

AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA, THROUGH THE DEPARTMENT OF
THE INTERIOR,
BUREAU OF RECLAMATION
AND THE UPPER COLORADO RIVER COMMISSION,
REGARDING THE FUNDING OF A TEMPORARY COLORADO RIVER SYSTEM
CONSERVATION PILOT PROGRAM
IN THE UPPER COLORADO RIVER BASIN

PREAMBLE

THIS AGREEMENT (“Agreement”) is entered into this 6th day of January 2023, by and between the UNITED STATES OF AMERICA (“United States”), represented by the Secretary of the Interior (“Secretary”) acting through the officials of the U.S. Bureau of Reclamation (“Reclamation”) executing this Agreement and the Upper Colorado River Commission (“UCRC”), each being referred to individually as “Party” and collectively as the “Parties.”

PARTIES

The UCRC was created by the Upper Basin Compact among the states of Arizona, Colorado, New Mexico, Utah, and Wyoming. Article VIII of the Upper Basin Compact authorizes the UCRC to, among other things, perform all functions required by the Compact and do all things necessary, proper, and convenient in the performance of its duties either independently or in cooperation with any state or federal agency.

Reclamation was created by the Reclamation Act of 1902 (32 Stat. 388), which, as amended and supplemented, authorizes Reclamation to act on behalf of the Secretary in constructing, operating, and maintaining certain facilities on the Colorado River, including the initial units of the Colorado River Storage Project, consisting of dams,

reservoirs, power plants, transmission facilities and appurtenant works.

RECITALS

WHEREAS, the Colorado River Storage Project Act (82 Stat. 885), as amended, authorized the Secretary to construct and operate Glen Canyon Dam and the Upstream Initial Units, to support the Upper Division States in developing and utilizing their share of the Colorado River and meet their obligations under the Colorado River Compact;

WHEREAS, the Colorado River System has been suffering from the effects of a long-term drought resulting in substantially decreased inflows into Lake Powell and depleted storage;

WHEREAS, recent Colorado River System modeling projections show a serious near-term risk that the water elevations in Lake Powell and the Upstream Initial Units could decline to levels that would interrupt the ability of the Upper Division States to benefit from the operation of Lake Powell and the Upstream Initial Units;

WHEREAS, from 2015 until 2018, the Upper Division States participated in a System Conservation Pilot Program (“SCPP”) with the UCRC acting as the contracting entity;

WHEREAS, the UCRC’s 2018 Report (“2018 Report”) on the results of the SCPP stated that “the overall goals of SCPP were to, among other things, help explore, learn from and determine whether a voluntary, temporary, and compensated reduction in consumptive use in the Upper Basin is a feasible method to partially mitigate the decline of or to raise water levels in Lake Powell;”

WHEREAS, the 2018 Report also explained that “the primary objective of the SCPP was not to test whether conserved water actually reaches Lake Powell, but rather to assess the feasibility of System Conservation as a future means of increasing storage at the reservoir;”

WHEREAS, the 2018 Report found that Upper Basin Water Users have an interest and willingness to participate in voluntary, temporary, and compensated water conservation activities;

WHEREAS, the UCRC ended the SCPP via a resolution dated June 20, 2018;

WHEREAS, in August 2022, Congress passed the Inflation Reduction Act of 2022 (Pub. L. No. 117-169), Section 50233 (“Inflation Reduction Act”) of which appropriated \$4,000,000,000 through September 30, 2026, for “activities to mitigate the impacts of drought in the Reclamation States and other basins experiencing comparable levels of long-term drought;”

WHEREAS, the Parties propose to establish another System Conservation Pilot Program, whereby Upper Division Water Users would be compensated for temporary and voluntary reductions in water use, including but not limited to municipal and industrial conservation efforts, and the fallowing of agricultural lands, to create conserved water to benefit the Colorado River System;

WHEREAS, the UCRC desires to enter into cooperative agreements with Upper Division Water Users for compensated voluntary reductions of Consumptive Use of water to be funded by the United States subject to the enactment of legislation reauthorizing Reclamation to fund System Conservation efforts in the Upper Basin;

WHEREAS, Reclamation has committed to further the objectives of this Agreement and the Pilot Program;

WHEREAS, the UCRC has determined that a System Conservation Pilot Program for the period of 2023 through water year 2026 may mitigate the impacts of drought on the Colorado River System within the Upper Basin;

WHEREAS, the UCRC has committed to further the objectives of this Agreement and the Pilot Program by coordinating with Upper Division Water Users to utilize funds made available by Reclamation for temporary and voluntary System Conservation projects.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. APPLICABILITY: Participation in the Pilot Program implemented pursuant to this Agreement within the Upper Division States shall be limited to Upper Division Water Users.
2. DEFINITIONS: For the purpose of this Agreement and its exhibits, the following definitions shall apply to capitalized terms in this Agreement in addition to other terms defined herein. No definition set forth in this Agreement shall be construed as evidence or an indicator of the Parties' interpretation or intent as it relates to similar terms that may exist in other laws, rules, regulations, agreements, or other relevant documents that may involve, implicate, or otherwise affect the Parties.

2.1 "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).

2.2 “Colorado River System” shall have the meaning ascribed to such term in the Colorado River Compact.

2.3 “Consumptive Use” means the man-made diversions of water from the Colorado River System, less any return flow to the river system that is available for Consumptive Use in the Upper Basin.

2.4 “Evaluation” or “Evaluating” means the UCRC evaluating the results of the Pilot Program and reporting those results to Reclamation.

2.5 “Facilitation Exhibit” means the UCRC Facilitation Exhibit for Implementation of SCPP attached as Exhibit 1 to this Agreement, which describes how the UCRC intends to implement the Agreement.

2.6 “Governor’s Representative” means any one of the Upper Colorado River Commissioners representing his or her state on the Commission.

