two to five (2-5) feet. The GPS unit must be capable of showing or mapping the treatment units. This mapping must be supplied to the designated Project Manager in State Plane Colorado North NAD 83.

Aerial Mulch Application:

1. Aerial mulch will be applied to 100% of the targeted areas, covering approximately 1,350 acres. Targeted areas are “moderate” and “high” severity polygons (see Attachment C) on slopes between 20-60%. Treatment units range in size from 1.5 to nearly 240 acres. Treatment units are defined by ridgelines of each basin or sub-watershed as well as land ownership. Application of mulch must be evenly distributed over the designated treatment areas.
2. Apply a minimum of four (4) tons per acre of wood shreds or one and one half (1.5) tons per acre of straw mulch. Because wood shred moisture content will vary from source to source, application rates may vary from three to six (3-6) tons/acre to achieve the desired cover of 70%.
3. The County will work with the Contractor to quantify the rate needed after a few initial polygons are treated.
4. The mulch mixture will cover at least 70% of the soil surface (excluding large rocks) and to a depth of ½” to 1” across all treatment units.
5. Avoid treating areas within the polygon units that are rock face or rock slopes (incapable of vegetative cover). Avoid treating areas that did not burn, and open meadows. A certain amount of pilot discretion is recognized to be necessary while in the air to determine appropriate application within treatment areas. Field inspectors will be made aware of this pilot discretion.

6. Mulch can be applied over snow on the ground, provided the depths are no more than 6-12", and adequate standing trees are present. Mulch over snow in meadows or other open areas is not allowed.
7. Frozen bales of straw will not be accepted; moldy straw, that will not spread evenly, will not be accepted.
8. Contractor will use industry recognized methods of preparation and application of mulch that have previously demonstrated effectiveness in both distributions during application and erosion control capabilities.
9. The Contractor must use industry recommended net mesh standards. Net mesh should be no greater than 2 to 4-inches in diameter.
10. Avoid drifting of mulch onto houses and other structures, and primary roads.

Wood Shreds Material Specifications:

Wood shreds shall meet the following specifications. Product may be rejected if these specifications are not upheld.

1. Wood shreds must be limited to local native conifer species that were obtained from naturally occurring forested lands. In addition, raw material must be procured and processed within a 100 mile radius of the project area. The area from where the woody biomass is harvested must be approved by the Project Manager or their designee in order to minimize the possibility of harmful pathogens, insects, or invasive plant material being introduced into the project area.
2. The wood shredding process should include screening that will ensure the size range of the wood mulch. Past experience has demonstrated that a horizontal grinder with a 4" screen, coupled with adjustments to the rate of feed produce the best size material. The size of the mulch shall be in two dominant sizes to allow interlocking of mulch material and provide the most resistance to water runoff, soil erosion and wind removal of mulch.
3. At least 70% of the total wood shred volume will have stubble lengths of 2-8 inches typical, approximately 1" diameter and have minimal fines. It is recommended that a horizontal grinder be used on trees and a tub grinder be used for the resulting slash if needed.
4. 30% of total wood shred volume can be finer material, with a diameter of less than 1".
5. The mulch will be appropriately mixed before aerial application to assure effective interlocking of mulch materials on hillslopes.
6. Wood shreds should be processed in a manner that promotes even distribution when aerially released from helicopter nets. The helicopter net will be small enough such that the vast majority of the mulch will not fall through the net and be lost in flight between the staging area and the treatment area.
7. The County will inspect the grinding process and samples of the finished material with the Contractor to achieve the most desirable and effective material, prior to the Contractor initiating full shredding operations.
8. The wood shreds shall be free from dirt and rocks.
9. Wood shreds shall be covered during transportation. Wood shreds shall also be covered at staging area in the event of rain or snow to prevent saturation of the material that would increase the weight of the product.
10. The County will inspect and approve the wood shreds, where possible, prior to purchase. If the County is unable to inspect the wood shreds on site, a sample of the wood shreds will be required. The County will provide approval of the wood shreds, in writing, to Contractor.
11. A sample truck weight for every 20th truckload may be required.

Wood Shred Assessment Protocol Size and Composition:

The material will be screened through an appropriately sized sampling screen (1/2" – 1" opening) needed to meet the size specifications with no more than 30% of any sample comprised of fines less than 1" diameter by volume. All samples with a proportion of "fines" greater than 30% will be considered not acceptable per the material specification. See Additional Notes on Material Specification and Quality Assurance below.

The methodology described below will be used to assess the adequacy of the cover material.

1. Draw two lines inside a five gallon bucket with a permanent marker: The first line is drawn 2/3 up from the bottom of the bucket which represents 3.3 gallons; this is the sample volume. Draw the second line at the 1.0 gallon level to demarcate the 30% "fines" sample threshold.
2. With the bucket, collect mulch (material specification sample) to the upper (3.3 gallon) line, noting where the sample was taken from: site/pile identifier, horizontal (i.e. northwest corner, center, etc.) and vertical (i.e. Top, middle or bottom) locations within the pile.
3. In a continuous motion pour and shake the collected material on to the 1/2" - 1" sieve, which is 3 feet above a tarp (or something that effectively catches the material). Agitate the sieve. Material that falls through the sieve is a fine that does not meet the specification. When done, set the wood shred that did not fall through the sieve aside for further assessment if necessary.
4. Pour the sieved "fines" back into the bucket, and level the contents to make an even plane of fines at the bottom of the bucket. If the "fines" exceed the 30% mark (1.0 gallons, lower line) of the bucket after being leveled, then the sample does not pass.

Application Assessment Protocol:

1. Cover Assessment Considerations: Due to the difficulty of the terrain, the time and effort required to gain access to the areas will be intensive. As a result more time will likely be taken to gain the sample points than to actually collect the data. Therefore, it will be advantageous to collect enough data to safely infer the variation of cover within a single treatment polygon. The confidence in data results should constitute no more than "a preponderance of evidence" that the coverage was applied to specification.
2. All treatment polygons will be given a generalized total cover estimate from afar, either from vantage points or aerial imagery. Additionally, at a minimum, fifteen (15) treatment polygons will be selected for a quantitative assessment using line point transects. The County reserves the right to inspect every treatment polygon.
3. Cover will be estimated and documented utilizing a Wood Straw cover grid (Forest Concepts LLC). A cover point will be assessed at ten points along the transect, one every ten paces, by the inspector to estimate post treatment percent cover of wood shred mulch. Transects will be randomly located within treatment polygons via randomly selected transect starting points (identified by a GPS waypoint or mark on a treatment map). Transects will be paced on a random bearing in a straight line across slope. Ten transects will be completed and averaged across the treatment area. Pictures of the transect will be taken at the time of cover measurement. All transect information will be recorded on the approved inspection form and signed and dated by the inspector. If the 70% criterion is not met, the inspector will notify the Contractor of the deficiency. The Contractor will take corrective action as soon as flight and ground operations permit. A timely follow up inspection will occur on the deficient treatment area to insure mulching operations are not unduly impeded.
4. For sites that cannot be accessed due to landowner permissions or terrain limitations, a

visual estimate will have to be employed. This may be from a vantage point or via flights on the helicopter. Please note though, color of wood shred can vary greatly depending on species and whether it is dead/heavily charred, resulting in mistaken “low” estimations of cover across the treatment polygon. Visual inspections from the air or vantage points will also be noted on the approved inspection form. Therefore, all effort will be made to access the polygons on the ground to perform the step point transect or cover grid method of determining percent cover.

5. The Contractor will provide helicopter records for load weights and trips for every treatment polygon to verify that sufficient mulch material has been applied.
6. For off site material delivered to project site, Contractor and or Vendor representative will provide load tickets to the inspectors on a daily basis. Load tickets will be compared to, documented, and attached to the inspection form.
7. Prior to the closing of a staging area and movement to a new staging area all treatment polygons will be signed off by Project Manager.
8. The inspectors will consist of County personnel, and potentially staff from the Lefthand Watershed Center and the Calwood Environmental Education Center.

Alternate Bid Item - Certified, Weed-Free Straw:

1. The County will inspect and approve the straw at the place of harvest, where possible, prior to the Contractor’s purchase of the straw. When the County is unable to inspect the straw at the harvest site, the County will inspect the straw at the operational staging area. The County will provide approval of the purchase, in writing, to Contractor.
2. Contractor will supply enough certified weed free straw to apply 1.5 tons per acre across all designated mulching polygons.
3. Straw must be from the State of Colorado and comply with the Colorado Department of Agriculture Weed Free Forage regulations. See the following webpage for regulations and a list of producers: <http://www.colorado.gov/cs/Satellite/Agriculture-Main/CDAG/1167928162865>
4. All Colorado certified weed free straw bales shall be identified by a marking system of colored twine. Bales without certified weed free twine marking will be rejected.
5. Preference will be given to straw from irrigated fields.
6. Preference will be given to straw from 2020 harvest.
7. Rye straw will not be accepted. Wheat, sorghum, and barley are acceptable.
8. In addition to the weeds not accepted on the Colorado weed-free forage list, cheatgrass (*Bromus tectorum* and *Bromus japonicus*) will also not be accepted. The County reserves the right to reject straw that contains excessive amounts of problematic weeds that are not on the Colorado Weed Free Forage list.
9. A transit certificate, whether the original or a photocopy, shall be submitted to the County for all inspected certified weed free mulch by truckload. The transit certificate shall contain the inspection certificate number, the producer’s name, the type of straw, the origin, and the quantity purchased in number of bales and estimated weight.
10. Truck deliveries must be during County working hours or at an agreed upon time with the Project Manager in order to be inspected at the time of delivery and while straw is off-loaded from trucks.
11. Contractor will dispose of spilled straw, packing materials, pallets and/or other waste materials in Contractor provided receptacles, as placed in designated approved areas.

Transportation of Forest Products:

1. Contractor will be required to maintain load records and submit copies of these records to the Project Manager upon request.
2. Transportation route includes segments of Municipal, County, State, and Federal paved and unpaved roads. The contractor is solely responsible for any required transportation fees/permits associated with project. The contractor is also solely responsible for adhering to weight restrictions associated with selected transportation route.
3. Contractor will have the sole responsibility for all resources and personnel needed to process, load, transport, and unload the material. No equipment or operational support will be provided by the County.
4. Caution signs, indicating heavy truck traffic, will be provided by the contractor, and shall be placed at appropriate intersections located adjacent to the project. At a minimum, signage will be placed 500' distance (or most visible location), in each direction from the intersection located at Geer Canyon/Lefthand Canyon.
5. All truck drivers, whether employees or sub-contractors, will be fully licensed and experienced CDL drivers. Drivers must be experienced with driving in adverse conditions, on unimproved roads, that include steep/rough terrain. All transport equipment must be in fully operable safe condition as set forth by CDOT regulations.
6. Access at Geer Canyon Drive to the Heil Valley Ranch Open Space is currently gated and closed to the public. This may require personnel to staff the gate, allowing for Contractor deliveries while keeping the public out.

Site Rehabilitation – Landings and Skid/Forwarding Trails:

The Contractor will make every effort to minimize the impact and size of disturbance. The contractor will be responsible for mitigating and repairing adverse equipment impacts at the project site. This will also include the landings/loading areas. The Contractor will reclaim all staging areas and newly constructed access roads by the date set forth by the County. Any grading, topsoil removal, or excavations will only occur as approved by the County. Contractor will only use equipment that is appropriate for accessing the approved staging area.

Storm water management best practices are required, which includes vehicle tracking pads and erosion barriers (silt fence or straw wattles). If the area of disturbance is equal to or greater than one acre, then a CDPHE (Colorado Department of Public Health and Environment) storm water permit is required from the State of Colorado.

1. Any aggregate or matting material placed on landing access roads must be removed by the contractor, in addition to rehabilitation actions mentioned previously.
2. The Contractor is responsible for removing all residual slash and debris from the landing/processing areas. The Contractor is responsible for hauling this material off site for disposal.
3. Rehabilitation of landings and skid/forwarding trails, as well as any temporary access roads, will be the responsibility of the contractor. This may include ripping, seeding and mulching. Landings and skid/forwarding trails will be inspected by the Project Manager and rehabilitation actions will be determined at that time.
4. The contractor will be responsible for negative and unnecessary surface impacts within the units. The Project Manager and/or designee will inspect the forwarding/yarding trails and rehabilitation actions will be determined at that time. Most likely this will not involve ripping, but, may involve seeding and mulching.

5. Contractor will be held responsible for any damage to public roads and/or infrastructure sustained during the project.

Reclamation specifications below are for County managed lands. See "Contractor Commitments" for staging areas on private property.

1. Topsoil Removal: Some limited topsoil removal may be necessary. The Contractor must get approval for topsoil removal from the County. Contractor is responsible for obtaining Boulder County CP&P permits, including, but not limited to, a Site Plan Review Waiver and Grading Permit when over 50 cubic yards of soil is moved.
 - a. If applicable, after the staging area and its access have been delineated, the vegetation should be mowed to a maximum height of 4-inches over the area to be disturbed. If the amount of vegetation exceeds what can be incorporated into the soil, without interfering with establishing a proper seedbed, then excess vegetation shall be removed.
 - b. Topsoil should be removed by a frontend loader (preferred method) or grader. Under no circumstances should topsoil be removed under wet soil moisture conditions. The Project Manager can provide assistance in determining topsoil depth and proper removal. The depth of the topsoil layer may vary. Topsoil may be delineated from the subsoil by a higher organic matter content (usually, but not always, indicated by a darker color) and a relatively loose and friable soil structure. The Project Manager should be present at the site as topsoil removal is initiated to determine average topsoil depth. Typically, topsoil is between 4 to 8-inches in depth. Topsoil should be placed to one side of the construction area and kept for replacement of the soil upon completion of the project.
2. Relieving Compaction of Reclaimed Staging Areas
 - a. Areas that are within and leading to the staging area that are not previously existing public roadways, and are compacted by heavy equipment, shall be decompacted by using an excavator or chiseling with dozer or other appropriate equipment. If feasible, and in areas with minimal surface rock, compacted areas will be chiseled to a minimum depth of 10-inches, with no more than a 10-inch interval between chiseled furrows.
 - b. Two passes with a chiseler may be necessary, with the second pass chiseling between the first furrows, or perpendicular to original furrows.
3. Seedbed Preparation of Reclaimed Staging Areas
 - a. On disturbed areas, further seedbed preparation such as discing, harrowing and/or firming operations will be necessary to reduce soil clods that are greater than 4-inches in diameter, and to provide a seedbed that is firm and friable.
4. Seeding of Reclaimed Staging Areas
 - a. The County will provide the seed mix and planting rate specifications.
 - b. Seed shall be broadcast seeding at the provided rate. Broadcast seed shall be raked, harrowed, or otherwise-covered by soil to a depth of ¼" to ½".
5. Mulching of Reclaimed Staging Areas

After seeding has been completed, the application of mulch is required on the seeded areas to protect the seed and conserve soil moisture, which will aid in seedling germination and establishment. The seeded area shall be mulched within 24-hours after seeding.

One of the following types of mulch are to be used for 3:1 slopes or flatter:

 - a. Wood shreds and/or fines from shredding operations, covering the entire area of disturbance to a depth of ½" to 1"

- b. Certified weed-free straw mulch: Applied evenly at a rate of 3,000 lbs. per acre over the seeded areas. Straw must be crimped in or sprayed with a tackifier. Guar gum tackifier is recommended
- c. Wood fiber hydromulch with guar gum tackifier: A standard rate of 2,000 lbs. per acre of hydromulch and 80 lbs. per acre of guar gum tackifier will be appropriate for most projects, unless otherwise specified. The Contractor shall 'spray apply' the slurry of wood fiber mulch according to the manufacturer's specifications in a uniform manner over the designated seeded areas. Seed shall not be incorporated and applied simultaneously with the hydromulch slurry.

OVERNIGHT CAMPING:

Overnight camping by Contractor and/or designees is permitted only within scope of maintaining security for equipment and/or resources, and shall not exceed 1-2 staff. Crew camping is not permitted. Smoking and all fires are prohibited. Pets are prohibited.

HOURS OF OPERATION:

Contractor work hours shall be dawn to dusk Monday to Friday. Work on Saturdays and Sundays, nights, and federal holidays shall not be allowed unless approved, in writing, by the County.

PROJECT QUALITY CONTROL:

The Contractor shall propose and adopt a quality control inspection system to ensure that the work is progressing in compliance with Contract specifications. Complete records of all inspection work performed by the Contractor shall be maintained and made available, upon request, to the County during the contract performance period.

QUALITY ASSURANCE PLAN (QAP)

TASK/SUBTASK	PERFORMANCE STANDARD	ACCEPTABLE QUALITY LEVEL (AQL)	METHOD OF SURVEILLANCE
1. Period of Performance	Begin work in a timely manner and complete the mulching within the time prescribed	100% started and completed on time	Visual, reviewing record for excusable days
2. Supply enough wood shreds or certified weed-free straw to fully treat the designated areas to specification	Contractor will secure enough wood shreds to mulch an average of 70% cover on the designated mulching units. Quantities may vary depending on moisture content, but typically equate to four to six (4-6) tons per acre. Certified weed-free straw will be one and one half (1.5) ton per acre on the designated mulching units	100% of the requirements	Contractor and County will inspect and calibrate grinding process to attain specified dimensions and percentages of fines Wood shred quantities will be calculated with helicopter weights Certified weed-free straw will be inspected at the source prior to shipping whenever possible. Random sampling will be completed to verify that the supplied products are complying with

TASK/SUBTASK	PERFORMANCE STANDARD	ACCEPTABLE QUALITY LEVEL (AQL)	METHOD OF SURVEILLANCE
			the certified weed-free status
3. Preventative measures made to minimize noxious weed spread at both staging and project areas	All equipment, other than vehicles arriving and leaving each workday, including tarps are free of loose dirt, vegetation and noxious weeds prior to the arrival and departure from the staging area	100% of the equipment, other than vehicles arriving and leaving each workday, is free of dirt, vegetation and noxious weeds	Visual inspection prior to unloading by County representative
4. Accomplish the aerial certified weed-free straw and wood straw treatment objectives	The wood shreds will be comprise 70% cover on all designated mulching units	100% of the target area will be covered at a rate of 70% cover, excluding rocks larger than 8", and to a depth of ½" to 1"	1. Review ground application quality control reports a. County representative initial inspection 2. Visual observation during & after application in all units a. Final approval by County 3. County may conduct random sampling tests of application rates and coverage (step transects in representative areas or areas in dispute)
5. Contractor to manage the project to meet the Project Safety and Resource Protection Objectives	Carry out all provisions of the Project Safety and Resource Protection Objectives	100% acceptable level of performance	Visual inspection by County representative of Contractor's actions and documents
6. Contractor to manage the project within the identified constraints	Manage constraints to minimize impacts of project	100% of the requirements shall be met	Visual inspection by County representative
7. Provide daily progress reports	Daily progress reports submitted timely with accurate information	100% of requirements shall be met	Review report
8. Provide final report	Provide a complete final report	100% of requirements shall be met	Review report

COUNTY INSPECTIONS AND PAYMENT:

1. The County will make periodic inspections of treatment units as a basis for payments and recommendations for adjustments in work quality while work is in progress.
2. When a treatment unit is complete and ready for inspection, the Contractor shall request the County to conduct a final inspection of the completed treatment unit.
3. Units should be inspected prior to any high wind events that may disperse materials and potentially provide an inaccurate assessment of initial application.
4. Mulch application inspections will include the following information to be recorded for each plot inspected:
 - a. Percentage of ground cover of mulch
 - b. Depth of mulch
 - c. Minimal areas of uncovered, bare soil. Expect consistent, even mulch cover over treatment areas.

