



If you would like to address City Council, please place your name on the sign-up sheet located at the back of the council room. You will be recognized to speak during the "audience participation" portion of the agenda.

AGENDA

Regular Meeting
February 4, 2014 - 7:30 p.m.

City Council meeting packets are prepared several days prior to the meetings. This information is reviewed and studied by the Councilmembers, eliminating lengthy discussions to gain basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis. An informational packet is available for public inspection on our website at www.cityofevans.org and posted immediately on the bulletin board adjacent to the Council Chambers.

1. CALL TO ORDER

2. PLEDGE

3. ROLL CALL

Mayor:	Lyle Achziger
Mayor Pro-Tem:	John Morris
Council:	Laura Brown
	Mark Clark
	April Neibauer
	Brian Rudy
	Jay Schaffer

4. RECOGNITION

A. Citizen Transportation Advisory Board – Recognition of Kathy VanSoest

5. APPOINTMENTS

A. Appointments to the Evans Planning Commission – Appointment of Richard Eisele

B. Appointments Flood Task Force Appointments – Appointment of Additional Evans Flood Recovery and Redevelopment Task Force Members

6. AUDIENCE PARTICIPATION

The City Council welcomes you here and thanks you for your time and concerns. If you wish to address the City Council, this is the time set on the agenda for you to do so. When you are recognized, please step to the podium, state your name and address then address City Council. Your comments will be limited to two (2) minutes. The City Council may not respond to your comments this evening, rather they may take your comments and suggestions under advisement and your questions may be directed to the appropriate staff person for follow-up. Thank you!

7. APPROVAL OF AGENDA

8. CONSENT AGENDA

- A. Approval of Minutes of the Regular Meeting of January 21, 2014
- B. Amendment to the Employment Agreement with the City Manager
- C. Ordinance No. 586-14 – Approving Charter Amendments for the Regular Municipal Election scheduled for April 8, 2014 (2nd Reading)

9. NEW BUSINESS

- A. Public Hearing – Resolution No. 05-2014 – Approving the Highway 85 Master Plan (**CONTINUED TO February 18th, 2014**)
- B. Resolution No. 06-2014 – Authorizing approval of an Agreement between the Colorado Water Resources and Power Development Authority and the City of Evans
- C. Resolution No. 07-2014 – Authorizing approval of a Subgrant Agreement between the Northern Colorado Water Conservancy District and the City of Evans for the Evans Town Ditch Repair Project

10. REPORTS

- A. City Manager
- B. City Attorney

11. AUDIENCE PARTICIPATION (general comments)

Please review the Audience Participation section listed at the beginning of the agenda for procedures on addressing City Council.

12. EXECUTIVE SESSION

- A. Conference with legal counsel to receive legal advice on specific legal questions pursuant to C.R.S. 24-6-402(4)(b).

13. ADJOURNMENT

CITY OF EVANS – MISSION STATEMENT

“To deliver sustainable, citizen-driven services for the health, safety, and welfare of the community.”

COUNCIL COMMUNICATION

DATE: February 4, 2014

AGENDA ITEM: 5.A

SUBJECT: Appoint of Richard Eisele to the Evans Planning Commission

PRESENTED BY: Zach Ratkai, Building and Development Manager

AGENDA ITEM DESCRIPTION:

Mr. Eisele is a resident of Evans and is interested in serving on the Planning Commission. His application is attached. This will be his first appointment and in accordance with Section 2.52 of the Municipal Code (also attached), staff is recommending that his term expire on February, 2019.

FINANCIAL SUMMARY:

N/A

RECOMMENDATION:

N/A

SUGGESTED MOTIONS:

“I move to appoint Richard Eisele to the City of Evans Planning Commission for a five year term to expire on February, 2019.”

Chapter 2.52

PLANNING COMMISSION

Sections:

2.52.010	Created.
2.52.020	Membership--Appointment and qualifications.
2.52.030	Term.
2.52.040	Attendance.
2.52.050	Vacancy filling.
2.52.060	Meetings--Rules for operation.
2.52.070	Organization and officers.
2.52.080	Powers and duties.

2.52.010 Created. There is created the city planning commission. (Ord. 654-86, 1986)

2.52.020 Membership--Appointment and qualifications. The planning commission shall consist of five members, who shall be qualified electors and residents of the city appointed by the city council, none of whom shall hold any other position with the city. The city manager or his appointed designee, shall serve in an advisory capacity to the commission. (Ord. 654-86, 1986)

2.52.030 Term. The term of office shall be five years, except that of the members first appointed who shall be appointed one for one year, one for two years, one for three years, one for four years, and one for five years. The existing members of the planning commission shall continue in office until their terms would normally expire. (Ord. 654-86, 1986)

2.52.040 Attendance. Absence from three consecutive regular meetings, or a total of six regular meetings in any twelve consecutive months, without justifiable cause, as determined by the city council after consultation with the planning commission, shall constitute grounds for removal from office. (Ord. 654-86, 1986)

2.52.050 Vacancy filling. A. Vacancies shall be filled by appointment of the city council for the unexpired term of the vacancy.

B. A vacancy exists when a member dies, resigns, is removed by action of the city council, or if a member moves outside the city limits and thus is no longer a qualified elector residing in the city. (Ord. 654-86, 1986)

2.52.060 Meetings--Rules for operation. The planning commission shall hold at least one regular meeting in each calendar month. All meetings of the commission shall be held at the call of the chairman and at such other times as such commission may determine. All meetings and records of the commission shall be open to the public. The commission shall keep minutes of its proceedings, showing the vote of each member upon every questions, or if absent or failing to vote, indicating such fact, and shall also keep records of its official actions. A majority of the commission shall constitute a quorum for the transaction of business. The commission is empowered to make rules and regulations for its conduct and operation not inconsistent with state and municipal law. (Ord. 654-86, 1986)

2.52.070 Organization and officers. The officers of the planning commission shall be a chairperson and a vice chairperson, both of which shall be elected by the members of the commission. Their duties shall be those customarily performed by such officers and as specified by the rules of the commission. The officers of the commission shall hold office for two years or until their

successors are elected. The city manager shall provide a staff person to record minutes of each meeting and conduct correspondence for the commission. (Ord. 654-86, 1986)

2.52.080 Powers and duties. Subject to review and final approval by the council, the commission shall have the power and shall be required to:

A. Make, amend and add to the master plan for the physical development of the city as defined in Chapter 12, Section 12.6 of the City Charter;

B. Exercise control over platting or subdividing land with the city, as defined in Chapter 12, Section 12.7 of the City Charter;

C. Draft for the city council an official map of the city and recommend or disapprove proposed changes in such map;

D. Make and recommend as provided in Chapter 12, Section 12.9 of the City Charter, a zoning plan for the city and recommend or disapprove proposed changes in such plan;

E. Make and recommend as provided in Chapter 12, Section 12.10 of the City Charter, plans for the clearing and rebuilding of slum district and blighted areas within the city;

F. Request information which shall be furnished within a reasonable time from the other departments of the city government in relation to its work;

G. Make and adopt plans for the replanning, improvements and redevelopment of neighborhoods;

H. Any additional powers and duties required to be exercised by the planning commission under state law. (Ord. 654-86, 1986)



CITY OF EVANS, COLORADO BOARD & COMMISSION APPLICATION

1100 37th Street - Evans, CO 80620
(970) 339-5344 FAX: (970) 330-3472
www.cityofevans.org

Place a check mark in the box next to the Board or Commission you are applying for:

- | | |
|--|--|
| <input type="checkbox"/> Parks and Recreation Commission | <input type="checkbox"/> Water & Sewer Board |
| <input checked="" type="checkbox"/> Planning Commission | <input type="checkbox"/> Zoning Board of Appeals |
| <input type="checkbox"/> Senior Advisory Board | <input type="checkbox"/> Economic Development Advisory Council |

Would you consider appointment to another Board or Commission other than the one listed above?
If so, please list according to priority

- | | |
|---------|---------|
| 1 _____ | 3 _____ |
| 2 _____ | 4 _____ |

Please fill out the information below:

Name: Richard Sumner Eisele

Address: 3723 Belmont Ave

Home Phone: 970-330-4079 Work Phone: 970-353-7272 Cell Phone: 970-268-0307 ⁵³⁴⁻⁵⁷⁸⁸

Email Address: richardseisele@gmail.com ^{-Richseisele@gmail.com}

Are you a resident of Evans? YES NO If yes, for how long? Back 2 Months

Tell us briefly about yourself, why you are interested in being appointed to this Board or Commission, and what specific talents or expertise you would bring to this Board or Commission if appointed?

I am a professionally trained and experienced educator/coach/administrator who graduated with a bachelor degree from the University of Nebraska-Lincoln, and a masters degree from the University of Northern Colorado in Greeley. I have recently moved back from teaching in Canada. I have also been a local concrete truck driver here in Northern Colorado. I have been here in Greeley/Evans on and off for 14 years of my adult life starting in the fall of 1989, and wow has the community changed in some regards, however has stayed the same in many others. I believe I have an understanding of the way Greeley has treated Evans and I am a steadfast supporter of Evans over Greeley on every issue and policy. I have decided to settle here in the community of Evans, and want to see it grow in a authentic and efficient way, displaying the history and heritage of its citizenry, and celebrating it strengths. I want to see Evans as a spotlight for businesses choosing Evans over Greeley and the surrounding communities, so that Evans citizens can find more work here, closer to their homes, which Greeley is taking away. I do not like the politics of Greeley, and I am a firm believer in strong local control of Evans over the oppressive larger urban centers of Greeley and Denver. I am a practiced listener, analytical critical thinker, and a detailed questioner. I know that I can become an asset to the city of Evans and its citizenry. Thank you for your consideration.

10/14/2013

Signature

Date

Please mail to the address listed above or fax to 330-3472

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

MEMORANDUM FOR THE DIRECTOR

DATE: 10/15/68

TO: DIRECTOR, FBI

FROM: SAC, NEW YORK

SUBJECT: [Illegible]

RE: [Illegible]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

COUNCIL COMMUNICATION

DATE: February 4, 2014

AGENDA ITEM: 5.B

SUBJECT: Appointment of Additional Evans Flood Recovery and Redevelopment Task Force Members

PRESENTED BY: Sheryl Trent, Economic Development Director

AGENDA ITEM DESCRIPTION:

The City of Evans has begun a program to transform the flooded area of east Evans, known as Historic Evans. This is a twelve to eighteen month project with a target of adopting a new Master Plan for that area in the spring of 2015. In November of 2013 the City Council approved Resolution No. 39 – 2013 which set forth the nature of the Task Force, their working goals and guidelines for the project.

Past experience with the use of a community task force, specifically the Fire District Task Force has provided great success in cooperation and collaboration for the betterment of the City of Evans. The same approach is to be used for the recovery and redevelopment of the flooded area of east Evans. The objectives of the Evans Flood Recovery and Redevelopment Task Force will be to:

1. Identify, gather and evaluate such data and information as are necessary and appropriate to draft a plan for flood recovery and redevelopment in the historic old town area.
2. Create and maintain a strong relationship with impacted stakeholders and insure that stakeholder voices are heard in the development of a flood recovery and redevelopment plan.
3. Assist staff in the recruitment, selection and evaluation of consultants as well as integration of consultant work into the final draft plan.
4. Focus on preventing similar flood damage to the historic old town area with the paramount goal of reducing the threat of flooding and related health and safety risks to residents and business.
5. Create a long-term vision of a vibrant and sustainable historic old town.
6. Communicate with the residents and business in the historic old town area, City Council, the Evans community in general and other stakeholders through state-of-the-art communications strategies.
7. Make recommendations to the City Council regarding the legal, financial, operational and organizational options for the draft plan.
8. Produce a proposed plan by mid-2015 for City Council consideration including changes to land use plans, the Evans Municipal Code and other regulatory plans and documents.

Staff has used several methods to gain interest in the Task Force. We have:

- 1) Mentioned it at every flood meeting
- 2) Posted the opening on our web page
- 3) Asked the Greeley Tribune to issue information
- 4) The Evans Area Chamber of Commerce has released the information to their members
- 5) The Greeley Area Chamber of Commerce has also done the same.

Since the January 7, 2014 appointment of 10 task force members, staff has collected more applications for interested individual. Based on the applications received, staff is recommending the appointment of the following individuals to the task force. Each individual's application has been attached.

- Fred Neal—Evans Property Owner
- Amy Boren—Historic Evans Property Owner
- Maria Castillo—Evans Property Owner

FINANCIAL SUMMARY:

While the Task Force as a body will not have a budget, the City's budget for the over all Master Planning process is attached for your review. The Council recently approved the administrative staff function that will support this Task Force, and a grant application has been filed by DOLA.

Estimated costs and preliminary proposed budget

	2014	2015	Total
Staff (full time temporary admin assistant)	\$44,000	\$22,000	\$66,000
Consultant	\$200,000	\$50,000	\$250,000
Project support	\$5,000	\$2,000	\$7,000
River Corridor Study	\$40,000	0	\$40,000
Total	\$289,000	\$74,000	\$363,000

RECOMMENDATION:

Staff would recommend appointment of the members as listed.

SUGGESTED MOTIONS:

“Mr. Mayor, I move to appoint Amy Boren, Fred Neal, and Maria Castillo as members of the Flood Recovery Task Force”

To: City of Evans

Fax: 970-330-3472

Attn: Evans Flood Recovery Task Force

From: Amy Boren

Email: amy.boren@bannerhealth.com

Phone 970-350-6095

Please call me at 350-6095 to confirm this fax has been received.

Thank you!

To: The Honorable Mayor and
City Council Members
1100 37th Street
Evans, CO 80620-2036

Appointment To
Evans Flood Recovery
Task Force

Name: Amy Boren

Address: 3809 Riverside Parkway Evan, CO 80620

Phone No.: (Home) — (Cell) 970 405 8356 (Work) (970) 350-6095

How long have you resided in the City of Evans? 8 years

If you are not appointed to the Flood Recovery Task Force, would you consider appointment to another Board or Commission? Yes No If so, which one or ones?

Flood Recovery Taskforce

Water & Sewer Board

Planning Commission

Zoning Board of Appeals

Senior Advisory Board

Economic Development Advisory Council

Parks & Recreation Commission

Tell us briefly about yourself, why you are interested in being appointed to this vacancy, and what specific talents or expertise you would bring to the City Council if appointed?

I am a proud resident of Evans. I love our community. My husband + I were severely impacted by the flood. We were the 1st on our street with a generator + pumps and among the 1st families to return. It was important to show others we could all fight for our homes. The flood knocked us down, but did not destroy us. In five years I intend to look back and see how the flood made us and our community better. I'm not sure what I will bring to the task force, but I know I want to be a part of the solution, and not just a recipient of the problem.

Signature Amy Boren

1.8.14
Date

To: The Honorable Mayor and
City Council Members
1100 37th Street
Evans, CO 80620-2036

Appointment To
Evans Flood Recovery
Task Force

Name: Fred Neal

Address: 1614-38th ST

Phone No.: (Home) 970-475-0731 (Cell) _____ (Work) _____

How long have you resided in the City of Evans? 35 years

If you are not appointed to the Flood Recovery Task Force, would you consider appointment to another Board or Commission? Yes No If so, which one or ones?

