

**STATE OF COLORADO**  
acting by and through the  
**Department of Natural Resources,**  
for the use and benefit of the  
**Colorado Water Conservation Board**  
  
**REAL PROPERTY**  
**GRANT**  
**TO PURCHASE A**  
**CONSERVATION EASEMENT**  
  
with  
**Rio Grande Headwaters Land Trust**

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**1. PARTIES**

This grant agreement ("Grant") is entered into by Rio Grande Headwaters Land Trust ("Grantee"), whose address is P.O. Box 444, Del Norte, CO 81132, and the State of Colorado acting by and through the Department of Natural Resources, for the use and benefit of the Colorado Water Conservation Board (the "State" or "CWCB") located at 1313 Sherman St., Denver, Colorado 80203. The Parties agree to the provisions set forth in this Grant.

**2. EFFECTIVE DATE**

This Grant shall not be effective or enforceable until the Effective Date as defined in §4. 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 or after termination.

LC 2/2/12

### 3. RECITALS

#### A. State's Authority, Appropriation, and Approval

Authority to enter into this Grant exists pursuant to CRS §§ 37-60-106, 39-29-109(2)(c) and 38-30.5-102; sufficient funds have been budgeted, appropriated and paid; and all prior reviews and approvals have been obtained, except as provided in §9.

#### 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. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A (Scope of Work)**, **Exhibit B (Budget & Timeline)**, **Exhibit CE (Conservation Easement Draft)**, and **Exhibit PM (Property Map)**. Most exhibits are identified by relevant acronyms based on their title rather than being assigned random letters or numbers.

#### D. Grantee Intent

Grantee intends to obtain from Owner (as defined in §4.D) a grant, transfer, and conveyance of a perpetual right to preserve and protect the Conservation Values of the Property via a perpetual conservation easement burdening the Property and to prohibit any uses that would diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of the conservation easement.

#### E. Purpose

The Water Supply Reserve Account provides money for grants and loans to complete water activities, which are broadly defined and include water supply and environmental projects and/or studies. This Grant is for the North Rio Grande River Ranch Conservation Easement Project in the Rio Grande River Basin.

#### F. 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. Closing and Closing Date

"Closing" means the completion or waiver of all conditions precedent in the purchase and sale contract by and between Grantee and the Owner and on which all related documents, including Easement deed are contemporaneously executed, and "Closing Date" is the date on which the Closing occurs.

#### B. Conservation Values

"Conservation Values" means those values, opportunities, and characteristics referred to in §3.E and set forth in detail in **Exhibit CE**.

#### C. CRS

"CRS" means the Colorado Revised Statutes as amended.

#### D. Easement

"The Easement" is the Conservation Easement set forth in **Exhibit CE**.

#### E. Effective Date

"Effective Date" is the date this Grant is approved and signed by the State Controller or designee.

#### F. GOCO

"GOCO" is the Great Outdoors Colorado Trust Fund.

#### G. 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, State Fiscal Rules, and State Controller Policies.

#### H. Grant Funds

"Grant Funds" are the funds the State will provide on behalf of Grantee at Closing as set forth in §7.A.

**I. Owner**

"Owner" means the owner of the Property from whom Grantee is purchasing the Easement.

**J. Party or Parties**

"Party" means either the State or Grantee, and "Parties" means both the State and Grantee.

**K. Property**

"Property" is the real property legally described in Exhibit CE attached hereto and generally depicted on Exhibit PM.

**L. Purchase Price**

"Purchase Price" is the total amount of money Grantee will pay Owner to purchase the Easement.

**M. Title Commitment**

"Title Commitment" means a current standard ALTA form(s) in common use of a title insurance commitment issued by a Title Company authorized to do business in the State of Colorado, and insuring Grantee's interest in the Easement in an amount not less than the Purchase Price, together with, as applicable, any updates of the Title Commitment that are issued.

**5. TERM and EARLY TERMINATION**

**A. Term**

The Parties' respective duties and obligations shall commence on the Effective Date, and shall continue through the Closing.

**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. The State shall notify Grantee of such termination in accordance with §14, specifying the effective date of the termination and whether it affects all or a portion of this Grant. Upon receipt of a termination notice, the Parties shall be subject to and comply with the provisions of §13.

