

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 AGREEMENT
TO PURCHASE A
CONSERVATION EASEMENT

with
Colorado Open Lands

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1. PARTIES

This grant agreement ("Grant") is entered into by Colorado Open Lands ("Grantee"), whose address is 274 Union Boulevard, Suite 320, Lakewood, CO 80228, 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., Room 721, 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 Grantee 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, 38-30.5-102 and 39-29-109(2)(c); 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, Budget and Schedule)**, **Exhibit B (Performance Monitoring Provisions)**, **Exhibit CE (Conservation Easement-to be attached at closing)**, **Exhibit PLD (Property Legal Description)** 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. Grantee Intent

Grantee intends to obtain from Owner (as defined in §4.K) 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

This Grant supports the legislative policies, purposes, and uses enumerated in CRS §§38-30.5-102 and 39-29-109(2)(c) as the Property possesses some or all of the values, opportunities, and characteristics listed therein which are important to the Parties, the residents of the surrounding area, and the people of the State of Colorado. Grantee has entered or will enter into a contract with Owner for the purchase of a conservation easement burdening the Property. At Grantee's request the State has agreed to provide funding to assist Grantee with such purchase for the purpose of permanently protecting the 116 acre Lake San Cristobal Inlet containing 79 acres of wetlands and 0.65 miles of the Lake Fork of the Gunnison River from future development and inappropriate land management that could jeopardize its recreational, wildlife and scenic characteristics and to guarantee permanent public access to the Lake Fork of the Gunnison River for fly fishing as more particularly described in the Conservation Values set forth in the attached **Exhibit CE**.

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. Baseline Report

"Baseline Report" means the written report, incorporated by reference herein, approved and signed by the Parties that documents the condition of the Property and the historical diversion and use of the Water Rights, if any, as of the Effective Date.

B. CE

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

C. Closing and Closing Date

"Closing" means the completion or waiver of all conditions precedent in the purchase and sale contract by and between Grantee 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.

D. Conservation Values

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

E. CRS

“CRS” means the Colorado Revised Statutes as amended.

F. Easement

“The Easement” is the Conservation Easement set forth in **Exhibit CE**.

G. Effective Date

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

H. 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.

I. Grant Funds

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

J. Management Plan

“Management Plan” means the plan, and any amendments thereto, detailing ongoing management of the Property and Water Rights, if any, set forth in **Exhibit CE**.

K. Owner

“Owner” means the owner of the Property from whom Grantee is purchasing the Easement.

L. Party or Parties

“Party” means either the State or Grantee, and “Parties” means both the State and Grantee.

M. Property

“Property” is the real property legally described in **Exhibit PLD** and generally depicted on **Exhibit PM**.

N. Purchase Price

“Purchase Price” is the total amount of money Grantee will pay Owner to purchase the Easement.

O. 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 Grantee’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 Grantee 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 Grantee, with the Grant Funds to purchase the Easement, and Grantee 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**. Grantee 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 GRANTEE

A. Maximum Amount Payable and Allocation

The maximum amount payable by the State to or on behalf of Grantee for Grant Funds is One hundred and sixty seven thousand (167,000) 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 Grantee beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in §17.B. If GOCO and/or federal funds are used to fund this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant during any State fiscal year shall be made only from available funds encumbered for this Grant for such State fiscal year and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State, GOCO, or federal funds are not fully appropriated or otherwise become unavailable, the State may terminate this Grant in whole or to the extent of such funding reduction, without further liability, after providing notice to Grantee in accordance with §14.

C. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under transactions between the State and Grantee 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 Grantee's ability to perform its obligations hereunder, Grantee 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

Grantee'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 Grantee 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 Gunnison Basin Roundtable and the CWCB Board;
- ii. GOCO if GOCO funding is involved; and
- iii. The applicable agency of the federal government if federal funding is involved.