Flood Recovery Taskforce

Water & Sewer Board

Planning Commission

Zoning Board of Appeals

Senior Advisory Board

Economic Development Advisory Council

Parks & Recreation Commission

Tell us briefly about yourself, why you are interested in being appointed to this vacancy, and what specific talents or expertise you would bring to the City Council if appointed?

1. Wanted to see if task force would be filled to capacity with a diverse group of residents before applying.

2. Recalled my treatment when I applied to the City Council for Water & Sewer Board.

3. Concurred about the time.

Fred Neal
Signature

17 Dec 13
Date

To: The Honorable Mayor and
City Council Members
1100 37th Street
Evans, CO 80620-2036

Appointment To
Evans Flood Recovery
Task Force

Name: Maria Castillo (maria.castillo5@gmail.com)

Address: 1614 39th st.

Phone No.: (Home) N/A (Cell) 405-4451 (Work) _____

How long have you resided in the City of Evans? 10 years

If you are not appointed to the Flood Recovery Task Force, would you consider appointment to another Board or Commission? Yes No If so, which one or ones?

Flood Recovery Taskforce

Water & Sewer Board

Planning Commission

Zoning Board of Appeals

Senior Advisory Board

Economic Development Advisory Council

Parks & Recreation Commission

Tell us briefly about yourself, why you are interested in being appointed to this vacancy, and what specific talents or expertise you would bring to the City Council if appointed?

I have been actively involved with families that were affected by the floods, from their stay at the shelter to the present. I work closely with the school district and community in different roles as an educator and as an active member of the Evans community. I am bilingual and believe that I can represent my community well.

Signature

Date

1-21-14

COUNCIL COMMUNICATION

DATE: February 4, 2014

AGENDA ITEM: 8.A

SUBJECT: Approval of the Minutes of January 21, 2014 City Council Meeting

PRESENTED BY: City Clerk

AGENDA ITEM DESCRIPTION:

Approval of minutes.

FINANCIAL SUMMARY:

N/A

RECOMMENDATION:

N/A

SUGGESTED MOTIONS:

"I move to approve the minutes as presented."

AGENDA
Regular Meeting
January 21, 2014 - 7:35 p.m.

CALL TO ORDER

Mayor Achziger called the meeting to order at 7:35 p.m.

PLEDGE

ROLL CALL

Present: Mayor Achziger, Mayor Pro-Tem Morris, Council Members Brown, Clark, Neibauer, Rudy, Schaffer

AUDIENCE PARTICIPATION

There was no audience participation.

APPROVAL OF AGENDA

Council Member Schaffer made the motion, seconded by Council Member Rudy, to approve the agenda. The motion passed with all voting in favor thereof.

CONSENT AGENDA

A. Approval of Minutes of the Regular Meeting of January 7, 2014

Council Member Schaffer made the motion, seconded by Council Member Clark, to adopt the consent agenda. The motion passed with all voting in favor thereof.

NEW BUSINESS

B. Resolution No. 03-2014 – Approving the 2014 IGA with Weld County Concerning Oil and Gas Employees Residing within City Boundaries

Sheryl Trent, Community and Economic Development Director, explained that the Resolution approves an annual intergovernmental agreement (IGA) with the Weld County Board of County Commissioners for William Jerke to assess the number of oil and gas employees residing within the unincorporated boundaries of Weld County and within the various municipalities. Ms. Trent explained that the County IGA ensures that each City within the County will pay a proportionate share of the costs to contract with Mr. Jerke.

The financial terms of the contract include \$1,325.52 for each employee within the City, plus bonuses up to \$50 per employee from the State of Colorado Severance Tax Direct Distribution payment and \$50 per employee from the Federal Mineral Lease Distribution payment.

Ms. Trent stated that staff was recommending the approval of the IGA through the adoption of the Resolution.

Mayor Pro-Tem Morris clarified the state and federal 5 percent bonus that the City received.

Ms. Trent explained that the 5 percent was the bonus for each additional employee above the 2013 base count.

Mayor Achziger commented about how much annual revenue the City receives for oil and gas employees residing in the City and voiced his support for the Resolution.

Council Member Clark made the motion, seconded by Council Member Brown, to adopt the Resolution. The motion passed with all voting in favor thereof.

C. Resolution No. 04-2014 – Authorizing the Conduct of a Mail Ballot Election for the Regular Municipal Election scheduled for April 8, 2014

Scott Krob, City Attorney, explained that the Resolution authorizes the City to conduct a mail ballot election for the municipal election on April, 2014. Mr. Krob explained that, through adoption of the Resolution, the upcoming municipal election will be conducted according to the applicable state-wide municipal election law concerning mail ballot elections under the provisions of the Uniform Election Code.

Mayor Pro-Tem Morris voiced his support for mail ballot elections over a polling place election in order to promote a larger voter turnout.

Mayor Achziger also voiced his support for the City to conduct a mail ballot election.

Council Member Clark made the motion, seconded by Council Member Rudy, to adopt the Resolution. The motion passed with all voting in favor thereof.

D. Ordinance No. 586-14 – Approving Charter Amendments for the 2014 Regular Municipal Election, scheduled for April 8, 2014 (1st Reading)

Scott Krob made explained that the Ordinance reflected the recommendations of the City Charter Commission for proposed amendments to the City Charter. Mr. Krob explained that the recommended changes under the Ordinance will amend charter provisions concerning:

- term limits;
- city manager residency requirement;
- court fines; and
- changes to the Planning Commission and Zoning Board of Appeals.

Mayor Pro-Tem Morris commented about the changes concerning term limits for City Council Members and the membership of City Planning Commission (PC) and Zoning Board of Appeals (ZBA). He discussed his support for the PC and ZBA to be comprised of five members who must be qualified electors residing within the City. Also under the proposed changes, these members can hold other board or commission positions in the City, with the exception of being a member of the City Council.

Mayor Achziger commented about residency requirement for a City Manager under Section 4.3 of the Home Rule Charter. He talked about the recommendation from a consulting firm to remove the residency requirement from the City Charter to draw the best candidates to any opening for City Manager. He talked about support for changes to the Charter to remove the residency requirement and to make language in the Section 4.3 gender neutral.

Mayor Pro-Tem Morris talked about his support for the Ordinance and his support for also removing the residency requirement for the City Manager under Section 4.3 of the Home Rule Charter.

Mayor Achziger explained some of the City's history and the reason the requirement may have been originally placed into the Home Rule Charter.

Mayor Pro-Tem Morris made the motion, seconded by Council Member Clark, to adopt the Ordinance on First Reading. The motion passed with all voting in favor thereof.

REPORTS

A. City Manager

Aden Hogan, City Manager, updated City Council about ongoing public works improvement projects and referred the City Council Members to the City Manager's Monitoring Report. He also distributed a flyer about a Time Capsule that will be buried onsite at the new Riverside Library and Cultural Center. Mr. Hogan discussed this project with City Council and talked about the City's role in contributing to the time capsule.

He reminded City Council that we would be out of the state for the next three days. Mayor Achziger wished Mr. Hogan the best on his travel plans.

B. City Attorney

Scott Krob, City Attorney, updated City Council about an action filed in District Court against the Merlin G. Dirks, dba Pacific Parkway Mobile Home, to force the abatement of outdoor storage currently being used for mobile homes, manufactured homes, and other materials on 4431 and 4611 Brantner Road.

AUDIENCE PARTICIPATION

There was no audience participation.

ADJOURNMENT

The meeting adjourned at 8:05 p.m.

CITY COUNCIL COMMUNICATION

DATE: February 4, 2014

AGENDA ITEM: 8.B

SUBJECT: Amending Employment Agreement with City Manager, Aden Hogan, Jr.

PRESENTED BY: Scotty P. Krob, City Attorney

AGENDA ITEM DESCRIPTION: The attached Employment Agreement with City Manager, Aden Hogan, Jr., is identical to the one that was approved by City Council last year on February 5, 2013, except for the change in salary as recommended for approval by City Council. There are no other changes to the Agreement.

FINANCIAL SUMMARY: The Amended Employment Agreement increases the City Manager's salary to \$121,944.13, effective retroactively to December 30, 2013.

RECOMMENDATION: Approve the Amended Employment Agreement.

SUGGESTED MOTIONS:

"I move that we approve the Amended Employment Agreement with City Manager, Aden Hogan, Jr., and authorize the Mayor's signature on the Agreement."

"I move to deny approval of the Amended Employment Agreement."

CITY MANAGER AMENDED EMPLOYMENT AGREEMENT

THIS AMENDED EMPLOYMENT AGREEMENT, made this 30th day of December, 2013, by and between the CITY OF EVANS (“Employer”), and ADEN HOGAN, JR. (“Employee”) supersedes all prior Agreements between the Parties including, but not limited to, that Agreement dated February 5, 2012.

The parties agree as follows:

1. **POSITION.** Employer agrees to continue the employment of Employee as its City Manager. Employee agrees to serve as City Manager in accordance with the attached position description labeled “Exhibit A.” The City Manager shall be a full-time employee (although exempt from the FLSA) and may engage in other business and employment activities, but only upon approval of a majority of the entire City Council. Employee shall perform the functions and duties specified under the City’s Charter and shall perform such other legal and proper duties and functions as the Employer shall assign. It is the intent of the Parties that the Manager’s employment is full-time employment. Participation in professional organizations and volunteer programs are encouraged provided they are consistent with the responsibilities of the City Manager for the City.

2. **SALARY.** Employer shall pay employee a salary of \$121,944.13 per year, effective December 30, 2013, which shall be payable in installments of pay periods at the same time as other employees of the City are paid. Employee shall be given an annual salary and performance evaluation, after which the Employer agrees to consider the base salary or bonuses and other benefits to Employee based upon the performance evaluation. Employee’s salary will be reviewed each November or December of every year of employment.

3. **BENEFITS.** Employer shall provide Employee the same holidays, group health, dental, life insurance, and disability as provided to all other employees, except as hereinafter modified. In addition to participation in the City’s standard 401k retirement plan, Employee shall be entitled to use a 457 Plan whereby Employer will contribute three percent (3%) of Employee’s gross income, including any bonuses awarded. Employer shall contribute three percent (3%) of the Employee’s gross income and in addition, match Employee’s contributions up to a maximum of four percent (4%), not to exceed the maximum permitted by the I.R.S into the City’s standard 401k plan. Employee shall be fully vested immediately upon such contributions into the 457 and 401k plans.

4. **VACATION/HEALTH LEAVE.** Based upon full-time employment, Employee shall accrue vacation leave at 12 hours/month and health leave at 8 hours/month. Employee shall not be entitled to a cash payment for unused health leave at the end of his employment.

5. **CAR/CELL PHONE ALLOWANCE.** Employee shall be paid an allowance of \$210.00 per pay period for use of his personal automobile and cell phone for Employer business. If Employee uses his own automobile for Employer business (outside 50 miles from his office at City Hall) the Employer shall reimburse Employee for the business use of his personal

automobiles on a per mile basis and at a rate equal to what Employer reimburses all other employees for business use of a personal automobile.

6. BUSINESS EXPENSES/PROFESSIONAL DUES. Employee shall be reimbursed for normal business expenses and professional dues related to Employee's continued professional development in the field of City Management/Administration but shall be limited to the annual approved budget amount by City Council. Employer agrees to budget and pay reasonable travel and subsistence expenses to Employee to enable him to attend annual conferences for the International City Management Association and the annual Colorado Municipal League conference.

7. HOURS OF WORK. It is understood that the position of City Manager requires attendance at evening meetings and occasionally a possible weekend meeting. It is understood by Employee that additional compensation and compensatory time shall not be permitted for such additional expenditures of time for the reason that Employee will be in an exempt position under the Fair Labor Standards Act (FLSA). It is further understood that Employee may absent himself from the office within "reasonable discretion" in consideration of these extraordinary time expenditures outside of normal working hours.

8. TERMINATION BENEFITS. Employee shall hold office at the pleasure of the majority of the City Council, be an "employee at will," and may be terminated at any time with or without cause, even in the event should Employee become totally and permanently disabled. In the event that Employee is terminated by the Employer, without cause, during such time that Employee is willing and able to perform the duties of City Manager, then in that event, Employer agrees to pay Employee a continuation of his normal salary at the last current rate for a period of six (6) months, to be paid out in installments during normal pay periods and not as a lump sum, from the date of termination to, including the health and dental insurance benefit at the election level, the date of termination, but no other benefits. Employee shall not be entitled to, nor shall he receive, such termination benefits in the event of voluntary resignation. In the event Employee voluntarily resigns his position with the City at any time during the term of this Agreement, Employee shall give the Employer at least one month written notice in advance. The Parties further agree and acknowledge that the City has established and shall maintain an adequate present cash reserve held for future payments if required in an amount sufficient to pay any termination benefits required by this Agreement. For the purpose of COBRA and the notification requirements, the last day of employment shall be the actual last day of employment and shall not include the extended period of any termination benefits.

In the event, however, that Employee is terminated for cause, the City shall have no obligation for termination benefits as provided above. As used herein, "cause" shall mean:

- (a) Conduct by Employee that is fraudulent or dishonest,
- (b) Employee's conviction of a felony or crime involving moral turpitude under any federal or state law, or
- (c) Failure by Employee in a material way to fulfill or comply with his obligations under this Employment Agreement. By way of example and not by limitation, should Employee not comply with the residency requirement set forth in paragraph 10 of this

Agreement and in the Home Rule Charter, or gross neglect of his duties, Employee shall be deemed to be terminated with cause and the termination benefits shall not apply.

9. ANNUAL EVALUATION. In November or December of each year, a majority of the members of the City Council or a committee appointed by a majority of the City Council shall evaluate the job performance of the Employee and as with the evaluation of other City employees, the evaluation is intended to provide Employee with an opportunity to meet with a majority of the members of the City Council or a committee appointed by a majority of the City Council to discuss his job requirements, areas of strength and weakness, and direction for improvement of his performance.

10. RESIDENCY. The Parties acknowledge that pursuant to the City's Home Rule Charter, Employee is obligated to reside in the City. Employee shall be required, under this Agreement, to reside within the City of Evans for the duration of his employment as City Manager.

11. VENUE. This Agreement shall be construed and interpreted according to the laws of the State of Colorado and any action necessary to enforce, construe, or interpret this Agreement shall be maintained in the County of Weld, State of Colorado.

IN WITNESS WHEREOF, Employer has caused this Agreement to be signed and executed on its behalf by Lyle Achziger, Mayor, and Employee has signed this Agreement the day of and year first written above.

ATTEST:

Raegan Robb, City Clerk

EMPLOYER:

By: _____
Lyle Achziger, Mayor

EMPLOYEE:

Aden Hogan, Jr.

CITY MANAGER

EXHIBIT A

GENERAL STATEMENT OF DUTIES

The City Manager is responsible for the efficient administration of all departments within the City Government as defined by the city organizational structure and City Charter.

SUPERVISION RECEIVED

The City Manager is responsible to and held accountable by the City Council.

SUPERVISION EXERCISED

The City Manager provides direct supervision to all department heads subordinate to his/her position within the city organization. The City Manager may provide direct or indirect supervision to any employee subordinate to his/her position, regardless of the department which the employee works within.

