

State of Colorado, Colorado Water Conservation Board
Contract Routing Number (CLIN #): 08 PDA00164
Contract No. 150417
Grant Amount: \$176,000

GRANT CONTRACT

THIS CONTRACT, by and between the State of Colorado, for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board, located at 1313 Sherman Street, Suite 721, Denver, Colorado 80203, (the "**State**"), and the District 64 Reservoir Company, a Colorado nonprofit corporation, located at 100 Broadway Plaza, Suite 12, Sterling, CO 80751-2757, ("**Contractor**" or "**Grantee**").

FACTUAL RECITALS

- A. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this contract through the Colorado Financial Reporting Systems (COFRS).
- B. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
- C. Grantee's bid was selected in accordance with Colorado law and State Procurement Rules pursuant to the issuance of a grant which was awarded to Grantee by the Colorado Water Conservation Board in September 2007;
- D. Authority for the agency entering into this Contract arises from Colorado Revised Statutes (CRS) 39-29-109(1)(a)(III), 37-75-102 and 37-74-104(2)(c) and Senate Bill 06-179 adopted by the 2006 General Assembly.
- E. The State has allocated grant funds for the Ovid Reservoir Phase II Feasibility Study. Grantee is ready, willing and able to provide such a task.

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this contract, the State and Contractor agree as follows:

AGREEMENT

1. Definitions

The following terms as used in this contract shall be construed and interpreted as follows, unless the context otherwise expressly requires a different construction and interpretation:

- 1.1. "**Compensation**" means the funds payable to Contractor by the State which are related to the Goods and Services set forth in the Scope of Work set forth in **Exhibit A**, attached hereto and incorporated herein.
- 1.2. "**Contract**" means this contract for Goods and Services, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this contract, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to State Fiscal Rules

and Policies.

- 1.3. **"Exhibit"** means a statement of work document, schedule, budget, or other identified exhibit which has been incorporated into and attached to this contract.
- 1.4. **"Goods"** means anything that is produced or manufactured and that is obtained by the State, either in and of itself, or in conjunction with services.
- 1.5. **"Services"** means services performed or tangible material produced or delivered in the performance of services.

BASIC CONTRACT TERMS

2. Statement of Work

Contractor shall perform the Services described in **Exhibit A, Scope of Work**.

3. Performance Standard

Contractor shall perform the Services described in **Exhibit A, Scope of Work**, in accordance with the highest standard of care, skill and diligence provided by a professional person or company in performance of work similar to the Services, and all services, and all consumables, products, and materials used in performance of the Services shall be of good quality and free from faults and defects. Contractor warrants that (a) services or goods provided under this contract shall meet the description in **Exhibit A, Scope of Work**, (b) there are no pending or threatened suits, claims, or actions of any type with respect to the services or goods provided and (c) the services and goods shall be free and clear of any liens, encumbrances, or claims arising by or through Contractor or any party related to Contractor.

4. Performance Term

- 4.1. This contract shall be effective upon approval by the Colorado State Controller, or designee (the "Effective Date") and extend through June 30, 2009. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the sequence and manner set forth in **Exhibit A, Scope of Work**.
- 4.2. In the event the State desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to three (3) months. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate at the end of the three (3) month period or when the replacement contract is signed by the Colorado State Controller or an authorized delegate.

5. Grant Award (Compensation)

- 5.1. Payment of compensation pursuant to this contract will be made as earned, in whole or in part, from available State funds encumbered in a maximum amount not to exceed \$176,000 for the performance of the Services required by this contract and **Exhibit A, Scope of Work**. Satisfactory performance under the terms of this contract shall be a condition precedent to the State's obligation to compensate Contractor.
- 5.2. The maximum compensation payable under this contract, and under any renewal hereof, shall include all Contractor fees, costs and expenses.
- 5.3. The State shall not be liable to Contractor for payment of work or services or for costs or expenses incurred by Contractor prior to the "Effective Date".

- 5.4. The maximum amount available during each fiscal year of this contract for the purchase of Goods and Services shall be \$176,000 in fiscal years 2008 and 2009.

6. Availability of Funds

This contract is contingent upon the continuing availability of State appropriations as provided in Section 2 of the Colorado Special Provisions, incorporated as a part of this contract. The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. If Federal appropriations or grants fund this contract in whole or in part, the contract is subject to and contingent upon the continuing availability of appropriated Federal funds for this contract. If State of Colorado or Federal funds are not appropriated, or otherwise become unavailable to fund this contract, the State may immediately terminate the contract in whole or in part without further liability.

