

State of Colorado, Colorado Water Conservation Board
Contract Routing Number (CLIN #): 09 PDA 00063
Contract No. 150430
Grant Amount: \$100,540

GRANT CONTRACT

THIS CONTRACT, by and between the State of Colorado, for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board, located at 1313 Sherman Street, Suite 721, Denver, Colorado 80203, (the "**State**"), and the South Metro Water Supply Authority, located at 8400 East Prentice Avenue, Suite 1500, Greenwood Village, CO 80111 ("**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 at its July 2008 meeting;
- D. Authority for the agency entering into this Contract arises from Colorado Revised Statutes (CRS) 39-29-109(2)(c), 37-75-102 and 37-75-104(2)(c) and Senate Bill 06-179 adopted by the 2006 General Assembly.
- E. The State has allocated grant funds for the South Metro Water Supply Authority Regional Aquifer Supply Assessment. Grantee is ready, willing and able to provide such a task.

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

AGREEMENT

1. Definitions

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

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

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

BASIC CONTRACT TERMS

2. Statement of Work

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

3. Performance Standard

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

4. Performance Term

- 4.1. This contract shall be effective upon approval by the Colorado State Controller, or designee (the “Effective Date”) and extend through December 31, 2009. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the sequence and manner set forth in **Exhibit A**, Scope of Work.
- 4.2. In the event the State desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to three (3) months. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate at the end of the three (3) month period or when the replacement contract is signed by the Colorado State Controller or an authorized delegate.

5. Grant Award (Compensation)

- 5.1. Payment of compensation pursuant to this contract will be made as earned, in whole or in part, from available State funds encumbered in a maximum amount not to exceed \$100,540 for the performance of the Services required by this contract and **Exhibit A**, Scope of Work. Satisfactory performance under the terms of this contract shall be a condition precedent to the State’s obligation to compensate Contractor.
- 5.2. The maximum compensation payable under this contract, and under any renewal hereof, shall include all Contractor fees, costs and expenses.
- 5.3. The State shall not be liable to Contractor for payment of work or services or for costs or expenses incurred by Contractor prior to the “Effective Date”.

- 5.4. The maximum amount available during each fiscal year of this contract for the purchase of Goods and Services shall be:
- (a) \$100,540 in fiscal year 2009;
 - (b) \$100,540 in fiscal year 2010, minus any funds expended in fiscal year 2009.

6. Availability of Funds

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

PROCEDURES FOR AND OBLIGATIONS OF CONTRACT PERFORMANCE

7. Billing/Payment Procedure

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

8. Inspection and Acceptance

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

- (a) require Contractor to take necessary action to ensure that future performance conforms to this contract requirements; and

- (b) equitably reduce the payment due to Contractor to reflect the reduced value of the Services performed.

These remedies shall in no way limit the remedies available to the State in other provisions of this contract or remedies otherwise available in equity or at law, all of which may be exercised by the State, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment under this provision shall not constitute a breach of contract or default by the State.

9. Reporting

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

10. Rights in Data, Documents, and Computer Software

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

11. Maintenance, Inspection and Monitoring of Records

- 11.1 Contractor shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of programs or the delivery of Services or Goods under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed; provided, that if an audit by or on behalf of the Federal and/or Colorado State government has begun but is not completed or audit findings have not been resolved after a three (3) year period, such materials shall be retained until the resolution of the audit findings.
- 11.2 Contractor shall permit the State, the Federal Government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof

or to evaluate Contractor's performance hereunder.

- 11.3 Contractor also shall permit these same described entities to monitor all activities conducted by Contractor pursuant to the terms of this contract. As the monitoring agency, in its sole discretion, may deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract performance.

12. Confidentiality of State Records and Information

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

13. Litigation Reporting

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

14. Conflict of Interest.

- 14.1 During the term of this contract, Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations under this contract.
- 14.2 Additionally, Contractor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, Contractor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of Contractor's obligations to the State in accordance with the terms and conditions of this contract, without the prior written approval of the State.
- 14.3. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure

statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.

14.4. Contractor and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer or agent of Contractor or any permitted subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (a) an employee, officer or agent;
- (b) any member of the employee's immediate family;
- (c) an employee's partner; or
- (d) an organization, which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. Contractor's or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential contractors, or parties to sub-agreements.

