

# STATE OF COLORADO

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## Colorado Water Conservation Board

### Department of Natural Resources

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Denver, Colorado 80203  
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[www.cwcb.state.co.us](http://www.cwcb.state.co.us)



August 7, 2013

Mr. Nathan Coombs, District Manager  
Conejos Water Conservancy District  
P.O. Box 550  
Manassa, CO 81141

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John Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

**RE: Notice to Proceed – ATM Grant – Use of ATM's to Increase Supplies for  
Conejos Basin, Agricultural, Municipal & Environmental Purposes**

Dear Nathan:

This letter is to inform you that the contract for the ATM grant request was signed on July 31, 2013. A signed original contract will be mailed to you.

With the executed contract, you are now able to proceed with the project and begin invoicing the State of Colorado for costs incurred through August 31, 2014. Upon receipt of your invoice(s), the State of Colorado will provide payment no later than 45 days. I wish you much success in your project.

Sincerely,

/s/

***Craig Godbout***  
***Graduate Student Intern***  
***Colorado Water Conservation Board***  
***Water Supply Planning Section***  
1580 Logan Street, Suite 200  
Denver CO 80203  
 [\(303\) 866-3441, ext 3210](tel:(303)866-3441) (office)  
 [\(970\) 218-9407](tel:(970)218-9407) (cell)  
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**STATE OF COLORADO**  
**Colorado Water Conservation Board**  
**Grant Agreement**  
**with**  
**Conejos Water Conservancy District**  
**Contract Number C154239**

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### **1. PARTIES**

This Grant Agreement (hereinafter called “Grant”) is entered into by and between Conejos 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) 37-60-106 and 37-60-121, and Senate Bill 09-125 adopted by the 2009 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 Alternative Agricultural Water Transfer Methods Competitive Grant Program provides money to complete water activities that further the understanding and development of alternative agricultural water transfers in Colorado. The purpose of this Grant project is to investigate the feasibility of a unique ATM that involves enlarging Trujillo Meadows Reservoir that preserves agriculture in the District and provides a reliable supply of augmentation water for the Towns. In addition, the project will also evaluate the other multiple-objective benefits that are possible, such as enhanced recreational opportunity at Trujillo Meadows Reservoir, potential environmental benefits such as enhanced riparian habitat, re-timing of streamflows on the Rio De Los Pinos and the on the Conejos below Platoro due to the release of augmentation water to the Towns, and meeting Compact delivery requirements.

## **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. Subgrantee**

“Subgrantee” 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**

### **A. Initial Term-Work Commencement**

The Parties respective performances under this Grant shall commence on the later of either the Effective Date or August 1, 2013. This Grant shall terminate on February 1, 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 February 1, 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 Subgrantees shall be considered Grantee’s or Subgrantees’ 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 \$124,124, 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>\$124,124 in FY2014</b>
<b>\$124,124 in FY2015, minus an funds expended in FY2014</b>

### **B. Payment**

#### **i. Advance, Interim and Final Payments**

Any advance 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 person or entity other than the State.

## **C. 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.

## **D. Matching Funds**

Grantee shall provide matching funds as provided in **Exhibit A**.

# **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 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 of 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.

### **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 agents, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein,



and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

**C. Use, Security, and Retention**

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records 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, Subgrantees, 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 Grantee's 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 Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to 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 Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

##### **ii. 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 Subgrantees that are not "public entities".

#### **B. Grantee and Subgrantees**

Grantee shall require each Grant with Subgrantees, 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 Subgrantee 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 contractual 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, Subgrantee 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 Subgrantees 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 Subgrantees 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 Subgrantees 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 Subgrantee 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 subgrant, Grantee and each Subgrantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

## **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 has been 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 subcontracts 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 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 subcontracts. 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 Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

**v. Intellectual Property**

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

**16. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. State:**

Rebecca Mitchell, Section Chief, Water Supply Planning Section
Colorado Water Conservation Board
1580 Logan Street, Suite 200
Denver, CO 80203
Rebecca.mitchell@state.co.us