PROCEDURES FOR AND OBLIGATIONS OF CONTRACT PERFORMANCE

7. Billing/Payment Procedure

- 7.1. The State shall establish billing procedures and pay Contractor the contract price or rate for Services performed, reviewed, and accepted or Goods delivered, inspected, and accepted pursuant to all the terms and conditions of this contract, including without limitation, performance, quality, milestones and completion requirements for payment set forth in **Exhibit A**, Scope of Work, and the State's inspection and acceptance rights in Section 8. Contractor shall submit invoices for payment on forms and provide requested documentation in a manner prescribed or approved by the State. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described Services and Goods. Incorrect payments by the State to Contractor due to omission, error, fraud, or defalcation shall be recovered from Contractor by deduction from subsequent payments under this contract or other contracts between the State and Contractor or collected as a debt due to the State.
- 7.2. Invoices and payments shall be mailed using the US Postal Service or other delivery service with a properly addressed stamped envelop to the address specified by the Contractor on form W-9 or other similar form and by the State in its billing procedures.
- 7.3. The State shall make payment in full with respect to each invoice within forty-five (45) days of receipt thereof; provided that the amount invoiced represents Goods and/or Services which have been accepted by the State and the form of the invoice is acceptable to the State. Uncontested amounts not paid by the State within forty-five (45) days shall bear interest on the unpaid balance beginning with the forty-sixth (46th) day at a rate of one percent (1%) per month until paid in full; provided, however, that no interest shall accrue with respect to unpaid amounts for which the State has delivered to Contractor notice of a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the applicable interest rate.

8. Inspection and Acceptance

The State reserves the right to inspect Services provided under this contract at all reasonable times and places during the term of this contract, including any extensions. If any of the Services does not conform to contract requirements, the State may require Contractor to promptly perform the Services again in conformity with contract requirements, at no additional cost to the State. When defects in the quality or quantity of Services cannot be corrected by re-performance, the State may:

- (a) require Contractor to take necessary action to ensure that future performance conforms to this contract requirements; and
- (b) equitably reduce the payment due to Contractor to reflect the reduced value of the Services performed.

These remedies shall in no way limit the remedies available to the State in other provisions of this contract

or remedies otherwise available in equity or at law, all of which may be exercised by the State, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment under this provision shall not constitute a breach of contract or default by the State.

9. Reporting

Unless otherwise provided in this contract or the exhibits hereto, Contractor shall submit, on a quarterly basis and upon termination or completion of work, a written progress report analyzing the performance under this contract and specifying progress made for each activity identified in Contractor's duties and obligations. Such written analysis shall be in accordance with the procedures developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of Contractor and failure to comply may result in the delay of payment of funds and/or termination of this contract. Required reports shall be submitted to the State not later than the end of each calendar quarter, or at such time as otherwise specified. Notwithstanding anything herein to the contrary, including without limitation the priority provisions set forth in Section 35, specific reporting requirements set forth in **Exhibit A**, Scope of Work, or in other exhibits to this contract, shall take precedence over this general reporting provision.

10. Rights in Data, Documents, and Computer Software

- 10.1 Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by Contractor in the performance of its obligations under this contract (the "Work Product"), shall be the exclusive property of the State and all Work Product shall be delivered to the State by Contractor upon completion, termination, or cancellation of this contract. The rights of the State with respect to such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such Work.
- 10.2 Contractor shall not use, willingly allow, cause or permit such property to be used for any purpose other than the performance of Contractor's obligations under this contract, without the prior written consent of the State. The rights of the State with respect to such property shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such property.

11. Maintenance, Inspection and Monitoring of Records

- 11.1 Contractor shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of programs or the delivery of Services or Goods under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed; provided, that if an audit by or on behalf of the Federal and/or Colorado State government has begun but is not completed or audit findings have not been resolved after a three (3) year period, such materials shall be retained until the resolution of the audit findings.

- 11.2 Contractor shall permit the State, the Federal Government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Contractor's performance hereunder.
- 11.3 Contractor also shall permit these same described entities to monitor all activities conducted by Contractor pursuant to the terms of this contract. As the monitoring agency, in its sole discretion, may deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract performance.

12. Confidentiality of State Records and Information

- 12.1 Contractor acknowledges that it may come into contact with confidential information in connection with this contract or in connection with the performance of its obligations under this contract, including but not limited, to personal records and information of individuals. It shall be the responsibility of Contractor to keep all State records and information confidential at all times and to comply with all Colorado State and Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the State. Any request or demand for information in the possession of Contractor made by a third party who is not an authorized party to this contract shall be immediately forwarded to the State's principal representative for resolution.
- 12.2 Contractor shall notify all of its agent, employees, subcontractors and assigns who will come into contact with State information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and information wherever located. No State information of any kind shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by the contract and as approved by the State. State information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in this contract and approved by the State. Disclosure of State records or information may be cause for legal action against Contractor or its agents. Defense of any such action shall be the sole responsibility of Contractor.

13. Litigation Reporting

Contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services provided or Contractor's performance under this contract, which has been filed in any Federal or state court or administrative agency, shall deliver copies of such document to the State's principal representative, or in absence of such designation, to the chief executive officer of the department, agency, or institution executing this contract on behalf of the State.

14. Conflict of Interest.

- 14.1 During the term of this contract, Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations under this contract.
- 14.2 Additionally, Contractor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, Contractor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of Contractor's obligations to the State in accordance with the terms and conditions of this contract, without the prior written approval of the State.