2.7 “Pilot Program” means the Pilot Program described in this Agreement and to be funded pursuant to this Agreement.

2.8 “Pilot Program Funds” means funds provided by Reclamation to the UCRC consistent with the terms of this Agreement and provided by the UCRC to Upper Division Water Users according to the schedules and terms of SCIAs as executed with Upper Division Water Users.

2.9 “Pilot Program Funding Account” means a bank account opened in the name of the UCRC to accept, maintain, and release Pilot Program Funds according to the terms of this Agreement and any applicable SCIA.

2.10 “Project” means a System Conservation Project proposed or selected for inclusion in the Pilot Program.

2.11 “Project Proponent” means an Upper Division Water User who applies to participate in the Pilot Program pursuant to the terms of the Facilitation Exhibit.

2.12 “Reclamation” means the United States Bureau of Reclamation.

2.13 “RFP” means a request for proposals issued by the UCRC to Upper Division Water Users soliciting Projects to be included in the Pilot Program.

2.14 “System Conservation” means a voluntary reduction of Consumptive Use of Colorado River water that can be estimated or measured. System Conservation does not include: (i) measures implemented by an Upper Division Water User to meet Consumptive Use reduction obligations under any transfer, acquisition, or conservation agreement with another party, (ii) implemented for monetary payment or other valuable consideration from any third party not a signatory to this Agreement, or (iii) efforts that are voluntarily, administratively or judicially ordered to be undertaken by an Upper Division Water User for purposes other than System Conservation.

2.15 “SCIA” means a System Conservation implementation agreement entered into between the UCRC and the Project Proponent following approval of a proposal to participate in the Pilot Program consistent with the terms of this Agreement and the Facilitation Exhibit. Each SCIA shall include a Verification plan.

2.16 “Secretary” means the Secretary of the United States Department of the Interior.

2.17 “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.

2.18 “UCRC” means the Upper Colorado River Commission.

2.19 “Upper Basin Compact” means the Upper Colorado River Basin Compact regarding the Colorado River System signed by the states of Arizona, Colorado, New Mexico, Utah and Wyoming on October 11, 1948, and consented to by an act of Congress on April 6, 1949 (63 Stat. 31, Chapter 48).

2.20 “Upper Division States” means Colorado, New Mexico, Utah, and Wyoming, as defined in the Colorado River Compact.

2.21 “Upper Division Water User” means a person or entity within an Upper Division State that has an existing authorization under applicable state law to divert Colorado River System water for beneficial uses. Upper Division Water Users shall also include Native American Tribes or Tribal entities within an Upper Division State that have an existing authorization under applicable federal or state law to divert and use Colorado River System water.

2.22 “Upstream Initial Units” means Curecanti (the “Aspinall Unit”), Flaming Gorge Dam, and Navajo Dam as authorized by the Act of April 11, 1956 (70 Stat. 105), designated the Colorado River Storage Project Act.

2.23 “Verification” or “Verify” means confirmation that the action(s) proposed by the Project Proponent and agreed to under a SCIA have been taken. Verification will occur pursuant to a Verification plan to be agreed upon between the Project Proponent and the UCRC and included as part of the SCIA.

3. GENERAL TERMS AND CONDITIONS:

3.1 Purpose: The purpose of this Agreement is to initiate the Pilot Program within the Upper Basin to mitigate the impacts of the long-term drought and depleted storage. This Agreement describes the mechanism by which the Secretary acting through Reclamation shall fund temporary and voluntary Pilot Projects in the Upper Colorado River Basin with the participation of the Upper Division States acting through the UCRC.

3.2 SCIAs: For projects funded pursuant to this Agreement, the UCRC shall enter into, and administer, SCIAs with Upper Division Water Users selected for inclusion in the Pilot Program. Individual SCIAs between the UCRC and each participating Upper Division Water User shall provide for, among other things, the payment terms, the project timing, and project specific performance metrics. Reclamation shall be a third-party beneficiary of the SCIAs.

3.3 Timing of Pilot Program Proposals: The UCRC shall begin seeking proposals from Upper Division Water Users for implementation during water year 2023.

3.4 Selection of Pilot Program Participants: The UCRC, in consultation with the Upper Division States, shall set criteria to select Upper Division Water User

proposals for inclusion in the Pilot Program based on the Facilitation Exhibit. The Parties may amend the Facilitation Exhibit in writing, without amending this Agreement.

3.5 Form of SCIA: Upper Division Water Users selected for participation in the Pilot Program shall be required to execute a SCIA with the UCRC. The UCRC shall strive to use the terms of the SCIA template in Exhibit 2, but the Parties recognize that the terms of the SCIA template may differ based upon the unique needs of each Project Proponent or the unique circumstances of each System Conservation project.

3.6 Payments to Participating Upper Division Water Users: Compensation for System Conservation shall be paid by the UCRC to Upper Division Water Users with approved System Conservation projects from the funding Reclamation makes available to the UCRC for the Pilot Program. Upper Division Water Users may be paid some of the required payments after Verification has occurred.

3.7 Reporting: The UCRC shall provide Reclamation with a written report by March 31 of each year, or at another mutually agreeable time, that summarizes the Pilot Program implementation including the amount of funds expended in the previous water year.

3.8 No Individual Benefit: The System Conservation water conserved pursuant to this Agreement and a SCIA shall accrue only to the benefit of the Upper Basin of the Colorado River System.

4. FUNDING:

4.1 United States: Subject to appropriations, Reclamation shall provide up to \$125 million in funding to the UCRC towards the total Pilot Program costs in a manner mutually agreed to by the Parties. Provided, however that:

4.1.1 additional Federal funding can be added to this Agreement without requiring amendment of this Agreement;

4.1.2 in addition to the federal funding contribution in Paragraph 4.1, Reclamation may provide staffing and administrative support (in-kind contributions) to assist the UCRC in implementing the Pilot Program.

