



# COLORADO WATER CONSERVATION BOARD



## WATER SUPPLY RESERVE ACCOUNT APPLICATION FORM

Today's Date: August 1, 2014

Arkansas Roundtable Basin Implementation Plan Phase Two

### Name of Water Activity/Project

Lower Arkansas Valley Water Conservancy District

### Name of Applicant

Arkansas Basin  
Roundtable

Amount from Statewide Account:

104,600

Amount from Basin Account(s):

209,200

Total WSRA Funds Requested:

313,800

### Approving Basin Roundtable(s)

*(If multiple basins specify amounts in parentheses.)*

FEIN: 481298144

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### Required Exhibits

- A. Statement of Work, Budget, and Schedule
- B. Project Map
- C. As Needed (i.e. letters of support, photos, maps, etc.)

### Appendices – Reference Material

- 1. Program Information
- 2. Insurance Requirements
- 3. WSRA Standard Contract Information (Required for Projects Over \$100,000)
- 4. W-9 Form (Required for All Projects Prior to Contracting)

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### **Instructions**

To receive funding from the Water Supply Reserve Account (WSRA), a proposed water activity must be approved by the local Basin Roundtable **AND** the Colorado Water Conservation Board (CWCB). The process for Basin Roundtable consideration and approval is outlined in materials in Appendix 1.

Once approved by the local Basin Roundtable, the applicant should submit this application **with a detailed statement of work including budget and schedule as Exhibit A** to CWCB staff by the application deadline.

WSRA applications are due with the roundtable letter of support 60 calendar days prior to the bi-monthly Board meeting at which it will be considered. Board meetings are held in January, March, May, July, September, and November. Meeting details, including scheduled dates, agendas, etc. are posted on the CWCB website at: <http://cwcb.state.co.us> Applications to the WSRA Basin Account are considered at every board meeting, while applications to the WSRA Statewide Account are only considered at the March and September board meetings.

When completing this application, the applicant should refer to the WSRA Criteria and Guidelines available at: <http://cwcb.state.co.us/LoansGrants/water-supply-reserve-account-grants/Documents/WSRACriteriaGuidelines.pdf>

The application, statement of work, budget, and schedule **must be submitted in electronic format** (Microsoft Word or text-enabled PDF are preferred) and can be emailed or mailed on a disk to:

Craig Godbout - WSRA Application  
Colorado Water Conservation Board  
1580 Logan Street, Suite 200  
Denver, CO 80203  
[Craig.godbout@state.co.us](mailto:Craig.godbout@state.co.us)

If you have questions or need additional assistance, please contact Craig Godbout at: 303-866-3441 x3210 or [craig.godbout@state.co.us](mailto:craig.godbout@state.co.us).

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### Part I. - Description of the Applicant (Project Sponsor or Owner);

1.	Applicant Name(s):	Lower Arkansas Valley Water Conservancy District		
	Mailing address:	801 Swink Ave. Rocky Ford, CO 81067		
	FEIN #:	481298144		
	Primary Contact:	Jay Winner	Position/Title:	General Manager
	Email:	jwinner@centurytel.net		
	Phone Numbers:	Cell: 719-469-8935	Office:	719-254-5115
	Alternate Contact:	Carla Quezada	Position/Title:	Office Manager
	Email:			
	Phone Numbers:	Cell:	Office:	719-254-5115

### 2. Eligible entities for WSRA funds include the following. What type of entity is the Applicant?

- ☐ Public (Government) – municipalities, enterprises, counties, and State of Colorado agencies. Federal agencies are encouraged to work with local entities and the local entity should be the grant recipient. Federal agencies are eligible, but only if they can make a compelling case for why a local partner cannot be the grant recipient.
- ☒ Public (Districts) – authorities, Title 32/special districts, (conservancy, conservation, and irrigation districts), and water activity enterprises.
- ☐ Private Incorporated – mutual ditch companies, homeowners associations, corporations.
- ☐ Private individuals, partnerships, and sole proprietors are eligible for funding from the Basin Accounts but not for funding from the Statewide Account.
- ☐ Non-governmental organizations – broadly defined as any organization that is not part of the government.

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3. Provide a brief description of your organization

*The Lower Arkansas Valley Water Conservancy District (“Lower Ark District”) is a water conservancy district established in 2002 pursuant to Colorado law, C.R.S. § 37-45-101 et seq. The Lower Ark District’s mission is to acquire, retain and conserve water resources within the Lower Arkansas River; to encourage the use of such water for the socio-economic benefit of the District citizens; and to participate in water-related projects that will embody thoughtful conservation, responsible growth, and beneficial water usage within the Lower Arkansas Valley. The Lower Ark District has consistently supported the Arkansas Basin Roundtable since its inception and has actively participated in the development of Phase One of the Arkansas Roundtable Basin Implementation Plan.*

4. If the Contracting Entity is different than the Applicant (Project Sponsor or Owner) please describe the Contracting Entity here.

*The Lower Ark District formed a Water Activity Enterprise in 2003 to manage the District’s water assets and provide services to the District on a reimbursable basis. The Lower Arkansas Valley Water Enterprise Fund would be the contracting entity for this project. This approach has successfully completed on four prior CWCB grants (two concerning the Super Ditch, including two WSRA grants, and two concerning the State Engineer’s Irrigation Improvements Rules).*

5. Successful applicants will have to execute a contract with the CWCB prior to beginning work on the portion of the project funded by the WSRA grant. In order to expedite the contracting process the CWCB has established a standard contract with provisions the applicant must adhere to. A link to this standard contract is included in Appendix 3. Please review this contract and check the appropriate box.

☒

The Applicant will be able to contract with the CWCB using the Standard Contract

☐

The Applicant has reviewed the standard contract and has some questions/issues/concerns. Please be aware that any deviation from the standard contract could result in a significant delay between grant approval and the funds being available.

6. The Tax Payer Bill of Rights (TABOR) may limit the amount of grant money an entity can receive. Please describe any relevant TABOR issues that may affect the applicant.