- 14.3. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.
- 14.4. Contractor and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer or agent of Contractor or any permitted subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- (a) an employee, officer or agent;
 - (b) any member of the employee's immediate family;
 - (c) an employee's partner; or
 - (d) an organization, which employs, or is about to employ, any of the above,
- has a financial or other interest in the firm selected for award. Contractor's or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential contractors, or parties to sub-agreements.

REPRESENTATIONS AND WARRANTIES

15. Warranties. During the term of this contract and for a period of twelve months following the State's final acceptance under this contract, Contractor warrants as follows:

- 15.1 All Services under this Contract shall be performed in accordance with the specifications set forth in this contract and **Exhibit A** and in a manner acceptable to the State. Contractor shall re-perform any Services that fail to satisfy this warranty.
- 15.2 All deliverables delivered under this contract by Contractor shall meet the specifications set forth in this contract and **Exhibit A**. Contractor shall correct or replace any deliverables which fail to satisfy this warranty.

The foregoing warranties and such other warranties as may be set forth in **Exhibit A**, Scope of Work, are a part of the minimum work requirements of this contract, and as such will be at no additional cost to the State.

16. Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this contract, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform the Services and/or deliver the Goods covered by this contract. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this contract, without reimbursement by the State or other adjustment in contract price. Additionally, all employees of Contractor performing services under this contract shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform this contract, shall be deemed to be a default by Contractor and grounds for termination of this contract by the State.

17. Tax Exempt Status

Contractor acknowledges that the State of Colorado is not liable for any sales, use, excise, property or other taxes imposed by any Federal, State or local government tax authority. The State also is not liable for any Contractor franchise or income related tax. No taxes of any kind shall be charged to the State.

18. Legal Authority

Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind Contractor to its terms. Contractor agrees it shall submit voluntarily to the personal jurisdiction of the Federal and State courts in the State of Colorado and venue in the City and County of Denver, Colorado. The person(s) executing this contract on behalf of Contractor warrant(s) that such person(s) have full authorization to execute this contract.

19. Compliance with Applicable Law

19.1 Contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract. Contractor also shall require compliance with such laws and regulations by subcontractors under subcontracts permitted under this contract.

REMEDIES

20. Remedies

In addition to any other remedies provided for in this contract, and without limiting the remedies otherwise available at law or in equity, the State may exercise the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in this contract. "Substantial failure" to satisfy duties and obligations shall be defined to mean material, insufficient, incorrect or improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

- (a) Suspend Contractor's performance pending necessary corrective action as specified by the State, without Contractor's entitlement to adjustment in price/cost or schedule. Furthermore, at the State's option, a directive to suspend may include suspension of this entire contract or any particular part of this contract that the State determines in good faith would not be beneficial or in the State's best interests due to Contractor's substantial non-performance. Accordingly, the State shall not be liable to Contractor for costs incurred after the State has duly notified Contractor of the suspension of performance under this provision, and Contractor shall promptly cease performance and incurring costs in accordance with the State's directive;
- (b) Withhold payment to Contractor until the necessary Services or corrections in performance, development or manufacture are satisfactorily completed;
- (c) Request the removal from work on this contract of employees or agents of Contractor identified by the State, in its reasonable judgment, as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this contract the State deems to be contrary to the public interest or not in the best interests of the State;
- (d) Deny payment for those Services or obligations which have not been performed which have not been provided and which, due to circumstances caused by Contractor, cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
- (e) Terminate this contract for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

21. Termination for Convenience

- 21.1 When the interests of the State so require, the State may terminate this contract in whole or in part, for the convenience of the State. The State shall give written notice of termination to Contractor specifying the termination of all or a portion of this contract and the effective date of such. Exercise by the State of this termination for convenience provision shall not be deemed a breach of contract by the State. Upon receipt of written notice, Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Contractor shall stop work to the extent specified. Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this contract shall, at the option of the State, be delivered by Contractor to the State and shall become the State's property. The State may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor shall complete and deliver to the State the work not terminated by the notice of termination and may incur obligations as are necessary to do so within the contract terms.
- 21.2 If this contract is terminated by the State as provided herein, Contractor shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or the deliverables satisfactorily delivered or installed bear to the total Services or deliverables covered by this contract, less payments of compensation previously made. In addition, for contracts that are less than 60% completed, the State may reimburse the contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by Contractor during the contract period which are directly attributable to the uncompleted portion of Contractor's obligations covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the Termination for Cause or Default provision shall apply.