4.2 Administration Costs: The funding of total Pilot Program costs funding in this Paragraph 4 shall include all costs incurred by the UCRC in administering the Pilot Program, including but not limited to payments for Pilot Program administration through one or more third-party contractor(s), the UCRC's costs in complying with the reporting and other requirements set forth in this Agreement, the UCRC's documented Evaluation costs and Verification costs, and any other documented costs the UCRC and the Upper Division States may incur in implementing the Pilot Program. These administration costs will be in addition to payments made to Pilot Program participants.

4.3 Administration of Pilot Program Funds: The UCRC or its designated agent(s) shall keep full and complete records of Pilot Program Funds and expenditures made pursuant to this Agreement according to generally accepted accounting standards. These records shall be available for inspection, audit, and reproduction by

Reclamation during normal business hours. At the end of the Pilot Program, the UCRC shall provide an itemized statement to Reclamation documenting how the Pilot Program Funds were spent and any credits that are available for reimbursement if Program Funds exceed expenditures made.

4.4 Reimbursement of Pilot Project Funds: At the conclusion of the Pilot Program, the UCRC shall direct any Pilot Program Funds not expended as part of the Pilot Program to be returned or redirected according to Reclamation's instructions. The Parties recognize that any Pilot Project Funds to be reimbursed or redirected as set forth in this Agreement shall be equal to the Pilot Program Funds the UCRC received from Reclamation, minus any funding the UCRC expended pursuant to this Agreement, and may also include deductions from the reimbursement total for any fees associated with maintaining the Pilot Program Funding Account and any other administrative costs incurred by the UCRC and its agents that have been previously agreed to by the UCRC and Reclamation.

5. EVALUATING SYSTEM CONSERVATION: The UCRC will evaluate the results of each approved System Conservation Project and the implementation of the overall Pilot Program. The UCRC will provide Reclamation with the results of its Evaluation in the reports required under Paragraph 3.7 of this Agreement.

6. DISCLOSURE OF INFORMATION: The Parties recognize that the information obtained or developed from activities performed under this Agreement may be public information that is available for release upon request, except to the extent otherwise provided by applicable law.

7. NON-WAIVER: No Party to this Agreement shall be considered to have waived any right hereunder unless such waiver of the right is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or a relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

8. UNCONTROLLABLE FORCES: No Party shall be considered to be in default in the performance of any of its obligations under this Agreement 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, 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 Agreement 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.

9. REPRESENTATIONS AND WARRANTIES:

9.1 This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms. Each Party: (i) warrants and represents that such Party and the individual executing this Agreement on behalf of the Party is authorized by, and has undertaken all

prerequisite actions required by applicable Federal and State laws and regulations to perform the obligations and exercise the rights contemplated herein; and (ii) acknowledges that such warranty and representation is a material inducement to, and has been relied upon by, the other Parties in entering into this Agreement and performing that Party's respective obligations hereinafter.

9.2 The Parties recognize that implementing the Pilot Program in the Upper Basin will provide valuable information for developing drought management tools in each of the Upper Division States. Such information shall be useful regardless of whether the Pilot Program produces conserved water in quantities that result in measurable increased stream flow in the Colorado River System. The Parties, therefore, agree that no Party shall be liable, if, despite good faith efforts, expenditure of Pilot Program Funds does not produce measurable yields of conserved water at Lake Powell or elsewhere in the Colorado River System.

10. GOVERNING LAW: This Agreement shall be interpreted, governed by, and construed under applicable Federal law. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Agreement shall be in an appropriate Federal court in the Upper Division States.

11. BINDING EFFECT AND LIMITED ASSIGNMENT: This Agreement is and shall be binding upon and shall inure to the benefit of the Parties and, if ever applicable, the legal successors and assigns of their assets and liabilities, provided that no assignment shall be valid unless approved in writing by all Parties.

12. AMENDMENT, MODIFICATION, AND/OR SUPPLEMENT: Except as otherwise provided in this Agreement or its Exhibits, no amendment, modification, or supplement shall be binding unless it is in writing and signed by all Parties.

13. DRAFTING CONSIDERATIONS: Each Party and its counsel have participated fully in the drafting, review, and revision of this Agreement, each of whom is sophisticated in the matters to which this Agreement pertains, and no one Party shall be considered to have drafted this Agreement.

14. NOTICES: All notices required to be given hereunder shall be in writing via email with confirmation of receipt or First-Class U.S. mail to a Party's principal representative at the address set forth below. 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.

BUREAU OF RECLAMATION:

Regional Director Upper Colorado Region
125 South State Street, Room 6107
Salt Lake City, UT 84138-1147
WPullan@usbr.gov

UPPER COLORADO RIVER COMMISSION:

Charles R. Cullom, Executive Director
50 S 600 E, Suite 100
Salt Lake City, UT 84102
ccullom@ucrcommission.com

A Party may change its address by giving the other Parties notice of the change in writing.

15. JUDICIAL REMEDIES NOT FORECLOSED: Nothing in this Agreement shall be construed: (i) as in any manner abridging, limiting, or depriving any Party of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof, or of any other remedy which it would otherwise have; or (ii) as depriving any Party of any defense thereto which would otherwise be available.

16. AVAILABILITY OF INFORMATION: Subject to applicable Federal laws and regulations, each Party to this Agreement shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters covered by this Agreement.

17. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS: The expenditure or advance of any money or the performance of any obligation of the Parties under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to any of the Parties in case funds are not appropriated or allotted

18. OFFICIALS NOT TO BENEFIT: No Member of or Delegate to the Congress, or Resident Commissioner, or official of the UCRC or any Upper Division State, shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

19. NO THIRD-PARTY BENEFICIARIES: This Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties. This Agreement does not confer any right or entitlement to benefits from this Agreement on any person or entity that is not signatory to this Agreement,

including any of the Upper Division States, regardless of the legal theory on which such a claim is made.

20. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

21. TERM: This Agreement shall become effective upon the enactment of federal legislation that renews authorization for Reclamation to carry out its obligations under this Agreement. Provided, however, that if either Party considers the enacted federal legislation to be inconsistent with the terms of this Agreement, or if federal reauthorizing legislation is not enacted, then either Party may request that the Parties meet to seek consensus on a path forward. If the Parties are unable to reach consensus on a path forward after holding one (1) meeting, either Party may terminate this Agreement by sending notice to the other Party. This Agreement shall expire on September 30, 2027, provided that no additional funding may be provided for System Conservation activities consistent with the Inflation Reduction Act following September 30, 2026. Nothing in this Agreement shall be considered support by Reclamation for enactment of legislation.

22. NO PRECEDENT: The terms the Agreement shall not be deemed to establish any precedent for the UCRC or any Upper Division State.

23. EXISTING LAW: The Parties intend the implementation of this Agreement and any uses of water as a result of this Agreement to be consistent with existing law. Nothing in this Agreement shall be deemed to affect, influence, or otherwise give meaning to any particular provision of the Colorado River Compact, the Upper Basin

Compact, the Boulder Canyon Project Act, the 1944 Mexico Water Treaty, the Colorado River Storage Project Act (82 Stat. 885), the U.S. Supreme Court’s Consolidated Decree in *Arizona v. California*, and the Colorado River Basin Project Act (88 Stat. 266). The Parties further intend that nothing in this Agreement is intended to, nor shall this Agreement be construed to, diminish or modify the rights of water users under existing law to waters from the Colorado River System.

24. RESERVATION OF RIGHTS AND AUTHORITIES: Neither the terms and conditions of this Agreement, nor its execution by the signatory Parties, shall be deemed to limit, reduce, or alter any Party’s rights, authorities or obligations under existing state or federal law. Furthermore, each Upper Division State reserves the right to exercise and protect its respective rights, obligations and entitlements related to water from the Colorado River System as it deems appropriate.

25. DISPUTE RESOLUTION: If any dispute arises regarding this Agreement, the Parties agree to meet and to attempt to resolve the dispute before seeking any remedy.

26. CONFLICTS: If there is a conflict between the provisions of this Agreement and any of its exhibits, the provisions of this Agreement shall govern.

[Execution on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement
on the day and year first written above.

THE UNITED STATES OF AMERICA

WAYNE PULLAN Digitally signed by WAYNE
PULLAN
Date: 2022.12.23 14:57:32 -07'00'

Regional Director, Upper Colorado River Basin Region

UPPER COLORADO RIVER COMMISSION



1/6/2023

Executive Director

EXHIBIT 1

Facilitation Exhibit

**UCRC FACILITATION EXHIBIT FOR IMPLEMENTATION OF A TEMPORARY
SYSTEM CONSERVATION PILOT PROGRAM IN THE UPPER COLORADO
RIVER BASIN**

A. INTRODUCTION

1. Purpose: This UCRC Facilitation Exhibit for Implementation of a Temporary System Conservation Pilot Program in the Upper Colorado River Basin (“Facilitation Exhibit”) describes how the Upper Colorado River Commission (“UCRC”) intends to implement the “Agreement Between the United States of America, Through the Department of the Interior, Bureau of Reclamation (“Reclamation”) and the UCRC, Regarding the Funding of a Temporary Colorado River System Conservation Pilot Program in the Upper Colorado River Basin” dated January 6, 2023 (the “Agreement”). This Facilitation Exhibit:
 - a. Outlines the process the UCRC will use to seek proposals from interested Upper Division Water Users to participate in the Pilot Program;
 - b. Sets forth the Project criteria for eligibility to participate in the Pilot Program;
 - c. Describes how the UCRC and the Upper Division States will select Projects for participation in the Pilot Program;
 - d. Describes how the UCRC will Verify approved Projects; and
 - e. Describes how Reclamation will review Projects.

B. DEFINITIONS

The following definitions, as set forth in the Agreement, shall apply for purposes of this Facilitation Exhibit only. No definition set forth in this Facilitation Exhibit shall be construed as evidence or an indicator of the UCRC’s interpretation or intent as it relates to similar terms that may exist in other laws, rules, regulations, agreements, or other relevant documents that may involve, implicate, or otherwise affect the UCRC.

- 1 “Agreement” means the Agreement Between the United States of America, Through the Department of the Interior, Bureau of Reclamation, and the Upper Colorado River Commission, Regarding the Funding of a Temporary Colorado

River System Conservation Pilot Program in the Upper Colorado River Basin dated _____, 2022.

- 2 “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).
- 3 “Colorado River System” shall have the meaning ascribed to such term in the Colorado River Compact.
- 4 “Consumptive Use” means the man-made diversions of water from the Colorado River System, less any return flow to the river system that is available for Consumptive Use in the Upper Basin.
- 5 “Evaluation” or “Evaluating” means the UCRC evaluating the results of the Pilot Program and reporting those results to Reclamation.
- 6 “Facilitation Exhibit” means this document which is attached as Exhibit 1 of the Agreement and describes how the UCRC intends to implement the Agreement.
- 7 “Pilot Program” means the Pilot Program described in the Agreement and implemented within the Upper Division States.
- 8 “Pilot Program Funds” means funds provided by Reclamation consistent with the terms of the Agreement, and according to the schedules and terms of SCIA as executed with Upper Division Water Users.
- 9 “Pilot Program Funding Account” means a bank account opened in the name of the UCRC to accept, maintain, and release Pilot Program Funds according to the terms of the Agreement and any applicable SCIA.
- 10 “Project” means a System Conservation proposal selected for inclusion in the Pilot Program.
- 11 “Project Participant” means a Project Proponent whose SCIA has been executed.
- 12 “Project Proponent” means an Upper Division Water User who applies to participate in the Pilot Program pursuant to the terms of this Facilitation Exhibit.