*The Lower Ark District’s 1.5 mill property tax levy is exempt from TABOR pursuant to the election that formed the district in 2002.*

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### Part II. – Description of the Water Activity/Project

1. What is the primary purpose of this grant application? (Please check only one)

☐ Nonconsumptive (Environmental or Recreational)

☐ Agricultural

☐ Municipal/Industrial

☐ Needs Assessment

☐ Education

☒ Other      Explain: This grant supports all listed categories

2. If you feel this project addresses multiple purposes please explain.

*Phase Two of the Arkansas Roundtable Basin Implementation Plan will process input received from public meetings hosted by Roundtable members which cites agriculture, environment, recreation and municipal/industrial uses of water within the Arkansas Basin. Further refinement of the Basin Implementation Plan as contemplated in this grant request will enhance both the quality of the BIP and provide clear direction for the basin to meet its consumptive and nonconsumptive needs. The Draft Basin Implementation Plan (“BIP”) also provides an education tool for Roundtable member’s use when informing their respective constituencies about water issues in their local area.*

3. Is this project primarily a study or implementation of a water activity/project? (Please check only one)

☒ Study      ☐ Implementation

4. To catalog measurable results achieved with WSRA funds can you provide any of the following numbers?

New Storage Created (acre-feet)

New Annual Water Supplies Developed, Consumptive or Nonconsumptive (acre-feet)

Existing Storage Preserved or Enhanced (acre-feet)

Length of Stream Restored or Protected (linear feet)

Length of Pipe/Canal Built or Improved (linear feet)

Efficiency Savings (acre-feet/year OR dollars/year – **circle one**)

Area of Restored or Preserved Habitat (acres)

☒ Other -- Explain: See Exhibit A

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4. To help us map WSRA projects please include a map (Exhibit B) and provide the general coordinates below:

*This grant will cover the entire Arkansas River Basin*

Latitude:

Longitude:

5. Please provide an overview/summary of the proposed water activity (no more than one page). Include a description of the overall water activity and specifically what the WSRA funding will be used for. A full **Statement of Work** with a detailed budget and schedule is required as **Exhibit A** of this application.

*The Draft Arkansas Roundtable Basin Implementation Plan was delivered to the Colorado Water Conservation Board on the July 31, 2014 deadline. At the time of delivery, the Plan acknowledged that it was a draft only. Additional time and resources are required to process the large volume of public input received and to further understand the nature and location of consumptive and nonconsumptive gaps. The Arkansas Basin Roundtable desires to further refine the BIP to incorporate that public input, to disaggregate gap areas by locality and sub-regions (particularly with regard to groundwater dependent areas) and to further investigate the nonconsumptive projects and their interaction with agriculture and municipal/industrial water uses.*

### Part III. – Threshold and Evaluation Criteria

1. Describe how the water activity meets these **Threshold Criteria**. (Detailed in Part 3 of the Water Supply Reserve Account Criteria and Guidelines.)

a) The water activity is consistent with Section 37-75-102 Colorado Revised Statutes.<sup>1</sup>

*This water activity increases the quality of input by the Arkansas Basin Roundtable to the Colorado Water Plan as contemplated in the Governor's Executive Order D2013-005.*

b) The water activity underwent an evaluation and approval process and was approved by the Basin

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<sup>1</sup> 37-75-102. Water rights - protections. (1) It is the policy of the General Assembly that the current system of allocating water within Colorado shall not be superseded, abrogated, or otherwise impaired by this article. Nothing in this article shall be interpreted to repeal or in any manner amend the existing water rights adjudication system. The General Assembly affirms the state constitution's recognition of water rights as a private usufructuary property right, and this article is not intended to restrict the ability of the holder of a water right to use or to dispose of that water right in any manner permitted under Colorado law. (2) The General Assembly affirms the protections for contractual and property rights recognized by the contract and takings protections under the state constitution and related statutes. This article shall not be implemented in any way that would diminish, impair, or cause injury to any property or contractual right created by intergovernmental agreements, contracts, stipulations among parties to water cases, terms and conditions in water decrees, or any other similar document related to the allocation or use of water. This article shall not be construed to supersede, abrogate, or cause injury to vested water rights or decreed conditional water rights. The General Assembly affirms that this article does not impair, limit, or otherwise affect the rights of persons or entities to enter into agreements, contracts, or memoranda of understanding with other persons or entities relating to the appropriation, movement, or use of water under other provisions of law.

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Roundtable (BRT) and the application includes a description of the results of the BRT's evaluation and approval of the activity. At a minimum, the description must include the level of agreement reached by the roundtable, including any minority opinion(s) if there was not general agreement for the activity. The description must also include reasons why general agreement was not reached (if it was not), including who opposed the activity and why they opposed it. Note- If this information is included in the letter from the roundtable chair simply reference that letter.

*See Letter of Approval from Ark RT Chair*

- c) The water activity meets the provisions of Section 37-75-104(2), Colorado Revised Statutes.<sup>2</sup> The Basin Roundtable Chairs shall include in their approval letters for particular WSRA grant applications a description of how the water activity will assist in meeting the water supply needs identified in the basin roundtable's consumptive and/or non-consumptive needs assessments.

