

STATE OF COLORADO
acting by and through the
Department of Natural Resources,
for the use and benefit of the **Colorado Water Conservation Board**

REAL PROPERTY GRANT
TO PURCHASE A CONSERVATION EASEMENT
With **Lower Arkansas Valley Water Conservancy District**

TABLE OF CONTENTS

1. PARTIES	PAGE 1
2. EFFECTIVE DATE	PAGE 1
3. RECITALS	PAGE 1
4. DEFINITIONS	PAGE 2
5. TERM/EARLY TERMINATION	PAGE 3
6. PURCHASE AND SALE OF EASEMENT	PAGE 3
7. PAYMENT TO DISTRICT	PAGE 3
8. LITIGATION REPORTING	PAGE 3
9. PERFORMANCE CONTINGENCIES FOR THE STATE	PAGE 4
10. STATUS PENDING CLOSING	PAGE 5
11. CLOSING	PAGE 5
12. REPRESENTATIONS AND WARRANTIES	PAGE 6
13. DEFAULT-TIME IS OF THE ESSENCE-REMEDIES	PAGE 7
14. NOTICES and REPRESENTATIVES	PAGE 7
15. LIMITATION OF STATE LIABILITY	PAGE 7
16. GENERAL PROVISIONS	PAGE 7
17. COLORADO SPECIAL PROVISIONS	PAGE 10
18. SIGNATURE PAGE	PAGE 11
EXHIBIT A-SCOPE OF WORK	ATTACHED
EXHIBIT B-BUDGET	ATTACHED
EXHIBIT C- PERFORMANCE MEASURING PROVISIONS	ATTACHED
EXHIBIT CE-CONSERVATION EASEMENT	ATTACHED
EXHIBIT PM-PROPERTY MAP	ATTACHED

1. PARTIES

This grant agreement ("Grant") is entered into by Lower Arkansas Valley Water Conservancy District ("District"), whose address is 801 Swink Ave., Rocky Ford, Colorado, 81067 and the State of Colorado acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Water Conservation Board (the "State" or "CWCB") located at 1313 Sherman St., Denver, Colorado 80203. The Parties agree to the provisions set forth in this Grant.

2. EFFECTIVE DATE

This Grant shall not be effective or enforceable until the Effective Date as defined in §4. The State shall not be liable to pay or reimburse the District for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date or after termination.

3. RECITALS

A. State's Authority, Appropriation, and Approval

Authority to enter into this Grant exists pursuant to CRS §§ 37-60-106, 39-29-109(2) (c) and 38-30.5-102; sufficient funds have been budgeted, appropriated and paid; and all prior reviews and approvals have been obtained, except as provided in §9.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: Exhibit A (Scope of Work), Exhibit B (Budget & Timeline), Exhibit C (Performance Monitoring Provisions), CE (Conservation Easement), and Exhibit PM (Property Map). Most exhibits are identified by relevant acronyms based on their title rather than being assigned random letters or numbers.

D. District Intent

District intends to obtain from Owner (as defined in §4.1) a grant, transfer, and conveyance of a perpetual right to preserve and protect the Conservation Values of the Property via a perpetual conservation easement burdening the Property and to prohibit any uses that would diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of the conservation easement.

E. Purpose

The Water Supply Reserve Account provides money for grants and loans to complete water activities, which are broadly defined and include water supply and environmental projects and/or studies. This Grant is for the Lower Arkansas Valley Water Conservancy District Water Enterprise Fund.

F. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits, or other attachments are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

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

A. Closing and Closing Date

"Closing" means the completion or waiver of all conditions precedent in the purchase and sale contract by and between District and the Owner and on which all related documents, including Easement deed are contemporaneously executed, and "Closing Date" is the date on which the Closing occurs.

B. Conservation Values

"Conservation Values" means those values, opportunities, and characteristics referred to in §3.E and set forth in detail in Exhibit CE.

C. CRS

"CRS" means the Colorado Revised Statutes as amended. D.

Easement

"The Easement" is the Conservation Easement set forth in Exhibit CE.

E. Effective Date

"Effective Date" is the date this Grant is approved and signed by the State Controller or designee.

F. GOCO

"GOCO" is the Great Outdoors Colorado Trust Fund.

G. Grant

"Grant" means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments, or references incorporated herein pursuant to Colorado State law, State Fiscal Rules, and State Controller Policies.

H. Grant Funds

"Grant Funds" are the funds the State will provide on behalf of the District at Closing as set forth in §7.A.

I. Owner

"Owner" means the owner of the Property from whom the District is purchasing the Easement.

J. Party or Parties

"Party" means either the State or District, and "Parties" means both the State and District.

K. Property

"Property is the real property legally described in Exhibit CE attached hereto and generally depicted on Exhibit PM

L. Purchase Price

"Purchase Price" is the total amount of money District will pay Owner to purchase the Easement.

M. Title Commitment

"Title Commitment" means a current standard ALTA form(s) in common use of a title insurance commitment issued by a Title Company authorized to do business in the State of Colorado, and insuring District's interest in the Easement in an amount not less than the Purchase Price, together with, as applicable, any updates of the Title Commitment that are issued.

5. TERM and EARLY TERMINATION

A. Term

The Parties' respective duties and obligations shall commence on the Effective Date, and shall continue through the Closing.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. The State shall notify District of such termination in accordance with §14, specifying the effective date of the termination and whether it affects all or a portion of this Grant. Upon receipt of a termination notice, the Parties shall be subject to and comply with the provisions of §13.

6. PURCHASE AND SALE OF EASEMENT

Subject to the provisions of this Grant, by the Closing, the State shall provide the title company, on behalf of District, with the Grant Funds to purchase the Easement, and District shall purchase the Easement from Owner. The Easement shall burden the Property in perpetuity, and shall be substantially in the form set forth in Exhibit CE. District shall maintain a complete file of all material records, communications and other written materials, which pertain to the performance of the Grant, including the acquisition of the Easement, and shall maintain such records for a period of three years after the Closing Date. The State may audit such records at reasonable times and upon reasonable notice.

7. PAYMENT TO DISTRICT

A. Maximum Amount Payable and Allocation

The maximum amount payable by the State to or on behalf of District for Grant Funds is Two Hundred and Seventy Thousand Dollars (\$270,000) as determined by the State from available funds.

B. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year and making payment to District beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in §17.B.

C. Erroneous Payments

At the State's sole discretion, payments made to District in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by District, may be recovered from District by deduction from subsequent payments under transactions between the State and District or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

8. LITIGATION REPORTING

A. Litigation Reporting

Within five days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect District's ability to perform its obligations hereunder, District shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CWCB.

B. Noncompliance

District's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or exercise of any remedies provided under this Grant, including termination.

9. PERFORMANCE CONTINGENCIES FOR THE STATE

The State's performance hereunder is contingent upon successful completion or express waiver, done in accordance with §16.J, of each of the following conditions in this §9. If one or more of these contingencies are not satisfied by Closing, and the Parties have not agreed in writing to allow additional time for satisfaction, then this Grant shall automatically terminate and District and the State shall be released from all further obligations and liabilities under this Grant.

A. Approvals

Final approvals of this transaction by the following entities and persons:

- i. The CWCB Staff; and
- ii. The applicable agency of the federal government if federal funding is involved.

B. Appraisal and Other Due Diligence

i. Appraisal

District shall, at no cost and expense to the State, cause a qualified appraiser to complete an appraisal in accordance with CRS §24-30-202(5)(b) that supports the Purchase Price and is satisfactory to and accepted by the Colorado State Controller. The appraisal shall be acceptable to any review appraiser if a review appraisal is requested by the State. Copies of all appraisals ordered by District shall be provided to the State.

ii. Option Agreement

District shall provide the State with an executed copy of the Option Agreement between District and Owner relating to the District's Option Agreement for the purchase of the Easement.

iii. Description and Maps

District shall cause to be prepared, without cost or expense to the State, a legal description of the Property and Easement areas and site and area maps that are acceptable to and approved by the State.

iv. Management Plan

District shall, at its sole cost and expense, create a management plan in conjunction with Owner and the State that is acceptable to and approved by the State. District shall deliver the Management Plan to the State within six (6) months of Closing.

v. Reports

District shall, at no cost and expense to the State, cause qualified professionals to prepare a baseline report documenting the condition of the Property at the time of Closing, a geologist's remoteness report, and a phase I environmental assessment, and should the State deem them necessary, any additional environmental assessments on all or part of the Property if reasonably necessary to protect the interests of the State. Such reports shall be acceptable to and approved by the State. After Closing, District shall, at its sole cost and expense, create an annual report detailing its monitoring of the Easement, and provide a copy of such report to the State within 30 days of the completion thereof.