22. Termination for Default/Cause

If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time and pursuant to the requirements and terms specified in this contract, the State may notify Contractor in writing of such non-performance. If Contractor fails to promptly correct such delay or non-performance within the time specified, the State, may at its option, terminate this entire contract or such part of this contract as to which there has been delay or a failure to properly perform. If terminated for cause, the State shall only reimburse Contractor for accepted work or deliverables received up to the date of termination and final payments may be withheld. In the event of termination, all finished or unfinished documents, data, studies, research surveys, reports, other materials prepared by Contractor, or materials owned by the State in the possession of Contractor, at the option of the State, shall be returned immediately to the State or retained by the State as its property. At the State's option, Contractor shall continue performance of this contract to the extent not terminated, if any, and shall be liable for excess costs incurred by the State in procuring from third parties replacement services or substitute goods as cover. Notwithstanding any remedial action by the State, Contractor also shall remain liable to the State for any damages sustained by the State by virtue of any breach by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. Upon termination by the State, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. Further, the State may withhold amounts due to Contractor as the State deems necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods or services. Any action taken by the State hereunder or pursuant to paragraph 15 shall not be cause for Contractor to terminate this Contract for default or material breach. If, after termination by the State, it is determined for any reason that Contractor was not in default or that Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience and the rights and obligations of the parties shall be the same as if this contract had been terminated for convenience, as described herein.

23. Insurance

- 23.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:
- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the Contractor's employees acting within the course and scope of their employment.
 - b. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.
- If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.
- c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
- 23.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
- 23.3 The Contractor will require all insurance policies in any way related to the contract and secured and maintained by the Contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
- 23.4 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.
- 23.5 The Contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.
- 23.6 Notwithstanding subsection (a) of this section, if the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

24. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Governmental Immunity Act. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of sections 24-10-101, *et seq.*, C.R.S., as now or hereafter amended and the risk management statutes, sections 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended.

25. Force Majeure

Neither Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; public health/safety emergency acts of the State or any governmental entity in its sovereign capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

MISCELLANEOUS PROVISIONS

26. Representatives

Each individual identified below is the principal representative of the designating party. All notices required to be given to a party pursuant to this contract shall be hand delivered with receipt required or sent by certified or registered mail to such party's principal representative at the address for such party set forth below. Either party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent.

For the State:

Name: Rick Brown

Title: Section Chief, Intrastate Water Management and Development, CWCB

Address: 1313 Sherman Street, Room 721, Denver, CO 80203

Telephone: (303) 866-3514

For Contractor:

Name: Joe Frank, PE

Title: General Manager, District 64 Reservoir Company

Address: 100 Broadway Plaza, Suite 12, Sterling, CO 80751-2757

Telephone: (970) 522-1378

27. Assignment and Successors

Unless otherwise specified in **Exhibit A**, Scope of Work, Contractor's rights and obligations under this contract shall be deemed to be personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State, which shall not be unreasonably withheld. Any attempt at assignment, transfer or subcontracting without such consent shall be void, except that Contractor may assign the right to receive payments from the State pursuant to section 4-9-318, C.R.S. All subcontracts and subcontractors consented to by the State shall be made subject to the requirements, terms and conditions of this contract. Contractor alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted work or Goods, and performance of any subcontracted Services. Contractor shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this contract, including an obligation of the subcontractor to indemnify the State as is required under Section 3 of the Colorado Special Provisions, incorporated as a part of this contract.

28. Third Party Beneficiaries

The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement shall be strictly reserved to the State and Contractor. Nothing contained in this contract shall

give or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and Contractor that any such person or entity, other than the State or Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

29. Severability

To the extent this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

30. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

31. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the Colorado State Fiscal Rules.

32. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, all terms and conditions of this contract, including but not limited to its exhibits and attachments, which may require continued performance, compliance, or effect beyond the termination date of the contract, shall survive such termination date and shall be enforceable by the State in the event of the Contractor's failure to perform or comply as required.

33. Modification and Amendment

- 32.1 This contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this contract on the Effective Date of such change, as if fully set forth herein.
- 32.2 Except as specifically provided in this contract, no modification of this contract shall be effective unless agreed to in writing by both parties in an Amendment to this contract, properly executed and approved in accordance with Colorado State law and State Fiscal Rules.

34. Venue

Venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

35. Order of Precedence

The provisions of this contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (a) Colorado Special Provisions, pages 12 to 13.
- (b) Remaining pages of the contract, pages 1 to 11.
- (c) **Exhibit A**, Scope of Work.

SPECIAL PROVISIONS

The Special Provisions apply to all Contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This Contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY. CRS 24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION.** To the extent allowed by law, Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract.

[Applicable Only to Intergovernmental Contracts] No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

4. **INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent Contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this Contract. Contractor acknowledges that Contractor and its employees are not entitled to unemployment insurance benefits unless Contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision of this Contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Contract, to the extent that this Contract is capable of execution. At all times during the performance of this Contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. **[Not Applicable to Intergovernmental Contracts] VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this Contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract.

10. [Not Applicable to Intergovernmental Contracts]. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101. Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or Contract with an illegal alien to perform work under this Contract or enter into a Contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or Contract with an illegal alien to perform work under this Contract. Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.

