

STATE OF COLORADO
Colorado Water Conservation Board
Grant Agreement
with
Northern Colorado Water Conservancy District
Contract Number C150540

TABLE OF CONTENTS

1. PARTIES.....	1
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.....	1
3. RECITALS.....	1
4. DEFINITIONS.....	2
5. TERM and EARLY TERMINATION.....	3
6. STATEMENT OF WORK.....	3
7. PAYMENTS TO GRANTEE.....	4
8. REPORTING - NOTIFICATION.....	5
9. GRANTEE RECORDS.....	5
10. CONFIDENTIAL INFORMATION-STATE RECORDS.....	6
11. CONFLICTS OF INTEREST.....	6
12. REPRESENTATIONS AND WARRANTIES.....	7
13. INSURANCE.....	7
14. BREACH.....	8
15. REMEDIES.....	9
16. NOTICES and REPRESENTATIVES.....	10
17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE.....	11
18. GOVERNMENTAL IMMUNITY.....	11
19. STATEWIDE GRANT MANAGEMENT SYSTEM.....	11
20. GENERAL PROVISIONS.....	12
21. COLORADO SPECIAL PROVISIONS.....	14
22. SIGNATURE PAGE.....	16
23. EXHIBIT A: STATEMENT OF WORK.....	Exhibit A
24. EXHIBIT B: PERFORMANCE MONITORING.....	Exhibit B

1. PARTIES

This Grant Agreement (hereinafter called “Grant”) is entered into by and between Northern Colorado Water Conservancy District, 220 Water Ave., Berthoud, Colorado, 80513, a political subdivision of the State of Colorado, organized pursuant to the provisions of C.R.S. §§ 37-45-101, *et seq.*, (hereinafter called “Grantee” or “Northern Water”), and the STATE OF COLORADO acting by and through the Department of Natural Resources, Colorado Water Conservation Board (hereinafter called the “State or CWCB”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). 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.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority for the agency entering into this Contract arises from Colorado Revised Statutes (CRS) 39-29-109(2)(c), 37-75-104(2)(c) and 37-75-102 et al., and Senate Bill 06-179 adopted by the 2006 General Assembly, and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

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. Purpose

The Water Supply Reserve Account (“WSRA”) provides money for grants and loans to complete water activities, which are broadly defined and include water supply and environmental projects and/or studies. The purpose of this grant is for Grantee to perform obligations under the CWCBC Emergency Flood Assessment, Design and Recovery Grant by selecting qualified Subgrantees, using a Subgrantee application process, and awarding grant funds to complete the repair of damages to water supply infrastructure caused by the 2013 flooding. The Grantee will act as the Program Sponsor of the Grant. Additional information on the project is included in Exhibit A – Statement of Work. Grantee’s role as Program Sponsor is more specifically outlined in Tasks 1, 2 and 3 in the attached Exhibit A-Statement of Work. The selected Subgrantees are solely responsible for providing the technical and other services described in Activity 1 and construction described in Activity 2.

D. 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. Budget

“Budget” means the budget for the Work described in **Exhibit A**.

B. Evaluation

“Evaluation” means the process of examining Grantee’s Work and Subgrantee’s Work, and rating it based on criteria established in **§19** and **Exhibit A**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work) and **Exhibit B** (Performance Monitoring).

D. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee and Subgrantee renders hereunder.

E. 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, Fiscal Rules, and State Controller Policies.

F. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

G. Party or Parties

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

H. Program

“Program” means the CWCBC Emergency Flood Recovery Assessment, Design, and Recovery water activity which utilizes funds provided from the Water Supply Reserve Account grant program.

I. Program Sponsor

“Program Sponsor” means the entity administering the Program pursuant to Tasks 1, 2 and 3 in Exhibit A and the terms herein, and more specifically the Grantee.

J. Review

“Review” means examining Grantee’s Work and Subgrantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§19** and **Exhibit A** and **Exhibit B**.