B. Appraisal and Other Due Diligence

i. Appraisal

Grantee shall, at no cost and expense to the State, have an appraisal completed 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 Grantee shall be provided to the State.

ii. Contract

Grantee shall provide the State with an executed copy of the contract between Grantee and Owner relating to the purchase of the Easement.

iii. Option Agreement

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

iv. Description and Maps

Grantee 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.

v. Management Plan

Grantee shall, at no cost and expense to the State, create a management plan in conjunction with Owner and the State that is acceptable to and approved by the State. Grantee shall deliver the Management Plan to the State within six (6) months of Closing.

vi. Reports

Grantee 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 if needed, 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, Grantee 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 Grantee and the State shall be released from any further obligations.

i. Evidence of Title – Matters of Public Record

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

ii. Standard Title Exceptions

Grantee 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-II of the Title Commitment. Grantee 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 Grantee or the State determines that one or more of the following items must be deleted in the title insurance policy, then Grantee 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

Grantee, 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-II of the Title Commitment.

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

Grantee shall require Owner to deliver to Grantee 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 Grantee 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 Grantee 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 – Grantee's Liability

Grantee 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 Grantee 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). Grantee 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 Grantee fails or refuses to do so within a reasonable time, and Grantee 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

Grantee shall require Owner to maintain the Property in its present condition until closing. Specifically, but not by way of limitation, Grantee shall, in its purchase and sale contract with Owner, prohibit the following activities on the Property: cutting, slashing, removing, destroying or wasting of any trees or plants; diking, dredging, filling or other disturbances; or disturbance of the soils or any alteration of the surface or of any vegetation thereon (with the exception of historic livestock grazing and harvesting of seasonal crops, which shall be in accordance with acceptable range management and farming standards). 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 Grantee 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 Grantee and Owner, but not later than 5:00 p.m. on December 31, 2013. Closing shall occur at the offices of the title company. **At Closing Owner shall deliver to Grantee a properly executed easement deed burdening the Property in perpetuity substantially in the form of Exhibit CE and suitable for recording, and the Grantee 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 Grantee shall sign and complete all customary or required documents at or before Closing.

12. REPRESENTATIONS AND WARRANTIES

A. Owner to Grantee

As a condition of entering into this Grant the State requires Grantee to obtain from Owner the following representations and warranties in the purchase and sale contract between Grantee 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 Grantee, 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 Grantee 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 Grantee 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 purchase and sale contract with Grantee 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. Grantee to the State

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

i. Grantee's Intent

Grantee 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—Grantee Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant, and, if Grantee 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 Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

iii. Qualified Holder

Grantee 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. Grantee in Default

If Grantee is in default, all things of value received or performed hereunder shall be forfeited by Grantee 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 Grantee's failure to perform Grantee'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 Grantee's sole and only remedy for the State's failure to perform its obligations under this Grant. Grantee 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 the Party they represent unless 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

Jacob Bornstein
CWCB
1313 Sherman Street, Room 721
Denver, CO 80203
jacob.bornstein@state.co.us

Grantee

Dieter Erdmann
Colorado Open Lands
274 Union Boulevard, Suite 320
Lakewood, CO 80228
derdmann@coloradoopenlands.org

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

Grantee 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

Grantee 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 Grantee, or its

employees, agents, subgrantees, 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.

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 Grantee, 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

Grantee 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 Grantee, 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 Grantee 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 Grantee 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. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Grantee 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.

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17. COLORADO SPECIAL PROVISIONS

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

A. 1. 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. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. 3. 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. 5. COMPLIANCE WITH LAW.

