



**COLORADO**

**Colorado Water  
Conservation Board**

Department of Natural Resources

1313 Sherman Street, Room 718  
Denver, CO 80203

June 22, 2015

Mr. Peter Nichols, Special Counsel  
Lower Arkansas Valley Water Conservancy District  
801 Swink Avenue  
Rocky Ford, CO 81067

RE: Notice to Proceed - ATM Grant –Rotational Fallowing-Leasing Catlin Canal Pilot  
Project in the Arkansas River Basins

Dear Peter,

This letter is to inform you that the contract to assist in the above ATM grant project was approved on June 19, 2015. The original documentation will be mailed to you.

With the executed contract, you are now able to proceed with the project and invoice the State of Colorado for costs incurred through January 31, 2017 according to the schedule in Exhibit A.

Please provide the project name and contract number when corresponding with or invoicing the State of Colorado for your project. Upon receipt of your invoice(s), the State of Colorado will provide payment no later than 30 days after review and signed approval by the project manager.

If you have any questions or concerns regarding the project, please contact me. You can contact Dori Vigil at 303-866-3441 ext. 3250 for invoicing and payment disbursement questions.

Sincerely,

//s//

***Craig Godbout***  
***Program Manager***  
***Colorado Water Conservation Board***  
***Water Supply Planning Section***  
1313 Sherman Street, Suite 718  
Denver CO 80203  
 [\(303\) 866-3441, ext 3210](tel:3038663441) (office)  
 [\(303\) 547-8061](tel:3035478061) (cell)  
[craig.godbout@state.co.us](mailto:craig.godbout@state.co.us)

Attachments



**STATE OF COLORADO**  
**Colorado Water Conservation Board**  
**Grant Agreement**  
**with**  
**Lower Arkansas Valley Water Conservancy District**  
**Contract Number CTGG1 2015-3447**

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### **1. PARTIES**

This Grant Agreement (hereinafter called “Grant”) is entered into by and between Lower Arkansas Valley Water Conservancy District, 801 Swink Avenue, Rocky Ford, CO 81067 (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. This Grant is for Rotational Fallowing – Leasing Catlin Canal Pilot Project Implementation and Operations Program.

## **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** (Statement of Work), **Exhibit B** (Performance Evaluation).

### **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 Alternative Agricultural Water Transfer Methods Competitive 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**

“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

### A. Initial Term-Work Commencement

The Parties respective performances under this Grant shall commence the Effective Date. This Grant shall terminate on **March 31, 2017** unless sooner terminated or further extended as specified elsewhere herein.

### B. Two Month Extension

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

## 6. STATEMENT OF WORK

### A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** on or before **March 31, 2017**. 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 **\$173781.50**, 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>\$173,781.50 in FY2015</b>
<b>\$173,781.50 in FY2016, minus any funds expended in FY2015</b>
<b>\$173,781.50 in FY17, minus any funds expended in FY2015and FY2016</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. Grantee may adjust budgeted expenditure amounts up to 10% within each line item of said Budget without approval of the State. Adjustments in excess of 10% shall be authorized by the State in an amendment to this Grant. 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**. Grantee shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request.

**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**

State shall submit a report to the Grantee 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 Exhibit B**.

**B. Litigation Reporting**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of 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 sub-grants 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 sub-grants

entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such sub-grants 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 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 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 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. Grantee and 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 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, 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 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 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 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 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:**

Craig Godbout, Project Manager
Colorado Water Conservation Board
1313 Sherman St, Suite 718
Denver, CO 80203
Craig.godbout@state.co.us

**B. Grantee:**

Lower Arkansas Valley Water Conservancy District
Mr. Peter Nichols, Special Counsel
801 Swink Avenue
Rocky Ford, CO 81067
pdn@bhgrlaw.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 exclusive 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. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

**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 & Administration (Executive Director), upon request by the Department of Natural Resources, 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 a showing of good cause.

## **20. GENERAL PROVISIONS**

### **A. Assignment and Sub-grants**

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or sub granted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, sub-grants, 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 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, 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 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:

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

#### **J. Severability**

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

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

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

#### **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.

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

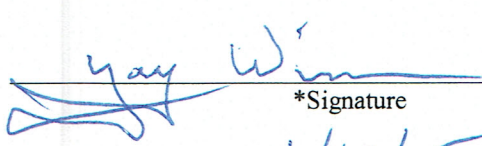
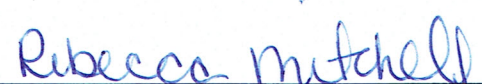
**22. SIGNATURE PAGE**

Grant Routing Number CTGG1 2015-3447

CMS# 81015

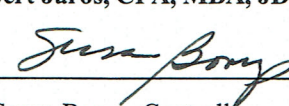
**THE PARTIES HERETO HAVE EXECUTED THIS GRANT**