**6. PURCHASE AND SALE OF EASEMENT**

Subject to the provisions of this Grant, by the Closing, the State shall provide the title company, on behalf of Grantee, with the Grant Funds to purchase the Easement, and Grantee shall purchase the Easement from Owner. The Easement shall burden the Property in perpetuity, and shall be substantially in the form set forth in Exhibit CE. Grantee shall maintain a complete file of all material records, communications, and other written materials, which pertain to the performance of the Grant, including the acquisition of the Easement, and shall maintain such records for a period of three years after the Closing Date. The State may audit such records at reasonable times and upon reasonable notice.

**7. PAYMENT TO GRANTEE**

**A. Maximum Amount Payable and Allocation**

The maximum amount payable by the State to or on behalf of Grantee for Grant Funds is Seventy Thousand Dollars (\$70,000) as determined by the State from available funds.

**B. Available Funds-Contingency-Termination**

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year and making payment to Grantee beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in §17.B. If GOCO and/or federal funds are used to fund 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 during any State fiscal year shall be made only from available funds encumbered for this Grant for such State fiscal year and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State, GOCO, or federal funds are not fully appropriated or otherwise become unavailable, the State may terminate this Grant in whole or to the extent of such funding reduction, without further liability, after providing notice to Grantee in accordance with §14.



### **C. 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 transactions 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.

## **8. LITIGATION REPORTING**

### **A. Litigation Reporting**

Within five 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 CWCB.

### **B. 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 exercise of any remedies provided under this Grant, including termination.

## **9. PERFORMANCE CONTINGENCIES FOR THE STATE**

The State's performance hereunder is contingent upon successful completion or express waiver, done in accordance with §16.J, of each of the following conditions in this §9. If one or more of these contingencies are not satisfied by Closing, and the Parties have not agreed in writing to allow additional time for satisfaction, then this Grant shall automatically terminate and Grantee and the State shall be released from all further obligations and liabilities under this Grant.

### **A. Approvals**

Final approvals of this transaction by the following entities and persons:

- i. The CWCB Staff;
- ii. GOCO if GOCO funding is involved; and
- iii. The applicable agency of the federal government if federal funding is involved.

### **B. Appraisal and Other Due Diligence**

#### **i. Appraisal**

Grantee shall, at no cost and expense to the State, cause a qualified appraiser to complete an appraisal in accordance with CRS §24-30-202(5)(b) that supports the Purchase Price and is satisfactory to and accepted by the Colorado State Controller. The appraisal shall be acceptable to any review appraiser if a review appraisal is requested by the State. Copies of all appraisals ordered by Grantee shall be provided to the State.

#### **ii. Option Agreement**

Grantee shall provide the State with an executed copy of the Option Agreement between Grantee and Owner relating to the Grantee's Option Agreement for the purchase of the Easement.

#### **iii. Description and Maps**

Grantee shall cause to be prepared, without cost or expense to the State, a legal description of the Property and Easement areas and site and area maps that are acceptable to and approved by the State.

#### **iv. Management Plan**

Grantee shall, at its sole cost and expense, create a management plan in conjunction with Owner and the State that is acceptable to and approved by the State. Grantee shall deliver the Management Plan to the State within six (6) months of Closing.

#### **v. Reports**

Grantee shall, at no cost and expense to the State, cause qualified professionals to prepare a baseline report documenting the condition of the Property at the time of Closing, a geologist's remoteness report, and a phase I environmental assessment, and should the State deem them necessary, any additional environmental assessments on all or part of the Property if reasonably necessary to protect the interests of the State. Such reports shall be acceptable to and approved by the State. After Closing, Grantee shall,

at its sole cost and expense, create an annual report detailing its monitoring of the Easement, and provide a copy of such report to the State within 30 days of the completion thereof.

#### **C. Title Inspection and Review**

The State's satisfaction with the title to the Property after the opportunity for physical inspection of the Property and after reviewing the documents and evidence of title thereto provided for in this §9.C. If any of the State's objections made pursuant to this provision are not rectified, then the State may terminate this Grant by written notice and both Grantee and the State shall be released from any further obligations.