Grantee 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. 6. 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. 7. 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. 10. 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 1/1/09

[END OF SPECIAL PROVISIONS]

18. SIGNATURE PAGE

Grant Agreement Number C150526
CMS Number

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

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

<p style="text-align: center;">GRANTEE Colorado Open Lands</p> <p>By: _____ Signature</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, Governor Department of Natural Resources, Mike King, Executive Director Colorado Water Conservation Board</p> <p>By: _____ Signature</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
<p style="text-align: center;">2nd Grantee Signature if Needed</p> <p>By: _____ Signature</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____ Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins 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
Robert Jaros, CPA, MBA, JD

By: _____

Susan Borup, Controller, Department of Natural Resources

Effective Date: _____

EXHIBIT A (SCOPE OF WORK, BUDGET AND SCHEDULE)

Statement of Work

GRANTEE and FISCAL AGENT - Colorado Open Lands

PROJECT NAME – Lake San Cristobal Inlet

GRANT AMOUNT – \$167,000

INTRODUCTION AND BACKGROUND

Located approximately three miles south of Lake City in Hinsdale County, Lake San Cristobal is the second largest natural lake in the state of Colorado. The 320-acre lake and the majority of the surrounding lands are owned by Hinsdale County and the Bureau of Land Management, and Lake San Cristobal is a popular destination for fishing, boating, and camping. Hinsdale County manages several public sites on the Lake including a campground, a day-use picnic area, and a boat launch.

At the southern end of Lake San Cristobal is an expansive wetland delta formed by the Lake Fork of the Gunnison River as it empties into the lake. The delta is comprised of a complex of historic channels, remnant beaver dams, patches of open water, and diverse and largely intact montane wetlands, which all provide important habitat for a diverse array of wildlife species and provide critical water quality functions such as flood control and sediment filtration. The majority of this delta is privately owned (referred to herein as the Lake San Cristobal Inlet property).

The 116-acre Lake San Cristobal Inlet property contains approximately 79 acres of wetlands and 0.65 miles of the Lake Fork of the Gunnison River. The Inlet property is completely surrounded by County and BLM land and is the only significant piece of private property at the south end of the Lake. The landowners have historically allowed the public to access the Lake Fork of the Gunnison River on the property for fishing through a handshake agreement with the Colorado Parks and Wildlife's District Wildlife Manager. The property is minimally signed and is not marked as open to the public, but still receives significant use.

OBJECTIVES

The objective of the project is to protect the property from future development and inappropriate land management that could jeopardize its recreational, wildlife, and scenic characteristics, and to guarantee permanent public access to the Lake Fork of the Gunnison River for fly fishing. Many of the characteristics that make the property a high priority for conservation also align closely with the Gunnison Basin Roundtable's Non-consumptive Needs Assessment. The Needs Assessment identifies Lake San Cristobal a "Major Recreational Segment" due to its "Highest Recreation and Fishery" attributes. This project ensures the protection of or directly enhances nearly all of the attributes identified in the Needs Assessment for Lake San Cristobal. In addition, the project meets the Gunnison Basin Roundtable objective of "Preserving Open Space" in a highly sensitive scenic landscape. Using funding from Great Outdoors Colorado, Colorado Parks and Wildlife's "Fishing is Fun" program, and the Gunnison Basin Roundtable, Colorado Open Lands will negotiate and bargain purchase a conservation easement and

permanent access agreement from the landowners to ensure that the property's conservation values are preserved and protected in perpetuity.

TASKS

TASK 1 – Prepare Conservation Easement and Access Agreement

Description of Task

Colorado Open Lands (COL) will work with the landowner, Great Outdoors Colorado (GOCO), the Colorado Water Conservation Board (CWCB), and the Division of Parks and Wildlife (DPW) to negotiate two separate agreements, a perpetual conservation easement and a perpetual access agreement. Most, if not all, of the general parameters of these agreements have been pre-negotiated with the landowner as a result of multiple grant applications, however, these documents will need to be reviewed by agency staff, the landowner's attorney, and COL's attorney.

Method/Procedure

Iterative process beginning with standard forms including required language from all funding agencies involved.

Deliverable

A nearly final conservation easement document and access agreement in a form such that these can be included in purchase contracts. These documents will need to be reviewed by agency staff, the landowner's attorney, and COL's attorney

TASK 2 – Enter into Purchase Contracts

Description of Task

COL will work with the landowner and the DPW to negotiate purchase contracts for the conservation easement and the access agreement.

Method/Procedure

Iterative process beginning with standard forms including required language from all funding agencies involved.

