

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
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Bill Ritter, Jr.
Governor

Harris D. Sherman
DNR Executive Director

Jennifer L. Gimbel
CWCB Director

Dan McAuliffe
CWCB Deputy Director

March 22, 2011

Farmers Reservoir and Irrigation Company
80 South 27th Avenue
Brighton, CO 80601

RE: Notice to Proceed—FRICO Alternative Agricultural Transfer

Dear Farmers Reservoir and Irrigation Company:

This letter is to inform you that the contract amendment for your grant request extension to assist in the FRICO Alternative Agricultural Transfer was signed on March 21, 2011. An original signed copy of the 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 from March 31, 2012. 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/

Todd Doherty
Colorado Water Conservation Board
Water Supply Planning Section
1580 Logan Street, Suite 200
Denver, CO 80203
Phone: 303-866-3441 x3210
Todd.doherty@state.co.us
www.cwcb.state.co.us and www.ibcc.state.co.us

State of Colorado, Colorado Water Conservation Board
Contract Routing Number (CLIN #): 09 PDA 00113
Contract No. 150428
Grant Amount: \$202,500

GRANT CONTRACT

THIS CONTRACT, by and between the State of Colorado, for the use and benefit of the Department of Natural Resources, Colorado Water Conservation Board, located at 1313 Sherman Street, Suite 721, Denver, Colorado 80203, (the "**State**"), and Farmers Reservoir and Irrigation Company, a Colorado nonprofit corporation located at 80 South 27th Avenue, Brighton, CO 80601 ("**Contractor**" or "**Grantee**").

FACTUAL RECITALS

- A. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this contract through the Colorado Financial Reporting Systems (COFRS).
- B. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
- C. Grantee's bid was selected in accordance with Colorado law and State Procurement Rules pursuant to the issuance of a grant which was awarded to Grantee by the Colorado Water Conservation Board at its July 2008 board meeting;
- D. Authority for the agency entering into this Contract arises from Colorado Revised Statutes (CRS) 39-29-109(1)(a)(III), 37-75-102 and 37-74-104(2)(c) and Senate Bill 07-122 adopted by the 2007 General Assembly.
- E. The State has allocated grant funds for alternative agricultural water transfer methods in the South Platte Basin using the FRICO system. Grantee is ready, willing and able to provide such a task.

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this contract, the State and Contractor agree as follows:

AGREEMENT

1. Definitions

The following terms as used in this contract shall be construed and interpreted as follows, unless the context otherwise expressly requires a different construction and interpretation:

- 1.1. "**Compensation**" means the funds payable to Contractor by the State which are related to the Goods and Services set forth in the Scope of Work set forth in **Exhibit A**, attached hereto and incorporated herein.
- 1.2. "**Contract**" means this contract for Goods and Services, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this contract, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to State Fiscal Rules and Policies.

- 1.3. **"Exhibit"** means a statement of work document, schedule, budget, or other identified exhibit which has been incorporated into and attached to this contract.
- 1.4. **"Goods"** means anything that is produced or manufactured and that is obtained by the State, either in and of itself, or in conjunction with services.
- 1.5. **"Services"** means services performed or tangible material produced or delivered in the performance of services.

BASIC CONTRACT TERMS

2. Statement of Work

Contractor shall perform the Services described in **Exhibit A**, Scope of Work.

3. Performance Standard

Contractor shall perform the Services described in **Exhibit A**, Scope of Work, in accordance with the highest standard of care, skill and diligence provided by a professional person or company in performance of work similar to the Services, and all services, and all consumables, products, and materials used in performance of the Services shall be of good quality and free from faults and defects. Contractor warrants that (a) services or goods provided under this contract shall meet the description in **Exhibit A**, Scope of Work, (b) there are no pending or threatened suits, claims, or actions of any type with respect to the services or goods provided and (c) the services and goods shall be free and clear of any liens, encumbrances, or claims arising by or through Contractor or any party related to Contractor.

4. Performance Term

- 4.1. This contract shall be effective upon approval by the Colorado State Controller, or designee (the "Effective Date") and extend through June 30, 2010. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the sequence and manner set forth in **Exhibit A**, Scope of Work.
- 4.2. In the event the State desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to three (3) months. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate at the end of the three (3) month period or when the replacement contract is signed by the Colorado State Controller or an authorized delegate.

5. Grant Award (Compensation)

- 5.1. Payment of compensation pursuant to this contract will be made as earned, in whole or in part, from available State funds encumbered in a maximum amount not to exceed \$202,500 for the performance of the Services required by this contract and **Exhibit A**, Scope of Work. Satisfactory performance under the terms of this contract shall be a condition precedent to the State's obligation to compensate Contractor.
- 5.2. The maximum compensation payable under this contract, and under any renewal hereof, shall include all Contractor fees, costs and expenses.
- 5.3. The State shall not be liable to Contractor for payment of work or services or for costs or expenses incurred by Contractor prior to the "Effective Date".

5.4. The maximum amount available during each fiscal year of this contract for the purchase of Goods and Services shall be:

- (a) \$202,500 in fiscal year 2009;
- (b) \$202,500 minus any funds expended in 2009 in fiscal year 2010.