- d. Refer to Contract Specifications – ‘Application Assessment Protocol’ for further details on field assessment specifications.
- e. Where applying straw, the presence of large clumps of agricultural straw greater than one sheet of straw will not be accepted.

Safety and Conduct – General:

1. The Contractor and its employees, as well as any sub-contractors, are expected to maintain a high degree of professionalism and safety while being present on Boulder County property. The units being treated are on public land; therefore, it is highly likely that the Contractor will encounter public citizens utilizing trails and other available resources. In areas within the management unit that have established trail corridors, the County will supply safety signs to be placed along appropriate trail corridors. It is the Contractor’s responsibility to maintain adequate safety zones with regard to all components of its operation.
2. All personnel associated with the Contractor will wear O.S.H.A. approved P.P.E. appropriate for their current duties.
3. First aid equipment/supplies will be readily available for all workers as well as reliable means of communication in the event of an emergency situation.
4. Contractor will have emergency response/evacuation plan, in the advent of serious illness or injury, for their crew.
5. Equipment operators will be responsible for maintaining an awareness of the safety zone surrounding their particular application/operation.
6. One (1) 5# fire extinguisher will be in place on mobile operational equipment as well as trucks.
7. One (1) hand tool (shovel, Pulaski, etc.) will be readily available for each employee currently on site for fire suppression, if needed.
8. Equipment operators will be responsible for maintaining the safety zone surrounding their particular application/operation. This safety zone shall extend approximately 1.5-2 X the distance where specific operations could injure personnel or bystanders.
9. Unlawful, rude, or aggressive behavior will not be tolerated.
10. Contractor will comply with all Government Safety and Health regulations and the Department of Labor Occupational Safety and Health (OSHA) standards.

Project Safety – Aerial Operations Specific:

1. Contractors will explain, in detail, their proposal and how they will manage for safety in all elements of the aerial harvesting and mulching operation.
2. The Contractor will provide pilots that are commercially certified by the FAA to fly aircraft appropriate to fulfill the Contract.
3. Contractor will submit an Aviation Safety Plan.
4. The Contractor will submit a safety plan that includes a discussion of safety for public and staff. All authorized persons in the operational areas should have radio communications with the Contractors designated project leader. The authorized persons in the staging/landing areas, or the treatment areas, should be wearing hardhats, hearing protection, and highly visible clothing (e.g. blaze orange).
5. Contractor will adhere to all FAA, and other applicable agency regulations, as they relate to fire suppression for aerial operations, including fuel storage/staging.
6. Contractor will be required to assure that it is operating within the constraints of the equipment being used, the given load, weather conditions, etc.

7. Aviation operators will be responsible for maintaining the safety zone surrounding their landing zones and aviation maintenance/fueling areas. This safety zone shall extend approximately 1.5-2 X the distance where specific operations could injure personnel or bystanders.
8. Dust abatement will be required at staging/landing areas, when necessary. Mud tracking control will be used at all entrances to paved roadways, when necessary, that are adjacent to staging areas.
9. Contractor will provide personnel to control local traffic, in compliance with Federal, State and County regulations, during operations. Warning signs on roads leading to the operations shall be installed.

Hazardous Materials: Fueling, Hydraulics, and Lubricants:

1. Fueling equipment and operations will be inspected and approved upon mobilization of the operation by the Project Manager before Contractor can proceed with work. The joint inspection will include, but is not limited to, checking for evidence of oil/fuel leaks at all piping, oil/fuel lines, hydraulic lines and seals, fuel tanks and other sources of leaks. All evidence of leaks will be investigated and immediately repaired prior to operation of the equipment operation at the project site. If at any time a spill occurs, the Contractor will notify the Project Manager immediately.
2. All non-manual fueling equipment will have an automatic shut-off switch installed to avoid fuel releases.
3. The Contractor is required to clean up any spill, including, but not limited to, diesel or gasoline fuels. The Contractor will assume all liability and responsibility for clean-up of any spill and will meet all established EPA Spill Prevention, Control and Countermeasure (SPCC) Rules and Colorado Clean Air and Water Standards.
4. Fueling and fuel storage will occur at a distance greater than 100 feet from ephemeral or perennial streams.
5. Contractor will submit a written plan to the County as to how Contractor will deal with spills in Contractor's submittal to this RFP.
6. Use of Hazardous Materials and/or petroleum products requires that all appropriate State and Federal Regulations be complied with including, but not limited to, Material Safety Data Sheets (MSDS) on hand and use of necessary Personal Protective Equipment (PPE).
7. On-site disposal of Hazardous Materials or Waste, including hydrocarbons is not authorized. Violations of on-site disposal will subject the Contractor to, at least, the cost of reclamation and the appropriate disposal of contaminated soil.
8. Incidental minimal leaks from fittings, gaskets, or ruptured hoses will not subject the Contractor to remediation requirements. These will be considered to be normal and unavoidable losses. Continual leaks will be noted on inspection reports and correction through on-site, on-going maintenance is required.
9. Maintenance and repair operations that require the draining of engines or hydraulic systems may be conducted on site only if the fluids are captured and properly contained and removed for proper disposal.

PERMITS, LICENSES, LOCATES, AND CODES:

1. Contractor shall, without additional expense to the County, have responsibility for identifying and obtaining, prior to the start of work, and for maintaining throughout the term of the Project, any permits and licenses which may be required in order to carry out the work. The Contractor shall be responsible for complying with any Federal, State, County,

- and Municipal laws, codes and regulations applicable to the performance of the Contract.
2. The Contractor shall also be responsible for all "locates" of all public utilities related to performing work under the terms of this Contract.
 3. The Contractor shall be responsible for all damages to person, or property that occurs as a result of the Contractor's fault or negligence.
 4. The Contractor shall be responsible for all materials delivered and work performed until completion and acceptance of the entire work.
 5. The Contractor shall be responsible for insuring that any of its subcontractors performing work on the Project satisfy the provisions of this paragraph.

Project Constraints:

1. Selected Contractor will complete all FAA required permitting and/or documentation to complete the project, as specified.
2. Pilots and vehicle drivers shall be aware of the potential conflict with the public on all roads within the Calwood Fire Area. The Contractor will be responsible for traffic control on all roads during operations.
3. Straw and wood mulch shall not be dispersed during excessive rain or snowstorms. Dispersal will be conducted only when weather conditions meet FAA visual flight rules.
4. Aerial mulching operations will be limited to daylight hours. No flight operations before FAA official sunrise and after official sunset.
5. Some areas of project area are populated with private homes and buildings, residential roads, and power lines.

Daily Operational Report:

Written daily progress reports must be communicated to the Project Manager prior to the next day of operation.

Daily Progress Reports must contain:

1. Areas that have been treated within each polygon;
2. Approximate number of acres treated within each unit;
3. Total wood shred tons delivered to staging area(s) (or total certified weed-free straw bales/tons if applicable);
4. Total wood shreds tons applied to treatment units (or total certified weed-free straw bales/tons if applicable);
5. Percent of project complete;
6. Report any problems or concerns encountered.

Project Deliverables

A final submittal of project documentation shall be provided in Adobe pdf, Microsoft Word/Excel 2003, or higher format, or any appropriate software version mutually agreed upon, that includes at a minimum:

1. Field conditions that delayed application or application quality;
2. Final electronic shapefiles of GPS data, if different from original files provided by County, of the mulching treatment areas delivered in accepted Boulder County GIS format;
3. Total wood shreds tons delivered to staging areas, and any trucking delivery documents;
4. Total wood shreds tons applied to each treatment area;
5. Total certified weed-free straw bales/tons delivered to the staging areas and total applied to each treatment area, if applicable;

6. All Colorado Department of Agriculture Straw Certification Documents and trucking delivery documents, if applicable;
7. Total flight time flown (hours);
8. Photographs taken associated with the Contract or Project.

PROJECT COMPLETION SCHEDULE:

Aerial operations are required to be completed on or by Friday, June 11, 2021, weather permitting, unless additional time shall be allowed by the County, in writing.

Reclamation operations of the staging area is required to be completed on or by Friday, June 18, 2021.

All administrative tasks including close out items and funding requests are required to be completed by September 9, 2021.

CONFLICT OF INTEREST:

Any party that has developed, designed or drafted specifications, requirements, statements of work and/or has participated in planning activities for this Project may be excluded from consideration for the award of this Project.

CHANGE ORDERS:

Any unplanned, change orders, modifications or additional services to this Project, shall be submitted by the Contractor, in a separate, written document, including a fee schedule and completion schedule and presented to the County for review. Approval from the County, in writing, must accompany all change order requests.

GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA:

Contractors agree that the following, specified data formats, shall be used and/or adhered to when submitting required data to the County:

1. GIS Data Format Specifications

- a. All GIS data required to be delivered, by Contractor, in an ESRI 10.x compatible format, either shapefile or file geodatabase feature class.
- b. All spatial or georeferenced (both GIS and CAD) data are required to be provided, by the Contractor, in the following coordinate system:
 - i. **Name:** NAD 1983 HARN State Plane Colorado North FIPS 0501 Feet
 - ii. **Unit:** Foot US
 - iii. **Projection:** Lambert Conformal Conic
 - iv. **Horizontal Datum:** North American Datum 1983 HARN
 - v. **Vertical Datum:** North American Vertical Datum 1988
 - vi. **Spheroid:** GRS 1980



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Boulder, CO 80302
purchasing@bouldercounty.org

INSURANCE AND W-9 REQUIREMENTS

INSURANCE REQUIREMENTS:

Note that the insurance amounts listed below are the minimum required for this project. **Proof of current insurance must be provided with your proposal in the form of a sample certificate or your proposal will be deemed non-responsive; A contract will not be awarded to contractors that do not meet the minimum insurance requirements for this Project.**

***This type of coverage will be required to remain in place and be maintained by the selected contractor for the 3-year period as noted after completion of the Project.**

I. Aircraft Liability:

During the term of the Contract, the “Aircraft Operator” will at its own expense have in effect the following aircraft coverages with insurers of recognized reputation, responsibility and having at least an A.M. Best rating of an “A XVII” or better:

- a) Aircraft Liability to include slung loads in an amount not less than \$5,000,000 each occurrence Combined Single Limit including passengers.
- b) The above liability coverages shall name County of Boulder, State of Colorado, a body corporate and politic as additional insureds.
- c) The above liability coverages include a Severability of Interest clause stating that each insured under the policy has the same protection as if were covered separately.
- d) The above coverages provided shall be primary and is not excess or contributing with any insurance maintained by Boulder County.

II. Commercial General Liability

This coverage should be provided on an Occurrence Form, ISO CG001 or equivalent, with Minimum limits of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products Completed Operations Aggregate.

III. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

IV. Workers' Compensation and Employer's Liability

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease- Policy Limit/\$100,000 Disease-Each Employee.

V. Pollution Liability

Coverage pay for those sums the Contractor becomes legally obligated to pay as damages because of Bodily Injury, Property Damage or environmental Damage arising out of a pollution incident caused by the Contractor's work including Completed Operations. Coverage shall include emergency response expenses, pollution liability during transportation (if applicable) and at Non-Owned Waste Disposal Site (if applicable). The Minimum limits required are \$1,000,000 Per Occurrence/Loss and \$1,000,000 Policy Aggregate. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. County shall be named as an additional insured for ongoing operations and completed operations.

Boulder County as Additional Insured: Boulder County shall be named as an additional insured for General Liability and Pollution Liability, as designated in this RFP and subsequent Contract. Additional insured shall be endorsed to the policy.

THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS: *County of Boulder, State of Colorado, a body corporate and politic, is named as Additional Insureds.*

In regards to General Liability, Umbrella/Excess Liability, and Pollution Liability: If any or all of these coverages are required above, additional insured status will be required prior to beginning any and all tasks or work.

Additionally, the successful bidder will be required to comply with the insurance requirements as specified in the USDA NRCS EWP Agreement. The selected proposer will provide the County with proof of this coverage in the form of a certificate of insurance.

W-9 REQUIREMENT:

Please provide a current copy of your business's W-9 with your proposal.



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SUBMITTAL SECTION

SUBMITTAL:

In addition to the attached proposal section, contractor shall submit the following as part of their proposal.

The technical proposal should include information on how the work will be organized and performed in accordance with the specifications and evaluation criteria set forth in the solicitation. To assist the Selection Committee in the evaluation, you should number your responses to correspond with the criteria being addressed. The technical portion of the proposal shall address as a minimum the following:

1. Company Qualifications:
 - a. Company contact information:
Firm Name:
Contact Name and Title:
Street Address:
Contact Phone Number:
Email:
 - b. Submit your firm's ability to meet the County's Payment Bond and Performance Bond requirements.
2. Please provide the names of any subcontractors and their contact information.
3. A list of three (3) projects similar in scope, and preferably wildland fire stabilization, along with three (3) references for those projects.
4. Please state how your company would approach this project. Please include any alternative approaches you feel the evaluation team should consider.
 - a. What strategies would you employ to meet the optimal ground cover requirements?
5. Please submit proposed sources, if known, of off-site wood shreds or logs available for this project and quantities.
6. Please submit an estimated project timeline, along with milestones.
7. Submit an estimate of project flight hours.
8. Treatment Plan and schedule
9. Sample of Quality Control Plan from a previous work contract.
10. Safety Plan
11. Number of full-time employees to be used for this project.
12. Number of part-time employees to be used for this project.
13. Equipment: Attach a list of mechanical equipment to be used on the job.



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SUBMITTAL CHECKLIST

The proposer's attention is especially called to the items listed below, which must be submitted in full as part of the PROPOSAL. Failure to submit any of the documents listed below as a part of your PROPOSAL, or failure to acknowledge any addendum in writing with your PROPOSAL, or submitting a proposal on any condition, limitation or provision not officially invited in this Request for Proposal (RFP) may be cause for rejection of the PROPOSAL.

THIS CHECKLIST MUST BE SUBMITTED AS PART OF YOUR PROPOSAL PACKAGE: Proposer will check each box indicating compliance:

INCLUDED	ITEM
	Name, Address, Office Telephone and Email Address of company/Organization
	Name and Address of the Partners and Subcontractors
	Name, Title, Email and Resume of Staff Contact designated for Project.
	A detailed project schedule with an all-inclusive total cost
	Information on the relevant experience of key personnel
	Technical Proposal Items 1-13; page 33
	State your company's ability to comply with the Terms and Conditions in the Sample Contract included in this RFP; Specifically list any deviations and provide justification for each deviation.
	State your company's ability to comply with the Payment Bond & Performance Bonds conditions contained in this BID.
	State your company's ability to comply with the requirements of the NRCS EWP Agreement included in this RFP, including scheduled completion dates.
	State your company's ability to comply with the Pre-Bid Meeting Requirements and required Waiver included in this RFP.
	Insurance Certificate - Sample
	W-9
	Signature Page
	Contractor's Duns Number
	Certificate of Good Standing
	SAM.Gov registration
	Bid Bond Requirement
	Addendum Acknowledgement(s) (If Applicable)



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EVALUATION CRITERIA

The proposals will be reviewed by a selection committee. The committee may request additional information from vendors or request interviews with one or more vendors. Final evaluation and selection may be based on, but not limited to, any or all of the following:

A scoring matrix with the order and priority of criteria to be used by the county in its evaluation and selection process is shown below:

Description	Points
TOTAL COST	40
TIMELINE FOR COMPLETION	20
QUALITY OF PROPOSAL	20
QUALIFICATIONS AND EXPERIENCE	20
Total Possible	100



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PROPOSAL SECTION

Proposers should include proposed amounts, itemized per action, as outlined below. Acreages are estimates and are subject to change. Certain actions, i.e. mobilization, demobilization and access road and landing rehabilitation, are not reflected in the itemized list. It is the proposer's responsibility to incorporate those types of costs into the itemized list.

Item #	Item Description	Unit	Quantity	Unit Cost	Total Cost
1	On Site Tree Harvesting and Processing Operation	Acre	170		
2	Aerial Application of Wood Shred Mulch - Sourced on Site	Acre	800		
3	Aerial Application of Wood Shred Mulch – Contractor Sourced Off Site	Acre	550		
4	Mastication	Acre	282		
5	ALTERNATE BID ITEM: Aerial Application of Colorado Certified Weed Free Straw	Acre	Minimum 100		
	TOTAL PROJECT COST				

Company Name

Name of person and title submitting PROPOSAL (PLEASE PRINT)

Signature of Bidder

Date



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purchasing@bouldercounty.org

SIGNATURE PAGE

Contact Information	Response
Company Name including DBA	
List Type of Organization (Corporation, Partnership, etc.)	
Name, Title, and Email Address of Person Authorized to Contract with Boulder County	
Company Address	
Company Phone Number	
Company Website	

By signing below, I certify that:

I am authorized to bid on my company's behalf.

I am not currently an employee of Boulder County.

None of my employees or agents is currently an employee of Boulder County.

I am not related to any Boulder County employee or Elected Official.