K. Services

“Services” means the required services to be performed by Grantee and Subgrantee pursuant to this Grant.

L. Subgrantee

“Subgrantee” means third-parties selected by Grantee to perform Subgrantee’s Activities 1 and 2 as described in Exhibit A-Statement of Work. The selected Subgrantees are solely responsible for providing the technical and other services described in Activity 1 and construction described in Activity 2 as described in the attached Exhibit A-Statement of Work.

M. Work

“Work” means the tasks Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A and Exhibit B**, including the selection of Subgrantees, using a Subgrantee application process, to complete the repair of damages to water supply infrastructures caused by the 2013 flooding. References to “Subgrantee Work” means the technical and other services described in Activity 1 and construction described in Activity 2 that Subgrantee will perform as described in the attached Exhibit A-Statement of Work.

N. Work Product

“Work Product” means the tangible or intangible results of Grantee’s Work and Subgrantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM and EARLY TERMINATION.

A. Initial Term-Work Commencement

The Parties’ respective performances under this Grant shall commence after the Agreement is signed by the State Controller or delegate (“Effective Date”). The termination date is two (2) years from the effective date unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in **§16**, may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF WORK

A. Completion

Grantee shall complete the Work and its other obligations, as described herein and in Exhibit A (as specifically outlined in Tasks 1, 2 and 3), two (2) years from the effective date. The State shall not be liable to compensate Grantee for any Subgrantee Work performed prior to October 14, 2014 or after the termination of this Grant. Provided however, Subgrantee Work performed after September 9, 2013 may qualify as in-kind services or contributions.

B. Goods and Services

Grantee shall act as Program Sponsor and shall complete the tasks identified in Exhibit A using a Subgrantee application process. Goods provided and Services and Work performed by the Subgrantees, shall be in accordance with Grantee contracts to Subgrantees and accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee’s or Subgrantees’ employee(s), respectively, for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **\$1,800,000**, as determined by the State from available funds. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**. The maximum amount payable by the State to Grantee during each State fiscal year of this Grant shall be:

\$1,800,000 in FY2014
\$1,800,000 in FY2015, minus any funds expended in FY2014
\$1,800,000 in FY2016, minus any funds expended in FY2014 and FY2015

B. Payment

i. Interim and Final Payments

Any payment allowed under this Grant or in **Exhibit A** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant, including the attached Exhibits. Grantee shall initiate any payment requests by submitting Subgrantee invoices and associated documentation to the State in the form and manner set forth and approved by the State, as frequently as monthly, or as frequently as agreed upon by Northern and CWCB.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee and approved Subgrantees. Uncontested amounts not paid by the State within 45 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any documented reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee, if Grantee is able to recover from Subgrantees, by deduction from subsequent payments under this Grant or other Grants, grants or agreements 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 party other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein (as more specifically described in Exhibit A), and/or in the Budget. The State's total consideration shall not exceed the maximum amount shown herein.

8. REPORTING – NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

Grantee shall comply with and require its Subgrantees to comply with, all reporting requirements, set forth in **Exhibit A and Exhibit B**.

B. Litigation Reporting

Within 10 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 the Colorado Department of Natural Resources.

C. 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 termination as provided under this Grant.

D. Subgrants

Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

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

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the Record Retention Period) until the last to occur of the following: (i) a period of three years after the date this Grant is completed or terminated, or (ii) final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Grantee shall permit the State to inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work (including Subgrantee's Work) at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee and its Subgrantees to promptly bring the Work into conformity with Grant requirements. If the Work (including Subgrantee's Work) cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee with the Subgrantee's assistance, when needed, to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or inequity in lieu of or in conjunction with such corrective measures. Subgrantee will be responsible for and will be liable for any performance of Subgrantee Work as specified in Exhibit A, Subgrantee Activities 1 and 2.

C. Monitoring

Grantee shall permit the State to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other

procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein if so requested in writing by the State.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions on this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. The State shall notify the Grantee in writing and notate any State records and information that are classified by the State as being "Confidential" and given to the Grantee in connection with its performance hereunder. The provisions of this Section 10 shall only apply to such notated records and information.

