

State of Colorado, Colorado Water Conservation Board
Contract Routing Number (CLIN #): 08 P D A 60023
Contract No. 150409
Grant Amount: \$1,500,000

GRANT CONTRACT

THIS CONTRACT, dated this September 11, 2007, 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 Grand County, a county of the State of Colorado, located at the Grand County Courthouse, P.O. Box 264, Hot Sulphur Springs, Colorado 80451, ("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 on March 13, 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 to purchase shares of the Grand County Irrigated Land Company, as part of the Vail Ditch Project. 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 Grantee 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 Grantee by the State which are related to the 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 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. **"Services"** means services performed or tangible material produced or delivered in the performance of services.

BASIC CONTRACT TERMS

2. Scope of Work

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

3. Performance Standard

Grantee 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. Grantee 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 provided and (c) the services and goods shall be free and clear of any liens, encumbrances, or claims arising by or through Grantee or any party related to Grantee.

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, 2008. 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 Grantee, may unilaterally extend this Contract for a period of up to two (2) 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 two (2) 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 the grant award amount 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 \$1,500,000 for the performance of the Services and acquisition of Goods 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 Grantee.
- 5.2. The maximum compensation payable under this Contract, and under any renewal hereof, shall include all Grantee fees, costs and expenses, including but not limited to, labor costs, rent or mortgage payment, travel expenses, overhead, parts, repairs and replacements, mileage, supplies, mailing, testing, communications, reporting, debugging, delivery charges or other operation or Contract expenses.
- 5.3. The State shall not be liable to Grantee for payment of work or services or for costs or expenses incurred by Grantee prior to the "Effective Date".

5.4. The maximum amount available for this grant Contract shall be \$1,500,000 in fiscal year 2008.

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 Grantee the Contract price or rate for Services performed, reviewed, 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. Grantee 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. Incorrect payments by the State to Grantee due to omission, error, fraud, or defalcation shall be recovered from Grantee by deduction from subsequent payments under this Contract or other Contracts between the State and Grantee 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 following addresses:

For the **State**:

Department of Natural Resources, Colorado Water Conservation Board
1313 Sherman Street, Suite 721
Denver, CO 80203
Attention: Rick Brown

For **Grantee**:

Grand County
P.O. Box 264
Hot Sulphur Springs, CO 80451
Attention: Lurline Underbrink-Curran, County Manager

- 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 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 Grantee notice of a good faith dispute. Grantee 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 or Goods does not conform to Contract requirements, the State may require Grantee 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 Grantee to take necessary action to ensure that future performance conforms to this Contract requirements; and
- (b) equitably reduce the payment due to Grantee 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, Grantee 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 Grantee'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 Grantee 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 Grantee 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 Grantee 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 Grantee shall not use, willingly allow, cause or permit such property to be used for any purpose other than the performance of Grantee'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 Grantee 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 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 Grantee 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 Grantee'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 Grantee's performance hereunder.

- 11.3 Grantee also shall permit these same described entities to monitor all activities conducted by Grantee 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 Grantee 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 Grantee 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 Grantee 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 Grantee 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. Grantee 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 Grantee 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 Grantee 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 Grantee or its agents. Defense of any such action shall be the sole responsibility of Grantee.

13. Litigation Reporting

Unless otherwise specifically provided herein, Grantee promptly shall notify the State in the event that Grantee learns of any actual litigation which involves the Services provided or Grantee's performance under this Contract in which Grantee is a party defendant. Grantee, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves the Services provided or Grantee'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, Grantee 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 Grantee's obligations under this Contract.
- 14.2 Additionally, Grantee acknowledges that in governmental Contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, Grantee shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full

performance of Grantee'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 Grantee is uncertain whether the appearance of a conflict of interest may reasonably exist, Grantee 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. Grantee 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 Grantee or any permitted subcontractor shall participate in the selection, or in the award or administration of a Contract or subcontract supported by State 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. Grantee's or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Grantee, potential Contractors, or parties to sub-agreements.

REPRESENTATIONS AND WARRANTIES

15. Warranties. During the term of this Contract and for a period of twelve (12) months following the State's final acceptance under this Contract, Grantee 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. Grantee shall re-perform any Services that fail to satisfy this warranty.
- 15.2 All deliverables delivered under this Contract by Grantee shall meet the specifications set forth in this Contract and **Exhibit A**. Grantee 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

Grantee 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. Grantee 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 Grantee performing services under this Contract shall hold the required licenses or certification, if any, to perform their responsibilities. Grantee, 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

Grantee to properly perform this Contract, shall be deemed to be a default by Grantee and grounds for termination of this Contract by the State.

17. Tax Exempt Status

Grantee 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 Grantee franchise or income related tax. No taxes of any kind shall be charged to the State.

18. Legal Authority

Grantee 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 Grantee to its terms. In any event, Grantee 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 Grantee warrant(s) that such person(s) have full authorization to execute this Contract.