##### **i. Evidence of Title – Matters of Public Record**

As soon as practicable, Grantee shall obtain, without cost or expense to the State, a Title Commitment. Grantee shall also deliver to the State copies of any abstracts of title covering all or any portion of the Property.

##### **ii. Standard Title Exceptions**

Grantee shall require Owner to provide a Mechanic's Lien Indemnification Agreement and meet all other requirements for the deletion of or insuring over standard exceptions for mechanic's liens and defects, liens, encumbrances, adverse claims or other matters, if any are created, first appearing in the public records or attaching subsequent to the effective date of the Title Commitment of Schedule B-II of the Title Commitment. Grantee shall require Owner to cause the Title Commitment to delete or insure over the standard exceptions regarding unpaid taxes, assessments, and unredeemed tax sales prior to the year of Closing. If the Grantee or the State determine that one or more of the following items must be deleted in the title insurance policy, then Grantee shall require Owner to cause the Title Commitment to delete or insure over the standard exceptions regarding (a) parties in possession, (b) unrecorded easements, and (c) survey matters.

##### **iii. Exceptions - Title Review - Matters of Public Record**

Grantee, without cost or expense to the State, shall promptly cause a copy of the Title Commitment together with the following documents to be delivered to the State: (a) copies of all plats, declarations, covenants, conditions, and restrictions burdening the Property, and (b) copies of other documents (or, if illegible, summaries of such documents) listed in the Additional Exceptions of Schedule B-II of the Title Commitment.

##### **iv. Title Review and Inspection - Matters Not Shown by the Public Records**

Grantee shall require Owner to deliver to Grantee and the State true copies of all lease(s), survey(s), and other similar documentary information in Owner's possession pertaining to the Property, and shall require Owner to disclose in writing to Grantee and the State all easements, liens, or other title matters not shown by the public record of which Owner has actual knowledge. The State and Grantee shall have the right to inspect the Property to determine if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

##### **v. Unrecorded Burdens – Grantee's Liability**

Grantee shall, at no cost to the State, cause Owner to discharge and/or cure any liens, charges, defects, encumbrances, claims, or causes of action (hereinafter called "burdens") existing on or before Closing and incurred by Grantee or Owner that attach to the Property which are not of record at the time of Closing and which were not disclosed pursuant to §9.C(iv). Grantee shall reimburse the State in an amount equal to CWCB's proportionate contribution to Purchase Price of any diminution in value of the Easement if any such burden cannot be discharged or cured. The State may bring an action to enforce this §9.C(v) if Grantee fails or refuses to do so within a reasonable time, and Grantee shall reimburse the State for its costs and reasonable attorney's fees incurred with regard to such action.

## **10. STATUS PENDING CLOSING**

### **A. Maintenance of the Property**

Grantee shall require Owner to maintain the Property in its present condition until closing. Grantee's option agreement with Owner shall prohibit Owner from permitting any use of the Property for any purpose or in any manner that would adversely affect the Property as habitat for plants or animals or otherwise impair the

conservation purposes of the conservation easement. In the event of any such loss or damage prior to Closing, the State may, without liability, terminate this Grant.

**B. Risk of Loss**

The State may elect to terminate this Grant without liability to Grantee to provide Grant Funds in the event of loss or damage to the Property before closing, including, but not limited to, losses from acts of nature, such as fire, flood, and landslide.

**11. CLOSING**

**A. Date and Time**

The date and time of Closing shall be at the mutual agreement of Grantee and Owner, but not later than 5:00 p.m. on December 30, 2011. Closing shall occur at the offices of the title company. At Closing Owner shall deliver to Grantee a properly executed easement deed burdening the Property in perpetuity substantially in the form of Exhibit CE and suitable for recording, and the Grantee shall deliver to Owner payment of the Purchase Price. That portion of the Purchase Price supplied by the State may be in the form of a State warrant or electronic funds transfer, which shall be at the State's discretion. The State's payment shall be made under explicit instructions (i) that said payment shall be returned to the State if for any reason acquisition of the Easement does not occur, and (ii) that said payment shall be returned to the State if the Easement approved by the State in its instruction letter or at Closing are not delivered to the escrow agent/title insurance company.

**B. Closing at Title Company**

The Closing shall be completed by the title company furnishing the Title Commitment and subsequent title insurance policy. Owner and Grantee shall sign and complete all customary or required documents at or before Closing.