*This activity directly supports the Arkansas Basin Roundtable in its legislative mandate to “propose projects and methods to meet the needs” of the Arkansas Basin. (C.R.S. 37-75-101 et seq.)*

- d) Matching Requirement: For requests from the **Statewide Fund**, the applicants will be required to demonstrate a **25 percent** (or greater) match of the total grant request from the other sources, including by not limited to Basin Funds. A minimum match of 5% of the total grant amount shall be from Basin funds. A minimum match of 5% of the total grant amount must come from the applicant or 3rd party sources. Sources of matching funds include but are not limited to Basin Funds, in-kind services, funding from other sources, and/or direct cash match. Past expenditures directly related to the project may be considered as matching funds if the expenditures occurred within 9 months of the date the contract or purchase order between the applicant and the State of Colorado is executed. Please describe the source(s) of matching funds. (NOTE: These matching funds should also be reflected in your Detailed Budget in **Exhibit A** of this application)

*28% (\$78,000) matching funds from the Arkansas Basin Roundtable (requested)*

*72% (\$165,000) funds from the Statewide Account*

2. For Applications that include a request for funds from the **Statewide Account**, describe how the water activity/project meets all applicable **Evaluation Criteria**. (Detailed in Part 3 of the Water Supply Reserve Account Criteria and Guidelines and repeated below.) Projects will be assessed on how well they meet the Evaluation Criteria. **Please attach additional pages as necessary.**

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<sup>2</sup> 37-75-104 (2)(c). Using data and information from the Statewide Water Supply Initiative and other appropriate sources and in cooperation with the on-going Statewide Water Supply Initiative, develop a basin-wide consumptive and nonconsumptive water supply needs assessment, conduct an analysis of available unappropriated waters within the basin, and propose projects or methods, both structural and nonstructural, for meeting those needs and utilizing those unappropriated waters where appropriate. Basin Roundtables shall actively seek the input and advice of affected local governments, water providers, and other interested stakeholders and persons in establishing its needs assessment, and shall propose projects or methods for meeting those needs. Recommendations from this assessment shall be forwarded to the Interbasin Compact Committee and other basin roundtables for analysis and consideration after the General Assembly has approved the Interbasin Compact Charter.

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**Evaluation Criteria** – the following criteria will be utilized to further evaluate the merits of the water activity proposed for funding from the Statewide Account. In evaluation of proposed water activities, preference will be given to projects that meet one or more criteria from each of the three “tiers” or categories. Each “tier” is grouped in level of importance. For instance, projects that meet Tier 1 criteria will outweigh projects that only meet Tier 3 criteria. WSRA grant requests for projects that may qualify for loans through the CWCB loan program will receive preference in the Statewide Evaluation Criteria if the grant request is part of a CWCB loan/WSRA grant package. For these CWCB loan/WSRA grant packages, the applicant must have a CWCB loan/WSRA grant ratio of 1:1 or higher. Preference will be given to those with a higher loan/grant ratio.

### **Tier 1: Promoting Collaboration/Cooperation and Meeting Water Management Goals and Identified Water Needs**

- a. The water activity addresses multiple needs or issues, including consumptive and/or non-consumptive needs, or the needs and issues of multiple interests or multiple basins. This can be demonstrated by obtaining letters of support from other basin roundtables (in addition to an approval letter from the sponsoring basin).

*A further refinement of the Draft Arkansas Roundtable Basin Implementation Plan is intended to connect gaps with projects and methods to meet those gaps. One portion of the effort will focus on understanding sub-regional gaps and public input or Identified Plans and Process that could address those gaps. Two other component of this effort are: 1) Understand and articulate nonconsumptive needs in relation to the constraints and opportunities described in Section 3 of the Draft BIP, and; 2) clarify the interdependence between current agricultural uses of water, future needs to sustain agriculture throughout the basin and nonconsumptive needs.*

- b. The number and types of entities represented in the application and the degree to which the activity will promote cooperation and collaboration among traditional consumptive water interests and/or non-consumptive interests, and if applicable, the degree to which the water activity is effective in addressing intrabasin or interbasin needs or issues.

*This program includes all members of the Arkansas Basin Roundtable, both voting and liaison, and their respective stakeholders and constituents.*

- c. The water activity helps implement projects and processes identified as helping meet Colorado’s future water needs, and/or addresses the gap areas between available water supply and future need as identified in SWSI or a roundtable’s basin-wide water needs assessment.

*A further refinement of the Draft Arkansas Roundtable Basin Implementation Plan will aid significantly in addressing gap areas in all water resource topic areas.*

### **Tier 2: Facilitating Water Activity Implementation**

- d. Funding from this Account will reduce the uncertainty that the water activity will be implemented.



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*Funding from the WSRA will reduce the uncertainty that the Arkansas Roundtable Basin Implementation Plan is comprehensive in identifying the needs of the Arkansas River basin.*

- e. The amount of matching funds provided by the applicant via direct contributions, demonstrable in-kind contributions, and/or other sources demonstrates a significant and appropriate commitment to the project.

*The team that compiled the first Draft BIP is contributing time and materials from July 31, 2014 through contracting for Phase 2 as an in-kind contribution. This contribution is intended to assure the highest quality work product with the knowledge than some or all Phase One team members may not participate in Phase Two.*

### Tier 3: The Water Activity Addresses Other Issues of Statewide Value and Maximizes Benefits

- f. The water activity helps sustain agriculture and open space, or meets environmental or recreational needs.

*One of the specific goals of Phase Two is to gain greater understanding of the interaction between agriculture, open space and the environment and recreation to better sustain agriculture and meet nonconsumptive goals.*

- g. The water activity assists in the administration of compact-entitled waters or addresses problems related to compact entitled waters and compact compliance and the degree to which the activity promotes maximum utilization of state waters.

*This water activity is intended to understand management of water resources in the Arkansas River basin to meet identified needs within the constraints of the Kansas v. Colorado lawsuit and the Arkansas River Compact.*

- h. The water activity assists in the recovery of threatened and endangered wildlife species or Colorado State species of concern.

*Integration of nonconsumptive needs, and the protection of attributes with the Arkansas River basin as identified in Phase One, are specific goals of this water activity.*

- i. The water activity provides a high level of benefit to Colorado in relationship to the amount of funds requested.

*The benefit of the Pubic Outreach initiative by the Arkansas Basin Roundtable will emerge through the processing of information received as one of the tasks of Phase Two. There were over 100 Input Forms completed in the short two months of public meetings. Input from major water providers, conservancy districts, non-profits and local governments is still being received and will be incorporated in Phase Two. There is a high level of benefit to Colorado in relationship to the funds requested because so*

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*much of the input, and the work to process that input in Phase Two, has and will depend on volunteer efforts by Roundtable member.*

- j. The water activity is complimentary to or assists in the implementation of other CWCB programs.

