

**CONTRACT FOR PARTICIPATION IN
THE UPPER COLORADO RIVER BASIN
SYSTEM CONSERVATION PILOT PROGRAM**

This Contract (“Participation Contract” or “System Conservation Implementation Agreement”) is entered into this ___ day of _____, 2018 (“Effective Date”), by and between the Upper Colorado River Commission (“Commission”), acting through the officials executing this Contract and _____, (“Contractor”), each being referred to individually as “Party” or collectively as the “Parties.”

In consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

1. Parties [SUBJECT TO REVISION DEPENDING ON PROJECT SPECIFICS]

- 1.1 The Commission was created by the Upper Colorado River Basin Compact (“Upper Basin Compact”) among the states of Arizona, Colorado, New Mexico, Utah, and Wyoming on October 11, 1948, and consented to by Congress in the Act of April 6, 1949 (63 Stat. 31, Chapter 48).
- 1.2 The Contractor is an Upper Basin water user proposing to voluntarily reduce consumptive use of Colorado River System water pursuant to the terms of this Participation Contract.

2. Authority

- 2.1 The Commission is acting pursuant to authority granted under Article VIII of the Upper Basin Compact, which authorizes the Commission to, among other things: i) engage in cooperative studies of water supplies of the Colorado River and its tributaries; ii) collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries; iii) make findings as to the quantity of water of the Upper Colorado River System used each year in the Upper Basin and in each state in the Upper Basin; iv) make findings on the quantity of water deliveries at Lee Ferry during each water year; v) make findings as to the necessity for and the extent of the curtailment of use required, if any, in the Upper Basin; and vi) perform all functions required by the

Upper Basin Compact and do all things necessary, proper or convenient in the performance of its duties either independently or in cooperation with any state or federal agency. Pursuant to these authorities and Article X.2 of the Commission By-Laws, the Commission executed the Agreement to Facilitate Implementation of the System Conservation Pilot Program in the Upper Colorado River Basin (“Facilitation Agreement”) between the Commission and the System Conservation Partners, signed May 13, 2015 and amended December 14, 2016. Under this legal framework, the Commission Chair and Secretary (a/k/a Executive Director), acting upon the approval of the Commission, have the authority to execute this Participation Contract and related instruments on behalf of the Commission.

- 2.2 The Contractor hereby warrants that the individual executing this Contract on behalf of the Contractor has the full legal power and authority to do so and to bind the Contractor to the terms herein. The Contractor further warrants that by executing this Contract, it agrees to meet any and all of its obligations under this Contract and any exhibits.

3. Consideration

The parties acknowledge that the mutual promises and covenants contained herein are sufficient consideration.

4. Purpose

The purpose of this Participation Contract is to implement a project approved for inclusion in the Upper Basin Pilot Program for System Conservation to help determine whether system conservation is sufficiently cost-effective, robust, and feasible to partially mitigate the impacts of salinity and ongoing drought on the Colorado River System by managing water elevation levels in Lakes Mead and Powell above critically low elevations as a first priority, with the ancillary benefit of enhancing flows in areas upstream of storage reservoirs. All water conserved under the Pilot Program shall be for the sole purpose of testing the feasibility of compensated, voluntary reductions in water use for the benefit of the Colorado River System. Water conserved does not accrue to the benefit or use of any individual water user.

5. References

All references in this Contract 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.

6. Definitions

The following definitions shall apply for purposes of this Contract only.

- 6.1 Colorado River Compact means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171). The Colorado River Compact was approved by Congress in Section 13(a) of the Boulder Canyon Project Act.
- 6.2 Colorado River System shall have the meaning ascribed to such term in the Colorado River Compact.
- 6.3 Consumptive Use means diversions from the Colorado River System, less any return flow to the river system of water that is available for Consumptive Use in the Upper Basin. This includes, but is not limited to, withdrawal of water from its source due to evaporation, water transpired by plants, water incorporated into products or crops, water consumed by people or livestock, or water otherwise consumed.
- 6.4 Monitoring means the efforts taken to evaluate the results of the Pilot Program, including but not necessarily limited to identifying or estimating the volume of System Conservation achieved by each approved project and estimating the system benefit, if any, of the water conserved in the Upper Basin.
- 6.5 Participation Contract means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, or other attachments.