**12. REPRESENTATIONS AND WARRANTIES**

**A. Owner to Grantee**

As a condition of entering into this Grant the State requires Grantee to obtain from Owner the following representations and warranties in the purchase and sale contract between Grantee and Owner, each of which, shall also, notwithstanding anything to the contrary in §16.P or equivalent provision in any agreements or easements between Owner and Grantee, flow to and be enforceable by the State as a third-party beneficiary thereof:

**i. Compliance with Law**

Owner is in compliance with the laws, orders, and regulations of each governmental department, commission, board or agency having jurisdiction over the Property in those cases where noncompliance would have a material adverse affect on the Property.

**ii. Ownership of the Property**

Owner is the sole owner in fee simple of the Property as of the Effective Date of this Grant, Owner is the record owner of the Property, and at closing Grantee shall receive good and marketable title to the Easement, subject to those matters of record revealed in the Title Commitment and those matters disclosed to Grantee and the State.

**iii. Other Agreements**

Owner is not a party to, nor subject to, nor bound by any agreement, contract, or lease of any kind relating to the Property that would conflict with Owner's performance under the Option Agreement with Grantee other than those matters of record revealed in the Title Commitment and found acceptable to the State.

**iv. Pending Actions**

There are not any actions, suits, proceedings, or investigations pending or, to Owner's knowledge, threatened, against or affecting the Property, or arising out of Owner's actions or inactions related to the Property.

**B. Grantee to the State**

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



**i. Grantee's Intent**

Grantee intends that the Conservation Values of the Property be preserved and protected in perpetuity, and that any uses be prohibited that would diminish or impair the Conservation Values or that otherwise would be inconsistent with the purposes of the Easement.

**ii. Legal Authority—Grantee Signatory**

Grantee warrants that it possesses the legal authority to enter into this Grant, and, if Grantee is not a natural person, that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Grant, 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.

**iii. Qualified Holder**

Grantee is qualified to hold easements under CRS §38-30.5-101 et seq., which provides for conservation easements to retain or maintain land, water, airspace, or water rights, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or, life-sustaining ecological diversity.

**13. DEFAULT-TIME IS OF THE ESSENCE-REMEDIES**

Time is of the essence hereof. If any note or check received or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

**A. Grantee in Default**

If Grantee is in default, all things of value received or performed hereunder shall be forfeited by Grantee and the Parties shall thereafter be released from all obligations hereunder. It is agreed that such forfeiture is the State's sole and only remedy for Grantee's failure to perform Grantee's obligations under this Grant. The State waives the remedies of specific performance and additional damages.

**B. The State in Default**

If the State is in default, all things of value received or performed hereunder shall be forfeited by the State and the Parties shall thereafter be released from all obligations hereunder. It is agreed that such forfeiture is Grantee's sole and only remedy for the State's failure to perform its obligations under this Grant. Grantee waives the remedies of specific performance and additional damages.

**14. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party, and is entitled to provide all approvals and consents on behalf of the the Party they represent unless unless specifically noted otherwise elsewhere in this Agreement.. 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.

**State**

Chris Sturm  
CWCB  
1313 Sherman Street  
Room 721  
Denver, CO 80203  
chris.sturm@state.co.us

**Grantee**

Nancy Butler  
Rio Grande Headwaters Land Trust  
P.O. Box 444  
Del Norte, CO 81132  
nancyb@riograndelandtrust.org

**15. LIMITATION OF STATE LIABILITY**

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 CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management).

## **16. GENERAL PROVISIONS**

### **A. Assignment**

Grantee may not assign its rights under this Grant absent written consent of the State which may be withheld at the State's sole and absolute discretion.

### **B. Binding Effect**

All provisions herein, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### **C. Captions and Headings**

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. Construction Against the Drafter**

In the event of an ambiguity in this Grant the rule of Grant construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

### **E. 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.

### **F. Counterparts**

This Grant may be executed in multiple identical original counterparts constituting one Grant.

### **G. 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.

### **H. Indemnification**

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, up to the amount of the Grant Funds, together with costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

### **I. Jurisdiction and Venue**

All suits or actions related to this Grant shall be filed and proceedings held in the State of Colorado and venue shall be in the County in which the Property is located. Venue shall be proper in any county in which the Property is located if it is situate in more than one county.