*This water activity will assist all Sections with the CWCB organization, but may be particularly helpful to the Water Management, Loans and Grants, Environment and Public Information sections.*

### Part IV. – Required Supporting Material

1. **Water Rights, Availability, and Sustainability** – This information is needed to assess the viability of the water project or activity. Please provide a description of the water supply source to be utilized, or the water body to be affected by, the water activity. This should include a description of applicable water rights, and water rights issues, and the name/location of water bodies affected by the water activity.

*The water body affected includes the entire Arkansas River basin and those watersheds that are impacted by imports to the Arkansas Basin and exports from the Arkansas Basin.*

2. Please provide a brief narrative of any related studies or permitting issues.

*The Draft Basin Implementation Plan dated July 31, 2014 will benefit from further refinement and inclusion of the input received during the Public Outreach initiative.*

3. Statement of Work, Detailed Budget, and Project Schedule

The statement of work will form the basis for the contract between the Applicant and the State of Colorado. In short, the Applicant is agreeing to undertake the work for the compensation outlined in the statement of work and budget, and in return, the State of Colorado is receiving the deliverables/products specified. **Please note that costs incurred prior to execution of a contract or purchase order are not subject to reimbursement.** All WSRA funds are disbursed on a reimbursement basis after review invoices and appropriate backup material.

*See Exhibit A.*

### REPORTING AND FINAL DELIVERABLE

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

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


## **PAYMENT**

Payment will be made based on actual expenditures and invoicing by the applicant. Invoices from any other entity (i.e. subcontractors) cannot be processed by the State. The request for payment must include a description of the work accomplished by major task, and estimate of the percent completion for individual tasks and the entire water activity in relation to the percentage of budget spent, identification of any major issues and proposed or implemented corrective actions. The last 10 percent of the entire water activity budget will be withheld until final project/water activity documentation is completed. All products, data and information developed as a result of this grant must be provided to the CWCB in hard copy and electronic format as part of the project documentation. This information will in turn be made widely available to Basin Roundtables and the general public and help promote the development of a common technical platform.

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The above statements are true to the best of my knowledge:

**Signature of Applicant:** 

**Print Applicant's Name:** Jay Winner, General Manager, Lower Arkansas Valley Water Conservancy District  
**Project Title:** Arkansas Roundtable Basin Implementation Plan Phase Two

**Date:** August 1, 2014

**Return an electronic version (hardcopy may also be submitted) of this application to:**

Craig Godbout – WSRA Application  
Colorado Water Conservation Board  
1580 Logan Street, Suite 200  
Denver, CO 80203  
303-866-3441, ext. 3210 (office)  
303-547-8061 (cell)  
[craig.godbout@state.co.us](mailto:craig.godbout@state.co.us)

## Exhibit A

### Statement of Work - DRAFT

**WATER ACTIVITY NAME – Arkansas Basin Implementation Plan – Phase 2**

**GRANT RECIPIENTS – Fiscal Agent (TBD)**

**FUNDING SOURCE - Statewide Account / Basin Account**

The following is a Scope of Work to enhance the Draft Arkansas Basin Implementation Plan (Plan or BIP) between Draft and Final submittal to the Colorado Water Conservation Board (CWCB) and incorporation in to the Colorado Water Plan (CWP). The Arkansas Roundtable (Ark RT) elected to solicit input from the stakeholders in the basin through a Public Outreach initiative; specifically, orienting the annual Arkansas Basin Forum to the topics of the Basin Implementation Plan and Colorado's Water Plan, by organizing and hosting a total of 17 public meetings and maintaining a website. The input received in that process needs to be integrated in the Draft Plan along with greater detail regarding the municipal supply gap. A disaggregation of the municipal gap, and alignment with potential solutions brought forward during the Outreach Initiative, will provide a clearer picture of regional projects and methods to address the Basin's needs. The tasks identified in this scope of work will refine and improve the Draft Arkansas BIP. The format for Tasks follows the Basin Implementation Plan (Plan) Draft Guidance.

**Consultants. This Scope of Work includes three (3) consultants: a Consumptive Consultant, a Nonconsumptive Consultant and a Project Manager, referenced collectively as "Consultants." Where an individual entity has sole responsibility for an activity, that entity is designated.**

## Executive Summary

According to the BIP guidelines the executive summary of the Arkansas BIP will be included in the CWP.

### Consultants Responsibilities

#### Task 0.0 – Executive Summary

The Executive Summary in the Draft Plan is a progress report. Project Manager will revise and finalize the Executive Summary of the Arkansas BIP.

- Redraft Executive Summary, present to Executive Committee and Ark RT, revise for final submission.

## Section 1: Arkansas Basin Goals and Measurable Outcomes

The Draft Plan included a total of four (4) Storage Goals, four (4) Municipal Goals, five (5) Agriculture Goals and eight (8) Nonconsumptive Goals. These goals will be revised and further articulated in the text where appropriate. New goals may be added based on a review of the input and further dialogue by the Ark RT.

## **Consultants Responsibilities**

### **Task 1.0 – Goals and Measurable Outcomes**

The Consultants will work with the BRT to revise and finalize the basin's goals and measurable outcomes for input into the CWP.

- Include new goals as identified in review of the input forms
- Develop Measurable Outcomes, Actions and Challenges to complete the Nonconsumptive Goals table

## **Section 2: Evaluate Consumptive and Nonconsumptive Needs**

### **2.1 Nonconsumptive Needs**

This section of the Plan reviewed and documented nonconsumptive needs in the Arkansas Basin. Section 2.1 currently describes the progress to date and contains appendices of historic documents, including the Nonconsumptive Toolbox.

This section of the Plan will be enhanced and finalized by performing the items listed below.

