AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Acknowledgement of County Manager's Signature; Gra

Action Requested:

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Please see the attached for acknowledgement of County Manager's Signature.

Fiscal Impact:

Submitted by: Josh Ost **Submitter's Email Address:** jost@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/7/2018

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 5/10/2018 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 5/10/2018

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 5/15/2018

Revised April 2015

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GRANT AGREEMENT

Project Name: **Shady Island River Park Planning**
Contract Number: **18383**
Completion Date: **March 15, 2020**

PARTIES TO AGREEMENT:

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

Grantee: **Gunnison County**

CONTEXT OF AGREEMENT:

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

B. In 1994, the Board created a statewide grant program, pursuant to which eligible entities could apply for grants to plan for local government parks and outdoor recreation projects to which Grantee responded with a detailed application (the "Project Application").

C. Grantee submitted a Project Application to the Board which contemplates the execution of the project entitled and described above (the "Project"). The Project is briefly described in the Project Summary attached hereto as Exhibit A. The parties acknowledge that they have on file a complete copy of the Project Application, which is incorporated herein by reference.

D. The Board approved Grantee's Project Application on March 15, 2018, subject to the execution of a detailed grant agreement, and subject to the terms and conditions set forth herein. The parties intend this agreement to be the detailed final grant agreement required by the Board (the "Agreement").

AGREEMENT

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

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1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated into the terms and conditions of this Agreement.

2. Representations and Warranties of Grantee**.**

a. Grantee is a County, duly organized in accordance with the laws of Colorado and has full and lawful authority to enter into, and comply with the terms of, this Agreement.

b. Grantee's governing body has authorized entering into this Agreement as evidenced by the resolution attached hereto as Exhibit B.

3. Grant and Project. Subject to the terms and conditions set forth in this Agreement, the Board hereby awards to Grantee a sum not to exceed $30,000.00 (the "Grant"). The Grant shall be used by Grantee solely to complete the Project, in substantial conformity with the Project Application.

4. Project Scope. Grantee shall not materially modify the Project or the Project budget (attached hereto as Exhibit C, the "Budget") without the prior written approval of the Executive Director of GOCO ("Executive Director") or the Executive Director's designee, such approval to be in GOCO's sole discretion. Any material modification to the Project undertaken without GOCO's prior written consent may be deemed a breach of this Agreement by GOCO, entitling GOCO to all remedies available under this Agreement. If Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Project Application, Grantee will promptly so advise the Board, and cooperate in good faith to seek a resolution before any further funds are advanced.

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

6. Completion Date. Grantee shall complete the Project and submit its Final Report no later than March 15, 2020 (the "Completion Date") which is two calendar years after the Board's approval of the Project. Grantee may request an extension of the Completion Date in compliance with GOCO's Overdue Grants Policy, which is attached as Exhibit D ("Overdue Grants Policy"). If Grantee determines with reasonable probability that the Project will not or cannot be completed by the Completion Date or any extended completion date, Grantee will promptly so advise the Board, and cooperate in good faith to seek a resolution before any further funds are advanced.

7. Matching Funds. Grantee shall obtain the matching cash and in-kind contributions for the Project as reflected in the Budget and as required by GOCO policy, and shall provide such evidence of the same as GOCO may require in its discretion from time-to-time.

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8. Disbursement of Funds.

a. Progress Payment: If Grantee has opted to forego an Advance Payment and has opted to receive a portion of the Grant funds after starting but prior to completing work on the Project (a "Progress Payment"), Grantee shall provide GOCO with a progress report detailing expenditures and progress made to date ("Progress Report"). The Progress Report must be submitted using GOCO's Progress Report form (available at www.goco.org or by contacting GOCO). GOCO may, in its discretion, request additional documentation to support making a Progress Payment. A Progress Payment shall not exceed 75% of the funds expended to date for the Project or 50% of the Grant, whichever is less. A Progress Payment shall be considered a loan until the Project is complete and Final Payment (as defined below) has been made. If Grantee received an Advance Payment, it may not receive a Progress Payment.

b. Final Payment: Once the Project is complete, Grantee shall submit a final report to GOCO detailing the accomplishments of and expenditures related to the Project (the "Final Report"). The Project is "complete" when all the tasks and final products contemplated in the Project Application have been completed. The Final Report must be submitted using GOCO's Final Report form (available at www.goco.org or by contacting GOCO). GOCO may, in its discretion, request additional documentation before its approval of the contents of the Final Report. Upon GOCO's review and approval of the Final Report, GOCO shall pay the outstanding balance on the Grant (the "Final Payment"), subject to any reductions contemplated by any provision of this Agreement.

