

STATE OF COLORADO
DEPARTMENT OF NATURAL RESOURCES
GRANT AGREEMENT
with
San Juan Water Conservancy District

1. PARTIES

THIS GRANT AGREEMENT (hereinafter called "Grant") is entered into by and between the San Juan Water Conservancy District, a Colorado Special District (hereinafter called "Grantee" or "Contractor"), and the STATE OF COLORADO acting by and through the Colorado Water Conservation Board (hereinafter called the "State" or "CWCB").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the State Controller or its designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay or reimburse Grantee for any performance hereunder or be bound by any provision hereof prior to the Effective Date.

3. RECITALS**A. Authority, Appropriation, And Approval**

Authority for the agency entering into this contract arises from Colorado Revised Statutes (CRS) 39-29-109(1)(a)(III), 37-75-102 and 37-75-104(2)(c) and Senate Bill 06-179 adopted by the 2006 General Assembly. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies. Senate Bill 06-179 created the Water Supply Reserve Account (hereinafter called "Account"). The legislation directs the State Treasurer to transfer 42 million dollars over a five-year period from the Operational Account of the Severance Tax Trust Fund to the Account. Any balance remaining in the Account at the end of any fiscal year shall remain in the Account; except that the unencumbered and unexpended balance of the Account shall revert to the Operation Account of the Severance Tax Trust Fund on June 30, 2011.

B. Bid Exemption

This Grant is exempt from the competitive bid requirements of the State's Procurement Rules.

C. Purpose and State's Role

The State administers and disburses funds made available to the State for eligible water activities, as identified in Senate Bill 06-179. Senate Bill 06-179 created the Account, which helps to address Colorado's future water needs through grants and loans for water supply and environmental projects and/or studies. Requests for monies from the Account must be approved by the Basin Roundtables established under CRS 37-75-104. Senate Bill 06-179 is very specific regarding eligibility requirements, and criteria and guidelines were developed from the direction provided in the legislation. Once approved by the Basin Roundtable the request is forwarded to the CWCB to evaluate and make decisions regarding funding.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Grant

"Grant" means this Grant for Goods and Services, its provisions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated pursuant to State Fiscal Rules and Policies.

B. Goods

"Goods" means any physical item produced or manufactured and acquired by the State either separately or in conjunction with the Services rendered hereunder.

C. Services

"Services" means services performed or tangible material produced or delivered in the performance of services.

5. TERM and EARLY TERMINATION

A. Initial Term-Work Commencement

The initial term of this Grant shall commence on the Effective Date, and terminate on December 31, 2025, unless sooner terminated as provided for below, herein. Performance of the Parties' respective obligations under this Grant shall begin as soon as practicable following commencement of the initial term.

B. State's Option to Extend

At its sole discretion, the State, upon written notice to Grantee, may unilaterally extend the term of this Grant for a period of up to three months under the same terms and conditions as the original Grant, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate on the later of the end of the three month period or when a replacement Grant is signed by the Colorado State Controller or its designee.

C. Early Termination

This Grant is subject to early termination in accordance with the provisions of the Remedies section below herein.

6. SCOPE OF WORK

Grantee shall provide Services and Goods (if applicable), and perform its other obligations as described in **Exhibit A, Scope of Work**.

7. GRANTEE'S COMPENSATION

Grantee shall be compensated in the following amounts and manners and subject to return of any unexpended funds:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State shall be \$1,000,000, as determined by the State from available funds. The State shall not be liable to pay or reimburse Grantee for any performance hereunder prior to the Effective Date.