EXAMPLES OF DUTIES

The following examples are meant to be illustrative only and are not intended to be all-inclusive:

- To see that all laws and ordinances are enforced.
- To appoint the heads of several city departments, whose appointment is not otherwise specified in the Charter, and to direct and supervise such department heads.
- To give to the proper department or officials ample notice of the expiration or termination of any franchises, contracts, or agreements.
- To see that all terms and conditions imposed in favor of the City or its inhabitants in any public utility franchise, or in any contract, are faithfully kept and performed.
- To recommend an annual budget to the City Council; and to administer the budget as finally adopted under policies formulated by the City Council; and to keep the City Council fully advised, at all times, as to the financial conditions and needs of the City.
- To recommend to the City Council, for adoption, such measures, as he/she may deem necessary or expedient.
- To attend Council meeting with the right to take part in discussions, but not to vote.
- To exercise and perform all administrative functions of the City that are not imposed by the Charter or ordinance upon some other official.
- Not counteracting any other provision in the Charter, the Manager may, in the event of an emergency, at his discretion, exercise complete administrative authority over any department, department head, or city employee and all city owned property. The City Manager shall determine when such emergency exists.
- To be responsible for the maintenance of a system of accounts of the City, which shall conform to any uniform system required by the City Council, and which shall conform to generally accepted principles and procedure of governmental accounting. He shall submit financial statements to the Council monthly, or more often as directed.
- To act as Purchasing Agent for the City and in such capacity to purchase all supplies and equipment and dispose of the same in accordance with procedures established by the Council.
- To establish, subject to approval by the Council, appropriate personnel rules and regulations governing officers and employees of the City.
- To perform such other duties as may be prescribed by the Charter or required of him by ordinance or by direction of the Council.

- The City Manager shall prepare an annual report of the affairs of the City including a financial report. Copies of such audit and annual report shall be made available for public inspection at the office of the City Clerk.

REQUIRED KNOWLEDGE, ABILITIES, AND SKILLS

- Thorough knowledge of municipal government operations, practices and procedures.
- General knowledge of budgets accounting practices, purchasing procedures, infrastructure maintenance, water and wastewater issues, contract administration, law enforcement, personnel issues, records maintenance and security services, recreation programs, planning and zoning issues, fire suppression, and prevention techniques.
- Thorough knowledge of current management, administrative, and supervisory techniques.
- Must have good oral and written communication skills.
- Ability to deal with people in a positive manner.

DESIRABLE EDUCATION, TRAINING, AND EXPERIENCE

- Masters degree in area of Management, Administration or Business.
 - Advanced training in any area of expertise required as part of being City Manager.
 - Ten years of progressively responsible experience in Municipal Government;
- or
- Any combination of education, training and experience which would qualify for the position as determined by City Council.

CITY COUNCIL COMMUNICATION

DATE: February 4, 2014

AGENDA NO.: 8.C

SUBJECT: Ordinance No. 586-14 - Approving Charter Amendments for the Regular Municipal Election scheduled for April 8, 2014

PRESENTED BY: Scott Krob, City Attorney and Raegan Robb, City Clerk

AGENDA ITEM DESCRIPTION:

The attached ordinance amends Sections 3.4, 4.3, 7.10, 12.1, and 12.5 of the Home Rule Charter of the City of Evans, Colorado, and further providing that the question for adoption of such amendments be submitted to the registered electors at the Municipal Election held on April 8, 2014. The specific ballot questions to be submitted to the registered electors are listed below:

1. Shall Section 3.4, Terms, be amended by Clarifying that Council members filling partial terms and filling vacancies will not be deemed to have served a term in office for purposes of determining term limits, and further providing that in no event shall a person serve more than ten continuous years as a Council member regardless of whether they are appointed or elected?
2. Shall Section 4.3 City Manager - Appointment and Qualifications, of the City of Evans Home Rule Charter, be amended by eliminating the requirement that the City Manager reside within the city and by making the language of the section gender neutral?
3. Shall Section 7.10, Penalties for Violation of Ordinances, be amended to state that the fine shall be up to the maximum amount allowed under state law and established by Ordinance?
4. Shall Chapter 12 of the Home Rule Charter be amended to require members of the Planning Commission and the Zoning Board of Appeals to be qualified electors residing within the City and to allow such members to hold other board or commission positions in the City?

RECOMMENDATION:

The Charter Committee has recommended the adoption of the above Charter amendments, and City staff recommends the approval of the Ordinance on second reading.

SUGGESTED MOTIONS:

- "I move to approve Ordinance No. 586-14 on second reading."*
- "I move to deny adoption of Ordinance No. 586-14."*
-

CITY OF EVANS, COLORADO

ORDINANCE NO. 586-14

AN ORDINANCE TO AMEND SECTIONS 3.4, 4.3, 7.10, 12.1, and 12.5 OF THE HOME RULE CHARTER OF THE CITY OF EVANS, COLORADO AND FURTHER PROVIDING THAT THE QUESTION FOR ADOPTION OF SUCH AMENDMENTS BE SUBMITTED TO THE REGISTERED ELECTORS AT THE REGULAR MUNICIPAL ELECTION WHICH WILL BE HELD ON APRIL 8, 2014

WHEREAS, the City of Evans is a home rule city duly organized and existing under the Constitution of the State of Colorado and the Home Rule Charter of the City; and

WHEREAS, pursuant to Section 1.5 of the Home Rule Charter, amendments to the charter must be submitted to the electors of the City of Evans; and

WHEREAS, an election shall be held on Tuesday, April 8, 2014, at which election there shall be submitted to the eligible electors of the City these amendments to the Home Rule Charter; and

WHEREAS, City Council and staff have recommended that Chapter 3.4, concerning Terms, should be amended to clarify how the provisions of the Colorado Constitution imposing term limits on elected officials apply to partial terms and terms filling vacancies.

WHEREAS, the Charter Committee has recommended that Section 4.3, concerning the City Manager – Appointment and Qualifications, be amended removing gender-specific language and by eliminating the requirement that the City Manager reside within the City; and

WHEREAS, City Council and staff have recommended that Chapter 7.10, concerning Penalties for Violation of Ordinances, should be amended to state that the fine shall be up to the maximum amount provided by state law, as set forth by ordinance; and

WHEREAS, City Council and staff have recommended that Chapter 12.1, concerning Zoning, should be renamed “Planning, Zoning, and Housing” and that such chapter should be amended by updating the language to comply with current law and procedures; and

WHEREAS, currently the language in Chapter 12 states that members of the Zoning Board of Appeals and the Planning Commission shall not hold any other position with the City, but does not address City Council members serving, and the revised Chapter 12 would add such language regarding the membership of the Zoning Board of Appeals and Planning Commission.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO:

SECTION 1. PROPOSED AMENDMENT: Chapter 12 of the Home Rule Charter of the City of Evans, Colorado, shall be amended to read as follows:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO:

Section 1. Proposed Amendments. Sections 3.4, 4.3, 7.10, 12.1, and 12.5 of the Home Rule Charter of the City of Evans, Colorado, shall be amended to read as follows:

3.4 TERMS. The term of office of the Councilmen hereafter to be elected in accordance with the provisions of this Charter shall commence at the hour of 7:30 p.m. on the next Tuesday of April following their election, and shall continue during the term for which they shall have been elected and until their successors shall have been elected and qualified. In the year 1974, the first municipal election shall be held under the provisions of this Charter at which one Councilman shall be elected from each Ward for a term of four years and every four years thereafter. In the year 1976, the second municipal election shall be held under the provisions of this Charter in which one Councilman shall be elected from each Ward for a term of four years and every four years thereafter, and in the year 1976, the Mayor shall be elected for a term of two years. At every subsequent bi-annual election a Mayor shall be elected for a term of two years. **For purposes of applying Article XVIII, Section 11 of the Colorado Constitution regarding limitation on terms, Council members filling partial terms of office and Council members filling vacancies, whether by election or appointment, are not deemed to have served a term in office. In no event shall a Council member serve more than ten continuous years, whether by election or appointment, regardless of whether a portion of that period was a partial term.**

4.3 CITY MANAGER – APPOINTMENT AND QUALIFICATIONS. The Council may appoint a City Manager within ninety days after any vacancy exists in such position. The City Manager shall hold office at the pleasure of a majority of the Council. **He A City Manager** shall be selected solely on the basis of his **or her** executive and administrative qualifications with special reference to his **or her** actual experience in and **his** knowledge of accepted practice in respect to the duties of his **or her** office as hereafter set forth. **At the time of his appointment, he need not be a resident of the City or State, but during tenure of office he shall reside within the City.** The City Manager shall be a full time employee and may engage in other business and employment activities, but only upon approval of a majority of the entire City Council. **His** The **City Manager's** salary shall be fixed by the Council. Upon ~~such his~~ termination **of the City Manager**, the Council may, in its discretion, provide termination pay.

7.10 PENALTIES FOR VIOLATION OF ORDINANCES. Any ordinance may provide for the punishment of those who violate its provisions. The punishment for the violation of any ordinance shall be at the discretion of the Municipal Judge, but shall not exceed **a fine of one thousand dollars (\$1,000), or imprisonment, or both, which may be allowed by law. the maximum permitted for fines and punishment as provided under state law.**

12.1 PLANNING COMMISSION. There shall be a City Planning Commission which shall consist of five members, ~~at least four~~ **all** of whom shall be qualified electors residing within the City and all of whom shall be appointed by the City Council for a term of five years, ~~none of whom shall hold any other position within the City. One member who does not reside within the City may be appointed, as long as he or she is a qualified elector residing within the Evans urban growth area as shown in the Comprehensive Plan.~~ **Members of the City Council shall be prohibited from serving on the Planning Commission.** Three members of the Commission shall constitute a quorum. Any member of the Commission may be removed by the Council for cause, after public hearing, if a hearing is requested by such member. The Commission shall adopt rules of procedure (bylaws), which shall include its process for election of a Chairperson and Vice-Chairperson, scheduling of meetings, and proceedings of meetings. All meetings and records of the Commission shall be open to the public. City staff shall keep minutes of the Commission's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its official actions.

12.5 ZONING BOARD OF APPEALS. There shall be a Zoning Board of Appeals which shall consist of five members, ~~at least four~~ **all** of whom shall be qualified electors residing within the City and all of whom shall be appointed by the City Council for a term of five years, ~~none of whom shall hold any other position within the City. One member who does not reside within the City may be appointed, as long as he or she is a qualified elector residing within the Evans urban growth area as shown in the Comprehensive Plan.~~ **Members of the City Council shall be prohibited from serving on the Zoning Board of Appeals.** Three members of the Board shall constitute a quorum. Any member of the Board may be removed by the Council for cause, after public hearing, if a hearing is requested by such member. The Board shall adopt rules of procedure (bylaws), which shall include its process for election of a Chairperson and Vice-Chairperson, scheduling of meetings, and proceedings of meetings. All meetings and records of the Board shall be open to the public. City staff shall keep minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its official actions.

Section 2. Election. The question of whether the City of Evans Home Rule Charter shall be amended as set forth above in Section 1 shall be submitted to the registered electors of the City of Evans at a regular municipal election to be held on April 8, 2014.

Section 3. Ballot Titles. The ballot titles setting forth the questions to be voted on shall be as follows:

1. Shall Section 3.4, Terms, be amended by Clarifying that Council members filling partial terms and filling vacancies will not be deemed to have served a term in office for purposes of determining term limits, and further providing that in no event shall a person serve more than ten continuous years as a Council member regardless of whether they are

- appointed or elected?
2. Shall Section 4.3 City Manager - Appointment and Qualifications, of the City of Evans Home Rule Charter, be amended by eliminating the requirement that the City Manager reside within the city and by making the language of the section gender neutral?
 3. Shall Section 7.10, Penalties for Violation of Ordinances, be amended to state that the fine shall be up to the maximum amount allowed under state law and established by Ordinance?
 4. Shall Chapter 12 of the Home Rule Charter be amended to require members of the Planning Commission and the Zoning Board of Appeals to be qualified electors residing within the City and to allow such members to hold other board or commission positions in the City?

Section 4. Publication and Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published, and posted as required by the City Charter and the adoption, posting, and publication shall be authenticated by the signature of the Mayor and City Clerk, and by the Certificate of Publication. The effective date of this Ordinance shall be April 8, 2014, provided there is approval by a majority of registered electors voting thereon as to each of the questions submitted to the voters as provided in Section 3 above. In the event that some, but not all, of the questions submitted to the voters have approval of the majority of the registered electors voting thereon, then, in that event, this Ordinance shall be amended to remove those proposed amendments in Section 1 above that do not receive a majority approval of the registered electors.

PASSED, AND APPROVED at a regular meeting of the City Council of the City of Evans on this 21st day of January, 2014.

CITY OF EVANS, COLORADO

ATTEST:

Raegan Robb, City Clerk

By: _____
Lyle Achziger, Mayor

PASSED, APPROVED, AND ADOPTED ON SECOND READING THIS 4th day of February, 2014.

CITY OF EVANS, COLORADO

ATTEST:

CITY OF EVANS, COLORADO

ORDINANCE NO. 586-14

AN ORDINANCE TO AMEND SECTIONS 3.4, 4.3, 7.10, 12.1, and 12.5 OF THE HOME RULE CHARTER OF THE CITY OF EVANS, COLORADO AND FURTHER PROVIDING THAT THE QUESTION FOR ADOPTION OF SUCH AMENDMENTS BE SUBMITTED TO THE REGISTERED ELECTORS AT THE REGULAR MUNICIPAL ELECTION WHICH WILL BE HELD ON APRIL 8, 2014

WHEREAS, the City of Evans is a home rule city duly organized and existing under the Constitution of the State of Colorado and the Home Rule Charter of the City; and

WHEREAS, pursuant to Section 1.5 of the Home Rule Charter, amendments to the charter must be submitted to the electors of the City of Evans; and

WHEREAS, an election shall be held on Tuesday, April 8, 2014, at which election there shall be submitted to the eligible electors of the City these amendments to the Home Rule Charter; and

WHEREAS, City Council and staff have recommended that Chapter 3.4, concerning Terms, should be amended to clarify how the provisions of the Colorado Constitution imposing term limits on elected officials apply to partial terms and terms filling vacancies.

WHEREAS, the Charter Committee has recommended that Section 4.3, concerning the City Manager – Appointment and Qualifications, be amended removing gender-specific language and by eliminating the requirement that the City Manager reside within the City; and

WHEREAS, City Council and staff have recommended that Chapter 7.10, concerning Penalties for Violation of Ordinances, should be amended to state that the fine shall be up to the maximum amount provided by state law, as set forth by ordinance; and

WHEREAS, City Council and staff have recommended that Chapter 12.1, concerning Zoning, should be renamed “Planning, Zoning, and Housing” and that such chapter should be amended by updating the language to comply with current law and procedures; and

WHEREAS, currently the language in Chapter 12 states that members of the Zoning Board of Appeals and the Planning Commission shall not hold any other position with the City, but does not address City Council members serving, and the revised Chapter 12 would add such language regarding the membership of the Zoning Board of Appeals and Planning Commission.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO:

SECTION 1. PROPOSED AMENDMENT: Chapter 12 of the Home Rule Charter of the City of Evans, Colorado, shall be amended to read as follows:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANS, COLORADO:

Section 1. Proposed Amendments. Sections 3.4, 4.3, 7.10, 12.1, and 12.5 of the Home Rule Charter of the City of Evans, Colorado, shall be amended to read as follows:

3.4 TERMS. The term of office of the Councilmen hereafter to be elected in accordance with the provisions of this Charter shall commence at the hour of 7:30 p.m. on the next Tuesday of April following their election, and shall continue during the term for which they shall have been elected and until their successors shall have been elected and qualified. In the year 1974, the first municipal election shall be held under the provisions of this Charter at which one Councilman shall be elected from each Ward for a term of four years and every four years thereafter. In the year 1976, the second municipal election shall be held under the provisions of this Charter in which one Councilman shall be elected from each Ward for a term of four years and every four years thereafter, and in the year 1976, the Mayor shall be elected for a term of two years. At every subsequent bi-annual election a Mayor shall be elected for a term of two years. For purposes of applying Article XVIII, Section 11 of the Colorado Constitution regarding limitation on terms, Council members filling partial terms of office and Council members filling vacancies, whether by election or appointment, are not deemed to have served a term in office. In no event shall a Council member serve more than ten continuous years, whether by election or appointment, regardless of whether a portion of that period was a partial term.