- 6.6 Pilot Program means the program identified and funded through the System Conservation Agreement to determine whether system conservation could be a feasible method to help mitigate the impacts of salinity and ongoing drought in the Colorado River System. The Pilot Program refers to the execution and implementation of System Conservation activities within the Upper Basin consistent with the System Conservation Agreement and further clarified by this Contract.
- 6.7 Project Activity means the actions taken by the Contractor to reduce Consumptive Use pursuant to the terms of this Contract.
- 6.8 Reclamation means the United States Bureau of Reclamation, a United States Department of the Interior agency.
- 6.9 Subcontractor means third parties, if any, engaged by the Contractor or the Commission to aid in performance of its obligations.
- 6.10 System Conservation means a voluntary and measurable or reliably estimated reduction of Consumptive Use of Colorado River water, including the elimination of system losses or reduction in demands through increased efficiency by an Upper Basin Water User through the Pilot Program for the sole purpose of benefitting the Colorado River System and learning whether such reductions can have a mitigating effect on declining storage levels in the Colorado River reservoirs. System Conservation does not include: (i) measures implemented by an Upper Basin Water User to meet Consumptive Use reduction obligations under any transfer, acquisition, or conservation agreement with another party; (ii) measures implemented for monetary payment or other valuable consideration from any third party not a signatory to this Contract other than monetary payment or other valuable consideration received from Reclamation or other federal sources supporting the Pilot Program and/or other drought contingency efforts; or (iii) efforts that are voluntarily, administratively, or judicially ordered to be undertaken by an Upper Basin Water User for purposes other than System Conservation.
- 6.11 System Conservation Agreement means the agreement among the System Conservation Partners for a Pilot Program for Funding the Creation of Colorado River System Water through Voluntary Water

Conservation and Reductions in Use, executed July 30, 2014, as Reclamation Agreement No. 14-XX-30-W0574, and amended on August 12, 2015, and March 8, 2016.

- 6.12 System Conservation Partners means Denver Water, Southern Nevada Water Authority, Central Arizona Water Conservation District, The Metropolitan Water District of Southern California, and Reclamation.
- 6.13 Upper Basin means those parts of the states of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry, as defined in the Colorado River Compact.
- 6.14 Upper Basin Water User means a person or entity within an Upper Division State, as defined in the Colorado River Compact, that has an existing authorization under applicable state law to divert Colorado River System water as reasonably required for beneficial uses.
- 6.15 Verification means efforts taken to confirm that the action(s) proposed by the Contractor to accomplish the contemplated System Conservation have been taken, as further described in Exhibit A, Verification Plan.
- 6.16 Work means Project Activity, tasks, and any other activities the Contractor is required to perform to fulfill its obligations under this Contract, including Exhibit A – Verification Plan.

7. Term

- 7.1 Effective Date and Termination Date: The term of this Contract shall commence on the Effective Date and terminate on _____, unless sooner terminated or extended as provided for below.
- 7.2 Work Commencement: The Parties' respective performance under this Contract shall commence on the Effective Date.

8. Warranties and Representations

The Contractor represents, warrants, and acknowledges the Commission's reliance on the following representations and warranties:

8.1 Rights to Use Water and Property:

- i. The Contractor has the legal right and authority to use the subject water and property described in Section 9 below under [insert state] law to perform the Contractor's obligation under this Contract. To the best of the Contractor's knowledge, no legal impediment exists regarding the Contractor's ability to perform the Contractor's obligations under this Contract; and
- ii. There is no known or anticipated claim, nor any known or anticipated action or proceeding before any court, tribunal, or other body, that could affect the Contractor's right, title, and/or interest to the water or the land that are the subject of this Contract.

8.2 Intent to Use Water: The Contractor had the intent, and all necessary rights, to divert the water that is the subject of this Contract, for beneficial consumptive use, during the year identified in the terms of this Contract. The subject water was diverted in the past as described in Section 9.

8.3 Contractor Obligated to Submit Correct Information: All information submitted by the Contractor in the proposal and application to the System Conservation Pilot Program and provided in support of this Contract is true and correct to the best of the Contractor's knowledge as of the time of submittal and as of the Effective Date.

8.4 Standard and Manner of Performance: The Contractor's performance hereunder shall comply with all applicable federal and state laws and the Contractor shall provide that any subcontracts be governed by the laws of the state in which the subject property is located.