REPRESENTATIONS AND WARRANTIES

15. Warranties. During the term of this contract and for a period of six (6) months following the State's final acceptance under this contract, Contractor warrants as follows:

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

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

16. Licenses, Permits, and Responsibilities

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

17. Tax Exempt Status

Contractor acknowledges that the State of Colorado is not liable for any sales, use, excise, property or other taxes imposed by any Federal, State or local government tax authority. The State also is not liable

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

18. Legal Authority

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

19. Compliance with Applicable Law

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

REMEDIES

20. Remedies

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

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

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

21. Termination for Convenience

21.1 When the interests of the State so require, the State may terminate this contract in whole or in part, for the convenience of the State. The State shall give written notice of termination to Contractor

specifying the termination of all or a portion of this contract and the effective date of such. Exercise by the State of this termination for convenience provision shall not be deemed a breach of contract by the State. Upon receipt of written notice, Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Contractor shall stop work to the extent specified. Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this contract shall, at the option of the State, be delivered by Contractor to the State and shall become the State's property. The State may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor shall complete and deliver to the State the work not terminated by the notice of termination and may incur obligations as are necessary to do so within the contract terms.

- 21.2 If this contract is terminated by the State as provided herein, Contractor shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or the deliverables satisfactorily delivered or installed bear to the total Services or deliverables covered by this contract, less payments of compensation previously made. In addition, for contracts that are less than 60% completed, the State may reimburse the contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by Contractor during the contract period which are directly attributable to the uncompleted portion of Contractor's obligations covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the Termination for Cause or Default provision shall apply.

22. Termination for Default/Cause

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

23. Insurance

- 23.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:
- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the Contractor's employees acting within the course and scope of their employment.
 - b. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.

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

24. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits,

protection, or other provisions of the Governmental Immunity Act. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of sections 24-10-101, *et seq.*, C.R.S., as now or hereafter amended and the risk management statutes, sections 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended. The parties hereto further understand and agree that Contractor is relying on and does not waive or intend to waive by this Agreement or any provision hereof, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.*, as from time to time amended, or otherwise available to Contractor.

25. Force Majeure

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

MISCELLANEOUS PROVISIONS

26. Representatives

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

For the State:

Name: Eric Hecox

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

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

Telephone: (303) 866-4895

For Contractor:

Name: Rod Kuharich

Title: Executive Director, South Metro Water Supply Authority

Address: 8400 East Prentice Avenue, Suite 1500, Greenwood Village, CO 80111

Telephone: (303) 409-7747

27. Assignment and Successors

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

28. Third Party Beneficiaries

The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement shall be strictly reserved to the State and Contractor. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and Contractor that any such person or entity, other than the State or Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

29. Severability

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

30. Waiver

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

31. Entire Understanding

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

32. Survival of Certain Contract Terms

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

33. Modification and Amendment

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

- (a) Colorado Special Provisions, pages 12 to 13.
- (b) Remaining pages of the contract, pages 1 to 11.

- (c) **Exhibit A**, Scope of Work.

SPECIAL PROVISIONS

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

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

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

3. INDEMNIFICATION. 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. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to Intergovernmental Agreements] The State Controller may withhold payment of certain debts owed to State agencies under the State's vendor offset intercept system for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et. seq.; (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 certified by the State Controller as owing to the State as a result of final agency determination or judicial action.

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. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), 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 (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, institution of higher education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

11. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised May 13, 2008

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

<p>GRANTEE South Metro Water Supply Authority By: Rod Kuharich Title: Executive Director</p> <p><i>Rod Kuharich</i> _____ *Signature</p> <p>Date: <u>11.20.08</u></p>	<p>STATE OF COLORADO</p> <p>Bill Ritter, Jr. GOVERNOR Department of Natural Resources Harris D. Sherman, Executive Director</p> <p><i>Mike Serlet</i> _____ By: Mike Serlet, Section Chief, CWCB</p> <p>Date: <u>12/5/08</u></p>
	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: <u>N/A</u> _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL GRANTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performance prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: <i>Dianne C Stump</i> _____</p> <p>Date: <u>1-28-09</u></p>
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Scope of Work

South Metro Water Supply Authority

Regional Aquifer Supply Assessment

This Scope of Work is divided into four sections as suggested in the Grant Application Instructions. Section 1 provides a description of each major task associated with the project along with a functional description of who will be completing the work and a description of the deliverables associated with the task. Section 2 lists the key personnel proposed for the project along with a brief description of their relevant project experience. Section 3 presents a detailed breakdown of the costs to complete the study and Section 4 presents the proposed Project Schedule.