C. Title Inspection and Review

The State's satisfaction with the title to the Property after the opportunity for physical inspection of the Property and after reviewing the documents and evidence of title thereto provided for in this §9.C. If any of the State's objections made pursuant to this provision are not rectified, then the State may terminate this Grant by written notice and both District and the State shall be released from any further obligations.

i. Evidence of Title – Matters of Public Record

As soon as practicable, District shall obtain, without cost or expense to the State, a Title Commitment. District shall also deliver to the State copies of any abstracts of title covering all or any portion of the Property.

ii. Standard Title Exceptions

District shall require Owner to provide a Mechanic's Lien Indemnification Agreement and meet all other requirements for the deletion of or insuring over standard exceptions for mechanic's liens and defects, liens, encumbrances, adverse claims or other matters, if any are created, first appearing in the public records or

attaching subsequent to the effective date of the Title Commitment of Schedule B-11 of the Title Commitment. District shall require Owner to cause the Title Commitment to delete or insure over the standard exceptions regarding unpaid taxes, assessments, and unredeemed tax sales prior to the year of Closing. If the District or the State determines that one or more of the following items must be deleted in the title insurance policy, then District shall require Owner to cause the Title Commitment to delete or insure over the standard exceptions regarding (a) parties in possession, (b) unrecorded easements, and (c) survey matters.

iii. Exceptions- Title Review- Matters of Public Record

District, without cost or expense to the State, shall promptly cause a copy of the Title Commitment together with the following documents to be delivered to the State: (a) copies of all plats, declarations, covenants, conditions, and restrictions burdening the Property, and (b) copies of other documents (or, if illegible, summaries of such documents) listed in the Additional Exceptions of Schedule B-11 of the Title Commitment.

iv. Title Review and Inspection- Matters Not Shown by the Public Records

District shall require Owner to deliver to District and the State true copies of all lease(s), survey(s), and other similar documentary information in Owner's possession pertaining to the Property, and shall require Owner to disclose in writing to District and the State all easements, liens, or other title matters not shown by the public record of which Owner has actual knowledge. The State and District shall have the right to inspect the Property to determine if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

v. Unrecorded Burdens-District's Liability

District shall, at no cost to the State, cause Owner to discharge and/or cure any liens, charges, defects, encumbrances, claims, or causes of action (hereinafter called "burdens") existing on or before Closing and incurred by District or Owner that attach to the Property which are not of record at the time of Closing and which were not disclosed pursuant to §9.C(iv). District shall reimburse the State in an amount equal to CWCB's proportionate contribution to Purchase Price of any diminution in value of the Easement if any such burden cannot be discharged or cured. The State may bring an action to enforce this §9.C(v) if District fails or refuses to do so within a reasonable time, and District shall reimburse the State for its costs and reasonable attorney's fees incurred with regard to such action.

10. STATUS PENDING CLOSING

A. Maintenance of the Property

District shall require Owner to maintain the Property in its present condition until closing. District's option agreement with Owner shall prohibit Owner from permitting any use of the Property for any purpose or in any manner that would adversely affect the Property as habitat for plants or animals or otherwise impair the conservation purposes of the conservation easement. In the event of any such loss or damage prior to Closing, the State may, without liability, terminate this Grant.

B. Risk of Loss

The State may elect to terminate this Grant without liability to District to provide Grant Funds in the event of loss or damage to the Property before closing, including, but not limited to, losses from acts of nature, such as fire, flood, and landslide.

11. CLOSING

A. Date and Time

The date and time of Closing shall be at the mutual agreement of District and Owner, but not later than 5:00 p.m. on December 30, 2011. Closing shall occur at the offices of the title company. At Closing Owner shall deliver to District a properly executed easement deed burdening the Property in perpetuity substantially in the form of Exhibit CE and suitable for recording, and the District shall deliver to Owner payment of the Purchase Price. That portion of the Purchase Price supplied by the State may be in the form of a State warrant or electronic funds transfer, which shall be at the State's discretion. The State's payment shall be made under explicit instructions (i) that said payment shall be returned to the State if for any reason acquisition of the Easement does not occur, and (ii) that said payment shall be returned to the State if the Easement approved by the State in its instruction letter or at Closing are not delivered to the escrow agent/title insurance company.

B. Closing at Title Company

The Closing shall be completed by the title company furnishing the Title Commitment and subsequent title insurance policy. Owner and District shall sign and complete all customary or required documents at or before Closing.

12. REPRESENTATIONS AND WARRANTIES

A. Owner to District

As a condition of entering into this Grant the State requires District to obtain from Owner the following representations and warranties in the purchase and sale contract between District and Owner, each of which shall also, notwithstanding anything to the contrary in §16.P or equivalent provision in any agreements or easements between Owner and District, flow to and be enforceable by the State as a third-party beneficiary thereof:

i. Compliance with Law

Owner is in compliance with the laws, orders, and regulations of each governmental department, commission, board or agency having jurisdiction over the Property in those cases where noncompliance would have a material adverse affect on the Property.

ii. Ownership of the Property

Owner is the sole owner in fee simple of the Property as of the Effective Date of this Grant, Owner is the record owner of the Property, and at closing District shall receive good and marketable title to the Easement, subject to those matters of record revealed in the Title Commitment and those matters disclosed to District and the State.

iii. Other Agreements

Owner is not a party to, or subject to, nor bound by any agreement, contract, or lease of any kind relating to the Property that would conflict with Owner's performance under the Option Agreement with District other than those matters of record revealed in the Title Commitment and found acceptable to the State.

iv. Pending Actions

There are not any actions, suits, proceedings, or investigations pending or, to Owner's knowledge, threatened, against or affecting the Property, or arising out of Owner's actions or inactions related to the Property.

B. District to the State

District makes the following representations and warranties to the State, each of which was relied on by the State in entering into this Grant:

i. District's Intent

District intends that the Conservation Values of the Property be preserved and protected in perpetuity, and that any uses be prohibited that would diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of the Easement.

ii. Legal Authority-District Signatory

District warrants that it possesses the legal authority to enter into this Grant, and, if District is not a natural person, that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Grant, and to bind District to its terms. If requested by the State, District shall provide the State with proof of District's authority to enter into this Grant within 15 days of receiving such request.

iii. Qualified Holder

District is qualified to hold easements under CRS §38-30.5-101 et seq., which provides for conservation easements to retain or maintain land, water, airspace, or water rights, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or, life-sustaining ecological diversity.

13. DEFAULT-TIME IS OF THE ESSENCE-REMEDIES

Time is of the essence hereof. If any note or check received or any other payment due hereunder is not paid,

honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

A. District in Default

If District is in default, all things of value received or performed hereunder shall be forfeited by District and the Parties shall thereafter be released from all obligations hereunder. It is agreed that such forfeiture is the State's sole and only remedy for District's failure to perform District's obligations under this Grant. The State waives the remedies of specific performance and additional damages.

B. The State in Default

If the State is in default, all things of value received or performed hereunder shall be forfeited by the State and the Parties shall thereafter be released from all obligations hereunder. It is agreed that such forfeiture is District's sole and only remedy for the State's failure to perform its obligations under this Grant. District waives the remedies of specific performance and additional damages.

14. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party, and is entitled to provide all approvals and consents on behalf of the Party they represent unless specifically noted otherwise elsewhere in this Agreement. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, 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 herein, all notices shall be effective upon receipt.

State

Todd Doherty
CWCB
1313 Sherman Street
Room 721
Denver, CO 80203

District

Jay Winner, General Manager
Lower Arkansas Valley Water Conservancy District
801 Swink Ave.
Rocky Ford, CO 81067
jwinner@centurytel.net

15. LIMITATION OF STATE LIABILITY

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 CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management)

16. GENERAL PROVISIONS

A. Assignment

District may not assign its rights under this Grant absent written consent of the State which may be withheld at the State's sole and absolute discretion.