8.5 Licenses, Permits, Etc.: As of the Effective Date, the Contractor must have, and at all times during the term hereof, it shall have and

maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations, if any, required by law to perform its obligations hereunder. The Contractor must do so without reimbursement by the Commission or other adjustment in any payment made to the Contractor under this Contract. Additionally, all employees, agents, and Subcontractors of the Contractor performing Work under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. The Contractor, if a foreign corporation or other foreign entity transacting business in the state(s) of Colorado, Wyoming, Utah and/or New Mexico further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the state where the project is located and has designated a registered agent in the state in which the subject property is located to accept service of process. Any revocation, withdrawal, or non-renewal of licenses, certifications, approvals, insurance, permits, or any such similar requirements necessary for the Contractor to properly perform the terms of this Contract is a material breach by the Contractor and constitutes grounds for termination of this Contract.

- 8.6 Contractor Compliance with Existing Laws and Legal Obligations: This Contract will be a legal and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms and will not violate any provision of any agreement to which the Contractor is a party or to which the Contractor is subject. The Contractor's agreement to conserve water as part of the Pilot Program does not and will not violate applicable laws or recorded documents affecting the water and property described in Section 9 below.

9. Statement of Work

9.1 Contractor Information Required

- i. Subject Water: This section will include water rights, permit numbers, priority dates, and any additional relevant information about water historically used on the subject property.

- ii. Contractor Use of Subject Water: This section will include information regarding how the water has been used, including the amount of acres for each type of use, typical dates of irrigation, name(s) of field(s), information on the diversion structure and how water is typically diverted, and any other relevant information about the participant's use of the subject water.
- iii. Project Activity: This section details the things the contractor agrees to do to reduce consumptive use of water. It will include information on the property the water was used on, including field name(s) and name(s) of the ditch(es) where applicable, number of acres, a description of which headgates will be closed and how saved water will be returned to the river, and dates of fallowing or reduced water use.
- iv. Right of Entry: The Contractor agrees that the Commission, with the assistance of its Subcontractor(s) and/or the state engineer's office in the state where the project activity takes place, will have the right to access and enter the property and access the related water structures specified in this Section, and as provided in the Verification Plan (Exhibit A), in order to verify and monitor the results of the Project Activity.

9.2 Verification

- i. The Commission will verify that the Project Activity is performed consistently with the terms of this Contract and Exhibit A, Verification Plan, with the assistance of its Subcontractor(s) and/or the state engineer's office in the state where the project takes place.
- ii. At the request of the Commission, the Contractor agrees to provide the Commission after completion of the Project Activity additional information or access to the subject project at reasonable times and upon at least 24 hours' notice as needed to aid in developing any final reports for the Pilot Program. This provision survives termination of this Contract.

- iii. The Contractor agrees to document the amount of conserved Consumptive Use as described in Exhibit A, Verification Plan.

10. Payments to Contractor

10.1 Compensation: The Contractor will be paid a maximum of \$_____ for implementation of the Project Activity, as follows: Compensation in exchange for implementation of the Project Activity pursuant to this Contract will be paid by the Commission from the funds contributed and unencumbered by the System Conservation Partners and received by the Commission for the Pilot Program, pursuant to the System Conservation Agreement. The Contractor will be paid \$_____ within sixty days of the Effective Date, and \$_____ no later than sixty days after completion of the 2018 Project Activity if the Project Activity occurred in 2018 and was completed according to the terms of this Contract and in compliance with the Verification Plan, Exhibit A, as confirmed to the Commission's satisfaction. Payment will be mailed to Contractor at the following address:

10.2 Available Funds—Contingency—Termination: The expenditure or advance of any money or the performance of any obligation by the Commission under this Contract shall be contingent upon the receipt of funds from the System Conservation Partners. If no funds or insufficient funds are provided by the System Conservation Partners or received by the Commission for payment to the Contractor, either Party may terminate the Contract, and no monetary or other liability shall accrue to the Commission.

10.3 Conditions of Payment – Holdback Option: Following the initial payment pursuant to Section 10.1, the Commission shall make the final payment pursuant to Section 10.1 to the Contractor only upon determination by the Commission that the Contractor has fulfilled all of the requirements of this Contract. If the Commission determines that the Contractor has not complied with any of the requirements of this Contract and Exhibit A, Verification Plan, the Commission has the

option to holdback full or partial payment, at the Commission's discretion, until the Contractor has cured the non-compliance to the Commission's satisfaction.