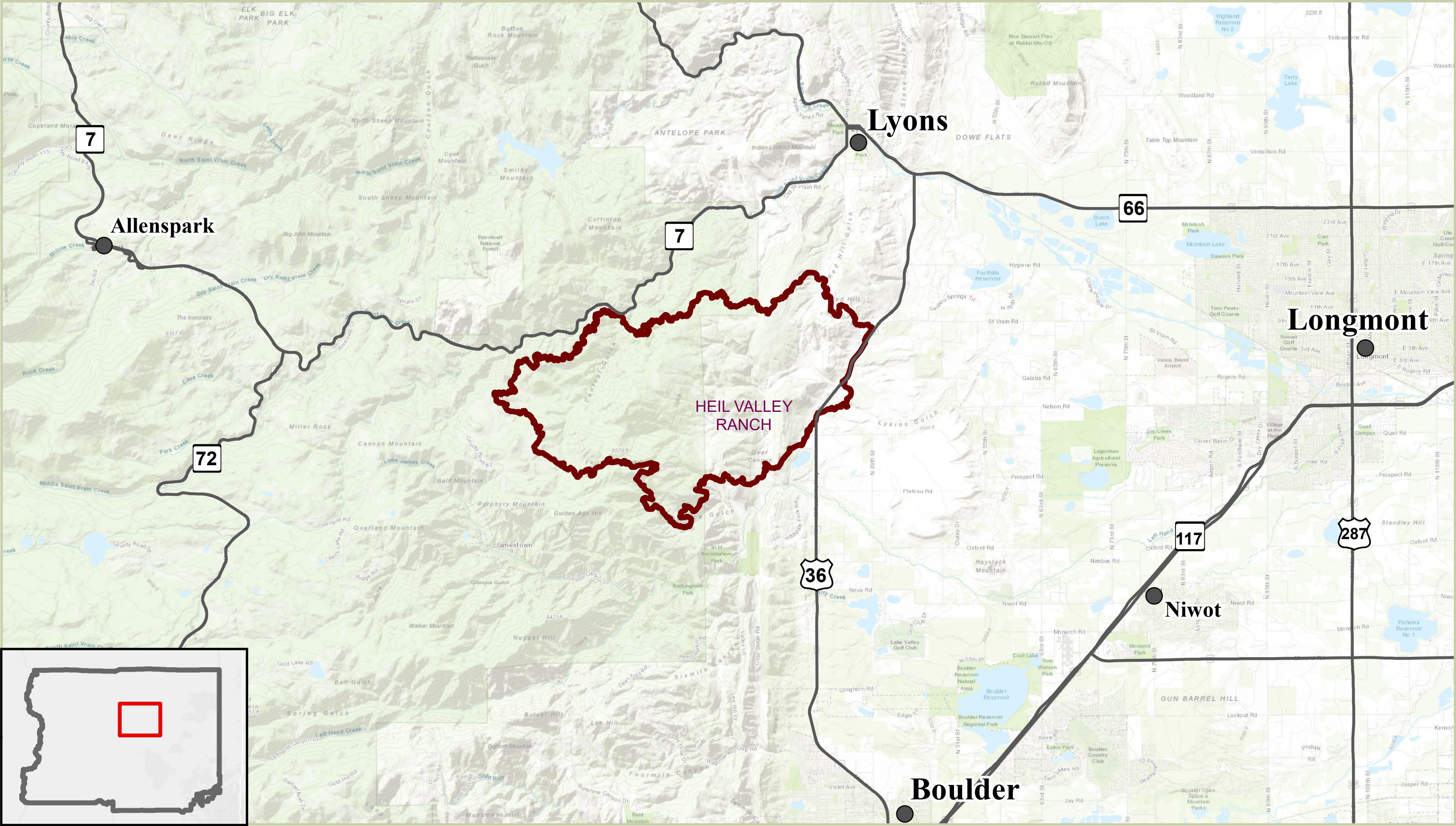
(Sole Proprietorships Only) I am not a Public Employees' Retirement Association (PERA) retiree.

**Signature of Person Authorized to Bid on
Company's Behalf**

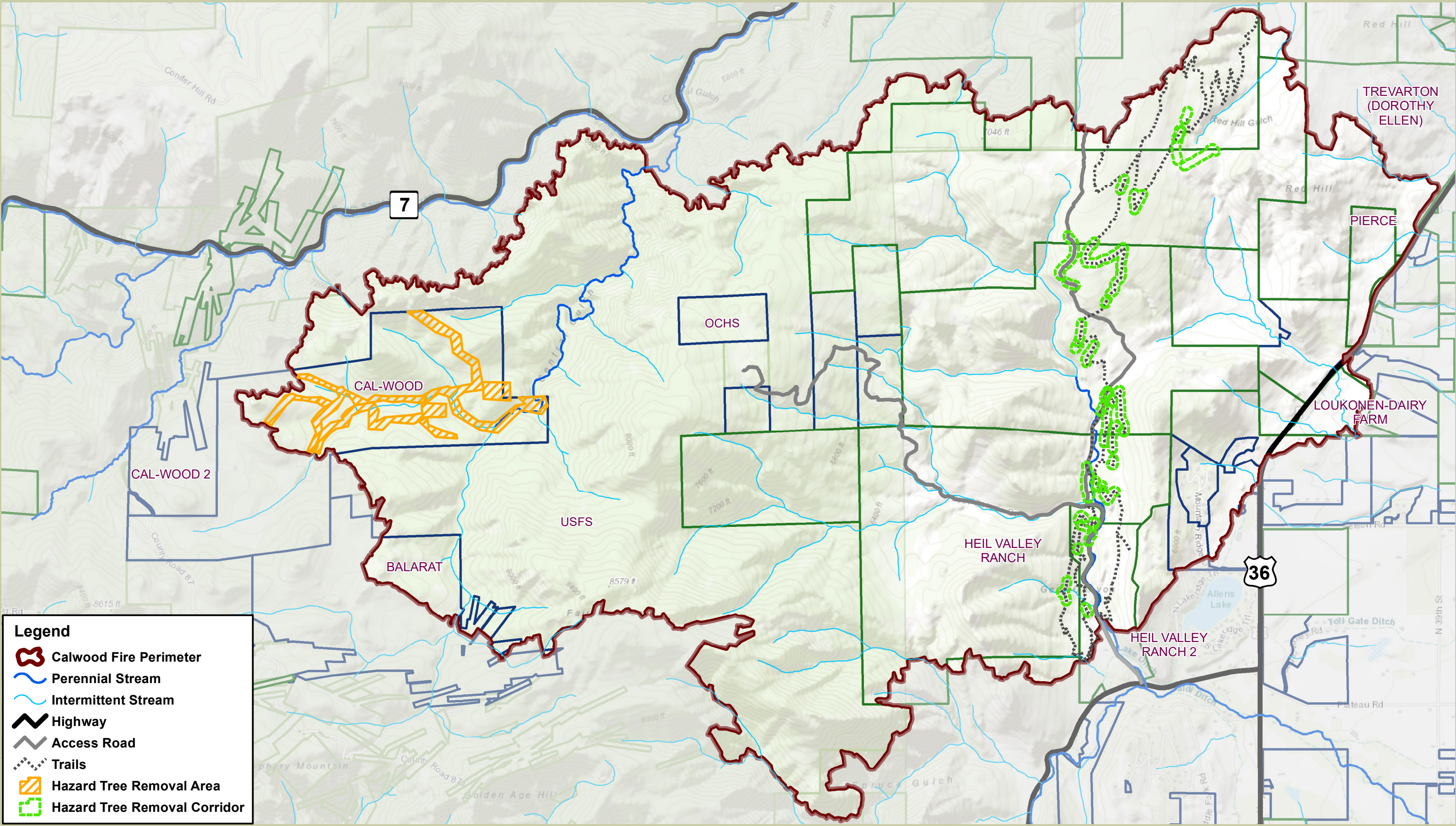
Date

Note: If you cannot certify the above statements, please explain in a statement of explanation.

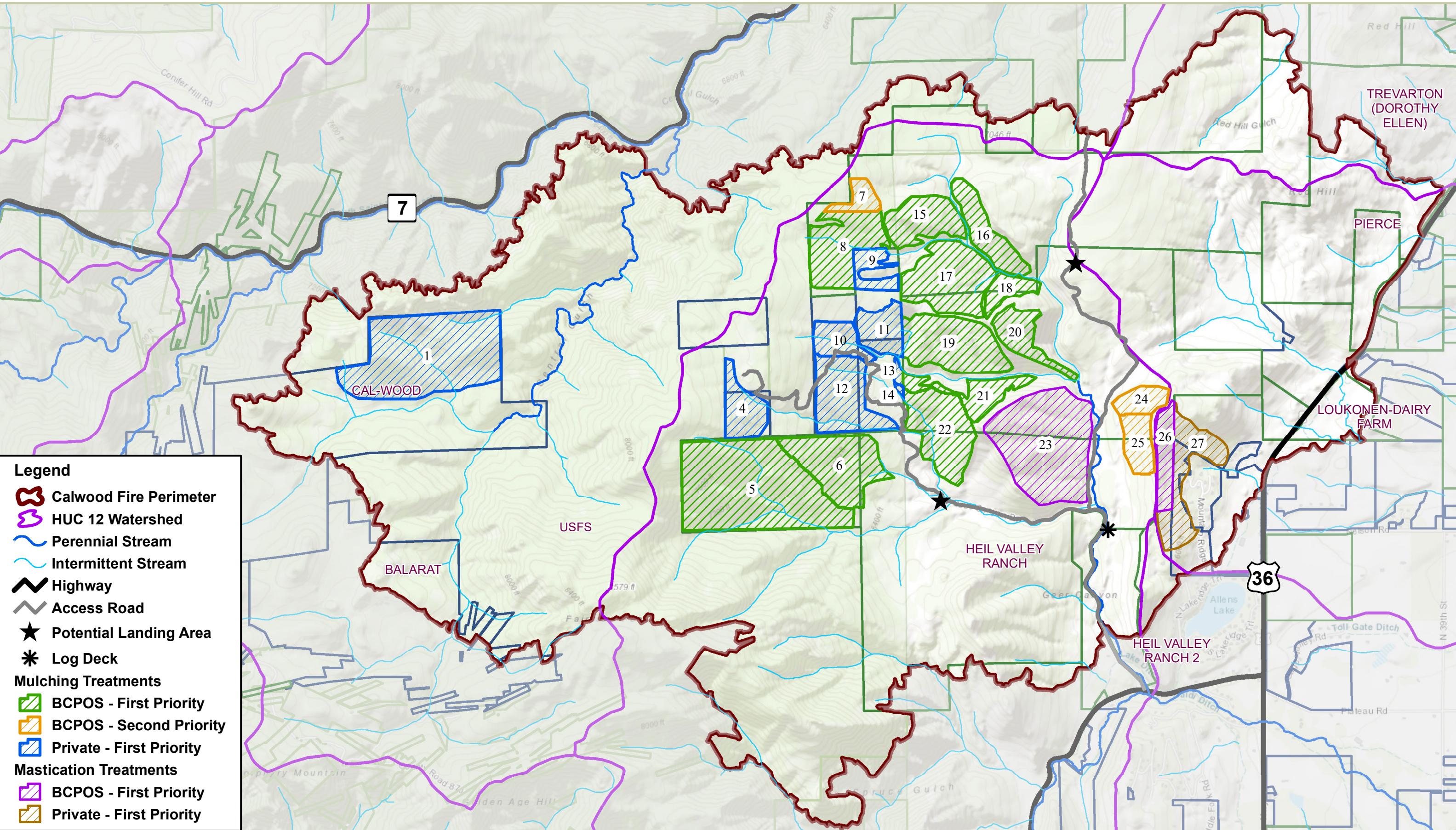
Attachment A: Calwood Fire Location Overview
















Attachment B: Hazard Tree Removal Areas



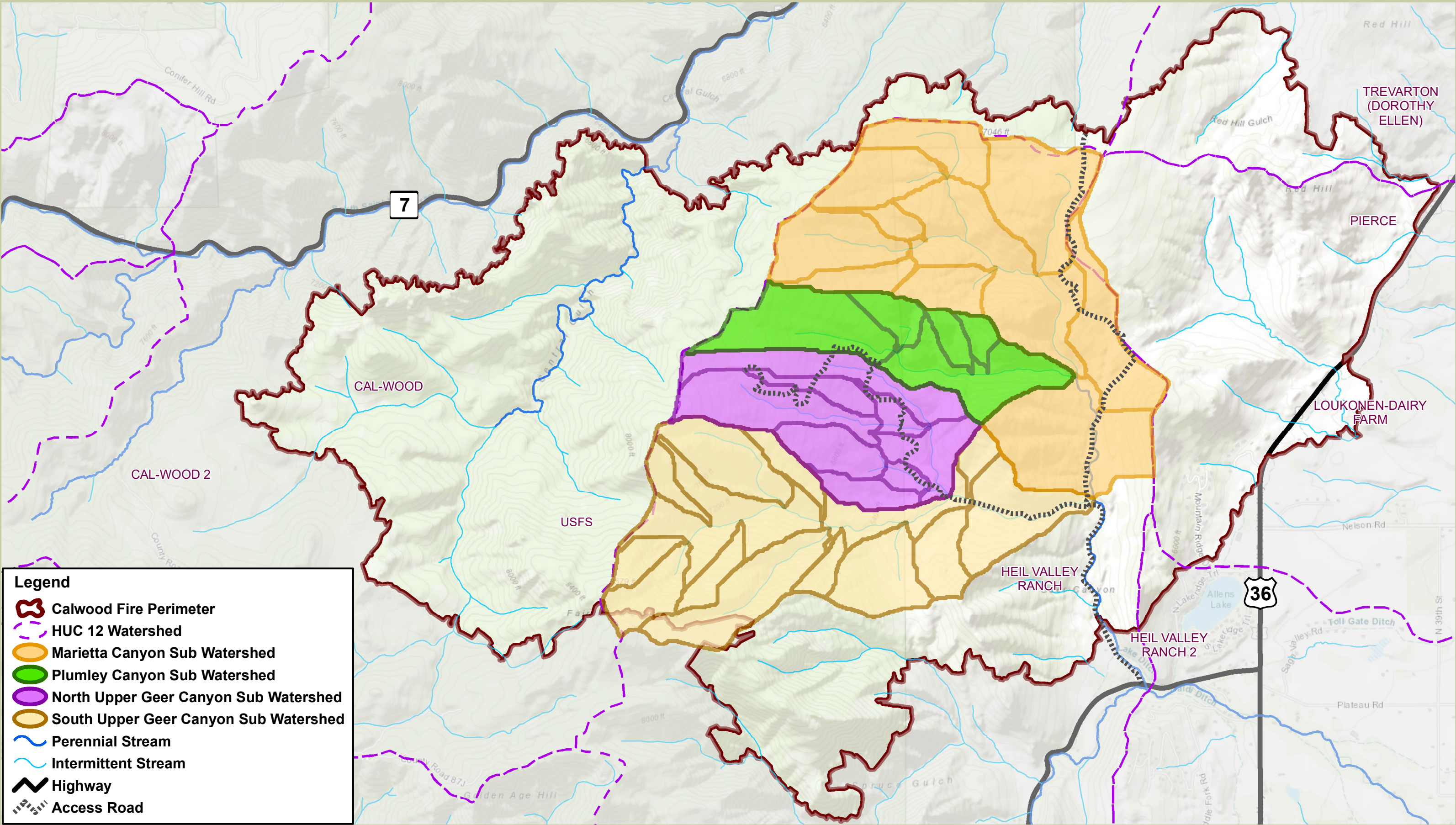
Attachment C: Mulching and Mastication Treatment Areas / Potential Landing Locations



Legend

-  Calwood Fire Perimeter
-  HUC 12 Watershed
-  Perennial Stream
-  Intermittent Stream
-  Highway
-  Access Road
-  Potential Landing Area
-  Log Deck
- Mulching Treatments**
 -  BCPOS - First Priority
 -  BCPOS - Second Priority
 -  Private - First Priority
- Mastication Treatments**
 -  BCPOS - First Priority
 -  Private - First Priority

Attachment D: Calwood Fire Sub Watersheds



Attachment E: Mulching and Mastication Treatment Areas Acreage Table

Mulching Treatment Area	Acres	Ownership & Priority	Watershed or Sub Watershed
1	218.7	Private – 1 st Priority	South Saint Vrain Creek
2	42.1	Private – 1 st Priority	North Upper Geer Canyon
3	238.5	Boulder County – 1 st Priority	South Upper Geer Canyon
4	95.1	Boulder County – 1 st Priority	North Upper Geer Canyon
5	18.7	Boulder County – 2 nd Priority	Marietta Canyon
6	83.4	Boulder County – 1 st Priority	Marietta Canyon
7	23.8	Private – 1 st Priority	Marietta Canyon
8	31.9	Private – 1 st Priority	Plumley Canyon
9	38.8	Private – 1 st Priority	Plumley Canyon
10	81.5	Private – 1 st Priority	North Upper Geer Canyon
11	3.5	Private – 1 st Priority	Plumley Canyon
12	1.4	Private – 1 st Priority	Plumley Canyon
13	57.2	Boulder County – 1 st Priority	Marietta Canyon
14	49.9	Boulder County – 1 st Priority	Marietta Canyon
15	99.3	Boulder County – 1 st Priority	Marietta Canyon
16	22.4	Boulder County – 1 st Priority	Marietta Canyon
17	95.9	Boulder County – 1 st Priority	Plumley Canyon
18	39.4	Boulder County – 1 st Priority	Marietta Canyon
19	40.6	Boulder County – 1 st Priority	Plumley Canyon
20	87.5	Boulder County – 1 st Priority	North Upper Geer Canyon
21	23.6	Boulder County – 2 nd Priority	Marietta Canyon
22	32.1	Boulder County – 2 nd Priority	Marietta Canyon

Mastication Treatment Area	Acres	Ownership & Priority	Watershed or Sub Watershed
23	179.2	Private – 1 st Priority	Marietta Canyon
24	33.0	Private – 2 nd Priority	Saint Vrain Creek
25	69.3	Private – 2 nd Priority	Saint Vrain Creek

ATTACHMENT F: CALWOOD FIRE PHOTOS



Looking north into Marietta Canyon, mulching treatment area #15 and #16 in distance.



Looking northwest at Upper Marietta watershed, mulching area #15.



Plumely Canyon, treatment area #21.



Typical high severity burn slope. Mulching treatment area #18.



Mesa top along main acces road, near site of northern landing area.



Looking west into Marietta watershed from access road near northern landing area.



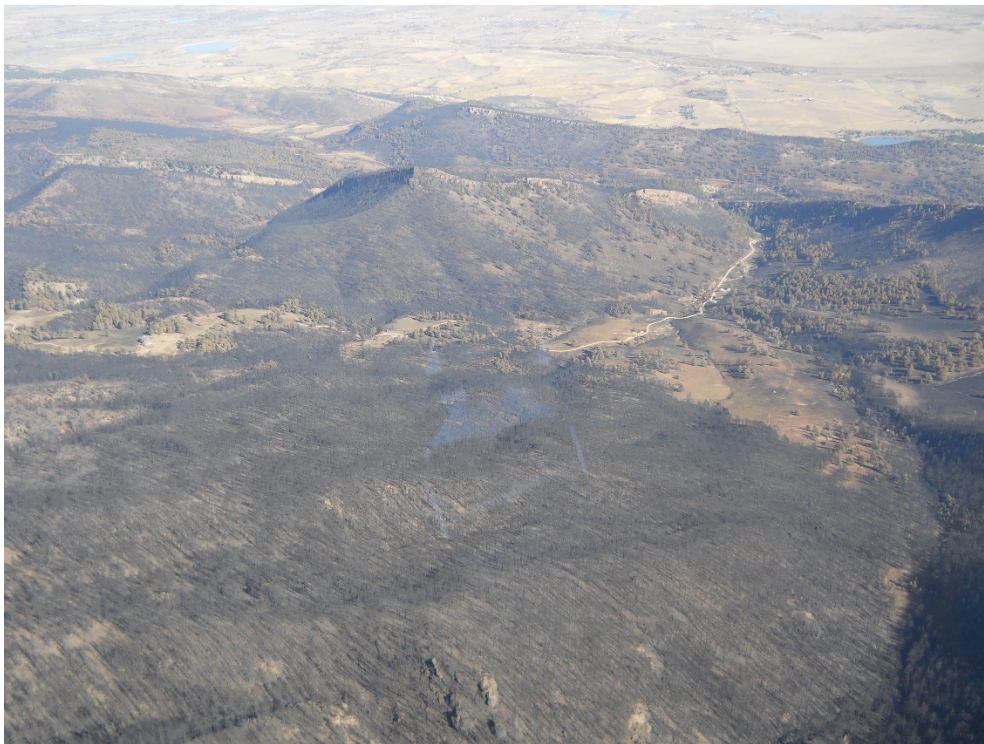
Looking southwest across private home and treatment area #12. Far burnt slopes are on US Forest Service lands and are not currently part of the scope of this work.