B. Payment

Payment shall be made to Grantee within 45 days of the Effective Date unless the State Controller has approved advance payment of funds hereunder. All payments are subject to the general Remedies section of this Grant.

i. Method and Time

Grantee shall periodically submit invoices to the State in the form and manner approved by the State and shall attach timesheets and receipts. Grantee shall submit invoices within 60 days after the end of the period for which payment is requested, and final billings on this contract must be received by the State within 60 days after termination hereof. The State shall make payment in full with respect to each invoice acceptable to it within 45 days of receipt thereof, after which uncontested unpaid amounts shall bear interest at a rate of one percent per month. Interest shall not arise if a good faith dispute exists as to the State's obligation to pay all or a portion of an invoice. Grantee shall invoice the State separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate.

ii. Available Funds-Contingency-Remedies

The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. Therefore, Grantee's compensation is contingent upon the continuing availability of state appropriations as provided in §2 of the Colorado Special Provisions, set forth below herein. If federal appropriations or grants fund this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this contract shall only be made from available funds encumbered for this Contract, and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If state 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 in accordance with the Termination for Cause subsection of the Remedies section of this Contract. All payments are subject to the general Remedies section of this Contract.

iii. Erroneous Payments-Remedies-

Payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments may, at the State's sole discretion, be recovered from Grantee by deduction from subsequent payment under this contract or other contracts between the State and Grantee, or by other appropriate methods.

C. Unexpended Funds

i. Return

Any funds provided by the State hereunder not expended upon termination of this Grant shall be returned to the State within 15 days.

ii. Remedy.

If Grantee fails to do so, the State may offset the amount not returned against any other unpaid funds the State owes Grantee under any other grant, contract, or obligation between the Parties.

iii. Availability of Funds-Contingency.

The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. Therefore, Grantee's compensation is contingent upon the continuing availability of state appropriations as provided in §2 of the Colorado Special Provisions, set forth below herein. If federal appropriations or grants fund this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such federal funds.

D. Remedy.

If state funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate the Grant in whole or in part without further liability in accordance with the Termination for Cause subsection of the Remedies section of this Grant.

E. Return of Grant Funds

All of the Account funds disbursed to the Grantee shall be applied to the purchase of the Running Iron Ranch and related Weber Properties required for the development of the Dry Gulch Project, as described in Exhibit A. Should construction and/or notice to proceed for the Dry Gulch Project not occur by 2025, the Grantee shall repay/donate to the CWCBC (the State) the principal amount of \$1 million, together with interest thereon at the rate of 3.5% compounded annually and calculated from the date of disbursement. The time to perform the construction and/or notice to proceed for the Dry Gulch Project under this provision (7.E) may be extended upon the mutual agreement of the parties hereto by formal amendment.

8. REPORTING-NOTIFICATION

Reports and analysis required under this section shall be in accordance with procedures and in such form as prescribed by the State.

A. Performance, Progress, Personnel, and Funds

Unless waived in writing by the State, Grantee shall submit reports to the State upon termination of this Grant and quarterly reports before termination on or within 10 days of March 31, June 30, September 30, and December 31 and such reports shall analyze its performance under this Grant and specify progress made for each of Grantee's obligations hereunder. Such reports shall also provide details regarding staffing status, labor hours provided, fund expenditures, and matching funds raised.

B. Litigation

Within 10 days after being served with any pleading in a legal action at a court or administrative agency related to this Grant, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative in accordance with the Notice section of this Grant.

C. Remedies

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this section may result in the delay of payment of funds and/or termination under the Remedies section of this Grant.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials, electronic media files or communications, which pertain in any manner to delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records for (a) a period of three years after the date this Grant is completed or terminated or final payment hereunder, whichever is later, or (b) for such further period as may be necessary to resolve any pending matters, or (c) until an audit has been completed and its findings have been resolved

B. Inspection

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 Grant and for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder.

C. Monitoring

Grantee also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other. NRCS and CSCB will monitor district service level provided principally through the NRCS performance recording system. All such monitoring shall be performed in a manner that will not unduly interfere with Grantee's performance hereunder.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee acknowledges that it may become privy to confidential information in connection with its performance hereunder, including, but not limited to state records, personnel records, and information concerning individuals.

A. Confidentiality

It shall be Grantee's responsibility to keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information to the same extent applicable to the State. Any request or demand for information in the possession of Grantee made by any third party shall be immediately forwarded to the State's principal representative for resolution.

B. Notification

Grantee shall notify its agent, employees, sub-Grantees and assigns who may come into contact with confidential information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access information.