\* 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><b>GRANTEE</b> Lower Arkansas Valley Water Conservancy District</p> <p>By: _____ Title: _____</p> <p> _____ *Signature</p> <p>Date: <u>6/12/15</u></p>	<p><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, Governor</b> Department of Natural Resources Mike King-Director</p> <p> _____ By: Rebecca Mitchell, Section Chief, Water Supply Planning, 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: <u>6-15-15</u></p>
<p>2nd Grantee Signature if Needed</p> <p>By: _____ Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p><b>LEGAL REVIEW</b> 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><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By:  _____ Susan Borup, Controller Department of Natural Resources</p> <p>Date: <u>6/19/15</u></p>
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## **Exhibit A Statement of Work**

**WATER ACTIVITY NAME –Rotational Fallowing – Leasing Catlin Canal Pilot Project Implementation and Operations Program**

**GRANT RECIPIENT – Lower Arkansas Valley Water Conservancy District**

**FUNDING SOURCE – Alternative Agricultural Water Transfer Methods Grant Program**

### **INTRODUCTION AND BACKGROUND**

The Lower Arkansas Valley Water Conservancy District (the “District”) was formed by a vote of the electorate in 2002 to conserve water resources for their greatest beneficial use within the District, essentially the Lower Arkansas Valley. The District has been active in the development of alternatives to the permanent dry-up and transfer of irrigation water rights for use outside the Lower Valley. The District is the recognized leader in Colorado in developing a fallowing-leasing program to meet the water needs of Front Range municipalities while preserving irrigated agriculture and the economic future of rural Colorado. This work began in 2003 and has grown over time with the continued support of the Colorado Water Conservation Board (“CWCB”). There is an urgency to implement alternative transfer methods such as rotational fallowing to meet the needs identified in the 2010 SWSI, the Arkansas Basin Needs Assessment, and the draft Colorado Water Plan.

On January 27, 2015, the CWCB approved the first Rotational Fallowing Leasing Pilot Project under HB 13-1248 (codified at C.R.S. § 37-60-115(8)), with the District and the Lower Arkansas Valley Super Ditch Company, Inc. as co-applicants. The approved Catlin Pilot Project is a ten-year pilot project that will involve the rotational fallowing of approximately 1,200 acres irrigated under the Catlin Canal in the Arkansas River Basin to generate up to 500 acre-feet of water available for lease to three municipal participants. The Catlin Pilot Project is intended to provide on-the-ground “proof of concept” that rotational land fallowing – municipal leasing is a viable alternative to permanent buy-and dry.

The conditions of CWCB’s January 27, 2015 approval for the Catlin Pilot Project (the “Pilot Project Approval”) are extensive and include 60 terms and conditions to which the District and Super Ditch must comply in operating the project. A copy of the Pilot Project Approval is included with this grant application. That approval requires, for example:

- Calculation of consumptive use credits, return flow obligations, and disposition of consumptive use credits and return flow water with numerous accounting elements on a daily basis
- Daily recharge accounting, including daily content measurements, daily precipitation, and daily evaporation
- Weekly submittal of accounting for the first 75 days of the project
- Recharge pond monitoring for vegetation, seeps, overtopping, or inducement of elevated ground water tables
- Periodic monitoring of dry-up parcels for compliance with dry-up requirements
- Annual report preparation (to include a comprehensive summary of the year’s operations, accounting summary, information on all costs associated with operations, a description of any obstacles to operation encountered, evaluation of erosion prevention and noxious

weed control, any proposed operational modifications for the upcoming year, and any potential additional terms and conditions needed to prevent material injury to other water rights)

- Annual mapping of parcels to be fallowed
- Annual identification of how/where nonparticipating shares will be used, including location of irrigated lands
- Identification of water supplies that will be used on non fallowed portions of participating farms

The Catlin Pilot Project is the first application to be submitted and approved through the CWCB HB 1248 pilot program. This means that the Catlin Pilot Project application was the first to go through the process established in the CWCB's Criteria and Guidelines and was also the first to conduct an analysis using the Lease-Fallowing Tool that was developed by the Division of Water Resources. As a result, the process of putting together the Catlin Pilot Project application, working through the comments of nine parties, preparing a joint conference report with those commenting parties on proposed terms and conditions, obtaining the Pilot Project Approval and then complying with the "conditions precedent" to 2015 operations that were set out in that approval was an arduous one that involved significant commitment of time and financial resources by the District. This Rotational Fallowing - Leasing Catlin Pilot Project Operations and Implementation Program (the "Operations Program") will support the day-to-day operations and administration of the Catlin Pilot Project during the first two years of operations.

The Operations Program will provide funding for the on-the-ground staffing and equipment needs for the first two years of the Pilot Project's operations to ensure continued implementation of the Catlin Pilot Project during its ten-year term. Adequate funding for on-the-ground implementation is critical for compliance with the terms and conditions of the Pilot Project approval described above. This on-the-ground experience will assist in evaluating opportunities and challenges in operating rotational leasing fallowing projects.