6. Availability of Funds

This contract is contingent upon the continuing availability of State appropriations as provided in Section 2 of the Colorado Special Provisions, incorporated as a part of this contract. The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. If Federal appropriations or grants fund this contract in whole or in part, the contract is subject to and contingent upon the continuing availability of appropriated Federal funds for this contract. If State of Colorado or Federal funds are not appropriated, or otherwise become unavailable to fund this contract, the State may immediately terminate the contract in whole or in part without further liability.

PROCEDURES FOR AND OBLIGATIONS OF CONTRACT PERFORMANCE

7. Billing/Payment Procedure

- 7.1. The State shall establish billing procedures and pay Contractor the contract price or rate for Services performed, reviewed, and accepted or Goods delivered, inspected, and accepted pursuant to all the terms and conditions of this contract, including without limitation, performance, quality, milestones and completion requirements for payment set forth in **Exhibit A**, Scope of Work, and the State's inspection and acceptance rights in Section 8. Contractor shall submit invoices for payment on forms and provide requested documentation in a manner prescribed or approved by the State. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described Services and Goods. Incorrect payments by the State to Contractor due to omission, error, fraud, or defalcation shall be recovered from Contractor by deduction from subsequent payments under this contract or other contracts between the State and Contractor or collected as a debt due to the State.
- 7.2. Invoices and payments shall be mailed using the US Postal Service or other delivery service with a properly addressed stamped envelop to the address specified by the Contractor on form W-9 or other similar form and by the State in its billing procedures.
- 7.3. The State shall make payment in full with respect to each invoice within forty-five (45) days of receipt thereof; provided that the amount invoiced represents Goods and/or Services which have been accepted by the State and the form of the invoice is acceptable to the State. Uncontested amounts not paid by the State within forty-five (45) days shall bear interest on the unpaid balance beginning with the forty-sixth (46th) day at a rate of one percent (1%) per month until paid in full; provided, however, that no interest shall accrue with respect to unpaid amounts for which the State has delivered to Contractor notice of a good faith dispute. Contractor 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 applicable interest rate.

8. Inspection and Acceptance

The State reserves the right to inspect Services provided under this contract at all reasonable times and places during the term of this contract, including any extensions. If any of the Services does not conform to contract requirements, the State may require Contractor to promptly perform the Services again in conformity with contract requirements, at no additional cost to the State. When defects in the quality or quantity of Services cannot be corrected by re-performance, the State may:

- (a) require Contractor to take necessary action to ensure that future performance conforms to this contract requirements; and

- (b) equitably reduce the payment due to Contractor to reflect the reduced value of the Services performed.

These remedies shall in no way limit the remedies available to the State in other provisions of this contract or remedies otherwise available in equity or at law, all of which may be exercised by the State, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment under this provision shall not constitute a breach of contract or default by the State.

9. Reporting

Unless otherwise provided in this contract or the exhibits hereto, Contractor shall submit, on a quarterly basis and upon termination or completion of work, a written progress report analyzing the performance under this contract and specifying progress made for each activity identified in Contractor's duties and obligations. Such written analysis shall be in accordance with the procedures developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of Contractor and failure to comply may result in the delay of payment of funds and/or termination of this contract. Required reports shall be submitted to the State not later than the end of each calendar quarter, or at such time as otherwise specified. Notwithstanding anything herein to the contrary, including without limitation the priority provisions set forth in Section 35, specific reporting requirements set forth in **Exhibit A**, Scope of Work, or in other exhibits to this contract, shall take precedence over this general reporting provision.

10. Rights in Data, Documents, and Computer Software

- 10.1 Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by Contractor in the performance of its obligations under this contract (the "Work Product"), shall be the exclusive property of the State and all Work Product shall be delivered to the State by Contractor upon completion, termination, or cancellation of this contract. The rights of the State with respect to such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such Work.
- 10.2 Contractor shall not use, willingly allow, cause or permit such property to be used for any purpose other than the performance of Contractor's obligations under this contract, without the prior written consent of the State. The rights of the State with respect to such property shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such property.

11. Maintenance, Inspection and Monitoring of Records

- 11.1 Contractor shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of programs or the delivery of Services or Goods under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed; provided, that if an audit by or on behalf of the Federal and/or Colorado State government has begun but is not completed or audit findings have not been resolved after a three (3) year period, such materials shall be retained until the resolution of the audit findings.
- 11.2 Contractor shall permit the State, the Federal Government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Contractor's performance hereunder.
- 11.3 Contractor also shall permit these same described entities to monitor all activities conducted by Contractor pursuant to the terms of this contract. As the monitoring agency, in its sole discretion, may deem necessary or appropriate, such monitoring may consist of internal evaluation procedures,

examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract performance.

12. Confidentiality of State Records and Information

- 12.1 Contractor acknowledges that it may come into contact with confidential information in connection with this contract or in connection with the performance of its obligations under this contract, including but not limited, to personal records and information of individuals. It shall be the responsibility of Contractor to keep all State records and information confidential at all times and to comply with all Colorado State and Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the State. Any request or demand for information in the possession of Contractor made by a third party who is not an authorized party to this contract shall be immediately forwarded to the State's principal representative for resolution.
- 12.2 Contractor shall notify all of its agent, employees, subcontractors and assigns who will come into contact with State information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and information wherever located. No State information of any kind shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by the contract and as approved by the State. State information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in this contract and approved by the State. Disclosure of State records or information may be cause for legal action against Contractor or its agents. Defense of any such action shall be the sole responsibility of Contractor.