- 13 “Reclamation” means the United States Bureau of Reclamation.
- 14 “RFP” means a request for proposal issued by the UCRC soliciting Project proposals to be included in the Pilot Program.
- 15 “System Conservation” means a voluntary reduction of Consumptive Use of Colorado River water that can be estimated or measured. System Conservation does not include: (i) measures implemented by an Upper Division Water User to meet Consumptive Use reduction obligations under any transfer, acquisition, or conservation agreement with another party, (ii) implemented for monetary payment or other valuable consideration from any third party not a signatory to the Agreement, 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.
- 16 “SCIA” means a System Conservation implementation agreement entered into between the UCRC and the Project Proponent following approval of a proposal to participate in the Pilot Program consistent with the terms of the Agreement and this Facilitation Exhibit. Each SCIA shall include a Verification plan.
- 17 “Secretary” means the Secretary of the United States Department of the Interior.
- 18 “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.
- 19 “UCRC” means the Upper Colorado River Commission.
- 20 “Upper Basin Compact” means the Upper Colorado River Basin Compact regarding the Colorado River System signed by the states of Arizona, Colorado, New Mexico, Utah, and Wyoming on October 11, 1948, and consented to by an act of Congress on April 6, 1949 (63 Stat. 31, Chapter 48).

- 21 “Upper Division States” means Colorado, New Mexico, Utah, and Wyoming, as defined in the Colorado River Compact.
- 22 “Upper Division Water User” means a person or entity within an Upper Division State that has an existing authorization under applicable state law to divert Colorado River System water for beneficial uses. Upper Division Water Users shall also include Native American Tribes or Tribal entities within an Upper Division State that have an existing authorization under applicable federal or state law to divert and use Colorado River System water.
- 23 “Upstream Initial Units” means Curecanti (the “Aspinall Unit”), Flaming Gorge Dam, and Navajo Dam as authorized by the Act of April 11, 1956 (70 Stat. 105), designated the Colorado River Storage Project Act.
- 24 “Verification” means confirmation that the action(s) proposed by the Project Proponent and agreed to under a SCIA have been taken. Verification will occur pursuant to a Verification plan to be agreed upon between the Project Proponent and the UCRC and included as part of the SCIA.

C. SELECTION OF PROJECTS

1. Solicitation: The UCRC shall solicit Project proposals to participate in the Pilot Program consistent with the terms of the Agreement, this Facilitation Exhibit, the UCRC’s authorities, and the laws of the Upper Division State in which the Project would be located.
2. Request for Proposal: The UCRC, in consultation with the Upper Division States, shall develop and issue an RFP each year the UCRC implements the Pilot Program. Each year’s RFP shall provide Upper Division Water Users the option of submitting: (a) a proposal that accepts the fixed price per acre-foot established by the UCRC; or (b) a proposal in which the Upper Division Water User requests a per acre-foot price for their Project that differs from the fixed price the UCRC has established. Proposals shall include a proposed Verification plan. The UCRC shall work with the Upper Division States to assure widespread distribution of the RFPs among Upper Division Water Users.
3. Fixed Price Determination: The UCRC shall determine the fixed price to be

included in the RFP before the UCRC issues the RFP. The UCRC will consult with Reclamation in development of fixed per acre-foot pricing.

4. Proposal Collection and Initial Project Selection:

- a. *Collection of Proposals:* The UCRC shall collect the proposals. Each Upper Division State shall designate a point of contact to coordinate and communicate with the UCRC in the review of the proposals, the selection of Projects for inclusion in the Pilot Program, and the development and execution of SCIA's for each Project.
- b. *Project Selection:* In consultation with the Upper Division States, the UCRC shall review and select proposals for possible inclusion in the Pilot Program based on the following factors and other criteria the Upper Division States deem appropriate.
 - i. A history of recent consumptive use of Colorado River water by the Project Proponent;
 - ii. Adherence of the proposal to the requirements of this Facilitation Exhibit and the RFP;
 - iii. Prioritize projects that are likely to mitigate impacts of the ongoing drought;
 - iv. Diversity of location and type of conservation measures, including consideration of multiple benefits;
 - v. The relative size of the Project in terms of acre-feet of water that may be conserved;
 - vi. The comparative ease or difficulty of implementing the SCIA, including the proposed Verification Plan;
 - vii. The amount of time required for the Project to generate System Conservation;
 - viii. Required permitting and approvals, if any; and

- ix. For non-fixed price proposals, the amount of the proposed price per acre-foot and a justification for the proposed price.
 - c. *Fixed Price Proposals*: No price negotiations are needed for selected Projects that were submitted pursuant to a fixed price proposal, and the fixed price the UCRC established shall be the per-acre foot price included in the SCIA for the Project.
 - d. *Pricing for Non-Fixed Price Proposals*: For non-fixed price proposals, the UCRC may accept the proposed per acre-foot price or may negotiate a mutually acceptable price with the Project Proponent, provided that the UCRC shall consult with the Upper Division States in the selection or negotiation of the per acre-foot price to be included in the SCIA. If the UCRC and the Project Proponent cannot agree on a mutually acceptable price, the UCRC shall reject the proposal and notify the Project Proponent in writing.
 - e. *Modifications to Verification Plan*: The UCRC and the Upper Division States may require changes to the proposed Verification plan as needed. If the Project Proponent is unwilling to accept changes the UCRC and the Upper Division States require, the UCRC shall reject the proposal and notify the Project Proponent in writing.
5. Negotiation and Execution of SCIAs: The UCRC and the Upper Division States shall use the following process to develop and execute SCIA for selected Projects:
- a. *Preparation of Draft SCIA*: The UCRC shall prepare a draft SCIA for each Project based on the template attached as Exhibit 2 of the Agreement. If the UCRC determines that substantial modification to the SCIA template is required to accommodate the unique circumstances of a Project, the UCRC shall note where changes have been made from the template when it submits the draft SCIA for review and approval.
 - b. *Review by Upper Division State Where Project is Located*: The UCRC shall provide the Upper Division State where the Project is located with a draft SCIA for review and approval. The draft SCIA must include the agreed upon per acre-foot price and the agreed upon Verification plan. The Verification plan shall also identify any Pilot Project Funds to be applied

toward Verification. If the Upper Division State in which a Project is located does not approve the draft SCIA, the UCRC shall reject the proposal and notify the Project Proponent in writing.