- 10.4 Maximum Amount: Total payments to the Contractor for the Project Activity provided pursuant to this Contract shall not exceed \$_____.
- 10.5 Reimbursement for Erroneous Payments: If the Contractor is paid by the Commission for progress and/or completion of the Project Activity contemplated in Section 9, and Exhibit A, Verification Plan, that the Contractor subsequently fails to complete, the Contractor agrees to reimburse the Commission for such overpayment within 30 days of receipt of a bill for collection from the Commission.
- 10.6 Adjustment for Errors: The Commission has the authority to make any adjustments to payments if it discovers an error has been made in prior payments.

11. Contractor Reporting – Notification

Reports and notifications required of the Contractor to be submitted to the Commission shall be in accordance with procedures prescribed by the Commission.

- 11.1 Contractor Reporting: Upon completion of the Project Activity or sooner if provided in Exhibit A, Verification Plan, the Contractor shall submit to the Commission information sufficient to confirm whether the Contractor has performed each requirement described in Exhibit A, Verification Plan, and will report the final status of the Contractor's obligations hereunder.
- 11.2 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 Contract or which may affect the Contractor's ability to perform its obligations hereunder, the Contractor shall notify the Commission, in writing, of such action and deliver copies of such pleadings to the Commission's representative as identified herein.
- 11.3 Noncompliance: The Contractor's failure to provide reports and notify the Commission in a timely manner in accordance with this Section 11

and Section 29 may result in the delay of payment of funds and/or termination as provided under this Contract.

11.4 Subcontracts: Copies of any and all subcontracts entered into by the Contractor to perform its obligations hereunder shall be submitted to the Commission upon request by the Commission. Any and all subcontracts entered into by the Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the state in which the subject property is located. To the extent that Contractor enters into contract(s) or relationship(s) with Subcontractor(s) in the course of performance under this contract that could affect performance under this Contract, Contractor shall notify the Commission of the contract and/or relationship.

11.5 W-9 and Tax Documentation: Within fourteen days of the Effective Date, Contractor shall provide the Commission a fully executed Internal Revenue Service Form W-9, including a Taxpayer Identification Number or Employer Identification Number, as applicable. A blank W-9 form is provided to Contractor at the time of execution of this Contract.

12. Contractor Records

12.1 Maintenance: The Contractor shall make, keep, maintain, and allow inspection, copying, and monitoring by the Commission or its Subcontractor(s) of a complete file of all materials or records required in Exhibit A, Verification Plan until the last to occur of: (i) a period of three years after the date this Contract expires or is sooner terminated, or (ii) the resolution of any pending Contract matters, or (iii) if a financial or records audit is occurring that includes or could involve the Project Activity specifically or the System Conservation Pilot Program in general, or the Contractor has received notice that such a financial or records audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period"). This provision survives termination of this Contract.

12.2 Inspection of Records: The Contractor shall permit the Commission, its designees, and the System Conservation Partners to audit, inspect, examine, excerpt, copy, and/or transcribe the Contractor's records related to this Contract during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. Such activities shall be done during normal business hours and upon at least 24 hours' notice by mail or other accepted forms of communication.

12.3 Monitoring and Inspection of Work: The Contractor shall permit the Commission, with the assistance of its Subcontractor(s) and/or the designated State representatives as provided in the Verification Plan (Exhibit A) to monitor all activities conducted by the Contractor pursuant to the terms of this Contract 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 Commission and the States shall be performed in a manner that shall not unduly interfere with the Contractor's performance hereunder. The Commission reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals, provided that the Commission gives 24 hours' notice by email message of such inspections. If the Work fails to conform to the requirements of this Contract, the Commission may require the Contractor to bring the Work promptly into conformity with Contract requirements, at the Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the Commission may require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures. This provision survives termination of this Contract.

13. Insurance

The Contractor and any of its Subcontractors shall obtain and maintain insurance as specified in this Section at all times during the term of this Contract.

13.1 Contractor for Pilot Projects

- i. [IF NON-GOVERNMENTAL ENTITY] Insurance Required for Non-Governmental Entity: As a nongovernmental entity within the meaning of the [insert information regarding state's governmental immunity act], the Contractor shall obtain and maintain liability insurance coverage on the subject Property in the amount of ONE MILLION DOLLARS (\$1,000,000). Proof of insurance shall be provided to the Commission by a copy of the applicable document from the insurers within ten days of request.