B. Binding Effect

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

C. Captions and Headings

The captions and headings in this Grant are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

D. Construction Against the Drafter

In the event of an ambiguity in this Grant the rule of Grant construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

E. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-

72-101, et seq.

F. Counterparts

This Grant may be executed in multiple identical original counterparts constituting one Grant.

G. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

H. Indemnification

District shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, up to the amount of the Grant Funds, together with costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by District, or its employees, agents, sub districts, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not 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.

I. Jurisdiction and Venue

All suits or actions related to this Grant shall be filed and proceedings held in the State of Colorado and venue shall be in the County in which the Property is located. Venue shall be proper in any county in which the Property is located if it is situate in more than one county.

J. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto, properly executed and approved in accordance with applicable Colorado State Law, State Fiscal Rules, and Office of the State Controller Policies. Modifications specifically permitted in this Grant shall be made in accordance with the State Controller's Policy entitled MODIFICATION OF GRANTS -TOOLS AND FORMS.

ii. By Operation of Law

This Grant 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 shall be automatically incorporated as part of this Grant on the effective date of such change, as if fully set forth herein.

K. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments, including, but not limited to, those provided by District, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Colorado Special Provisions, then

ii. The remaining provisions of this Grant.

L. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Grant in accordance with its intent.

M. Repayment of Grant Funds

District shall repay to the State the Grant Funds and any appreciation in the value of the Easement (if any appreciation exists and only in an amount equal to the State's proportionate contribution to the Purchase Price), if the Easement is terminated or extinguished or its material provisions rendered unenforceable due to acts or omissions of District, its employees, agents, successors or assigns, including, but not limited to, complying with or enforcing the provisions of the Easement. If any part of the Grant Funds were originally received by the State from GOCO, then District shall make repayment to the State if GOCO makes a demand for repayment to CWCB on the grounds set forth in this §16.M.

N. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after Closing or termination hereof, shall survive such Closing or termination and shall be enforceable by the State if District fails to perform or comply as required.

O. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 et seq. and 201 et seq. District shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing District for such taxes.

P. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties. 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.

Q. Waiver

Waiver of any default under a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent default, provision or, requirement, or of any other term, provision, or requirement.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

17. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all Grants except where noted in *italics*.

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Grant shall not be valid until it has been approved by the State Controller or designee.

B. 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.

C. GOVERNMENTAL IMMUNITY.

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, protections, 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. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. COMPLIANCE WITH LAW.

District shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

E. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not 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 shall not invalidate the remainder of this Grant, to the extent capable of execution.

F. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

G. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies 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 owing to the State as a result of final agency determination or judicial action.

Revised 1/09

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

18. SIGNATURE PAGE

CMS#51378

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.

GRANTOR**LOWER ARKANSAS VALLEY WATER
CONSERVANCY DISTRICT**

Name: LYNDEN E. GILL
(Print)
Title: PRESIDENT / Chairman

Lynden E. Gill
*Signature

Date: 12/12/2012

STATE OF COLORADO

John W. Hickenlooper GOVERNOR
Department of Natural Resources
Mike King, Executive Director

By: Jim Feehan
For Jennifer L. Gimbel, Director

Name: JIM FEEHAN
Colorado Water Conservation Board

Title: ASSISTANT DIR.

Date: 12-13-12

2nd Grantor Signature if Needed

Name: _____

Title: _____

*Signature

Date: _____

LEGAL REVIEW

John W. Suthers, Attorney General

By: NA

Signature - Assistant Attorney General

Date: _____

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 performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: Susan Borup
Susan Borup, Controller, Department of Natural Resources

Date: 12/17/12

Contract #C150512

Exhibit A
Statement of Work

WATER ACTIVITY NAME – Ag-Municipal Conservation Easement Demonstration

GRANT RECIPIENT – Lower Arkansas Valley Water Conservancy District Water Enterprise Fund

FUNDING SOURCE – Statewide Account and Basin Account

INTRODUCTION AND BACKGROUND

Provide a brief description of the project. (Please limit to **no more than 200 words**; this will be used to inform reviewers and the public about your proposal)

The purpose of the Ag-Municipal Conservation Easement Demonstration is to demonstrate the use of conservation easements on irrigated agricultural land to both preserve long-term agricultural irrigation and provide secure long-term water supplies to a municipality. The concept would create another, new alternative to historical "buy-and-dry" of irrigation water rights for M&I uses. More specifically, an Ag-Municipal Conservation Easement would perpetually preserve the irrigated land *and* give the municipality a secure, legally enforceable permanent source of additional water supplies.

OBJECTIVES

List the objectives of the project

Implementation of the Ag-Municipal Conservation Easement Demonstration would demonstrate the viability of the concept, as well as provide a concrete example of the legal and technical details of such a transaction. Specifically, completion of the Easement transaction would contain example or model language for a ag-municipal conservation easement, including an enforceable municipal interest in the use of water rights under defined terms and conditions in, for example, 3 years out of 10 – leaving the water in irrigation 7 years out of 10.

SCOPE OF WORK

This Project is at heart a pretty simple real property transaction, coupled with the simultaneous grant of a conservation easement. It is the structure and terms of the transaction and conservation easement that have significance for preserving irrigated agricultural land and securing municipal water supplies. These are set forth below:

Parties: There are four or five parties for the Project:

1. The Sellers of the farm: Raymond W. Pieper and Susan S. Pieper.
2. The Buyers of farm and Grantors of the Conservation Easement, and Water Lessors: Wesley Herman and Brenda Herman.
3. The Purchaser and Grantee of the Conservation Easement: Lower Arkansas Valley Water Conservancy District.
4. The Funder of the Conservation Easement: Colorado Water Conservation Board.
5. The Municipal Water User (optional): to be determined.
6. Cash or certified funds on closing.

7. Closing on or before December 30, 2012.

Purchase terms (see attached Land Agreement dated 2 July 2012):

1. S 1/2 of Sec. 22, T. 24 S, R. 57 W. of the 6th P.M., Otero County, Colorado, comprising 320 acres more or less, together with 12 shares of the capital stock of the High Line Canal Company.
2. Purchase price for land and water rights: \$540,000.
3. Purchase price for conservation easement: based on appraisal (estimated \$270,000 to \$324,000).
4. Cash or certified funds on closing.
5. Closing on or before December 30, 2012.
6. Sellers to provide currently updated abstract of title, or a title commitment for title insurance in the amount of the purchase price.
7. Buyers to make any objections to title with 5 days of the receipt of title evidence.
8. Sellers and Buyers to proceed with due diligence to resolve any defect in title.

Conservation Easement terms (see attached example Deed of Conservation Easement):

1. The irrigated and to remain in agricultural production at least 7 years in 10 in perpetuity.
2. The non-irrigated land to remain perpetually in agricultural production.
3. Water rights:
 - a. To be used to irrigate historically irrigated land;
 - b. To be used for municipal purposes off the property, such use to occur no more often than 3 in 10 years on a rolling 10-year average, or 30 percent each year with the fallowed land to be rotated at least every fourth year.
 - i. Municipality may be a party and grantee of an easement on the use of the water in accordance with the above.
 1. Ag-municipal water use terms may be included in conservation easement or separate Municipal Water Lease Option Agreement document.

Municipal water use terms:

1. Municipality to purchase option to lease water in future years.
 - a. Option would give municipality an undivided 30% fee interest in the water rights and right to lease water 3 years in 10, or 30% annually.
2. Municipality to pay farmer/grantor for use of water in years when use water.
 - a. Annual use payment could be based on ag value (farmer's foregone economic opportunity); or
 - b. Annual use payment could be negotiated up front/periodically; and
 - i. Could include factor for price escalation.
3. Could include deadlines for notice of municipal use.
 - a. Could include additional payments for late notice for municipal use.