Looking due east from Och's property, mulching treatment area # 12.



Looking east over upper watersheds. Marietta Canyon on left, Plumely Canyon to right. Treatment areas #10, 11, and 19 between two drainages. Steep dish-shaped basin, center right is treatment area #21.



Upper Geer watershed looking east. Treatment area #5 and #6 lower center of photo.



Slope above upper trailhead, mastication area #23.



Mountain Ridge slope, mastication area #27.



Slope above Mountain Ridge Subdivision. Approximately 100 acres proposed for mastication. Treatment areas #26 and #27.



Cut and limbed hazard trees along trail. Will likely require aerial yarding to move to landing for processing with grinder.



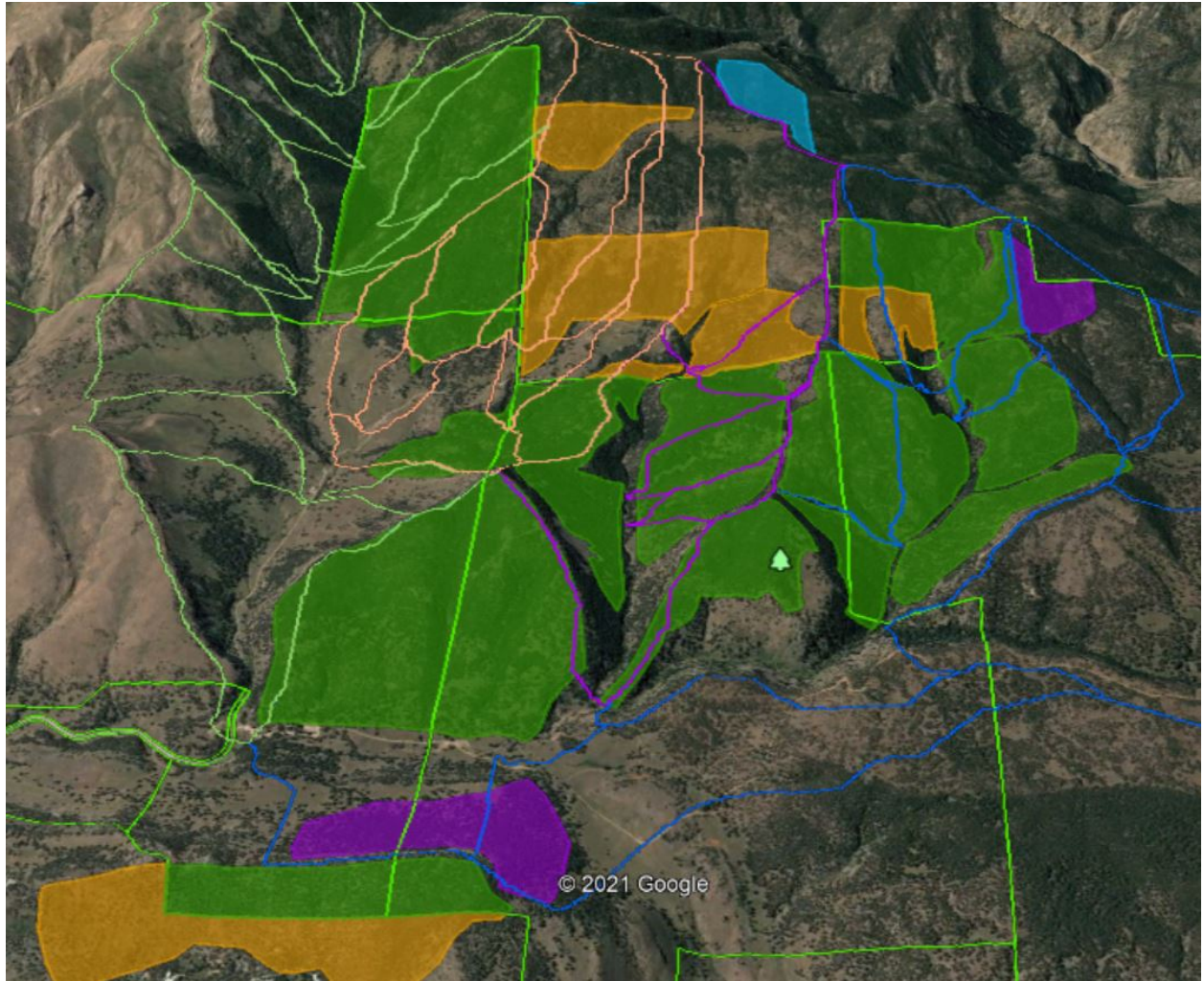
Looking west across mulching treatment #1 on the Calwood Education Center.



Mulching treatment area #1 on the Calwood Education Center.



Hazard tree removal areas along access roads and trails at Calwood Education Center.



Google Earth imagery of mulching and mastication treatment areas, with the exception of the Cal-Wood treatment area #1. KML files and ArcGIS shapefiles available as part of RFP.

ATTACHMENT G

PERMIT FOR EMERGENCY WATERSHED PROTECTION (EWP) WORK FOR THE CALWOOD FIRE

The undersigned landowners hereby grant permission to Boulder County and its employees and agents to enter upon the property described below for the purpose of evaluating and mitigating damage resulting from the Calwood Fire at any reasonable time within a period of 365 days from the date of this instrument. This permit includes the right to install needed measures including aerial mulching, mastication, hazard tree felling, wood and rock check dam construction, and perform similar emergency watershed protection work necessitated by the Calwood Fire, with the exception of _____.

This permit also includes the right of ingress and egress on the land for the purpose of maintaining the emergency work as needed, for the period of 1 year from the date of completion.

Owner Name(s) (print)

Parcel ID – Site Name
(legal desc., address, etc.)

Signature

Date

Return this form to:

**Boulder County Parks and Open Space
Attn: David Hirt
5201 St. Vrain Road
Longmont, CO 80503**

SAMPLE

ATTACHMENT H

NOTE:

This project is supported by an Agreement with the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) CFDA# 10.923 Emergency Watershed Protection (EWP) program. This project is contingent upon Boulder County finalizing an executed Agreement from the NRCS. *Attachment H was not available at the time this solicitation was posted, however, the attachment will be posted in the bid addenda.

AGREEMENT ID: TBD 600000XXXX
SPONSOR: Boulder County
PROJECT: Boulder County Calwood EWP

ATTACHMENT I
EMERGENCY WATERSHED PROTECTION PROGRAM
STATEMENT OF WORK

PURPOSE

The purpose of this agreement is for the United States Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as the “NRCS”, to provide technical and financial assistance to the Boulder County, hereinafter referred to as the “Sponsor”, for EWP Project # 5085 Calwood in Boulder County, Colorado for implementation of recovery measures, that, if left undone, pose a risk to life and/or property.

OBJECTIVES

The design and installation of EWP measures as detailed in the individual Damage Survey Reports (DSR) and described here:

- DSR 5085-001 - Erosion & sedimentation prevention, debris removal, structure protection from the threat of future flooding due to the Calwood Fire.

BUDGET NARRATIVE

A. The estimated costs for the Project:

1. Total Estimated Project Budget: \$5,708,000

The budget includes:

Financial Assistance (FA) Costs:

Construction Costs

75% NRCS: \$3,981,000

25% Sponsor: \$1,327,000

TOTAL \$5,308,000

Technical Assistance (TA) Costs:

100% NRCS (not to exceed): \$400,000

2. NRCS reimburses up to 75 percent of eligible construction costs and Sponsor pays 25 percent of construction costs. NRCS will contribute up to \$400,000 for contract administration and construction management costs. It is possible that technical and administrative costs will exceed this amount, requiring the Sponsor to contribute resources to complete technical and administrative work
3. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for financial assistance (FA) and one for technical assistance (TA). FA costs are associated with construction activities; TA costs are associated with services. These expenditures shall be accounted for separately in order for expenses to be eligible for reimbursement.
4. NRCS will provide FA for actual costs as reimbursement to the Sponsor for approved on-the-ground construction costs, subject to above limits. If costs are reduced, reimbursement will be reduced

accordingly. Construction costs are associated with the installation of the project measures including labor, equipment and materials.

5. NRCS will provide TA reimbursement to the Sponsor for technical and administrative costs directly charged to the project, subject to the above limits. If costs are reduced, reimbursement will be reduced accordingly. These costs include
 - a. engineering costs include, but not limited to, developing a project design that includes construction drawings and specifications, an operation and maintenance plan, a quality assurance/inspection plan and an engineer's estimate of the project installation costs in addition to providing necessary quality assurance during construction.
 - b. contract administration costs include, but not limited to, soliciting, evaluating, awarding and administering contracts for construction and engineering services, including project management, verifying invoices and record keeping.
6. The Sponsor will contribute funds toward the total construction costs in either direct cash expenditures, the value of non-cash materials or services, or in-kind contributions. The value of any in-kind contribution shall be agreed to in writing prior to implementation and documented on the inkind plan of operations.

RESPONSIBILITIES OF THE PARTIES

A. Sponsor will—

1. Accomplish construction of the EWP project measures by contracting, in-kind construction services, or a combination of both.
2. Ensure and certify by signing this agreement that its cost share obligation is from a non-Federal source.
3. Comply with the terms and conditions of this agreement and the attached general terms and conditions except those that are not applicable to State and local governments.
4. Acquire adequate real property rights (land and water), permits and licenses in accordance with local, state, and Federal laws necessary for the installation of EWP project measures at no cost to NRCS prior to construction. This includes any rights associated with required environmental mitigation. Costs related to land rights and permits are the Sponsor's responsibility and ineligible for reimbursement.
5. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits and licenses needed for the Project.
6. Provide the agreed-to portion of the actual, eligible and approved construction cost. These costs may be in the form of cash, in-kind construction services, or a combination of both. Final construction items that are eligible construction costs will be agreed upon during the

AGREEMENT ID: TBD 600000XXXX
SPONSOR: Boulder County
PROJECT: Boulder County Calwood EWP

pre-design conference. These costs consist of costs from contracts awarded to contractors and eligible Sponsor in-kind construction costs for materials, labor, and equipment. The Sponsor shall provide NRCS documentation to support all eligible construction costs. Construction costs incurred prior to the Sponsor and NRCS signing this agreement are ineligible and will not be reimbursed.

7. Be responsible for 100 percent of all ineligible construction costs and 100 percent of any unapproved upgrade to increase the level of protection over and above that described in the engineering plans.
8. Account for and report FA and TA expenditures separately in order for expenses to be eligible for reimbursement. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for TA and one for FA, requiring this separation.
9. The contracts for design services and construction described in this Agreement shall not be awarded to the Sponsor or to any firm in which any Sponsor's official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms. Reference 2 CFR § 200.318 regarding standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.
10. For in-kind construction services (materials, labor, and/or equipment supplied by the Sponsor), develop a Plan of Operations describing the construction services to be performed including estimated quantities and values. The Plan of Operations shall be concurred in by NRCS at the pre-design conference. In-kind construction services for equipment shall not exceed published FEMA equipment rates unless otherwise documented and concurred in advance by NRCS.
11. The following documentation is required to support the Sponsor's request for reimbursement of in-kind construction services:
 - a. Invoices covering actual costs of materials used in constructing the eligible EWP project measures.
 - b. Records documenting the type, quality, and quantities of materials actually used in constructing the eligible EWP project measures.
 - c. Daily time records for each employee showing name, classification, wage rate, hours, and dates actually employed for constructing the eligible EWP project measures.
 - d. Equipment operating records showing the type and size of equipment, hourly rate, actual hours of operation and dates used to install the eligible EWP project measures. Equipment idle time is not eligible in-kind construction services, even if on the job site, and should not be included in the equipment operating records.
12. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
13. The Sponsor must secure at its own expense all Federal, State, and local permits and licenses necessary for completion of the work described in this agreement as well as any

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necessary natural resource rights and provide copies of all permits and licenses obtained to NRCS.

14. Will arrange and pay for any necessary location, removal, or relocation of utilities. EWP program regulations prohibit NRCS from reimbursing the Sponsor or otherwise paying for any such costs; nor do the costs qualify as a Sponsor cost-share contribution.
15. Ensure that technical and engineering standards and specifications of NRCS are adhered to during construction of the Project, as interpreted by NRCS State Conservation Engineer. Provide NRCS State Conservation Engineer and Program/Technical Contact progress reports as necessary and agreed to. Progress reports should include technical on-site inspections of work accomplished for the period, work planned, results of material tests, deficient work products and/or tests with corrective actions taken, modifications anticipated, technical problems encountered, contractual issues and other relevant information.
16. Ensure that all contractors on NRCS assisted projects are performing their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). The Sponsor is responsible for periodically checking the contractor's compliance with safety requirements.
17. Provide a Colorado registered PE-certified as-built drawings and quantities for the project. A copy of the as-built drawings will be submitted to the NRCS State Conservation Engineer and Program/Technical Contact.
18. Pay the contractor(s) for work performed in accordance with the agreement and submit a SF-270, "Request for Advance or Reimbursement" to the Program/Technical Contact with all documentation to support the request. Final payment request shall be submitted within 90 calendar days of completion of the EWP project measures. Payments will be withheld until all required documentation is submitted and complete.
 - a. The **required supporting documentation for reimbursement of construction costs** include invoices and proof of payment to the contractor showing the items and quantities installed and certified by the engineer of record along with any supporting documentation such as quantity calculations, rock weight tickets, etc.
 - b. The **required supporting documentation for reimbursement of in-kind construction expenses** will include employee time sheets, employee hourly rate, equipment operating logs, equipment hourly rate, and material quantities and invoices.
 - c. The **required documentation for reimbursement of technical and administrative services** will be invoices and proof of payment to consultants and/or employee time sheets along with the employee's hourly rate, hours worked, and date work was performed.

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19. Ensure that information in the System for Award Management (SAM) is current and accurate until the final financial report (SF-425) under this award or final payment is received, whichever is later.
20. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the contract(s) awarded under this Agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the Project. Such actions will be at the expense of the Sponsor, including any legal expenses. The Sponsor will advise, consult with, and obtain prior written concurrence of NRCS on any litigation matters in which NRCS could have a financial interest.
21. Sponsor must indemnify and hold NRCS harmless to the extent permitted by State law for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the Sponsor in connection with its acquisition and management of the Emergency Watershed Protection Program pursuant to this agreement. Further, the Sponsor agrees that NRCS will have no responsibility for acts and omissions of the Sponsor, its agents, successors, assigns, employees, contractors, or lessees in connection with the acquisition and management of the Emergency Watershed Protection Program pursuant to this agreement that result in violation of any laws and regulations that are now or that may in the future become applicable.
22. Retain all records dealing with the award and administration of the contract(s) for 3 years from the date of the Sponsor's submission of the final request for reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the 3-year period, records are to be retained until the litigation is resolved or the end of the 3-year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcriptions.
23. Be liable to the NRCS for damages sustained by the NRCS as a result of the contractor failing to complete the work within the specified time. The damages will be based upon the additional costs incurred by the NRCS resulting from the contractor not completing the work within the allowable performance period. These costs include but are not limited to personnel costs, travel, etc. The NRCS will have the right to withhold such amount out of any monies that may be then due or that may become due and payable to the Sponsor. This liability is not applicable to the extent that the contract performance time is extended by court judgment unless such judgment results from actions of the Sponsor not concurred in by NRCS.
24. Take necessary legal action, including bringing suit, to collect from the contractor any monies due in connection with the contract, or upon request of NRCS, assign and transfer to NRCS any or all claims, demands, and causes of action of every kind whatsoever that the Sponsor has against the contractor or his or her sureties.
25. Submit performance reports on a quarterly basis to the Program/Technical Contact and/or to the Farm Production and Conservation (FPAC) Grants and Agreements Division staff via

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email to: FPAC.BC.GAD@usda.gov. Reports are due 30 calendar days after the reporting period and are based on the agreement period of performance start date.

26. Submit SF-425 Financial Reports on a semi-annual basis to the NRCS Program/Technical Contact and/or to the Farm Production and Conservation (FPAC) Grants and Agreements Division staff via email to: FPAC.BC.GAD@usda.gov. Reports are due 30 calendar days after the reporting period and are based on the agreement period of performance start date.
27. Submit payment requests to the Program/Technical Contact and/or to the Farm Production and Conservation (FPAC) Grants and Agreements Division staff via email to: FPAC.BC.GAD@usda.gov. on a monthly basis. Refer to the General Terms and Conditions for more information regarding payment requests.
28. The recipient (including subrecipients) is responsible for compliance with the prohibition on certain telecommunications and video surveillance services or equipment identified in 2 CFR 200.216. See Public Law 115-232, Section 889 for additional information. In accordance with 2 CFR 200.216, the recipient (including subrecipients) is prohibited from obligating or expending loan or grant funds for covered telecommunications equipment or services to:
 - (1) procure or obtain, extend or renew a contract to procure or obtain;
 - (2) enter into a contract (or extend or renew a contract) to procure; or
 - (3) obtain the equipment, services or systems.
29. In accordance with 2 CFR 200.340, the recipient understands this agreement may be terminated in whole or in part as follows:
 - (1) By the Federal awarding agency or pass-through entity, if a recipient fails to comply with the terms and conditions of a Federal award;
 - (2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
 - (3) By the Federal awarding agency or pass-through entity with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
 - (4) By the recipient upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

B. NRCS will—

1. Assist Sponsor in establishing design parameters; determine eligible construction costs during the pre-design conference.

2. Designate a Government Representative (GR) to serve as liaison with the Sponsor and identify that person's contact information with this executed agreement.
3. Review, comment and concur in preliminary and final plans, specifications, O&M Plan, Plan of Operations (if required) and QAP.
4. Make periodic site visits during the installation of the EWP project measures to review construction progress, document conformance to engineering plans and specifications, and provide any necessary clarification on the Sponsor's responsibilities.
5. Upon notification of the completion of the EWP project measures, NRCS shall promptly review the performance of the Sponsor to determine if the requirements of this agreement and fund expenditures as agreed have been met.
6. Make payment to the Sponsor covering NRCS' share of the cost upon receipt and approval of Form SF-270 and supporting documentation, withholding the amount of damages sustained by NRCS as provided for in this agreement. In the event there are questions regarding the SF 270 and supporting documentation, NRCS will contact the Sponsor in a timely manner to resolve concerns.

C. MUTUALLY AGREED

1. The furnishing of financial, administrative, and/or technical assistance above the original funding amount by NRCS is contingent on there being sufficient unobligated and uncommitted funding in the Emergency Watershed Protection Program that is available for obligation in the year in which the assistance will be provided. NRCS may not make commitments in excess of funds authorized by law or made administratively available. Congress may impose obligational limits on program funding that constrains NRCS's ability to provide such assistance.
2. In the event of default of a construction contract awarded pursuant to this agreement, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the agreement.
3. Additional funds, including interest properly allocable as construction costs as determined by NRCS, required as a result of decision of the CO or a court judgment in favor of a claimant will be provided in the same ratio as construction funds are contributed under the terms of this agreement. NRCS will not be obligated to contribute funds under any agreement or commitment made by the Sponsor without prior concurrence of NRCS.
4. The State Conservationist may make adjustments in the estimated cost to NRCS set forth in this agreement for constructing the EWP measures. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment will be made to change

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the cost sharing assistance provided by NRCS as set forth in this agreement, nor reduce funds below the amount required to carry out NRCS' share of the contract.