C. Use, Security, and Retention

No confidential 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 Grant and as approved by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as set forth in this Grant and approved by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information for any reason may be cause for legal action against Grantee or its agents by third parties, and defense of any such action shall be Grantee's sole responsibility.

11. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

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 Grant (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 or termination of this Grant. The State's

exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

12. CONFLICT OF INTEREST

A. Definition and Appearance

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 hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder.

B. Specific Prohibitions

Grantee's and sub-grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Grantee, potential Grantees, or parties to sub-agreements. Grantee's employees, officers, and agents or any permitted sub-grantee shall not participate in the selection, award, or administration of this Grant or sub-grant if a conflict of interest or the appearance thereof would occur. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award, to-wit:

- i. an employee, officer or agent;
- ii. any member of the employee's immediate family;
- iii. an employee's partner; or
- iv. an organization, which employs, or is about to employ, any of the aforementioned.

C. Determination by State-Default

If Grantee is uncertain whether the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be considered a material default of this Grant.

D. Code of Performance

Grantee and sub-grantees, if any, shall maintain a written code of standards governing the performance of their respective employees, agents, and contractors engaged in the award and administration of this Grant. Grantee shall provide a copy of such code to the State within 10 days of the State's written request therefore.

13. WARRANTIES

A. Services and Goods

During the term of this Grant and for a period of twelve months following the State's final acceptance under this Grant, Grantee, as part of Grantee's obligations hereunder and at no additional cost to the State, warrants, as follows:

i. Specifications

All Services performed and all Goods delivered shall meet the specifications set forth in this Grant and are acceptable to the State.

ii. Claims

There are not any pending or threatened suits, claims, or actions of any type with respect to the services or goods provided, and

iii. Liens

All Services performed and Goods provided shall be free and clear of any liens, encumbrances, or claims arising by or through Grantee or any party related to Grantee.

B. Standard And Manner Of Performance

Grantee shall perform the Services and deliver the Goods 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. All services, consumables, products, and materials used in performance of the Services shall be

of good quality and/or free from faults and defects. Grantee shall perform its obligations hereunder in the sequence and manner set forth in the **Scope of Work**.

C. Inspection and Verification

The State reserves the right to inspect all Services and Goods provided hereunder at all reasonable times and places to verify that they conform to the requirements of the **Scope of Work**.

D. Remedies

If the Grantee breaches any of its warranties, the State may require Grantee to promptly perform the Services or provide Goods again in conformity with Grant requirements, at no additional cost to the State. If such breaches cannot be, or are cured, the State may, in addition to any other remedies provided or in this Grant, require Grantee to take necessary action to ensure that future performance conforms to the provisions of this Grant; and equitably reduce the payment due to Grantee to reflect the reduced value of the Services performed or Goods provided. Any reduction, delay or denial of payment under this provision shall not constitute a breach of Grant or default by the State.

14. REPRESENTATIONS

A. Licenses, Permits, Etc.

Grantee warrants that as of the Effective Date it has, and that all times during the term hereof it will have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform the Services and/or deliver the Goods specified herein. Additionally, all employees of Grantee performing services under this Grant shall hold the required licenses or certification, if any, to perform their duties. 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 Grant, shall be deemed to be a default by Grantee and grounds for termination for cause of this Grant.

B. Legal Authority

Grantee warrants that it possesses the legal authority to enter into this Grant 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 Grant and to bind Grantee to its terms.

15. Tax Exempt Status

The State represents that it is not liable for any sales, use, excise, property or other taxes imposed by any federal, state or local governmental authority, nor for any Grantee franchise or income related tax. No taxes of any kind shall be charged to the State.

16. INSURANCE

Grantee shall obtain, and maintain insurance as specified below herein at all times during the term hereof, to wit:

A. Worker's Compensation

Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the Grantee's employees acting within the course and scope of their employment.

B. General Liability

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 Grantee 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

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.

D. Additional Insured

The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

E. Primacy

Coverage required of the Grant shall be primary over any insurance or self-insurance program carried by the State.

