

Funding Agreement (Strategic Fuels Program)

DETAILS SUMMARY	
Document Type	New Contract
OFS Number-Version	303437
County Contact Information	
Boulder County Legal Entity	Boulder County
Department	Community Planning and Permitting
Division/Program	Strategic Fuels Mitigation Grant Program
Mailing Address	P.O. Box 471 Boulder, CO 80306
Contact 1– Name, email	Meg Halford, mhalford@bouldercounty.gov
Contact 2– Name, email	Vicky Reinold, vreinold@bouldercounty.gov
Recipient Contact Information	
Recipient Name	Boulder Mountain Fire Protection District
Recipient Mailing Address	1905 Linden Drive, Boulder, CO 80304
Contact 1- Name, title	Mike Palamara
Contact 1- email	mitigation@bouldermountainfire.org
Contact 2	
Term	
Start Date	March 7, 2024
Expiration Date	March 6, 2027
Amount	
Funding Amount (not to exceed)	\$410,812.50
Brief Justification for Funding	
Boulder Mountain Fire (BMF) is requesting funds to complete 234.75 acres of wildfire mitigation treatment. The main objectives of this project are to reduce the wildfire risk to the life-safety of residents and first responders, help protect vital human infrastructure during wildfire events, and restore ecosystems to their natural state for essential wildlife habitat.	
Agreement Documents	
Exhibit A - Use of Funds Exhibit B – Administrative Requirements	
Agreement Notes (<i>Additional information not included above</i>)	

THIS FUNDING AGREEMENT ("Agreement") 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 Community Planning and Permitting ("County") and the Boulder Mountain Fire Protection District ("Recipient"). County and Recipient are each a "Party," and collectively the "Parties."

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

1. Incorporation into Agreement: The **Details Summary, Agreement Documents** and the terms and conditions of the County's Strategic Fuels Mitigation Grant Program (the "Grant

Program”) available at [Strategic Fuels Mitigation Grant Program - Boulder County](#) are incorporated into this Agreement by reference.

2. **Use of Funds:** Recipient must use the **Funding Amount** in accordance with Exhibit A.
3. **Term of Agreement:** The **Term** begins on the **Start Date** and expires on the **Expiration Date**, unless terminated sooner. The Funding Amount must be used during the **Term**.
4. **Payment of Grant Funding:** County will pay to Recipient an amount not to exceed the Funding Amount in accordance with the **Agreement Documents**.
5. **Indemnity:** Recipient will be liable for any damages to persons or property caused by or arising out of the actions, obligations, or omissions of Recipient, its employees, agents, representatives or other persons acting under Recipient's direction or control in performing or failing to perform its obligations under this Agreement. Recipient 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 Recipient, its employees, agents or representatives, or other persons acting under Recipient's direction or control. This indemnification obligation will extend to claims based on Recipient's unauthorized use or disclosure of confidential information and intellectual property infringement. County will not be obligated to indemnify or defend Recipient under any circumstances. Recipient's obligations under this provision shall survive expiration or termination of this Agreement. Nothing contained in this Agreement or the **Agreement 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.
6. **Nondiscrimination:** Recipient will comply with the letter and spirit of 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. Recipient must require that its subcontractors, if any, similarly comply with all applicable laws concerning discrimination and unfair employment practices.
7. **Information and Reports:** Recipient will provide to authorized County, State, and Federal government representatives all information and reports that may be required for any purpose authorized by law. Recipient will permit access to such representatives to Recipient'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 Recipient, Recipient must so certify to the County and explain what efforts it has made to obtain the information.
8. **Independent Contractor:** Recipient is an independent contractor for all purposes. Recipient is not an employee 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 Recipient or Recipient's employees. Recipient will exercise complete authority over its personnel and agents and will be fully responsible for their actions.

9. Termination for Breach: Either Party's failure to perform any of its material obligations under this Agreement, 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 Recipient, or the appointment of a receiver or similar officer for Recipient 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 notified Party does not cure the breach, at its sole expense, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Agreement or at law, including immediate termination of this Agreement.

10. Termination for Convenience: County may terminate this Agreement, in whole or in part, for any reason, upon seven (7) days' advance written notice to Recipient.

11. Remedies for Noncompliance: If Recipient fails to perform any of its obligations under this Agreement, County may, at its sole discretion, and in addition to any remedies available at law or in equity, require Recipient to repay all or any part of the Funding Amount to County.

12. Notices: All notices provided under this Agreement 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.

13. Statutory Requirements: This Agreement 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 Recipient 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.

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

15. Assignment/Subcontractors: This Agreement may not be assigned or subcontracted by Recipient without the prior written consent of the County. If Recipient subcontracts any of its obligations under this Agreement, Recipient will remain liable to the County for those obligations and will also be responsible for subcontractor's performance under, and compliance with, this Agreement.

16. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Agreement. Any claim relating to this Agreement 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.

17. Breach: The failure of either Party to exercise any of its rights under this Agreement will not be deemed to be a waiver of such rights or a waiver of any breach of the Agreement. All remedies available to a Party in this Agreement are cumulative and in addition to every other remedy provided by law.
18. Severability: If any provision of this Agreement becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Agreement will continue to be operative and binding on the Parties.
19. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Agreement are reserved to the Parties. Any other person receiving services or benefits under this Agreement is an incidental beneficiary only and has no rights under this Agreement. Notwithstanding, where the beneficiary **Department** is led by an Elected Official, such Elected Official shall be considered a third-party beneficiary.
20. Colorado Open Records Act: County may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-101, et seq.
21. Conflict of Provisions: If there is any conflict between the terms of the main body of this Agreement and the terms of any of the **Agreement Documents**, the terms of the main body of the Agreement will control.
22. Governmental Immunity: Nothing in this Agreement 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.
23. Representations and Warranties: Recipient represents and warrants the following:
 - a. Recipient is in compliance with the 50% match requirement of the Grant Program and will promptly provide any reasonable documentation requested by County to demonstrate such compliance;
 - b. Execution of this Agreement and performance thereof is within Recipient's duly authorized powers;
 - c. The individual executing this Agreement is authorized to do so by Recipient; and
 - d. Recipient 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 Recipient.
24. Legal Compliance: Recipient assumes full responsibility for obtaining and maintaining any permits and licenses required to carry out its obligations hereunder. Recipient's performance under this Agreement will comply with all Federal, State, and local laws, regulations, ordinances and codes.
25. 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 Agreement, including but not limited to the authority to terminate this Agreement.
26. Publicity Releases: Recipient will not refer to this Agreement or the County in commercial advertising without prior written consent of the County. This provision shall survive expiration or termination of this Agreement.

27. Execution by Counterparts; Electronic Signatures: This Agreement 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 Agreement 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 Agreement 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.

28. Limitation of Liability: COUNTY SHALL NOT BE LIABLE TO RECIPIENT FOR ANY DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

[Signature Page to Follow]

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

SIGNED for and on behalf of Boulder County	SIGNED for and on behalf of Recipient
Signature:	Signature: <i>Mike Palamara</i>
Name: Ashley Stolzmann	Name: Mike Palamara
Title:	Title: Wildland Division Chief
Date:	Date: March 12, 2024
↓↓ <i>For Board-signed documents only</i> ↓↓	
Attest:	<i>Initials</i>
Attestor Name: Matthew Ramos	
Attestor Title:	