- i. [IF PUBLIC ENTITY] Public Entities: If Contractor is a "public entity" within the meaning of the [insert state statute regarding governmental immunity] then Contractor shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the _____. Contractor shall show proof of such insurance satisfactory to the Commission, if requested by the Commission. Contractor shall require each contract with a Subcontractor that is a public entity to include the insurance requirements necessary to meet such Subcontractor's liabilities under the _____. Contractor shall require all non-public entity Subcontractors to obtain and maintain liability insurance coverage in the amount of \$1,000,000. Proof of insurance shall be provided to the Commission by a copy of the applicable document from the insurers within ten days of request.

14. Breach

- 14.1 Breach Defined: In addition to any breaches specified in other sections of this Contract, 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 Contractor, or the appointment of a receiver or similar officer for the Contractor or any of its property, which is not

vacated or fully stayed within twenty days after the institution of occurrence thereof, shall also constitute a breach.

- 14.2 Notice and Cure Period: In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If a breach is not cured within thirty days of receipt of written notice, or if a cure cannot be completed within thirty days, or if cure of the breach has not begun within thirty days and pursued with due diligence, the Commission may exercise any of the remedies listed in Section 14. Notwithstanding anything to the contrary herein, the Commission, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety.
- 14.3 Remedies: If the Contractor is in breach under any provision of this Contract, the Commission shall have all of the remedies listed in Section 14 in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in Section 14.2. The Commission may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.
- 14.4 Termination for Breach: The Commission may elect to terminate this Contract in the event the Contractor fails to cure a breach in accordance with Section 14.2. The Commission shall deliver a termination notice in accordance with Section 29.1 to the Contractor if the Commission elects to terminate. Exercise by the Commission of this right shall not be a breach of its obligations hereunder. The Contractor shall continue performance of this Contract to the extent not terminated, if any.
- 14.5 Obligations and Rights: To the extent specified in any termination notice, the Contractor shall not engage in any Work, incur further obligations, or render any further performance hereunder after the date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, the Contractor shall complete and deliver to the Commission all Work not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms.

- 14.6 Payments if Breach Occurs: If the Contractor is in breach, the Commission shall reimburse the Contractor only for Work performed in accordance with this Contract prior to the date of the breach and Work performed in accordance with this Contract after the date of the breach to the extent it is accepted by the Commission.
- 14.7 Damages and Withholding: Notwithstanding any other remedial action by the Commission, the Contractor shall remain liable to the Commission for any damages sustained by the Commission by virtue of any breach under this Contract by the Contractor and the Commission may withhold any payment to the Contractor for the purpose of mitigating the Commission's damages, until such time as the exact amount of damages due to the Commission from the Contractor is determined. The Commission may withhold any amount that may be due the Contractor as the Commission deems necessary to protect the Commission against loss.
- 14.8 Remedies not Involving Termination: The Commission, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:
- i. Performance: If the Work fails to conform to the requirements of this Contract, the Commission may require the Contractor to bring the Work promptly into conformity with Contract requirements, at the Contractor's sole expense.
 - ii. Suspend Performance: Suspend the Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the Commission without entitling the Contractor to an adjustment in price/cost or performance schedule. The Contractor shall promptly cease performance and incurring costs in accordance with the Commission's directive and the Commission shall not be liable for costs incurred by the Contractor after the suspension of performance under this provision.
 - iii. Withhold Payment: Withhold payment to the Contractor until corrections in the Contractor's performance are made and completed to the satisfaction of the Commission.

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

14.9 Contractor's Remedies not Involving Termination: The Contractor, in its sole discretion, may suspend the Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the Contractor, in addition to other remedies available to it under this Contract. The Contractor recognizes that the Commission shall not be liable for any costs incurred by the Contractor during suspension of performance consistent with this provision.

15. General Provisions

15.1 Assignments and Subcontracts: The Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the Commission, which consent shall not be unreasonably withheld. Any attempt of Contractor at assignment, transfer, or subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by the Contractor or the Commission are subject to all of the provisions hereof. The Contractor shall be solely responsible for all aspects of the Contractor's subcontracting arrangements and performance. The Commission is solely responsible for all aspects of its subcontracting arrangements and performance.