**B. Grantee:**

Nathan Coombs, District Manager
Conejos Water Conservancy District
P.O. Box 550
Manassa, CO 81141
Cwcd1971@hotmail.com

**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 exclusive 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**

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, or subgranting without such consent shall be void. All assignments, subgrants, or Subgrantees 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 effect 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, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the

Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

#### **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 the 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 CONTRACTS - 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 Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions,
- ii.** The provisions of the main body of this Grant,
- iii.** Exhibit A,
- iv.** Exhibit B

#### **J. Severability**

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

#### **K. Survival of Certain Grant Terms**

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

#### **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**

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

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

This Grant shall not be 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 will 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 agreement, 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 Grant 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/CONFLICT OF 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 contract with an illegal alien who will perform work under this Grant and will 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 contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

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

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

SPs Effective 1/1/09



[END OF SPECIAL PROVISIONS]

22. SIGNATURE PAGE

Grant Contract Number **C154239**  
Grant CMS Number 58990

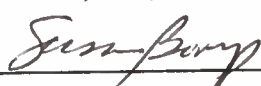
**THE PARTIES HERETO HAVE EXECUTED THIS GRANT**

\* 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> <b>Conejos Water Conservancy District</b></p> <p>Name: <u>NATHAN COOMBS</u> Title: <u>MANAGER</u></p> <p><u></u> *Signature</p> <p>Date: <u>7/22/13</u></p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>John W. Hickenlooper GOVERNOR</b> Department of Natural Resources Mike King, Executive Director</p> <p><u></u> By: Rebecca Mitchell, Section Chief, Water Supply Planning Section 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: <u>7/25/13</u></p>
<p style="text-align: center;">2nd Grantee Signature if Needed</p> <p>By: _____ Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p>By: <u>NA</u> Signature - Assistant Attorney General</p> <p>Date: _____</p>

**ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins 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>A. STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p>By: <u></u> Susan Borup, Controller, Department of Natural Resources Date: <u>7/31/13</u></p>
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## **Exhibit A**

### **Statement of Work**

**WATER ACTIVITY NAME** - Use of ATMs to Increase Supplies for Conejos Basin Agriculture, Municipal, and Environmental Purposes

**GRANT RECIPIENT** – Conejos Water Conservancy District

**FUNDING SOURCE** - CWCB Alternative Agricultural Grant Program plus 10% cash match from grant recipient and approximately 10% in-kind services match

### **INTRODUCTION AND BACKGROUND**

The Conejos Water Conservancy District (District) is located in Conejos County in southern Colorado in the Rio Grande Basin (Water Division 3). The District includes 88,000 acres of irrigated agriculture and the towns of Manassa, Romeo, Sanford, Conejos, Antonito, Ortiz and San Antonio. Several of these towns rely partially or entirely on groundwater pumping for their water supply and pending rules and regulations will require augmentation of well pumping depletions. The towns will look to agricultural water resources within the basin as a replacement source as there is not water available for appropriation under a new water right. The District agricultural users on the San Antonio river, a tributary to the Conejos river cannot receive Project deliveries by gravity flow or current infrastructure. The purpose of this ATM project is to investigate the opportunities for the transfer of the allocation of San Antonio river agricultural water users' Project water to the Towns to meet their augmentation water requirement without loss or impact to the irrigated agricultural lands.

### **OBJECTIVES**

The purpose of this project is to investigate the feasibility of a unique ATM that involves enlarging Trujillo Meadows Reservoir that preserves agriculture in the District and provides a reliable supply of augmentation water for the Towns. In addition, the project will also evaluate the other multiple-objective benefits that are possible, such as enhanced recreational opportunity at Trujillo Meadows Reservoir, potential environmental benefits such as enhanced riparian habitat, re-timing of streamflows on the Rio De Los Pinos and the on the Conejos below Platoro due to the release of augmentation water to the Towns, and meeting Compact delivery requirements.

