

GRANT AGREEMENT

PROJECT:

Project Title: East Plum Creek Trail Phase 5
Contract Number: 17809
Completion Date: October 7, 2019

PARTIES TO AGREEMENT:

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

Grantee: Town of Castle Rock

RECITALS

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 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.

D. The Board approved Grantee’s Project Application on October 7, 2016, subject to the execution of a grant agreement, the terms and conditions of which are 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:

1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into the terms of this Agreement.
2. **Representations and Warranties of Grantee.**
 - a. Grantee is a Municipality, 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 included in the Project Application.
 - c. Grantee warrants that it has good and sufficient title to the property or properties on which the Project is to be located (the "Property"). GOCO may require Grantee to provide evidence of its ownership of the Property and encumbrances against the Property satisfactory to GOCO in GOCO's discretion prior to funding..
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 \$1,000,000.00 (the "Grant"). The Grant shall be used by Grantee solely to complete the Project, in substantial conformity with the final plans, specifications, designs and uses approved by the Board.
4. **Project Scope.** Grantee shall not materially modify the Project or the Project budget (included in the Project Application) 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 October 7, 2019 (the "Completion Date") which is 36 months after the Board's approval of the Project. Grantee may request an extension of the Completion Date in compliance with GOCO's Overdue Grants procedure, as may be amended from time to time by GOCO in its sole discretion. GOCO may elect to terminate this Agreement and deauthorize the

Grant in the event the Completion Date is not met and/or Grantee fails to comply with the Overdue Grants procedure.

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, or the status of efforts to secure matching funding was disclosed and has been deemed satisfactory by Staff; and shall provide such evidence of the same as GOCO may require in its reasonable discretion.

8. **Disbursement of Funds.**

a. Progress Payment: Grantee may opt 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 GOCO's percentage of expected overall costs (as determined by the GOCO-approved budget) applied to the value of documented eligible expenses 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.

b. Final Payment: Grantee shall submit a final report to GOCO detailing the accomplishments of and expenditures related to the Project and its completion (the "Final Report"). The Project is "complete" when all facilities, trails or other improvements included in the Project have been built and are ready for their intended use. 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 the cost of fixed assets, including construction of new facilities, and enlargement or renovation of existing facilities. The Grant and all matching funds may not be used to pay for maintenance costs, administrative costs (such as salaries associated with administering the Grant, office supplies, telephone, or travel expenses), non-fixed assets (such as athletic or maintenance equipment), or any other costs deemed to be ineligible by the Board, at the Board's sole discretion.

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.). GOCO may, in its discretion, depending on the nature of the Project, require documentation of mechanics lien waivers or waivers of claims to public project performance bonds as a precondition to any disbursement under this Agreement.

c. Except as otherwise agreed to in writing 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 size or number of recreational development components to be constructed, changes to the nature of the recreational development components to be constructed, 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.

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. **Project Operation and Maintenance.**

a. Subject to annual appropriations, Grantee shall operate, manage, and maintain the Project in a reasonable state of repair for the purposes specified and for the useful life of the Project in the Project Application, in accordance with product warranties and/or the generally accepted standards in the parks/recreation community, and provide and maintain access to the Project and to the Property, regardless of the Property's ownership. The Grantee has estimated a useful life of 15 years in the project application.

b. Failure to comply with the provisions of Paragraph 12.a. may be deemed a breach by Grantee under Paragraph 21, below.

c. GOCO shall not be liable for any cost of maintenance, management or operation of the Project.

d. Within 60 days of a reasonable request by the Board, Grantee will provide the Board with adequate records reflecting the operating and maintenance costs of the Project and provide the Board with such other information concerning the use of the Project by the public and the impact of the Project.

e. The Grantee's administrative staff shall request to the Grantee during the Grantee's annual budget process a request for an appropriation sufficient to meet the financial obligations of the Grantee presented by this Agreement. The Grantee will use its best efforts to fully

consider such appropriation and the Parties understand that Board is relying upon fair and full consideration of annual appropriation in its decision to extend its resources and the grant hereunder, and enter into this Agreement. In the event that the Grantee fails to appropriate sufficient funds to meet the obligations of this Agreement, the Grantee shall provide notice to the Board of the specific reason(s) for any decision not to appropriate funding. Grantee's administrative staff shall notify the Board of any recommendation not to fund or to partially fund the annual appropriation necessary to fulfill Grantee's obligations hereunder.

13. **Public Access.** Grantee agrees, for itself and its successors in interest, to allow reasonable public access to the Project for the term specified in Section 12. Grantee may temporarily close such public access for construction, maintenance, emergency situations, or other reasonable purposes.

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

15. **Nondiscrimination.** During the performance of this Agreement, Grantee and its contractors, subcontractors and agents 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, or any other basis prohibited by local, state or federal law. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Further, during the performance of this Agreement, Grantee and anyone acting on behalf of Grantee shall not engage in any unlawful discrimination in permitting access and use of the Project.