Section 1 Task Summary

Introduction and Background

In 2004, the Colorado Water Conservation Board (CWCB) completed the Statewide Water Supply Initiative (SWSI). That study included estimates of unmet water demands in the South Platte Basin will be over 400,000 acre-feet through 2030, with over 90,000 acre-feet of "gap" between projected municipal and industrial water demands and available water supplies remaining after identified projects and processes are implemented.

SWSI estimated that by 2030 approximately 40,000 AFY of this gap was in the south Metro Denver area, which has been one of the fastest growing regions in the state and nation for over a decade. This 40,000 AFY gap was based on assumption that existing levels of groundwater pumping could continue indefinitely into the future. The southern metro area is a region that relies almost entirely on groundwater supplies developed from deep bedrock aquifers within the Denver Basin. These groundwater supplies do not have a natural source of recharge so are considered non-renewable. Legally, water from these bedrock aquifers does not interact with surface water supplies or the connected tributary groundwater and are defined as non-tributary. While the south Metro Denver municipal water suppliers have the legal rights to non-tributary groundwater supplies located beneath their boundaries, the dramatic increase in groundwater withdrawals over the past two decades have led to water level declines of 20 to 30 feet per year over large portions of the south Metro area. As a result, one of the key findings from SWSI is that continued reliance on nonrenewable, non-tributary groundwater supplies brings serious concerns over the reliability and sustainability of this source of supply along the Front Range area.

Water providers in the south Metro area have joined together as the South Metro Water Supply Authority (SMWSA) to coordinate on a variety of activities leading to more sustainable water supplies. In 2004 a study was completed on the effects of future pumping of the Denver Basin bedrock aquifers by south Metro water providers through 2050. This study concluded that projected pumping will draw down aquifer water levels to an extent that production from individual wells will decline by 40 to 80

percent over the study period. This will require a substantial investment in new wells just to meet current demands. Alternative sources of supply, including conservation, reuse and conjunctive use (combined surface and groundwater) were recommended as methods to extend the life of the bedrock aquifer supplies.

The SMWSA completed the South Metro Regional Water Master Plan in 2007. This report identified build out water demands, renewable water supply goals and potential sources of renewable supplies. In addition, this study also developed proposed regional infrastructure that will allow delivery of new renewable sources as well as routing of potential local supplies such as water developed through a regional aquifer storage and recovery (ASR) project. The SMWSA members also understand the need to implement strategies to preserve the bedrock aquifers and in September 2007 began discussions on more coordinated management. Current plans include formal arrangements to share equipment, personnel and infrastructure in times of supply emergency, and developing a common resource pool for contracting drilling services. The SMWSA is also aware that the bedrock aquifers vary significantly in their yield and impacts within the south Metro area. The member organizations would like to understand these local effects in greater detail so they can develop plans to use the groundwater supplies in ways that reduce impacts throughout the region. The SMWSA is also investigating how to expand its artificial recharge of the bedrock aquifers. One of its member organizations has had implemented a successful aquifer storage and recovery (ASR) program for over a decade and others would also like to implement ASR projects. They understand that a coordinated ASR program is as important as coordinated aquifer pumping.

Given this background, it is appropriate and opportune for a study to be undertaken under the auspices of HB-1177 and the Metro Basin Roundtable to more accurately evaluate the likely impacts of continued reliance on the non-renewable groundwater supplies in the south Metro Denver area and to explore more coordinated regional management of this precious resource.

Study Objectives

The objectives of the study are to:

1. Develop a better understanding of the aquifer characteristics relevant to well production, artificial recharge and conjunctive use within the south Metro area through the collection of additional data from SMWSA providers.
2. Undertake a detailed assessment of aquifer drawdown due to pumping in the south Metro area by evaluating information from previous studies and updating with additional information collected from SMWSA providers.
3. Characterize the unit cost of producing potable groundwater in the south Metro area, including costs for pumping, water treatment, annual operations and maintenance; evaluate whether the unit costs vary geographically and/or over time through the year; and use this information to assess ways of optimizing operations to increase aquifer sustainability.

4. Identify potential locations to conduct a regional ASR demonstration project within the south Metro area.

Tasks

This study is divided into four tasks, addressing each of the objectives. The following is a list and description of tasks to be completed under this work plan.