### **TASKS**

#### **TASK 1 – Background and Objectives**

##### **Description of Task**

This task will provide background and objectives for the project. The categories of background information will include:

1. Basic reservoir and dam information

2. Expected rules and regulations including imminent augmentation demand
3. Existing agricultural shortages on San Antonio
4. Existing Platoro Reservoir operations
5. Potential recreational and environmental benefits of dam enlargement
6. Conceptual schematic of the proposed ATM
7. Meetings and Coordination
8. Travel / Reimbursables

### Method/Procedure

Through discussions with Colorado Parks and Wildlife (CPW) and the Conejos Water Conservancy District (CWCD), information will be gathered on the Trujillo Meadows reservoir and dam and CPW's uses of the reservoir, including the recreation user days per year for fishing visits. The history of Trujillo Meadows dam operation, maintenance, and rehabilitation, including historical dam problems will be summarized.

The pending groundwater pumping rules and regulations, and anticipated municipal augmentation demand will be researched and documented.

Through discussions with landowners and irrigation companies and investigations using StateCU, the existing agricultural shortages on lands irrigated from the San Antonio will be documented.

CWCD will provide detailed information about the existing Platoro division operations including timing, volume, and location of deliveries out of Platoro reservoir.

The potential recreation and environmental benefits of reservoir enlargement will be documented. These benefits include fishery and biological systems improvement, riparian habitat enhancement, and stream flow enhancement through re-timing of run-off.

There will be a kick-off meeting for the project in the San Luis Valley.

### Deliverable

- A memorandum of tasks will be incorporated into the final report.
- A PowerPoint presentation will be developed that can be used to build partnerships with other entities

## **TASK 2 – Municipal Augmentation Demand**

### Description of Task

This task will include an assessment of the municipal augmentation demand expected for the Towns' well pumping. The following components will be included:

1. Quantification or estimate of pumping by towns (current and future)
2. RGDSS response functions to estimate augmentation demand
3. Estimate dry-up acreage to meet augmentation demand from agricultural water

### Method/Procedure

CWCD will assist in collecting pumping data from towns. Both current pumping levels and expected future pumping volumes will be analyzed based on population and industry growth.

Currently the towns do not augment their well pumping. However, they will be required to do so once the rules and regulations requiring augmentation of pumping depletions are adopted. The Rio Grande Decision Support System (RGDSS) response functions will be used to estimate the augmentation requirements. It is currently estimated that the towns will need to augment 15 to 18 percent of their well pumping.

With the current water resources and operations in the Conejos watershed, agricultural water rights are the most likely source of water for municipality augmentation demand. Once the towns' augmentation demand is calculated, an estimate of the agricultural acreage that will be dried-up due to transfers of irrigation water will be determined.

### Deliverable

- Memorandum including town pumping quantification, both current and future, and an estimate of dry-up acreage to meet augmentation demand from agricultural water sources will be incorporated into the final report

## **TASK 3 – Trujillo Meadows Reservoir Enlargement Feasibility**

### Description of Task

Storing water in an enlarged Trujillo Meadows reservoir for re-timing of run-off will better meet the needs of agricultural irrigation users and enhance stream flows for a longer period of time during the spring, allowing some agricultural water users to lease their Platoro project water to the towns for augmentation purposes. This task will examine the feasibility of Trujillo Meadows Reservoir enlargement through the consideration of the following components:

1. Reconnaissance level geotechnical analysis of the dam and reservoir enlargement
2. Reconnaissance level environmental analysis of the dam and reservoir enlargement including a potential new dam site 0.3 miles upstream; wetlands mapping and a cultural resources survey
3. Reconnaissance level biological analysis of the dam and reservoir enlargement including Threatened and Endangered Species
4. Reconnaissance level hydrological analysis including inflow quantification
5. Institutional challenges with reservoir enlargement including compact issues, environmental permitting, New Mexico's use of water, water rights, etc.
6. Meetings and subcontractor coordination

### Method/Procedure

Basic engineering will be conducted on the reconnaissance level feasibility of dam enlargement.

