

Agriculture
BAA
Contract Routing Number

INTERGOVERNMENTAL AGREEMENT
Technician Employment Assistance

This Contract, made this _____ day of _____ 200__, by and between the State of Colorado for the use and benefit of the Department of Agriculture, Conservation Services Division, hereinafter referred to as the **State**, and _____-**Conservation District**, hereinafter referred to as the **District**, or **Contractor**.

RECITALS:

- a) Required approval, clearance and coordination has been accomplished from and with appropriate agencies; and
- b) Authority exists in the law and funds for the current fiscal year have been budgeted, appropriated, and otherwise made available, and a sufficient uncommitted balance thereof remains available for payment of this contract; and
- c) The State shall administer and disburse funds made available for the purpose of assisting conservation districts, political subdivisions of the State, in the conservation of soil and water resources of the state of Colorado pursuant to CRS 35-70-102, *et seq.*; and
- d) The _____ District is a political subdivision of the state organized under CRS 35-70-104; and
- e) The USDA NRCS has provided funding to the State under cooperative agreement in order to improve conservation activities in district private lands; and
- f) The funding shall be made available under a competitive process required by the USDA NRCS for the District to employ technicians to provide technical assistance to landowners for development and maintenance of conservation plans pursuant to 2002 USDA Farm Bill; and
- g) Such technical assistance provided to farmers and ranchers by the District shall result in conservation practices applied to the land protecting the natural resources and water quality of Colorado; and

NOW THEREFORE, it is hereby agreed that,

1. Scope of Work

District shall prepare and implement its plan attached as **Exhibit A**, and the State funding approval letter attached as **Exhibit B**, which are hereby incorporated into this contract by this reference. The District shall:

- A. Provide administration necessary for the process of preparing and implementing the District's plan and account for the funding provided pursuant to this agreement separately from any other funding the district may have or receive.
- B. Provide the State with a quarterly report of activity, progress, labor hours, expenses incurred, which shall include:
1) a description of all work completed; 2) an accounting of all the funds allocated; 3) an accounting of the match raised as required in this agreement.

2. Performance Period

The contract shall be effective upon approval by the State Controller, or designee, or December 1, 200__, whichever date is later. The contract performance contemplated herein shall commence as soon as practicable after the effective date of this contract and shall be undertaken and performed in the manner set forth in the Scope of Work, and extend through December 31, 200__.

3. Payment

The maximum amount payable under the terms of this contract shall be \$_____, as determined by the State from funds available for the purpose of this contract, and payable to the District within 30 days of approval of this agreement by the State Controller, or designee. Any increases or decreases in the contract amount shall be accomplished with a Funding Letter substantially the same as attached Exhibit C.

4. Match

(a) All awards made from this agreement are made with a mandatory requirement that the District contribute a minimum of 33% of the award amount as hard dollars. All district match shall be in accordance with the standards set by the Office of Management and Budget (OMB) in Policy Circulars A-21, A-87 and A-122 and shall be provided in full by (*end date of contract*). It shall be the District's responsibility to generate and maintain adequate documentation to verify the contribution and its source.

(b) The District has agreed to and will provide between \$_____ and \$_____ as hard dollar match contribution as a condition of receiving the payment issued from this contract.

5. Federal and State Funding

The contractor hereto expressly recognizes that the contractor is to be paid with funds provided by the USDA NRCS and the State for the purpose of contracting for the plan provided for herein, and therefore, the contractor expressly understands and agrees that all its rights, demands, and claims for the funding arising under this contract are contingent upon receipt of such funds by the State and requirements of the USDA NRCS and the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate this agreement without liability, including liability for termination costs.

6. Federal Fund Assurances

a) This agreement involves the expenditure of federal funds. The contractor shall at all times during the execution of this contract strictly adhere to and comply with all applicable federal laws and regulations as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this contract.

b) The contractor shall safeguard USDA conservation program records and ensure information obtained through activities covered by this agreement is not used for any purpose not specified in this agreement; ensure that information is not released to anyone other than the State, without prior written approval of the NRCS Freedom of Information Act Officer; ensure that all conservation district employees providing assistance under this agreement are aware of the importance of protecting the privacy of USDA conservation program records.