19. Compliance with Applicable Law

Grantee 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. Grantee 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 Grantee 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 Grantee. These remedial actions are as follows:

- (a) Suspend Grantee's performance pending necessary corrective action as specified by the State, without Grantee'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 Grantee's substantial non-performance. Accordingly, the State shall not be liable to Grantee for costs incurred after the State has duly notified Grantee of the suspension of performance under this provision, and Grantee shall promptly cease performance and incurring costs in accordance with the State's directive;
- (b) Withhold payment to Grantee until the necessary Services or corrections in performance or development are satisfactorily completed;
- (c) Request the removal from work on this Contract of employees or agents of Grantee identified by the State, in its reasonable judgment, identifies 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 Grantee, 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 Grantee 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, Grantee shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Grantee shall stop work to the extent specified. Grantee 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 Grantee under this Contract shall, at the option of the State, be delivered by Grantee to the State and shall become the State's property. The State may direct Grantee to assign Grantee's right, title, and interest under terminated orders or subcontracts to the State. Grantee 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, Grantee shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or deliverables satisfactorily delivered 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 Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Grantee during the Contract period which are directly attributable to the uncompleted portion of Grantee'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 Grantee, the Termination for Cause or Default provision shall apply.

22. Termination for Default/Cause

If Grantee 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 Grantee in writing of such non-performance. If Grantee 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 Grantee 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 Grantee, or materials owned by the State in the possession of Grantee, 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, Grantee 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 as cover. Notwithstanding any remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. Upon termination by the State, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. Further, the State may withhold amounts due to Grantee 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 Services. Any action taken by the

State hereunder or pursuant to the paragraph 15 shall not be cause for Grantee to terminate this Contract for default or material breach. If, after termination by the State, it is determined for any reason that Grantee was not in default or that Grantee'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 Grantee 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 insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

23.4 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.

23.5 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

23.6 The Grantee 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 Grantee shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

23.7 Notwithstanding Subsection (a) of this section, if the Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the Grantee 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 Grantee 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 Grantee 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 Grantee:

Name: Lurline Underbrink-Curran

Title: County Manager, Grand County

Address: P.O. Box 264, Hot Sulphur Springs, CO 80451

Telephone: (970) 725-3347

27. Assignment and Successors

Unless otherwise specified in Exhibit A, Scope of Work, Grantee'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 Grantee 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. Grantee alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted work, and performance of any subcontracted Services. Grantee 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 Grantee. 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 Grantee that any such person or entity, other than the State or Grantee, 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 Grantee's failure to perform or comply as required.

33. Modification and Amendment

33.1 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.

33.2 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 Grantee. 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 13 to 14.
- (b) Remaining pages of the Contract, pages 1 to 12.
- (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(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

Grand County _____

By 
For Executive Director, Department of Natural Resources

84-6000769
FEIN

Date 9-21-07


County Commissioner

Date 9/11/07

LEGAL REVIEW:
Attorney General, John W. Suthers


By W/A

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By

County Clerk

(Place corporate seal here, if available)

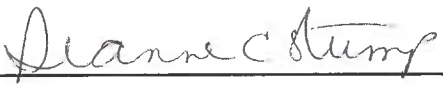

Candice Sypher - Chief Deputy

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
Leslie M. Shenefelt

By



Date

11-13-07

Exhibit A

Scope of Work

WATER ACTIVITY NAME -

Vail Ditch Project

GRANT RECIPIENT –

Grand County

FUNDING SOURCE -

Statewide Account - \$1,500,000.00

BACKGROUND

The Vail Ditch Project is a structural and nonstructural water activity that will provide new water supplies to the headwaters areas of the Colorado and/or Fraser Rivers near Granby and Winter Park. The project will supply water for environmental and/or municipal needs in Grand County.

Grand County is the contracting entity for receipt of the funds to acquire water rights via purchase of shares of the Grand County Irrigated Land Company. Grand County and the following entities:

Winter Park Water and Sanitation District,
Grand County Water and Sanitation District No.1,
Town of Winter Park,
Town of Granby, and
Colorado River District Water Projects Enterprise

have formed the Grand County Water Coalition to complete negotiations and project logistics. Prior to closing on the acquisition of the water rights the Coalition will form a separate entity to hold title to the shares and manage the water assets. These entities are providing an estimated \$1,500,000 in matching funds to secure the water rights and conduct project logistics.

Recent water planning efforts indicate that the Fraser River headwaters are facing critical water needs. The area needs new water supplies for both consumptive and non-consumptive demands. Local growth is booming and the water districts and Towns need certainty in their future water supplies. At the same time, Denver Water and the Municipal Subdistrict of the Northern Colorado Water Conservancy District are looking to firm-up supplies from their respective Moffat and Windy Gap transmountain supplies. In the midst of these pressures, water flow in the streams will more often approach critically low levels.