A geotechnical analysis will be conducted to determine the dam enlargement scope and the possible size of the enlarged reservoir. The history of Trujillo Meadows dam operation and maintenance,



including historical problems with the dam will also be assessed and taken into account in the dam enlargement feasibility. Additional assessment will include embankment design considerations, existing structures, and future investigations and design considerations.

Environmental analysis of the dam and reservoir enlargement will be conducted to determine any negative impacts on wetlands, wildlife, and the surrounding habitat. A map of the inundation that will occur with reservoir enlargement will be produced. Assessments of other wildlife impacts will also be conducted. A cultural survey will be conducted assessing the potential impacts of construction on significant indigenous and non-indigenous archaeological and cultural heritage values.

To determine the current amount of water that flows into and out of Trujillo Meadows Reservoir via the Rio De Los Pinos, water commissioner records and RGDSS records will be analyzed. This analysis will help in determining how much Trujillo Meadows should be enlarged for maximum beneficial use.

CPW's USFS permit for the existing reservoir will be characterized. The existing reservoir permit may be expired, and if so, next steps for permitting will be outlined. Interviews with the District Ranger will be conducted to determine permit concerns and any potential special permit concerns will be evaluated. The Rio De Los Pinos flows from Colorado into New Mexico and then back into Colorado. Compact issues associated with the enlarged reservoir and re-timing of flows along with New Mexico's use of water on the Rio De Los Pinos will be evaluated. Water rights considerations will also be determined.

CWCD to provide on-site coordination with subcontractors for site visits.

#### Deliverable

- Technical memoranda on reconnaissance level geotechnical and environmental analysis of the dam and enlargement will be incorporated or appended to the final report.
- A memorandum of biological and hydrological analysis and institutional changes will be incorporated or appended to the final report

### **TASK 4 – Alternative Transfer Method Model**

#### Description of Task

The purpose of this task is to develop a simple operations model for the Trujillo Meadows Reservoir that shows storing, releasing and diverting water from the reservoir. The model will show changes in streamflow and the return flows. The model may be incorporated into the existing Rio Grande Cooperative Project model for CPW operations.

#### Method/Procedure

An operations model will be developed and incorporated into the existing Rio Grande Cooperative model to track reservoir use for meeting existing uses, meeting agricultural shortages, changes to stream flows below Trujillo Meadows, changes to Platoro to meet augmentation demands and the impact to the Compact and CPW's obligations for replacement of Trujillo Meadows evaporation.

#### Deliverable

- An operational model incorporated into the existing Rio Grande Cooperative Model with results in Excel-based format
- A memorandum of the components of this task including basic model configuration description, assumptions, and the results will be incorporated into the final report.

### **TASK 5 – Multiple Benefits**

#### Description of Task

This task will assess and characterize the multiple benefits associated with the project and the goal of preserving agriculture irrigated acres by leasing the San Antonio users Platoro project allocation to the towns for augmentation, in turn for the enlargement of Trujillo Meadows reservoir. Benefits assessed will include:

1. Ability to meet towns' augmentation demand through the ATM Project
2. Ability to reduce agricultural shortages
3. Environmental benefits to streamflows on the Los Pinos, San Antonio, and Conejos
4. Benefits to CPW operations and uses
5. Compact and/or state-wide benefits

#### Method/Procedure

One of the main goals of the project is to meet towns' augmentation demand through an alternative transfer method. For this Project the transfer method is the trade of the use of Project water in Platoro reservoir for the enlargement and use of water re-timed out of Trujillo Meadows. Based on model results and assessments from previous tasks, the ability to meet the towns' augmentation demand through Platoro project water will be determined. In conjunction with the benefits to the towns' the ability to reduce agricultural shortages of the users on the San Antonio through water released out of Trujillo Meadows will also be evaluated.