13. Litigation Reporting

Contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services provided or Contractor's performance under this contract, which has been filed in any Federal or state court or administrative agency, shall deliver copies of such document to the State's principal representative, or in absence of such designation, to the chief executive officer of the department, agency, or institution executing this contract on behalf of the State.

14. Conflict of Interest.

- 14.1 During the term of this contract, Contractor 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 Contractor's obligations under this contract.
- 14.2 Additionally, Contractor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, Contractor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of Contractor's obligations to the State in accordance with the terms and conditions of this contract, without the prior written approval of the State.
- 14.3. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.
- 14.4. Contractor and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer or agent of Contractor or any permitted

subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (a) an employee, officer or agent;
- (b) any member of the employee's immediate family;
- (c) an employee's partner; or
- (d) an organization, which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. Contractor's or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential contractors, or parties to sub-agreements.

REPRESENTATIONS AND WARRANTIES

15. Warranties. During the term of this contract and for a period of six (6) months following the State's final acceptance under this contract, Contractor warrants as follows:

15.1 All Services under this Contract shall be performed in accordance with the specifications set forth in this contract and **Exhibit A** and in a manner acceptable to the State. Contractor shall re-perform any Services that fail to satisfy this warranty.

15.2 All deliverables delivered under this contract by Contractor shall meet the specifications set forth in this contract and **Exhibit A**. Contractor shall correct or replace any deliverables which fail to satisfy this warranty.

The foregoing warranties and such other warranties as may be set forth in **Exhibit A**, Scope of Work, are a part of the minimum work requirements of this contract, and as such will be at no additional cost to the State.

16. Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this contract, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform the Services and/or deliver the Goods covered by this contract. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this contract, without reimbursement by the State or other adjustment in contract price. Additionally, all employees of Contractor performing services under this contract shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to do 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 Contractor to properly perform this contract, shall be deemed to be a default by Contractor and grounds for termination of this contract by the State.

17. Tax Exempt Status

Contractor acknowledges that the State of Colorado is not liable for any sales, use, excise, property or other taxes imposed by any Federal, State or local government tax authority. The State also is not liable for any Contractor franchise or income related tax. No taxes of any kind shall be charged to the State.

18. Legal Authority

Contractor warrants that it possesses the legal authority to enter into this contract 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 contract and to bind Contractor to its terms. Contractor agrees it shall submit voluntarily to the personal jurisdiction of the Federal and State courts in the State of Colorado and venue in the City and County of Denver, Colorado. The person(s) executing this contract on behalf of Contractor warrant(s) that such person(s) have full authorization to execute this contract.

19. Compliance with Applicable Law

19.1 Contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract. Contractor also shall require compliance with such laws and regulations by subcontractors under subcontracts permitted under this contract.

REMEDIES

20. Remedies

In addition to any other remedies provided for in this contract, and without limiting the remedies otherwise available at law or in equity, the State may exercise the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in this contract. "Substantial failure" to satisfy duties and obligations shall be defined to mean material, insufficient, incorrect or improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

- (a) Suspend Contractor's performance pending necessary corrective action as specified by the State, without Contractor's entitlement to adjustment in price/cost or schedule. Furthermore, at the State's option, a directive to suspend may include suspension of this entire contract or any particular part of this contract that the State determines in good faith would not be beneficial or in the State's best interests due to Contractor's substantial non-performance. Accordingly, the State shall not be liable to Contractor for costs incurred after the State has duly notified Contractor of the suspension of performance under this provision, and Contractor shall promptly cease performance and incurring costs in accordance with the State's directive;
- (b) Withhold payment to Contractor until the necessary Services or corrections in performance, development or manufacture are satisfactorily completed;
- (c) Request the removal from work on this contract of employees or agents of Contractor identified by the State, in its reasonable judgment, as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this contract the State deems to be contrary to the public interest or not in the best interests of the State;
- (d) Deny payment for those Services or obligations which have not been performed which have not been provided and which, due to circumstances caused by Contractor, cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
- (e) Terminate this contract for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

21. Termination for Convenience

21.1 When the interests of the State so require, the State may terminate this contract in whole or in part, for the convenience of the State. The State shall give written notice of termination to Contractor specifying the termination of all or a portion of this contract and the effective date of such. Exercise by the State of this termination for convenience provision shall not be deemed a breach of contract by the State. Upon receipt of written notice, Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Contractor shall stop work to the extent specified. Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. All finished or unfinished documents, data,

studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this contract shall, at the option of the State, be delivered by Contractor to the State and shall become the State's property. The State may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor shall complete and deliver to the State the work not terminated by the notice of termination and may incur obligations as are necessary to do so within the contract terms.

- 21.2 If this contract is terminated by the State as provided herein, Contractor shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or the deliverables satisfactorily delivered or installed bear to the total Services or deliverables covered by this contract, less payments of compensation previously made. In addition, for contracts that are less than 60% completed, the State may reimburse the contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by Contractor during the contract period which are directly attributable to the uncompleted portion of Contractor's obligations covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the Termination for Cause or Default provision shall apply.