F. Cancellation

The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

G. Subrogation Waiver

All insurance policies in any way related to the Grant and secured and maintained by the Grantee as required herein shall include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. Reputable Insurers

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

I. Certificates

Grantee shall provide certificates evidencing insurance coverage required hereunder to the State within seven business days of the Effective Date or before commencement of Grantee's performance hereunder, whichever occurs first. No later than 15 days prior to the expiration date of any such coverage, Grantee shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term hereof, 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.

J. Public Entity

Notwithstanding subsection A, above, if Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §CRS 24-10-101, et seq., as amended ("Act"), Grantee may at all times during the term of this Grant 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, Grantee shall show proof of such insurance satisfactory to the State.

17. DEFAULT-BREACH

A. Defined

In addition to any breaches or defaults specified in other sections of this Contract, including, but not limited to the Special Provisions, the failure of either Party to perform any of its obligations hereunder entirely, partially, or in satisfactory manner, including, but not limited to, performing them in a timely manner, constitutes a default or breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar legislation, by or against the Grantee, or the appointment of a receiver or similar officer for the Grantee or any of its property, and such proceedings or appointments are not vacated or fully stayed within 20 days after the institution or occurrence thereof; shall also constitute a default.

B. Notice and Cure Period

In the event of a default or breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in the Notice section of this Grant. If such default or breach is not cured within 30 days of receipt of written notice or cure of the default or breach has not begun within said period or has not been pursued with due diligence, the aggrieved Party may terminate this Grant by providing written notice thereof, given in the manner provided for in the Notice section of this Grant, effective 30 days from the date the notice of termination was received.

18. REMEDIES

If Grantee is in default under any provision of this Grant including, but not limited to the Special Provisions, the State shall have all of the remedies listed in this section in addition to all other remedies set forth in other sections of this Grant. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Early Termination for Convenience

This Grant is subject to early termination in accordance with the provisions of the Remedies section herein. The State may, in its sole discretion terminate this Grant in whole or in part, for the State's convenience. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. This subsection shall not apply and the Termination for Cause or Default provision shall apply if this Grant is terminated for cause or Grantee's default

i. Method and Content.

The State shall give written notice of termination to Grantee in accordance with the notice provisions hereof specifying the effective date of termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights.

To the extent specified in the termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall also terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Services and Goods not terminated by the termination notice and may incur obligations as are necessary to do so within the Grant terms. In the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subcontracts. Upon termination, 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. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Grantee under this Grant or materials owned by the State in the possession of Grantee shall, at the option of the State, be delivered by Grantee to the State and shall become the State's property. Grantee shall complete and deliver to the State all Services and Goods not terminated by the termination notice and may incur obligations as are necessary to do so within the Grant terms.

iii. Payments.

If this Grant is terminated by the State for convenience, Grantee shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or the Goods satisfactorily delivered or installed bear to the total Services and Goods covered by this Grant, less payments previously made. Additionally, if the Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) it incurred that are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that reimbursement shall not exceed the maximum amount payable to Grantee.

B. Termination for Cause and/or Default

If Grantee fails to perform any its obligations hereunder with such diligence as is required to ensure their completion in a timely manner and such non-performance continues following notice, the State may notify Grantee in writing of such non-performance and specifying a time to cure it. If Grantee thereafter fails to promptly cure such non-performance within the time specified, the State, may at its option, terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder.

i. Method and Content.

The State shall give written notice of termination to Grantee in accordance with the notice provisions hereof specifying the effective date of termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights.

To the extent specified in the termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall also terminate

outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within the Grant terms. In the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subcontracts. Upon termination, 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. In the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subcontracts. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Grantee under this Grant shall, at the option of the State, be delivered by Grantee to the State and shall become the State's property.

iii. Payments.

The State shall only reimburse Grantee for accepted Services and Goods received up to the date of termination. If, after termination, it is determined 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 Grant had been terminated for convenience, as described above herein.

iv. Damages and Withholding.

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any default under this section 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. 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 goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Services or substitute Goods as cover.