- c. *Review of SCIA by Upper Division States:* After the Upper Basin State in which a Project is located approves a draft SCIA, the UCRC shall provide the draft SCIA to all of the Upper Division States for final review and agreement. If an Upper Division State requests edits to the draft SCIA, the UCRC shall incorporate the edit into the draft SCIA and circulate the draft SCIA to the Project Proponent.
- d. *Reclamation Review of Draft SCIA:* After the Upper Division States have concluded their review of a draft SCIA under paragraph C.5.c, the UCRC shall provide the draft SCIA to Reclamation, including information describing the Project, Project consistency with the Facilitation Exhibit, and substantive deviations from the SCIA template. Reclamation may object to the draft SCIA if the draft SCIA is inconsistent with the Agreement, this Facilitation Exhibit, or federal law. Reclamation shall notify the UCRC of any objections to a draft SCIA as soon as possible but no later than 15 days after the date on which Reclamation receives the draft SCIA. The UCRC and Reclamation will work together to resolve any objections Reclamation may raise.
- e. *Review of SCIA by the Project Proponent:* After the UCRC completes the process set forth in paragraph C.5.a through C.5.d, the UCRC shall provide the Project Proponent with the draft SCIA. The Project Proponent shall review the draft SCIA and provide comments to the UCRC. If the Project Proponent requests substantive edits to the draft SCIA, the UCRC shall circulate the requested edits to the Upper Division States. The UCRC and the Upper Division States shall review the Project Proponent's requested edits within five (5) business days of the date the UCRC circulates the proposed edits. If the edits cannot be reconciled, the UCRC and the Upper Division States shall commit to attend a timely conference call with the Project Proponent to resolve remaining issues. If consensus on the terms of a draft SCIA cannot be reached, the UCRC shall reject the proposal and notify the Project Proponent in writing.
- f. *Execution of SCIA:* Upon obtaining consent to finalize a SCIA from the Upper Division States and the Project Proponent, the UCRC shall finalize

and execute the SCIA with the Project Proponent.

6. Recordkeeping: The UCRC shall keep record of all approvals required under this Section C with the SCIA for each Project.

D. IMPLEMENTATION

1. Implementation: To implement the Pilot Program, the UCRC shall administer the SCIA's and shall perform Verification for the selected Projects. The UCRC shall perform these tasks in consultation with the Upper Division States through their designated point of contact and the Upper Division States shall assist the UCRC as needed.

E. PILOT PROGRAM FUNDING MANAGEMENT

1. Pilot Program Funding – Participation: The UCRC shall facilitate payment of Pilot Program Funds to Project Proponents pursuant to the Agreement.
2. Transfer and Disbursement of Pilot Program Funds:
 - a. *Deposit of Pilot Program Funds*: The UCRC shall deposit the Pilot Program Funds received from Reclamation into a designated Pilot Program Funding Account.
 - b. *Distribution of Pilot Program Funds to Project Participants*:
 - i. Consistent with the terms of the Agreement, the UCRC shall authorize distribution of Pilot Project Funds to a Project Participant pursuant to the payment schedule set forth in the applicable SCIA.
 - ii. Distribution of any Pilot Program Funds to a Project Participant under this Facilitation Exhibit shall be subject to the availability of sufficient money provided to the UCRC pursuant to the Agreement.
 - c. *Payment of Costs*: In addition, the UCRC shall use Pilot Program Funds to pay for the costs of administration of the Pilot Program.
3. Buy America Act: All costs incurred in connection with the Pilot Program shall be consistent with the provisions of the Buy America Act (41 U.S.C. §§ 8301 et

seq.), as applicable.

F. MISCELLANEOUS

1. Contractors and Designees: The UCRC is authorized to utilize contractors or other authorized designees to fulfill its obligations under this Facilitation Exhibit.
2. Amendment: the UCRC and Reclamation may revise and amend this Facilitation Exhibit in writing without amending the Agreement.
3. Conflicts: If there is a conflict between the provisions of this Facilitation Exhibit and the provisions of the Agreement, the provisions of the Agreement shall govern.
4. No Precedent: This Facilitation Exhibit does not create any future rights or obligations or create any precedent regarding management, operation, or administration of the Colorado River System beyond the scope of the Pilot Program.

EXHIBIT 2

System Conservation Implementation (“SCIA”) Agreement Templates

**UPPER COLORADO RIVER BASIN
SYSTEM CONSERVATION IMPLEMENTATION AGREEMENT**

This System Conservation Implementation Agreement (“SCIA”) is entered into this ___ day of _____, 20__ (“Effective Date”), by and between the Upper Colorado River Commission (“UCRC”), acting through the officials executing this Agreement 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

- 1.1 The UCRC 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 Division Water User proposing to voluntarily reduce consumptive use of Colorado River System water pursuant to the terms of this Agreement.

2. Authority

- 2.1 The UCRC is acting pursuant to authority granted under Article VIII of the Upper Basin Compact, which authorizes the UCRC to, among other things, 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 UCRC By-Laws, the UCRC executed an agreement Regarding the Funding of a Temporary Colorado River System Conservation Pilot Program in the Upper Colorado River Basin (“Funding Agreement”) with the United States Bureau of

Reclamation on _____, 2022. Under this legal authority, the undersigned UCRC's designated representative has the authority to execute this SCIA and any related instruments on behalf of the UCRC.