A. Confidentiality

Grantee shall keep all State records and information (classified as confidential in accordance with Paragraph 10. immediately above) confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

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

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records classified as confidential and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records classified as confidential in accordance with this Section 10 or disclosure of other State designated confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Specifically related to documents designated in writing by the State as confidential documents in accordance with this Section 10, Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, or agents, and that are limited and specifically related to the disclosure of records designated in writing by the State as confidential records pursuant to this §10.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder and as more specifically described in Exhibit A- Statement of Work (Tasks 1, 2, and 3) in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantees Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, 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.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the receipt of the Notice to Proceed it will have, if applicable per Exhibit A, Statement of Work and pursuant to this Grant, at all times during the term hereof, at its sole expense, all insurance, certifications, approvals, licenses, permits, and other authorization required by law to perform its obligations hereunder. Grantee shall require as a term and condition of its contracts with any Subgrantee that all Subgrantees certify that they have, at their sole expense, all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees of Grantee performing services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. The Grantee shall require, in any contract with the Subgrantees, that any Subgrantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificates of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall require each Grant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Certificates

Grantee shall provide certificates showing Grantee insurance coverage required above to the State within 30 business days of the effective date of this agreement, and no later than 15 days prior to the expiration date of any such coverage, Grantee shall deliver to the State certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, Grantee shall, within 30 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.A. as it pertains to Grantee.

B. Subgrantees

As required by the State, Grantee shall require as a term and condition of its contract with any Subgrantee that each Subgrantee providing Goods or Services or performing Subgrantee Work, in connection with this Grant, certifies that it has insurance substantially similar to the following in **§13.B.i.** through **13.B.viii.**, or in the alternative, complies with **§13.B.ix.** (Subgrantees May Hold the State and Grantee Harmless):

i. Worker's Compensation

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

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket Grantual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, additional insurance shall be immediately obtained to restore the full aggregate limit and furnish a certificate or other document satisfactory to Grantee showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Primacy of Coverage

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

v. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State.

vi. Subrogation Waiver

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

vii. Additional Insured

Subgrantees shall name the Grantee and the State as additional insured on the Commercial General Liability (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

viii. Certificates

Subgrantee shall provide insurance certificates thirty business days of the Notice to Proceed from the Grantee to the Subgrantee. In addition, upon request by the State at any other time during the term of this Grant or any sub-grant, Subgrantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13.**

ix. Subgrantees May Hold the State and Grantee Harmless

Subgrantees who do not provide insurance certificates verifying the insurance requirements specified above in §13.B. shall a) provide evidence of what insurance coverages are in place, and b) shall sign a waiver holding the State and Grantee harmless in lieu of providing insurance at the levels specified above, except that Worker's Compensation shall not be exempted when required by statute. A standard hold harmless waiver form shall be approved by the State.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or

similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Grants with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or sub-Grants. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

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. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made.

Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

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

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. 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.

A. State:

Craig Godbout
Program Manager
Water Supply Planning Section
Colorado Water Conservation Board,
1580 Logan Street, Suite 200
Denver, CO 80203
303-866-3441 ext. 3210
craig.godbout@state.co.us

B. Grantee:

Jerry Gibbens
Northern Colorado Water Conservancy District
220 Water Avenue
Berthoud, CO 80513-9245
jgibbens@northernwater.org

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee and Subgrantees in the performance of its obligations under this Grant shall be the nonexclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's nonexclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the Grantee, its departments, board of directors, and employees is controlled and limited by the provisions of the Governmental Immunity Act.

19. STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Grant management system, to the extent outlined in Exhibit B.

Grantee's performance of its Tasks 1, 2 and 3 shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Grant Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost

and timeliness as each pertains to Task 1, 2 and 3. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations, as further contained in Exhibit B. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating by CWCB shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress. The State shall be solely responsible for monitoring, evaluation and reviewing, pursuant to CRS §24-103.5-101, Subgrantee's Work (as further described in Activities 1 and 2 in the Statement of Work-Exhibit A).