A key component in simplifying Pilot Project operations is the use of recharge facilities capable of meeting return flow obligations. While the Catlin Pilot Project currently has two approved and operational recharge facilities, additional facilities may be necessary and/or desirable in the future. Use of recharge is important not only to the success of the Catlin Pilot Project, but also in other rotational fallowing-leasing projects. Current use of recharge in the Arkansas Basin is very limited. To that end, the Operations Program also includes identification of potential additional recharge locations to replace return flow obligations owed from Catlin Pilot Project farms. This will provide an alternative to the two recharge facilities currently in use, in the event either facility becomes unavailable for continued use through the Pilot Project's operations.

## **OBJECTIVES**

1. Advance the District's and Super Ditch Company's efforts to implement the Catlin Pilot Project, as approved by C.R.S. 37-60-115(8) during the start-up phase of the ten-year Pilot Project Approval to demonstrate the viability of rotational-leasing and fallowing as a meaningful alternative to the permanent dry-up of agricultural lands.

2. Identify, through actual rotational leasing-fallowing operations, any barriers to implementation of the Catlin Pilot Project and whether those may also pose barriers to other rotational leasing-fallowing projects.
3. Identify potential means of addressing identified barriers and possibilities for streamlining implementation of rotational leasing and fallowing on a broad scale, through models or other tools.

## **TASKS**

### **Task 1 – Purchase and Install Equipment for Operations**

Description of Task: The District has identified the need for equipment for the recharge ponds and to facilitate accounting and measurement requirements without the need for personnel to travel daily (or more) to the recharge ponds. Stage discharge recorders for the recharge ponds have already been purchased, but require GPRSLink units to allow this data to be transmitted wirelessly. In addition, radar level recorders and associated GPRSLink units for the recharge ponds (which measure water surface elevation that is used to determine surface area, volume, and daily evaporation) will be purchased and installed. Use of this equipment will require data plan and subscription –based software (SutronWIN).

Method/Procedure: District personnel will identify appropriate equipment and purchase the equipment from a qualified vendor. Once purchased, equipment will be installed using standard installation procedures and the District will provide an opportunity to Division 2 Engineering personnel to inspect the equipment.

Deliverable: Invoices of purchased equipment along with records and photos reflecting installation of equipment will be provided.

### **Task 2 – 2015 Operations, Accounting, and Annual Reporting**

Description of Task: This Task will consist of District personnel/consultants undertaking the day-of-day operations of the Catlin Pilot Project to ensure that historic consumptive use water is made available to the municipal participants, return flow obligations are being met through recharge and augmentation station operations, and any exchanges and/or trades are made in compliance with the approval. This Task generally involves ensuring operations occur in compliance with all terms and conditions of the Catlin Approval and that all accounting and reporting obligations are properly completed.

Method/Procedure: This Task will be completed through the daily measurements and recording, monitoring activities, and preparation of weekly, monthly and annual submittals. This task will involve regular coordination between Pilot Project staff with the Catlin Canal Company, participating farmers, the participating municipalities, the Division Engineer's Office, CWPDA and others, as appropriate.

Deliverable: A 2015 annual grant report will be provided that (1) provides a copy of the Annual Report on the Catlin Pilot Project required by Term and Condition No. 52 of the Pilot Project Approval; (2) outlines the level of effort undertaken to comply with the terms and conditions;



and (3) proposes any potential mechanisms identified through operations for simplifying future operations.

### **Task 3 – 2016 Share/Parcel Identification**

Description of Task: District personnel/consultants will prepare parcel mapping and the associated submittal needed for compliance with Term and Condition No. 4 of the Pilot Project Approval for 2016 operations.

Method/Procedure: District personnel/consultants will meet with participating farmers to cooperatively identify appropriate/adequate lands for inclusion on 2016 Pilot project operations. This will include gathering additional information from the participating farmers regarding use of non-fallowed shares/lands. With this information, personnel/consultants will then prepare mapping and the associated submittal needed for compliance with Term and Condition No. 4.

Deliverable: A copy of the mapping and submittal required by Term and Condition No. 4 for 2016 pilot project operations will be provided.

### **Task 4 – 2016 Operations, Accounting and Annual Reporting**

Description of Task: This Task will consist of District personnel/consultants undertaking the day-of-day operations of the Catlin Pilot Project to ensure that historic consumptive use water is made available to the municipal participants, return flow obligations are being met through recharge and augmentation station operations, and any exchanges and/or trades are made in compliance with the approval. This Task generally involves ensuring operations occur in compliance with all terms and conditions of the Catlin Approval and that all accounting and reporting obligations are properly completed.