4.3 CITY MANAGER – APPOINTMENT AND QUALIFICATIONS. The Council may appoint a City Manager within ninety days after any vacancy exists in such position. The City Manager shall hold office at the pleasure of a majority of the Council. A City Manager shall be selected solely on the basis of his or her executive and administrative qualifications with special reference to his or her actual experience in and knowledge of accepted practice in respect to the duties of his or her office as hereafter set forth. The City Manager shall be a full time employee and may engage in other business and employment activities, but only upon approval of a majority of the entire City Council. ~~His~~The City Manager's salary shall be fixed by the Council. Upon ~~such his~~ termination of the City Manager, the Council may, in its discretion, provide termination pay.

7.10 PENALTIES FOR VIOLATION OF ORDINANCES. Any ordinance may provide for the punishment of those who violate its provisions. The punishment for the violation of any ordinance shall be at the discretion of the Municipal Judge, but shall not exceed the maximum permitted for fines and punishment as provided under state law.

12.1 PLANNING COMMISSION. There shall be a City Planning Commission which shall consist of five members, all of whom shall be qualified electors residing within the City

and all of whom shall be appointed by the City Council for a term of five years, Members of the City Council shall be prohibited from serving on the Planning Commission. Three members of the Commission shall constitute a quorum. Any member of the Commission may be removed by the Council for cause, after public hearing, if a hearing is requested by such member. The Commission shall adopt rules of procedure (bylaws), which shall include its process for election of a Chairperson and Vice-Chairperson, scheduling of meetings, and proceedings of meetings. All meetings and records of the Commission shall be open to the public. City staff shall keep minutes of the Commission's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its official actions.

12.5 ZONING BOARD OF APPEALS. There shall be a Zoning Board of Appeals which shall consist of five members, all of whom shall be qualified electors residing within the City

and all of whom shall be appointed by the City Council for a term of five years Members of the City Council shall be prohibited from serving on the Zoning Board of Appeals. Three members of the Board shall constitute a quorum. Any member of the Board may be removed by the Council for cause, after public hearing, if a hearing is requested by such member. The Board shall adopt rules of procedure (bylaws), which shall include its process for election of a Chairperson and Vice-Chairperson, scheduling of meetings, and proceedings of meetings. All meetings and records of the Board shall be open to the public. City staff shall keep minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its official actions.

Section 2. Election. The question of whether the City of Evans Home Rule Charter shall be amended as set forth above in Section 1 shall be submitted to the registered electors of the City of Evans at a regular municipal election to be held on April 8, 2014.

Section 3. Ballot Titles. The ballot titles setting forth the questions to be voted on shall be as follows:

1. Shall Section 3.4, Terms, be amended by Clarifying that Council members filling partial terms and filling vacancies will not be deemed to have served a term in office for purposes of determining term limits, and further providing that in no event shall a person serve more than ten continuous years as a Council member regardless of whether they are appointed or elected?
2. Shall Section 4.3 City Manager - Appointment and Qualifications, of the City of Evans Home Rule Charter, be amended by eliminating the requirement that the City Manager reside within the city and by making the language of the section gender neutral?

3. Shall Section 7.10, Penalties for Violation of Ordinances, be amended to state that the fine shall be up to the maximum amount allowed under state law and established by Ordinance?
4. Shall Chapter 12 of the Home Rule Charter be amended to require members of the Planning Commission and the Zoning Board of Appeals to be qualified electors residing within the City and to allow such members to hold other board or commission positions in the City?

Section 4. Publication and Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published, and posted as required by the City Charter and the adoption, posting, and publication shall be authenticated by the signature of the Mayor and City Clerk, and by the Certificate of Publication. The effective date of this Ordinance shall be April 8, 2014, provided there is approval by a majority of registered electors voting thereon as to each of the questions submitted to the voters as provided in Section 3 above. In the event that some, but not all, of the questions submitted to the voters have approval of the majority of the registered electors voting thereon, then, in that event, this Ordinance shall be amended to remove those proposed amendments in Section 1 above that do not receive a majority approval of the registered electors.

PASSED, AND APPROVED at a regular meeting of the City Council of the City of Evans on this 21st day of January, 2014.

CITY OF EVANS, COLORADO

ATTEST:

Raegan Robb, City Clerk

By: _____
Lyle Achziger, Mayor

PASSED, APPROVED, AND ADOPTED ON SECOND READING THIS 4th day of February, 2014.

CITY OF EVANS, COLORADO

ATTEST:

Raegan Robb, City Clerk

By: _____
Lyle Achziger, Mayor

COUNCIL COMMUNICATION

DATE: February 4, 2014

AGENDA ITEM: 9.A

SUBJECT: Resolution No. 05-2014 US Highway 85 Overlay District Master Plan (**CONTINUED TO February 18th, 2014**)

PRESENTED BY: Sheryl Trent, City Economic Development Director

INTRODUCTION:

Baseline Engineering Corporation respectively requests City Council to postpone action on the proposed US Highway 85 Overlay District Master Plan to the date of February 18, 2014. This continuance will allow time for the City of Evans Planning Commission to hold a public hearing to review the document and offer a recommendation to City Council.

BACKGROUND:

Staff sent out a notice on December 5, 2013 to all property and business owners within the Highway 85 Overlay District. This notice indicated the original schedule to review the Master Plan before the Planning Commission on January 14, 2014 and City Council on February 4, 2014. However on January 14 the Planning Commission did not have a quorum and was unable to open the case for review or public comment.

The public hearing for the US Highway 85 Overlay District Master Plan has been rescheduled to the next formal meeting of the Planning Commission that will be held on Tuesday, February 11, 2014 commencing at 6:00pm.

We therefore request that the document go before City Council during its regular meeting scheduled for Tuesday, February 18, 2014, rather than the original date of February 4, 2014.

RECOMMENDATION:

Staff recommends continuing the public hearing for Resolution No. 05-2014 – Approving the Highway 85 Overlay District Master Plan to the date of February 18, 2014.

CITY COUNCIL COMMUNICATION

DATE: February 4, 2014

AGENDA ITEM: 9.B

SUBJECT: Approval of Resolution No. 06-2014 Authorizing approval of an Agreement between the Colorado Water Resources and Power Development Authority and the City of Evans.

PRESENTED BY: Fred Starr, AICP, Public Works Director

PROJECT DESCRIPTION:

The City of Evans has applied for and been awarded a grant by the Colorado Water Resources and Power Development Authority in the amount of \$36,000.00 to be used for paying for costs associated with completing FEMA project worksheets, project management, engineering review and assessments of flooding on water and wastewater infrastructure damaged as a result of the September 2013 flood.

This grant requires NO matching funds from the City or other source.

STAFF RECOMMENDATION:

The City of Evans staff recommends that the City Council approve the grant agreement between the Colorado Water Resources and Power Development Authority and the City of Evans for a grant in the amount of \$36,000.

SUGGESTED MOTIONS:

“I move to approve Resolution No. 06-2014.”

“I move to deny the adoption of Resolution No. 06-2014”



COLORADO WATER RESOURCES & POWER DEVELOPMENT AUTHORITY

Logan Tower Bldg – Suite 620, 1580 Logan Street, Denver, Colorado 80203-1942
303/830-1550 · Fax 303/832-8205 · info@cwrrpda.com

November 22, 2013

City of Evans
Fred Starr
1100 37th street
Evans, CO 80620-2036

RE: Wastewater Flood Assistance Grant

Dear Mr. Starr:

The Colorado Water Resources and Power Development Authority (the "Authority") and the Water Quality Control Division (the "Division") have reviewed City of Evan's ("City") application for a flood assistance grant related to the City's Wastewater Treatment Facility. I am pleased to inform you that a \$36,000 grant is hereby offered to support a portion of the costs associated with completing FEMA project worksheets, funding for a project manager/coordinator to assist with the FEMA process to ensure eligibility for reimbursement, and engineering review and assessments of flood impacted water and wastewater infrastructure.

Funding is made possible through a coordinated effort between the Authority and the Division. A contractual agreement conveying the \$36,000 grant obligation is attached. **Please sign the agreement, make a copy for your records and return the executed agreement to:**

Colorado Water Resources and Power Development Authority
Attention: Keith McLaughlin
1580 Logan Street, Suite 620
Denver, Colorado 80203

The Division's staff will be responsible for managing this grant and the Authority will distribute the funds upon the Division's approval. Please contact Nicole Rollo at the Division at 303.692.2053 for payment disbursement information. Be aware that appropriate expenditure documentation must accompany requests for reimbursement (Attachment A) and the expenses noted on the invoice(s) incurred prior to the effective date of this agreement may be eligible for reimbursement. In addition, the completed FEMA worksheets, consultant reports/assessments, cost estimates, and/or itemized project manager/coordinator tasks must be submitted to the WQCD for approval prior to disbursement of final grant funds.

All requests for reimbursements should be submitted within 60 days after the contract expiration date.

Best wishes to you in successfully accomplishing this work.

Sincerely,

Keith McLaughlin
Finance Director

Attachment – City of Evan's Flood Impact Assistance Grant Agreement
Attachment A- Request for Reimbursement

cc: Louanna Cruz, WQCD via email
Nicole Rollo, WQCD via email
Barry Cress, DOLA via email



Colorado Department
of Public Health
and Environment

FLOOD ASSISTANCE GRANT AGREEMENT

This agreement made this 8th day of November, 2013 is by and between: the Colorado Water Resources and Power Development Authority (Authority) as approved by the Water Quality Control Division (WQCD), and, City of Evans herein after referred to as the "Applicant."

A grant of up to \$36,000.00 from funds derived from Administrative Fees collected for the

Drinking Water Revolving Fund

Water Pollution Control Revolving Fund.

The intended use of this grant is to cover up front costs associated with completing FEMA project worksheets, funding for a project manager/coordinator to assist with the FEMA process to ensure eligibility for reimbursement, and engineering review and assessments of flood impacted water and wastewater infrastructure. Work completed prior to the execution of this grant agreement but after the September 2013 flood events may be eligible for reimbursement

A. **In consideration of this agreement**, the parties agree to the following Scope of Work and deliverables:

The project consists of upfront costs associated with completing FEMA project worksheets, funding for a project manager/coordinator to assist with the FEMA process to ensure eligibility for reimbursement and engineering review and assessments of flood impacted wastewater infrastructure.

Deliverables include but are not limited to copies of:

- a. FEMA Worksheets
- b. Consultant reports/assessments
- c. Cost estimates
- d. Itemized project manager/coordinator tasks

B. **The Term of this agreement** shall continue through and including **May 8, 2015**.

C. **Matching Funds** will not be required.

D. **Reimbursements** to the Applicant for costs incurred on the project described in the scope of work will be processed by the Authority after approval of the request for reimbursement and invoices by the WQCD.

To receive compensation under this agreement, the Applicant shall submit a signed "Request for Reimbursement" and all applicable invoices. "Request for Reimbursement" is included hereto as "**Attachment A**."

Disbursements will be made as follows: Up to 75% of the award will be paid out with applicable invoices and Request for Reimbursement form. The remaining 25% of the award will be paid out after submission of the deliverables described in paragraph A have been submitted to WQCD Grants and Loans Unit.

All requests for reimbursements must be submitted no later than 60 days after the contract expiration date. No reimbursement will be made after that time and all remaining funds will be forfeited.

Requests for reimbursement shall be sent electronically to:

Nicole Rollo
Nicole.rollo@state.co.us
Colorado Department of Public Health and Environment
WQCD, Grants and Loans Unit
4300 Cherry Creek Drive South, B-2
Denver, Colorado 80246-1530

- E. Compliance with Article X, Section 20 of the Colorado Constitution (TABOR Amendment) shall be the responsibility of the Contractor. The funds used for this agreement are considered state dollars and may impact compliance with the TABOR Amendment.

Signatures:

By: _____  _____
Applicant's Authorized Representative (Designate Title) Date

FEIN: _____

WQCD:

By: *Smaranda Arz*
Grants & Loans Unit Manager

Date: 11-18-2013

Authority:

By: *[Signature]*
Finance Director

Date: 11-22-13

ATTACHMENT A
2013 FLOOD ASSISTANCE GRANT
REQUEST FOR REIMBURSEMENT FORM

TO: Colorado Department of Public Health and Environment
WQCD Grants and Loans Unit
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

ATTN: Nicole Rollo, WQCD GLU via email to:
nicoloe.rollo@state.co.us

FROM: City of Evans Phone #: 970-475-1170
Attn: Fred Starr
1100 37th Street
Evans, CO 80620-2036

Project Number: _____ Funds from 2013 Flood Assistance (WW)
Pay Request Number: _____ Check here for final payment _____
Expenditures: From: _____ To: _____

Grant Amount: \$ 36,000.00
Previous Amount Paid: \$ _____
Total Invoice Amount: \$ _____
Grant Contract Balance: \$ _____

The person, firm or corporation to whom the amount requisitioned is due, or to whom a reimbursable and advance has been made, is: _____

Please make check payable to: _____

This is to certify that the above expenses were incurred according to the grant agreement and invoices are attached.

Authorized Representative Signature Date

Authorized Rep (Typed or Printed) Title

To be completed by the Water Quality Control Division.

I hereby certify that all contract requirements have been met and the amounts billed are correct.
Payment is authorized.

Project Manager Date

CITY COUNCIL COMMUNICATION

DATE: February 4, 2014

AGENDA ITEM: 9.C

SUBJECT: **Approval of Resolution No. 07-2014 Authorizing approval of a Subgrant Agreement between the Northern Colorado Water Conservancy District and the City of Evans for the Evans Town Ditch Repair Project.**

PRESENTED BY: Fred Starr, AICP, Public Works Director

PROJECT DESCRIPTION:

The City of Evans has applied for and been awarded a grant by the Northern Colorado Water Conservancy District in the amount of \$20,000.00 for the purpose of making certain repairs to the Evans Town Ditch. Per the terms of the agreement, the grant is to be used to provide funds for technical assistance and/or the repairs of damages to the water supply infrastructure caused by the 2013 flooding. This grant will allow the City to make emergency repairs to the Evans Town Ditch which is necessary prior to the completion of permanent repair efforts. The estimated cost of the emergency repairs is \$63,750.00. The City will be required to provide \$6,666.00 in matching funds as a condition of the grant.