TASKS

1. Due diligence on real property ownership and encumbrances.
 - a. Review abstract of title and/or title insurance commitment.
 - b. Serve seller with title objections within 5 days.
 - c. Resolve title objections.
 - d. Obtain subordination of all real estate liens and mortgages.
 - e. Confirm ownership of 12 shares of capital stock of High Line Canal Company with Company.
2. Obtain qualified appraisal of conservation value of land and water rights.
3. Obtain certified copy of original patent if minerals reserved by the government and/or certified copy of document(s) reserving other minerals.
 - a. Obtain subordination of all mineral rights reserved or owned by others, or professional report concluding "the possibility of surface mining on the property is so remote as to be negligible" and stating there is no current mineral production if minerals leased.
4. Provide 60-day notice to High Line Ditch Company of proposed conservation easement.
 - a. Draft notice of encumbrance for reissued share certificate.
5. Draft General Warranty Deed.
6. Draft Ag-Municipal Deed of Conservation Easement.
7. Draft Municipal Water Lease Option Agreement, if needed.
8. Closing.
 - a. Execute General Warranty Deed.
 - b. Execute Deed of Conservation Easement.
 - c. Execute assignment of stock certificate to Buyers and Lower Ark District, as easement holder.
 - d. Execute Municipal Water Lease Option Agreement, if any.
 - e. Deliver purchase price to Sellers.
 - i. Conservation easement value (up to \$270,000, less any municipal water lease option purchase) from CWCB.
 - ii. Farm ag value (\$540,000 less conservation easement value) from Buyers.
 - iii. Municipal Water Lease Option, if any, from municipal provider.
9. Record General Warranty Deed, Deed of Conservation Easement, and Municipal Water Lease Option Agreement (if any).
10. Request reissuance of share certificate with notation of conservation easement encumbrance from High Line Canal Company.
11. Prepare Project Report, to include copies of Land Agreement (purchase contract), General Warranty Deed, Deed of Conservation Easement, Municipal Water Lease Option Agreement (if any), and reissued share certificate with encumbrance.

II. PERSONNEL

H. Barton Mendenhall, Esq., Mendenhall & Malouf, will preform the due diligence for the Lower Arkansas Valley Water Conservancy District, prepare the General Warranty Deed and other closing documents, conduct the closing and complete the post-closing tasks.

Jay Winner, General Manager, and Bill Hancock, Project Manager, Lower Arkansas Valley Water Conservancy District, will obtain the appraisal of the conservation value from a qualified appraiser and a mineral remoteness letter, if required.

Peter Nichols, Esq., Trout Raley Montano Witwer & Freeman PC, will draft the deed of conservation easement, the municipal water lease option agreement, and the encumbrance for the reissued share certificate for High Line Canal Company, and prepare the Project Report.

Heath Kuntz, Adaptive Resources, will prepare any necessary engineering analyses concerning the consumptive use, exchange, storage, and subsequent municipal use of the water rights.

III. ADDITIONAL INFORMATION

The following exhibits are included in this Application by reference:

1. Warranty Deed from David J. Lundquist to Raymond W. Pieper and Susan S. Pieper, dated 25 May 1993, recorded 5/28/1993 in the real property records of Otero County, Colorado, at Book 875, Page 408, reception # 36690.
2. Land [and Water Sales] Agreement between Raymond W. Pieper and Susan S. Pieper and Wesley Herman and Brenda Herman, dated 2 July 2012.
3. Share Certificate No. 2259, High Line Canal Company.
4. Map of Raymond W. Pieper and Susan S. Pieper Farm.
5. Draft example of a Deed of Conservation Easement.

REPORTING AND FINAL DELIVERABLE

Reporting: The applicant shall provide the CWCB a progress report every 6 months, beginning from the date of the executed contract. The progress report shall describe the completion or partial completion of the tasks identified in the statement of work including a description of any major issues that have occurred and any corrective action taken to address these issues.

Final Deliverable: At completion of the project, the applicant shall provide the CWCB a final report that summarizes the project and documents how the project was completed. This report may contain photographs, summaries of meetings and engineering reports/designs.

The Project will take less than 6 months from the date of the executed contract. Thus, the Lower Ark District will not prepare any formal progress reports. The District, however, will be happy to update the CWCB at any time.

The Final Report will summarize the Ag-Municipal Conservation Easement Demonstration Project, and document each of the steps to implement the Project, that is, the contract to purchase and actual purchase of the farm and shares in the High Line Canal Company and their encumbrance with a conservation easement that preserves irrigation in perpetuity but also allows a municipal water provider to lease the irrigation water for municipal use under specified terms and conditions. The Report will discuss any unique aspects of the Demonstration Project, and contrast them to more generally applicable factors expected in future ag-municipal conservation easements elsewhere in Colorado, with recommendations for appropriate practices in future transactions.

In addition to the narrative report, the Report will include copies of all of the transactional documents, e.g., the general warranty deed, deed of conservation easement, municipal water lease option agreement, encumbrance language for the shares of the High Line Canal Company, and copy of the reissued share certificate in the High Line Canal Company. A copy of the appraisal of the conservation value of the conservation easement will also be included.

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That I, David J. Lundquist, whose address is 17081 Highway 10, Rocky Ford, County of Otero, and State of Colorado, for the consideration of TEN DOLLARS and other good and valuable considerations, in hand paid, hereby sell, and conveys to Raymond W. Pieper and Susan S. Pieper, as joint tenants with right of survivorship whose address is 20415 County Road 17.5, Rocky Ford, County of Otero, State of Colorado, the following real property, in Otero County, Colorado, to-wit:

The South 1/2 of Section 22, Township 24 S., Range 57 West of the 6th P.M. in Otero County, Colorado,

TOGETHER WITH all water rights thereunto belonging or in any way appertaining thereto, more especially including 14 shares of the capital stock of the High Line Canal Company.

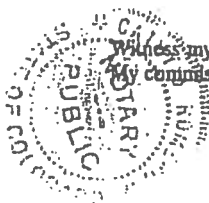
with all its appurtenances and warrant the title to the same, subject to easements, restrictions, and encumbrances of record, inclusion within any governmental entities, or subdivisions and taxes for the year 1993.

Signed this 25th day of May A.D., 1993.

David J. Lundquist
David J. Lundquist

STATE OF COLORADO)
) ss.
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 25th day of May, 1993, by David J. Lundquist.



Witness my hand and official seal.
My commission expires 12/13/95

Cathy B. Register
Notary Public
Business Address:
201 N. Main, Rocky Ford, CO 81067

OTERO CO.
MAY 28 1993
STATE DOCUMENTARY FEE
\$ 11.50

LAND AGREEMENT

THIS AGREEMENT, made and entered into this 2nd day of July, 2012, by and between **Raymond W. Pieper and Susan S. Pieper**, of 20415 Road 17.5, Rocky Ford, Colorado 81067, of the County of Otero, State of Colorado, party of the first part, hereinafter called the Sellers, and **Wesley Herman and Brenda Herman**, of as joint tenants with right of survivorship, of the County of Otero, State of Colorado, parties of the second part, hereinafter called the Buyers.

WITNESSETH:

That the Sellers have agreed to sell and the Buyers have agreed to buy, certain real and personal property under the terms and conditions hereinafter set forth:

I. PROPERTY:

I.1 The real property and water rights to be sold and purchased is described as follows:

S1/2 of Sec. 22, T.24 S., R.57 W. of the 6th P.M. In Otero County, Colorado.

TOGETHER WITH all water rights thereunto belonging or in any way appertaining thereto, more especially including 12 shares of the capital stock of the High Line Canal Company.

I.2 The personal property to be sold and purchased is described as follows:

All irrigation wells, pumps and irrigating equipment including gated pipe, pipelines, and the like.

II. CONSIDERATION:

II.1 The total consideration for the sale and purchase of said property is \$540,000.00 to the Sellers payable as follows:

\$500.00 hereby receipted for as earnest money, and the balance due in cash at closing.

Provided however, that this contract is contingent upon the Buyers being able to obtain financing for the purchase of said property at rates and terms satisfactory to them.

III. CONVEYANCE:

III.1 The Sellers shall convey the real property to the Buyers by Warranty Deed, to joint tenants with right of survivorship, free and clear of all liens and encumbrances. And shall further convey all personal property to the Buyers by Bill of Sale.

IV. POSSESSION AND CLOSING:

IV.1 Buyers are currently in possession of said property.

IV.2 Closing shall be on or before December 15, 2012 at the offices of Mendenhall & Malouff, Attorneys at Law, 805 Chestnut Avenue, Rocky Ford, Colorado or such other place as the parties may designate.

V. PROOF OF TITLE:

V.1 The Sellers shall provide a currently updated abstract of title, or a current commitment for title insurance in the amount of the purchase price for the benefit of the Buyers and the Buyers shall proceed in all convenient haste to examine the same.