### **J. Modification**

#### **i. By the Parties**

Except as specifically provided in this Grant, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto, properly executed and approved in accordance with applicable Colorado State Law, State Fiscal Rules, and Office of the State Controller Policies. Modifications specifically permitted in this Grant shall be made in accordance with the State Controller's Policy entitled MODIFICATION OF GRANTS - TOOLS AND FORMS.

#### **ii. By Operation of Law**

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State Law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of this Grant on the effective date of such change, as if fully set forth herein.

### **K. Order of Precedence**

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments, including, but not limited to, those



provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions, then
- ii. The remaining provisions of this Grant.

**L. 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, provided that the Parties can continue to perform their obligations under this Grant in accordance with its intent.

**M. Repayment of Grant Funds**

Grantee shall repay to the State the Grant Funds and any appreciation in the value of the Easement (if any appreciation exists and only in an amount equal to the State's proportionate contribution to the Purchase Price), if the Easement is terminated or extinguished or its material provisions rendered unenforceable due to acts or omissions of Grantee, its employees, agents, successors or assigns, including, but not limited to, complying with or enforcing the provisions of the Easement. If any part of the Grant Funds were originally received by the State from GOCO, then Grantee shall make repayment to the State if GOCO makes a demand for repayment to CWCB on the grounds set forth in this §16.M.

**N. Survival of Certain Grant Terms**

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

**O. 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 et seq. and 201 et seq. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Grantee for such taxes.

**P. Third Party Beneficiaries**

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties. 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.

**Q. Waiver**

Waiver of any default under 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 default, provision or, requirement, or of any other term, provision, or requirement.

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## **17. 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 valid until it has been approved by the 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. 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.

### **E. 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.

### **F. 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.

### **G. 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.

Revised 1/1/09

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# 18. SIGNATURE PAGE

Grant Routing Number 38553

## 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>GRANTOR</b> <b>Rio Grande Headwaters Land Trust</b> By: Nancy J. Butler Title: Executive Director</p> <p><u>Nancy J. Butler</u> *Signature Date: <u>11/14/11</u></p>	<p><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, Governor</b> acting by and through the Dept. of Natural Resources, for the use and benefit of the Colorado Water Conservation Board</p> <p><u>Eric B. Hecox</u> By: Eric Hecox, Section Chief, Water Supply Planning Date: <u>11/18/11</u></p>
<p>2nd Grantee Signature if Needed By: _____ Title: _____</p> <p>_____ *Signature Date: _____</p>	<p><b>LEGAL REVIEW</b> <b>John W. Suthers, Attorney General</b></p> <p>By: <u>NA</u> Signature - Assistant Attorney General 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> <b>David J. McDermott, CPA</b></p> <p>By: <u>Susan Borup</u> <u>Susan Borup, DNR Controller</u> Date: <u>11/30/2011</u></p>
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## **Exhibit A Scope of Work**

### **Rio Grande Initiative**

#### **I. Tasks**

Description of tasks:

The overall Great Outdoors Colorado (GOCO) Legacy Grant funds the acquisition of six conservation easements over three years. The Water Supply Reserve Account (WSRA) matching funds are targeted for use on four of these projects. The tasks involved in completing each conservation easement are as follows:

Implementation of voluntary conservation easements on four key parcels on the Rio Grande corridor includes:

- 1) Negotiations with landowners as to terms and conditions of conservation easement
- 2) Perform all due diligence as required by law and according to the funding sources such as GOCO and Colorado Division of Wildlife (CDOW) including:
  - Obtain appraisal by qualified appraiser (Note: Documentation of the costs via a valid, independent appraisal of the value of the conservation easement, documentation of “fair market value”, a full legal description and maps of the properties will be provided to the Colorado Water Conservation Board (CWCB) as the steps of the due diligence process are completed.
  - Complete title work
  - Identify mineral ownership and if necessary, obtain mineral remoteness letter from qualified geologist
  - Identify water rights for inclusion in deed
  - Obtain approval of Ditch Company Board of Directors (if applicable)
  - Surveys as needed (to determine boundaries, building envelope- if applicable, etc.)
  - Phase I Environmental Site Assessment
  - Baseline Condition Report
  - Develop and negotiate Deed of Conservation Easement language with legal counsel for all parties
  - Develop management plan
  - Supply all necessary documents to funders (GOCO, CDOW, and CWCB— as the case may be) for review

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- Closing and recording of conservation easement.
- Ongoing, long-term stewardship of conservation easement as required, including annual monitoring, management plan updates at required intervals, and enforcement of easement terms, if and when necessary.