The potential for environmental benefits such as enhanced stream flows, improved fisheries and ecosystem, and riparian environment enrichment determined in Task 1 will be incorporated into the analysis.

Additional benefits to CPW will be characterized including enhanced operations and improved uses for the water saved by not having to augment evaporation in Trujillo Meadows.

Finally, compact and state-wide benefits including better managed compact deliveries and improved reservoir and stream operations will be determined.

#### Deliverable

- A memorandum of benefits assessed in this task will be incorporated into the final report.
- Potential partners will be identified based on benefits.

## **TASK 6 – Report, Conclusions and Recommendations**

### Description of Task

A final report will be prepared that includes or incorporates all of the task memoranda, summarizes the project, and documents how the project was completed.

### Method/Procedure

Deliverables and results from Tasks 1-5 will be incorporated into the final report.

### Deliverable

- Final report including tables, maps, figures as necessary

## **TASK 7 – Cooperative Partnership and Stakeholder Involvement**

### Description of Task

This task will develop a cooperative partnership and stakeholder involvement in the multiple benefit project. Outreach will be made to the following stakeholders:

1. The towns of Sanford, Manassa, La Jara and Romeo
2. Agricultural users
3. CPW for preliminary negotiations
4. BLM
5. USBR regarding Platoro reoperation and project water contracting
6. DWR

Regular updates with CWCD will take place via progress meetings and trips to the San Luis Valley.

### Method/Procedure

Meetings with the stakeholders, either individually or in larger groups depending on the meeting purpose and goals, will be held to develop a cooperative partnership and stakeholder involvement. CWCD will assist and be actively involved in stakeholder involvement and outreach.

### Deliverable

- Regular coordination and progress updates with CWCD

## **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.

**BUDGET**

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

See attached budget

**SCHEDULE**

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

See attached Schedule

**PAYMENT**

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

Additional Information – If you would like to add any additional pertinent information please feel free to do so here.



Conejos Water Conservancy District

ATM Grant Proposal

Use of ATMs to Increase Supplies for Conejos Basin Agricultural, Municipal and Environmental Purposes

		\$175	\$140	\$140	\$105			\$65
		Senior	Senior	Water	Water		Total Cash	CWCD In-kind
		Engineer	Consultant/ Biologist	Resources Engineer II	Resources Engineer I	Subcontractor	Costs	labor hours
Task	Task Description							labor cost
<b>Task 1</b>	<b>Background and Objectives</b>						<b>\$14,610</b>	<b>\$2,600</b>
	Basic reservoir/dam information - current location, use, rehab work in 1998, storage restriction etc..	2		8	4		\$1,890	8
1B	Expected Rules and Regulations and imminent augmentation demand	1		4			\$735	
1C	Existing agricultural shortages on San Antonio	1		4	8		\$1,575	4
1D	Existing Platoro Division operations	2		12			\$2,030	12
	Potential recreational and environmental benefits of enlargement (fishery improvement, riparian area, retiming of flows etc)	2	8	4	4		\$2,450	
1F	Conceptual schematic of proposed ATM	2		6	2		\$1,400	4
1G	Meetings and coordination	12		12			\$3,780	12
1H	Travel/Reimbursibles						\$750	

**T1 Deliverables (cost included in budgeted items)**

memorandum of tasks 1A to 1G for incorporation into a final report (Task 6)

PowerPoint presentation that can be used to build partnerships with other entities (Task 7)

<b>Task 2</b>	<b>Municipal Augmentation Demand</b>						<b>\$5,740</b>	<b>\$1,170</b>
2A	Quantity/Estimate pumping by towns (current and future)	2		10			\$1,750	10
2B	Use RGDSS response functions to estimate augmentation demand	1		12	4		\$2,275	2
2C	Estimate dry-up acreage to meet augmentation demand from agricultural water source	1		8	4		\$1,715	6
2D	Travel/Reimbursibles						\$0	\$0