5. Except for item 4. above (last sentence), this document may be revised as mutually agreed through a written amendment duly executed by authorized officials of all signatory parties to this agreement.
6. NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without obtaining concurrence as set out in this agreement.
7. Once the project is completed and all requests for reimbursement submitted, any excess funding remaining in the agreement will be de-obligated from the agreement.
8. If inconsistencies arise between the language in the Statement of Work (SOW) in the agreement and the general terms and conditions, the language in the SOW takes precedence.

EXPECTED ACCOMPLISHMENTS AND DELIVERABLES

1. Prepare design, construction specifications, and drawings in accordance with standard engineering principles that comply with NRCS programmatic requirements; and/or contract/install the designed construction. Any design services will be by a professional State of Colorado registered engineer. Sponsor will obtain NRCS review and concurrence on the design, construction plans, and specifications. The Sponsor must ensure description of work is reviewed, concurred, and approved by NRCS. A copy of the final signed and sealed plans and specifications shall be provided to the NRCS State Conservation Engineer.
2. Contract for services and construction in accordance with the Code of Federal Regulations (CFR), 2 CFR § 200.317 through 200.326, applicable State regulations, and the Sponsor's procurement regulations, as appropriate. (See general terms and conditions attached to this agreement for a link to the CFR.) In accordance with 2 CFR § 200.326, contracts must contain the applicable provisions described in Appendix II to Part 200. Davis-Bacon Act would not apply under this Federal program legislation.
3. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns as well as copies of all permits, licenses, and other documents required by Federal, state, and local statutes and ordinances prior to solicitation for installation of the EWP project measures. All modifications to the plans and specifications shall be reviewed and concurred on by NRCS.
4. Prepare and submit to the NRCS State Conservation Engineer for NRCS concurrence an Operation and Maintenance (O&M) Plan, if applicable, prior to commence of work. The O&M Plan shall describe the activities the Sponsor will do to ensure the project performs as designed. Upon completion of the project measures, the Sponsor shall assume responsibility for O&M.
5. Prior to commencement of work and/or solicitation of bids, submit to the NRCS State Conservation Engineer for NRCS review and concurrence a Quality Assurance Plan (QAP).

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The QAP shall outline technical and administrative expertise required to ensure the EWP project measures are installed in accordance with the plans and specifications, identify individuals with the expertise, describe items to be inspected, list equipment required for inspection, outline the frequency and timing of inspection (continuous or periodic), outline inspection procedures, and record keeping requirements. A copy of the final QAP shall be provided to NRCS prior to commencement of construction.

6. Provide construction inspection in accordance with the QAP.
7. Arrange for and conduct final inspection of completed project with NRCS to determine whether all work has been performed in accordance with contractual requirements. Provide a State of Colorado registered PE certification that the Project was installed in accordance with approved plans and specifications.

RESOURCES REQUIRED:

As stated in this agreement.

MILESTONES

Milestones shall include, but not limited to, the following items:

1. Pre-construction design conference within 21 days of signing agreement.
2. Submit to NRCS a schedule with time lines of major items to be completed within 30 days of the pre-design conference.
3. Acquire needed landowner permissions prior to start of construction and provide proof to NRCS.
4. Obtaining permits and provide to NRCS prior to the start of construction.
5. Completing any necessary surveys.
6. Completing draft engineering plans and specifications for NRCS review and concurrence.
7. Completing final engineering plans and specifications for NRCS review and approval.
8. Completing quality assurance plan for NRCS review and approval.
9. Completing Operation & Maintenance (O&M) plan for NRCS review and approval.
10. Solicit bids and provide to NRCS.
11. Award contract and provide to NRCS.
12. Submit Request for Reimbursement (SF-270) with supporting documentation every 30 days.
13. Provide construction progress reports on an agreed upon interval.
14. Provide date of estimated completion of construction.
15. Schedule and invite NRCS to the final walk through.
16. Complete agreement close-out activities including a final progress report, certifications treatments meets approved plans & specifications, as built and a final SF-270.

ATTACHMENT J

ADDENDUM TO CONTRACT

NATIONAL RESOURCES CONSERVATION SERVICES (NRCS)

EMERGENCY WATERSHED PROTECTION PROGRAM (EWP)

REQUIREMENTS FOR PROCUREMENT CONTRACTS

This is an addendum to the [CONTRACT NAME], RFP _____, Agreement between [CONTRACTOR] ("Contractor"), and Boulder County, (the "County").

The parties acknowledge that the above-referenced contract is subject to the provisions of 7 CFR Part 624. This addendum is hereby expressly incorporated into the agreement between Boulder County and the Contractor. To the extent that the terms of the Agreement and this Addendum conflict, the terms of this Addendum shall control.

The following provisions are hereby added and incorporated into the above-referenced Agreement:

1. EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

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

2. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
3. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 25 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection.
4. **OSHA Compliance.** Contractors on NRCS assisted projects shall perform their work in accordance with OSHA regulations, NRCS Supplement to OSHA Parts 1910 and 1926, and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth in Attachment A.

Except as modified herein, all terms and conditions of the existing contract between the parties remain in full force and effect.

Accepted by **[CONTRACTOR]** on

(Date)

By: _____
TITLE

Accepted by **BOULDER COUNTY** on

(Date)

Matt Jones, Chair

EXHIBIT A

NATURAL RESOURCES CONSERVATION SERVICE SUPPLEMENT TO OSHA PARTS 1910 AND 1926 CONSTRUCTION INDUSTRY STANDARDS AND INTERPRETATIONS

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

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

- (1) Specific reference to the provision or standard in question;
- (2) An explanation as to why the waiver is considered justified; and
- (3) The Contractor's proposed alternative, including technical drawings, materials, or equipment specifications needed to enable the Contracting Officer to render a decision.

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

Copies of OSHA Parts 1910 and 1926, Construction Industry Standards and Interpretations, may be obtained from:
Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

1.0 GENERAL CONTRACTOR REQUIREMENTS:

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

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

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

1.4 SAFETY PERSONNEL. Each Contractor is to designate a competent supervisory employee satisfactory to the Contracting Officer to administer the safety program.

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

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

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

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

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

2.0 FIRST AID AND MEDICAL FACILITIES:

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

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

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

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

- (a) A daily treatment log listing chronologically all persons treated for occupational injuries and illnesses;
- (b) Cumulative record of injury for each individual;
- (c) Monthly statistical records of occupational injuries, classified by type and nature of injury; and
- (d) Required records for worker's compensation.

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

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

3.0 PHYSICAL QUALIFICATIONS OF EMPLOYEES:

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

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

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

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

4.0 PERSONAL PROTECTIVE EQUIPMENT:

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

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

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

CONSTRUCTION AREA - HARDHATS REQUIRED BEYOND THIS POINT

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

4.3 SAFETY GOGGLES (DRILLERS)

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

5.0 MACHINERY AND MECHANIZED EQUIPMENT:

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

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

5.3 HAUL ROADS FOR EQUIPMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.5 ROLLOVER PROTECTIVE STRUCTURES (ROPS)

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

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

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

6.0 LADDERS AND SCAFFOLDING:

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

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

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

- (a) Work on stored material in hoppers, bins, silos, tanks, or other confined spaces.
- (b) Work on hazardous slopes, structural steel, or poles; erection or dismantling of safety nets, tying reinforcing bars; and work from Boatswain's chairs, swinging scaffolds, or other unguarded locations at elevations greater than 6 feet.
- (c) Work on skips and platforms used in shafts by crews when the skip or cage does not block the opening to within 1 foot of the sides of the shaft, unless cages are provided.

**U.S. DEPARTMENT OF AGRICULTURE
FARM PRODUCTION AND CONSERVATION**

**GENERAL TERMS AND CONDITIONS
GRANTS AND COOPERATIVE AGREEMENTS**

The Farm Production and Conservation (FPAC) mission area encompasses the following USDA agencies: Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), Risk Management Agency (RMA), the Commodity Credit Corporation (CCC), and the FPAC Business Center.

I. APPLICABLE REGULATIONS

- a. As a condition of this award, the recipient assures and certifies that it has and/or will comply and require subrecipients to comply with the requirements contained in the following statutes and regulations, as applicable. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.
 1. 2 CFR Part 25, “Universal Identifier and System of Award Management”
 2. 2 CFR Part 170, “Reporting Subaward and Executive Compensation Information”
 3. 2 CFR Part 175, “Award Term for Trafficking in Persons”
 4. 2 CFR Part 180, “OMB Guidelines to Agencies On Governmentwide Debarment And Suspension (Nonprocurement)”
 5. 2 CFR Part 182, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)”
 6. 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”
 7. 2 CFR Part 400, “Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards”
 8. 2 CFR Part 417, “Nonprocurement Debarment and Suspension”
 9. 2 CFR Part 418, “New Restrictions on Lobbying”
 10. 2 CFR Part 421, “Requirements for Drug-Free Workplace (Financial Assistance)”
 11. 2 CFR Part 422, “Research Institutions Conducting USDA-Funded Extramural Research; Research Misconduct”
- b. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and, to the extent applicable, to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.
 1. 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles And Audit Requirements For Federal Awards”
 2. 48 CFR Part 31, “Contract Cost Principles and Procedures”
- c. For corporate recipients, by accepting this award the recipient acknowledges: (1) that it does not have a Federal tax delinquency, meaning that it is not subject to any unpaid Federal tax

liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, **and** (2) that it has not been convicted of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the USDA has considered suspension or debarment of the recipient corporation based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, the agency will annul this agreement and may recover any funds the recipient has expended in violation of the above cited statutory provisions.

II. UNALLOWABLE COSTS

The following costs are not allowed:

- a. Costs above the amount authorized for the project.
- b. Costs incurred after the award period of performance end date.
- c. Costs not identified in the approved budget or approved budget revisions.
- d. Profit resulting from Federal financial assistance. Recipients may not earn and keep income resulting from an award.
- e. Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
- f. Compensation for injuries to persons or damage to property arising from project activities.

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, "Subpart E - Cost Principles", or direct specific inquiries to the administrative contact identified in the award. The allowability of some items of costs may be difficult to determine. To avoid disallowance or dispute of such costs, the recipient may seek prior approval before incurring them. See 2 CFR 200.407.

III. PRIOR APPROVAL REQUIREMENTS

Certain items of cost and award revisions require the prior written approval of the awarding agency. The following are the most common situations requiring prior approval. However, this list is not exhaustive, and the recipient is also bound by any other prior approval requirements identified in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

- a. Pre-award costs.—To receive reimbursement for costs incurred prior to the award date, recipients must request written approval before incurring the costs. This restriction also applies to costs intended to meet cost-share requirements. FPAC agencies will not approve expenses incurred more than 90 calendar days before the period of performance start date. All costs incurred before the period of performance start date, even if approved, are at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs).
- b. Revisions to scope, objective, or deliverables.—When it is necessary to modify the scope, objective, or deliverables of an award, the recipient authorized signatory must submit a written request and justification for the change along with the revised scope, objective, or deliverables of the award to the administrative contact. The request should contain the following information:
 - 1. Grant or agreement number
 - 2. Narrative explaining the requested modification to the project scope, objectives, or deliverables

3. A description of the revised scope, objectives, or deliverables

- c. Additions or changes to subawards and contracts.—The subawarding, transferring, or contracting out of any work under a Federal award not identified in the original award budget or any changes to subaward or contracts requires prior written approval. The recipient must submit a justification for the proposed subaward/contract, a statement of work to be performed, and a detailed budget for the subaward/contract to the administrative contact. This provision does not apply to the acquisition of supplies, material, equipment, or general support services.
- d. Change in a key person specified in the application or award.— When there is a change in key personnel, the recipient must request prior written approval for the substitution or change. The request must identify the replacement personnel and provide his or her qualifications.
- e. Absence or change in project leadership.—If the approved project director or principal investigator disengages from the project for more than three months or reduces time devoted to the project by 25 percent or more, the recipient must notify the administrative contact in writing, identifying who will be in charge during the project director's absence. The notification must include the qualifications of the replacement.
- f. Budget revisions.—Recipients must request prior written approval for deviations from the approved budget in the instances described below. For all budget revisions, the recipient must submit a new SF 424A or 424C and budget narrative to support the request.
 - 1. The inclusion of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, “Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable.
 - 2. Where the cumulative amount of transfers of funds among direct cost categories or programs, functions, and activities exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency, and where the Federal share of the project exceeds the simplified acquisition threshold.
 - 3. The transfer of funds budgeted for participant support costs to other categories of expense requires prior written approval. Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects.
 - 4. Changes in the approved cost-sharing or matching provided by the recipient.
 - 5. Additional Federal funds needed to complete the project.
 - 6. Changes to negotiated indirect cost rates during the award period of performance.
 - 7. Equipment purchases not specifically identified in the approved budget.
- g. No-Cost Extensions of Time.—When a no-cost extension of time is required, the recipient authorized signatory must submit a written request to the FAPC administrative contact. Except in very limited circumstances, a no-cost extension of time cannot exceed 12 months. FPAC cannot approve requests for no-cost extensions received after the

expiration of the award. In addition, time may not allow extension requests submitted less than 30 calendar days before the period of performance end date to be processed, so recipients are encouraged to submit requests as soon as possible. FPAC agencies cannot approve no-cost extensions requested merely to expend remaining funds. The request must contain the following:

1. Amount of additional time requested
2. Explanation for the need for the extension
3. A summary of progress to date and revised milestones

IV. PAYMENTS

- a. Recipients must request reimbursement or advances using a properly completed and executed SF-270, submitted with supporting documentation to either the ezFedGrants system or to the e-mail address specified in the statement of work. FPAC agencies will make payment to the recipient on a reimbursable or advance basis in accordance with the frequency specified in the statement of work.
- b. Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant to procedures contained in the Federal administrative provisions and 31 CFR Part 205. At the end of each advance period, the recipient must provide a justification (i.e., documentation) showing the amount of advanced funds spent.
- c. The method of payment between the recipient and its contractors will be in accordance with the policies and procedures established by the recipient except that the contractors may not use the USDA Office of Financial Management/National Finance Center method to request payments. If the recipient makes advance payments to contractors, the recipient must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds. Recipients must not submit requests from their contractors for review or approval.
- d. Accounting records for all costs incurred under this award must be supported by source documentation. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subaward documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the approved project period of this award, including any approved no-cost extension of time. Costs that cannot be supported by source documentation or that are incurred outside of the approved project period and budget may be disallowed and may result in award funds being returned to the Federal Government by the recipient. The level of detail and documentation required to be provided to support any individual payment request is at the discretion of the Government.
- e. Recipients must pay all costs incurred (i.e., liquidate obligations) under the award not later than 90 calendar days after the period of performance end date.

V. FINANCIAL REPORTING

- a. Recipients must submit a Federal Financial Report (FFR), SF 425 in accordance with the schedule included in the award statement of work. Recipients must submit reports to either the ezFedGrants system or to the email address specified in the statement of work. Failure

to submit reports as required may result in suspension or termination of award.

- b. The recipient must submit a final financial report no later than 90 days after the period of performance end date.
- c. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

VI. PERFORMANCE MONITORING AND REPORTING

- a. The recipient is responsible for monitoring day-to-day performance and for reporting to FPAC. If the project involves subaward/contractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.
- b. The recipient must submit a written progress report at the frequency specified in the statement of work to either the ezFedGrants system or to the email address specified in the statement of work. Each report must cover—
 - 1. A comparison of actual accomplishments with the goals and objectives established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.
 - 2. The reasons why goals and objectives were not met, if appropriate.
 - 3. Additional pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit costs.
- c. The recipient must submit a final performance report within 90 calendar days of the period of performance end date.
- d. The FPAC awarding agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

VII. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

- a. Reporting of first-tier subawards.
 - 1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
 - 2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
 - 1. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov>.
- b. Reporting Total Compensation of Recipient Executives.
 - 1. Applicability and what to report. You must report total compensation for each of your

five most highly compensated executives for the preceding completed fiscal year, if—

- i. the total Federal funding authorized to date under this award is \$25,000 or more;
- ii. in the preceding fiscal year, you received—

- (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

- 2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

- 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. in the subrecipient's preceding fiscal year, the subrecipient received—

- (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

- 2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and
2. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. ____ .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

VII. AUDIT REQUIREMENTS

The recipient is responsible for complying with audit requirements in accordance with 2 CFR 200, Subpart F. A recipient entity that expends \$750,000 or more during the recipient's fiscal year in Federal awards must have a single or program-specific audit conducted for that year.

VIII. SPECIAL PROVISIONS

- a. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.
- b. Employees of FPAC agencies will participate in efforts under this agreement solely as representatives of the United States. They may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, FPAC employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in projects or agreements with such recipients.
- c. Employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement.
- d. Except in very limited circumstances (e.g., construction agreements), no agreement period of performance can exceed a total of five years, including extensions.
- e. Recipients who engage or assist in scientific related activities on behalf of USDA must uphold the principles of scientific integrity established by Departmental Regulations 1074-001, Scientific Integrity. Covered activities include engaging in, supervising, managing, and reporting scientific work; analyzing and publicly communicating information resulting from scientific work; and utilizing information derived from scientific work in policy and decision making.
- f. Recipients of awards under covered programs (as defined in Executive Order 13858, January 31, 2019) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under the award. "Covered program" means a program that provides financial assistance for the alteration, construction, conversion, demolition, extension, improvement, maintenance, construction, rehabilitation, or repair of an infrastructure project in the United States. However, it does not include programs for which a domestic preference is inconsistent with law or programs providing financial assistance that are subject to comparable domestic preferences.
- g. The recipient and its employees are prohibited from promoting, recommending, or discussing the availability of specific commercial products or services with FPAC agency clients in the course of carrying out activities under this agreement, including any products or services offered by the recipient, except as may be specifically allowed in the agreement.

IX. PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

- a. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.
- b. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to:

Farm Production and Conservation Business Center
Grants and Acquisitions Division
1400 Independence Avenue, SW.
Room 6819 South Building
Washington, DC 20250

- c. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.
- d. The following acknowledgment of USDA support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (World Wide Web pages, computer programs, etc.) that is substantially based upon or developed under this award:

“This material is based upon work supported by the U.S. Department of Agriculture, under agreement number [recipient should enter the applicable award number here].”

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

“Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services.”

- e. All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA home page. If the material is too small to permit the full nondiscrimination statement to be included, the material must, at a minimum, include the statement:

“USDA is an equal opportunity provider, employer, and lender.”

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

X. COST-SHARING REQUIREMENTS

- a. If the award has specific cost-sharing requirements, the cost-sharing participation in other projects may not be counted toward meeting the specific cost-share requirement of this award and must come from non-Federal sources unless otherwise stated in the applicable

program authorizing statute.