15.2 Binding Effect: 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.

16. Conflict of Interest

16.1 Contractor: The Contractor shall not engage in any business or personal activities or practices or maintain any relationships that

conflict in any way with the full performance of the Contractor's obligations hereunder. The Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the Commission's interests. Absent the Commission's prior written approval, the Contractor shall refrain from any practices, activities, or relationships that reasonably appear to be in conflict with the full performance of the Contractor's obligations to the Commission hereunder. If a conflict or appearance exists, or if the Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, the Contractor shall submit to the Commission a disclosure statement setting forth the relevant details for the Commission's consideration. Failure to promptly submit a disclosure statement or to follow the Commission's direction in regard to the apparent conflict constitutes a breach of this Contract.

16.2 Commission: The individual Upper Colorado River Commissioners, employees, and agents of the Commission shall not personally benefit from this Contract. The Commission further warrants that to the best of its knowledge no such personal benefits or any conflicts of interest exist as a result of entering into this Contract.

17. Legal Effect

17.1 Except as otherwise expressly stated herein, nothing herein shall be construed as affecting the legal status of the Contractor's property, including but not limited to the effect of taxes, liens, encumbrances, statutory or regulatory requirements, or entitlements.

17.2 Except as otherwise expressly stated herein, nothing in this Contract is intended to affect the legal status, nor to diminish or modify the water rights from the Colorado River System of any Party or water user under existing law.

17.3 The Contractor agrees that the Commission is not responsible for, and no action or conduct of Commission, its agents, or employees shall be construed as advice or identification of the legal effect or consequences, if any, of the Contractor's decision regarding participation in the Pilot Program.

18. Effective Date, Termination, and Notice of Non-Liability

This Contract shall become effective and enforceable upon approval and signature by the Commission and the Contractor. The Parties shall not be liable to perform, pay, or reimburse 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, except as otherwise expressly agreed to herein.

- 18.1 Early Termination: Subject to notice provided in accordance with Section 29.1, this Contract may be terminated by either Party at any time prior to the Contractor engaging in any work in accordance with this Contract and provided that the Commission has not made any payment to the Contractor.
- 18.2 Extension: The Commission and the Contractor may mutually agree in writing to extend the term of this Contract for a period not to exceed two months at or near the end of any initial term or renewal term. The two month extension shall immediately terminate when and if a replacement Contract is approved and signed by the Parties.
- 18.3 Mutual Consent: Subject to notice provided in accordance with Section 29.1, this Contract may be terminated at any time with the consent of both Parties under mutually acceptable terms executed in writing by the Parties.
- 18.4 By Commission: The Commission may terminate this Contract unilaterally if required by changes in federal or state law or regulation, or by early termination of the Facilitation Agreement. Notice of termination shall be given as provided in Section 29.1.
- 18.5 By Contractor: The Contractor may terminate this Contract unilaterally before receiving any payments made by the Commission pursuant to this Contract. Notice of termination shall be given as provided in Section 29.1.

19. Amendment

This Contract may not be modified or amended except as provided as follows:

19.1 By the Parties: Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by both Parties in an amendment to this Contract.

19.2 By Operation of Law: This Contract is subject to such modifications as may be required by changes in federal or state law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein. Either party may terminate this Contract by written notice to the other if said changes in federal or state law impact the ability of either Party to perform its obligations pursuant to the terms of this Contract.

20. No Precedent

Nothing in this Contract, nor the execution of this Contract, shall be deemed to establish any precedent for managing or calculating consumptive use by the Commission or the States of Colorado, New Mexico, Wyoming and Utah. This Contract does not establish any rights to obtain any similar agreement after termination of this Contract. Each Party reserves the right to exercise and protect its respective rights, obligations, and entitlements related to use of water as it deems appropriate.

21. Entire Agreement/Severability

This Contract, its exhibits, and its attachments, constitute the entire understanding of the Parties.

22. Counterparts

This Contract and any amendments thereto may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument with the original.

23. Compliance with Existing Laws

The Parties intend that implementation of this Contract be consistent with and subject to existing law, including but not limited to the Colorado River Compact, the Upper Colorado River Basin Compact, the Colorado River Storage Project Act of

1956, and the Colorado River Basin Project Act of 1968. The Parties further intend that this Contract is consistent with the water rights and administration laws of the states in which the Contract is to be implemented.