C. Remedies Not Involving Termination

The State, its sole discretion may exercise the following remedies in addition to its other remedies, to-wit:

i. Suspend Performance

The State suspend Grantee's performance pending necessary corrective action as specified by the State without the entitling Grantee to adjustment in price/cost or schedule; and/or

ii. Withhold Payment

Withhold payment to the Grantee until corrections in services are satisfactorily completed and /or acceptable goods are provided; and/or

iii. Deny Payment

Deny payment for those services not performed and/or not provided and which due to circumstances caused by the Grantee cannot be performed, or if performed, would be of no value to the State; provided any denial of payment must be reasonably related to the value of work or performance lost to the State; and/or

iv. Removal

Demand removal of Grantee's employees, agents, or subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or not in the State's best interest.

D. Force Majeure

Neither Grantee nor the State shall be liable to the other for any delay in, or failure of performance of, any provision, 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 herein 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.

19. NOTICES

All written notices required to be given hereunder shall be hand delivered or sent by certified or registered mail to the principal representative at the address 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. Unless otherwise provided for herein, all notices shall be effective upon receipt. In addition to hard-copy written notices, notice may also be sent by email to the email addresses, if any, set forth after the mailing addresses set forth below. The individuals listed below are the principal representatives of the respective Parties. For the purposes of this Grant, the official representative(s) and addresses of the Parties are:

i. State:

Rick Brown	
Colorado Water Conservation Board	
1313 Sherman Street	
Room 721	
Denver, CO 80203	
(303)866-3514	

ii. Grantee:

Jack DeLange	
San Juan Conservancy District	
P.O. Box 4632	
Pagosa Springs, CO 81157	
(970)731-2691	

20. MISCELLANEOUS

A. Binding Effect

All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the heirs, legal representatives, successors, and assigns of the respective Parties.

B. Modification

All modifications however described (including, but not limited to, changes, amendments, alterations, etc.) to the provisions of this Grant shall be ineffective unless embodied in a writing subscribed to by the Party against whom enforcement is sought.

C. Entire Understanding

This Grant constitutes the entire understanding of the Parties and all prior representations and understandings, oral or written, are merged herein, and are of no further effect.

D. Severability

If any part of this Grant is declared invalid by a court of competent jurisdiction for any reason, the remaining provisions shall remain in full force and effect to the extent possible.

E. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

F. Waiver

The waiver by either Party of any right or remedy they have hereunder, whether explicitly or by lack of enforcement, shall not constitute a continuing waiver of such right or remedy, but shall be limited to that particular instance.

G. Assignment-Novation

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted, and novations shall not occur, without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting, or novations without such consent shall be void. All subcontracts to which the State consents shall be subject to the provisions hereof. Grantee shall be solely responsible for all aspects of subcontracting arrangements and performance.

H. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

I. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provision of this Grant requiring continued performance, compliance, or effect beyond the termination, shall survive and shall be enforceable by the applicable Party if the other Party fails to perform or comply as required.

J. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and the Parties hereby agree that venue shall be proper in the City and County of Denver.

K. Governmental Immunity

Notwithstanding any other provision to the contrary, nothing herein constitutes 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., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

L. Order of Precedence

In the event of conflicts or inconsistencies in the provisions of this Grant and/or between it and any exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions;
- ii. Remaining pages of the Grant; then
- iii. Exhibits, if any.

21. COLORADO SPECIAL PROVISIONS

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

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This Grant 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.** Grantee 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 Grantee, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Grant.
[Applicable Only to Intergovernmental Contracts] No term or condition of this Grant 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 GRANTEE. 4 CCR 801-2.** Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be or shall be deemed to be an agent or employee of the state. Grantee 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 Grant. Grantee acknowledges that Grantee and its employees are not entitled to unemployment insurance benefits unless Grantee or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Grantee shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Grantee 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.** Grantee 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 Grant. Any provision of this Grant, 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 Grant, to the extent that this Grant is capable of execution. At all times during the performance of this Grant, Grantee 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 Grant shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies that, for the term of this Grant and any extensions, Grantee has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Grant, including, without

limitation, immediate termination of this Grant 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 Grant.