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder and as more fully described in Exhibit B, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the CWCB, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and SubGrants

As described in Exhibit A-Statement of Work, Grantee will enter into a Subgrant agreement with Subgrantees. The selected Subgrantees are solely responsible for providing the technical and other services described in Activity 1 and construction described in Activity 2. All assignments, subgrants, or Subgrantees approved by Grantee are subject to all of the provisions hereof.

B. Binding Effect

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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. Counterparts

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

E. 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.

F. Indemnification-General

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, or agents, 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.

G. Jurisdiction and Venue

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

H. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by both parties in an amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS 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 automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Grant shall govern the relationship of the State and Grantee. 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,
- ii.** The provisions of the main body of this Grant,
- iii.** Exhibit A and Exhibit B.

J. 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.

K. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required. Subgrantee's continued performance of any obligations shall solely be Subgrantee's responsibility.

L. 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 and 201 *et seq.* Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Subgrantees shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee or Subgrantee for them.

M. Third Party Beneficiaries

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

N. Waiver

Waiver of any breach of 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 breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. 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.*

21. COLORADO SPECIAL PROVISIONS

The 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 deemed valid until it has been approved by the Colorado 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.4. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E.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.

F.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.

G.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 contract or incorporated herein by reference shall be null and void.

H.8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I.9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J.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.

K.11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.

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

L.12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.

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

SPs Effective 1/1/09

[END OF SPECIAL PROVISIONS]


22. SIGNATURE PAGE

C150540

CMS# 42427

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 Northern Colorado Water Conservancy District</p> <p>By: <u>Eric W. Wilkinson</u> Print</p> <p>Title: <u>General Manager</u></p> <p><u></u> *Signature</p> <p>Date: <u>OCTOBER 31, 2013</u></p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper GOVERNOR Department of Natural Resources Mike King, Executive Director</p> <p>BY: <u>Rebecca Mitchell</u></p> <p>Name: <u>Rebecca Mitchell</u> <u>Section Chief, Water Supply Planning</u> <u>Colorado Water Conservation Board</u></p> <p>DATE: <u>10-31-13</u></p> <p>Signatory avers to the State Controller or delegate that Grantee has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p>
<p>2nd Grantee Signature if Needed</p> <p>By: _____</p> <p>Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____ N/A 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.

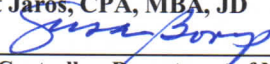
<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: <u></u> Susan Borup, Controller, Department of Natural Resources</p> <p>Date: <u>10/21/13</u></p>
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Exhibit A

STATEMENT OF WORK

WATER ACTIVITY NAME – Emergency Flood Recovery Assessment, Design, and Recovery

GRANT RECIPIENT – Northern Colorado Water Conservancy District

FUNDING SOURCE –Water Supply Reserve Account (“WSRA”), South Platte Basin Roundtable

GENERAL DESCRIPTION OF PROJECT

The purpose of this grant is for Northern Water to perform obligations under the CWCB Emergency Flood Recovery Assessment, Design and Recovery Grant by selecting qualified Subgrantees, using a Subgrantee application process, and awarding grant funds to complete the repair of damages to water supply infrastructure caused by the 2013 flooding. Northern Water’s role as Program Sponsor is more specifically outlined in Tasks 1, 2, and 3 below. The selected Subgrantees are solely responsible for providing the technical and other services described in Activity 1 and construction described in Activity 2 also shown below.

The September 2013 flood caused remarkable damage in the South Platte River Basin. Reservoirs, diversions, and ditches have been damaged and, in some cases, destroyed in many areas. For others, the water infrastructure is intact, but the river or stream has moved so that it is no longer possible to divert water for the decreed beneficial use(s). Riparian areas have also been severely impacted and river re-channelization is severe in many areas.