**T2 Deliverables (cost included in budgeted items)**

memorandum of tasks 2A to 2C for incorporation into a final report (Task 6)

<b>Task 3</b>	<b>Trujillo Meadows Enlargement Feasibility</b>						<b>\$35,825</b>	<b>\$1,690</b>
3A	Reconnaissance level geotechnical analysis of dam and enlargement	2		2	1	\$10,000	\$10,735	4
	Reconnaissance level environmental analysis of dam and enlargement, including potential new dam site 0.3 miles upstream; wetlands mapping, cultural resources	2	8	2	1	\$6,000	\$7,855	4
3C	Reconnaissance level biological analysis of dam and enlargement, including TE	1	32	1	2		\$5,005	2
3D	Reconnaissance level hydrological analysis (quantify inflows)	2		8	4		\$1,890	2
3E	Institutional Challenges (Compact issues, Permitting, New Mexico use, water rights)	10		12		\$6,000	\$9,430	8
3F	Meetings and subcontractor coordination	2	2	2			\$910	6
3G	Travel/Reimbursibles						\$0	\$0

**T3 Deliverables (cost included in budgeted items)**

technical memoranda for 3A, 3B from subcontractors as appendices to final report  
memorandum of 3C to 3F (plus summary of 3A, 3B) for incorporation into a final report (Task 6)

<b>Task 4</b>	<b>Alternative Transfer Method Model</b>						<b>\$15,540</b>	<b>\$520</b>
	RiverWare model development to track reservoir use for meeting existing uses, meeting agricultural shortages, changes to streamflows below Trujillo Meadows, changes to Platoro operations to meet augmentation demands, impact to Compact	4	4	24	40		\$8,820	4
4B	May be able to incorporate into existing Rio Grande Cooperative Project model for CPW operations	4		16	36		\$6,720	4
4C	Travel/Reimbursibles						\$0	\$0

**T4 Deliverables (cost included in budgeted items)**

Operational RiverWare model with results in Excel-based format  
memorandum of 4A and 4B, including description of model configuration, assumptions, results discussed in Task 5 and in a final report (Task 6)

Conejos Water Conservancy District

ATM Grant Proposal

Use of ATMs to Increase Supplies for Conejos Basin Agricultural, Municipal and Environmental Purposes

		\$175	\$140	\$140	\$105				\$65
		Senior	Senior	Water	Water				
Task	Task Description	Engineer	Consultant/ Biologist	Resources Engineer II	Resources Engineer I	Subcontractor	Total Cash Costs	CWCD In-kind labor hours	CWCD In-kind labor cost
Task 5	Multiple Benefits						\$16,310		\$1,300
5A	Ability to meet augmentation demand through ATM (towns)	4		8	6		\$2,450	4	\$260
5B	Ability to reduce agricultural shortages (CWCD)	4		8	6		\$2,450	4	\$260
5C	Environmental benefits to streamflows (Los Pinos, San Antonio, Conejos)	4	16	8	6		\$4,690	4	\$260
5D	Benefits to CPW operations and uses	4	16	4	6		\$4,130	4	\$260
5E	Compact and/or State-wide benefit	8		4	6		\$2,590	4	\$260
5F	Travel/Reimbursibles						\$0		\$0

**T5 Deliverables (cost included in budgeted items)**

memorandum of 5A to 5D, for incorporation into a final report (Task 6)  
identification of potential partners based on benefits

<b>Task 6</b>	<b>Report, Conclusions and Recommendations</b>						<b>\$11,570</b>		<b>\$780</b>
	Final report incorporating memoranda from previous tasks, including conclusions, recommendations and next steps	16	12	16	20	\$2,000	\$10,820	12	\$780
6B	Travel/Reimbursibles						\$750		\$0