STAFF RECOMMENDATION:

The City of Evans staff recommends that the City Council approve the grant agreement between the Northern Colorado Water Conservancy District and the City of Evans for a grant in the amount of \$20,000.

SUGGESTED MOTIONS:

“I move to approve Resolution No. 07-2014.”

“I move to deny the adoption of Resolution No. 07-2014”



December 11, 2013

Fred Starr
City of Evans
1100 37th St.
Evans, CO 80620

e-mail: fstarr@evanscolorado.gov

Dear Fred:

Congratulations on being awarded a CWCB Flood Recovery Grant in Cycle #2, through Northern Water and the CWCB.

Attached you will find several documents:

1. The Subgrant Agreement. After you have read the agreement, and if you agree with the conditions of participation, please sign, date, and return a notarized, hard copy to Northern Water.
2. W9 form. Please complete and return to Northern Water.
3. Exhibit A – CWCB and Northern Water Grant Agreement (for your reference).
4. Exhibit B – Your grant application and Scope-of-Work. If the Scope-of-Work has changed or if more detail is requested, please revise and return to Northern Water along with your Subgrant Agreement.
5. Exhibit C - Reimbursement Request. Retain this attachment and use it to request reimbursement for qualifying project costs.
6. Exhibit D – Cost Documentation for Reimbursement Requests (2 tables).
7. Exhibit E – Cost Documentation for In-Kind or Hard Match (2 tables).

Please return the original signed Subgrant Agreement, Scope-of-Work (if revised), proof of insurance, and W9 at your earliest convenience to:

Northern Water
Attn: Amy Johnson
220 Water Avenue
Berthoud, CO 80513

- The subgrant requires the recipient to pay or provide an in-kind match for at least 25% of the project cost. If you cannot pay or provide the in-kind match for the minimum 25% above the amount you were awarded, the award will be adjusted or rescinded.
- If your original request was reduced, the reduction is noted on your Agreement.

- The grant end date for this project is October 31, 2015. All reimbursement requests and reporting are due to Northern Water before November 15, 2015.

We will require strict documentation. This award may be considered as income by the IRS. You should check with your tax advisor. Exhibits C, D, and E are required to obtain periodic reimbursement for costs you incur and documentation of your match. In order for your request for reimbursement to be submitted to the CWCB, you must have all documentation in order and delivered to Northern Water no later than three weeks prior to Northern Water's submittal date (see Schedule in Subgrant Agreement). Progress reports are required every 6 months (with the first one being due in 3 months: March 15, 2014) and a final report must be submitted with your final reimbursement request as described in the Subgrant Agreement.

Please review Paragraph #14 of the Subgrant Agreement for insurance requirements and submit the requested documentation when you return the signed Subgrant Agreement.

Your project will have oversight by Northern Water and the CWCB. Disbursement of payments will come through Northern Water from the CWCB. Additionally, as part of the grant, you authorize representatives of the Northern Water and the CWCB to access your property to view the project and progress, at mutually agreed upon times.

Please feel free to contact Jerry Gibbens or Amy Johnson at (800) 369-7246 or by e-mail at FloodRecoveryGrantProgram@northernwater.org with any questions you may have.

Sincerely,

Amy L. Johnson (electronically)

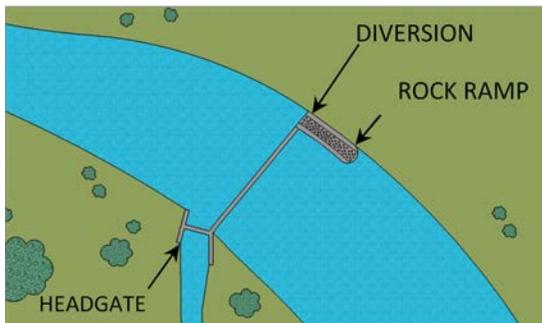
Amy Johnson, PE
Water Resources Engineer

rdm
Enclosures

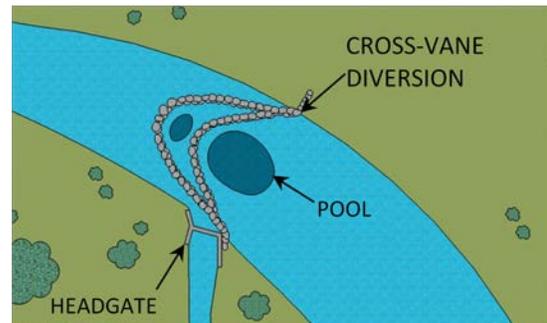


REBUILDING FLOOD-DAMAGED DIVERSION STRUCTURES TO BENEFIT MULTIPLE USES

Colorado Parks and Wildlife (CPW), the Colorado Water Conservation Board (CWCB), federal agencies and other stakeholders can assist municipalities, ditch and reservoir companies and other water users in reconstructing flood-damaged water diversion structures in a manner that will maintain historical water diversions while providing for fish and boat passage. CPW stream reconstruction specialists and engineers are available to share conceptual designs for structures successfully used throughout Colorado on all sizes of streams. These designs ensure that water users can fully divert under their decreed water rights while allowing fish access to the entire reach of stream, at little to no additional costs. Designs range from the traditional concrete diversion structure with associated rock ramps to stand-alone boulder cross-vanes, or a combination of concrete diversion structures and boulder cross-vanes.



TRADITIONAL DIVERSION WITH ROCK RAMP



BOULDER CROSS-VANE DIVERSION



TRADITIONAL DIVERSION WITH ROCK RAMP



BOULDER CROSS-VANE DIVERSION

Potential benefits of these types of diversion structures include:

- Allowing full diversion of decreed water rights while facilitating fish and boat passage
- Increasing habitat connectivity for fish
- Improving recreational potential and reducing hazards
- Withstanding high flows (boulder cross-vane diversions on Boulder and South Boulder Creek survived the recent flooding, minus a few boulders)
- Serving as a temporary diversion structure during this period of high construction costs, or while the owner pursues additional financial assistance
- Enhancing stream health without impacting ability to fully divert and use water

If you are interested in exploring this approach to rebuilding, please contact:

Ken Kehmeier, Colorado Parks and Wildlife
317 W. Prospect
Ft. Collins, CO 80526
ken.kehmeier@state.co.us

FUNDING SOURCES INCLUDE:

CWCB Emergency Loans: Available to fund repair or replacement of raw water supply structures damaged by flood, including river diversion dams, ditch rehabilitation, and measuring devices; can incorporate design elements to facilitate fish passage. Terms: 3 years of no payment and zero interest + 27 yrs of payments at current CWCB interest rates. (Contact Anna Mauss at 303-866-3441, ext. 3224; anna.mauss@state.co.us).

CWCB Fish and Wildlife Resources Fund: Grants to owners of existing water supply facilities to help balance between development of the state's resources and protection of the state's fish and wildlife resources. Can be used for construction projects designed to directly mitigate or significantly reduce the environmental impacts of existing water facilities. (Contact Chris Sturm at 303-866-3441, ext. 3236; chris.sturm@state.co.us).

U.S. Department of Agriculture: A list of USDA funding sources is attached to this fact sheet.

For information on CWCB's loan and grant programs, see
<http://cwcb.state.co.us/LoansGrants/Pages/LoansGrantsHome.aspx>

OTHER RESOURCES:

Trout Unlimited can provide seed money to help with fish-friendly rebuilding efforts; assist in seeking grants for restoration projects, and provide volunteer support on projects (eligible as match for FEMA). (Contact Stephanie Scott at sscott@tu.org).

U.S. Fish and Wildlife Service can provide assistance in project design, hydrologic analysis and some funding towards improving or establishing "fish friendly" passage designs, irrigation diversions, road culverts and bridges and the removal of obsolete dams and instream structures. Projects must have a fish and wildlife tie and focus on state or federal protected species. Funding decisions are based on region-wide needs, USFWS priorities and needs identified by USFWS's various aquatic resource partners. (Contact Scott Roth at scott_roth@fws.gov or Pam Sponholtz at Pamela_sponholtz@fws.gov).

U.S. Department of Agriculture Programs – Potential uses for Colorado Flood Recovery

NRCS Program	Relevance to Flood Recovery	Time Frame	Who Is Eligible	How To Apply	What Is Provided	Comments
Emergency Watershed Protection Program (EWPP)	Financial and technical assistance for sediment and debris removal, stream bank and channel stabilization, or dike/levee repairs. Some limited potential to assist with stream channel repairs associated with irrigation structures.	Predominantly short term.	Public and private landowners are eligible for assistance but must be represented by a project sponsor. Sponsors are a local unit of government.	The Sponsor applies for NRCS assistance via a letter to the NRCS State Conservationist within 60 days of the flood. Sponsor and NRCS work with affected land owners to identify and prioritize recovery funding needs.	EWPP provides varying amounts of technical assistance and 75% of cost for installing eligible recovery measures. Recovery measures may be temporary or permanent measures.	Project eligibility limits. Funding availability is subject to congressional appropriation. NRCS EWPP Program Contact: John Andrews 720-544-2834
Emergency Watershed Protection Flood Plain Easements (EWP-FPE)	Financial and technical assistance to purchase a permanent easement and restore the floodplain to natural conditions where it is a more economical and prudent approach to reducing a threat to life or property.	Long term.	Private landowners within the floodplain. A project sponsor is required for projects involving the conversion of residential or other developed land uses from the floodplain. The Sponsor is required to purchase the remaining property after structures are removed.	Agricultural landowners apply directly to NRCS local offices. For properties with residential or other land use requiring removal of structures the landowners work with a local EWP Sponsor to make an application to NRCS.	NRCS will pay up to 100% of the easement value and up to 100% of the costs for easement restoration. For residential housing, NRCS will pay up to 100% of the easement value and up to 100% of the structure's value if the landowner chooses to have it demolished or relocated.	Project eligibility limits. Funding availability is subject to congressional appropriation. NRCS EWP-FP Program Contact: John Andrews. 720-544-2834
Environmental Quality Incentive Program (EQIP)	Financial and technical assistance for Repair replacement of on farm irrigation systems. Some limited potential for off farm irrigation systems. Potential for land reclamation of ag land damaged by overland flood flows.	Long Term. Competitive grant process.	Assistance provided to individuals for use on agricultural land.	Individual submit an application for EQIP assistance through their local NRCS office.	EQIP provides 100% of needed technical assistance and an incentive payment of typically 50%-75% of cost to construct required conservation practices.	Program availability for new contracts may be altered by pending legislation to reauthorize the Farm Bill. NRCS EQIP Program Contact: Dawn Jackson. 720-544-2805
Wildlife Habitat Incentive Program (WHIP)	Potential use for bank stabilization, channel modification, and vegetation establishment to develop and improve wildlife habitat.	Long Term. Competitive grant process	Assistance provided to individuals for use on agricultural and nonindustrial private forest land.	Individual submit an application for WHIP assistance through their local NRCS office.	WHIP provides 100% of technical assistance and an incentive payment typically in range of 50%-75% of cost to construct habitat improvement measures.	Applications for new projects are on hold pending legislation to reauthorize the Farm Bill. WHIP fund availability is aligned to National & State priorities. Preble's Mouse habitat is a priority issue in the flooded areas. NRCS WHIP Program Contact: Dawn Jackson. 720-544-2805
Wetland Reserve Program (WRP)	Potential use in flood plains to convert damaged property from agricultural use to permanent wetlands.	Long Term. Competitive grant process requiring submittal of application for EQIP assistance through local NRCS office.	Assistance provided to individuals for use on agricultural* land.		NRCS purchases 30 year or perpetual easement and shares cost of constructing measures necessary to restore wetland functions.	Program availability for new contracts may be subject to pending legislation. NRCS WRP Program Contact: Dawn Jackson. 720-544-2805

FSA Program	Relevance to Flood Recovery	Time Frame	Who Is Eligible	How To Apply	What Is Provided	Comments
Emergency Conservation Program (ECP)	Financial assistance for debris removal, fence restoration, grading, shaping and releveling ag land, and restoring conservation structures.	Predominantly short term.	Assistance provided to individuals for use on agricultural lands.	Individuals submit an application for assistance through their local FSA Office.	ECP provides financial assistance up to 75% of cost for installing eligible recovery measures, or up to 90% for Limited Resource producers.	FSA ECP Program Contact: Jenny Peterson 720-544-2895
Emergency Loan Program	Provides emergency loans to help producers recover from production and physical losses due to drought, flooding, other natural disasters or quarantine.	Must apply within 8 months of the county's disaster or quarantine designation.	Owners or operators of land located in a county declared by the President or designated by the Secretary of Agriculture as a primary disaster area or quarantine area who suffered at least a 30% loss.	Individuals submit a loan application through their local FSA Office.	Producers can borrow up to 100% of actual production or physical losses, to a maximum amount of \$500,000. Interest rates vary with a loan term of one to twenty years.	FSA Emergency Loan Program Contact: Gary Wall 720-544-2892

**NORTHERN COLORADO WATER CONSERVANCY DISTRICT
SUBGRANT AGREEMENT
WITH
CITY OF EVANS
NORTHERN WATER CONTRACT NO. 2.54**

This **SUBGRANT AGREEMENT** is made and entered into as of the ____ day of _____, 20____, by and between Northern Colorado Water Conservancy District, a political subdivision of the State of Colorado, organized pursuant to the provisions of C.R.S. §§ 37-45-101, *et seq.*, whose address is 220 Water Avenue, Berthoud, Colorado 80513 (“Northern Water”), and **City of Evans**, whose address is **1100 37th St., Evans, CO 80620**.

WHEREAS, Northern Water is the Program Sponsor of Grant Funds from the Colorado Water Conservation Board (“CWCB”, also referred to herein as “State”) pursuant to a Grant Agreement dated October 31, 2013, between the CWCB and Northern Water (“Grant Agreement”), attached to this Subgrant Agreement as Exhibit A. As more fully described in the Grant Agreement, the Grant Funds are to be used to provide technical assistance and/or the repair of damages to water supply infrastructure caused by the 2013 flooding. Grant Funds may be used by water providers and water users in areas impacted by the September 2013 floods in the South Platte River Basin. The Grant Agreement’s definitions are incorporated herein.

In consideration of the mutual covenants and obligations herein expressed, Northern Water and Subgrantee agree as follows.

1. Grant Application. Subgrantee is approved by Northern Water and the CWCB to receive **\$20,000** in Grant Funds under Task 2 of the Grant Agreement for the **Evans Town Ditch Repair** (“Project”). The estimated total Project costs are **\$63,750** and the estimated completion date is _____.

2. Matching Funds. Subgrantee’s required matching funds are **\$6,666**. Subgrantee shall secure, or commit to provide in-kind services for, the full amount of matching funds and shall report to CWCB and Northern Water regarding the status of such funds upon request.

3. Subgrantee Work. “Subgrantee Work” means the technical and other services described in Activity 1 and/or construction described in Activity 2 of the Grant Agreement that Subgrantee will perform to complete the Project, as more fully described in the attached Exhibit B, Subgrantee Project Description.

- a. Subgrantee shall complete its Subgrantee Work and other obligations in accordance with the terms of this Subgrant Agreement and the Grant Agreement (including the Grant Agreement Exhibit A, Statement of Work, and Exhibit B, Performance Monitoring).
- b. As further described herein, Subgrantee is solely responsible for performance of all Subgrantee Work.