2.2 The Contractor hereby warrants that the individual executing this SCIA 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 SCIA, it agrees to meet any and all of its obligations under this SCIA 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 SCIA is to implement a Project approved for inclusion in the Pilot Program for System Conservation in order to mitigate the impacts of the long-term drought. Water conserved pursuant to approved Pilot Program Projects does not accrue to the benefit or use of any individual water user.

5. References

All references in this SCIA 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 SCIA only.

- 6.1 “Agent” means third parties, if any, engaged by the Contractor to aid in performance of its obligations.
- 6.2 “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).
- 6.3 “Colorado River System” shall have the same meaning as set forth in the Colorado River Compact.
- 6.4 “Consumptive Use” means the man-made diversions of water 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.
- 6.5 “Evaluation” or “Evaluate” means the UCRC evaluating the results of the Pilot Program and reporting those results to Reclamation.
- 6.6 Funding Agreement means Reclamation Agreement No. 23-SCPP-40-946 between Reclamation and the UCRC executed January 6, 2023, as amended, which lays out the conditions pursuant to which the UCRC will receive funding from Reclamation to implement the Pilot Program.
- 6.7 “Pilot Program” means the pilot program identified and funded through the Funding Agreement and described in that Funding Agreement and its attachments.
- 6.8 “Project” means the actions taken by the Contractor to reduce Consumptive Use pursuant to the terms of this SCIA.
- 6.9 “Reclamation” means the United States Bureau of Reclamation.
- 6.10 “System Conservation” means a voluntary reduction of Consumptive Use of Colorado River water that can be estimated or measured. System Conservation does not include: (i) measures implemented by an Upper

Division Water User to meet Consumptive Use reduction obligations under any transfer, acquisition, or conservation agreement with another party, (ii) implemented for monetary payment or other valuable consideration from any third party not a signatory to this SCIA, or (iii) efforts that are voluntarily, administratively or judicially ordered to be undertaken by an Upper Division Water User for purposes other than System Conservation.

- 6.11 “SCIA” means this System Conservation Implementation Agreement, including its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this SCIA, and any future modifying agreements, exhibits, or other attachments.
- 6.12 “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.
- 6.13 “Upper Division Water User” means a person or entity within an Upper Division State that has an existing authorization under applicable state law to divert Colorado River System water for beneficial uses. Upper Division Water Users shall also include Native American Tribes or Tribal entities within an Upper Division State that have an existing authorization under applicable state law to divert and use Colorado River System water.
- 6.14 “Verification” or “Verify” means confirmation that the action(s) proposed by the Contractor and agreed to under this SCIA have been taken, as further described in Exhibit A to this SCIA, Verification Plan.

6.15 “Work” means Project, tasks, and any other activities the Contractor is required to perform to fulfill its obligations under this SCIA, including Exhibit A – Verification Plan.

7. Term

7.1 Effective Date and Termination Date: The term of this SCIA shall commence on the Effective Date indicated on page 1 above and terminate on _____, unless sooner terminated or extended as provided for below.

7.2 Work Commencement: The Parties’ respective performance under this SCIA shall commence on the Effective Date.

8. Warranties and Representations

The Contractor represents, warrants, and acknowledges the UCRC’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 SCIA. 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 SCIA; 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 SCIA.

8.2 Contractor’s Use of the Water: But for the Contractor’s participation in this SCIA and the Pilot Program, the Contractor would otherwise divert the

water that is the subject of this SCIA for consumptive use during the time period identified in the terms of this SCIA.

- 8.3 Contractor Obligated to Submit Correct Information: All information submitted by the Contractor in the proposal and application to the Pilot Program and provided in support of this SCIA is true and correct to the best of the Contractor's knowledge as of the time of submittal and as of the Effective Date. If the Contractor should discover that any information submitted in the proposal, application or in the SCIA has become incorrect, the Contractor has a duty to immediately inform the UCRC in writing regarding what information is incorrect and the date on which the Contractor discovered that the information was incorrect. Following such communication, the UCRC and the Contractor will meet to discuss next steps with respect to this SCIA in light of the Contractor's communication.
- 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 of this SCIA, the Contractor must have, and at all times during the term hereof, shall maintain, at its sole expense, all rights, decrees, licenses, certifications, approvals, insurance, permits, and other authorizations, if any, required by law to perform its obligations hereunder including the payment of any assessments due. The Contractor must do so without reimbursement by the UCRC or other adjustment in any payment made to the Contractor under this SCIA. Additionally, all employees or Agents of the Contractor performing Work under this SCIA shall hold, at all times during performance under this SCIA, 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, New Mexico, Utah, and/or Wyoming 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 SCIA is a material breach by the Contractor and constitutes grounds for termination of this SCIA.

8.6 Contractor Compliance with Existing Laws and Legal Obligations: Upon execution by all Parties, this SCIA is a legal and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms. The Contractor agrees and warrants that this SCIA does not violate any provision of any other 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.

8.7 Insurance: The Contractor represents and warrants that it has obtained and will maintain general liability insurance coverage on the property where the Project is located for the term of this SCIA. The Contractor shall provide proof of such insurance to the UCRC upon request.

9. Statement of Work

9.1 Contractor Information Required

- i. Subject Water: This section will include water rights, permit numbers, priority dates, share certificate numbers, nature or purpose of use, place of use, and any additional relevant information about the subject water.
- ii. Contractor Use of Subject Water: This section will include information regarding how the water has been consumptively used.