In reaction to these requests the CWCB, on September 25, 2013, and October 21, 2013 approved a \$1.8 M grant to be used for flood recovery purposes with Northern Water acting as the Program Sponsor and distributing grant funds in accordance with CWCB criteria, subject to review by CWCB. CWCB has directed that the funds made available under the grant are to be used by water users and water providers (hereinafter referred to as Subgrantees) as “seed money” to perform damage assessments, and facilitate loan and/or additional grant applications which may be required to fund the full cost of needed repairs, master planning, engineering and permitting for projects, as well as to accomplish initial needed repairs and construction that will assist Subgrantees in getting back online temporarily or permanently.

Subgrantees do not have adequate financial and technical resources to initiate the rehabilitation process, yet have a need to act expeditiously in light of the pending storage season and the 2014 irrigation season. Therefore, it is critical to provide initial emergency grants as soon as possible, recognizing that further clarifications regarding specific fund distribution criteria may be needed. Examples of allowable short term assistance may include, but not limited to, headgate and ditch repair and clean up, i.e. projects that are “shovel ready”.

CWCB has been asked to take a leadership role in supporting impacted areas. Federal funds may not be at adequate funding levels, or dispersed in a timely manner to support needed repair of the water infrastructure in areas of the South Platte Basin affected by the 2013 flooding. Furthermore, flood insurance typically does not exist nor does it cover this infrastructure.

Neighboring Subgrantees are encouraged to work collaboratively and cooperatively to minimize costs and to address challenges associated with river re-channelization or structure relocation. Funds could be used to further determine the best course for restoring the river channel. At the Subgrantee’s discretion, they may partner with Colorado Parks and Wildlife, CWCB, and non-governmental organizations to incorporate fish and paddler friendly designs where possible.

TASKS TO BE PERFORMED BY GRANTEE

Task 1: Selection of Subgrantees and Distribution of CWCB WSRA Grant Funds by Northern Water to Subgrantees

Description: To facilitate the distribution of CWCB WSRA Grant Funds (funds), Northern Water will solicit, review and approve in coordination with CWCB staff, grant applications from qualifying Subgrantees. Upon approval, Northern Water will provide a Notice to Proceed to the Subgrantees and will distribute grant funds as reimbursements for approved expenditures to Subgrantees. Expenditures of funds by approved Subgrantees can be used to fund two types of activities: Technical Services Seed Money (Activity 1); and Assistance for Shovel Ready Projects (Activity 2). All applicants must be in flood impacted areas within the South Platte Basin and working to repair and/or recover water infrastructure impacted

by the September 2013 floods. Applicants also must be holders of decreed perfected water rights for agricultural, domestic, municipal, and/or industrial uses associated with the infrastructure for which grant funding is requested. Federal and State agencies are not eligible to receive grant funds.

Reimbursement to Subgrantees: Northern Water must provide documentation (including invoices) from its Subgrantees of qualified incurred expenses to CWCB in order to receive reimbursement of those qualified expenditures from the approved grant funds. Northern Water may submit this documentation on a monthly basis, or as frequently as agreed upon by Northern and CWCB. Once accepted by CWCB, the documents will be processed for payment. The request for payment must include a description of the work accomplished by activities associated with Task 1. All products, data and information developed as a result of this grant must be provided to the CWCB in 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.

Actual reimbursement of grant funds shall be based on required documentation showing final project costs and other grant funding from other sources used to pay project costs.

CWCB reserves the right for CWCB or Northern Water to perform on-site observations of any project funded by this grant throughout the duration of the grant to ensure that the actual progress is consistent with reported progress, and that the work is otherwise consistent with the grant application.

Task 2: Progress Reports

Northern Water shall submit a progress report to CWCB every 6 months. The progress report shall summarize the projects for which funds were used, and contain by reference each of the final reports required of water users receiving funds. The progress report shall describe the completion or partial completion of the CWCB Emergency Flood Recovery Assessment, Design, and Recovery Grant program, identifying the estimated percentage of program completion.