4. Time of Commencement and Completion of Subgrantee Work. This Agreement shall commence as of the date first stated above. Northern Water is not liable to pay or reimburse Subgrantee for any costs or expenses incurred prior to signing this agreement. Provided however, Subgrantee may request that i) Subgrantee Work completed after September 9, 2013 (date approved by CWCB as the date of the flood) qualify as an in-kind match, and that ii) Subgrantee Work performed after October 14, 2013 (date approved by CWCB as first date for reimbursement) qualify for reimbursement. Northern Water is under no obligation to grant such requests if they do not meet the criteria established herein. This Subgrant Agreement shall terminate no later than two (2) years from the effective date of the Grant

Agreement between Northern Water and the CWCB, or as sooner terminated or further extended by Northern Water. All Subgrantee Work for which it seeks reimbursement must be completed, and all invoices dated, prior to the termination date.

5. Subgrantee Responsibility. Northern Water will not oversee Subgrantee Work or instruct the Subgrantee on how to perform such Subgrantee Work. Subgrantee shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all studies, designs, plans, specifications, drawings, permits, construction and other Subgrantee Work, regardless of whether performed by the Subgrantee, its employees, or subcontractors. The Subgrantee shall only employ qualified subcontractors and persons for performance of the Subgrantee Work. Subgrantee warrants that all obligations performed hereunder shall be performed with the highest standards of care, skill and diligence in the industry, trade or profession. Further, Subgrantee shall procure all Goods and Services (as defined in the Grant Agreement) necessary to complete the Subgrantee Work. Northern Water is acting as a Program Sponsor only and will not procure, or provide, any Work, Goods or Services for Subgrantee.

- a. Pursuant to the terms of the Grant Agreement, Subgrantee shall permit the State and Northern Water to inspect, examine, excerpt, copy and /or transcribe Subgrantee's records during the Record Retention period (a period of three years following termination of the Grant Agreement or final payment). Subgrantee shall also permit the State and Northern Water to inspect or monitor Subgrantee's Work at all reasonable times and places during the term of this Subgrant Agreement, including any extensions.
- b. If the Subgrantee Work fails to conform to the requirements of the Grant Agreement or this Subgrant Agreement, the State may require Subgrantee to promptly bring the Subgrantee Work into conformity. If the Subgrantee Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Subgrantee to take necessary action to ensure that future performance conforms to the Grant Agreement requirements and may exercise the remedies available under the Grant Agreement, at law or in equity, either in lieu of or in conjunction with such corrective measures. Subgrantee shall be solely responsible and liable for all performance of the Subgrantee Work as specified in the Grant Agreement and this Subgrant Agreement including the specific Project description in the attached Exhibit B.

6. Subgrantee Employees. All persons employed by Subgrantee shall be considered Subgrantee's employee(s) for all purposes and shall not be employees of Northern Water or the State for any purpose. Nothing herein shall be construed to make Subgrantee an agent or employee of Northern Water for any purpose. Subgrantee and its employees and subcontractors shall in no way represent themselves to third parties as agents or employees of Northern Water in performance of the Subgrantee Work.

7. Payment of Taxes. As stated in the Grant Agreement at § 20.L., the State is exempt from certain federal and state taxes and prohibited from reimbursing Grantee or Subgrantee for such taxes. Therefore, Subgrantee shall be solely liable for paying such taxes. Payment of such taxes by Subgrantee may be included as an expense for purposes of calculating matching funds. Subgrantee indemnifies Northern Water for any liability resulting from nonpayment of such taxes.

8. Reimbursements, Progress Reports and Final Report. Northern Water will reimburse approved Project costs and expenses based on the reimbursement requirements and schedule in this paragraph 8, and as additionally described in the Grant Agreement. Total reimbursement under this Subgrant Agreement shall not exceed **\$20,000**.

- a. Northern Water will not distribute Grant Funds prior to Subgrantee performing approved Subgrantee Work, submitting the required reimbursement documentation, and CWCB approval (i.e., no “up front” money will be allocated).
- b. Subgrantee shall initiate any reimbursement requests by submitting the required forms and detailed invoices or receipts to Northern Water along with the reimbursement documentation described below.
- c. Northern Water will request grant reimbursement from CWCB once per month. In order for Subgrantee’s request for reimbursement to be included, Subgrantee must have all documentation delivered to Northern Water no later than three (3) weeks prior to Northern Water’s submittal date—see Reimbursement Request Schedule below. Subgrantee may not submit a reimbursement request to Northern more frequently than once per month. The Reimbursement Request Schedule may be amended by Northern Water or CWCB at any time. Northern Water prefers that reimbursement requests not be made until the amount reimbursed exceeds \$5000, unless i) the total Grant Funds awarded are less than \$5000, ii) it is the final reimbursement request, or iii) if prior arrangements are made with Northern Water.

Reimbursement Request Schedule

For inclusion in reimbursement requested by Northern Water on:	Submit request no later than:
December 20, 2013	November 29, 2013
January 31, 2014	January 10, 2014
February 28, 2014	February 7, 2014
March 28, 2014	March 7, 2014
April 25, 2014	April 4, 2014
May 30, 2014	May 9, 2014
June 27, 2014	June 6, 2014
July 25, 2014	July 4, 2014
August 29, 2014	August 8, 2014
September 26, 2014	September 5, 2014
October 31, 2014	October 10, 2014
November 28, 2014	November 7, 2014
December 26, 2014	December 5, 2014
January 30, 2015	January 9, 2015
February 27, 2015	February 6, 2015
March 27, 2015	March 6, 2015
April 24, 2015	April 3, 2015
May 29, 2015	May 8, 2015
June 26, 2015	June 5, 2015
July 31, 2015	July 10, 2015
August 28, 2015	August 7, 2015
September 25, 2015	September 4, 2015
October 30, 2015	October 9, 2015

- d. Reimbursement Documentation. For each reimbursement request, Subgrantee shall submit to Northern Water the required reimbursement forms with detailed invoices and receipts for all qualified incurred costs and expenses. Subgrantee shall also provide documentation of the minimum matching funds from expenditures or in-kind contributions, full documentation of Project progress, and an estimated percentage of Project completion. Subgrantee shall further certify that all grant conditions have been complied with in each reimbursement request. All forms, invoices and summary documentation must be submitted to Northern Water in an electronic format. The required Reimbursement Forms are attached as Exhibits C (CWCB Flood Recovery Grant Program Reimbursement Request), D (Cost Documentation Summary Worksheet, Reimbursement Request) and E (Cost Documentation Summary Worksheet, Recipient Contribution In-kind or Hard Match).
 - e. Progress Reports (every 6 months). Subgrantee shall submit a progress report, as described in the Grant Agreement Exhibits A and B, every 6 months. The progress report will summarize the completion or partial completion of Subgrantee Work and identify the estimated percentage of Project completion.
 - f. Final Report. At completion of the Project, the Subgrantee shall provide Northern Water a final report summarizing the Project as completed and documenting how Grant Funds were used. This report should contain photographs, summaries of meetings and engineering reports/designs, if applicable. Per CWCB requirements, a retainage of 5% of the total reimbursable amount will be withheld by Northern Water until receipt of the Subgrantee's final report and approval by CWCB.
 - g. Pursuant to the Grant Agreement, it is anticipated that the CWCB will pay approved invoices within 45 days of Northern Water's reimbursement submittal. Northern Water will reimburse Subgrantee within 15 days of receiving reimbursement from CWCB.
 - h. Subgrantee may use Grant Funds to cover reasonable and necessary costs to perform the Subgrantee Work, including contracted services, use of rented equipment, and supplies directly related to the Project. Grant Funds shall not be used to pay regular-time wages for budgeted permanent or seasonal employees, or to pay for use of equipment owned by the applicant. Grant Funds may be used to pay overtime wages for budgeted permanent or seasonal employees, or wages for temporary employees hired to perform Subgrantee Work directly related to the grant. Regular-time wages for budgeted employees and use of equipment owned by the Subgrantee used to perform work related to the Project may count towards the Subgrantee's match of in-kind services.
 - i. Reimbursements made to Subgrantee in error for any reason, including, but not limited to, overpayments or improper payments, may be recovered by i) deduction from subsequent payments, ii) requiring that Subgrantee return Grant Fund money to Northern Water (which will be immediately returned to CWCB), or iii) by other appropriate methods. Grant Funds shall be used only for eligible costs and expenses identified in the Grant Agreement and this Subgrant Agreement.
 - j. If Subgrantee later recovers, at any time, any of its reimbursed costs or expenses through a separate grant, program, or from other proceeds (such as insurance proceeds), the Subgrantee shall immediately notify Northern Water and the State, and Subgrantee shall immediately return to Northern Water (which will be immediately returned to CWCB) the amount of Grant Funds that Subgrantee recovered from the secondary source.
9. Reporting. Subgrantee shall comply with all reporting and audit requirements described in this Subgrant Agreement and the Grant Agreement, including Exhibit A (Statement of Work) and

Exhibit B (Performance Monitoring). Subgrantee shall make, keep, maintain and allow inspection and monitoring by the CWCB or Northern Water of its records pertaining in any manner to the Subgrantee Work performed pursuant to this Subgrant Agreement. Subgrantee is required to maintain its records for the same Record Retention Period (a period of three years following termination of the Grant Agreement or final payment) as described in the Grant Agreement.

10. Confidentiality and Conflicts of Interest. Subgrantee is subject to all Confidentiality and Conflicts of Interest requirements included in §§10 and 11 of the attached Grant Agreement.

11. Legal Authority. Subgrantee warrants that it possesses the legal authority to enter into this Subgrant Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Subgrant Agreement, or any part thereof, and to bind Subgrantee to its terms.

12. Licenses, certifications, approvals, insurance, permits, and other authorization. Subgrantee represents, warrants and certifies that at all times during the terms hereof, Subgrantee shall have and maintain, all insurance, certifications, approvals, licenses, permits, and other authorization required by law to perform its obligations hereunder, without reimbursement by the State or Northern Water or other adjustments in Grant Funds unless such Subgrantee Work is specifically included in the approved Subgrantee Work (for example, Project permitting under Activity 1) attached hereto as Exhibit B.

- a. Additionally, all employees, agents or subcontractors of Subgrantee performing Subgrantee Work under this Subgrant Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities.
- b. Subgrantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificates of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process.
- c. Any evocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Subgrantee to properly perform the terms of this Subgrant Agreement shall be deemed to be a material breach by Subgrantee and constitute grounds for termination of this Subgrant Agreement.

13. Project Engineering. It is Subgrantee's responsibility to assure that all engineering work (as defined in the Engineers Practice Act (§12-25-102(10), C.R.S.)) performed under Activities 1 or 2 of this grant is performed by or under the responsible charge of professional engineer licensed by the State of Colorado to practice Engineering. Northern Water and the State will not provide engineering services under this grant, neither expressly or implied, nor does approval of a Subgrantee grant application imply that Northern Water or the State have any oversight or responsibility for Project engineering or construction.

14. Insurance. Subgrantee shall obtain and maintain insurance as specified in § 13.B. of the Grant Agreement at all times during the term of this Subgrant Agreement. Subgrantees who do not provide insurance certificates verifying the insurance requirements specified in the Grant Agreement at §13.B. shall a) provide evidence of what insurance coverages are in place, and b) shall sign a waiver holding the State and Northern Water harmless in lieu of providing insurance at the levels specified in the Grant Agreement at §13.B., except that Worker's Compensation shall not be exempted when required by statute. A standard hold harmless waiver form shall be provided by Northern Water or the State.

15. Notice. Each individual identified below is the principal contact for purposes of notice in this paragraph. All notices shall be hand delivered with receipt required or sent by certified or registered

mail to such principal contact 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.

Northern Water:

Jerry Gibbens
Northern Colorado Water Conservancy District
220 Water Avenue
Berthoud, CO 80513
jgibbens@northernwater.org

Subgrantee:

Fred Starr
City of Evans
1100 37th St.
Evans, CO 80620
fstarr@evanscolorado.gov

16. **Governmental Immunity.** Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended.

17. **Indemnification.** Subgrantee shall indemnify, save, and hold harmless Northern Water, any affiliated entities of Northern Water and their directors, officers, employees, and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Subgrantee, or its employees, agents, or assignees pursuant to the terms of this Subgrant Agreement and the Grant Agreement; 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.

18. **CORA Disclosure.** To the extent not prohibited by federal law, this Subgrant Agreement is subject to public release through the Colorado Open Records Act, CRS §24-72-101, *et seq.*

19. **Illegal Aliens.** Subgrantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Subgrant Agreement. Subgrantee shall confirm the employment eligibility of all employees who are newly hired for employment to perform Subgrantee Work under this Subgrant Agreement, through participation in either the E-Verify Program or the department program established pursuant to CRS §8-17.5-102(5)(c).

- a. Subgrantee shall not contract with any subcontractor that fails to certify that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Subgrant Agreement.
- b. Subgrantee shall not use the E-Verify Program or the department program to undertake pre-employment screening of job applicants while performing this Subgrant Agreement.
- c. If Subgrantee obtains actual knowledge that a subcontractor performing work under this Subgrant Agreement knowingly employs or contracts with an illegal alien, Subgrantee shall:

- i. Notify the subcontractor and Northern Water within three (3) days that Subgrantee has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - ii. Terminate the subcontract with the subcontractor if the subcontractor, within three (3) days of receiving notice that Subgrantee has actual knowledge that the subcontractor is employing or contracting with an illegal alien, does not stop employing or contracting with the illegal alien; except that Subgrantee shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- d. Subgrantee shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. § 8-17.5-102(5).
- e. Northern Water may terminate this Subgrant Agreement, in whole or in part, due to Subgrantee's breach of any provision of this Illegal Alien paragraph and Subgrantee shall be liable for actual and consequential damages to Northern Water in the event of such a termination.

20. Breach and Remedies. Failure of the Subgrantee to perform any of its material obligations hereunder, in whole or in part, or in a timely or satisfactory manner, constitutes a breach. The Notice and Cure period defined and provided for in §14 of the Grant Agreement is applicable herein, in the event of a breach by either Northern Water or the Subgrantee. Northern Water or the State shall exercise all of the same remedies against the Subgrantee as defined and provided for in §15 of the Grant Agreement, if applicable.

21. Governing Law. This Subgrant Agreement shall be governed by the laws of the State of Colorado.

22. Force Majeure. Neither party shall be liable to the other party for any delay or inability to perform its obligations hereunder by reason of acts of God, acts of the public enemy, riot, civil commotion, insurrection, acts or failure to act of governmental authorities, war, or any other cause or causes beyond the party's reasonable control, and an appropriate extension to the schedules herein shall be granted, or requested from the State, in each such event of delay.

23. Legal Status of Natural Person. Subgrantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Subgrant Agreement.

24. Pursuant to §20 of the Grant Agreement, Subgrantee is subject to all provisions of the Grant Agreement.

25. This Subgrant Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

26. Entire Agreement. This Subgrant Agreement constitutes the entire agreement between Northern Water and Subgrantee regarding the subject matter hereof and replaces all prior written or oral agreements and understandings. It may be altered, amended, or repealed only by a duly executed written instrument.