- b. Cost share must be documented on each SF 425 and SF 270 and in source documentation as it is provided by the recipient or third party. The required cost-share or matching ratio must be met by the end of the agreement period of performance; however, it does not have to be maintained for every payment request.
- c. Should the recipient become aware that it may be unable to provide the cost-sharing amount identified in this award, it must—
 - 1. Immediately notify the FPAC administrative contact of the situation.
 - 2. Specify the steps it plans to take to secure replacement cost sharing.
 - 3. Indicate the plans to either continue or phase out the project in the absence of cost sharing.

If the recipient's plans are not acceptable to FPAC, the award may be subject to termination. FPAC modifications to proposed cost sharing revisions are made on a case-by-case basis. Failure by the recipient to notify FPAC in accordance with this section may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by FPAC of some of the FPAC funds provided under the award, and possible termination of the award. It may constitute a violation of the terms and conditions of the award so serious as to provide grounds for subsequent suspension or debarment.

- d. The recipient must maintain records of all project costs that are claimed by the recipient as cost sharing as well as records of costs to be paid by FPAC. If the recipient's cost participation includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.
- e. Recipients must provide notification to the agency administrative contact when adding or replacing sources of cost-share contributions.

XI. PROGRAM INCOME

Program income is the gross revenue generated by a Federally funded activity earned during the performance period of the award. Program income may be earned by recipients from fees charged for conference or workshop attendance, from rental fees earned from real property or equipment acquired with Federal funds, or from the sale of commodities or items developed under the grant or cooperative agreement. It must fall within the guidelines at 2 CFR 200.307. Unless identified and addressed in the award, the recipient must provide notification to the administrative contact and request the manner it would like to treat the income (i.e., deductive or additive). Program income may be used to meet recipient cost-share requirements with the approval of the Government. All program income must be reported on the applicable SF 270 and SF 425.

XII. NONEXPENDABLE EQUIPMENT

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

XIII. LIMIT OF FEDERAL LIABILITY

The maximum financial obligation of FPAC to the recipient is the amount of funds indicated in the award

as obligated by FPAC. However, if an erroneous amount is stated on the approved budget, or any supporting document relating to the award, FPAC will have the unilateral right to make the correction and to make an appropriate adjustment in the FPAC share of the award to align with the Federal amount authorized.

XIV. MODIFICATIONS AND TERMINATIONS

The parties may amend this award through an exchange of correspondence between the authorized signatory of each or via formal amendment document. The award is subject to termination if FPAC determines that the recipient has failed to comply with the terms and conditions of the award. If the award is terminated, the guidelines at 2 CFR 200.339-42 will govern the obligations of the parties.

XV. PRIVACY ACT AND PROHIBITION AGAINST CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS

- a. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term “confidential information” means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of FPAC.
- b. The recipient’s personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient’s personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).
- c. The recipient agrees to comply with the **“Prohibition Against Certain Internal Confidentiality Agreements:”**
 1. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
 2. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
 3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
 4. If FPAC determines that you are not in compliance with this award provision, FPAC:
 - i. Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law;
 - ii. May pursue other remedies available for your material failure to comply with award terms and conditions.

XVI. ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE

The recipient agrees to comply with FPAC guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110-246), 7 U.S.C. 8791 as described below.

a. Responsibilities.

1. Acceptance of this award indicates acknowledgment and understanding that the recipient is legally bound by Federal statute to comply with the provisions of Section 1619 and that the recipient will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this award. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The recipient will be held responsible should disclosure of the protected information occur.
2. Acceptance of this award legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the recipient to comply with the provisions in Section 1619. The recipient must consult with FPAC prior to providing protected information to an entity or individual outside of the recipient and as necessary to implement the program to ensure that such release is permissible.
3. The recipient will use the protected information only to perform work that is directly connected to this award. Use of the protected information to perform work that is not directly connected to this award is expressly prohibited.
4. The recipient must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information to perform work under this award.
5. The provisions in Section 1619 are continuing obligations. Even when the recipient is no longer a recipient, or when individuals currently affiliated with the recipient become no longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with these provisions.
6. The recipient must notify all managers, supervisors, employees, contractors, agents, and representatives about this provision and the requirements of Section 1619. Notifications about the existence of this provision must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
7. When the recipient is unsure whether particular information is covered or protected by Section 1619, the recipient must consult with FPAC to determine whether the information must be withheld.
8. Use of the protected information for any purpose is expressly prohibited after the period of performance end date of this award. Upon the award end date, any protected information provided under this award must be immediately destroyed or returned to FPAC. The recipient must provide to FPAC written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.
9. Any State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.

b. Protected Information.

1. Examples of the types of information prohibited by disclosure under Section 1619 include, but are **not limited to**, the following:
 - i. State identification and county number (where reported and where located).
 - ii. Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
 - iii. Farm, tract, field, and contract numbers.

- iv. Production shares and share of acres for each Farm Serial Number (FSN) field.
 - v. Acreage information, including crop codes.
 - vi. All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
 - vii. Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
 - viii. Location of conservation practices.
2. Section 1619 allows disclosure of “payment information (including payment information and the names and addresses of recipients of payments) under any Department program *that is otherwise authorized by law*” (emphasis added). The names and payment information of producers generally may be provided to the public; however, the recipient shall consult with FPAC if there is any uncertainty as to the provision of such information.
 3. Section 1619 also allows disclosure of otherwise protected information if “the information has been transformed into a statistical or aggregate form without naming any—(i) individual owner, operator, or producer; or (ii) specific data gathering cite.” The recipient must consult with FPAC as to whether specific information falls within this exception prior to relying on this exception.
- c. Violations. The recipient will be held responsible for violations of this provision and Section 1619. A violation of this provision by the recipient may result in action by FPAC, including termination of the underlying Federal award.
 - d. Effective Period. The requirements of this provision is effective on the date of the final signature and will continue until FPAC notifies the recipient that it is no longer required based on changes in applicable Federal law.

XVII. AWARD CLOSEOUT

- a. Award closeout is the process by which FPAC determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.
- b. The recipient must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the agreement, including documentation showing that match or cost-share requirements have been met. The awarding agency may approve extensions when requested by the recipient.
- c. Unless the awarding agency authorizes an extension, the recipient must liquidate all obligations incurred under the agreement not later than 90 calendar days after the end date of the period of performance.
- d. Recipients must submit all requests for reimbursements no later than 90 calendar days after the end date of the period of performance.
- e. The recipient must promptly refund any balances of unobligated cash that the awarding agency paid in advance or paid and that are not authorized to be retained by the recipient for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.
- f. Recipients must retain all records pertaining to the agreement in accordance with 2 CFR 200.333-337 and any additional requirements included in the agreement statement of work.
- g. Recipients must follow disposition requirements for property acquired with award funds in accordance with 2 CFR 200.310-316.

Procurement Standards – 2 CFR § 200.317 through §200.326**§ 200.317 Procurements by states.**

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow § 200.318 General procurement standards through § 200.326 Contract provisions.

§ 200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j) (1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§ 200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§ 200.322 Procurement of recovered materials.

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

§ 200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a

starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Appendix II to Part 200Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

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

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). **(Not required for EWP program)** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not

apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

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

(H) 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 (42 U.S.C. 6201).

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

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

(K) See § 200.322 Procurement of recovered materials.

ATTACHMENT N

CONTRACTING LOCAL ORGANIZATION CERTIFICATION

STANDARDS OF CONDUCT

The CLO's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. The contract or other procurement action shall not be awarded to a sponsor, the CLO, or firms in which any official of such organizations or any member of such official's immediate family has direct or indirect interest in the recurring profits or contracts of such firms. To the extent permissible by state or local law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by the CLO officers, employees, or agents, or by contractors or their agents.

FINANCIAL MANAGEMENT SYSTEM

The CLO's financial management system meets the requirements specified in Section 510.50 of the National Contracts, Grants, and Cooperative Agreements Manual. Any reference in Section 510.50 to the acronym SCS refers to NRCS. A copy will be provided when requested.

PROCUREMENT

All procurement by the CLO shall be in accordance with 2 CFR Subtitles A and B Government wide Guidance for Grants and Agreement; Federal agency Regulations for Grants and Agreement; Final Rule and 2 CFR Part 225 Cost principles for State, Local, and Indian Tribal Governments (OMB Circular A-87). 7 CFR 3015 Grants Management Common Rule (State & Local Governments), 7 CFR 3017 Nonprocurement Suspension & Debarment, 7 CFR 3021 Drug-Free Workplace Act common rule, and 7 CFR 3018 Byrd Anti Lobbying Amendment common rule. The above can be downloaded at:

<http://www.whitehouse.gov/omb/circulars/index.html>.

Contracting Local Organization: _____

Signed by: _____

Title: _____

Date _____

ATTACHMENT I - SPECIAL PROVISIONS - CONSTRUCTION**I. EQUAL OPPORTUNITY**

A. The Contracting Local Organization agrees to incorporate, or cause to be incorporated, into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor at 41 CFR, Chapter 60, which is paid for, in whole or in part, with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity (Federally Assisted Construction) clause:

EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity (Federally Assisted Construction) clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Contractor's noncompliance with the Equal Opportunity (Federally Assisted Construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

7. The Contractor will include this Equal Opportunity (Federally Assisted Construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contracting Local Organization further agrees that it will be bound by the above Equal Opportunity (Federally Assisted Construction) clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, however, that if the Contracting Local Organization so participating is a State or local government, the above Equal Opportunity (Federally Assisted Construction) clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Contracting Local Organization agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity (Federally Assisted Construction) clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contracting Local Organization further agrees that it will refrain from entering into any contractor contract modification subject to Executive Order No. 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity (Federally Assisted Construction) clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contracting Local Organization agrees that if it fails or refuses to comply with these undertakings the administering agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant; refrain from extending any further

assistance to the Contracting Local Organization under the program with respect to which its failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contracting Local Organization; and refer the case to the Department of Justice for appropriate legal proceedings.

II. NOTICE TO CONTRACTING LOCAL ORGANIZATIONS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A. A Certification of Non-segregated Facilities must be submitted by the Contracting Local Organization prior to any agreement for Federal financial assistance where the Contracting Local Organization will itself perform a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

B. The Contracting Local Organization shall notify prospective federally assisted construction contractors of the Certification of Non-segregated Facilities required, as follows:

III. NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS

A. A Certification of Non-segregated Facilities must be submitted prior to the award of a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

B. Contractors receiving federally assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

IV. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A. A Certification of Non-segregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

B. Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

V. CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity Clause.)

The federally assisted construction contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control where segregated facilities are maintained. The federally assisted construction contractor certifies that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location under his/her control where segregated facilities are located. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain such certifications in his/her files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Contractor

Signature

Title

Date

VI. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

- a) “Covered area” means the geographical area described in the solicitation from which this contract resulted;
- b) “Director” means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority.
- c) “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d) “Minority” includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all person of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands) ; and
 - (iv) American Indian or Alaskan Native (all groups having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2 Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an

approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7(a) through 7(p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the *Federal Register* in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs or from Federal procurement Contracting Officers. The Contractor is expected to make substantially uniform progress toward meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligations to maintain a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority and female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process had impeded the Contractor's efforts to meet its obligations.
- e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7(b) above.
- f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or their employment decisions, including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h) Disseminate the Contract's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written

notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations; to schools with minority and female students; to minority and female students; and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of the applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.

j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m) Ensure that seniority practices, job classifications, work assignments, and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p) Conduct a review, at least annually, of all supervisor' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations [Paragraphs 7(a) through 7(p)]. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraphs 7(a) through 7(p) of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the

concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

14. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these specifications, so as to achieve maximum results from its effort to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 604.8.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ATTACHMENT P

NATURAL RESOURCES CONSERVATION SERVICE SUPPLEMENT TO OSHA PARTS 1910 AND 1926 CONSTRUCTION INDUSTRY STANDARDS AND INTERPRETATIONS

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

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

- (1) Specific reference to the provision or standard in question;
- (2) An explanation as to why the waiver is considered justified; and
- (3) The Contractor's proposed alternative, including technical drawings, materials, or equipment specifications needed to enable the Contracting Officer to render a decision.

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

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

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

1.0 GENERAL CONTRACTOR REQUIREMENTS:

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

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

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

1.4 SAFETY PERSONNEL. Each Contractor is to designate a competent supervisory employee satisfactory to the Contracting Officer to administer the safety program.

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

Attachment E

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

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

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

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

2.0 FIRST AID AND MEDICAL FACILITIES:

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

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

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

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

- (a) A daily treatment log listing chronologically all persons treated for occupational injuries and illnesses;
- (b) Cumulative record of injury for each individual;
- (c) Monthly statistical records of occupational injuries, classified by type and nature of injury; and
- (d) Required records for worker's compensation.

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

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

3.0 PHYSICAL QUALIFICATIONS OF EMPLOYEES:

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

Attachment E

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

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

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

4.0 PERSONAL PROTECTIVE EQUIPMENT:

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

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

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

CONSTRUCTION AREA - HARDHATS REQUIRED BEYOND THIS POINT

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

4.3 SAFETY GOGGLES (DRILLERS)

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

5.0 MACHINERY AND MECHANIZED EQUIPMENT:

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

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

5.3 HAUL ROADS FOR EQUIPMENT

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

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

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

traffic, considering the type of hauling equipment used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.5 ROLLOVER PROTECTIVE STRUCTURES (ROPS)

Attachment E

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

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

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

6.0 LADDERS AND SCAFFOLDING:

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

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

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

- (a) Work on stored material in hoppers, bins, silos, tanks, or other confined spaces.
- (b) Work on hazardous slopes, structural steel, or poles; erection or dismantling of safety nets, tying reinforcing bars; and work from Boatswain's chairs, swinging scaffolds, or other unguarded locations at elevations greater than 6 feet.
- (c) Work on skips and platforms used in shafts by crews when the skip or cage does not block the opening to within 1 foot of the sides of the shaft, unless cages are provided.

ATTACHMENT Q

Boulder County Parks and Open Space

PRE-BID MEETING WAIVER AND RELEASE AGREEMENT

THIS IS A RELEASE OF LIABILITY, PLEASE READ CAREFULLY BEFORE SIGNING

I, the undersigned, on my behalf and that of my organization (if indicated below), wish to participate in a pre-bid meeting regarding the Calwood Fire Aerial Mulching ("Project") with the Parks and Open Space Department of the County of Boulder, State of Colorado ("County"). I understand the challenging environment consisting of, but not limited to Stump/Root Holes, Unstable/Rolling Debris, Unstable and Low-Traction Surface and Flash Flooding/Debris Flow, location and duration of the meeting. After due consideration of my age, health, physical condition, and ability and the inherent risks and personal risks involved in this activity, I voluntarily agree to assume all risks of loss that may arise out of my participation and I agree, on my own behalf and that of my organization (if any), to waive any and all potential claims against the County and other parties described below.

My organization (if any) and I hereby release, and agree to indemnify and hold harmless, the Boulder County Parks and Open Space Department, the Board of County Commissioners, the County, and any groups associated with this Project and their respective agents or representatives from liability for any demands or actions or causes of action whatsoever, arising out of damage, loss or injury to my person or property, whether anticipated or unanticipated, while participating in the activities contemplated by this agreement, whether such damage, loss, or injury results from the negligence of Boulder County Parks and Open Space Department, the Board of County Commissioners, the County, and any groups or individuals associated with this Project, and their respective agents, representatives, officers, employees, successors, assigns, administrators, and executors.

I realize that participating in the pre-bid meeting for the Project may involve hiking through remote and rough terrain as well as other risks and hazards and presents risks of injury. I will be participating in this meeting with others who may not be accustomed to this type of activity. I am aware of the risks and hazards inherent in participating and do hereby assume sole responsibility for all such risks and waive all claims against Boulder County and any groups or individuals associated with this Project and their respective agents, representatives, officers, employees, successors, assigns, and insurers.

I authorize the County to obtain medical attention for me in case of emergency if unable to reach the emergency contact stated below, and I release the County for such medical attention.

I agree to abide by the rules and regulations of Boulder County Parks and Open Space and all current public health orders while participating in the pre-bid meeting for this Project. I hereby acknowledge that I have read, understood and voluntarily agreed to the foregoing waiver and release agreement.

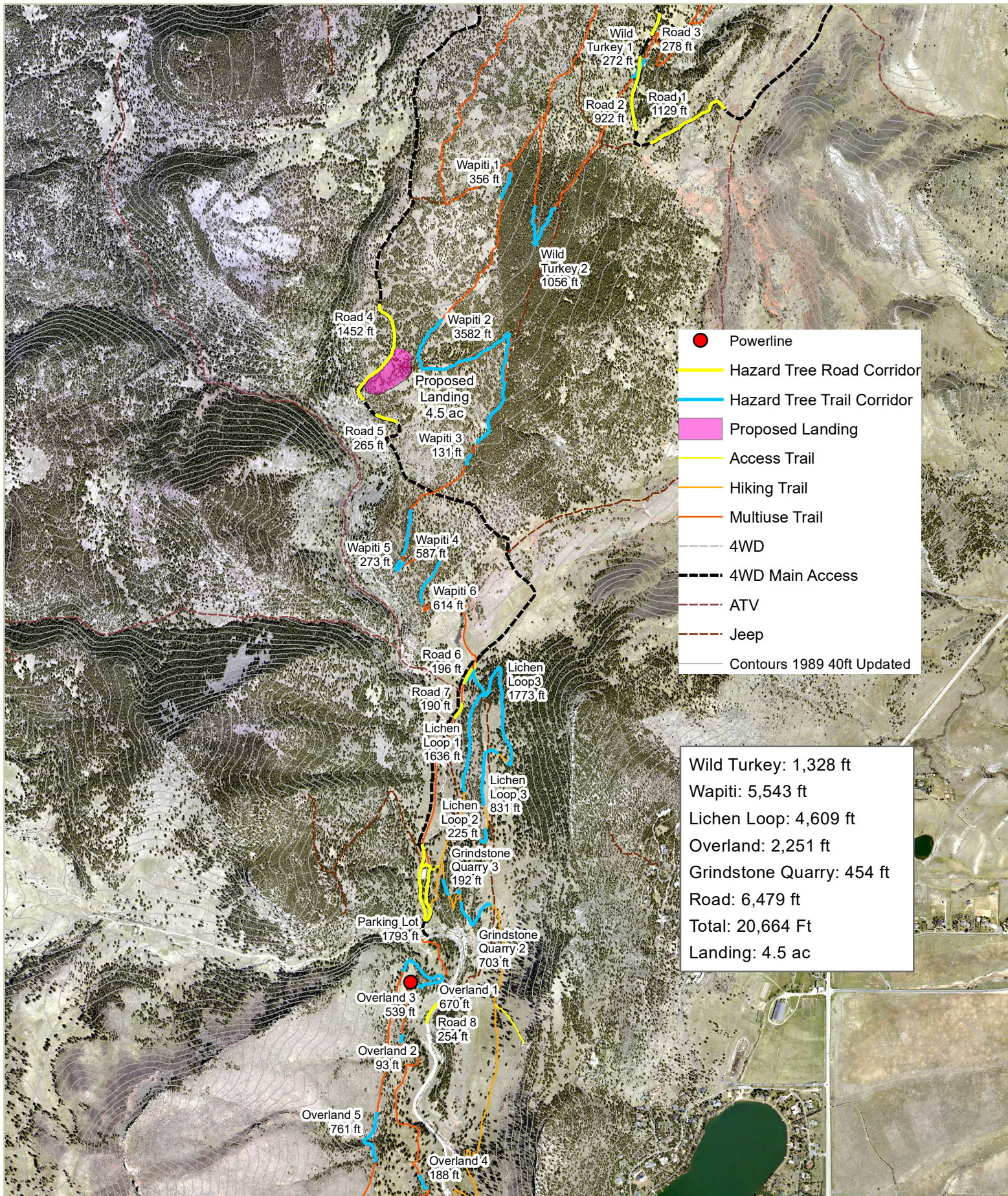
(Please Print Clearly)