## **Consultants Responsibilities**

### **Task 2.1 – Nonconsumptive Needs**

Nonconsumptive Consultant will work with the nonconsumptive needs committee to address comments or questions on the draft BIP. Coordination between the input received in the Public Outreach initiative and the nonconsumptive needs committee will generate minor edits to the current BIP draft. The Consultants will submit revisions to the Project Manager for inclusion in the final Arkansas BIP, to inform the Colorado Water Plan (CWP) and for inclusion in SWSI.

- Meet with the Nonconsumptive Needs Committee to revise Section 2.1 of the Draft
- Update Appendices as appropriate

### **2.2 Consumptive Needs**

This Section of the Draft Plan summarized the historic studies by the Ark RT and the methodologies applied in SWSI 2010. The Draft Plan also highlighted the local and regional nature of the municipal gap, the need for greater definition of interrelationship between agriculture and the environment and the pressure on agricultural water resources from increasing farm efficiency. An update of this section will disaggregate the gap into sub-regions. Within that disaggregation, the Consultants will distinguish between those groundwater resources that have been depleted and now require replacement sources of supply, those groundwater resources that have been depleted for economic benefit and are unlikely to ever be replaced, those groundwater resources that are challenged by water quality or other constraints besides depletion and groundwater systems in support of agriculture (center pivots, drip systems) that require increase augmentation under the SEO's Efficiency Rules.

## **Consultants Responsibilities**

### **Task 2.2 – Consumptive Needs**

The Consultants will;

- Disaggregate the consumptive needs for the basin by both sub-region and type.
- Compare Sub-regional needs with input received during the Public Outreach initiative.
- Quantify agricultural augmentation needs in sub-regions.. Integrate this information into the final Arkansas BIP.

## **Section 3: Evaluate Consumptive and Nonconsumptive Constraints and Opportunities**

The purpose of this section is to help the BRT better understand the constraints and opportunities within the basin to meet their identified needs. Sections 3.2 and 3.3 were completed in Phase 1, revisions to the Draft Plan will be made to Sections 3.1 and 3.4:

Consumptive and Nonconsumptive Constraints and Opportunities

3.1 Analysis of Constraints and Opportunities Based on Existing Data

3.4 Current and Future Shortage Analysis

### **3.1 Analysis of Constraints and Opportunities Based on Input Received in Phase 1**

The purpose of this task is to illustrate where projects and methods could be implemented and where constraints exist that might limit solutions. This Phase 2 BIP will generate maps showing “pinch points” or conflict areas, coordinated with consumptive and nonconsumptive projects and methods. Sub-regions with available modeling or management tools will be integrated. Sub-regions without tools, particularly groundwater dependent regions or tributaries to the Arkansas mainstem, will be identified for future study.

The impact of regulatory and jurisdictional constraints on water operations will be discussed.

## **Consultants Responsibilities**

### **Task 3.1 – Constraints and Opportunities Based on Existing Data**

Consumptive Consultant will work with Arkansas BRT to refine and enhance identified pinch points, other constraints, and opportunities identified in the Draft Arkansas BIP. This information will be integrated into the final Arkansas BIP.

- Generate maps identifying projects and conflict areas between projects and hydrologic constraints
- Propose modifications or alternatives to projects if and where possible

## Section 3.4 Current and Future Shortage Analysis

Using the model developed in Task 3.3., the Draft Plan will be updated with specific locations of shortages compared against solutions generated in the Outreach initiative. The shortage analysis will summarize where M&I, agricultural, and nonconsumptive needs may have shortages under varying hydrology such as wet, dry, and average conditions.

### Consultants Responsibilities

#### Task 3.4 – Shortage Analysis

##### Description of Task

The purpose of this task is to analyze water supply availability and uses for current conditions and a future planning horizon (2050) in order to gain a better understanding of both. Analyses will incorporate a range of hydrologic conditions and demand projections associated with the selected planning horizon. The analyses will include a shortage analysis as described above.

##### Deliverable

The results of the shortage analysis as documented in section 3.4 of the final Arkansas BIP is underway. The Draft considers a single scenario. The input received, an update to Section 4.3 Conservation and the disaggregation of the municipal gap will require scenarios with different assumptions. Consumptive Consultant shall:

- Meet with a technical committee to establish assumptions for scenarios (e.g. planning horizon other than 2050, alternatives to “high growth,” changes in return flow as fully consumable source transition from agriculture to meet the municipal gap, dry-up of agriculture to meet increased agricultural demand from increased efficiency, etc.)
- Present Shortage Analysis to Ark RT at a roundtable meeting

## Section 4: Projects and Methods

The Arkansas BRT will process the input received during the Public Outreach initiative, then update and refine their list of consumptive and nonconsumptive IPPs and identify potential new structural and nonstructural solutions to sub-regional gaps and shortages. The section will include the minor revisions to some sections:

4.2 Watershed Health

4.4 New Multi-Purpose, Cooperative, and Regional Projects and Methods

And more significant revisions to these sections:

4.1 Education, Participation, and Outreach

4.3 Conservation and Reuse Projects and Methods

4.5 M&I Projects and Methods (i.e., projects, conservation, reuse, drought planning, etc.)

4.6 Agricultural Projects and Methods

4.7 Nonconsumptive Projects and Methods

Section 4.8 will not be modified.



## **4.1 Education, Participation, and Outreach**

During the development of the draft Plan the Arkansas Basin Roundtable adopted an active engagement with the basin residents and held 17 public meetings. Over 100 input forms were received, along with 300+ suggestions for potential projects. This input will be sorted into sub-regions, qualified for sufficiency of information and measured against the Basin's needs and goals. Projects meeting the criteria for an IPP will be memorialized in a Project Summary Sheet.

### **Consultants Responsibilities**

#### **Task 4.1 – Education, Participation, and Outreach**

The Consultants will review and collate the input forms, coordinate further information gathering for the BIP and oversee the completion of Project Summary Sheets by roundtable members. The Projects that qualify as IPP's will be included under each subsections list of IPP's and/or organized by sub-regions.