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

Revised October 25, 2006

Effective Date of Special Provisions: August 7, 2006

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

GRANTEE:

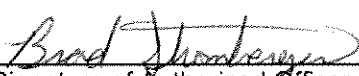
STATE OF COLORADO:

BILL RITTER, JR. GOVERNOR

District 64 Reservoir Company

By


For Executive Director, Department of Natural Resources


Signature of Authorized Officer

Brad Stromberger President
(Print) Name & Title of Authorized Officer

Date 4/24/08

LEGAL REVIEW:

Attorney General, John W. Suthers

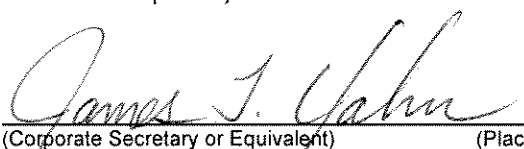
By

NA

CORPORATIONS:

(A corporate attestation is required.)

Attest (Seal) By



(Corporate Secretary or Equivalent)

(Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state Contracts. This Contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Contractor is not authorized to begin performance until the Contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER
David J. McDermott, CPA

By



Date

8-9-08

Exhibit A

Scope of Work

WATER ACTIVITY NAME -

Ovid Reservoir Comprehensive Feasibility Study

GRANT RECIPIENT –

District 64 Reservoir Company

FUNDING SOURCE -

Water Supply Reserve Account- Statewide Account \$176,000.00

BACKGROUND

The District 64 Reservoir Company was formed by the owners of water rights in the Lower South Platte near Julesburg Colorado. This company was formed to purchase the water rights, engineering and legal documents and title to the land where the Ovid Reservoir is planned and for other purposes relating to the provision of a water supply for the area. It was formed as a non-profit mutual ditch and reservoir company.

The Ovid Reservoir is a conditional storage right originally proposed by Groundwater Appropriators of the South Platte (GASP). The original water court application began in 1997 resulting in a conditional storage decree awarded to GASP for the project. GASP expended considerable legal, engineering, and land acquisition costs in moving the project forward. The concept was to construct an off-channel reservoir near that state line that could be used to augment well depletions and keep the compact call off when water users needed to divert. The selected reservoir site could store 5,700 acre-feet of water, fill by gravity from the Peterson Ditch and release by gravity back to the South Platte River approximately 10 miles above the state line. Wildlife and wildlife recovery was later added as a beneficial use of the conditional water right.

Due to an adverse ruling by the Supreme Court regarding augmentation supplies for wells, GASP was unable to continue in operation. The well users in District 64 still had a need for reliability and certainty in providing augmentation supplies for their farms. GASP offered to sell the title to the Ovid Reservoir site, water right, and all related personal property, including engineering studies performed to date, legal work and assets of the project. The District 64 Reservoir Company was formed by 75 shareholders which consist a combination of well owners, recharge project owners and other water users and local interests in the lower basin. Subscriptions to the reservoir were priced to raise approximately \$1,000,000 that would be put towards purchasing the assets offered by GASP. Title to the Ovid Reservoir site, water right and related assets were acquired by the District 64 Reservoir Company on February 21, 2007.

SUMMARY OF TASKS

Task 1 – Reservoir Operations and Modeling

A detailed evaluation of the possible operating scenarios will be outlined to provide information for decision making by potential end users. Applegate Group will be the lead firm for the task. Mike Applegate and Dick Stenzel will be senior advisors to the evaluation team lead by Richard Raines. Bennett Raley will provide guidance on legal issues associated with the use of the reservoir and the Lower South Platte Water Conservancy District will provide guidance and assistance on reservoir operations modeling and lower South Platte River administration.

Reservoir Operations:

Operating scenarios will be developed for dry year, wet year and average year hydrologic conditions. The administration policies currently in place for the South Platte River, potential future policies that may be implemented, and the implications of the Platte River Recovery Implementation Program (PRRIP) obligations on water management in the South Platte Basin will be considered in developing the scenarios. Winter time operations constraints will also be accounted for as part of the operations analysis. In addition, Julesburg Irrigation District operations as well as alternative operations determined as part of the defined scope in Task 3 will be analyzed as part of the reservoir operations. A river basin spreadsheet model will be developed using existing daily flow data that was originally developed for the reservoir when the decree was awarded in Division 1 water court. The daily flow model will be updated to incorporate the recent drought period. It will be updated to include new inputs from augmentation plans and recharge projects that have since been put into operation.

These additional inputs will be developed and utilized from real time data collected by the State Engineer, Lower South Platte Water Conservancy District and Northern Colorado Water Conservancy District for stream gages and river diversions. Historical point flow and river call data will be analyzed and simulated to develop optimum reservoir operating procedures for each scenario. Lower South Platte Water Conservancy District will provide guidance on current operations and administrative issues for ditch and augmentation systems in the vicinity of the proposed project. The team will review the decree and determine options that are available for the new ownership group. Comparisons of this model will be made to the preliminary South Platte DSS modeling where possible to incorporate improvements where appropriate.