Organization Name (if any): _____

Print Participant's Name and Title: _____

Signature: _____ **Date:** _____

Emergency Contact Name: _____ Phone: _____



ATTACHMENT S - SAMPLE CONTRACT

DETAILS SUMMARY	
Document Type	New Contract
OFS Number-Version	000000 (INTERNAL COUNTY ASSIGNED NUMBER)
County Contact Information	
Boulder County Legal Entity	Boulder County
Department	Parks & Open Space
Division/Program	Resource Management Plant Ecology Division
Mailing Address	Boulder County Parks and Open Space Department Attn: ADMIN-Contracts 5201 St. Vrain Road Longmont, CO 80503
Contract Contact – <i>Name, email</i>	Renee Bookless rbookless@bouldercounty.org 303-678-6200 PROJECT MANAGER CONTACT INFO
Invoice Contact – <i>Name, email</i>	Boulder County Parks and Open Space Department Accounts Payables posgrantpayables@bouldercounty.org
Contractor Contact Information	
Contractor Name	TBD
Contractor Mailing Address / Office Telephone Number	TBD
Contact 1- <i>Name, title, email</i>	TBD
Contact 2- <i>Name, title, email</i>	TBD
Contract Term	
Start Date	The Start Date shall be the date of last party signature as set forth on the Signature Page of this Contract. NOTE: Work shall not commence until a Notice to Proceed is provided by County to Contractor in accordance with paragraph 3.
Expiration Date	9/9/2021 NOTE: Work must be performed during the time period set forth in paragraph 3.
Final End Date	9/9/2021
Contract Amount	
Contract Amount	TBD
Fixed Price or Not-to-Exceed?	Fixed Price

Brief Description of Work	
<p>RFP# XXXX-21; Calwood Fire Aerial Mulching Project</p> <p>There are three primary work site locations:</p> <ol style="list-style-type: none"> 1. Boulder County's Heil Valley Ranch open space and some associated private parcels, located on Geer Canyon Road off Lefthand Canyon Drive. 2. Calwood Environmental Education Center, located northwest of Jamestown off James Canyon Drive and County Road 87. 3. A treatment unit located approximately one half (½) mile and 1¼ mile, respectively, north of Lefthand Canyon Drive on North Foothills Highway, State Highway 36. <p><u>The Contractor will be expected to adhere to the following schedule:</u></p> <p>June 11, 2021; Completion of all Aerial Mulching Operations</p> <p>June 18, 2021; Completion of all Reclamation Operations</p> <p>September 9, 2021; Completion of all Administrative close out documentation and funding requests.</p> <p>Work will commence only after a Notice to Proceed has been issued by the County.</p>	
Contract Documents	
<p>a. Formal Procurement (RFP) No. Bid Variable (the "Bid Documents")</p> <p>b. Contractor's proposal in response to the Bid Documents (the "Proposal")</p> <p>c. Project Details, including project-specific terms and a Scope of Work (the "Scope of Work")</p> <p>d. Fee Schedule (the "Fee Schedule")</p> <p>e. Pre-Authorization for Work, attached as Exhibit A</p> <p>f. NRCS EWP Addendum, attached as Exhibit B</p> <p>(subject to change; this is only a sample of included documents)</p>	
Purchasing Details – County Internal Use Only	
Grant Funded?	Yes
Bid Number	XXXX-21
Award Date	TBD
If no Bid No., bid process used	Bid number provided above
COVID-19	NO
Project #	N/A
Purchasing Notes (optional)	N/A
Contract Notes	
<p><i>Additional information not included above</i></p> <p>Project subject to Bid Bond qualification</p> <p>Project subject to Payment Bonds and Performance Bonds</p> <p>Project subject to 5% Retainage</p> <p>Project subject to Contractor Evaluation</p> <p>Project subject to Notice of Final Settlement</p> <p>Project subject to Debarment Check</p> <p>MinuteTraq No.: XXXX (INTERNAL COUNTY ASSIGNED NUMBER)</p> <p>ACCOUNT CODE: TBD (INTERNAL COUNTY ASSIGNED NUMBER)</p> <p>Payment as follows: Boulder County for 25% and USDA-NRCS/EWP for 75%</p> <p>Agreement Information: CMS NO. 10.923 from the United States Department of Agriculture, Natural Resources Conservation Service, Emergency Watershed Protection Program.</p>	

THIS CONTRACT ("Contract") is entered into by and between the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic, for the benefit of the Boulder County Parks and Open Space ("County") and [TBD-Supplier] ("Contractor"). County and Contractor are each a "Party," and collectively the "Parties."

In consideration of the mutual covenants contained in this Contract, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation into Contract: The **Details Summary** is incorporated into this Contract. The **Contract Documents** are incorporated into this Contract by reference, except to the extent that the Proposal, if any is incorporated, contains any obligations placed upon County and not otherwise contained in this Contract.

2. Work to be Performed: Contractor will provide all labor and equipment and do all tasks necessary and incidental to performing the work as described in the **Details Summary** and **Contract Documents** (the "Work"). Contractor will perform the Work (i) in a good and workmanlike manner, (ii) at its own cost and expense, (iii) in accordance with recognized industry standards of care, skill and diligence for the type of work being performed, and (iv) in strict accordance with the Contract. County and its representatives shall have access to the Work at all times.

a. Contractor shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

b. Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work. Contractor warrants that all materials incorporated into the Work will be new unless otherwise specified.

c. Contractor shall at all times enforce good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to such person. Contractor shall initiate, maintain, and supervise all safety precautions and programs in connection with the Work to ensure safe conditions on the premises at all times. Contractor shall comply with all laws, regulations, ordinances, rules, and orders of any public authority bearing on the safety of persons and property. In the event that County notifies Contractor of any unsafe conditions or practices, Contractor shall immediately take all actions required to remediate them at no expense to County. County reserves the right to immediately suspend the Work in the event of imminent hazard, as determined by County.

d. At all times, Contractor shall keep the premises free from accumulation of waste materials or rubbish caused by Contractor's operations. Upon completion of the Work, Contractor shall remove all of its waste materials and rubbish from the premises, as well as its tools, construction equipment, machinery and surplus materials.

e. Contractor shall confine operations on the premises to areas permitted by law, ordinances, permits, this Contract, and as directed by County, including storage of any materials or equipment.

f. Any claim for an increase in the **Contract Amount** shall be made and generally described by Contractor in writing and delivered to County promptly, in no event later than thirty (30) days after the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered to County within sixty (60) days after such occurrence and shall be accompanied by Contractor's written statement that the amount claimed covers all known amounts to which Contractor is entitled as a result of the occurrence of said event. All claims for increase in the **Contract Amount** shall be determined by County if the Parties are unable to otherwise reach agreement on the claim.

g. Before ordering any materials or doing any Work, Contractor shall verify all measurements for the Work and shall be responsible for the correctness of same.

3. Term of Contract: The **Contract Term** begins on the **Start Date** and expires on the Expiration Date. Notwithstanding, Work shall not commence until the County has provided a NOTICE TO PROCEED to Contractor, which shall set forth the date that Contractor may begin the Work. *As specified in RFP# XXXX-21 and the Details Summary of this Contract, Contractor shall adhere to the schedule as specified in the RFP to complete the Work*, unless this Contract is terminated earlier or the County grants Contractor a written extension in accordance with paragraph 6 or 7. In no event shall Work be performed outside the **Contract Term**.

4. Payment for Work Performed: In consideration of the Work performed by Contractor, and subject to conditions contained in this Contract, County will pay an amount not to exceed the **Contract Amount** to Contractor in accordance with the **Contract Documents**.

5. Invoicing: Contractor will promptly provide a copy of its Form W-9 and invoice template to County upon request. Contractor must submit an invoice to the County by the fifteenth (15th) day of the month for completion of any Work performed in the prior calendar month. All invoices submitted require the following components: Contractor's name and address (submitted W-9 address must match remit address), detailed description of services, dates of services, itemization of labor and materials costs, "Bill to: Boulder County" language, payment remittance address, payer, name and address, date of invoice, unique invoice number, and total amount due. Contractor must send all completed invoices to the **Invoice Contact** in the **Details Summary**. County may require delivery of invoices by email. Failure to submit invoices in a timely manner and in accordance with the terms of this Contract may cause a delay in payment. County may recoup any damages incurred because of Contractor's failure to submit invoices pursuant to the terms of this paragraph. County's acceptance or payment of an invoice will not constitute acceptance of any Work performed under this Contract.

6. Extra Time to Complete the Work (Additional Time only): If Contractor cannot complete the Work by the **Expiration Date**, Contractor may request extra time to complete the Work. County, in its sole discretion, may grant Contractor additional time to complete the Work by sending a written notice of extension to Contractor. An extension of time to complete the Work will not entitle Contractor to additional compensation from County.

7. Extension of Contract Term (Additional Time and Work): Upon mutual agreement of the Parties, this Contract may be extended until the **Final End Date**. During any extended **Contract Term**, the terms of this Contract will remain in full force and effect, unless otherwise amended in writing by the Parties. Where the Contractor will provide additional services for additional compensation beyond the initial **Contract Amount**, the Parties must execute a written amendment before the then-current **Expiration Date**. If necessary, the written amendment will incorporate an updated Scope of Work and updated Fee Schedule as exhibits. Contractor must

provide a current Certificate of Insurance to the County that complies with the **Insurance Requirements** of this Contract, if any, prior to any extended **Contract Term**.

8. Schedule of Work: County may designate the hours (on a daily or weekly basis) during which Contractor may perform the Work, strictly for the purposes of minimizing inconvenience to the County and interference with County operations. Contractor will otherwise set its own work schedule. Contractor shall promptly notify County of any aspect of the Work that will not be delivered or accomplished according to the initial schedule.

9. Indemnity: Contractor will be liable for any damages to persons or property caused by or arising out of the actions, obligations, or omissions of Contractor, its employees, agents, representatives or other persons acting under Contractor's direction or control in performing or failing to perform the Work under this Contract. Contractor will indemnify and hold harmless County, its elected officials and appointed department heads, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of Contractor, its employees, agents or representatives, or other persons acting under Contractor's direction or control. This indemnification obligation will extend to claims based on Contractor's unauthorized use or disclosure of confidential information and intellectual property infringement. County will not be obligated to indemnify or defend Contractor under any circumstances. Contractor's obligations under this provision shall survive expiration or termination of this Contract. Nothing contained in this Contract or the **Contract Documents** is intended to limit or restrict the indemnification rights or obligations of any Party under this provision, or damages available for breaches of the obligations herein.

10. Nondiscrimination: Contractor will comply with the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, State and Federal laws concerning discrimination and unfair employment practices. County prohibits unlawful discrimination on the basis of race, color, religion, gender, gender identity, national origin, age 40 and over, disability, socio-economic status, sexual orientation, genetic information, or any other status protected by applicable Federal, State or local law. Contractor must require that its subcontractors, if any, similarly comply with all applicable laws concerning discrimination and unfair employment practices.

11. Information and Reports: Contractor will provide to authorized County, State, and Federal government representatives all information and reports that may be required for any purpose authorized by law. Contractor will permit access to such representatives to Contractor's facilities, books, records, accounts, and any other relevant sources of information. Where information required by a representative is in the exclusive possession of a person or entity other than Contractor, Contractor must so certify to the County and explain what efforts it has made to obtain the information.

12. Independent Contractor: Contractor is an independent contractor for all purposes in performing the Work. None of Contractor, its agents, personnel or subcontractors are employees of the County for any purpose, including the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, County will not withhold or pay any income tax, payroll tax, or retirement contribution of any kind on behalf of Contractor or Contractor's employees. As an independent contractor, Contractor is responsible for employing

and directing such personnel and agents as it requires to perform the Work. Contractor will exercise complete authority over its personnel and agents and will be fully responsible for their actions.

13. Termination

a. Breach: Either Party's failure to perform any of its material obligations under this Contract, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the breaching Party does not cure the breach, at its sole expense, as reasonably determined by the non-breaching Party in its sole discretion, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Contract or at law, including immediate termination of this Contract.

b. Non-Appropriation: The other provisions of this Contract notwithstanding, County is prohibited by law from making commitments beyond the current fiscal year. Payment to Contractor beyond the current fiscal year is contingent on the appropriation and continuing availability of funding in any subsequent year. County has reason to believe that sufficient funds will be available for the full **Contract Term**. Where, however, funds are not allocated for any fiscal period beyond the current fiscal year, County may terminate this Contract without penalty by providing seven (7) days' written notice to Contractor.

c. Convenience: In addition to any other right to terminate under this Section 13, County may terminate this Contract, in whole or in part, for any or no reason, upon seven (7) days' advance written notice to Contractor.

14. Contractor Obligations upon Termination or Expiration: By the **Expiration Date** or effective date of termination, if earlier, Contractor must (1) remove from County property all of its personnel, equipment, supplies, trash and any hazards created by Contractor, (2) protect any serviceable materials belonging to the County, and (3) take any other action necessary to leave a safe and healthful worksite. Any items remaining on County property after the Expiration Date or the effective date of termination, if earlier, will be deemed abandoned by Contractor.

15. Payable Costs in Event of Early Termination: If County terminates this Contract before the **Expiration Date**, Contractor's payments (and any damages associated with any lawsuit brought by Contractor) are limited to only (1) payment for Work satisfactorily executed and fully and finally completed, as determined by County in its sole discretion, prior to delivery of the notice to terminate, and (2) the reasonable and actual costs Contractor incurred in connection with performing the Work prior to delivery of the notice to terminate. Contractor explicitly waives all claims it may have against the County for any other compensation, such as anticipatory profits or any other consequential, special, incidental, punitive or indirect damages.

16. Remedies for Non-Performance: If Contractor fails to perform any of its obligations under this Contract, County may, at its sole discretion, exercise one or more of the following remedies (in addition to any other remedies provided by law or in this Contract), which shall survive expiration or termination of this Contract:

a. Suspend Performance: County may require that Contractor suspend performance of all or any portion of the Work pending necessary corrective action specified by the County and without entitling Contractor to an increase in compensation or extension of the performance schedule. Contractor must promptly stop performance and incurring costs upon delivery of a notice of suspension by the County.

b. Withhold Payment Pending Corrections: County may permit Contractor to correct any rejected Work at the County's discretion. Upon County's request, Contractor must correct rejected work at Contractor's sole expense within the time frame established by the County. Upon full and final completion of the corrections satisfactory to the County, County will remit payment to Contractor.

c. Deny Payment: County may deny payment for any Work that does not comply with the requirements of the Contract or that Contractor otherwise fails to provide or fully and finally complete, as determined by the County in its sole discretion. Upon County request, Contractor will promptly refund any amounts prepaid by the County with respect to such non-compliant Work.

d. Removal: Upon County's request, Contractor will remove any of its employees or agents from performance of the Work, if County, in its sole discretion, deems any such person to be incompetent, careless, unsuitable, or otherwise unacceptable.

17. Binding Arbitration Prohibited: County does not agree to binding arbitration by any extra-judicial body or person.

18. Conflicts of Interest: Contractor may not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Contractor's obligations.

19. Notices: All notices provided under this Contract must be in writing and sent by Certified U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the other Party's **Contact** at the address specified in the **Details Summary**. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.

20. Statutory Requirements: This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally, including but not limited to: C.R.S. § 38-26-107, which requires withholding funds where the County receives a claim for payment from a supplier or subcontractor of Contractor upon notice of final settlement (required for public works contracts that exceed \$150,000); C.R.S. § 8-17-101 *et seq.*; C.R.S. § 18-8-301, *et seq.*; and C.R.S. § 18-8-401, *et seq.*

21. Public Contracts for Services (C.R.S. §§ 8-17.5-101, *et seq.*): *The phrase "unauthorized worker" as used in this provision shall have the same and intended meaning as "illegal alien" as such phrase is used in C.R.S. §§ 8-17.5-101, et seq.* Contractor hereby certifies, warrants, and agrees that it does not knowingly employ or contract with an unauthorized worker who will perform work under this Contract and further certifies that it will confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract by participating in the E-Verify Program established under Pub. L. 104-28 or the department verification program established under C.R.S. § 8-17.5-102(5)(c). Contractor (i) shall not knowingly employ or contract with an unauthorized worker to perform work under this Contract; (ii) shall not enter into a contract with a subcontractor that fails to certify to the contractor that the

subcontractor shall not knowingly employ or contract with an unauthorized worker to perform work under this Contract; (iii) has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in the E-Verify program or department program; (iv) is prohibited from using either the E-Verify program or department program procedures to undertake preemployment screening of job applicants while this Contract is being performed; and (v) shall comply with any reasonable request by the department made in the course of an investigation that the Colorado Department of Labor and Employment is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5). If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an unauthorized worker, Contractor shall (a) notify the subcontractor and County within three (3) days that Contractor has actual knowledge that subcontractor is employing or contracting with an unauthorized worker; and (b) terminate the subcontract if, within three (3) days of receiving notice hereunder, subcontractor does not stop employing or contracting with the unauthorized worker; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an unauthorized worker. Contractor's violation of this provision will constitute a material breach of this Contract, entitling the County to terminate the contract for breach. If this Contract is so terminated, Contractor shall be liable for actual and consequential damages to the County.

22. Entire Agreement/Binding Effect/Amendments: This Contract represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Contract terminates any prior agreements, whether written or oral in whole or in part, between the Parties relating to the Work. This Contract may be amended only by a written agreement signed by both Parties.

23. Assignment/Subcontractors: This Contract may not be assigned or subcontracted by Contractor without the prior written consent of the County. If Contractor subcontracts any of its obligations under this Contract, Contractor will remain liable to the County for those obligations and will also be responsible for subcontractor's performance under, and compliance with, this Contract. Contractor shall not contract with a person or entity to whom County has made a reasonable objection.

24. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Contract. Any claim relating to this Contract or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

25. Breach: The failure of either Party to exercise any of its rights under this Contract will not be deemed to be a waiver of such rights or a waiver of any breach of the Contract. All remedies available to a Party in this Contract are cumulative and in addition to every other remedy provided by law.

26. Severability: If any provision of this Contract becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Contract will continue to be operative and binding on the Parties.

27. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Contract are reserved to the Parties. Any other person receiving services or benefits under this Contract is an incidental beneficiary only and has no rights under this Contract.

Notwithstanding, where the beneficiary **Department** is led by an Elected Official, such Elected Official shall be considered a third-party beneficiary.