22. Termination for Default/Cause

If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time and pursuant to the requirements and terms specified in this contract, the State may notify Contractor in writing of such non-performance. If Contractor fails to promptly correct such delay or non-performance within the time specified, the State, may at its option, terminate this entire contract or such part of this contract as to which there has been delay or a failure to properly perform. If terminated for cause, the State shall only reimburse Contractor for accepted work or deliverables received up to the date of termination and final payments may be withheld. In the event of termination, all finished or unfinished documents, data, studies, research surveys, reports, other materials prepared by Contractor, or materials owned by the State in the possession of Contractor, at the option of the State, shall be returned immediately to the State or retained by the State as its property. At the State's option, Contractor shall continue performance of this contract to the extent not terminated, if any, and shall be liable for excess costs incurred by the State in procuring from third parties replacement services or substitute goods as cover. Notwithstanding any remedial action by the State, Contractor also shall remain liable to the State for any damages sustained by the State by virtue of any breach by Contractor and the State may withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. Upon termination by the State, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. Further, the State may withhold amounts due to Contractor as the State deems necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods or services. Any action taken by the State hereunder or pursuant to paragraph 15 shall not be cause for Contractor to terminate this Contract for default or material breach. If, after termination by the State, it is determined for any reason that Contractor was not in default or that Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience and the rights and obligations of the parties shall be the same as if this contract had been terminated for convenience, as described herein.

23. Insurance

- 23.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:
- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the Contractor's employees acting within the course and scope of their employment.

b. 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:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

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

23.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

23.3 The Contractor will require all insurance policies in any way related to the contract and secured and maintained by the Contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

23.4 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

23.5 The Contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

23.6 Notwithstanding subsection (a) of this section, if the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

24. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Governmental Immunity Act. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of sections 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, sections 24-30-1501, et seq., C.R.S., as now or hereafter amended.

25. Force Majeure

Neither Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; public health/safety emergency acts of the State or any governmental entity in its sovereign capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

MISCELLANEOUS PROVISIONS

26. Representatives

Each individual identified below is the principal representative of the designating party. All notices required to be given to a party pursuant to this contract shall be hand delivered with receipt required or sent by certified or registered mail to such party's principal representative at the address for such party 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.

For the State:

Name: Todd Doherty

Title: Section Chief, Intrastate Water Management and Development, CWCB

Address: 1313 Sherman Street, Room 721, Denver, CO 80203

Telephone: (303) 866-3441 ext. 3210

For Contractor:

Name: Manuel Montoya

Title: General Manager, FRICO

Address: 80 South 27th Avenue, Brighton, CO 80601

Telephone: (303) 659-7373

27. Assignment and Successors

Unless otherwise specified in **Exhibit A**, Scope of Work, Contractor's rights and obligations under this contract shall be deemed to be personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State, which shall not be unreasonably withheld. Any attempt at assignment, transfer or subcontracting without such consent shall be void, except that Contractor may assign the right to receive payments from the State pursuant to section 4-9-318, C.R.S. All subcontracts and subcontractors consented to by the State shall be made subject to the requirements, terms and conditions of this contract. Contractor alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted work or Goods, and performance of any subcontracted Services. Contractor shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this contract, including an obligation of the subcontractor to indemnify the State as is required under Section 3 of the Colorado Special Provisions, incorporated as a part of this contract.

28. Third Party Beneficiaries

The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement shall be strictly reserved to the State and Contractor. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and Contractor that any such person or entity, other than the State or Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

29. Severability

To the extent this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

30. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

31. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the Colorado State Fiscal Rules.

32. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, all terms and conditions of this contract, including but not limited to its exhibits and attachments, which may require continued performance, compliance, or effect beyond the termination date of the contract, shall survive such termination date and shall be enforceable by the State in the event of the Contractor's failure to perform or comply as required.

33. Modification and Amendment

33.1 This contract 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 contract on the Effective Date of such change, as if fully set forth herein.

33.2 Except as specifically provided in this contract, no modification of this contract shall be effective unless agreed to in writing by both parties in an Amendment to this contract, properly executed and approved in accordance with Colorado State law and State Fiscal Rules.

34. Venue

Venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

35. Indemnification

Contractor 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 Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

[Applicable Only to Intergovernmental Contracts] No term or condition of this contract shall 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.

36. Order of Precedence

The provisions of this contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (a) Colorado Special Provisions, pages 12 to 13.
- (b) Remaining pages of the contract, pages 1 to 11.
- (c) **Exhibit A**, Statement of Work.

SPECIAL PROVISIONS

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

1. CONTROLLER'S APPROVAL. CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

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.

3. GOVERNMENTAL IMMUNITY. No term or condition of this contract 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.

4. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor 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 Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor 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.

5. COMPLIANCE WITH LAW. Contractor 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.

6. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. 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 contract, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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 contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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.

11. PUBLIC CONTRACTS 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] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor 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 Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, 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 contract.