9. Conditions for Disbursement of Funds. Except as provided in Paragraph 10 below, the Grant is subject to the following requirements and conditions.

a. The Grant and all matching funds shall be used only for eligible expenses approved by GOCO.

b. Disbursement of Grant funds shall be made on the basis of costs actually incurred by Grantee and supported by written documentation (receipts, bills, etc.).

c. Except as otherwise agreed to in advance by GOCO in accordance with the terms of this Agreement, no material modifications may be made to the Project. Material modifications to the Project to which GOCO has not agreed may result in a reduction in the Grant. "Material modifications" may include, but are not necessarily limited to, a reduction in the total cost of the Project, a reduction in the scope of the anticipated planning process (for example, elimination of an element of a master plan), or any other variance from the Project as presented in the Project Application. It is the sole responsibility of Grantee to inform GOCO of any such modifications to the Project. GOCO strongly encourages Grantee to contact GOCO in writing when it becomes aware of or wishes to make any such modifications, however seemingly minor, to the Project.

10. Waiver. The Executive Director or the Executive Director's designee may in such person's discretion, waive or agree to modify one or more of the obligations in sections 8, 9, and 16 of the Agreement, or may permit performance of one or more of such obligations subsequent to disbursement.

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

12. Compliance with Regulatory Requirements and Federal and State Mandates. The Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, and other similar requirements. To the extent permitted by law, the Grantee will indemnify the Board from any liability or any failure to comply with any such applicable requirements.

13. Nondiscrimination. During the performance of this agreement, the Grantee and its contractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination.

14. Publicity and Project Information.

a. Grantee shall acknowledge Board funding in all publicity issued by it concerning the Project.

b. Grantee shall cooperate with the Board in preparing public information pieces.

c. Grantee shall give the Board the right and opportunity to use information gained from the Project.

d. If Grantee uses the Grant to create, maintain, or update its website or uses its website to disseminate information about the Project, Grantee shall acknowledge Board funding on its website.

e. If Grantee uses the Grant to create, publish, or update any written material or uses such written material to disseminate information about the Project, Grantee shall acknowledge Board funding in the written material.

f. If any events are planned in relationship to or as part of the Project, Grantee shall acknowledge the Board as a contributor to the event and shall notify the Board at least thirty (30) days prior to the event.

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15. Liability.

a. Grantee shall be responsible for, and to the extent permitted by law (including any constitutional or statutory limitations on the ability of a governmental entity to provide indemnification), indemnify, defend and hold harmless the Board, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs (including reasonable legal fees) resulting from, growing out of, or in any way connected with or incident to Grantee's actions or inactions in relation to it performance of this Agreement. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the State of Colorado, the Board, its members, officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement. Grantee acknowledges that Grantee is the owner of the Project and the Property upon which it is located, or has control of the Project and the Property, and that GOCO neither possesses nor controls the Project, the Property, nor the operations of the Project. For avoidance of doubt, this paragraph 15a should not be construed as requiring the Grantee to indemnify GOCO for its own conduct.

b. Anything else in this Agreement to the contrary notwithstanding, no term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protection provided to the Board or to the Grantee under the Colorado Governmental Immunity Act ("CGIA") as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted). This provision applies to Grantee to the extent fully permitted under the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq*. The Board and Grantee understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the Board or the Grantee, or their respective members, officials, agents and employees, may be controlled and/or limited by the provisions of the CGIA. The parties agree that no provision of this Agreement shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of either the Board or Grantee, or their respective members, officers, agents and employees.

16. Audits and Accounting. Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. The accounts, documents, and records related to the Project shall be retained by the Grantee for five (5) years following the date of disbursement of funds under this Agreement. The Board, or its designated agent, shall have the right, upon reasonable notice to the Grantee, to audit the books and records of Grantee which pertain to the Project and to the use and disposition of Board funds. The Grantee may use any accounting system which follows the guidelines of "Generally Accepted Accounting Practices" published by the American Institute of Certified Public Accountants.

17. Withdrawal of Board Funding. Anything else in this Agreement or otherwise to the contrary notwithstanding, the Board may withdraw, in whole or in part, the Grant and/or terminate this Agreement, and/or seek a refund of payments already made if the Board determines in its discretion that:

a. facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Grant as contemplated infeasible or impractical;

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b. any material modifications in the scope or nature of the Project have occurred from that which was presented in the Project Application and such material modifications have not received the prior written approval of GOCO;

c. any statement or representation made by Grantee in the Project Application, this Agreement, the Advance Payment documentation, the Progress Report, the Final Report, or otherwise is untrue, inaccurate or incomplete in any material respect;

d. the results of GOCO's review of the Advance Payment documentation, the Progress Report, or the Final Report are not acceptable to GOCO;

e. the Project will not or cannot be completed by the Completion Date or any extensions granted thereto or delays in the implementation of the Project have occurred which, in the Board's judgment, make the Project impracticable;

f. the Project will not or cannot be completed within the Budget or any approved modifications, or the total Project cost and/or Grantee's matching funding are reduced;

g. sufficient net lottery proceeds are not available to fund the Grant.

18. Breach.

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

i. Prior to payment of Grant:

A. Withdraw the Grant and terminate this Agreement; and,

B. Deny Grantee eligibility for participation in future Board grants, loans or projects.

ii. After payment (partial or full) of Grant:

A. Deny Grantee eligibility for participation in future Board grants, loans or projects;

B. Seek specific performance of Grantee's obligations under this Agreement;

C. Receive reimbursement in full of disbursement made under the Grant.

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

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

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

21. Applicable Law. This Agreement shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall lie exclusively in the State Courts of the City and County of Denver.