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. Grantee certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant or enter into a Grant with a subcontractor that fails to certify to Grantee that the subcontractor shall not knowingly employ or grant with an illegal alien to perform work under this Grant. Grantee 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). Grantee 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 Grantee shall be liable for actual and consequential damages. Grantee, 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 Grant.

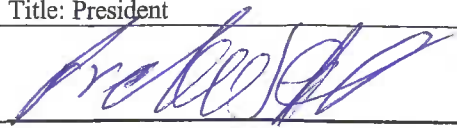
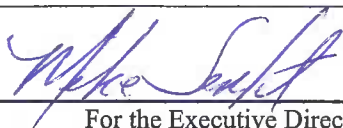
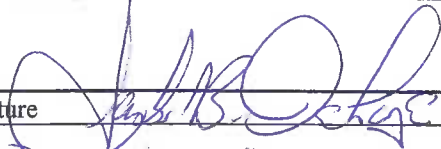

Revised October 25, 2006

Effective Date of Special Provisions: August 7, 2006

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THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*Persons signing on behalf of Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect and that they are personally for any and all damages the State may incur for any errors in such representation.

GRANTEE:	STATE OF COLORADO
Name: Fred Schmidt	Bill Ritter, GOVERNOR
Title: President	
	By: 
*Signature	For the Executive Director
Date: December 10, 2007	Date: 12/11/07
FEIN: 84-1088817	Department of Natural Resources/ Colorado Water Conservation Board
Name: Jack DeLange	LEGAL REVIEW:
Title: Secretary	
	By: 
*Signature	ATTORNEY GENERAL
Date: December 10, 2007	Date:

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state Contracts. This Grant is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Grantee is not authorized to begin performance until the Grant 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: 12/12/07

Exhibit A

Scope of Work

WATER ACTIVITY NAME -

Dry Gulch Reservoir – Land Acquisition

GRANT RECIPIENT –

San Juan Water Conservancy District

FUNDING SOURCE -

Statewide Account - \$1,000,000.00

BACKGROUND

The San Juan Water Conservancy District (District) was formed in 1987 in accordance with Colorado Revised Statutes, Sections 37-45-109(2.5) to 37-45-141, and the general election laws of the State of Colorado. The purpose of the District is to conserve, maximize and utilize the water resources of the San Juan River and its tributaries, and to ensure that properties within the District will be benefited by this purpose.

The District encompasses a significant portion of Archuleta County, including the Town of Pagosa Springs, and nearly all of the Pagosa Area Water and Sanitation District (PAWSD). Archuleta County and the Town of Pagosa Springs area are one of the fastest growing areas of the State of Colorado. The 2004 Statewide Water Supply Initiative, which was completed by the Colorado Water Conservation Board, identified the need to develop additional water supplies to help address future population growth. The Dry Gulch Reservoir was identified as an option to meet future water supply needs in the area.

Given the rapid rate of development and escalating land prices the District and PAWSD have determined that it is prudent to secure scarce locations for potential water storage and have identified the Dry Gulch Reservoir site as the most viable and desirable location for constructing a water supply reservoir.

Ultimately, construction of the Dry Gulch Reservoir project will likely involve transactions with multiple land owners and the United States Forest Service, and will be jointly pursued by both the District and PAWSD. Funding provided under this contract is for a portion of the overall project (acquisition of the Running Iron Ranch and Weber family properties as described in greater detail below) and funding will be provided to the San Juan Water Conservancy District.