Revised 1-1-09

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>GRANTEE Farmers Reservoir and Irrigation Company By: Manuel Montoya Title: General Manager</p> <p><u>Manuel Montoya</u> *Signature</p> <p>Date: <u>April 8 2009</u></p>	<p>STATE OF COLORADO Bill Ritter, Jr. GOVERNOR Department of Natural Resources Harris D. Sherman, Executive Director</p> <p><u>Mike Serlet</u> By: Mike Serlet, Section Chief, CWCB</p> <p>Date: <u>4/28/09</u></p>
	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: <u>WJA</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>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: <u>Deanne Stum</u></p> <p>Date: <u>5-26-09</u></p>

Exhibit A
Scope of Work
FRICO Alternative Agricultural Transfers

I. Task 1 - Survey of FRICO Barr and Milton Shareholders

Description of Task:

Prepare and complete a survey of FRICO Barr and Milton Shareholders representing potential suppliers of water for the alternative agricultural transfer methods. In addition, the shareholders will be surveyed to determine if they have the interest and physical infrastructure to participate in a shared water bank with M&I users.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Design the survey instrument and the methodology for implementing the survey.

Shareholders in Barr and Milton divisions will be interviewed to determine optimal business/financial arrangements and willingness to participate in various alternative agricultural transfer concepts. One joint Barr and Milton shareholder meeting will be held to describe the project and provide feedback from shareholders to the project team and provide an opportunity to fill out the survey. A follow-up mail survey will be sent to Barr and Milton agricultural shareholders.

Identify who will Undertake the Task:

Christopher Goemans and graduate researchers at Colorado State University and the Water Resources Research Institute supported by FRICO staff, DiNatale Water, and Duane Helton.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Survey and written summary of survey results delivered in electronic format.

Task 2 - Survey of M&I Providers

Description of Task:

Prepare and complete a survey of M&I providers in the Denver metro area representing potential customers of water from the alternative agricultural transfer methods identified in the FRICO Barr and Milton shareholder surveys. In addition, the M&I providers will be surveyed to determine if they have the interest and surplus water supplies to participate in a shared water bank with agricultural users.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Design the survey instrument and the methodology for implementing the survey.

Interview and/or survey M&I water providers that represent potential customers for water produced in the Barr and Milton Divisions under alternative agricultural transfer mechanisms as well as those that might have spot surplus water available for a shared water bank. Potential providers include:

South Metro Water Supply Authority members, Brighton, Lochbuie, Westminster, Thornton, Northglenn, Denver Water, Aurora, Lafayette, Louisville, Erie, Arvada, Con Mutual, South Adams, Commerce City, Bennett, and Watkins. Phone and onsite visits will be conducted as needed with water resources managers and public works or utilities directors or other water policy makers.

Identify who will Undertake the Task:

DiNatale Water supported by Christopher Goemans and graduate researchers at Colorado State University and FRICO staff.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Survey and written summary of survey results delivered in electronic format.

Task 3 – Shared Water Bank Structure

Description of Task:

Analysis will be made of the mechanics of a shared water bank that could provide benefits for FRICO, Barr and Milton shareholders, and M&I providers. The shared water bank will initially take “deposits” of surplus water from M&I users that cannot be efficiently stored by these M&I users. The benefits of any water deposited will accrue to the M&I providers, FRICO and individual shareholders on a negotiated sharing basis. This task will evaluate sharing arrangements based on the results of the surveys in Tasks 1 and 2 and will develop the mechanics of how a shared bank will operate and the likelihood of water deposits based on a historical streamflow analysis. Once the accounting and administrative structure of the shared water bank is established, opportunities to bank and market water obtained through alternative transfer mechanisms will be piloted with willing agricultural shareholders within the FRICO system.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Analysis will be made of water that could be made available on a spot basis by M&I providers based on surveys. Also, an evaluation will be made of the frequency and capacity of various components of the FRICO system that could be made available to capture and recharge surplus M&I water.

Identify who will Undertake the Task:

Duane Helton and DiNatale Water supported by CSU, FRICO staff, CSU and support consultant for GIS mapping and spreadsheet analysis.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Table of surplus water supplies available for banking delivered in electronic format (Excel).

Table summarizing surplus capacities in key FRICO structures under historical conditions delivered in electronic format (Excel).

Task 4 – Engineering Analysis of Alternative Transfer Mechanics

Description of Task:

Engineering analysis will be made of the feasibility and mechanics of alternative agricultural transfer methods that could provide benefits for FRICO, Barr and Milton shareholders, and M&I providers. The various alternative agricultural transfer methods identified by the SWSI Alternative Agricultural Transfer Round Table will be tested, in addition to other concepts developed as a result of the Task 1 and 2 survey results. Engineering reality checks will be made including the volume and location of water potentially made available, physical infrastructure to wheel the water, recharge capacities and underground and surface storage locations and volumes and compliance with Colorado water law to prevent injury to other users.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Building on existing FRICO engineering studies and models an analysis of water that could be made available by Barr and Milton shareholders through alternative transfers and through the recharge of excess M&I supplies. This would include locating recharge sites, underground storage capacity, timing, and location of returns and methods to beneficially use these supplies.

Identify who will Undertake the Task:

Duane Helton and DiNatale Water supported by CSU, FRICO staff, CSU and support consultant for GIS mapping and spreadsheet analysis.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Tables and maps showing volumes of water potentially available, diversion points, recharge sites, and return locations, amounts, and timing and retiming delivered in electronic format (GIS and Excel) and four color oversized paper copies of maps.

Task 5 – Water Administration Challenges**Description of Task:**

Consult with the Division Engineer on logistics of administration of proposed alternatives. Meetings will be held with the Division Engineer and other Division of Water Resources staff to discuss and evaluate the administration and water rights issues associated with the alternative agricultural transfer methods and shared water bank remaining after the analysis in Tasks 1 – 4.