**T6 Deliverables (cost included in budgeted items)**

Final report, including maps, tables, figures as necessary

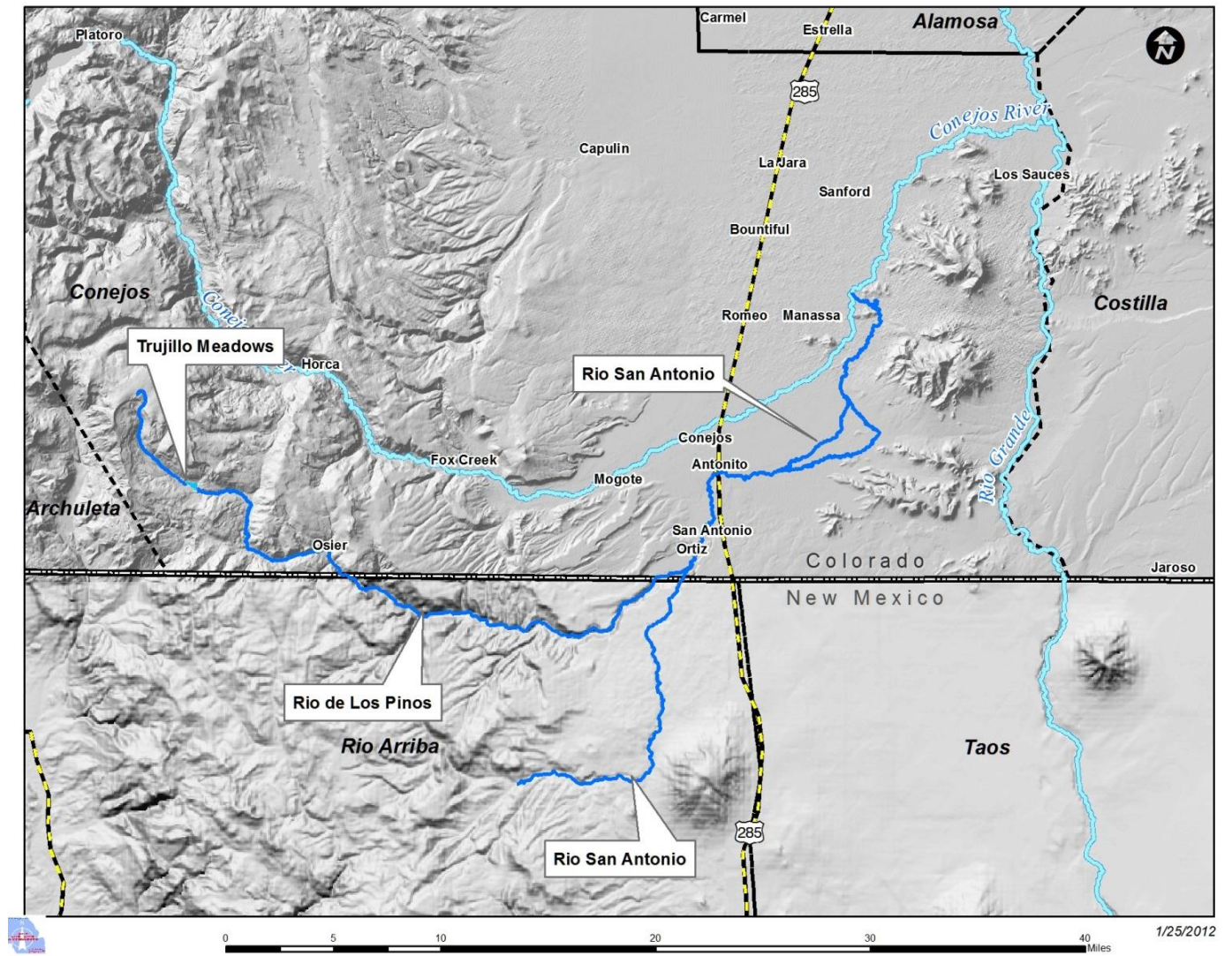
<b>Task 7</b>	<b>Cooperative Partnership and Stakeholder Involvement</b>						<b>\$38,320</b>		<b>\$4,680</b>
7A	Outreach to towns	16					\$2,800	8	\$520
7B	Outreach to agricultural users	16					\$2,800	8	\$520
7C	Outreach/ preliminary negotiations with CPW	16	24				\$6,160	8	\$520
7D	Outreach to BLM	8	8				\$2,520	8	\$520
7E	Outreach to USBR re: Platoro reoperation/Project water contracting etc	16	8				\$3,920	8	\$520
7F	Outreach to DWR	16					\$2,800	8	\$520
7G	Regular updates with CWCD	40	20	28	20		\$15,820	24	\$1,560
7H	Travel/Reimbursibles						\$1,500		\$0