Deliverable

Executed purchase contracts that establish a purchase amount, dictate a due diligence and inspection period, closing date, and form of documents to be executed at closing.

TASK 3 – Due Diligence Review and Funder Approval

Description of Task

COL will work with landowner to prepare and review due diligence to ensure a sound transaction. COL will submit due diligence to GOCO, CWCB, and CPW within required timelines to gain approval for closing.

Method/Procedure

Minerals assessment and phase I environmental assessment have been completed. COL and landowner will update title commitment and contract with appraiser to complete valuation of property interests. Lake Fork Valley Conservancy will complete baseline report.

Deliverable

Project documentation consistent with IRS guidelines, industry standards, and funder guidelines. Approval for closing from funders.

TASK 4 – Closing

Description of Task

Once funders have reviewed due diligence, funding will be wired to title company escrow account and closing can proceed. Limited signage will be developed to acknowledge project partners and help manage public access.

Method/Procedure

Closing will be conducted by title company as a typical real estate transaction.

Deliverable

Recorded documents, installation of limited signage.

Exhibit A

PROJECT TIMELINE

<i>Task ↓</i>	<i>Date →</i>	Jan – March 2013	March – May 2013	May - July 2013	July – Sept 2014	Already Complete (Completion Date)
Prepare Conservation Easement, Access Easement						
Obtain Environmental Assessment						February, 2012
Obtain Geologist's Mineral Assessment						February, 2012
Enter into Purchase Contract						
Obtain updated Title Commitment and referenced documents						
Complete Final Appraisal						
Complete Baseline Inventory Report						
Conduct Closing						

PROJECT BUDGET

**Lake San Cristobal Inlet Preservation and Fishing Access Project
Proposed Budget**

PROJECT COST							
	GOCO	Fishing is Fun	Gunnison Basin WSRA	Statewide WSRA	Lake Fork Valley Cons.	COL	Landowner
Cash							
Easement and Access Acquisition	700,000	133,000	16,700	150,300			
Appraisal							
Closing Costs							11,000
Environmental Assessment							4,500
Geologist's Remoteness Letter							2,750
Legal Services (COL)						7,000	1,800
Stewardship Endowment							20,000
In-Kind							
Baseline Documentation					3,800		3,800
TOTALS	700,000	133,000	16,700	150,300	3,800	7,000	40,050
PROJECT VALUE							
Total Uses of Funds							1,050,850
Donated Land Value							800,000
<i>Project Value</i>							1,850,850

EXHIBIT B (PERFORMANCE MONITORING PROVISIONS)

Colorado Open Lands Water Supply Reserve Account Grant Performance Monitoring Provisions

Statutory Requirements

For each personal services contract with a value over \$100,000, the individual selected by the state agency or institution of higher education (IHE), pursuant to CRS §24-103.5-101(3), shall monitor the contractor's work under the contract and shall certify as to whether the contractor is complying with the terms of the contract pursuant to CRS §§24-103.5-101(5).

(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 shall purchase a perpetual conservation easement. Grantee will produce detailed deliverables for Tasks 1 to 4 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.

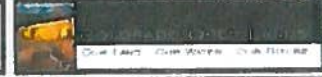
(d) Noncompliance Resolution: Per paragraphs 9, 14, 15, and 19 of the contract: payment will be withheld until grantee is current on all grant conditions. Flagrant disregard for grant conditions will result in a stop work order and cancellation of the purchase order.

EXHIBIT CE (CONSERVATION EASEMENT)

EXHIBIT PLD (PROPERTY LEGAL DESCRIPTION)

EXHIBIT PM (PROPERTY MAP)

Lake San Cristobal Inlet Preservation and Fishing Access Project Hinsdale County, Colorado Area Map



Created by Colorado Open Lands, March 2012

Data Sources: Colorado Open Lands,
Colorado Ownership Management and Protection (COMaPv8)
USA Topo Maps - USGS

This map is not a survey and must not be construed as one.



0 0.4 0.8 1.6 Miles