Method or Procedure that will be Used or Followed to Accomplish the Task:

An interview will be held with the Division 1 Engineer to review various alternative transfer methods and shared water bank and challenges and logistics of administration of proposed alternatives. Follow-up interviews with Division 1 staff and the State Engineer will be conducted as needed.

Identify who will Undertake the Task:

Duane Helton and DiNatale Water supported by Akolt and Akolt and FRICO staff.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Results will be incorporated in the Task 7 deliverable.

Task 6 – Legal Analysis

Description of Task:

Legal analysis will be made of the implementation issues associated with implementing the viable alternative agricultural transfer methods and shared water bank.

Method or Procedure that will be Used or Followed to Accomplish the Task:

FRICO legal team will analyze requirements to adjudicate the proposed transfers including proposed terms and conditions including protection of vested water rights and administrability. Draft agreements will be prepared if appropriate.

Identify who will Undertake the Task:

Akolt and Akolt, legal counsel for FRICO.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Results will be incorporated in Task 7 deliverable.

Task 7 – Summary Report

Description of Task:

Report summarizing project findings.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Using results from surveys, engineering and legal analyses, the potential effectiveness/activity level of various transfer methods will be estimated, as will the specific demographics of FRICO shareholders compared to other agricultural areas in the South Platte and Arkansas basins. An evaluation will be made of opportunities for alternative uses of formerly irrigated land if agricultural transfers are/are not successful; i.e., if land is permanently dried up. This will ensure transferability to other users and basins. The feasibility of a South Platte water bank for administering and marketing water made available through alternative ag transfers will be analyzed within the context of business arrangements deemed acceptable both to M&I providers and agricultural shareholders to determine where the intersection of interests may lie and if a water bank is the optimum mechanism for brokering these deals.

Identify who will Undertake the Task:

Entire project team.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion

of the Task:

Final summary report and briefing to CWCB. Report to be delivered in electronic format (PDF) and 20 total paper copies to be distributed between FRICO and CWCB.

4/7/2009

	Other Direct Costs				Materials Lump Sum	Equipment/ Supplies Lump Sum	Mileage Mile \$ 0.550	Total
	Items Copies (Black & White)	No.	Unit Cost \$ 0.10	\$				
Task 1 - Survey of PRICO Bars and Million Shareholders			1,000	500		3,000	2,275	
Task 2 - Survey of FMA Providers			1,000	500		1,000	1,400	
Task 3 - Shared Water Bank Structure			300	100	500		500	
Task 4 - Engineering Analysis of Alternation Transfer Mechanism			300	100	500		1,100	
Task 5 - Water Administration Challenges					500		500	
Task 6 - Legal Analysis - PRICO R-Rat								
Task 7 - Summary Report			1,200	1,500			250	
Total Units			3,600	2,700	1,000	4,000	6,003	
Total Cost			\$400	\$2,700	\$0	\$4,000	\$9,335	\$10,435

Project Schedule
Alternative Water Transfers in the South Platte Basin using the Farmers Reservoir and Irrigation Company System

Tasks	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
Task 1 - Survey of FRICO Barr and Milton Shareholders														
Task 2 - Survey of M&I Providers														
Task 3 - Shared Water Bank Structure														
Task 4 - Engineering Analysis of Alternative Transfer Mechanics														
Task 5 - Water Administration Challenges														
Task 6 - Legal Analysis - FRICO In-Kind														
Task 7 - Summary Report														

PAYMENT

Payment will be made based on actual expenditures and invoicing by the water activity sponsor. 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 CWCB in hard copy and electronic format as part of the project documentation.

Exhibit A – Scope of Work

Farmers Reservoir and Irrigation Company (FRICO)—Alternative Water Transfers in the South Platte Basin using the FRICO system

I. Task 1 - Survey of FRICO Barr and Milton Shareholders

Description of Task:

Prepare and complete a survey of FRICO Barr and Milton Shareholders representing potential suppliers of water for the alternative agricultural transfer methods. In addition, the shareholders will be surveyed to determine if they have the interest and physical infrastructure to participate in a shared water bank with M&I users.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Design the survey instrument and the methodology for implementing the survey.

Shareholders in Barr and Milton divisions will be interviewed to determine optimal business/financial arrangements and willingness to participate in various alternative agricultural transfer concepts. One joint Barr and Milton shareholder meeting will be held to describe the project and provide feedback from shareholders to the project team and provide an opportunity to fill out the survey. A follow-up mail survey will be sent to Barr and Milton agricultural shareholders.

Identify who will Undertake the Task:

Christopher Goemans and graduate researchers at Colorado State University and the Water Resources Research Institute supported by FRICO staff, CDM, and Duane Helton.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Survey and written summary of survey results delivered in electronic format.

Task 2 - Survey of M&I Providers

Description of Task:

Prepare and complete a survey of M&I providers in the Denver metro area representing potential customers of water from the alternative agricultural transfer methods identified in the FRICO Barr and Milton shareholder surveys. In addition, the M&I providers will be surveyed to determine if they have the interest and surplus water supplies to participate in a shared water bank with agricultural users.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Design the survey instrument and the methodology for implementing the survey.

