

JOINT AGREEMENT
between the
COLORADO DEPARTMENT OF AGRICULTURE
COLORADO STATE CONSERVATION BOARD
and the
NATURAL RESOURCES CONSERVATION SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

This agreement is entered into this 1st day of August, 2006, by and between the Colorado Department of Agriculture, Colorado State Conservation Board (CDOA-CSCB) and the United States of America, acting by and through the Natural Resources Conservation Service, United States Department of Agriculture (NRCS) to jointly cooperate in a locally led conservation initiative in Colorado. This cooperative agreement is assigned the NRCS Agreement Number of AG-8B05-A-6-38. The total funds obligated by this award are \$400,000. The performance period for this grant agreement is from August 1, 2006 to September 30th, 2007.

AUTHORITY

Under the terms of the Soil Conservation and Domestic Allotment Act of 1936 { 16 U.S.C. 590(a-f) } and Section 714 of the Agricultural Appropriations Act of 2001, the NRCS is authorized to cooperate with and to furnish assistance to non-profit entities.

PURPOSES AND OBJECTIVES

The NRCS has the authority and responsibility for implementing USDA conservation programs in order to conserve land, water, and related natural resources. NRCS has an interest in using a coordinated approach with its partners in discharging its responsibility for these programs. The NRCS has funds available that it will contribute to a joint undertaking with CDOA-CSCB that would help the NRCS ensure that the desired conservation and environmental goals related to conservation are achieved.

The CDOA-CSCB is a unit of State Government in the State of Colorado that has a strong interest in improving conservation activities on private lands. Also, the CDOA-CSCB has the expertise and resources that will make it available in providing assistance to implement programs and provide technical and administrative assistance. Therefore, the CDOA-CSCB and the NRCS deem it mutually advantageous to cooperate in this undertaking, and hereby agree to the following.

The CDOA-CSCB and the NRCS have a common purpose of helping to bring about the conservation and wise use of land, water, wildlife, and related resources. Both also have a mutual interest in the furtherance of USDA conservation programs administered by the NRCS to assure they are effectively implemented and address local priorities of the CDOA-CSCB. The CDOA-CSCB and NRCS jointly share in the responsibility of providing qualified technical assistance to landowners and operators within the boundaries of the Conservation Districts. Traditionally, resources are shared between the Districts and NRCS to ensure that timely and effective technical assistance is provided to those participating in USDA programs. This agreement builds on the established traditional relationship of shared resources to address National, State, and local resource concerns.

The CDOA-CSCB and NRCS have identified specific objectives, the achievement of which will help address common resource concerns. These objectives are identified in the CDOA-CSCB's Long Range Plan. The increased funding for conservation programs and administrative accountability of existing and new program contracts identified by the Food Security and Rural Investment Act of 2002 has resulted in the need for NRCS to acquire technical services of qualified District employees.

The CDOA-CSCB and NRCS have entered into a contribution agreement that allows the CDOA-CSCB to meet the needs of all Conservation Districts that apply for CDOA-CSCB Technical Assistance Funds. The purpose of this agreement is to assure that common goals are realized, the mutual interests specified in the Clean Water Act (CWA) are furthered, and that DISTRICT employees receiving compensation through the contribution agreement entered into by the CDOA-CSCB and NRCS meet the criteria for providing technical services. The amendment adds to the roles and responsibilities within the areas noted below. It does not replace, modify, or circumvent the roles and responsibilities contained in the original CWA.

Technical Service Provider:

This agreement will be implemented on a District basis. The goal of the agreement is to accelerate and ensure that needed technical assistance associated with the administration and field work necessary to implement the conservation programs under Title XII of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), occurs in a timely and effective manner. District personnel employed through financial resources provided by the NRCS, CDOA-CSCB Contribution Agreement will work, under the technical guidance of NRCS personnel, with individual producers to explain programs and program benefits; maintain producer case files and contract support documents; and provide direct technical assistance to plan, design, install, and check out conservation practices. The goal is to ensure that producers are knowledgeable of conservation cost-share programs administered by NRCS. Delivery of technical assistance support and field services, such as development of practice installation plans, practice layout, practice checkout, status reviews, and conservation planning activities will be provided as needed on a work priority basis. Due to the intensive field and administrative requirements associated with conservation cost-share programs, it is anticipated most field work will occur specific to providing direct technical assistance to landowners and operators with potential or approved USDA program contracts. The CDOA-CSCB and NRCS have identified the following work elements which may be performed by District personnel on any given contract:

1. **CONTRACT ADMINISTRATION** – Tasks include assisting with: developing modifications, preparing payment documents, development of contract support documents, maintaining tracking system, performing status reviews.
2. **CASE FILE MANAGEMENT** – Tasks include assisting with: correspondence development and filing.
3. **CONSERVATION PLANNING** – Tasks include assisting with: development of plan maps, CST plan development, inventory and evaluation, on-site planning and locating practices.
4. **CONSERVATION APPLICATION** – Tasks include assisting with: practice design, design worksheets, practice layout in field, surveying, environmental compliance, utilities, staking practices, inspection, and certification of practices.
5. **PROGRAM OUTREACH AND MARKETING** – Tasks include assisting with: on-site visits with customers, newsletters, mailings, meetings, training sessions, local work group coordination, and accepting and processing applications.
6. **PROGRAM MAINTENANCE** – Tasks include assisting with: compiling average cost data, PRMS, maintaining programmatic databases, maintaining scheduling system, and quality control.
7. **TRAINING** – Tasks include developing additional skill sets in technicians to fulfill Farm Bill activities.