7. Inspection and Acceptance

The contractor shall permit the State, Federal Government, or any other duly authorized agent of a governmental agency to audit and inspect services provided under this contract at all reasonable times and places during the term of the contract. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with contract requirements, the State may require the contractor to perform the services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by reperformance, the State may (1) require the contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

8. Third Party Beneficiaries

It is expressly understood and agreed that 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 the named contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It

is the express intention of the State and the contractor that any such person or entity, other than the State or the contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

9. Notices and Authorized Representatives

For the purpose of this contract, the persons named below are designated the representatives of the parties. All notice required to be given by the parties shall be given by registered or certified mail to the representative named below. The parties may designate in writing a new or substitute representative:

State

District

Cynthia Lair, Program Director
700 Kipling Street, Suite 4000
Lakewood, CO 80215-8000
Ph. (303) 239 4111

10. Severability

To the extent that 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 and 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. The waiver of any breach of a term hereof shall not be construed as waiver of any other term.

11. Integration

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

12. Succession

Except as herein otherwise provided, the contract shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

13. Amendment

During the period of this contract, all deviations in the contract scope and all period extensions shall require written approval of the State Controller in the form of a written amendment executed by the parties hereto in accordance with the Fiscal Rules. All such amendments shall be executed prior to commencement of the change for which the amendment is sought.

14. Assignment

The contractor may not assign their rights or duties under this contract without the prior written consent of the State.

15. Termination for Convenience

Unless otherwise agreed in writing, in addition to the rights and remedies governing transactions in goods in the Uniform Commercial Code, the State may when the interests of the State so require terminate this agreement in whole or in part, for the convenience of the agency or institution. The State shall give written notice of the termination to the contractor specifying the part of the agreement terminated and when termination becomes effective. Upon receipt of the notice of termination, the contractor shall incur no further obligations except to the extent necessary to mitigate costs of performance. In the case of services or specially manufactured goods, the State shall pay reasonable settlement expenses, the contract price or rate for supplies and services delivered and accepted, the reasonable costs of performance on unaccepted supplies and services, and a reasonable profit for that unaccepted work, in accordance with the cost principles promulgated in accordance with section 24-107-101, Colorado Revised Statutes, as amended. In the case of existing goods, the State shall pay reasonable settlement expenses, the contract price for goods delivered and accepted, reasonable costs incurred in preparation for delivery of the undelivered

goods, and a reasonable profit for that preparatory work. The amount of the termination liability under this paragraph shall not exceed the amount of the agreement price plus a reasonable cost for settlement expenses. The contractor agrees to submit a termination proposal as well as reasonable supporting documentation, cost and pricing data, and a certification required by section 24-106-101, C.R.S., as amended, upon request of the State.

16. Termination for Default

If, through any cause, the contractor shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the contractor shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the contractor of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the contractor shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The contractor shall be obligated to return any payment advanced under the provisions of this contract.

Notwithstanding the above, the contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the contractor, and the State may withhold any payment to the contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the contractor is determined.

If after such termination it is determined, for any reason, that the contractor was not in default, or that the 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 the contract had been terminated for convenience, as described herein.

17. Priority of Interpretation

The provisions of this contract shall govern the relationship of the State and the 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: first, the Special Provisions incorporated within this contract; second, the terms and provisions of this contract; third, Exhibit A.

SPECIAL PROVISIONS

1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. FUND AVAILABILITY. CRS 24-30-202 (5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. INDEMNIFICATION.

The 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 incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

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 for the parties, of the Colorado Governmental Immunity Act, CRA 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.

4. INDEPENDENT CONTRACTOR. 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

5. NON-DISCRIMINATION.

The contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. CHOICE OF LAW.

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall 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 will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. SOFTWARE PIRACY PROHIBITION Governor's Executive Order D 002 00

No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

8. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

9. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES. CRS 8-17.5-101 and Public Law 208, 104th Congress, as amended and expanded in Public Law 156, 108th Congress, as amended

The Contractor certifies that the Contractor shall comply with the provisions of CRS 8-17.5-101 et seq. The 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 knowingly employs or contracts with an illegal alien. The Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, or (ii) otherwise will comply with the requirements of CRS 8-17.5-101(2)(b)(i). The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate this contract for breach and the Contractor shall be liable for actual and consequential damages to the State.

Effective Date: August 9, 2006

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

Conservation District

Legal Name of Contracting Entity

Social Security Number or FEIN

Signature of Authorized Officer

Print Name & Title of Authorized Officer

STATE OF COLORADO:

Bill Owens, Governor

By _____
Sheldon Jones, Deputy Commissioner
Department of Agriculture
Date: _____

LEGAL REVIEW:

John W. Suthers, ATTORNEY GENERAL

By: NA

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

(Place corporate seal here ,if available.)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

Leslie M. Shenefelt

By _____
John Reitan, Chief Financial Officer
Department of Agriculture
Date _____