Interview and/or survey M&I water providers that represent potential customers for water produced in the Barr and Milton Divisions under alternative agricultural transfer mechanisms as well as those that might have spot surplus water available for a shared water bank. Potential providers include: South Metro Water Supply Authority members, Brighton, Lochbuie, Westminster, Thornton, Northglenn, Denver Water, Aurora, Lafayette, Louisville, Erie, Arvada, Con Mutual, South Adams, Commerce City, Bennett, and Watkins. Phone and onsite visits will be conducted as needed with water resources managers and public works or utilities directors or other water policy makers.

Identify who will Undertake the Task:

CDM supported by Christopher Goemans and graduate researchers at Colorado State University and the Water Resources Research Institute, FRICO staff, and Duane Helton.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Survey and written summary of survey results delivered in electronic format.

Task 3 – Shared Water Bank Structure**Description of Task:**

Analysis will be made of the mechanics of a shared water bank that could provide benefits for FRICO, Barr and Milton shareholders, and M&I providers. The shared water bank will initially take “deposits” of surplus water from M&I users that cannot be efficiently stored by these M&I users. The benefits of any water deposited will accrue to the M&I providers, FRICO and individual shareholders on a negotiated sharing basis. This task will evaluate sharing arrangements based on the results of the surveys in Tasks 1 and 2 and will develop the mechanics of how a shared bank will operate and the likelihood of water deposits based on a historical streamflow analysis. Once the accounting and administrative structure of the shared water bank is established, opportunities to bank and market water obtained through alternative transfer mechanisms will be piloted with willing agricultural shareholders within the FRICO system.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Analysis will be made of water that could be made available on a spot basis by M&I providers based on surveys. Also, an evaluation will be made of the frequency and capacity of various components of the FRICO system that could be made available to capture and recharge surplus M&I water.

Identify who will Undertake the Task:

CDM supported by FRICO staff and Duane Helton.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Table of surplus water supplies available for banking delivered in electronic format (Excel).

Table summarizing surplus capacities in key FRICO structures under historical conditions delivered in electronic format (Excel).

Task 4 – Engineering Analysis of Alternative Transfer Mechanics

Description of Task:

Engineering analysis will be made of the feasibility and mechanics of alternative agricultural transfer methods that could provide benefits for FRICO, Barr and Milton shareholders, and M&I providers. The various alternative agricultural transfer methods identified by the SWSI Alternative Agricultural Transfer Round Table will be tested, in addition to other concepts developed as a result of the Task 1 and 2 survey results. Engineering reality checks will be made including the volume and location of water potentially made available, physical infrastructure to wheel the water, recharge capacities and underground and surface storage locations and volumes and compliance with Colorado water law to prevent injury to other users.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Building on existing FRICO engineering studies and models an analysis of water that could be made available by Barr and Milton shareholders through alternative transfers and through the recharge of excess M&I supplies. This would include locating recharge sites, underground storage capacity, timing, and location of returns and methods to beneficially use these supplies.

Identify who will Undertake the Task:

CDM supported by FRICO staff and Duane Helton.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Tables and maps showing volumes of water potentially available, diversion points, recharge sites, and return locations, amounts, and timing and retiming delivered in electronic format (GIS and Excel) and four color oversized paper copies of maps.

Task 5 – Water Administration Challenges

Description of Task:

Consult with the Division Engineer on logistics of administration of proposed alternatives. Meetings will be held with the Division Engineer and other Division of Water Resources staff to discuss and evaluate the administration and water rights issues associated with the alternative agricultural transfer methods and shared water bank remaining after the analysis in Tasks 1 – 4.

Method or Procedure that will be Used or Followed to Accomplish the Task:

An Interview will be held with the Division 1 Engineer to review various alternative transfer methods and shared water bank and challenges and logistics of administration of proposed alternatives. Follow-up interviews with Division 1 staff and the State Engineer will be conducted as needed.

Identify who will Undertake the Task:

Hal Simpson, Duane Helton and CDM supported by Akolt and Akolt and FRICO staff.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Results will be incorporated in the Task 7 deliverable.

Task 6 – Legal Analysis

Description of Task:

Legal analysis will be made of the implementation issues associated with implementing the viable alternative agricultural transfer methods and shared water bank.

Method or Procedure that will be Used or Followed to Accomplish the Task:

FRICO legal team will analyze requirements to adjudicate the proposed transfers including proposed terms and conditions including protection of vested water rights and administrability. Draft agreements will be prepared if appropriate.

Identify who will Undertake the Task:

Akolt and Akolt, legal counsel for FRICO supported by Duane Helton, CDM and CSU/WRRI.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Results will be incorporated in Task 7 deliverable.

Task 7 – Summary Report

Description of Task:

Report summarizing project findings.

Method or Procedure that will be Used or Followed to Accomplish the Task:

Using results from surveys, engineering and legal analyses, the potential effectiveness/activity level of various transfer methods will be estimated, as will the specific demographics of FRICO shareholders compared to other agricultural areas in the South Platte and Arkansas basins. An evaluation will be made of opportunities for alternative uses of formerly irrigated land if agricultural

transfers are/are not successful; i.e., if land is permanently dried up. This will ensure transferability to other users and basins. The feasibility of a South Platte water bank for administering and marketing water made available through alternative ag transfers will be analyzed within the context of business arrangements deemed acceptable both to M&I providers and agricultural shareholders to determine where the intersection of interests may lie and if a water bank is the optimum mechanism for brokering these deals.