Please note that due to the perpetual nature of conservation easements, all conservation easement deeds include a clause which determines the transfer of the easement to another qualified organization or government entity, in the event that the original entity is dissolved or ceases to exist. This entity may be specified in the deed or left to a court decision. The CWCB will be provided a copy of the deed of conservation easement for each property receiving WSRA funds, include an explanation of the land trusts long-term rights and responsibilities and the protocol to be followed should the original easement-holding entity be dissolved. Attachment II to this application is a Draft/Sample Deed of Conservation Easement which includes GOCO required language. Note that additional language may be required by other funders including the CDOW and that other land trusts will be using their conservation easement language for their transactions. This is supplied to provide a sample deed.

Method or procedure that will be used or followed to accomplish the task and identify who will undertake the task:

The anticipated four conservation easements funded through this application will be held by three partnering qualified organizations: the Rio Grande Headwaters Land Trust (RiGHT), Ducks Unlimited (DU) or the Nature Conservancy (TNC), based upon negotiations with and preference of the landowners. The implementation will be conducted according to:

- 1) All legal requirements
- 2) The best practices determined by the national Land Trust Alliance, and
- 3) All due diligence requirements of GOCO and/or the CDOW (depending upon funding sources for each specific parcel) will be fulfilled prior to and as a condition of closing.

#### **Deliverables:**

The deliverables produced by this activity will be permanent conservation easements on lands and associated water rights, on the Rio Grande corridor. As a deliverable, the CWCB will be provided with copies of the all due diligence document and deeds of conservation easement placed upon the lands and associated water rights.

#### **II. Personnel**

Provide a list of key water activity/project participants and their qualifications to accomplish the water activity/project. If specific individuals or firms have not yet been identified indicate the types of expertise that will be sought (i.e. professional engineering firm, registered land surveyor, aquatic biologist etc.).

Key personnel for this project include:

- Nancy Butler, Executive Director, Rio Grande Headwaters Land Trust

Nancy has been the executive director of RiGHT for over six years and has successfully fundraised for and completed numerous conservation easements in that time. Nancy has 10 years previous experience with nonprofits including Earthlaw, the Diana Price Fish Cancer Foundation

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and the Peace Corps. She is responsible for all operations of the land trust, including project development, fundraising, office and board management and coordination of the *Rio Grande Initiative*.

- Rio de la Vista, Coordinator, San Luis Valley Wetlands Focus Area Committee and Co-coordinator of the *Rio Grande Initiative*

Rio has been working with nonprofit organizations on land related issues since 1980 and in various aspects of conservation since 1994 and in the San Luis Valley (SLV) since 1998, including coordinating the successful Rock Creek Heritage Project, which has protected approximately 8,000 acres of ranch land south of Monte Vista.

- Aaron Welch, Assistant Project Manager, Rio Grande Headwaters Land Trust and Ducks Unlimited

Aaron Welch is a Fellow with the Colorado Conservation Trust and recent graduate of Yale University's School of Forestry and Environmental Studies where he earned a Master's Degree in Environmental Science. He works part time for Ducks Unlimited and part time for RiGHT assisting with all functions of the organizations.