- Nonconsumptive Consultant will support the public outreach efforts per the allowance provided in the attached budget.
- Presentations as requested by the Ark RT Executive Committee to stakeholder groups and interested parties

## **4.2 Watershed Health**

The Watershed Health Working Group delivered an Action Plan for the Arkansas Roundtable BIP. This Action Plan contemplates formation of an Upper Arkansas Watershed Coalition to begin organizing the dialogue on Watershed Health. The expectation is that this Coalition will begin with a nucleus of Roundtable members.

### **Consultants Responsibilities**

#### **Task 4.2: Critical Community Watershed Health Plans**

- Present the deliverables from the Watershed Health Working Group, including the Action Plan and Summary of Tools and Processes, to interested third parties and other basin roundtables.
- Update the Draft Plan Section 4.2 to chronicle the success of the Action Plan implementation

## **4.3 Conservation and Reuse Projects and Methods**

### **Consultants Responsibilities**

#### **Task 4.3 – Conservation and Reuse**

The Consultants will perform the following activities to further develop the conservation and reuse section of the BIP.

- Telephonic or meeting interviews with major municipal suppliers to confirm data presented, describe activities and provide a comprehensive picture of progress on conservation goals.
- Update information on sub-regional conservation initiatives.

- The Draft BIP requires additional quantitative data for a complete understanding of the basin's conservation profile. Redraft Section 4.3.

### 4.4 New Multi-Purpose, Cooperative, and Regional Projects and Methods

The Draft BIP includes a summary of regional projects funded by the Arkansas BRT through the WSRA program. Sub-regions with self-funded multi-purpose projects will be contacted to obtain information for inclusion by the Consultants. This information should include cost estimates and the proportional costs that would be funded by each beneficiary of a multi-purpose project.

#### Consultants Responsibilities

##### Task 4.4 – Multi-Purpose Projects and Methods

The Consultants will review existing data and new information on planned and potential multi-purpose projects both structural and nonstructural..

- Identify and analyze multi-purpose, regional, and collaborative projects:
  - Cross check nonconsumptive, agricultural, and M&I IPPs to assist in coordination and possible integration
  - Identify costs associated with making a project multi-purpose
- Document multipurpose projects and methods not currently included in the draft BIP

Revise Section 4.4

### 4.5 M&I Projects and Methods

The Arkansas BRT will update its IPPs list for consumptive projects and methods.

#### Consultants Responsibilities:

##### Task 4.5: M&I Projects and Methods

The Consultants will review the input forms from the Public Outreach initiative for potential M&I projects both structural and nonstructural. Develop criteria for evaluation of projects to be considered in the Plan, including a Tiered ranking system. Review the Tiered ranking system with the Ark RT at a RT meeting, revise and provide to roundtable members.

- Organize meetings to determine additional projects and methods and alignment with disaggregated gap information
  - Regionally and topically based
  - Identify points of integration (i.e., interbasin, consumptive, and nonconsumptive)
  - Identify and discuss issues with getting IPPs completed
  - Coordinate stakeholders and project proponents
- Conceptualize projects and methods
  - Complete Project Summary Sheets for all IPP's
- Redraft Section 4.5

## **4.6 Agricultural Projects and Methods**

The Arkansas BRT will identify agricultural water needs, supplies, and update sub-regional gaps. Develop a database of projects and describe IPP's, underway and planned, by entities not included in the current Draft BIP. Review potential projects and methods as described in the input forms from the Public Outreach initiative for inclusion in the Plan. ATMs will be included as potential projects to reduce the permanent transfer of agricultural water to other uses.

### **Consultants Responsibilities**

#### **Task 4.6: Agricultural Projects and Methods**

The Consultants will review existing data provided by the analysis done in Section 2.2 to verify agricultural water needs, supplies, and gaps..

- Conceptualize agricultural and ATM new and planned projects and methods including cost estimates
- Identify the next steps to implement projects and methods
- Outreach to Ag sector, update irrigated lands in tributaries and sub-regions, define augmentation requirements for increasing agricultural efficiency
- Redraft Section 4.6

## **4.7 Nonconsumptive Projects and Methods**

The Arkansas BRT will identify possible new nonconsumptive projects and methods based on the input received from the Public Outreach initiative. The lists of projects received will be qualified and evaluated for inclusion in the Plan.

### **Consultants Responsibilities:**

#### **Task 4.7: Nonconsumptive Projects and Methods**

Nonconsumptive Consultant will provide additional support related to nonconsumptive needs as follows:

- Update BIP text per comments on the draft BIP.
- Attend four Arkansas BRT meetings.
- Attend five nonconsumptive needs committee meetings.
- Attend three various meetings with CWCB, TNC, or others as needed.
- Attend bi-weekly conference calls with the nonconsumptive needs committee.
- Provide email updates to the nonconsumptive needs committee's stakeholders list.
- Support the completion, organization, and processing of the nonconsumptive needs IPP and projects and methods lists.

- Prepare up to 20 one-page IPP summary sheets for nonconsumptive IPPs.
- Nonconsumptive related GIS mapping support, including data collection, data review, and the creation of new GIS maps.
- Support the Gap Analysis Framework by summarizing the process used by others to date and identification of future needs and steps to be conducted as part of SWSI 2016.
- Support the Flow Evaluation Tool by coordinating with the nonconsumptive needs committee, identifying data needs, determining future steps, and updating the draft BIP text accordingly.

## Section 5: Implementation Strategies for the Projects and Methods

The draft BIP identifies water management challenges and opportunities within the basin and provides a framework for meeting the challenges.

### Consultants Responsibilities

#### Task 5.0 – Implementation Strategies

The Consultants will develop strategies for addressing the basin gaps in all topic areas

- Implement the steps articulated in the draft BIP Section 5 to process the input received from the Public Outreach initiative, identify other consumptive and nonconsumptive IPP's, projects and methods, and assess the IPP's against their ability to meet the basin's goals.
- The draft BIP describes some potential funding mechanisms. Research and provide greater detail, including coordination meetings with funding entities, to further expand funding alternatives.
- Outreach to funding entities, processing of input forms, coordination with sub-regional needs and gaps, redraft Section 5.0, revise/add to goals in Section 1.0

## Section 6: How the Plan Meets the Roundtable's Goals and Measurable Outcomes

This section questions whether the projects and methods identified in the Plan meet the gaps and water supply shortages, in relation to the goals and measurable outcomes.