PRRIP Exchange Potential:

Water deliveries and constraints required by the PRRIP will be analyzed and incorporated into the modeling and evaluation process to determine Ovid Reservoir exchange potential with recharge accretions generated from existing and proposed recharge operations which are currently created primarily for local augmentation of alluvial aquifer wells. Tamarack Phase I and Colorado's Plan for Future Depletions along with current

accounting models for Colorado's PRRIP water plan will be thoroughly reviewed to determine potential project operations and benefit for the State of Colorado's PRRIP water contribution. Colorado's water plan for the first increment of the PRRIP is outlined in Attachment 5 (Water Plan) of the PRRIP Program Document located at: http://www.platteriver.org/library/program_document/water_plan_final.pdf.

Other Potential Operation Benefits:

Overall evaluation will include consideration of augmentation replacements, recharge accretions, non-consumptive options, exchange considerations in this reach of river and alternate points of diversion to the reservoir via a well field. The team will also consider the long term impacts of changes in trans-mountain diversion reuse water, compact obligations, and PRRIP Mitigation and how the reservoir provides benefits to meet these long-term changes. Other potential end users, direct beneficiaries and indirect benefits will be explored and analyzed to determine the optimum operations of this project. In addition, any potential negative impacts from reservoir operations will be explored and minimized as part of this Task. The goal for this Task is to provide a user friendly decision tool that can evaluate the potential operation of the project and detail the benefits that it would provide to participating parties.

Deliverables for this task will include:

1. A detailed engineering report describing the assumptions, methodology, results and conclusions of the task. The report will provide information on the array of benefits provided by different reservoir operations scenarios. This information can be used by CWCB for review and possible selection of an operating model that could allow State participation. It may also serve to help guide policy decisions necessary for CWCB to accommodate participation in the project by the State. This information may result in the framework for an agreement that has State participation.
2. A digital copy of the spreadsheet computer model and input files for selected scenarios.
3. A users manual for the spreadsheet model describing inputs.

The total fee for Task 1 is \$112,000

Task 2 Review of Preliminary Engineering on Ovid Reservoir

A review of the previous engineering work done by Applegate Group will be performed to evaluate conclusions and recommendations with respect to the new ownership group, changes in rules and regulations since the work was completed, and changes in technology that have occurred. The project team will be lead by Applegate Group with

Mike Applegate serving as senior advisor to in-house engineering. Cesare and Associates who was involved in the preliminary work will provide geotechnical expertise in this review. Evaluation of District 64 needs will be completed to determine base requirements for local water users.

Telemetry and Control

Modernization of the proposed project will consider SCADA (Supervised Control and Data Acquisition), other potential telemetry systems and automation for control of delivery system. Telemetry and automation will also be analyzed in coordinating reservoir operations in conjunction with Task 1. A guideline and criteria proforma will be prepared to outline what steps are necessary to integrate this project into the many other lower river projects that are feeding data to the State Engineer to help administer the lower river.

Peterson Ditch Diversion and Alternatives

The current diversion structure and ditch conveyance system for the Peterson Ditch will be analyzed to determine feasibility of the existing system to fill the Ovid Reservoir. This ditch is flat and does not have much of a history of winter operations. We will evaluate what changes in operations policies may be necessary to divert under cold weather conditions. This will be considered as a risk management evaluation that considers the possibilities of ditch freeze up that may disrupt diversions to the reservoir. The feasibility of constructing a new diversion structure for the Peterson Ditch and improving ditch conveyance up to the Ovid Reservoir will be analyzed as part of this Task in conjunction with Tasks 1 and 3. An alternative approach will consider the feasibility of installing a well system adjacent to the South Platte in place of diversion facilities on the Peterson Ditch. There may be more flexibility in diverting with pumps that can turn on whenever the river conditions allow diversions under priority. Preliminary designs of both scenarios will be prepared and analyzed to determine long term costs and benefits of each scenario.

Dam Safety

The Dam Safety regulations have also been updated recently which has some added requirements for obtaining a permit. An example is the seismic analysis with regard to dam foundation liquefaction currently requires a more rigorous analysis. Hydrology requirements have also been revised with new criteria for some classifications of dams being changed. The current design will be reviewed and modifications noted as necessary to comply with all updated Dam Safety regulations. An updated cost estimate will be prepared that considers the regulatory changes and the inflation of construction costs brought forward to the present.

Slurry Wall Dam Foundation Cutoff

The original feasibility level design of the Ovid Reservoir considered using a clay liner in the bottom of the reservoir to seal it from the underlying valley fill alluvium. Further geotechnical testing at the preliminary design stage showed that the site did not have adequate supplies of clay to build this liner. An alternate design using a slurry wall cutoff to protect the dam from seepage through the alluvium was evaluated. The underlying valley fill alluvium ranges from 40 to 75 feet in thickness and overlies the Brule formation bedrock. This bedrock is thick and relatively unfractured. Test results from three samples showed a minus 200 sieve content of around 60 to 70 percent. It is highly plastic but is probably classified as a sandy siltstone. Drilling results indicate that it is competent for keying in a slurry wall.