Northern Water shall require the Subgrantees to submit a final report summarizing each project and documenting how each project was completed. Northern Water will provide CWCB every 6 months a copy of each Subgrantee's final report, which may contain photographs, summaries of meeting, engineering reports/designs, and as-built drawings.

Task 3: Final Deliverable

At the conclusion of fund distribution Northern Water will send the last of the 6 month progress reports to CWCB.

ACTIVITIES TO BE PERFORMED BY SUBGRANTEES:

Subgrantee Activity 1:

Technical Services Seed Money - Up to \$25,000 may be made available per project/structure to be used for technical services needed to prepare the project for construction, including collaborative master planning for a stream or stream reach, engineering, permitting, or the preparation of documents required for loan or other grant applications. Technical Services Seed Money grants would be limited to 75%, up to \$25,000 (whichever is less), of the total planning, engineering and permitting costs for each project or structure that will not be reimbursed or provided from other non-water user financial sources. The remaining funding required must be matched from other sources or in-kind planning, engineering, or permitting services provided or paid for by the Subgrantee.

Grants for technical assistance involving multiple water users (each with a separate diversion point) working cooperatively and collaboratively, such as for re-channelization of a stream reach or combining diversion points or diversion structures, may be approved for up to \$25,000 per diversion point involved in the collaborative project, not to exceed 75% of the total cost of the work not reimbursed from other funding sources (i.e. if three water users combine efforts, the maximum request could be \$75,000, and to receive a maximum grant of \$75,000, the total qualifying costs for the project not reimbursed from other funding sources would equal or exceed \$100,000). In these cases, a single application should be submitted with one of the Subgrantees identified as the project representative; however, each applicant will be a signatory Subgrantee. That portion of the grant allocated to each of the involved Subgrantees will count towards each Subgrantee's maximum award under this grant program (see Northern Colorado Water Conservancy District's Application Instructions).

Subgrantee Activity 2:

Assistance for Shovel Ready Projects - Up to \$20,000 may be made available for initial construction, which could be part of the cost sharing financing requirements of other non-CWCB financial assistance programs or in-kind services. This type of grant would be limited to 75%, up to \$20,000 (whichever is less), of the total construction costs for each project or structure that will not be reimbursed or will not be provided from other non-water user financial sources. The remaining funding required must be matched from other sources or in-kind construction services provided or paid for by the Subgrantee.

Grants for shovel ready projects involving multiple water users (each with a separate diversion point) or multiple projects may be approved for up to \$100,000 and may include up to five projects or structures. In the case of collaborative, cooperative projects, a single application should be submitted with one of the Subgrantees identified as the project representative; however, each applicant will be a signatory Subgrantee. The amount allocated to each entity involved in the cooperative project seeking the grant will count towards each Subgrantee's maximum award under this grant program (see Northern Colorado Water Conservancy District's Application Instructions).

Engineering: It shall be the Subgrantee's responsibility to assure that all engineering work (as defined in the Engineers Practice Act (§12-25-102(10) C.R.S.) performed under activities 1 or 2 of this grant shall be performed by or under the responsible charge of professional engineer licensed by the State of Colorado to practice Engineering. Northern Water and CWCB will not provide engineering services under this grant, neither expressly or implied, nor does approval of a grant application imply that Northern Water or CWCB have any oversight/responsibility for project engineering or construction.

PROJECT BUDGET:

Total Costs					
		WSRA Statewide*	WSRA Basin*	Subgrantee Matching Funds**	Total Project Costs**
Task 1: Distribution of CWCB WSRA Grant Funds by Northern Water to Subgrantees	Activity 1	\$1,000,000	\$200,000	\$400,000	\$1,600,000
	Activity 2	\$500,000	\$100,000	\$200,000	\$800,000
Task 2: Project Reporting		0	0	0	0
Task 3: Final Deliverables		0	0	0	0
Total		\$1,500,000	\$300,000	\$600,000	\$2,400,000

* Allocation of funds among Activity 1 and Activity 2 are estimates only. Allocations may be revised by Northern Water and CWCB based on the application requests.