**T7 Deliverables (cost included in budgeted items)**

regular coordination and progress updates with CWCD

		Senior Engineer	Senior Consultant/Biologist	Water Resources Engineer II	Water Resources Engineer I	Subcontractor	Total	CWCD In-kind labor hours	CWCD In-kind labor cost
<b>Project Totals</b>									
	<i>Hours</i>	221	158	223	180		782	196	
	<i>Labor and Subcontractor Cost</i>	\$38,675	\$22,120	\$31,220	\$18,900	\$24,000	\$134,915		\$12,740
	<i>Travel/Reimbursibles</i>						\$3,000		
	<i>Total Project Cost</i>						\$137,915		
	<i>Cash and in-kind match</i>						\$13,792		
	<i>Grant request</i>						\$124,124		

*Southern Colorado/Northern New Mexico*



Conejos Water Conservancy District

ATM Grant Proposal

Use of ATMs to Increase Supplies for Conejos Basin Agricultural, Municipal and Environmental Purposes

Schedule		Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan
		Months after NTP																	
Task		1*	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Task 1	Background and Objectives																		
Task 2	Municipal Augmentation Demand																		
Task 3	Trujillo Meadows Enlargement Feasibility*																		
Task 4	Alternative Transfer Method Model																		
Task 5	Multiple Benefits																		
Task 6	Report, Conclusions and Recommendations																		
Task 7	Cooperative Partnership and Stakeholder Involvement																		

Grey shading indicates estimated timing of task

\*Assumes NTP Aug 2013 so that most field work can be performed in late summer and fall 2013. Differences to the assumed NTP date may affect timing of Task 3

**Conejos Water Conservancy District  
Alternative Agricultural Water Transfer Methods Competitive Grant  
Performance Monitoring Provisions**

**Statutory Requirements**

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

**Performance Monitoring Standards**

Performance monitoring for this contract shall include the following:

- (a) Performance measures and standards: The grantee shall investigate the feasibility of a unique ATM that involves enlarging Trujillo Meadows Reservoir that preserves agriculture in the District and provides a reliable supply of augmentation water for the Towns. In addition, the project will also evaluate the other multiple-objective benefits that are possible, such as enhanced recreational opportunity at Trujillo Meadows Reservoir, potential environmental benefits such as enhanced riparian habitat, re-timing of stream flows on the Rio De Los Pinos and the on the Conejos below Platoro due to the release of augmentation water to the Towns, and meeting Compact delivery requirements.
- (b) Accountability: Per ATM Criteria and Guidelines full documentation of project progress must be submitted with each invoice for reimbursement. Grantee must certify that all grant conditions have been complied with on each invoice. In addition, per ATM Criteria and Guidelines progress reports must be submitted at least once every 6 months. A final project report must be submitted and approved before final project payment and release of retainage.
- (c) Monitoring Requirements: Grantee is responsible for ongoing monitoring of project progress per Exhibit A and Paragraphs 9 & 19 of the contract. Progress shall be detailed in the required invoice documentation and progress reports as detailed above. Additional inspections or field consultations will be arranged as may be necessary.
- (d) Noncompliance Resolution: Per paragraphs 9, 14, 15, and 19 of the contract: payment will be withheld until grantee is current on all grant conditions. Flagrant disregard for grant conditions will result in a stop work order and cancellation of the purchase order.