Board of Directors of RiGHT:

- President Peggy Blenden has a Masters Degree in Wildlife Biology.
- Vice President Ralph Curtis is the retired General Manager of the Rio Grande Water Conservation District (RGWCD) and one of most knowledgeable people on water issues in the SLV.
- Secretary Cathy McNeil was the founding President of RiGHT, former President of the Rio Grande Watershed Association of Conservation Districts, and winner of several national conservation awards. Her husband Mike is a fourth generation rancher in the SLV and the McNeil's have protected their ranch.
- Treasurer, Pete Atkins is a full time rancher who has protected his ranch and is active with the Colorado Cattlemen's Association.
- Linda Schoonhoven is a full time rancher who has protected her ranch.
- Cathy Morin is a professional fundraiser for the SLV Regional Medical Center, the only full service hospital in the Valley and holds a PhD in Nutrition and is an active river boater.
- Jim Rhett is the recently retired BLM/USFS Assistant Supervisor for the Rio Grande National Forest and Center Manager for the BLM Area Office.
- Steve Russell is the retired District Conservationist for the NRCS. He implemented many of the river restoration projects that the NRCS has cost-shared, helped start the Rio Grande Restoration Project, and has extensive knowledge about range and ranch management and Farm Bill programs.

RiGHT's Advisors:

RiGHT has the legal services of attorney Jeanne "Gigi" Darricades who has served RiGHT for six years and technical advisors in various fields, including Pat McDermott and Craig Cotton with the Division of Water Resources, Kirk Thompson with Agro Engineering, Natural Resources



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Conservation Service (NRCS) personnel, and others. RiGHT has on-going working relationships with numerous professionals who can provide the expertise for all due diligence requirements for easements.

Partner Organizations and Personnel:

Ducks Unlimited:

- Greg Kernohan, Colorado Director, Ducks Unlimited
- Aaron Welch (see above)
- Ducks Unlimited legal counsel, grants administration, and other staff resources as needed

The Nature Conservancy:

- Paul Robertson, San Luis Valley Director, The Nature Conservancy
- David Gann, Western Slope Director, The Nature Conservancy
- Peter Ericson, Assistant Western Slope Director, The Nature Conservancy
- Stephanie Gripne, Land Transactions, The Nature Conservancy
- The Nature Conservancy's legal counsel, grants administration, and other staff resources as needed

Resumes and qualifications of professional staff can be provided upon request. In addition, the Boards of Directors of these organizations will review and approve all respective transactions. Also, the staff, legal counsel and Board of GOCO, CDOW and other funders will be reviewing and approving transactions which they are funding.

Professional Services:

Depending upon the requirements and selection of the landowners and conservation organizations and funders, additional outside professional services will be used as needed for the completion of the conservation easements including:

- attorneys
- professional biologists
- professional geologists
- qualified appraisers
- title companies
- surveyors
- Phase I Environmental Site Assessment professionals

### **III. Budget**

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The WSRA funds are to be used exclusively for the purchase of conservation easements and the associated water rights only. Transaction and staff costs will be covered by other sources. This application anticipates applying WSRA funds towards four of the ranches and their important water rights that received GOCO Legacy funding, including two that the CDOW is partnering on through their GOCO quadrant funding.

Due to the variability of funding opportunities and the complex process and negotiations of conservation easements, we request a degree of flexibility for the WSRA funds, that will allow us to optimize and implement the transactions that can be achieved in the most timely manner and with the maximum benefit and leveraging of funds.

All transactions will be developed with full GOCO due diligence requirements (and CDOW as needed) and relevant documents delivered to and project development reported to CWCB staff as they proceed towards closing. We also request that, similar to GOCO funds, all WSRA funds awarded to the *Rio Grande Initiative* be available to further match other federal funding sources, again in order to leverage all funds to maximum degree possible.

Per discussions with Rick Brown and Todd Doherty in advance of preparing this application, we confirmed that due to the sensitive nature of purchase negotiations, that we would not name landowners or specific dollar figures in this application. The funds allocated will be used to match the GOCO Legacy grant and potentially other sources of funding, and the transactions will be public when completed.

Please see the generic GOCO Legacy Grant budget, showing the matching role of the WSRA funds. It also shows the other funding sources that this project is accessing as matching funds the GOCO Legacy award.

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**Conservation Easement Budget Table:**

Please note that the following sample budget is an example of the overall costs and sources of funds for the conservation of four large ranches on the Rio Grande. As discussed with CWCB staff in the course of preparing this application, we are submitting a general budget in order to protect the landowners' privacy during the negotiation phase of these projects. We will also appreciate flexibility as to the specific use of WSRA funds in order to maximize the benefits, financial leveraging with other funding sources, and implement transactions in the most timely manner. Note that *all WSRA funds will be applied only to the purchase component of the transactions*, not to related costs (which are identified in the table on the next page) nor for staff and other costs incurred for their implementation. Transaction and staff costs are being covered by other funding sources.