### Consultants Responsibilities

#### Task 6.0: Measurable Evaluation

The Consultants have provided the initial draft to the Arkansas BRT and will work with them to further refine this section.

- Facilitate meetings to further develop how well the Plan meets the measurable outcomes
- Redraft Section 6.0 based on changes to the balance of the Draft Plan above

## Coordination and Reporting

The Consultants will coordinate with the Arkansas BRT, the Executive Committee and its technical committees during the duration of this study and will provide a final Basin Implementation Plan report for deliver to CWCB.

### Consultants Responsibilities

#### Task 7.0: Coordination with Arkansas BRT and Reporting

- Coordination with Arkansas BRT and technical team
- Prepare final Basin Implementation Plan (April 1, 2015)
- Reporting and presentation to third party groups, collection and collation of public input during Public Comment period (Jan – Mar, 2015), travel to and meetings in sub-regions
- Photocopies for distribution at Ark RT meetings, project meetings, publish the Final BIP electronically and maintain the Drop Box through 2015.
- Consultants will support the Arkansas BRT by attending BRT meetings per the allowances provided in the attached budget.

### Budget/Costs

Arkansas Basin Implementation Plan - Phase Two					
Total Costs		Project Manager	Consumptive	Nonconsumptive	Total
Task	Description	Cost	Cost	Cost	Cost
Task 0.0	Excutive Summary	\$ 2,400	\$ -	\$ -	\$ 2,400
Task 1.0	Goals and Measurable Outcomes	\$ 2,400	\$ 3,600	\$ -	\$ 6,000
Task 2.1	Nonconsumptive Needs	\$ 600	\$ -	\$ 4,000	\$ 4,600
Task 2.2	Consumptive Needs	\$ 2,400	\$ 12,600	\$ -	\$ 15,000
Task 3.1	Constraints and Opportunities Based on Input Received in Phase 1	\$ 2,400	\$ 10,000	\$ -	\$ 12,400
Task 3.2	Water Administration	\$ -	\$ -	\$ -	\$ -
Task 3.3	Hydrologic Modeling	\$ -	\$ -	\$ -	\$ -
Task 3.4	Shortage Analysis (Conflicts) Mapping based on Input Receive in Phase 1	\$ -	\$ 15,000	\$ -	\$ 15,000
Task 4.1	Education, Participation, and Outreach	\$ 9,334	\$ 9,333	\$ 9,333	\$ 28,000
Task 4.2	Watershed Health	\$ 1,200	\$ -	\$ -	\$ 1,200
Task 4.3	Conservation and Reuse Projects and Methods	\$ 1,200	\$ 10,000	\$ -	\$ 11,200
Task 4.4	New Multi-Purpose, Cooperative, and Regional Projects and Methods	\$ 3,600	\$ 11,400	\$ -	\$ 15,000
Task 4.5	M&I Projects and Methods	\$ 4,000	\$ 11,400	\$ -	\$ 15,400
Task 4.6	Agricultural Projects and Methods	\$ 4,000	\$ 19,000	\$ -	\$ 23,000
Task 4.7	Nonconsumptive Projects and Methods	\$ 1,200	\$ 19,000	\$ 47,500	\$ 67,700
Task 4.8	Interbasin Projects and Methods (EPAT)	\$ -	\$ 5,000	\$ -	\$ 5,000
Task 5.0	Implementation Strategies	\$ 6,000	\$ 14,000	\$ -	\$ 20,000
Task 6.0	Measurable Evaluation	\$ 3,600	\$ 8,000	\$ -	\$ 11,600
Task 7.0	Coordination with Arkansas BRT and Reporting	\$ 18,000	\$ 18,000	\$ 18,000	\$ 54,000
	Other Direct Charges (Expenses)	\$ 2,400	\$ 2,400	\$ 1,500	\$ 6,300
Total Cost:		\$ 64,734	\$ 168,733	\$ 80,333	\$ 313,800

### Breakdown of Hourly Rates

#### Consumptive Consultant (estimate of hourly rates)

Project Director	Principal	Sr Eng/Geo.	Proj. Eng/Geo	Staff Eng/Geo	Clerical/Drafting
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## Water Supply Reserve Account – Application Form

Revised October 2013

	\$	200		\$	175		\$	150		\$	130		\$	100		\$	85
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### Nonconsumptive Consultant (estimate of hourly rates)

Project Manager 4	Engineer 4	Engineer 3	Engineer 2	Engineer 1	Clerical/Drafting
\$ 180	\$ 130	\$ 150	\$ 105	\$ 99	\$ 78
Biologist	Sr. Editor Graphics	Editor Graphics			
\$ 84	\$ 140	\$ 90			

### Project Manager

\$150/hour
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### Schedule

Task	Description	NTP to NTP + 30	NTP + 90	NTP + 180
Task 0.0	Excutive Summary			
Task 1.0	Goals and Measurable Outcomes			
Task 2.1	Nonconsumptive Needs			
Task 2.2	Consumptive Needs			
Task 3.1	Constraints and Opportunities Based on Input Received in Phase 1			
Task 3.4	Shortage Analysis (Conflicts) Mapping based on Input Receive in Phase 1			
Task 4.1	Education, Participation, and Outreach			
Task 4.3	Conservation and Reuse Projects and Methods			
Task 4.4	New Multi-Purpose, Cooperative, and Regional Projects and Methods			
Task 4.5	M&I Projects and Methods			
Task 4.6	Agricultural Projects and Methods			
Task 4.7	Nonconsumptive Projects and Methods			
Task 5.0	Implementation Strategies			
Task 6.0	Measurable Evaluation			
Task 7.0	Coordination with Arkansas BRT and Reporting			