Based on the geotechnical information developed, a bentonite slurry wall is the preferred alternate to provide a positive cutoff for the dam. It would be installed near the centerline of the dam axis and keyed into bedrock around the perimeter of the reservoir in order to contain groundwater within the area of the reservoir and eliminate the potential seepage under the dam. The slurry wall will probably be 3 to 4 feet thick based on preliminary results. This approach will maximize beneficial use of the water supply and provide dam safety protection to the local community. The current design parameters proposed for the bentonite slurry wall cutoff will be reviewed during the final design process and modified as needed.

Preliminary Opinion of Probable Cost

The construction cost estimates will be updated to reflect current prices and projected forward for the contemplated project completion. Design changes identified from regulatory revisions will also be incorporated into the estimates. Results from Task 1 will be used to prepare detailed estimates on reoccurring annual facilities and maintenance costs.

Deliverables for this task will include:

1. A revised preliminary Opinion of probable cost estimate reflecting changes in design, inflation and anticipated schedule of the project.
2. A preliminary analysis and estimate of facilities operations and maintenance costs that are expected for the foreseeable future of the project.
3. An engineering report summarizing the results of the review. A description of the recommendations for any modifications to the project configuration will be outlined based on the new ownership group. Any recommendations for modernization or updates to technology will be detailed and broken out in terms of associated costs. The results of using an alternate well field approach for diversion will be reported in comparison to the original concept of using the Peterson Ditch.

The total fee for Task 2 is \$24,000

Task 3 - Julesberg Irrigation District and Peterson Canal options

Julesburg Irrigation District

The project team will evaluate the potential partnership and opportunities that can be established with the Julesberg Irrigation District (JID) with respect to incorporating their Peterson Ditch into the project as originally contemplated. A carriage agreement was negotiated with GASP as part of the original project. This agreement is non-transferable and has been the subject of discussion on how the new arrangements may be drafted. A new carriage agreement with JID will be explored and evaluated as part of this Task. Operation of the Peterson Ditch will also be evaluated considering winter operations scenarios, competition with other users in the system, coordination with current operating requirements, and potential changes in operating requirements that may prove beneficial to both parties. The requirements of a diversion structure on the Peterson Ditch will be reevaluated with regard to the discussions on this new ownership group. The Peterson Ditch has a relatively unreliable and old diversion structure on the South Platte River that requires constant maintenance. The opportunity for improvement of this structure and the upstream reach of ditch above the reservoir will also be considered in terms of engineering and construction costs. Results from Tasks 1 and 3 will also be used to evaluate operational arrangements with JID regarding the use of the Peterson Ditch.

Other Institutional Arrangements:

Other than the District 64 Reservoir Company, the project participants remain unknown. Institutional arrangements and operating agreements will need to be evaluated and enacted between the project participants. Numerous operating scenarios will be evaluated between various entities including but not limited to: the Julesburg Irrigation District, the State of Colorado, South Platte Water Related Activities Program, Ducks Unlimited, Sedgwick County Well Users and the Lower South Platte Water Conservancy District. Operating agreements will be formalized between all final project participants. The Applegate team will provide engineering technical support services to the management group and legal counsel of District 64 lead by Joe Frank and Bennett Raley. Mike Applegate and Dick Stenzel will provide senior advisor roles to the engineering team lead by Tara Schutter.

404 Permit Issues

There are also 404 permit issues with regard to irrigation facilities that will be evaluated by legal counsel. The construction of Ovid Reservoir will require a comprehensive review and assessment of state and federal permitting requirements. This review and assessment will include, without limitation, consideration of whether a federal Clean Water Act Section 404 "wetlands" permit will be required for Ovid Reservoir and the means by which water will be diverted into and delivered from Ovid Reservoir. In the event that one or more options are determined to be likely to require a 404 Permit, alternatives that do not require a 404 Permit will be identified. In addition, in the event that it is likely that a 404 Permit will be required, the review and assessment will outline potential permitting strategies that will minimize the cost of and risks associated with the 404 Permitting process, and will assess the likelihood of success in the permitting process. This review and assessment will be summarized in a report that will be provided

to the CWCB, and any confidential or privileged information will be provided to the Attorney General's Office under appropriate agreements that protect the confidential or privileged nature of the information.

Deliverables for this task will include:

1. Documentation of the final project participants operating arrangements between the participants.
2. Preliminary engineering analysis of the infrastructure requirements for the Peterson Ditch summarized in a report. The goal of this task is provide a decision point to the Reservoir Company on whether or not participation with the Julesberg Irrigation District and the use of their infrastructure is feasible. If it is not feasible, it will make recommendations on alternates that could be used for reservoir operations.
3. The results of the legal review will be summarized in a report to CWCB by legal counsel. Any confidential or privileged information will be provide to the Attorney General's Office under appropriate agreements that protect the confidential or privileged nature of the information.

The total fee for Task 3 is \$40,000

BUDGET

This grant will fund Tasks 1-3 as requested in Addenda 1.