Identify who will Undertake the Task:

Entire project team.

Description of the Major Deliverables/Products that will be Produced upon Successful Completion of the Task:

Final summary report and briefing to CWCB. Report to be delivered in electronic format (PDF) and 20 total paper copies to be distributed between FRICO and CWCB.

II. Personnel

See attached project schedule and task budget for a listing of key staff. Resumes of key investigators: DiNatale, Helton, Simpson, and Goemans are attached.

III. Budget

A detailed budget by task, which includes level of effort (hours), and rates. Any unit costs or other direct costs must be specified (i.e., mileage, number of miles, dollars per mile). (For an example budget format – see Attachment 1 at the end of this application.)

If applicable, the budget should also detail the source and amount of matching funds and/or in-kind contributions, if any. If applicable, the budget should also include any other outstanding or previously applied for funding that also supports the water activity:

See attached project schedule and task budget.

IV. Schedule

A detailed project schedule including key milestones and the dates these are expected to be completed.

Budget for Alternative Water Transfers in the South Platte Basin using the Farmers Reservoir and Irrigation Company System

	CDM							CSU - Water Resources Research Institute			Hal Simpson	Duane Helton	Subconsultant Total		FRICO Contribution	
	Senior Technical Advisor	Senior Professional	Professional II	Professional I	Support	Clerical/ Admin		Senior Researcher	Graduate Researcher		Senior Consultant	Senior Consultant				
							CDM	Goemans		CSU/WRRI		Helton	Subconsultant	WSRA Contribution	FRICO Contribution	Total Project Costs
	\$225	\$140	\$120	\$100	\$85	\$65	SUBTOTAL	\$110	\$30	SUBTOTAL	\$150	\$150	SUBTOTAL			
Tasks																
Task 1 - Survey of FRICO Barr and Milton Shareholders	10				12	10	\$3,920	100	220	\$17,600		20	\$22,660	\$26,580	\$10,349	\$36,929
Task 2 - Survey of M&I Providers	70		40		20	10	\$22,900	40	40	\$5,600			\$6,160	\$29,060	\$6,831	\$35,891
Task 3 - Shared Water Bank Structure	20	20	30	30	20	20	\$15,600			\$0	20	30	\$8,250	\$23,850	\$4,651	\$28,501
Task 4 - Engineering Analysis of Alternative Transfer Mechanics	50	29	80	75	40		\$35,810			\$0	35	100	\$22,275	\$58,085	\$12,500	\$70,585
Task 5 - Water Administration Challenges	16					20	\$4,900			\$0	20	15	\$5,775	\$10,675	\$1,773	\$12,448
Task 6 - Legal Analysis - FRICO In-Kind							\$0			\$0			\$0	\$0	\$0	\$0
Task 7 - Summary Report	50		60		54	22	\$24,470	80	80	\$11,200		40	\$18,920	\$43,390	\$11,395	\$54,785
Subtotal Hours	216	49	210	105	146	62	788	220	340	560	75	205	840	1,628		1,628
Subtotal Labor	\$48,600	\$6,860	\$25,200	\$10,500	\$12,410	\$4,030	\$107,600	\$24,200	\$10,200	\$ 34,400	\$11,250	\$30,750	\$84,040	\$191,640	\$47,500	\$239,140
Reimbursable Expenses							\$6,020			\$ 3,800	\$150	\$450	\$4,840	\$10,860	\$0	\$10,860
Total							\$ 113,620	\$ 24,200	\$ 10,200	\$ 38,200	\$ 11,400	\$ 31,200	\$ 80,800	\$ 202,500	\$ 47,500	\$ 250,000

FRICO In-Kind Match		
Senior Attorney	Attorney	
John Akolt III	John C, Akolt	In-Kind Total
\$200	\$150	
20		\$4,000
		\$0
20		\$4,000
		\$0
20		\$4,000
115	100	\$38,000
		-
175	100	275
\$35,000	\$15,000	\$50,000
\$0	\$0	\$0
\$ 35,000	\$ 15,000	\$ 50,000

Other Direct Costs							
Item:	Copies (Black & White)	Copies (Color)	Materials	Equipment/ Supplies	Mileage		Total
Units:	No.	No	Lump Sum	Lump Sum	Miles		
Unit Cost:	\$ 0.10	\$ 1.00			\$ 0.505		
Task 1 - Survey of FRICO Barr and Milton Shareholders	1,000	500		3,000	2,513		
Task 2 - Survey of M&I Providers	1,000	500		1,000	1,500		
Task 3 - Shared Water Bank Structure	300	100	500		500		
Task 4 - Engineering Analysis of Alternative Transfer Mechanics	300	100	500		1,200		
Task 5 - Water Administration Challenges					600		
Task 6 - Legal Analysis - FRICO In-Kind							
Task 7 - Summary Report	1,200	1,500			300		
Total Units:	3,800	2,700	1,000	4,000	6,613		
Total Cost:	\$380	\$2,700	\$0	\$4,000	\$3,340		\$10,420

PAYMENT

Payment will be made based on actual expenditures and invoicing by the water activity sponsor. 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 CWCB in hard copy and electronic format as part of the project documentation.

Project Schedule	Alternative Water Transfers in the South Platte Basin using the Farmers Reservoir and Irrigation Company System
2014	

[illegible]