SUMMARY OF TASKS

Task 1 – Land Acquisition

The Dry Gulch Land Acquisition Project involves the purchase of approximately 666 acres of land which is commonly known as the Running Iron Ranch. Additional Private land and ultimately some portion of United States Forest Service Land will be needed to allow construction of a reservoir with up to 35,000 acre-feet of storage capacity. Funding provided under this contract will be to assist in the acquisition of the private land known as the Running Iron Ranch and related Weber properties. The legal description of the land is summarized below:

TRACT I:

(EASTERN PARCEL)

The NW1/4SW1/4, E1/2SW1/4, SW1/4SW1/4, Lots 3 and 4, SW1/4NW1/4 in Section 4; the E1/2SE1/4, a portion of the SE1/4NE1/4, a portion of the SW1/4NE1/4 and a portion of the W1/2SE1/4 in Section 5; the NE1/4NE1/4 and a portion of the NW1/4NE1/4 in Section 8; the NE1/4NW1/4, NW1/4NW1/4, S1/2NW1/4 in Section 9, all in Township 35 North, Range 1 West, N.M.P.M. in Archuleta County, Colorado, being described as follows, to-wit:

BEGINNING at the Northwest Corner of Section 4;

Thence North 89° 20' 57" East, 1339.39 feet along the Northerly line of said Section 4;

- " North 89° 13' 37" East, 1337.09 feet along the said Northerly line to the North 1/4 corner of Section 4;
- " South 01° 39' 41" East, 1220.81 feet to the Center-North 1/16 corner of Section 4;
- " North 88° 58' 22" West, 1310.75 feet to the Northwest 1/16 corner of Section 4;
- " South 02° 55' 00" East, 1251.36 feet to the Center-West 1/16 corner of Section 4;
- " South 87° 21' 25" East, 1283.95 feet to the Center 1/4 corner of Section 4;
- " South 01° 35' 51" East, 2539.34 feet to the South 1/4 corner of Section 4, also being the North 1/4 corner of Section 9;
- " South 00° 10' 55" West, 2658.87 feet to the Center 1/4 corner of Section 9;
- " North 84° 32' 26" West, 2518.49 feet to the West 1/4 corner of Section 9;
- " North 01° 08' 19" East, 1344.14 feet;
- " South 87° 47' 30" West, 1633.19 feet;
- " North 00° 11' 09" East, 1187.94 feet;
- " South 89° 01' 34" East, 332.11 feet;
- " North 00° 13' 45" East, 188.18 feet;
- " South 89° 44' 33" West, 1264.78 feet to the easterly right-of-way of U.S. Highway 160;
- " North 19° 17' 02" East, 696.52 feet along said right-of-way of U.S. Highway 160;
- " South 78° 18' 01" East, 22.04 feet along said right-of-way of U.S. Highway 160;
- " North 18° 32' 44" East, 708.29 feet along said right-of-way of U.S. Highway 160;
- " North 18° 40' 46" East, 1197.11 feet along said right-of-way of U.S. Highway 160;
- " North 28° 05' 01" East, 183.62 feet along said right-of-way of U.S. Highway 160;
- " North 32° 59' 06" East, 112.23 feet along said right-of-way of U.S. Highway 160;
- " North 25° 09' 22" East, 316.75 feet along said right-of-way of U.S. Highway 160;
- " North 27° 57' 00" East, 346.90 feet along said right-of-way of U.S. Highway 160;
- " North 47° 26' 01" West, 162.97 feet along said right-of-way of U.S. Highway 160;
- " North 18° 40' 00" East, 187.80 feet along said right-of-way of U.S. Highway 160 to the north line of the SE1/4NE1/4 of said Section 5;
- " North 87° 49' 30" East, 1073.35 feet along the north line of the SE1/4NE1/4 of said Section 5 to the North 1/16 corner common to Sections 4 and 5;
- " North 04° 20' 11" West, 1150.96 feet along the west line of said Section 4 to the point of beginning.

AND

(WESTERN PARCEL)

A tract of land located in a portion of the SW1/4SE1/4 and the SE1/4SW1/4 in Section 5, Township 35 North, Range 1 West, N.M.P.M., in Archuleta County, Colorado, being described as follows, to wit:

BEGINNING on the south line of the SE1/4SW1/4 of said Section 5, from whence the South 1/4 corner of said Section 5 bears North 82° 20' 54" East, 57.37 feet;

Thence South 82° 20' 54" West, 1269.35 feet along said south line to the centerline of the San Juan River;

- " North 09° 19' 43" East, 112.15 feet along said centerline;
- " North 29° 18' 58" East, 141.22 feet along said centerline;
- " North 37° 27' 41" East, 250.10 feet along said centerline;
- " North 52° 54' 19" East, 239.57 feet along said centerline;
- " North 57° 19' 28" East, 506.67 feet along said centerline;
- " North 48° 08' 47" East, 236.96 feet along said centerline;
- " North 89° 51' 49" East, 518.66 feet to the westerly right-of-way of U.S. Highway 160;
- " South 19° 17' 02" West, 890.66 feet along said right-of-way to the point of beginning.