<b>Conservation Easement Purchase for four Rio Grande River Ranches /Estimated Costs &amp; Sources of Funds</b>					
<b>Source of Funds/Donation:</b>	<b>Landowner Donation</b>	<b>WSRA Funds</b>	<b>GOCO *</b>	<b>Other</b>	<b>Total Conservation Easement Value and Costs</b>
Conservation Easement on Rio Grande Ranch #1	\$750,000	\$750,000	\$1,500,000		\$3,000,000
Conservation Easement on Rio Grande Ranch #2	\$440,000	\$320,000	\$ 880,000	\$110,000	\$1,750,000
Conservation Easement on Rio Grande Ranch #3	\$900,000	\$360,000	\$1,240,000		\$2,500,000
Conservation Easement on Rio Grande Ranch #4	\$110,000	\$ 70,000	\$ 240,000		\$ 420,000
Total Value/Costs:	\$2,200,000	\$1,500,000	\$3,860,000	\$110,000	\$7,670,000

Transaction Costs include approximately \$35,000 per project for a total of \$105,000. Please see below for a description. However, WSRA funds will ONLY be used for the acquisition of conservation easement and will not include any funding for transaction costs.

**\*Including GOCO/CDOW Quadrant funds**



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<b>Transaction Costs Estimates – Per Transaction</b> <i>Note: WSRA funds will not be applied to these costs</i>	
<b>Required Expenses</b>	<b>Range</b>
Accountant / Financial Advisor	\$1,000 - \$2,000
Legal Fees	\$4,000 - \$15,000
Title Commitment, Insurance and Mineral Rights Search	\$500 - \$2,000
Appraisal	\$3,000 - \$7,000
Baseline Document	\$2,500 - \$5,000
Stewardship Endowment	\$10,000 - \$15,000
Closing Costs	\$500 - \$1,000
<b>If Needed Expenses</b>	
Mortgage Subordination	\$1,000 - \$2,000
Mineral Remoteness Letter	\$1,000 - \$2,000
Environmental Assessment	\$1,500 - \$3,000
Survey	\$1,500 - \$4,000

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#### **IV. Schedule**

The timeline for completion of the four conservation easements is dependent upon the timing of contracting with the WSRA for funds, and then proceeding through negotiations and all required due diligence steps. Ideally, WSRA funds would be provided to the closing agent at the time of closing of the Conservation Easement. This is the process used by GOCO and CDOW and we would appreciate consideration of this request versus a reimbursement process for the funds.

In order to address this question, the following is a sample timeline from GOCO depicting all the steps necessary for each conservation easement transaction. The time frame for achieving these steps- - from the time of award to conservation easement completion -- can vary between six and 18 months (or more in some complex cases) due to the many variables of each transaction. If WSRA funds are awarded, we would report regularly to the CWCB regarding our progress towards completion and we anticipate the use of all WSRA funds for transactions to be closed in 2008 and 2009.

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<b><i>Estimated Timeline Tasks/Date</i></b>	March 08	April - Oct 08	Nov 08	Dec 08	Jan - June 09	July –Dec 09
Obtain CWCB approval for WSRA funds	X					
Work on due diligence ( <i>See</i> Tasks P. 1) for all projects		X	X	X	X	X
Develop contract with CWCB for WSRA funds			X			
Conduct Closings on projects			X	X		X

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## **PAYMENT**

Requests for payment (invoicing) for this project must be done at least 15 days prior to closing. The request for payment shall include: preliminary closing documents (e.g. legal description, appraisal, etc.; purchase price of the conservation easement; and the amount of CWCB funds being requested for the closing. The CWCB will then transfer the amount of funds requested into the escrow account specified for the closing. Prior to closing, the Grantee shall provide a final copy of the closing documents. In the event that the closing does not occur within 45 days of the transfer of funds by the CWCB into escrow the funds will revert back to the CWCB, unless the CWCB expressly consents to an extension of this deadline in writing.

The request should also provide an estimate of the percent completion for individual tasks (conservation easement purchased) and the entire project in relation to the percentage of budget spent. 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.