V.2 Any objections to the title shall be served in writing upon the Seller within five (5) days of the receipt of the title evidence, and any objections not set forth in writing shall be deemed waived by the Buyers.

V.3 The Seller shall proceed with diligence to correct any defect in title disclosed by Buyers.

VI. TAXES, INSURANCE AND ASSESSMENTS:

VI.1 Taxes for the year 2011 and prior years shall be paid by the Seller(s). Taxes for the year 2012 and all subsequent years shall be paid by the Buyers.

VI.2 Water assessments and irrigation water pumping bills for the year 2011 shall be paid by the Sellers. Any subsequent water assessments and irrigation pumping bills shall be paid by the Buyers.

VI.3 Other assessments, including water, electricity, and other utilities, shall be paid by the Buyer from and after the date of possession of the improvements on the premises.

VII. SPECIAL TAXING DISTRICT DISCLOSURE - GENERAL OBLIGATION INDEBTEDNESS:

"SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES."

IX. MISCELLANEOUS:

IX.1 This agreement is conditioned upon the Buyers entering into, and closing simultaneously with this agreement, a contract for the purchase of a Conservation Easement on the described property with the Lower Arkansas Valley Water Conservancy District in an amount not less than 50% of the purchase price of this property. Further, this agreement is conditioned upon the Lower Arkansas Valley Water Conservancy District obtaining a grant from the Colorado Conservation Board to fund this purchase.

water

IX.2 Time is of the essence herein.

IX.3 This terms of this agreement shall survive the closing of this agreement and delivery of deed.

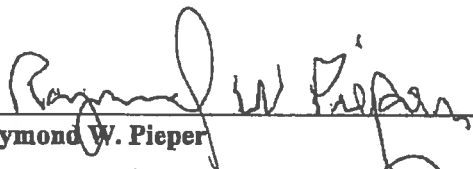
IX.4 This agreement shall not be assigned by the Buyers without the written consent of the Sellers first had and obtained.

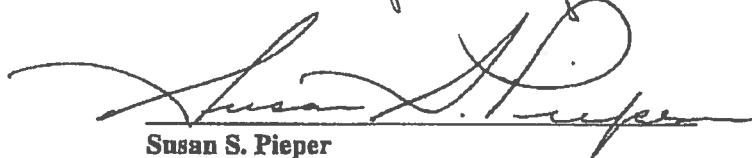
IX.5 By signing this document the parties acknowledge that they are advised that this document has important legal consequences and the examination of title and consultation with legal tax and other counsel is recommended before signing this contract.

IX.6 This agreement shall extend to and be binding upon the heirs, administrators, personal representatives, successors, survivors, and assigns of the parties hereto.


IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names the day and year first above written.

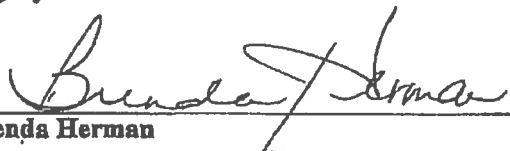
SELLERS:


Raymond W. Pieper


Susan S. Pieper

BUYERS:

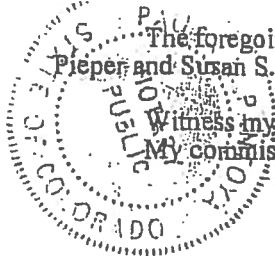

Wesley Herman


Brenda Herman

STATE OF COLORADO)
)ss.
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 2ND day of JULY, 2012, by Raymond W. Pieper and Susan S. Pieper.

Witness my hand and official seal.
My commission expires: 10/07/2014

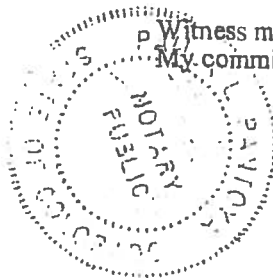


Paula L. Sauer
Notary Public
Business Address: 805 Chestnut Avenue
Rocky Ford, CO 81067

STATE OF COLORADO)
)ss.
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 2ND day of JULY, 2012, by Wesley Herman and Brenda Herman.

Witness my hand and official seal.
My commission expires: 10/07/2014



Paula L. Sauer
Notary Public
Business Address: 805 Chestnut Avenue
Rocky Ford, CO 81067

EXHIBIT B

BUDGET

Provide a detailed budget by task including number of hours and rates for labor and unit costs for other direct costs (i.e. mileage, \$/unit of material for construction, etc.). A detailed and perfectly balanced budget that shows all costs is required for the State's contracting and purchase order processes. Sample budget tables are provided below. Please note that these budget tables are examples and will need to be adapted to fit each individual application. Tasks should correspond to the tasks described above.

Total Costs			
Purpose	Direct Costs	Matching Funds	Total Project Costs
Purchase of farm and water		\$270,000	\$270,000
Purchase of conservation easement	\$270,000		\$270,000*
In-Kind Contributions		\$100,000	\$100,000
Total Costs:	\$270,000	\$370,000	\$640,000

*Estimate

d appraised value; final value to be determined by qualified appraisal.

	In-Kind Contributions (If Applicable)				
Project Personnel:	LAVWCD	Mendenhall	Kuntz	Nichols	
Hourly Rate:	n/a	\$125	\$140	\$235	Total
Appraisal, mineral report, stewardship fee, etc,	\$20,000				\$20,000
Legal		\$7,500		\$23,500	31,000
Engineering			\$49,000		49,000
Total Hours:	n/a	60	350	100	
Total Cost:	\$20,000	\$7,500	\$49,000	\$23,500	\$100,000

Contract #C150512

SCHEDULE

Provide a project schedule including key milestones for each task and the completion dates or time period from the Notice to Proceed (NTP). This dating method allows flexibility in the event of potential delays from the procurement process. Sample schedules are provided below. Please note that these schedules are examples and will need to be adapted to fit each individual application.

The Project is expected to take 7 months to complete (4 months after approval by CWCB)

Task	July	Aug	Sept	Oct	Nov	Dec	Jan
Ark BRT Review and Recommendation							
CWCB Review and Approval							
Due Diligence and Drafting							
Closing							
Recording and Post Closing							
Project Report							

PAYMENT

Payment will be made based on actual expenditures and invoicing by the applicant. Invoices from any other entity (i.e. subcontractors) cannot be processed by the State. The request for payment must include a description of the work accomplished by major task, and estimate of the percent completion for individual tasks and the entire water activity in relation to the percentage of budget spent, identification of any major issues and proposed or implemented corrective actions. The last 5 percent of the entire water activity budget will be withheld until final project/water activity documentation is completed. All products, data and information developed as a result of this grant must be provided to the CWCB in hard copy and electronic format as part of the project documentation. This information will in turn be made widely available to Basin Roundtables and the general public and help promote the development of a common technical platform.

LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT
Water Supply Reserve Account Grant
Performance Monitoring Provisions

Statutory Requirements

- 2) Each personal services contract entered into pursuant to this code with a value of one hundred thousand dollars or more shall contain
- (a) Performance measures and standards developed specifically for the contract by the governmental body administering the contract. The performance measures and standards shall be negotiated by the governmental body and the vendor prior to execution of the contract and shall be incorporated into the contract. The measures and standards shall be used by the governmental body to evaluate the performance of the governmental body and the vendor under the contract.
 - (b) An accountability section that requires the vendor to report regularly on achievement of the performance measures and standards specified in the contract and that allows the governmental body to withhold payment until successful completion of all or part of the contract and the achievement of established performance standards. The accountability section shall include a requirement that payment by the governmental body to the vendor shall be made without delay upon successful completion of all or any part of the contract in accordance with the payment schedule specified in the contract or as otherwise agreed upon by the parties.
 - (c) Monitoring requirements that specify how the governmental body and the vendor will evaluate each others' performance, including progress reports, site visits, inspections, and reviews of performance data. The governmental body shall use one or more monitoring processes to ensure that the results, objectives, and obligations of the contract are met.
 - (d) Methods and mechanisms to resolve any situation in which the governmental body's monitoring assessment determines noncompliance, including termination of the contract.