LESS AND EXCEPT therefrom, all that portion of the above described tract of land lying and being Easterly of the centerline and Westerly of the high water line of the San Juan River.

TRACT II:

A fraction of the NW1/4NE1/4 and the NE1/4NW1/4 of Section 8, Township 35 North, Range 1 West, N.M.P.M., in Archuleta County, Colorado, being described as follows, to wit:

BEGINNING at the Northeast corner of said NW1/4NE1/4;

Thence South 00° 13' 45" West, 188.18 feet along the easterly line of said NW1/4NE1/4 to the centerline of Dry Gulch;

- " North 89° 01' 34" West, 332.11 feet along said centerline;
- " North 00° 11' 09" East, 13.72 feet along said centerline;
- " North 55° 48' 19" West, 28.36 feet along said centerline;
- " South 81° 41' 45" West, 78.01 feet along said centerline;
- " South 54° 56' 46" West, 78.30 feet along said centerline;
- " North 71° 22' 31" West, 187.19 feet along said centerline;
- " South 84° 33' 25" West, 144.22 feet along said centerline;
- " North 87° 28' 10" West, 154.82 feet along said centerline;
- " South 61° 13' 45" West, 66.35 feet along said centerline;
- " South 77° 19' 40" West, 137.60 feet along said centerline;
- " South 74° 27' 58" West, 224.93 feet along said centerline to the easterly right-of-way of U.S. Highway 160;
- " North 23° 18' 04" East, 297.08 feet along said right-of-way to the north line of said NW1/4NE1/4;
- " North 89° 44' 33" East, 1264.78 feet along said north line to the point of beginning.

LESS AND EXCEPT therefrom, all that portion of the above described tract of land lying and being Northerly of the centerline and Southerly of the Northerly edge of Dry Gulch.

TRACT III:

The SE1/4NE1/4 of Section 8, Township 35 North, Range 1 West, N.M.P.M., in Archuleta County, Colorado, being described as follows, to-wit:

BEGINNING at the West 1/4 corner of Section 9 in Township 35 North, Range 1 West, N.M.P.M.;
Thence South 87° 31' 51" West, 1280.62 feet along the south line of said SE1/4NE1/4;
" North 00° 13' 45" East, 1348.90 feet along the west line of said SE1/4NE1/4;
" North 87° 47' 30" East, 1301.71 feet along the north line of said SE1/4NE1/4;
" South 01° 08' 19" West, 1344.14 feet along the east line of said SE1/4NE1/4 to the point
of beginning.

An independent appraisal of the land was performed by Walters and Mullins, Incorporated which indicates that the current market value of the subject 666 acres of land is substantially in excess of the requested grant amount. The value of the subject land exceeds the \$1,000,000.00 provided under this contract and the remainder of the land cost will be provided by the District and PAWSD.

The estimated timeframe for purchase, title transfer and closing is December 28, 2007. Request for payment of up to \$1,000,000.00 must be made to the State of Colorado a minimum of 14 days prior to the property closing date.

Deliverable

A copy of the final purchase agreement/contract must be provided prior to request for payment. Documentation of property closing and land acquisition must be provided to the State of Colorado, Colorado Water Conservation Board within 30 days of closing.

SCHEDULE

September 2007 to January 2008 - Finalize property negotiations; arrange project financing, and complete purchase of the subject property.

PAYMENT

Request for payment must be made a minimum of 14 days prior to closing. The State of Colorado will provide payment to the San Juan Water Conservancy District in the amount of \$1,000,000.00 for the sole purpose of purchasing the property 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.