The CDOA-CSCB agrees to:

- A. Develop and institute a methodology for county level Conservation Districts to provide technical and administrative assistance as outlined above on USDA Farm Bill conservation programs, including, but not limited to the following:
 - 1. Administrative support for the development and maintenance of conservation plans and conservation program contracts at the county level.
 - 2. Technical assistance for the development and implementation of conservation practices in conservation plans and conservation program contracts.
 - 3. Programmatic and administrative training to conservation district employees in order to carry out the purposes of this agreement.
- B. Develop an application process and allocation formula that leveraging state or local matching funds for making awards to Colorado Conservation Districts.
- C. Distribute funds to Colorado Conservation Districts through the use of competitive awards to carry out the activities as shown in I.A. Additionally the CDOA-CSCB will be required to demonstrate a 50% match for the awarded funds. Reimbursement will be based upon the level of match funds obtained. The reimbursable amount will not exceed \$400,000. Matching funds can be soft or hard match. Matching funds will be documented on Colorado matching form tracking sheet attachment D. Federal funds **cannot** be credited as match.
- D. Contribute resources to administer and make awards to Colorado Conservation Districts to carry out the activities shown I.A. above.
- E. Comply with all of the requirements shown in attachment A – Special; Provisions which are attached and incorporated in this agreement.
- F. Carry out the specific items of work detailed in Attachment C – Budget which are attached and incorporated in this agreement.
- G. Submit quarterly reports to the NRCS contact person regarding the progress and performance of this agreement.
- H. Submit a final report to the NRCS liaison within 30 calendar days after completion of activities covered by this agreement.
- I. 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 without prior written approval of the NRCS Freedom of Information Act Officer. Ensure that all CDOA-CSCB and conservation district employees providing assistance under this agreement are aware of the importance of protecting the privacy of USDA conservation program records.
- J. Complete and submit, not more frequently than monthly, nor less frequently than semi-annually, a properly completed Standard Form 270, Request for Advance or Reimbursement, with documentation to support reimbursement for work completed or advance for anticipated work

completed, and signed by the appropriate official of the CSCB. Advances can be requested. The SF-270 with supporting documentation will be sent to the following address:

USDA-Natural Resources Conservation Service
655 Parfet Street, Room E200C
Lakewood, Colorado 80215
ATTN: Financial Management

- K. Comply with all of the provisions of the Office of Management and Budget Circulars A-110, A-122, and A-133, all which may be amended from time to time and which are incorporated by reference into this agreement. Copies of these documents can be found at: <http://www.whitehouse.gov/OMB/grants/index.html>.
- L. Tax Identification Number: 84-1145530

The NRCS agrees to:

- A. Provide funding not to exceed \$400,000 to the CDOA-CSCB to cover the costs associated with this agreement. NRCS will certify and send payment electronically through the Electronic Fund Transfer upon receipt of a properly completed SF-270. Total payment to the CDOA-CSCB for the works of this agreement shall not exceed \$400,000.
- B. Provide programmatic guidance and oversight to CDOA-CSCB and Conservation District employees carrying out the duties associated with the agreement.
- C. Provide use of office space, computer equipment, surveying equipment, or other NRCS tools that are available that would assist CDOA-CSCB and Conservation District employees with carrying out the duties outlined in this agreement.

It is mutually agreed:

- A. This agreement shall become effective upon the date both parties have signed the agreement and shall remain in effect through September 30th, 2007.
- B. This is a cooperative venture of the parties. Personnel of CDOA-CSCB and conservation districts shall remain its employees while carrying out their duties under this agreement and shall **not** be considered (NRCS) Federal employees for any purpose.
- C. It is the intent of the NRCS to fulfill its obligations under this agreement. In the event funds from which the NRCS may fulfill its obligations are not appropriated or administratively made available, the agreement will automatically terminate. The CDOA-CSCB will be proportionately reimbursed by the service for its share of the expenses before the termination.
- D. All parties mutually agree that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

- E. This agreement may be amended at anytime as mutually agreed in writing. Modifications shall be by mutual consent of both parties, by issuance of a written modification, signed by both parties. All modifications, extensions, or amendments must be made prior to the expiration date of this agreement.
- F. NRCS may terminate this agreement in whole or part if NRCS determines that CDOA-CSCB has failed to comply with any of the conditions of this agreement. NRCS shall promptly notify CDOA-CSCB in writing of the determination and reasons for the termination, together with the effective date. Payments made by or recoveries made by NRCS under this termination shall be in accordance with legal rights and liabilities of NRCS and CDOA-CSCB.
- G. This agreement may be temporarily suspended by NRCS if the NRCS determines that corrective action by CDOA-CSCB is needed to meet the provisions of this agreement. Further, NRCS may suspend this agreement when it is evident that a termination is pending.
- H. The contact person for the CDOA-CSCB for this agreement is Cindy Lair, Colorado State Conservation Board, Department of Agriculture 700 Kipling, Suite 4000, Lakewood, Colorado 80215. Her phone number is (303) 239-4111 fax (303) 239-4125.
- G. The contact person for the NRCS for this agreement is Randy Randall, USDA-Natural Resources Conservation Service, 655 Parfet Street, Room E200C, Lakewood, Colorado 80215. His phone number is (720) 544-2803.