Performance Monitoring Standards

Performance monitoring for this contract shall include the following:

- (a) Performance measures and standards: The grantee, through the conservation easement, shall preserve long-term agricultural irrigation and provide a secure long-term water supplies to a municipality. Grantee will produce detailed deliverables for Tasks 1 to 11 as specified in Exhibit A. Grantee shall maintain receipts for all project expenses and documentation of the minimum in-kind contributions per the budget in Exhibit A. Per WSRA Criteria and Guidelines, retainage of 5% of the grant funds shall be withheld until receipt of the final report and all other deliverables.
- (b) Accountability: Per WSRA Criteria and Guidelines full documentation of project progress must be submitted with each invoice for reimbursement. Grantee must certify that all grant conditions have been complied with on each invoice. In addition, per WSRA Criteria and Guidelines progress reports must be submitted at least once every 6 months. A final project report must be submitted and approved before final project payment and release of retainage.
- (c) Monitoring Requirements: Grantee is responsible for ongoing monitoring of project progress per Exhibit A and Paragraphs 9 & 19 of the contract. Progress shall be detailed in the required invoice documentation and progress reports as detailed above. Additional inspections or field consultations will be arranged as may be necessary.
- (d) Noncompliance Resolution: Per paragraphs 9, 14, 15, and 19 of the contract: payment will be withheld until grantee is current on all grant conditions. Flagrant disregard for grant conditions will result in a stop work order and cancellation of the purchase order.

ATTACHMENT CE

**DEED OF CONSERVATION EASEMENT
FOR THE
WESLEY HERMAN AND BRENDA HERMAN FARM**

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted effective as of the day of _____, 200__, by Wesley Herman and Brenda Herman whose address is 19501 Co Rd 17.5, Rocky Ford, Colorado 81067 ("Grantor"), to the Lower Arkansas Valley Water Conservancy District ("District" or "Grantee"), for the purpose of forever conserving one or more of the following: the open space character, agricultural productivity, wildlife habitat, and scenic qualities of the subject property.

WITNESS THAT

Grantor is the sole owner in fee simple of the property ("Property") legally described in Exhibit A attached to and made a part of this Deed, which consists of approximately 231.03 acres of land, together with buildings and other improvements, located in Otero County, State of Colorado.

The Property is primarily irrigated farmland, and is an important part of the productive agricultural land still remaining in the Lower Arkansas Valley. The property is supplied irrigation water from the High Line Canal. The Property also includes relatively natural habitat with a variety of wildlife species, including deer, antelope, pheasant, quail, duck, geese, coyote, and fox to name a few. For a more detailed list of wildlife present on this farm see the Present Condition Report.

The Property contains approximately 100 acres of irrigated farmland along with 131.03 acres of native range. This farm is adjacent to Timpas Creek and is supplied irrigation water from the High Line Canal. The property directly across Timpas Creek to the east is also encumbered with a conservation easement.

The agricultural, ecological and other characteristics of the Property, its current use and state of improvement, are described in the Present Condition Report prepared by Grantor with the cooperation of Grantee, which Report is subject to approval by both Grantor and Grantee. The Report will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, this Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

Grantor intends to convey interests by this Deed to Grantee for the exclusive purpose of assuring that, under Grantee's perpetual stewardship, the agricultural productivity, open space character, wildlife habitat, and scenic qualities of the Property ("Conservation Values") will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property are consistent with the conservation purposes of this Deed.

The conservation purposes of this Deed are recognized by, and the grant of this Deed will serve, at least and without limitation, the following clearly delineated governmental conservation policies:

- The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. §§4201, *et seq.*, whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland."

- The Colorado Department of Agriculture statutes, Colorado Revised Statutes §§ 35-1-101, *et seq.*, which provide in part that "it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products."

- Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, providing for the establishment of conservation easements to maintain land "in a natural, scenic or open condition, or for wildlife habitat, or for agricultural . . . or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity."

- The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes §§ 33-1-101, *et seq.*, which provide that "it is the policy of the State of Colorado that the wildlife and their environment and the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors to this state."

- The Lower Arkansas Valley Water Conservancy District policy, which provides for the preservation of open space (including farm and ranch land) within the District boundaries and the conservation of native water of the Arkansas River and its tributaries for the scenic enjoyment of the general public, and to insure that the preservation of open space through regional conservation (including irrigation and water supply protection) will yield significant public benefits to the citizens of the District.

Grantee is a "qualified conservation organization," as defined by the United States Internal Revenue Code, and accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purpose forever.

Grantor owns the fee simple interest in the Property. Grantor intends to subject the property to a Deed of Trust held by Farm Credit of Southern Colorado, which has agreed that its Deed will be recorded subsequent to and subject to this Deed.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and of the nature and character described in this Deed, exclusively for the purpose of conserving and forever maintaining the agricultural productivity, open space character, wildlife habitat, and scenic qualities of the Property (the "Conservation Values").

- 1) *Use of Property.* It is the intention of Grantor to preserve the ability of the Property to be used for agricultural production, and to preserve any open space character, wildlife habitat, and scenic qualities of the Property. The Property may not be used for industrial activities, but may be used for other activities which are not prohibited by the terms of this Deed. As used herein, agricultural production shall mean the production, processing, storage or retail

marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock and livestock products include, but are not limited to:

- (a) crops commonly found in the community surrounding the Property;
 - (b) field crops, including corn, wheat, oats, rye, barley, hay, potatoes, herbs and dry beans;
 - (c) fruits, including apples, peaches, grapes, cherries, nuts and berries;
 - (d) vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans;
 - (e) horticultural specialties, including sod, seeds, nursery stock, ornamental shrubs, ornamental trees, Christmas trees and flowers;
 - (f) livestock and livestock products, including dairy cattle, beef cattle, sheep, swine, goats, horses, poultry, fur bearing animals, bees, milk and other dairy products, eggs and furs; and
 - (g) timber, wood, and other wood products derived from trees.
- 2) ***Prohibited Acts.*** Grantor promises not to perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. Grantor hereby authorizes Grantee to enforce these covenants in the manner described below. However, unless otherwise specified, nothing in this Deed shall require Grantor to take any action to restore the condition of any buildings or structures located on the Property after any fire, Act of God, or other event over which Grantor has no control, provided, however, that Grantor shall make reasonable efforts to return all agricultural land to productivity on the property after any fire, Act of God or other event over which Grantor has no control. Grantor understands that nothing in this Deed relieves them of any obligation or restriction on the use of the Property imposed by law.
- 3) ***Construction of Buildings and Other Structures.*** The construction of any building or other structure, except those existing on the date of this Deed or those approved by Grantee subsequent to the date hereof but prior to construction, is prohibited except in accordance with subparagraphs b) through e) below. Before undertaking any construction that requires advance permission, Grantor shall notify Grantee of such request.
- a) ***Fences.*** Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock, without any further permission of Grantee. Grantor shall not be required to erect any new fences for any purpose, including, but not limited to, fencing out livestock from riparian areas or other designated habitats.
 - b) ***Agricultural Structures and Improvements.*** All existing agricultural buildings and agricultural structures may be repaired, reasonably enlarged and replaced at their current location without further permission of Grantee. New buildings and improvements to be used solely for agricultural purposes, including the processing or sale of farm or ranch products predominantly grown or raised on the Property, may be built within the building envelope described on Exhibit B attached to and made a part of this Deed (the "Building Envelope"). Loafing sheds, corrals and other minor agricultural buildings and

improvements may be constructed anywhere on the Property. Grantor will notify Grantee prior to construction within the Building Envelope, so Grantee can update its records. No construction of any other new agricultural buildings or improvements other than those covered by the preceding three sentences shall be constructed.