Total Costs

Description	Labor	Subcontracts	Direct Costs	Total Project Costs
Task 1 Reservoir Operations and Modeling	\$ 84,000	\$ 25,000	\$ 3,000	\$ 112,000
Task 2 Review of Preliminary Engineering	\$ 15,500	\$ 5,500	\$ 3,000	\$ 24,000
Task 3 Julesberg Irrigation District	\$ 13,000	\$ 25,000	\$ 2,000	\$ 40,000
Task 4 Final Design	\$ 204,000	\$ 218,000	\$ 5,000	\$ 427,000
Task 5 State Dam Safety Permit	\$ 84,000		\$ 14,000	\$ 98,000
Task 6 Bid Documents and Contract Agreements	\$ 13,000	\$ 25,000	\$ 5,000	\$ 43,000
Task 7 Construction Project Management	\$ 666,000	\$ 970,000	\$ 117,000	\$ 1,753,000
Total Project Fee	\$ 1,062,500	\$ 1,268,500	\$ 149,000	\$ 2,500,000

Project: Covid Remedy for \$75 Grant Proposal

*GIVEN OF PROPOSED COSTS
Total Fixed Fee \$2,494,000

Rates - Continued

Summary of Legal Support Bennett Raley rates and tasks

The following is a brief description of the legal work that Bennett Raley will be doing on Task 1 and 3 of our grant application. Bennett's hourly rate is \$220. I apologize for not having it in the original submittal, but wanted to make sure we had the basic application information in prior to the July 20th deadline. You can see in our spreadsheet budget where Bennett ties into the work.

The following is a broad brush description of the scope that Bennett will be working under:

Task 1: "The evaluation of proposed operating scenarios will include a review and consideration of legal requirements and options associated with the exercise of the water rights for Ovid Reservoir, a review and consideration of existing and future contractual obligations relating to reservoir operations, and a consideration of the implications of the proposed scenario for the permitting of the Reservoir under state and federal law."

Task 3: "The evaluation of the Julesburg Irrigation District and Peterson Canal options will include an assessment of the legal issues relating to and the viability of the use of the Peterson Canal in connection with Ovid Reservoir, and the negotiation of an agreement for the use of the Peterson Canal as a component of Ovid Reservoir or a comparable alternative."

SCHEDULE

Ovid Reservoir
Schedule and Milestone Summary

Prepared by: CMA
3/24/2008 14:09

Task #	Description	Completion Date
1	Reservoir Operations and Modeling	
	Reservoir Modeling Criteria determined	9-May-08
	Input Data collected and compiled	16-May-08
	River administration scenarios set	23-May-08
	Test runs executed	20-Jun-08
	Comparison to SPSSS completed	27-Jun-08
	PRRIP exchange evaluation completed	18-Jul-08
	Augmentation evaluation	18-Jul-08
	Final modeling runs completed	1-Aug-08
	Summary report drafted	8-Aug-08
	Final report completed	29-Aug-08
	Users manual completed	29-Aug-08
2	Review of Preliminary Engineering	
	Telemetry evaluation	16-May-08
	Peterson Ditch alternatives	16-May-08
	Dam Safety Regulatory changes	30-May-08
	Slurry Wall evaluation	20-Jun-08
	Cost estimate update	18-Jul-08
	Report drafted	8-Aug-08
	Final report completed	29-Aug-08
3	Julesberg Irrigation District and Peterson Canal Options	
	Other Institutional Arrangements	5-Sep-08
	404 permit issues	5-Sep-08
	Carriage agreement negotiations	17-Oct-08
	Summary report drafted	31-Oct-08
	Final Report issued	21-Nov-08

PAYMENT

Payment will be made based on actual expenditures and invoicing by the water activity sponsor. The request for payment must include a description of the work accomplished by major task, and estimate of the percent completion for individual tasks and the entire water activity in relation to the percentage of budget spent, identification of any major issues and proposed or implemented corrective actions. The last 5 percent of the entire water activity budget will be withheld until final project/water activity documentation is completed.

All products, data and information developed as a result of this grant must be provided to CWCW in hard copy and electronic format as part of the project documentation.

Addenda 1

District 64 Reservoir Company

100 Broadway Plaza - Suite 12 - Phone (970) 522-1378
STERLING, COLORADO 80751

July 10, 2007

Rick Brown
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

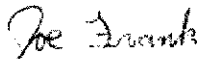
Re: Water Supply Reserve Account 2007 Grant Application for District 64 Reservoir
Company – Ovid Reservoir Phase II Feasibility Study

Dear Rick:

Enclosed is a grant application for \$176,000 from the District 64 Reservoir Company for the Ovid Reservoir Phase II Feasibility Study. The South Platte Basin Roundtable recently approved Tasks 1 thru 3 of the grant application from the South Platte Basin water supply reserve account as authorized by SB 06-179 at its June 12, 2007 meeting. This application has received a thorough review and full discussion by the SPIBRL.

Please contact me at (970) 522-1378 or jmfrank@lspwcd.org if you or the Water Conservation Board has any questions or comments regarding this proposal.

Sincerely,



Joe Frank,
Manager

enc
xc: District 64 Files