EXHIBIT A

CMS#

STATE OF COLORADO
Colorado Water Conservation Board
Grant Agreement
with
Northern Colorado Water Conservancy District
Contract Number C150540

TABLE OF CONTENTS

1. PARTIES.....	1
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.....	1
3. RECITALS.....	1
4. DEFINITIONS.....	2
5. TERM and EARLY TERMINATION.....	3
6. STATEMENT OF WORK.....	3
7. PAYMENTS TO GRANTEE.....	4
8. REPORTING - NOTIFICATION.....	5
9. GRANTEE RECORDS.....	5
10. CONFIDENTIAL INFORMATION-STATE RECORDS.....	6
11. CONFLICTS OF INTEREST.....	6
12. REPRESENTATIONS AND WARRANTIES.....	7
13. INSURANCE.....	7
14. BREACH.....	8
15. REMEDIES.....	9
16. NOTICES and REPRESENTATIVES.....	10
17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE.....	11
18. GOVERNMENTAL IMMUNITY.....	11
19. STATEWIDE GRANT MANAGEMENT SYSTEM.....	11
20. GENERAL PROVISIONS.....	12
21. COLORADO SPECIAL PROVISIONS.....	14
22. SIGNATURE PAGE.....	16
23. EXHIBIT A: STATEMENT OF WORK.....	Exhibit A
24. EXHIBIT B: PERFORMANCE MONITORING.....	Exhibit B

1. PARTIES

This Grant Agreement (hereinafter called “Grant”) is entered into by and between Northern Colorado Water Conservancy District, 220 Water Ave., Berthoud, Colorado, 80513, a political subdivision of the State of Colorado, organized pursuant to the provisions of C.R.S. §§ 37-45-101, *et seq.*, (hereinafter called “Grantee” or “Northern Water”), and the STATE OF COLORADO acting by and through the Department of Natural Resources, Colorado Water Conservation Board (hereinafter called the “State or CWCB”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority for the agency entering into this Contract arises from Colorado Revised Statutes (CRS) 39-29-109(2)(c), 37-75-104(2)(c) and 37-75-102 et al., and Senate Bill 06-179 adopted by the 2006 General Assembly, and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The Water Supply Reserve Account (“WSRA”) provides money for grants and loans to complete water activities, which are broadly defined and include water supply and environmental projects and/or studies. The purpose of this grant is for Grantee to perform obligations under the CWCB Emergency Flood Assessment, Design and Recovery Grant by selecting qualified Subgrantees, using a Subgrantee application process, and awarding grant funds to complete the repair of damages to water supply infrastructure caused by the 2013 flooding. The Grantee will act as the Program Sponsor of the Grant. Additional information on the project is included in Exhibit A – Statement of Work. Grantee’s role as Program Sponsor is more specifically outlined in Tasks 1, 2 and 3 in the attached Exhibit A-Statement of Work. The selected Subgrantees are solely responsible for providing the technical and other services described in Activity 1 and construction described in Activity 2.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

“Budget” means the budget for the Work described in **Exhibit A**.

B. Evaluation

“Evaluation” means the process of examining Grantee’s Work and Subgrantee’s Work, and rating it based on criteria established in **§19** and **Exhibit A**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work) and **Exhibit B** (Performance Monitoring).

D. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee and Subgrantee renders hereunder.

E. Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

F. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

G. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

H. Program

“Program” means the CWCB Emergency Flood Recovery Assessment, Design, and Recovery water activity which utilizes funds provided from the Water Supply Reserve Account grant program.

I. Program Sponsor

“Program Sponsor” means the entity administering the Program pursuant to Tasks 1, 2 and 3 in Exhibit A and the terms herein, and more specifically the Grantee.

J. Review

“Review” means examining Grantee’s Work and Subgrantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§19** and **Exhibit A and Exhibit B**.

K. Services

“Services” means the required services to be performed by Grantee and Subgrantee pursuant to this Grant.

L. Subgrantee

“Subgrantee” means third-parties selected by Grantee to perform Subgrantee’s Activities 1 and 2 as described in Exhibit A-Statement of Work. The selected Subgrantees are solely responsible for providing the technical and other services described in Activity 1 and construction described in Activity 2 as described in the attached Exhibit A-Statement of Work.

M. Work

“Work” means the tasks Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A and Exhibit B**, including the selection of Subgrantees, using a Subgrantee application process, to complete the repair of damages to water supply infrastructures caused by the 2013 flooding. References to “Subgrantee Work” means the technical and other services described in Activity 1 and construction described in Activity 2 that Subgrantee will perform as described in the attached Exhibit A-Statement of Work.

N. Work Product

“Work Product” means the tangible or intangible results of Grantee’s Work and Subgrantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM and EARLY TERMINATION.

A. Initial Term-Work Commencement

The Parties’ respective performances under this Grant shall commence after the Agreement is signed by the State Controller or delegate (“Effective Date”). The termination date is two (2) years from the effective date unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

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

6. STATEMENT OF WORK

A. Completion

Grantee shall complete the Work and its other obligations, as described herein and in Exhibit A (as specifically outlined in Tasks 1, 2 and 3), two (2) years from the effective date. The State shall not be liable to compensate Grantee for any Subgrantee Work performed prior to October 14, 2014 or after the termination of this Grant. Provided however, Subgrantee Work performed after September 9, 2013 may qualify as in-kind services or contributions.

B. Goods and Services

Grantee shall act as Program Sponsor and shall complete the tasks identified in Exhibit A using a Subgrantee application process. Goods provided and Services and Work performed by the Subgrantees, shall be in accordance with Grantee contracts to Subgrantees and accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee’s or Subgrantees’ employee(s), respectively, for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **\$1,800,000**, as determined by the State from available funds. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**. The maximum amount payable by the State to Grantee during each State fiscal year of this Grant shall be:

\$1,800,000 in FY2014
\$1,800,000 in FY2015, minus any funds expended in FY2014
\$1,800,000 in FY2016, minus any funds expended in FY2014 and FY2015

B. Payment

i. Interim and Final Payments

Any payment allowed under this Grant or in **Exhibit A** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant, including the attached Exhibits. Grantee shall initiate any payment requests by submitting Subgrantee invoices and associated documentation to the State in the form and manner set forth and approved by the State, as frequently as monthly, or as frequently as agreed upon by Northern and CWCB.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee and approved Subgrantees. Uncontested amounts not paid by the State within 45 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State’s current fiscal year. Therefore, Grantee’s compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State’s liability for such payments shall be limited to the amount remaining of such encumbered funds. If State funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State’s sole discretion, payments made to Grantee in error for any documented reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee, if Grantee is able to recover from Subgrantees, by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein (as more specifically described in Exhibit A), and/or in the Budget. The State’s total consideration shall not exceed the maximum amount shown herein.

8. REPORTING – NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

Grantee shall comply with and require its Subgrantees to comply with, all reporting requirements, set forth in **Exhibit A and Exhibit B**.

B. Litigation Reporting

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

C. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

D. Subgrants

Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the Record Retention Period) until the last to occur of the following: (i) a period of three years after the date this Grant is completed or terminated, or (ii) final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Grantee shall permit the State to inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work (including Subgrantee's Work) at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee and its Subgrantees to promptly bring the Work into conformity with Grant requirements. If the Work (including Subgrantee's Work) cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee with the Subgrantee's assistance, when needed, to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or inequity in lieu of or in conjunction with such corrective measures. Subgrantee will be responsible for and will be liable for any performance of Subgrantee Work as specified in Exhibit A, Subgrantee Activities 1 and 2.

C. Monitoring

Grantee shall permit the State to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other

procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein if so requested in writing by the State.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions on this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. The State shall notify the Grantee in writing and notate any State records and information that are classified by the State as being "Confidential" and given to the Grantee in connection with its performance hereunder. The provisions of this Section 10 shall only apply to such notated records and information.

A. Confidentiality

Grantee shall keep all State records and information (classified as confidential in accordance with Paragraph 10. immediately above) confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records classified as confidential and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records classified as confidential in accordance with this Section 10 or disclosure of other State designated confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Specifically related to documents designated in writing by the State as confidential documents in accordance with this Section 10, Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, or agents, and that are limited and specifically related to the disclosure of records designated in writing by the State as confidential records pursuant to this §10.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder and as more specifically described in Exhibit A- Statement of Work (Tasks 1, 2, and 3) in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantees Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the receipt of the Notice to Proceed it will have, if applicable per Exhibit A, Statement of Work and pursuant to this Grant, at all times during the term hereof, at its sole expense, all insurance, certifications, approvals, licenses, permits, and other authorization required by law to perform its obligations hereunder. Grantee shall require as a term and condition of its contracts with any Subgrantee that all Subgrantees certify that they have, at their sole expense, all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees of Grantee performing services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. The Grantee shall require, in any contract with the Subgrantees, that any Subgrantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificates of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall require each Grant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Certificates

Grantee shall provide certificates showing Grantee insurance coverage required above to the State within 30 business days of the effective date of this agreement, and no later than 15 days prior to the expiration date of any such coverage, Grantee shall deliver to the State certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, Grantee shall, within 30 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.A. as it pertains to Grantee.

B. Subgrantees

As required by the State, Grantee shall require as a term and condition of its contract with any Subgrantee that each Subgrantee providing Goods or Services or performing Subgrantee Work, in connection with this Grant, certifies that it has insurance substantially similar to the following in **§13.B.i.** through **13.B.viii.**, or in the alternative, complies with **§13.B.ix.** (Subgrantees May Hold the State and Grantee Harmless):

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of employees acting within the course and scope of their employment, if required.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket Grantual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, additional insurance shall be immediately obtained to restore the full aggregate limit and furnish a certificate or other document satisfactory to Grantee showing compliance with this provision.

iii. Automobile Liability

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

iv. Primacy of Coverage

Coverage required shall be primary over any insurance or self-insurance program carried by Grantee or the State.

v. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State.

vi. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

vii. Additional Insured

Subgrantees shall name the Grantee and the State as additional insured on the Commercial General Liability (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

viii. Certificates

Subgrantee shall provide insurance certificates thirty business days of the Notice to Proceed from the Grantee to the Subgrantee. In addition, upon request by the State at any other time during the term of this Grant or any sub-grant, Subgrantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13.**

ix. Subgrantees May Hold the State and Grantee Harmless

Subgrantees who do not provide insurance certificates verifying the insurance requirements specified above in §13.B. shall a) provide evidence of what insurance coverages are in place, and b) shall sign a waiver holding the State and Grantee harmless in lieu of providing insurance at the levels specified above, except that Worker's Compensation shall not be exempted when required by statute. A standard hold harmless waiver form shall be approved by the State.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or

similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Grants with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or sub-Grants. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to

such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Craig Godbout
Program Manager
Water Supply Planning Section
Colorado Water Conservation Board,
1580 Logan Street, Suite 200
Denver, CO 80203
303-866-3441 ext. 3210
craig.godbout@state.co.us

B. Grantee:

Jerry Gibbens
Northern Colorado Water Conservancy District
220 Water Avenue
Berthoud, CO 80513-9245
jgibbens@northernwater.org

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee and Subgrantees in the performance of its obligations under this Grant shall be the nonexclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's nonexclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the Grantee, its departments, board of directors, and employees is controlled and limited by the provisions of the Governmental Immunity Act.

19. STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Grant management system, to the extent outlined in Exhibit B.

Grantee's performance of its Tasks 1, 2 and 3 shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Grant Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost

and timeliness as each pertains to Task 1, 2 and 3. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations, as further contained in Exhibit B. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating by CWCB shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress. The State shall be solely responsible for monitoring, evaluation and reviewing, pursuant to CRS §24-103.5-101, Subgrantee's Work (as further described in Activities 1 and 2 in the Statement of Work-Exhibit A).

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder and as more fully described in Exhibit B, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the CWCB, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and SubGrants

As described in Exhibit A-Statement of Work, Grantee will enter into a Subgrant agreement with Subgrantees. The selected Subgrantees are solely responsible for providing the technical and other services described in Activity 1 and construction described in Activity 2. All assignments, subgrants, or Subgrantees approved by Grantee are subject to all of the provisions hereof.

B. Binding Effect

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification-General

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

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by both parties in an amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF 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 automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Grant shall govern the relationship of the State and Grantee. 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,
- ii.** The provisions of the main body of this Grant,
- iii.** Exhibit A and Exhibit B.

J. Severability

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

K. Survival of Certain Grant Terms

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

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 *et seq.* Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Subgrantees shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee or Subgrantee for them.

M. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, *et seq.*

21. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Grants except where noted in italics.

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

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

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

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

C.3. GOVERNMENTAL IMMUNITY.

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

D.4. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E.5. COMPLIANCE WITH LAW.

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F.6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

G.7. BINDING ARBITRATION PROHIBITED.

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

H.8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

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

I.9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J.10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[*Not Applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, *et seq.*; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K.11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] Grantee certifies, warrants, and agrees that it does not knowingly employ or Grant with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant or enter into a Grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the Granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or Granting with an illegal alien for work under this Grant, (c) shall terminate the subGrant if a Subgrantee does not stop employing or Granting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the Granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 *et seq.*, the Granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

L.12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 *et seq.*, and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Grant.

SPs Effective 1/1/09

[END OF SPECIAL PROVISIONS]

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 align="center">GRANTEE</p> <p align="center">Northern Colorado Water Conservancy District</p> <p>By: <u>Eric W. Wilkinson</u> Print</p> <p>Title: <u>General Manager</u></p> <p><u><i>Eric W. Wilkinson</i></u> *Signature</p> <p>Date: <u>OCTOBER 31, 2013</u></p>	<p align="center">STATE OF COLORADO</p> <p align="center">John W. Hickenlooper GOVERNOR</p> <p align="center">Department of Natural Resources Mike King, Executive Director</p> <p>By: <u><i>Rebecca Mitchell</i></u></p> <p>Name: <u>Rebecca Mitchell</u> <u>Section Chief, Water Supply Planning</u> <u>Colorado Water Conservation Board</u></p> <p>DATE: <u>10-31-13</u></p> <p>Signatory avers to the State Controller or delegate that Grantee has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p>
<p>2nd Grantee Signature if Needed</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW</p> <p align="center">John W. Suthers, Attorney General</p> <p>By: _____ N/A Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

By: *Susan Borup*

Susan Borup, Controller, Department of Natural Resources

Date: 10/21/13

Exhibit A
STATEMENT OF WORK

WATER ACTIVITY NAME – Emergency Flood Recovery Assessment, Design, and Recovery

GRANT RECIPIENT – Northern Colorado Water Conservancy District

FUNDING SOURCE –Water Supply Reserve Account (“WSRA”), South Platte Basin Roundtable

GENERAL DESCRIPTION OF PROJECT

The purpose of this grant is for Northern Water to perform obligations under the CWCB Emergency Flood Recovery Assessment, Design and Recovery Grant by selecting qualified Subgrantees, using a Subgrantee application process, and awarding grant funds to complete the repair of damages to water supply infrastructure caused by the 2013 flooding. Northern Water’s role as Program Sponsor is more specifically outlined in Tasks 1, 2, and 3 below. The selected Subgrantees are solely responsible for providing the technical and other services described in Activity 1 and construction described in Activity 2 also shown below.

The September 2013 flood caused remarkable damage in the South Platte River Basin. Reservoirs, diversions, and ditches have been damaged and, in some cases, destroyed in many areas. For others, the water infrastructure is intact, but the river or stream has moved so that it is no longer possible to divert water for the decreed beneficial use(s). Riparian areas have also been severely impacted and river re-channelization is severe in many areas.