Task 1 Evaluate Aquifer Characteristics

Recent studies have been undertaken at both region and local scales to identify aquifer characteristics that can assist in understanding the impacts of pumping and artificial recharge. The characteristics pertinent to aquifer hydraulics analysis include aquifer properties including transmissivity and storage coefficient, aquifer configuration, and percent sand/silt in each aquifer. Significant studies include those conducted for the CWCB under the South Platte Decision Support System (CDM 2007a-d) and the SB06-196 Underground Water Storage Evaluation (CDM 2007e), the South Metro Water Supply Study (Black & Veatch 2004), Castle Pines North Metro District Integrated Water Resources Plan (CDM 2006) and work being conducted by the Denver Museum of Nature and Science and by the Colorado Geologic Survey. Collectively, these incorporate numerous past studies of the Denver Basin aquifers conducted by the USGS, DWR and other entities. The SMWSA also has a variety of aquifer test reports associated with well drilling that provide detailed information at a local scale.

This task will compile information and data from these reports and will develop updates of the aquifer configuration and aquifer properties. Information and maps presented in the South Platte Decision Support System reports would serve as a starting point for any updates to the aquifer characteristics that are deemed significant.

Task 2 Characterize Aquifer Pumping and Its Effects

Groundwater pumping and aquifer water levels are measured by the water providers in the south Metro area. This information will be compiled into common databases that will have consistent reporting units for each category of data. These data will be used to characterize the location, duration and amount of pumping and how this has changed over time. These data will also be used to characterize how groundwater levels have changed over time in each aquifer. Relationships between changes in aquifer water levels and pumping will be developed.

Task 3 Analyze Pumping Costs

Information relating to water production cost from the south Metro water providers will be obtained and compiled. Costs will be compared to the well production data collected in Task 1.2 to develop and understanding of the cost per unit volume of delivered water by each provider. This information will be evaluated for both spatial and temporal trends to identify areas where delivered water is relatively more or less expensive to produce and optimize operations.

Task 4 Evaluate Potential ASR Locations

Information developed from Tasks 1 through 3 will be used to identify regions within the south Metro area that might be suitable for ASR demonstration projects. Potential areas will be based on suitability of aquifer characteristics, decline in water levels, aquifer water quality, interest on the part of water providers, unit costs, and other factors.

Deliverables

Technical memo describing methodology, assumptions, and results of the analyses. The results will be provided in graphical and tabular format to the extent possible. The databases on aquifer water levels, aquifer properties, aquifer configuration, and aquifer pumping will be provided.

Section 2 Key Personnel

Relevant project experience for the key personnel proposed for the SMWSA Regional Water Supply Assessment are presented in this section.

Gordon McCurry - Project Director

Dr. McCurry has more than 25 years of experience in groundwater hydrology relating to water resources evaluation and aquifer studies. His experience includes the investigation, characterization, and modeling of aquifer systems for projects nationwide. Dr. McCurry's areas of technical expertise include numerical simulation of groundwater flow and contaminant transport, wellhead protection, aquifer hydraulics testing and analysis, stream/aquifer interactions, design of groundwater remediation systems, and regulatory compliance. Dr. McCurry has led the development of the South Platte Groundwater Decision Support System.

Nicole Rowan, P.E. - Project Manager

Ms. Rowan has over 13 year experience and is a senior project manager who focuses on water supply, watershed management and natural resources projects. She is the project manager for the Statewide Water Supply Initiative (SWSI) and for CDM's current contract with Colorado Department of Natural Resources (DNR) to provide technical support to the Interbasin Project Compact process.

Mark McCluskey, P.E. - Project Engineer

Mr. McCluskey is an environmental engineer who specializes in water resources. His expertise includes hydrologic modeling. Mr. McCluskey's software experience includes MODFLOW, MODFLOW SURFACT, UCODE, PEST, DYNFLOW, Groundwater Vistas, ArcInfo, ArcGIS, HEC-RAS, Fortran, VBA, SHAPE, @RISK, EPAnet, LINDO, MathCAD, MINITAB, and Kypipe.

South Metro Water Supply Authority Engineers

The following South Metro Water Supply Authority Engineers will be contributing to this project:

- Rod Kuharich
- Mark Palombo
- Curtis Wells
- Courtney Hemenway
- John Halapaska
- Bruce Lytle
- Scott Mefford
- Chris Sanchez

Section 3 Budget

A detailed breakdown of the estimated labor and other direct costs for the proposed project is presented in the following pages.

Section 4 Project Schedule

The proposed project schedule is presented on the following page. The schedule is presented as months from contract inception. It is anticipated that the project will be completed within six months.

SMWSA Regional Water Supply Assessment Schedule

Task	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Notice to Proceed	x					
1. Evaluate Aquifer Characteristics						
2. Characterize Aquifer Pumping and Its Effects						
3. Analyze Pumping Costs						
4. Evaluate Potential ASR Locations						