- c) Single-Family Residential Dwellings. All existing single-family residential dwellings may be repaired, reasonably enlarged and replaced at their current location without further permission of Grantee. Not more than TWO new single-family residential dwellings, together with associated outbuildings such as barns, garages and sheds, may be built on the Property within the Building Envelope without further permission of Grantee. At the time that construction of such dwelling or dwellings is to commence, Grantee shall be notified so that its records can be updated.
- d) Repair and Replacement. All buildings which are permitted hereunder may be repaired, reasonably enlarged, and replaced at their permitted location without further permission from Grantee. At the time that construction is to commence, Grantee shall be notified so that its records may be updated.
- e) New Farm Support Housing. New dwellings or structures to be used primarily to house tenants or employees engaged in agricultural production on the Property ("Farm Support Housing") may be built on the Property, provided they are located within the area identified as "Farm Support Housing" on Exhibit E. Farm Support Housing shall not be subdivided from the Property under any circumstances.
- 4) Subdivision. The division or subdivision of the Property into two or more parcels, whether by physical or legal process, is prohibited.
- 5) Development Rights. Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred off of the Property to any other property adjacent or otherwise.
- 6) Conservation Practices. Grantor recognizes the importance of good resource management and stewardship to present and future generations. To this end, all agricultural uses of the Property shall be conducted using standard stewardship and management practices, which shall include compliance with governmental noxious weed control regulations.
- 7) Timber Harvesting. Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the Property. Any commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.
- 8) Mining. The commercial mining or extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method is prohibited; provided that mineral extraction is permitted if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the real property that is not irretrievably destructive of the Conservation Values of the Property, and provided further that the proposed mining or extraction will not substantially diminish or impair the Conservation Values of the Property. No extraction permitted pursuant to this paragraph shall occur without prior written notice to Grantee, which notice shall include a description of the

type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof.

- 9) *Grantor Extractions.* Notwithstanding anything in paragraph 8 above to the contrary, soil, sand, gravel or rock may be extracted without further permission from Grantee so long as such extraction is solely for noncommercial purposes on the Property, is in conjunction with activities permitted herein, is accomplished in a manner which is consistent with the Conservation Values expressed in this Deed. This provision shall be interpreted in a manner consistent with § 170(h) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.
- 10) *Paving and Road Construction.* No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other paving material, nor shall any road for access or other purposes be constructed, except for any unpaved road necessary to provide access to the buildings currently located on or permitted to hereafter be constructed on the Property. Any such road permitted by this Paragraph shall be constructed in a manner that does not substantially diminish or impair the Conservation Values of the Property.
- 11) *Trash.* The dumping or accumulation of any kind of trash or refuse on the Property, other than farm-related trash and refuse produced on the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.
- 12) *Recreational Uses.* Golf courses, airstrips, and helicopter pads are strictly prohibited on the Property. Other buildings and facilities for any other public or private recreational use may only be built on the Property in accordance with Paragraph 3, and then only in a manner that does not substantially diminish or impair the Conservation Values of the Property, except that use of the Property for more than "de minimus" commercial recreation activity is prohibited. The term "de minimus" shall have the meaning as set forth in § 2031(c)(8)(B) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.
- 13) *Feed Lot and Industrial Agricultural Operations.* The establishment or maintenance of a commercial feed lot and the use of the Property for concentrated agricultural operations such as hog raising or industrial dairy operations, are prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock. Nothing in this section shall prevent Grantor from seasonally confining Grantor's livestock into an area for feeding, or from leasing pasture for the grazing of livestock, but not to exceed the carrying capacity of the Property for the existing conditions, consistent with practices recommended by the United States Department of Agriculture.
- 14) *Water Rights.*
 - a) *Water Rights Included.* The parties agree that it is appropriate to include certain water rights beneficially used on the Property in this Deed (the "Water Rights"). The "Water Rights" include all of the Grantor's right, title and interests in and to the water and water rights described on Exhibit C, together with all associated canals, ditches, laterals, headgates, springs, wells, ponds, reservoirs, water shares and stock certificates, water allotments, contracts, units, permits, easements and rights of way, and irrigation equipment.

- b) Permitted Water Uses. The parties agree that the Water Rights are hereby dedicated and restricted exclusively for conservation purposes, including, but not limited to, the Conservation Values of the Property, agricultural, wildlife habitat, horticultural, wetlands, recreational, forest or other uses consistent with the protection of open land, environmental quality or life-sustaining ecological diversity (the "Permitted Water Uses"). The Permitted Water Uses include, but are not limited to, the continuation of the recent historical use, and the Grantor shall have the paramount right to use and enjoy the Water Rights on the Property consistent with recent historical practices. Grantor shall have the right to maintain, repair, and if destroyed, reconstruct any existing facilities related to the Water Rights (such as ditches, wells and reservoirs), unless the Conservation Values of the Property would be irreversibly damaged thereby, as determined by the Grantee in its sole judgment.
- c) Restrictions on Water Rights. The parties agree that the Grantor may not (i) permanently change the Water Rights to or use the Water Rights for municipal, industrial, commercial or any other new uses, (ii) permanently change the Water Rights for use other than on the Property, (iii) sell or lease the Water Rights, or encumber them separately from the Property or otherwise legally separate them from the Property, or (iv) change the points of diversion, or the type or the place of use within or without the Property, except after Grantor's receipt of a written determination by Grantee that such changes are not inconsistent with the Permitted Uses and will not impair the Conservation Values of the Property. Grantor shall not construct, or permit others to construct, any new diversion, storage or other water structures upon the Property, shall not develop any conditional water rights for use on the Property, and shall not otherwise undertake any new development of water resources for use on the Property without the prior written approval of the Grantee.
- d) Protection of Water Rights. In order to preserve and protect the Conservation Values of the Property, the Grantor shall continue the recent historical use of the Water Rights on the Property consistent with the Conservation Values and shall not abandon or allow the abandonment of any of the Water Rights, by action or inaction. In the event such Water Rights are represented by water shares, stock certificates, water allotments, contracts, units, or interests in a joint ditch, ditch and/or reservoir company, water users association, or similar entity, the Grantor shall promptly pay all assessments and shall not allow the Water Rights or shares to be forfeited, sold or otherwise impaired as a result of nonpayment. Grantor shall annually report to the Grantee the nature and extent of use of the Water Rights during the prior year, which report need not be in writing, but shall include copies of any reports submitted to the State or Division Engineer or Water Commissioner. The Grantor shall provide the Grantee a copy of any written notice received by Grantor from any water official concerning the assessment, use, or possible abandonment, of the Water Rights.

If the Water Rights appear on the decennial abandonment list or the Grantee determines that the Water Rights are otherwise subject to a threat of abandonment, the Grantee shall give the Grantor written notice of such threat of abandonment. If, and only if, Grantor fails to cure the threat of abandonment within 90 days of receiving such notice from the Grantee, the Grantee shall, in addition to any other remedies available to the Grantee under this Deed or law, have the right to (i) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights; (ii) seek removal of the Water Rights from the decennial abandonment list; (iii) seek to change the Water Rights to another Permitted Water Use; and/or (iv) sell or otherwise

convey all or part of such Water Rights to the Colorado Water Conservation Board or other entity for the specific conservation purpose of protecting or enhancing instream flows and/or water levels in streams, rivers, lakes and/or reservoirs to preserve or improve the natural environment of such water body(s). Grantor agrees to cooperate in any manner necessary to accomplish the Grantee's election, and authorizes and appoints Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate Grantee's election.

If the Grantor shall fail to pay any assessment of any joint ditch, ditch and/or reservoir company, water user association, or other similar entity and the Water Rights become subject to forfeiture, sale, or other impairment as a result of such delinquency, the Grantee shall, in addition to any other remedies available to the Grantee under this Deed or law, have the right to pay such assessment. In such event, the Grantor shall reimburse Grantee for all its expenses incurred in paying such assessment and preventing the forfeiture, sale or impairment of the Water Rights, including but not limited to reasonable attorneys' fees. The Grantee shall thereafter have a lien upon the Water Rights which are the subject matter of this Conservation Easement Deed for such expenses, and shall have the right to foreclose upon that lien if not reimbursed within 90 days.