In reaction to these requests the CWCB, on September 25, 2013, and October 21, 2013 approved a \$1.8 M grant to be used for flood recovery purposes with Northern Water acting as the Program Sponsor and distributing grant funds in accordance with CWCB criteria, subject to review by CWCB. CWCB has directed that the funds made available under the grant are to be used by water users and water providers (hereinafter referred to as Subgrantees) as “seed money” to perform damage assessments, and facilitate loan and/or additional grant applications which may be required to fund the full cost of needed repairs, master planning, engineering and permitting for projects, as well as to accomplish initial needed repairs and construction that will assist Subgrantees in getting back online temporarily or permanently.

Subgrantees do not have adequate financial and technical resources to initiate the rehabilitation process, yet have a need to act expeditiously in light of the pending storage season and the 2014 irrigation season. Therefore, it is critical to provide initial emergency grants as soon as possible, recognizing that further clarifications regarding specific fund distribution criteria may be needed. Examples of allowable short term assistance may include, but not limited to, headgate and ditch repair and clean up, i.e. projects that are “shovel ready”.

CWCB has been asked to take a leadership role in supporting impacted areas. Federal funds may not be at adequate funding levels, or dispersed in a timely manner to support needed repair of the water infrastructure in areas of the South Platte Basin affected by the 2013 flooding. Furthermore, flood insurance typically does not exist nor does it cover this infrastructure.

Neighboring Subgrantees are encouraged to work collaboratively and cooperatively to minimize costs and to address challenges associated with river re-channelization or structure relocation. Funds could be used to further determine the best course for restoring the river channel. At the Subgrantee’s discretion, they may partner with Colorado Parks and Wildlife, CWCB, and non-governmental organizations to incorporate fish and paddler friendly designs where possible.

TASKS TO BE PERFORMED BY GRANTEE

Task 1: Selection of Subgrantees and Distribution of CWCB WSRA Grant Funds by Northern Water to Subgrantees

Description: To facilitate the distribution of CWCB WSRA Grant Funds (funds), Northern Water will solicit, review and approve in coordination with CWCB staff, grant applications from qualifying Subgrantees. Upon approval, Northern Water will provide a Notice to Proceed to the Subgrantees and will distribute grant funds as reimbursements for approved expenditures to Subgrantees. Expenditures of funds by approved Subgrantees can be used to fund two types of activities: Technical Services Seed Money (Activity 1); and Assistance for Shovel Ready Projects (Activity 2). All applicants must be in flood impacted areas within the South Platte Basin and working to repair and/or recover water infrastructure impacted

by the September 2013 floods. Applicants also must be holders of decreed perfected water rights for agricultural, domestic, municipal, and/or industrial uses associated with the infrastructure for which grant funding is requested. Federal and State agencies are not eligible to receive grant funds.

Reimbursement to Subgrantees: Northern Water must provide documentation (including invoices) from its Subgrantees of qualified incurred expenses to CWCB in order to receive reimbursement of those qualified expenditures from the approved grant funds. Northern Water may submit this documentation on a monthly basis, or as frequently as agreed upon by Northern and CWCB. Once accepted by CWCB, the documents will be processed for payment. The request for payment must include a description of the work accomplished by activities associated with Task 1. All products, data and information developed as a result of this grant must be provided to the CWCB in electronic format as part of the project documentation. This information will in turn be made widely available to Basin Roundtables and the general public and help promote the development of a common technical platform.

Actual reimbursement of grant funds shall be based on required documentation showing final project costs and other grant funding from other sources used to pay project costs.

CWCB reserves the right for CWCB or Northern Water to perform on-site observations of any project funded by this grant throughout the duration of the grant to ensure that the actual progress is consistent with reported progress, and that the work is otherwise consistent with the grant application.

Task 2: Progress Reports

Northern Water shall submit a progress report to CWCB every 6 months. The progress report shall summarize the projects for which funds were used, and contain by reference each of the final reports required of water users receiving funds. The progress report shall describe the completion or partial completion of the CWCB Emergency Flood Recovery Assessment, Design, and Recovery Grant program, identifying the estimated percentage of program completion.

Northern Water shall require the Subgrantees to submit a final report summarizing each project and documenting how each project was completed. Northern Water will provide CWCB every 6 months a copy of each Subgrantee's final report, which may contain photographs, summaries of meeting, engineering reports/designs, and as-built drawings.

Task 3: Final Deliverable

At the conclusion of fund distribution Northern Water will send the last of the 6 month progress reports to CWCB.

ACTIVITIES TO BE PERFORMED BY SUBGRANTEES:

Subgrantee Activity 1:

Technical Services Seed Money - Up to \$25,000 may be made available per project/structure to be used for technical services needed to prepare the project for construction, including collaborative master planning for a stream or stream reach, engineering, permitting, or the preparation of documents required for loan or other grant applications. Technical Services Seed Money grants would be limited to 75%, up to \$25,000 (whichever is less), of the total planning, engineering and permitting costs for each project or structure that will not be reimbursed or provided from other non-water user financial sources. The remaining funding required must be matched from other sources or in-kind planning, engineering, or permitting services provided or paid for by the Subgrantee.

Grants for technical assistance involving multiple water users (each with a separate diversion point) working cooperatively and collaboratively, such as for re-channelization of a stream reach or combining diversion points or diversion structures, may be approved for up to \$25,000 per diversion point involved in the collaborative project, not to exceed 75% of the total cost of the work not reimbursed from other funding sources (i.e. if three water users combine efforts, the maximum request could be \$75,000, and to receive a maximum grant of \$75,000, the total qualifying costs for the project not reimbursed from other funding sources would equal or exceed \$100,000). In these cases, a single application should be submitted with one of the Subgrantees identified as the project representative; however, each applicant will be a signatory Subgrantee. That portion of the grant allocated to each of the involved Subgrantees will count towards each Subgrantee's maximum award under this grant program (see Northern Colorado Water Conservancy District's Application Instructions).

Subgrantee Activity 2:

Assistance for Shovel Ready Projects - Up to \$20,000 may be made available for initial construction, which could be part of the cost sharing financing requirements of other non-CWCB financial assistance programs or in-kind services. This type of grant would be limited to 75%, up to \$20,000 (whichever is less), of the total construction costs for each project or structure that will not be reimbursed or will not be provided from other non-water user financial sources. The remaining funding required must be matched from other sources or in-kind construction services provided or paid for by the Subgrantee.

Grants for shovel ready projects involving multiple water users (each with a separate diversion point) or multiple projects may be approved for up to \$100,000 and may include up to five projects or structures. In the case of collaborative, cooperative projects, a single application should be submitted with one of the Subgrantees identified as the project representative; however, each applicant will be a signatory Subgrantee. The amount allocated to each entity involved in the cooperative project seeking the grant will count towards each Subgrantee’s maximum award under this grant program (see Northern Colorado Water Conservancy District’s Application Instructions).

Engineering: It shall be the Subgrantee’s responsibility to assure that all engineering work (as defined in the Engineers Practice Act (§12-25-102(10) C.R.S.) performed under activities 1 or 2 of this grant shall be performed by or under the responsible charge of professional engineer licensed by the State of Colorado to practice Engineering. Northern Water and CWCB will not provide engineering services under this grant, neither expressly or implied, nor does approval of a grant application imply that Northern Water or CWCB have any oversight/responsibility for project engineering or construction.

PROJECT BUDGET:

Total Costs					
		WSRA Statewide*	WSRA Basin*	Subgrantee Matching Funds**	Total Project Costs**
Task 1: Distribution of CWCB WSRA Grant Funds by Northern Water to Subgrantees	Activity 1	\$1,000,000	\$200,000	\$400,000	\$1,600,000
	Activity 2	\$500,000	\$100,000	\$200,000	\$800,000
Task 2: Project Reporting		0	0	0	0
Task 3: Final Deliverables		0	0	0	0
Total		\$1,500,000	\$300,000	\$600,000	\$2,400,000

* Allocation of funds among Activity 1 and Activity 2 are estimates only. Allocations may be revised by Northern Water and CWCB based on the application requests.

** Represents a minimum level of non-CWCB funding by Subgrantees reflecting the allocation of funds among Activity 1 and Activity 2 as indicated above. No money or matching funds will be provided by Northern Water. Northern Water will be acting as a Program Sponsor only to administer the grants.

SCHEDULE:

Task	Start Date	Finish Date
Task 1	Contract effective date	Contract termination date
Task 2	6 Months from contract effective date	See Task 3
Task 3	(N/A)	30 days from Contract termination date

Exhibit B
Northern Colorado Water Conservancy District
Water Supply Reserve Account Grant
Performance Monitoring Provisions

Statutory Requirements

For each personal services contract with a value over \$100,000, the individual selected by the state agency (here, an individual that CWCB selects within the CWCB) pursuant to CRS §24-103.5-101(3), shall monitor Grantee's work under the contract as specifically described in Tasks 1, 2 and 3 in the Exhibit A-Statement of Work and shall certify as to whether Northern Water is complying with the terms of the Grant Agreement pursuant to CRS §§24-103.5-101(5). CWCB shall be solely responsible for monitoring, evaluation and reviewing, pursuant to CRS § 24-103.5-101, Subgrantee's Work (as further described in Activities 1 and 2 in the Statement of Work-Exhibit A).

Pursuant to CRS §24-103.5-101(2), each personal service contract entered into with a value of one hundred dollars or more shall contain:

a) Performance measures and standards developed specifically for the contract by the governmental body administering the contract. The performance measures and standards shall be negotiated by the governmental body and the vendor prior to execution of the contract and shall be incorporated into the contract. The measures and standards shall be used by the governmental body to evaluate the performance of the governmental body and the vendor under the contract.

(b) An accountability section that requires the vendor to report regularly on achievement of the performance measures and standards specified in the contract and that allows the governmental body to withhold payment until successful completion of all or part of the contract and the achievement of established performance standards. The accountability section shall include a requirement that payment by the governmental body to the vendor shall be made without delay upon successful completion of all or any part of the contract in accordance with the payment schedule specified in the contract or as otherwise agreed upon by the parties.

(c) Monitoring requirements that specify how the governmental body and the vendor will evaluate each others' performance, including progress reports, site visits, inspections, and reviews of performance data. The governmental body shall use one or more monitoring processes to ensure that the results, objectives, and obligations of the contract are met.

(d) Methods and mechanisms to resolve any situation in which the governmental body's monitoring assessment determines noncompliance, including termination of the contract.

CRS § 24-103.5-101(2).

Performance Monitoring Standards

Pursuant to the above, performance monitoring by CWCB of Northern Water's Work as specifically described in Tasks 1, 2 and 3 for this Grant shall include the following:

(a) Performance measures and standards: The Grantee will provide administrative services to assess and facilitate subgrants for the repair of damages to water supply infrastructure caused by the 2013 flooding. For Tasks 1, 2, and 3, Grantee will require all Subgrantees to produce detailed deliverables for its Subgrantee's Work performed under Activities 1 and 2 as specified in Exhibit A. Grantee shall maintain receipts and invoices received from Subgrantees for all project expenses and documentation of the minimum in-kind contributions made by Subgrantees per the budget in Exhibit A. Per WSRA Criteria and Guidelines, retainage of 5% of the grant funds (ultimately payable by Grantee to each Subgrantee) shall be withheld until receipt of the final report and all other deliverables from each Subgrantee.

(b) Accountability: Per WSRA Criteria and Guidelines full documentation of project progress as developed and submitted by each Subgrantee must be submitted by Grantee with each invoice for reimbursement. Subgrantee must certify to the Grantee that all grant conditions have been complied with on each invoice, and Grantee must submit the Subgrantee's certification with each request for payment to CWCB. In addition, per WSRA Criteria and Guidelines progress reports must be submitted by each Subgrantee at least once every 6 months, with an overview summary report submitted to CWCB

by the Grantee every 6 months. A final project report must be submitted by each Subgrantee and approved by the CWCB and the Grantee before final project payment and release of retainage.

(c) Monitoring Requirements: Grantee is responsible for ongoing administrative monitoring of project progress per the progress reports submitted by the Subgrantees pursuant to Exhibit A-Statement of Work and Paragraphs 9 & 19 of the contract. Subgrantee is responsible for the quality of work performed by the Subgrantee and Subgrantee contractors, and for assuring the performance of the Subgrantee or Subgrantee contractors is in compliance with statute, industry standards, permits, licenses, certifications, or other legal, regulatory, or statutory requirements. Progress shall be detailed in the required invoice documentation and progress reports provided to Northern Water and the CWCB by Subgrantees as detailed above.

(d) Noncompliance Resolution: Per paragraphs 9, 14, 15, and 19 of the contract: reimbursement to Grantee, or reimbursement by Grantee to any Subgrantee, will be withheld until Grantee and/or Subgrantee are current on all grant conditions. Flagrant disregard for grant conditions will result in a stop work order and cancellation of the purchase order.

COUNCIL COMMUNICATION

DATE: February 4, 2014
AGENDA ITEM: 12.A
SUBJECT: Adjournment to Executive Session

AGENDA ITEM DESCRIPTION:

City Council will adjourn into an Executive Session to receive legal advice on specific legal questions.

FINANCIAL SUMMARY:

N/A

RECOMMENDATION:

N/A

SUGGESTED MOTIONS:

“Pursuant to CRS 24-6-402(4)(b), I move to go into Executive Session for the purpose of receiving legal advice on specific legal questions.”

City Council Calendar

February 2014 through March 2014

FEBRUARY 2014

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

MARCH 2014

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

FEBRUARY	Event	Location	Time
1	Visit From Senator Udall	Evans City Complex	12:00 PM - 1:00 AM
4	Evans/Weld County Breakfast	Egg & I at 23rd Avenue, Greeley	7:00 AM - 8:00 8M
4	City Council Work Session & Regular City Council Meeting	Evans City Complex	Begins at 6:00 PM
5	Open House-Regional Communications Center	Weld County Regional Communications Center 1551 N. 17th Ave	1:00 PM - 4:00 PM
6	NFRMPO February Meeting	Berthoud Community Center, 248 Welch Ave	6:00 PM - 8:30 PM
7	City Council Election Candidate Packets Available	Evans City Complex, City Clerk's Office	8:00 AM - 5:00 PM
10	Mayors BullsEye Group	Evans City Complex	Begins at 6:30 PM
13	CML: Legislative Workshop	Colorado History Center 1200 Broadway, Denver	8:00 AM - 4:00 PM
17	Presidents Day	City Offices Closed	City Offices Closed
18	City Council Work Session & Regular City Council Meeting	Evans City Complex	Begins at 6:00 PM
21	City Council Election Candidate Packets DUE	Evans City Complex, City Clerk's Office	8:00 AM - 5:00 PM
24	CML: Effective Governance Workshop	CML Building, Denver	8:30 AM - 6:00 PM

MARCH	Event	Location	Time
4	City Council Work Session & Regular City Council Meeting	Evans City Complex	Begins at 6:30 PM
9	NFRMPO January Meeting	Fort Collins 281 North College Ave. Conference Rooms A-D	6:00 PM - 8:30 PM
18	City Council Work Session & Regular City Council Meeting	Evans City Complex	Begins at 6:30 PM