** Represents a minimum level of non-CWCB funding by Subgrantees reflecting the allocation of funds among Activity 1 and Activity 2 as indicated above. No money or matching funds will be provided by Northern Water. Northern Water will be acting as a Program Sponsor only to administer the grants.

SCHEDULE:

Task	Start Date	Finish Date
Task 1	Contract effective date	Contract termination date
Task 2	6 Months from contract effective date	See Task 3
Task 3	(N/A)	30 days from Contract termination date

Exhibit B
Northern Colorado Water Conservancy District
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 (here, an individual that CWCB selects within the CWCB) pursuant to CRS §24-103.5-101(3), shall monitor Grantee's work under the contract as specifically described in Tasks 1, 2 and 3 in the Exhibit A-Statement of Work and shall certify as to whether Northern Water is complying with the terms of the Grant Agreement pursuant to CRS §§24-103.5-101(5). CWCB shall be solely responsible for monitoring, evaluation and reviewing, pursuant to CRS § 24-103.5-101, Subgrantee's Work (as further described in Activities 1 and 2 in the Statement of Work-Exhibit A).

Pursuant to CRS §24-103.5-101(2), each personal service contract entered into with a value of one hundred 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.

CRS § 24-103.5-101(2).

Performance Monitoring Standards

Pursuant to the above, performance monitoring by CWCB of Northern Water's Work as specifically described in Tasks 1, 2 and 3 for this Grant shall include the following:

- (a) Performance measures and standards: The Grantee will provide administrative services to assess and facilitate subgrants for the repair of damages to water supply infrastructure caused by the 2013 flooding. For Tasks 1, 2, and 3, Grantee will require all Subgrantees to produce detailed deliverables for its Subgrantee's Work performed under Activities 1 and 2 as specified in Exhibit A. Grantee shall maintain receipts and invoices received from Subgrantees for all project expenses and documentation of the minimum in-kind contributions made by Subgrantees per the budget in Exhibit A. Per WSRA Criteria and Guidelines, retainage of 5% of the grant funds (ultimately payable by Grantee to each Subgrantee) shall be withheld until receipt of the final report and all other deliverables from each Subgrantee.
- (b) Accountability: Per WSRA Criteria and Guidelines full documentation of project progress as developed and submitted by each Subgrantee must be submitted by Grantee with each invoice for reimbursement. Subgrantee must certify to the Grantee that all grant conditions have been complied with on each invoice, and Grantee must submit the Subgrantee's certification with each request for payment to CWCB. In addition, per WSRA Criteria and Guidelines progress reports must be submitted by each Subgrantee at least once every 6 months, with an overview summary report submitted to CWCB

by the Grantee every 6 months. A final project report must be submitted by each Subgrantee and approved by the CWCB and the Grantee before final project payment and release of retainage.

(c) Monitoring Requirements: Grantee is responsible for ongoing administrative monitoring of project progress per the progress reports submitted by the Subgrantees pursuant to Exhibit A-Statement of Work and Paragraphs 9 & 19 of the contract. Subgrantee is responsible for the quality of work performed by the Subgrantee and Subgrantee contractors, and for assuring the performance of the Subgrantee or Subgrantee contractors is in compliance with statute, industry standards, permits, licenses, certifications, or other legal, regulatory, or statutory requirements. Progress shall be detailed in the required invoice documentation and progress reports provided to Northern Water and the CWCB by Subgrantees as detailed above.

(d) Noncompliance Resolution: Per paragraphs 9, 14, 15, and 19 of the contract: reimbursement to Grantee, or reimbursement by Grantee to any Subgrantee, will be withheld until Grantee and/or Subgrantee are current on all grant conditions. Flagrant disregard for grant conditions will result in a stop work order and cancellation of the purchase order.