- e) Temporary Instream Flow Use of Water Rights. The parties recognize that adverse environmental conditions, such as drought, occur from time to time, and that such conditions may pose a greater threat to the environment and life-sustaining ecological diversity than to the Conservation Values of the Property. Therefore, the parties agree that the Grantor may enter into legally enforceable water leases, contracts, emergency water loans, or similar agreements for conservation purposes to temporarily increase instream flows and/or water levels in streams, rivers, lakes, and/or reservoirs to preserve the natural environment of such water body(s), provided that (i) the Grantee has given its prior written consent to such arrangements, and (ii) the Water Rights shall not be used for such uses more than three out of every 10 years without a written determination by the Grantee that such use would not jeopardize the long-term Conservation Values of the Property.
- f) Temporary Municipal Use of Water Rights. The parties recognize that the long-term economic viability of any agricultural activity on the Property is necessary to accomplish the purposes of this Deed, and that enhancing such economic viability will foster the purposes of this Deed. The parties also recognize that adverse environmental conditions, such as drought, occur from time to time and that such conditions may prevent effective irrigation of the Property. Such conditions may also pose serious water supply problems for municipal, commercial, and industrial water users, which users may need to acquire the temporary use of alternate water supplies to meet their needs. Therefore, the parties specifically anticipate and intend that the Grantor (after 30 days notice to the Grantee) may enter into legally-enforceable interruptible supply contracts, following programs, emergency water loans, or similar agreements to allow the temporary municipal, commercial, or industrial use of the Water Rights. No more than thirty-five per cent (35%) of the Water Rights shall be used for such purposes without a written determination by the Grantee that such use would not jeopardize the long-term Conservation Values of the Property. The Grantor may request temporary leases for more than thirty-five (35) percent of said water rights, however such leases will require the further written consent of the Grantee. The parties agree that the provisions of this paragraph constitute an independent contract enforceable under law, in addition to any other remedies available under this Deed.

- g) Recording encumbrance on stock certificates. If the Water Rights include any shares in ditch or reservoir companies, the Grantor shall promptly submit the related stock certificate(s) to the appropriate ditch and reservoir company for inclusion of the following notation thereon: "These shares are subject to the terms and restrictions set forth in the Conservation Easement Deed from Wesley and Brenda Herman to The Lower Arkansas Valley Water Conservancy District recorded in the Real Property Records of Otero County Colorado on _____, 20__ at Reception No. _____." A copy of the re-issued stock certificate(s) shall be promptly provided by Grantor to Grantee.
- 15) Rights Retained by Grantor. Subject to interpretation under Paragraph 22, as owner of the Property, Grantor retains the right to perform any act not specifically prohibited or limited by this Deed. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose. Grantor retains the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products which are grown on the Property; farm machinery repair; sawmills; and firewood distribution; provided such uses are confined to locations within the Building Envelope described in Paragraph 3(B).
- 16) Responsibilities of Grantor and Grantee Not Affected. Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:
- a) Taxes. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.
- b) Upkeep and Maintenance. Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.
- c) Liability and Indemnification. If Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property, Grantor shall indemnify and reimburse Grantee for these payments, as well as for reasonable attorneys' fees and other expenses of defending itself, unless Grantee or any of its agents have committed a negligent or deliberate act that is determined by a court to be the sole cause of the injury or damage. In addition, Grantor warrants that Grantee is and will continue to be an additional insured on Grantor's liability insurance policy covering the Property. Grantor shall provide certificates of such insurance to Grantee on an annual basis.
- 17) Enforcement. Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed. With reasonable advance notice to Grantor, Grantee or Grantee's agents may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee may, at its discretion, take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee shall give Grantor written notice of the violation and sixty (60) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently, in addition to such other relief as the court

deems appropriate. A court may also issue an injunction requiring Grantor to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time, and Grantor hereby waives any defense available to Grantor pursuant to C.R.S. § 38-41-119, or the defense of laches or estoppel.

- 18) *Transfer of Easement.* With the prior written consent of Grantor (which consent shall not be unreasonably withheld), Grantee shall have the right to transfer the easement created by this Deed to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under §170(h) of the United States Internal Revenue Code, and under Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and only if the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Deed. If Grantee desires to transfer this easement to a qualified organization having similar purposes as Grantee, but Grantor unreasonably refuses to approve the transfer or, if Grantee ever ceases to exist or no longer qualifies under §170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility provided that Grantor receives notice of, and an opportunity to participate in, the court proceeding.
- 19) *Transfer of the Property.* Any time the Property itself, or any interest in it, is transferred by Grantor to any third party, Grantor shall notify Grantee in writing at least twenty (20) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Deed.
- 20) *Amendment of Easement.* This easement may be amended only with the written consent of Grantee and Grantor by an instrument duly executed and recorded in the real property records of Otero County, Colorado. Any such amendment shall be consistent with the purposes of this Deed and may not affect its perpetual duration. Any such amendment shall comply with §170(h) of the United States Internal Revenue Code, and any regulations promulgated thereunder. Any such amendment shall also be consistent with Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and any regulations promulgated thereunder.
- 21) *Termination of Easement.*
- a) If it is determined that conditions on or surrounding the Property change so much that it becomes impossible or impracticable to fulfill its conservation purposes, a court with jurisdiction may, at the joint request of both Grantor and Grantee, terminate the easement created by this Deed. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the easement may be terminated through condemnation proceedings. If the easement is terminated in whole or in part or all or part of the Property is sold or taken for public use, then, Grantee shall be entitled to the percent of the gross sale proceeds or condemnation award that represents an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Deed. Grantee shall use the proceeds consistent with the conservation purposes of this Deed.
 - b) If this Deed is terminated in whole or in part, District shall execute an appropriate instrument and record it in the real property records of Otero County, Colorado.

- 22) *Interpretation.* This Deed shall be interpreted under the laws of the State of Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to preserve the Conservation Values and give maximum effect to its conservation purposes.
- 23) *Perpetual Duration.* The easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. A party's rights and obligations under this Deed terminate upon transfer of the party's interest in this Deed or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 24) *Notices.* Any notices required by this Deed shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:
- To Grantor: Wesley Herman and Brenda Herman
19501 County Road 17.5
Rocky Ford, CO 81067
- To Grantee: Lower Arkansas Valley Water Conservancy District
801 Swink Avenue
Rocky Ford, Colorado 81067
- 25) *Grantor's Title Warranty.* Grantor warrants that Grantor has good and sufficient title to the Property and hereby promises to defend the same against all claims from persons claiming by, through or under Grantor.
- 26) *Grantor's Environmental Warranty and Indemnity.* Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- 27) *Subsequent Liens on the Property.* No provision of this Deed should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Deed.
- 28) *No Merger.* Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Deed.
- 29) *Acceptance.* As attested by its signature affixed hereto, Grantee hereby accepts, without reservation, the rights and responsibilities conveyed by this Deed.

- 30) *Liberal Construction.* Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed in a manner that best effectuates and protects Conservation Values and the purposes of this Deed and the policies and purposes of C.R.S. §38 30.5 101 *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 31) *Interpretation.* This Deed shall be interpreted as any other real property deed according to the laws of the State of Colorado.
- 32) *Internal Revenue Code.* This Deed shall always be interpreted in a manner consistent with the Internal Revenue Code to insure that the Conservation Values as defined by the Internal Revenue Code are protected.
- 33) *Severability.* If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 34) *Recording.* Grantor shall record this Deed in the real property records of Otero County, Colorado within 10 days from the date first written above.

TO HAVE AND TO HOLD, this Deed unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

Wesley Herman

Brenda Herman

STATE OF COLORADO)

COUNTY OF OTERO)

) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by Wesley Herman and Brenda Herman.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

ACCEPTED:

Lower Arkansas Valley Water Conservancy District

By: _____

Its: _____

STATE OF COLORADO

COUNTY OF OTERO

)
) ss.
)

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____, as _____ of the Lower Arkansas Valley Water Conservancy District.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

Exhibit A Legal Description of Property
Exhibit B Building Envelope
Exhibit C Water Rights *[delete if not relevant]*

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXAMPLE

EXHIBIT B
BUILDING ENVELOPE

EXAMPLE

EXHIBIT C
WATER RIGHTS
[delete if not relevant]

1. **[When the water rights to be included in the conservation easement can be described with specificity, include as much detail as possible, i.e., name of water right, source of water, amount, court and case number, date(s) of appropriation and date(s) of adjudication, well permit number(s), allotment contract(s), and/or certificate number(s) for shares in ditch and reservoir companies.]**
2. **[When the water rights to be included in the conservation easement cannot be described with specificity, but the intent of the parties is to include ALL of the water rights.]** The "Water Rights" consists of all of the Grantor's right, title and interests in any and all water and water rights of any kind or nature historically used on the Property, together with all canals, ditches, laterals, headgates, springs, ponds, reservoirs, water allotments, water shares and stock certificates, contracts, units, permits, wells, easements and rights of way, and irrigation equipment associated therewith. The Water Rights include surface water rights and groundwater rights (tributary, nontributary, ~~not nontributary~~, and designated) whether decreed or undecreed.

EXAMPLE

EXHIBIT PM

**Contract #C150512**