The Vail Ditch (Meadow Creek and Strawberry Creek) water supplies have a strategic position. The Vail Ditch diverts and stores water in Meadow Creek Reservoir, the northern most extension of the collection system used to convey water through Denver's Moffat Tunnel. With the use of Denver's system, the Meadow Creek and Strawberry Creek supplies can be moved to the uppermost Fraser River, benefiting stream flow and human uses from Winter Park on downstream. However, at this time it is not known in detail how the water will ultimately be put to beneficial use. Depending on the outcome of complex negotiations, regulatory processes, and physical supply analysis the water ultimate uses are likely to benefit the Fraser and/or Colorado River systems. From a regional point of view, Grand County believes the new uses will be beneficial to both the environment and municipal uses within Grand County.

Summary of Activities Associated with the Water Rights Purchase but not Subject to This Contract are Summarized Below for Informational Purposes.

1. Grand County Irrigated Land Company Issues

- a. Objective. Initiate a process for working with the Company that will determine the likely range of impacts from the Project and develop measures to prevent injury.
- b. Timeline. Begin early 2007. It is likely that these efforts will continue for at least one year.
- c. Activities. Technical and legal evaluations focusing on water use patterns, supplies, facilities, and operations.
- d. Participants. Project Sponsors, and ditch company shareholders.

2. Granby Mesa Hydrogeology Evaluation

- a. Objective. Evaluate and characterize the surface water and groundwater interactions in the area of Granby Mesa.
- b. Timeline. Begin February 2007 and complete by November 2007.
- c. Activities. Complete field work to map the nature and extent of the shallow groundwater aquifer on Granby Mesa.
- d. Participants. Project Sponsors, Grand County, shareholders, well permit holders.

3. Ditch Company Cooperative Studies

- a. Objective. Determine how the Vail Ditch supplies can be put to new uses without causing injury to other shareholders.
- b. Timeline. Begin 2007
- c. Activities. Coordinate water supply planning
- d. Participants. All

4. Denver Water Issues

- a. Objective. Determine cooperative solutions for Grand County's and Denver's water supply interests in the Fraser River which results in agreement by Denver Water to operate its system to enhance flows in the upper Fraser River using Vail Ditch water.
- b. Timeline. Ongoing
- c. Activities. Various technical and legal activities including discussions with City of Englewood and Climax regarding operational interests in the Cabin-Meadow Creek system.
- d. Participants. All

5. Water Rights Change Legal and Technical

- a. Objective. Utilizing all relevant information, develop the necessary legal and technical data to complete the water rights change to new consumptive and/or nonconsumptive uses.
- b. Timeline. Ongoing, utilizing information collected in activities 1-5 above.
- c. Activities. Various legal and technical.
- d. Participants. All

SUMMARY OF TASKS

Task 1 - Water Rights Purchase

The Vail Ditch Project will involve purchasing shares of the Grand County Irrigated Land Company (GCILC) (i.e., shares of a mutual ditch company) which operates the Vail Ditch Irrigation System. The shares are held by a private party who is a willing seller. The Project contemplates acquiring approximately 20% of GCILC. GCILC water rights include the following: Headgate #1 diverts from Meadow Creek, this diversion is first in priority on Meadow Creek for approximately 65 cfs of direct diversion. The Headgate #2 on Strawberry Creek can divert all of GCILC's Meadow Creek supplies and holds a 63 cfs right (fourth priority) on that tributary. In addition, GCILC has a contractual right to the first 850 AF of storage in Meadow Creek Reservoir. The rights are senior to the "Cameo" water rights in the Grand Valley. State Engineer's records indicate consistent diversion and beneficial use.

An independent appraisal of the value of 85.5 shares of Grand County Irrigated Land Company shares was completed by Leonard Rice and Associates. In performing the valuation it was estimated that the value can be based on a historic consumptive use range between 195-265 acre-feet. The value of this consumptive use water exceeds the

\$1,500,000.00 provided under this contract and the remaining value/cost of acquiring the water will be provided by the project participants.

The estimated closing date for the acquisition is February 11, 2008. Request for payment from the State of Colorado must be at least 30 days prior to the closing date.

Deliverable – A copy of the final purchase and sale agreement and documentation of closing and acquisition of the above reference shares of GCILC will be provided to the State of Colorado, Colorado Water Conservation Board within 30 days of closing.

SCHEDULE

September 2007- February 2008 – Complete the activities needed to prepare for water rights purchase and closing as outlined above.

PAYMENT

Request for payment must be made a minimum of 30 days prior to closing. The State of Colorado will provide payment to Grand County in the amount of \$1,500,000.00 for the sole purpose of purchasing the water rights described in this Exhibit A.

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

REFUNDS

Grant funds paid to Grand County for the purchase of the water rights described herein and which are not spent or obligated for that purpose by the expiration date of this contract will be refunded to the State of Colorado within 90 days.