22. No Joint Venture. Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the parties hereto other than independent contracting parties. Except as permitted under the remedies provisions hereunder, neither party shall have the express or implied right to act for, on behalf of, or in the name of the other party.

23. Severability. If any provision of this Agreement, or the application thereof, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision, other than those as to which it is found to be invalid, shall remain in full force and effect.

24. Time is of the Essence. Time is of the essence in this Agreement.

25. Survival. The terms and provisions of this Agreement and the parties' covenants hereunder shall survive the funding of the Grant and the completion of the Project.

26. Fax and Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by telecopy or e-mail as if they were original signatures.

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

28. Construction. Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.

29. Waiver. The failure of either party to enforce a term hereof shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach of the same,

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similar or different nature. No waiver shall be enforceable hereunder unless signed by the party against whom the waiver is sought to be enforced.

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

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of 5/4/2018

STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND

By:
DocuSigned by:
7DFD6A65E1034F5...

Chris Castilian
Executive Director

GRANTEE:
Gunnison County

By:
DocuSigned by:
Matthew Birnie
DF57D9FBAE8C463...

Title: County Manager

GOCO Program Staff:
Route Grant Agreement to
Executive Director for signature:
DocuSigned by:
CF615AFB417F43F...

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

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EXHIBIT A

Project Summary

Rank: 9	**Overall Score:** 81.75	**GOCO Staff Score:** 84	**Reviewer Average:** 79.5

Applicant: Gunnison County
Project Title: Shady Island River Park Planning
County: Gunnison
Log #: 18383

Funding Summary:

Applicant Funding	$10,000
Partner(s) Funding	$69,000
GOCO Grant Amount	$30,000
Total Project Cost	$119,000

Project Description:

Gunnison County recently secured a 12-acre property on the north side of the City of Gunnison that will serve to provide access and use of the Gunnison River for visitors and residents. The County plans to improve the property to create riverside boat access and recreational amenities, as well as improvements to riparian, wildlife and instream fish habitat. Funds would be used to develop and implement a public planning process to assist in
determining the future design and use of this area.

Staff and Peer Reviewer Comments:

The county is leveraging $79,000 from partners including Colorado Water Restoration Program, Upper Gunnison Water Conservancy District, Western State Colorado University, City of Gunnison, Trout Unlimited, Gunnison Angling Society, Gunnison River Festival, Gunnison/Crested Butte Tourism Association and Colorado Parks and Wildlife showing strong support for this project.
The plan will incorporate an extensive public process including several public meetings, design charrettes, site visits with residents and stakeholders, social media posts and surveys.
The planning process is well defined and presents a sound method for achieving the goals and objectives presented.

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EXHIBIT B
RESOLUTION (REQUIRED)

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EXHIBIT C
Budget

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EXHIBIT D
Overdue Grants Policy

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GOCO GREAT OUTDOORS COLORADO	**GREAT OUTDOORS COLORADO POLICIES & PROCEDURES MANUAL**	Policy:	Overdue Grants
		Approval Date:	October 7, 2016

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

A) Staff Extensions: Staff can grant an extension for at least 90 days and up to the date of the next scheduled GOCO Board meeting beyond that 90 days. A grantee may only request one staff extension per project.

   a. The grantee must submit a request for a staff extension prior to the original project completion date via email or postal mail to the appropriate GOCO program staff.
   b. Requests must include the following: a) grantee name; b) project title; c) contract number from the grant agreement; d) original project completion date; e) percent of project completed to date or due diligence items completed to date for land acquisitions; f) reason for delay; g) estimated date of project completion or closing; and h) estimated date of final report submission to GOCO, if applicable.
   c. Staff will notify the grantee via email of the decision to grant or deny the request for a staff extension.

B) Board Extensions: If the grantee needs more time than a staff extension would provide, the grantee must request a board extension. A grantee can request a second board extension if needed, although this is not a favorable action.

   a. The grantee must submit a request for a board extension prior to the original or staff-extended project completion date via email or postal mail. Requests must be sent to the appropriate GOCO program staff.
   b. Requests must include the following: a) grantee name; b) project title; c) contract number from the grant agreement; d) original project completion date and, if applicable, staff-extended project completion date; e) percent of project completed to date or due diligence items completed to date for land acquisitions; f) reason for delay; g) estimated date of project completion or closing; and h) estimated date of final report submission to GOCO, if applicable.

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c. The board will consider the request for board extension at its next scheduled meeting. Staff will notify the grantee via email of the board's decision to grant or deny the request for a board extension.
d. Requests for a second board extension must follow all of the procedures listed above.

C) To request a staff or board extension, use the *Project Extension Request* form.

D) GOCO expects the grantee to request the appropriate amount of time needed to complete the project. Failure to complete a project by the original due date, or by any extended due dates authorized by staff or the board, may result in the de-authorization of the grant and a suspension from applying in future grant cycles.