Method/Procedure: This Task will be completed through the daily measurements and recording, monitoring activities, and preparation of weekly, monthly and annual submittals. This task will involve regular coordination between Pilot Project staff with the Catlin Canal Company, participating farmers, the participating municipalities, the Division Engineer's Office, CWPDA and others, as appropriate.

Deliverable: A 2016 annual grant report will be provided that (1) provides a copy of the Annual Report on the Catlin Pilot Project required by Term and Condition No. 52 of the Pilot Project Approval; (2) outlines the level of effort undertaken to comply with the terms and conditions; and (3) proposes any potential mechanisms identified through operations for simplifying future operations.

### **Task 5 – Recharge Site Identification**

Description of Task: This task will involve the identification and mapping of potential recharge sites at appropriate locations on the participating Diamond A West, Diamond A East, Hirakata, and Hancock farms.

Method/Procedure: District personnel/consultants will review soil mapping and other available information to preliminarily determine suitability of various farm fields on each farm for recharge. If deemed appropriated, soil samples may be taken. District personnel/consultants will



then meet with participating farmers and visit properties and discuss any concerns or issues surrounding potential recharge site locations to determine whether construction of the preliminarily selected sites may be viable from the perspective of the respective land owners. These sites will be identified in consultation with the farm owners, the Division Engineer's Office, and the Catlin Canal Company.

Deliverable: Mapping of identified recharge locations and any preliminary construction plans prepared for recharge will be submitted. If a recharge site is not identified on a participating farm, a memorandum describing why a potential site could not be located will be submitted.

## **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.).

	Staff Engineer	Field Tech	Senior Engineer	GIS Specialist	Legal	Admin.	Equip.	Other Direct Costs (mileage)	<b>Task Total</b>
<b>Task 1</b>	40	-	-	-	-	15	\$21,620*	300	\$24,467.00
<b>Task 2</b>	250	300	190	-	55	15		5100	\$73,939.00
<b>Task 3</b>	15	-	40	10	-	15		200	\$9,948.00
<b>Task 4</b>	150	250	152	-	45	15		3700	\$56,471.00
<b>Task 5</b>	45	75	35	55	40	-		850	\$28,266.50
<b>Total hours</b>	500	625	417	65	140	60		10150 miles	
<b>Hourly Rate</b>	\$60.00	\$25.00	\$184.00	\$130.00	\$240.00	\$18.00		Mileage @ 0.59	
<b>Total</b>	\$30,000	\$15,625	\$76,728	\$8,450	\$33,600	\$1,080	\$21,620	\$5,988.50	\$193,091.50

\*Task 1 Equipment Costs:

<b>Equipment &amp; Supplies</b>	<b>No.</b>	<b>Unit Cost</b>	<b>Total Cost</b>
Radar Level Recorder	2	\$ 2,850.00	\$ 5,700.00
Miscellaneous Installation Supplies	1	\$ 1,000.00	\$ 1,000.00
Laptop computer	1	\$ 1,500.00	\$ 1,500.00
GPRSLink Station	4	\$ 1,950.00	\$ 7,800.00
TGPRS Activation Fee (one time)	4	\$ 60.00	\$ 240.00
TGPRS 5MB Plan (per 12 months)	8	\$ 120.00	\$ 960.00
SutronWIN User Account Setup	1	\$ 500.00	\$ 500.00
SutronWIN Activation Fee (one time)	4	\$ 250.00	\$ 1,000.00
SutronWIN Annual Subscription	8	\$ 365.00	\$ 2,920.00
			\$ 21,620.00

## **SCHEDULE**

The anticipated schedule for the timing of the 5 task items is as follows:

Task	2015							2016												2017		
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
1																						
2																						
3																						
4																						
5																						

## **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.

**Exhibit B**  
**Lower Arkansas Valley Water Conservancy District**  
**Water Supply Reserve Account Grant**  
**Performance Monitoring Provisions**

**Statutory Requirements**

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

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

**Performance Monitoring Standards**

Performance monitoring for this contract shall include the following:

- (a) Performance measures and standards: Grantee shall maintain receipts for all projects expenses and documentation of the minimum in-kind contributions per the budget in Exhibit A Tasks 1-5. Per ATM Criteria and Guidelines, retainage of 10% of the grant funds shall be withheld until receipt of the final report and all other deliverables  
General Reporting: The applicant shall provide the CWCB a progress report every 6 months, beginning from the date of the executed contract until the construction begins. The progress report shall describe the completion or partial completion of the statement of work leading up to the advertisement for bid and 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 the project. This report may contain photographs, summaries of meetings and reports/studies. Grantee shall maintain receipts for all project expenses and documentation of the minimum in-kind contributions per the budget in Exhibit A. Per ATM Criteria and Guidelines, 10% retainage of the grant funds shall be withheld until receipt of the final report and all other deliverables.
- (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.