Signatures

UNITED STATES DEPARTMENT OF AGRICULTURE
 NATURAL RESOURCES CONSERVATION SERVICE

BY: _____
 ALLEN GREEN
 State Conservationist

BY: _____
 SARA BRAASCH
 Regional Assistant Chief - West

COLORADO DEPARTMENT OF AGRICULTURE,
 COLORADO STATE CONSERVATION BOARD

BY: _____
 Don Ament
 Commissioner of Agriculture

ATTACHMENT A - SPECIAL PROVISIONS

The cooperator agrees to comply with the following special provisions that are hereby attached to this agreement.

I. Drug-Free Workplace.

By signing this agreement, the cooperator is providing the certification set out below. If it is later determined that the cooperator knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the NRCS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the grantees' payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification:

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1) The danger of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph 9a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notifying the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction;

(e) Notifying NRCS in writing, within ten calendar days after receiving notice under paragraph 9(d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(h) Agencies shall keep the original of all disclosure reports in the official files of the agency.

B. The cooperator may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

II. Certification Regarding Lobbying (7 CFR 3018) (Applicable if this agreement exceeds \$100,000)

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the cooperator, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, and officer or employer of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The cooperator shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

III. Certification Regarding Debarment, Suspension, and Other Responsibility matters - Primary Covered Transactions, (7 CFR 3017)

(1) The cooperator certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal has one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the primary cooperator is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

IV. Clean Air and Water Certification (Applicable if this agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

The cooperator signatory to this agreement certifies as follows:

(a) Any facility to be utilized in the performance of this proposed agreement is _____, is not _____, listed on the Environmental Protection Agency List of Violating Facilities.

(b) To promptly notify the State or Regional Conservationist prior to the signing of this agreement by NRCS, of the receipt of any communication from the Director, Office of Federal Activities, U. S. Environmental Protection Agency, indicating that any facility which he/she proposes to use for the performance of the agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(c) To include substantially this certification, including this subparagraph (c), in every nonexempt subagreement.

Clean Air and Water Clause

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA or the agreement is not otherwise exempt.)

A. The cooperator agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. sq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this agreement by NRCS.

(2) That no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this agreement was signed by NRCS unless and until the EPA eliminates the name of such facility or facilities from such listing.

(3) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.

(4) To insert the substance of the provisions of this clause in any nonexempt subagreement, including this subparagraph A. (4).

B. The terms used in this clause have the following meanings:

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-55).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), and approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (3 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with the scheduled or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.

(6) The term “facility” means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned leased, or supervised by a sponsor, to be utilized in the performance of an agreement or subagreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collated in one geographical area.

V. Assurances and Compliance

As a condition of the grant or cooperative agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015, 3016, 3017, 3018, 3019, 3051 and 3052 which hereby are incorporated in this agreement by reference, and such other statutory provisions as are specifically set forth herein.

VI. Examination of Records

Give the NRCS or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this agreement. Retain all records related to this agreement for a period of three years after completion of the terms of this agreement in accordance with the applicable OMB Circular.

DETERMINATIONS AND FINDINGS FOR AWARD OF A NON-COMPETITIVE CONTRIBUTION AGREEMENT

Pursuant to the Uniform Federal Assistance Regulations, 7 CFR 3015, the Natural Resources Conservation Service offers the following Determination and Findings as justification for entering into a non-competitive joint agreement. The main purpose of the agreement is to jointly cooperate in a locally led conservation initiative in Colorado.

FINDINGS:

1. NRCS has authority under the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a-f) and Section 714 of the Agricultural Appropriations Act of 2001 to enter into this type of relationship.
2. The work to be performed under the terms agreement will accomplish a public purpose of support and stimulation in carrying out activities authorized by the Act and other conservation related legislation.
3. The work to be performed under the terms of the agreement does not fall under a recent, current, or proposed NRCS solicitation.
4. NRCS will be substantially involved during performance of the work under the agreement.
5. The level of NRCS financial participation in the relationship is commensurate with the anticipated benefits.
6. Preparation of a solicitation for a commensurate contract employee would result in significant cost.
7. The award is for \$400,000.
8. This agreement is in the best interest of the government and is necessary to accomplish the goals of the legislation shown above.

DETERMINATIONS:

Based on the above findings, I hereby determine (1) this relationship is an agreement and that (2) within the requirements of the Regulation of the Secretary, 7 CFR 3015.158(d), this agreement is in the best interest of the Government; and is needed to assist in accomplishing conservation objectives.

State Conservationist