16. **Publicity and Project Information.**

a. Grantee shall erect and maintain a sign at a prominent location on the Project site acknowledging the assistance of Great Outdoors Colorado and the Colorado Lottery. GOCO will provide such signs at no cost to Grantee. Alternatively, GOCO will provide a reproducible version of its logo to Grantee for custom signs.

i. GOCO shall approve in advance the design of any permanent sign materially varying from the signs provided by GOCO if any. To obtain such approval, Grantee shall submit to GOCO plans describing the number, design, placement, and wording of signs and placards. Plans shall be submitted to the Board for review and approval prior to completion of the Project.

ii. The Board may withhold Final Payment pending evidence of placement of permanent signage.

- b. Grantee shall acknowledge Board funding in all publicity issued by it concerning the Project.
- c. Grantee shall cooperate with the Board or the Board's designee in advance in preparing public information pieces related to the Project.
- d. Grantee shall give the Board the right and opportunity to use information gained from the Project.
- e. Grantee shall give the Board a minimum 30 days' notice of Project grand openings, dedications, or other events.
- f. Grantee shall give timely notice of the Project, its inauguration, significance, and completion to the local members of the Colorado General Assembly, members of the board of county commissioners of the county or counties in which the Project is located, as well as to public officials of the Grantee.
- g. Grantee shall provide quality digital photographs of the completed Project with the Final Report. All materials, publications, artwork, videos, photographs, websites, and any other work product developed as a result of GOCO's funding will be the sole and exclusive property of the Grantee. However, GOCO reserves the right to use and duplicate such materials and work product in any print or electronic publication or platform for publicity, illustration, advertising, web content, and other purposes at any time without the need to seek pre-approval from the Grantee.
- h. At no time shall Grantee represent in any manner to the public or to any party that it is affiliated with GOCO or acting on behalf of GOCO.

17. **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 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.
- 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 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 may apply to Grantee if Grantee qualifies for protection 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, its 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 the Board, its members, officers, agents and employees.

18. **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 Grantee for not less than 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 Grantee, to audit the books and records of Grantee which pertain to the Project and to the use and disposition of the Grant. While Grantee is not required to use GAAP (Generally Accepted Accounting Principles), Grantee shall use reasonable and appropriate accounting systems in maintaining the required records hereunder.

19. **Inspection.** Throughout the term of this Agreement, GOCO shall have the right to inspect the Project to ascertain compliance with this Agreement.

20. **Withdrawal of Board Funding; Termination of Agreement.** 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;
- 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 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 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. title to or encumbrances against the Property are or become such that Grantee is unable to complete the Project, or the Project and/or the Property are or become unavailable for public use.

21. **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, including in the event that Grantee does not fulfill its obligation under Section 12.a. of the Agreement due to lack of annual appropriations.
- 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 GOCO must pursue any remedy hereunder and is the substantially prevailing party, GOCO shall be awarded its costs and reasonable legal fees, including costs of collection.

22. **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.

23. **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 that, at a minimum, the assignee is eligible to receive grants from the Board and assumes Grantee's ongoing obligations under this Agreement.

24. **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.

25. **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.

26. **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.

27. **Time is of the Essence.** Time is of the essence in this Agreement.

28. **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.

29. **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.

30. **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.

31. **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.

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

33. **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 .

STATE BOARD OF THE GREAT

GRANTEE:

OUTDOORS COLORADO TRUST FUND

Town of Castle Rock

By:

By:

Chris Castilian
Executive Director

Title:

GOCO Program Staff:
Route Grant Agreement to
Executive Director for signature:

NOTE Signee should be same individual
authorized to sign grant agreement in
attached resolution

EXHIBIT A
Project Summary

Rank: 5	Overall Score: 84.59	GOCO Staff Score: 86.5	Reviewer Average: 82.67
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Applicant: Town of Castle Rock
Project Title: East Plum Creek Trail Phase 5
County: Douglas
Log #: 17809

<u>Funding Summary:</u>	Applicant Funding	
	Partner(s) Funding	
	GOCO Grant Amount	\$1,000,000
	Total Project Cost	\$2,000,000

Project Description:

The Town of Castle Rock is requesting GOCO funds to construct the fifth and final phase of the East Plum Creek Trail, a southern segment of the Colorado Front Range trail. The project proposes to construct 2.05 miles of ten foot wide concrete trail through a recently acquired 82-acre open space creating new public access. The project would provide users from southern Castle Rock access to downtown amenities while connecting northern users to the aforementioned open space.

Staff and Peer Reviewer Comments:

EXHIBIT B
INTERGOVERNMENTAL (or other) AGREEMENT
(If applicable)