**STATE OF COLORADO**  
**Colorado Water Conservation Board**  
**Grant Agreement**  
**with**  
**Lower Arkansas Valley Water Conservancy District**  
**Contract Number CTGG1 2015-2052**

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**1. PARTIES**

This Grant Agreement (hereinafter called “Grant”) is entered into by and between Lower Arkansas Valley Water Conservancy District (hereinafter called “Grantee”), 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 will be expended to to enhance the Draft Arkansas Basin Implementation Plan (Plan or BIP) between Draft and Final submittal to the Colorado Water Conservation Board (CWCB) and incorporation in to the Colorado Water Plan (CWP). The Arkansas Roundtable (Ark RT) elected to solicit input from the stakeholders in the basin through a Public Outreach initiative; specifically, orienting the annual Arkansas Basin Forum to the topics of the Basin Implementation Plan and Colorado's Water Plan, by organizing and hosting a total of 17 public meetings and maintaining a website. The input received in that process needs to be integrated in the Draft Plan along with greater detail regarding the municipal supply gap. A disaggregation of the municipal gap, and alignment with potential solutions brought forward during the Outreach Initiative, will provide a clearer picture of regional projects and methods to address the Basin's needs. The tasks identified in this scope of work will refine and improve the Draft Arkansas BIP. The format for Tasks follows the Basin Implementation Plan (Plan) Draft Guidance.

## **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 rating it based on criteria established in §6 and **Exhibit A**.

### **C. Exhibits and other Attachments**

The following are attached hereto and incorporated by reference herein: **Exhibit A and B**.

### **D. Goods**

"Goods" means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee 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 Water Supply Reserve Account grant program that provides the funding for this Grant.

### **I. Review**

"Review" means examining Grantee's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and **Exhibit A and B**.

### **J. Services**

"Services" means the required services to be performed by Grantee pursuant to this Grant.

### **K. Sub-grantee**

"Sub-grantee" means third-parties, if any, engaged by Grantee to aid in performance of its obligations.



#### **L. Work**

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A and B**, including the performance of the Services and delivery of the Goods.

#### **M. Work Product**

“Work Product” means the tangible or intangible results of Grantee’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 on the later of either the Effective Date or November 14, 2015. This Grant shall terminate on May 15, 2015 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 (and not merely seeking a term extension) 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** on or before May 15, 2015. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

#### **B. Goods and Services**

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be 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 Sub-grantees shall be considered Grantee’s or Sub-grantees’ employee(s) 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 \$313,800, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. 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:

<b>\$313,800 in FY2015</b>
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#### **i. Advance, 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 or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

#### **ii. Interest**

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. 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. If federal funds are used with 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 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 or federal 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 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 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.

**B. Use of Funds**

Grant Funds shall be used only for eligible costs identified herein 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 submit a report to the State upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit A and 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, the federal government and any other duly authorized agent of a governmental agency to audit, 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 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 promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee 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.

#### **C. Monitoring**

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other 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.

### **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 confidential at all times and to 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, Sub-grantees, 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 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 or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees 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 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 Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain 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 and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, 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 certificate 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 by Grantee and constitute grounds for termination of this Grant.

**13. INSURANCE**

Grantee and its Sub-grantees 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 Grantee and 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 show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with Sub-grantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Sub-grantee's liabilities under the GIA.

### **ii. Non-Public Entities**

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to sub-Grantees that are not "public entities".

## **B. Sub-Grantees**

Grantee shall require each Grant with Sub-grantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

### **i. Worker's Compensation**

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

### **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, Sub-grantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee 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. Additional Insured**

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

### **v. Primacy of Coverage**

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

### **vi. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Grantee's receipt of such notice.

### **vii. Subrogation Waiver**

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Sub-grantees 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.

## **C. Certificates**

Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the



expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

#### **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, in 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 Sub-grantees 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:**

Brent Newman, Project Manager
Colorado Water Conservation Board
Water Supply Planning Section
1313 Sherman Street, Suite 718
Denver, CO 80203
Brent.newman@state.co.us

### **B. Grantee:**

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

## **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 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.

## **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.

Grantee's performance 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. 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. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating 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.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, 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**

Unless otherwise specified in Exhibit A, Statement of Work, Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subGranted without the prior, written consent of the State. Any attempt at assignment, transfer, subGranting without such consent shall be void. All assignments, subGrants, or Sub-grantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subGranting arrangements and performance.

### **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, agents, Sub-grantees, 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.

### **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 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.

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

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## **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 Sub-grantee that fails to certify to Grantee that the Sub-grantee 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 Sub-grantee and the Granting State agency within three days if Grantee has actual knowledge that a Sub-grantee is employing or Granting with an illegal alien for work under this Grant, (c) shall terminate the subGrant if a Sub-grantee 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

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## 22. SIGNATURE PAGE

Grant Routing Number

**CMS#73150**

### **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;"><b>GRANTEE</b></p> <p><b>Lower Arkansas Valley Water Conservancy District</b></p> <p>By: Jay Winner Title: General Manager</p>  <p style="text-align: center;">_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b></p> <p><b>John W. Hickenlooper GOVERNOR</b></p> <p>Department of Natural Resources Mike King, Executive Director</p>  <p style="text-align: center;">_____ By: Rebecca Mitchell, Section Chief, Water Supply Planning Section, CWCB 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>Date: _____</p>
<p style="text-align: center;">2nd Grantee Signature if Needed</p> <p>By: Title:</p>  <p style="text-align: center;">_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>LEGAL REVIEW</b></p> <p>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.**

<p style="text-align: center;"><b>STATE CONTROLLER</b></p> <p style="text-align: center;"><b>Robert Jaros, CPA, MBA, JD</b></p>  <p style="text-align: center;">By: _____</p> <p style="text-align: center;">Name and Title: Susan Borup, DNR Controller</p> <p style="text-align: center;">Date: _____</p>
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