28. Colorado Open Records Act: County may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq.

29. Conflict of Provisions: If there is any conflict between the terms of the main body of this Contract and the terms of any of the **Contract Documents**, the terms of the main body of the Contract will control.

30. Governmental Immunity: Nothing in this Contract shall be construed in any way to be a waiver of the County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

31. Representations and Warranties: Contractor represents and warrants the following:

- a. Execution of this Contract and performance thereof is within Contractor's duly authorized powers;
- b. The individual executing this Contract is authorized to do so by Contractor;
- c. Contractor is authorized to do business in the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Work and the Contractor; and
- d. Contractor and its subcontractors, if any, are financially solvent, able to pay all debts as they mature, and have sufficient working capital to complete the Work and perform all obligations under the Contract.

32. Legal Compliance: Contractor assumes full responsibility for obtaining and maintaining any permits and licenses required to perform the Work. Contractor is solely responsible for insuring that its performance under this Contract and the Work itself will comply with all Federal, State, and local laws, regulations, ordinances and codes. Contractor shall promptly notify County if any drawings or specifications are at variance with any laws, regulations, ordinances, or codes. If Contractor performs any Work contrary to such laws, regulations, ordinances, or codes, Contractor shall bear all costs arising therefrom. County approval of the Work or any aspect of Contractor's performance, such as drawings, specifications, plans, designs, or other Contractor-drafted documents, shall not be interpreted to mean that Contractor has satisfied its obligations under this Section.

33. Litigation Reporting: Contractor is not currently involved in any action before a court or other administrative decision-making body that could affect Contractor's ability to perform the Work. Contractor will promptly notify the County if Contractor is served with a pleading or other document in connection with any such action.

34. Tax Exemption: County is exempt from payment of Federal, State, and local government taxes. Contractor shall collect no tax from the County, and the County shall not be liable to pay any taxes imposed on Contractor. County shall provide its tax exemption status information to Contractor upon request.

35. Delegation of Authority: The Parties acknowledge that the Board of County Commissioners has delegated authority to the Department Head or Elected Official that leads the beneficiary **Department** and their designees to act on behalf of the County under the terms of this Contract, including but not limited to the authority to terminate this Contract.

36. Ownership of Work Product: All work product, property, data, documentation, information or materials conceived, discovered, developed or created by Contractor pursuant to this Contract ("Work Product") will be owned exclusively by the County. To the extent possible, any Work Product will be deemed to be a work made for hire. Contractor unconditionally and irrevocably transfers and assigns to the County all right, title and interest in and to any Work Product.

37. Publicity Releases: Contractor will not refer to this Contract or the County in commercial advertising without prior written consent of the County. This provision shall survive expiration or termination of this Contract.

38. Execution by Counterparts; Electronic Signatures: This Contract may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect or enforceability of this Contract solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Contract in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

39. Limitation on Public Statements and Lobbying Activity: During the term of this Contract, Contractor may receive from the County its confidential data, work product, or other privileged or confidential information that is protected by law. To maintain the fact and appearance of absolute objectivity, Contractor shall not, without the prior written consent of the County, which shall not be unreasonably withheld, do any of the following: (a) disclose information obtained because of this contractual relationship to any third party; (b) lobby any State or Federal agency on any pending matter while this Contract is effective; or (c) make any public statements or appear at any time to give testimony at any public meeting on the subject matters regarding which Contractor is or was retained by the County. County may set reasonable conditions on any disclosure authorized by the County under this provision. Notwithstanding, Contractor may make disclosures as required by law, and to law enforcement officials in connection with any criminal justice investigation.

40. Sustainability: All construction, deconstruction, remodel, and office move projects are required to follow construction waste procedure modeled off of Boulder County BuildSmart Code, International Green Construction Code (IGCC), International Energy Conservation Code (IECC), and Leadership in Energy and Environmental Design (LEED) certification, as an effort to achieve maximum jobsite waste diversion, energy efficiency, and water conservation. All 'demolition projects' are to follow deconstruction procedures. Instead of demolition project materials being crushed and primarily sent to the landfill, these projects should be systematically dismantled, typically in the opposite order they were constructed, in order to maximize the salvage of materials. Any hazardous materials encountered should follow state and federal standards, and contractor shall leverage the Boulder County Hazardous Materials Management facility for hazardous materials. The development of a project diversion plan is encouraged to include material types and volume/weight estimations as well as planned destinations. Projects must track all jobsite waste.

41. Limitation of Liability: COUNTY SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS CONTRACT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. COUNTY'S AGGREGATE LIABILITY, IF ANY, ARISING

FROM OR RELATED TO THIS CONTRACT, WHETHER IN CONTRACT, OR IN TORT, OR OTHERWISE, IS LIMITED TO, AND SHALL NOT EXCEED, THE AMOUNTS PAID OR PAYABLE HEREUNDER BY COUNTY TO CONTRACTOR. ANY CONTRACTUAL LANGUAGE LIMITING CONTRACTOR'S LIABILITY SHALL BE VOID.

42. County Opportunity to Review: Contractor shall provide County with the opportunity to review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents.

43. Notice to Proceed: The Parties agree that time is of the essence and work will begin after a "Notice to Proceed" has been issued by the County and in accordance with the terms therein.

44. Retainage: County may retain partial payment pending completion and County acceptance of the Work as satisfactory and fully and finally complete. *For contracts that exceed \$150,000, the retention rate shall not exceed five percent (5%).* C.R.S. § 24-91-103. Contractor is responsible for submitting a final invoice for any retainage held by County. If It becomes necessary for County to take over completion of the Work, all of the amounts owing to Contractor, including the withheld percentage, shall be applied: First, towards completion of the Work; second, towards performance of the withholding requirement set forth in C.R.S. § 38-26-107; third, to the surety furnishing bonds for the Work, to the extent such surety has incurred liability or expense in competing the Work or made payments pursuant to C.R.S. § 38-26-106; then, to Contractor. Such retained percentage as may be due to Contractor shall be due and payable as provided by C.R.S. § 38-26-107.

45. Bonds: Upon County's request, Contractor shall obtain and deliver to County payment and performance bonds each equal to 100% of the total Contract. Bonds shall be executed by a qualified corporate surety and must be acceptable to County. County reserves the right to accept other acceptable forms of surety in lieu of a bond, and to reduce the bond requirements set forth herein consistent with C.R.S. § 38-26-106.

46. Change Orders: If unforeseen modifications or changes are required, Contractor may submit a Change Order request to County, which must include a complete description, timeline, and fee schedule for the proposed work. Change Orders are not effective until approved by County in writing.

47. No Suspension or Debarment: Contractor certifies, and warrants for the duration of this Contract, that neither it nor its principals nor any of its subcontractors are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any Federal or State department or agency. Contractor shall comply, and shall require its subcontractors to comply, with subpart C of 2 C.F.R. § 180.

48. Permits/Licenses/Code Compliance: Prior to starting the Work, Contractor will identify and obtain, and maintain during this Contract, all permits and licenses necessary to perform the Work. Contractor shall comply with all State and local codes. Contractor is responsible for locating all public utilities, as necessary. Contractor shall require its subcontractors to comply with this provision. HVAC, roofing, and general contractors must be licensed through the Boulder County Community Planning and Permitting Department. Electricians and plumbers must be licensed

through the State and registered with the Boulder County Community Planning and Permitting Building Safety and Inspection Division. Architects, Professional Engineers and Professional Land Surveyors must be fully-licensed through the State. All required permits and licenses must be provided to County prior to Contractor beginning the Work.

49. Stormwater Quality Protection Requirements: Contractor will take all measures necessary to prevent pollutants from entering storm drains and watercourses. To eliminate stormwater pollution, Contractor shall implement effective Best Management Practices (BMPs). BMPs include general good housekeeping practices, appropriate scheduling of activities, operational practices, maintenance procedures and other measures to prevent the discharge of pollutants directly or indirectly to the storm drain system. These BMPs shall be maintained for the duration of this Contract. Contractor shall also be responsible for proper disposal of all waste materials, including wastes generated by the implementation of BMPs. Contractor shall otherwise comply with the Federal Clean Water Act, Colorado Water Quality Control Act, and Boulder County's local Clean Water Act, Illegal Discharge Ordinance (No. 2012-4). For work performed in urbanized areas, Contractor must comply with the requirements of MS4 permit (COR090000), which is available through the Colorado Department of Public Health and Environment.

50. Guaranties and Warranties: Upon completion of the Work, Contractor will provide County with a written guaranty covering all labor, materials and workmanship incorporated into the Work for one (1) year, or within any such longer period of time as may be prescribed by law, the specifications, or any other applicable special warranty required by the **Contract Documents**. Final payment upon full and final completion of the Work will not relieve Contractor of responsibility for faulty material or workmanship, which County may require Contractor to fix at Contractor's sole expense, in addition to County's other remedies. This provision shall apply to Work completed by Contractor's employees and subcontractors.

51. Final Payment: A final inspection of the Work shall be conducted by County. If a list of deficiencies results from such final inspection, Contractor shall promptly rectify all items appearing thereon before final payment will be made. When County indicates acceptance of the Work, Contractor may request final payment from County, including any retained amounts. Final payment shall be subject to C.R.S. § 38-26-107.

52. Notice of Final Settlement: Prior to remitting final payment to Contractor, County shall publish a Notice of Final Settlement in accordance with C.R.S. § 38-26-107. Final payment will be rendered in accordance with the statute and the other terms of this Contract. Final payment will not be rendered until County, in its sole discretion, determines full and final completion of the Work.

53. Geographic Information System (GIS) Data: GIS Data Format Specifications

- a. All GIS data required to be delivered, by Contractor, in an ESRI 10.x compatible format, either shapefile or file geodatabase feature class.
- b. All spatial or georeferenced (both GIS and CAD) data are required to be provided, by the Contractor, in the following coordinate system:
 - i. Name: NAD 1983 HARN State Plane Colorado North FIPS 0501 Feet
 - ii. Unit: Foot US
 - iii. Projection: Lambert Conformal Conic

- iv. Horizontal Datum: North American Datum 1983 HARN
- v. Vertical Datum: North American Vertical Datum 1988
- vi. Spheroid: GRS 1980

54. State Specifications: The Standard Specifications for Road and Bridge Construction 2017, either in whole or as set forth in the Bid Documents, are expressly incorporated into this Contract by reference.

55. Determination of Unit Prices: County will determine the actual quantities and classifications of Unit Price Work performed by Contractor. The Parties will review the County's preliminary determinations before County renders a written decision thereon (by recommendation of an Application for Payment or otherwise), which shall be final and binding upon Contractor. The value of any Unit Price Work covered by a Change Order or claim for an increase or decrease in the Contract Amount shall be determined by applying the unit prices to the quantities of items.

a. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the Parties agree that the Contract Amount includes the total cost of Unit Price Work, determined by multiplying the quantity of each item by its unit price. Initial quantity determinations are estimates, which must be adjusted to reflect actual quantities. Contractor shall make a claim in writing to County for any additional amounts owed where actual quantities exceed estimated quantities. Contractor shall provide such written claim within twenty (20) days of providing the items and shall be accompanied by supporting documentation. The written claim shall include a statement that the claimed amount covers all known amounts (direct, indirect and consequential) to which Contractor is owed. County shall only pay Contractor for actual quantities of items provided hereunder.

b. The Parties agree that each unit price adequately covers Contractor's overhead and profit for each item.

56. Records Retention/Access/Audits: Contractor shall maintain all records and documents pertaining to this Contract in accordance with the requirements prescribed by County. Such records shall be maintained for a period of five (5) calendar years after the date of Contractor's final payment from County under this Contract. Contractor agrees that County or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract as necessary and upon request, throughout the term of this Contract, and for five (5) calendar years after the date of the final payment hereunder. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. County and Contractor acknowledge that protected information is exempt from this requirement without proper client release.

57. Legal Interpretation. Each Party recognizes that this Contract is legally binding and acknowledges that it has had the opportunity to consult with legal counsel of its choice about this Contract. The rule of construction providing that any ambiguities are resolved against the drafting Party will not apply in interpreting the terms of this Contract.

58. Insurance: Prior to commencing the Work, Contractor will provide a Certificate of Insurance to the County demonstrating adequate insurance coverage as required by this paragraph. All policies evidencing coverage required by the Contract will be issued by insurance

companies satisfactory to the County. Contractor will forward Certificates of Insurance directly to the **County Department** and **Contact** listed in the **Details Summary**.

a. Boulder County as Additional Insured: Boulder County shall be named as an additional insured for General Liability, Umbrella/Excess Liability, and Pollution Liability, as designated in this Contract. Additional insured shall be endorsed to the policy.

THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS: *County of Boulder, State of Colorado, a body corporate and politic, is named as Additional Insured.*

b. Notice of Cancellation: Each insurance policy required by this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days' prior written notice has been given to the County except when cancellation is for non-payment of premium, then ten (10) days' prior notice may be given. If any insurance company refuses to provide the required notice, Contractor or its insurance broker shall notify the County any cancellation, suspension, or nonrenewal of any insurance policy within seven (7) days of receipt of insurers' notification to that effect.

c. Insurance Obligations of County: County is not required to maintain or procure any insurance coverage beyond the coverage maintained by the County in its standard course of business. Any insurance obligations placed on the County in any of the **Contract Documents** shall be null and void.

d. Deductible: Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of Contractor.

e. Primacy of Coverage: Coverage required of Contractor and its subcontractors, if any, shall be primary over any insurance or self-insurance program carried by the County.

f. Subrogation Waiver: All insurance policies in any way related to this Contract secured or maintained by Contractor as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against County, its organizations, officers, agents, employees, and volunteers.

g. Requirements. For the entire duration of this Contract including any extended or renewed terms, and longer as may be required by this Contract, Contractor shall procure and maintain at its own expense, and without cost to the County, the following kinds and minimum amounts of insurance to insure the liability risks that Contractor has assumed under this Contract:

I. Aircraft Liability:

During the term of the Contract, the "Aircraft Operator" will at its own expense have in effect the following aircraft coverages with insurers of recognized reputation, responsibility and having at least an A.M. Best rating of an "A XVII" or better:

- a) Aircraft Liability to include slung loads in an amount not less than \$5,000,000 each occurrence Combined Single Limit including passengers.
- b) The above liability coverages shall name County of Boulder, State of Colorado, a body corporate and politic as additional insureds.
- c) The above liability coverages include a Severability of Interest clause stating that each insured under the policy has the same protection as if were covered separately.

- d) The above coverages provided shall be primary and is not excess or contributing with any insurance maintained by Boulder County.

II. Commercial General Liability:

This coverage should be provided on an Occurrence Form, ISO CG001 or equivalent, with Minimum limits of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products Completed Operations Aggregate.

III. Automobile Liability:

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

IV. Workers' Compensation and Employer's Liability:

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease- Policy Limit/\$100,000 Disease-Each Employee.

V. Pollution Liability:

Coverage pay for those sums the Contractor becomes legally obligated to pay as damages because of Bodily Injury, Property Damage or environmental Damage arising out of a pollution incident caused by the Contractor's work including Completed Operations. Coverage shall include emergency response expenses, pollution liability during transportation (if applicable) and at Non-Owned Waste Disposal Site (if applicable). The Minimum limits required are \$1,000,000 Per Occurrence/Loss and \$1,000,000 Policy Aggregate. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. County shall be named as an additional insured for ongoing operations and completed operations.

Additionally, the successful bidder will be required to comply with the insurance requirements as specified in the USDA NRCS EWP Agreement. The selected proposer will provide the County with proof of this coverage in the form of a certificate of insurance.

59. Survival After Termination: Upon expiration or termination of this Contract, the obligations which by their nature are intended to survive expiration or termination of this Contract, will survive, including but not limited to the re-seeding and/or re-vegetative obligations set forth in the Scope of Work.

60. Grant Compliance/Incorporation of Funding Source Terms and Conditions:

a. Contractor acknowledges that it is performing the Work for County pursuant to agreements for outside funding between Boulder County and the grantor(s) described below. The Parties agree that all requirements of the funding agreement(s) are included in and incorporated into this Contract. Contractor shall perform the Work in accordance with the funding agreement(s), and shall otherwise comply with all the requirements of each funding agreement. The terms and conditions of the agreement described below, including all State and Federal regulatory requirements, are incorporated into this Contract and shall be binding upon Contractor. Failure of Contractor to comply with these requirements will be a material breach of this Contract. By

executing this Contract, Contractor certifies that it understands and shall perform all of its obligations under the following agreement(s):

i. *CMS NO. 10.923 from the United States Department of Agriculture, Natural Resources Conservation Service, Emergency Watershed Protection Program.*

b. Contractor will comply with all State and Local licensing requirements, including but not limited to filing the State of Colorado Statement of Foreign Entity Authority paperwork, if Contractor is not a Colorado company.

c. Contractor shall be authorized to do business in the State of Colorado and shall provide the County with a current **Certificate of Good Standing** evidencing such authorization. Furthermore, Contractor shall be responsible for all applicable sales and employment taxes.

d. Contractor must be and remain in good standing with the Federal Government and comply with all Federal laws for the duration of this Contract. Contractor shall promptly notify County in the event that it loses its good standing with the Federal Government and/or becomes listed on the Federal Debarment Checklist. The issuance of such notice by Contractor shall entitle County to immediately terminate this Contract upon written notice to Contractor.

61. Audits: Contractor understands that Contract's fiscal affairs are subject to audit. If costs are disallowed, the proportion of State and Federal funds disallowed must be returned to County.

62. Equal Opportunity Employer: Boulder County is an Equal Opportunity Employer and no otherwise qualified individual and/or company shall be subject to discrimination on the basis of race, color, religion, creed, national origin, ancestry, sex, age, sexual orientation (incl. transgender status), physical or mental disability, marriage to a co-worker and retaliation for engaging in protected activity (opposing a discriminatory practice or participating in an employment discrimination proceeding) in any phase of employment or selection for this Project.

63. Contract Work Hours and Safety Standards Act: Contractor agrees to comply, and to require its subcontractors to comply, with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by the Department of Labor regulations (29 C.F.R., Part 5).

64. Environmental Compliance: Contractor shall comply with all applicable 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), which prohibit the use of non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grant agency and to the USEPA Assistance Administrator for Enforcement (EN-329). Contractor shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan.

65. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387): As amended. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

66. OSHA Compliance: Contractors on NRCS assisted projects shall perform their work in accordance with OSHA regulations, NRCS Supplement to OSHA Parts 1910 and 1926, and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

67. Inspections: Throughout the term of this Contract, including upon completion of the Work, Contractor shall permit representatives of County, District, Boulder County Collaborative partners, and the State of Colorado to make periodic inspections of the Work. Such inspections shall cover the condition of the Work, operating records, maintenance records, and financial records.

68. "Anti-Kickback" Act: Contractor agrees to comply, and to require its subcontractors to comply, with the Copeland "Anti- Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

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

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed and entered into this Contract as of the latter day and year indicated below.

SIGNED for and on behalf of Boulder County		SIGNED for and on behalf of Contractor
Signature:		Signature:
Name:		Name:
Title:		Title:
Date:		Date:
↓↓ <i>For Board-signed documents only</i> ↓↓		
Attest:	Initials	
Attestor Name:		
Attestor Title:		