24. Indemnification and Waiver of Negligence Claims

24.1 To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the Commission, its employees, and agents, against any and all claims, damages, liability and court awards including costs, expenses and attorneys' fees, to the extent such claims are caused by or alleged to be caused by any negligent act or omission of, or breach of contract by, the Contractor, its employees, agents, contractors or assignees pursuant to the terms of this Contract, but not to the extent such claims are caused by any act or omission of, or breach of contract by the Commission, its employees, agents, other contractors or assignees, pursuant to the terms of this Contract.

24.2 If the indemnification provision set forth in Section 24.1 does not apply, the Parties agree to waive any claims for damages, liability, court awards including costs, expenses and/or fees that could otherwise be asserted for any allegation of injury, negligent act or omission, or other non-contractual related matter by the other Party, its employees or agents or third-party beneficiaries designated under this Contract. In the event a person or entity other than a Party or third party beneficiary designated in Section 26 of this Contract asserts a claim for injury, negligence or other non-contractual related claim, the Parties further agree to hold each other, the designated third-party beneficiaries, and respective employees and agents for each harmless against any claims, damages, liability and court awards including costs, expenses and attorneys' fees.

25. Commission Employee Non-Liability

The Contractor acknowledges that the Commission's employees or agents are not parties to this Contract in their individual capacities and the Contractor agrees not to bring any legal proceeding or claim against a Commission employee or agent in his or her individual capacity for any injury or damages when acting within the scope of his or her duties during performance of this Contract. To the extent suit is brought against a Commission member in which it is alleged Contractor's

negligence caused any alleged injury, Contractor will defend and indemnify the Commission member relating to the lawsuit.

26. Third Party Beneficiaries

26.1 Consistent with the terms and obligations binding the Commission and the System Conservation Partners in the Facilitation Agreement, the System Conservation Partners are intended third party beneficiaries to this Contract and may enforce the terms of this Contract in the same manner as the Parties.

26.2 Except for the System Conservation Partners as provided in Section 26.1, no Party to this Contract intends for, and this Contract does not confer any right or entitlement to benefits from this Contract on any person or entity that is not signatory to this Contract regardless of the legal theory on which such a claim is made.

27. Jurisdiction/Venue

This Contract shall be interpreted, governed by, and construed under applicable federal law. Where federal law is silent or where federal law does not conflict, [insert state of project activity] law shall apply. Venue for adjudication of any disputes under this Contract shall be the appropriate federal court within the state in which the project is located.

28. Force Majeure

28.1 No Party shall be considered to be in default in the performance of any of its obligations under this Contract when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Contract by reason of an uncontrollable force shall give prompt written notice of such act to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

28.2 The Parties agree that compliance with environmental laws shall not be included in any of the conditions described in Section 28.1 that would affect the Parties' ability to perform obligations under this Contract that are not considered default.

29. Contacts

29.1 Notice: All notices required to be given hereunder shall be in writing and hand delivered or sent by certified U.S. mail, return receipt requested, to such Party's principal representative at the address set forth below. In addition to hard-copy notice, notice also may be sent by e-mail message if an e-mail address is provided. Any Party from time to time may by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notice shall be effective upon receipt.

29.2 Representatives: The individuals listed below are the principal representatives of the respective Parties. Any Party may from time to time designate in writing new or substitute representatives or addresses. Until changed by notice in writing, all notices and communications shall be addressed as follows:

CONTRACTOR:

Email: _____

UPPER COLORADO RIVER COMMISSION

Don A. Ostler, P.E., Executive Director

355 South 400 East

Salt Lake City, Utah 84111

Phone: (801) 531-1150

Email: dostler@ucrcommission.com

30. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by either Party.

31. Waiver

None of the provisions of this Contract shall be considered waived, except when such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions, or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or that Party's relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect. Furthermore, waiver of any breach under a term, provision, or requirement of this Contract, 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.

32. Open/Public Records Act

This Contract, including its attachments, exhibits, and any amendments or other related records, may be subject to request under an Open/Public Records Act request made pursuant to one of the Upper Division State's laws. Upon receipt of such a request, the Upper Division State and any other government agency in possession of those records may be required to disclose them in their entirety to the requesting party. Contractor understands this obligation and has no expectation of privacy relating to any of the terms of this Contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on _____ day _____ of 2018.

CONTRACTOR:

By: _____

THE UPPER COLORADO RIVER COMMISSION:

By: Don A. Ostler P.E.
Executive Director