- iii. Project: This section details the things the Contractor agrees to do to achieve the goals of the Pilot Program.
- iv. Right of Entry: The Contractor agrees that after providing the Contractor upon at least twenty-four hours' notice, the staff, designees or agents of the UCRC, accompanied by the state engineer or the state engineer's authorized designee in the state where the Project takes place, will have the right to access and enter the subject property to Verify and Evaluate the results of the Project as specified in this SCIA, and as provided in the Verification Plan (Exhibit A).

9.2 Verification

- i. The UCRC will Verify that the Project is performed consistently with the terms of this SCIA and Exhibit A, Verification Plan, with the assistance of its staff, designees or agents, and/or the state engineer' or authorized designee in the state where the Project is located.
- ii. At the request of the UCRC, the Contractor agrees that, after completion of the Project, the Contractor will provide the UCRC additional information related to the Project and/or access to the Project site at reasonable times and upon at least twenty-four hours' notice as needed to aid in developing any final reports for the Pilot Program. This provision survives termination of this SCIA until completion of the Pilot Program.
- iii. The Contractor agrees to document the amount of anticipated 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 \$ [REDACTED] for implementation of the Project, as follows: Compensation in exchange for implementation of the Project pursuant to this SCIA will be paid by the UCRC from the funds the UCRC receives from Reclamation for the Pilot Program, pursuant to the Funding Agreement. The Contractor will be paid \$ [REDACTED] within sixty days of the Effective Date, and \$ [REDACTED] no later than sixty days after completion of the Project if the Project was completed according to the terms of this SCIA and in compliance with the Verification Plan, Exhibit A, as confirmed to the UCRC's satisfaction. Payments will be mailed to Contractor at the following address:

[REDACTED]
[REDACTED]
[REDACTED]

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

10.3 Conditions of Payment: Following the initial payment pursuant to Section 10.1, the UCRC shall make the final payment to the Contractor pursuant to Section 10.1 only upon determination by the UCRC that (i) the Contractor has fulfilled all of the requirements of this SCIA and (ii) the water that is the subject of this SCIA was legally or physically available for Contractor to consumptively use during the term of this SCIA. If the UCRC determines that the Contractor has not complied with any of the requirements of this SCIA and Exhibit A, Verification Plan, the UCRC has the option to holdback full or partial payment, at the UCRC's sole discretion, until the Contractor has cured the non-compliance to the UCRC's satisfaction. If the UCRC

determines that the water that is subject to this SCIA was not legally or physically available during the term of this SCIA, the UCRC has the option to forego all or a portion of the final payment.

10.4 Reimbursement for Erroneous Payments: If the Contractor is paid by the UCRC for progress and/or completion of the Project contemplated in Section 9, and Exhibit A, Verification Plan, that the Contractor subsequently fails to complete, the Contractor agrees to reimburse the UCRC for such overpayment within 30 days of receipt of a bill for collection from the UCRC.

10.5 Adjustment for Errors: The UCRC 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 UCRC shall be in accordance with procedures prescribed by the UCRC.

11.1 Contractor Reporting: Upon completion of the Project, or sooner if provided in Exhibit A, Verification Plan, the Contractor shall submit to the UCRC information sufficient to confirm that the Contractor has performed each requirement described in Exhibit A, Verification Plan.

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 SCIA or which may affect the Contractor's ability to perform its obligations hereunder, the Contractor shall notify the UCRC, in writing, of such action and deliver copies of such pleadings to the UCRC's representative as identified herein.

11.3 Noncompliance: The Contractor's failure to provide required information and notifications to the UCRC in a timely manner in accordance with this

Section 11 and Section 28 may result in the delay of payment of funds and/or termination as provided under this SCIA.

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

11.5 W-9 and Tax Documentation: Within fourteen days of the Effective Date of this SCIA, the Contractor shall provide the UCRC 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 SCIA.

12. Contractor Records. The Contractor shall make, keep, maintain, and, upon request, provide to the UCRC or its agents or designees a complete file of all materials or records required in Exhibit A, Verification Plan. This provision survives termination of this SCIA until completion of the Pilot Program.

13. Breach

13.1 Breach Defined: In addition to any breaches specified in other sections of this SCIA, 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.

- 13.2 Notice and Cure Period: In the event of a breach, the non-breaching Party shall give written notice of the 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 UCRC may exercise any of the remedies listed in Section 13. Notwithstanding anything to the contrary herein, the UCRC, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this SCIA in whole or in part if reasonably necessary to preserve public safety.
- 13.3 Remedies Generally: If the Contractor is in breach under any provision of this SCIA, the UCRC shall have all of the remedies listed in Section 13 in addition to all other remedies set forth in other sections of this SCIA following the notice and cure period set forth in Section 13.2. The UCRC may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.
- 13.4 Payments and Reimbursements: If the Contractor is in breach, the UCRC shall reimburse the Contractor only for Work performed in accordance with this SCIA prior to the date of the breach and Work performed in accordance with this SCIA after the date of the breach to the extent it is accepted by the UCRC. If the UCRC is in breach by delayed payment, upon written notice from the Contractor the UCRC shall remedy and not be required to pay interest on the delayed payment.
- 13.5 Termination for Breach: If the Contractor fails to cure a breach, the UCRC may elect to terminate this SCIA. If the UCRC elects to terminate this SCIA, the UCRC shall deliver a termination notice to the Contractor in accordance with Section 28.1.

- 13.6 Obligations and Rights: After the date of a termination notice, and to the extent specified in such termination notice, the Contractor shall not engage in any Work, incur further obligations, or render any further performance hereunder. Upon receipt of a termination notice, the Contractor shall also terminate outstanding orders and subcontracts with third parties. However, the Contractor shall complete and deliver to the UCRC all Work not cancelled by the termination notice and may incur all obligations as are necessary to do so within this SCIA's terms.
- 13.7 Damages and Withholding: Notwithstanding any other remedial action by the UCRC, the Contractor shall remain liable to the UCRC for any damages sustained by the UCRC by virtue of any breach under this SCIA by the Contractor and the UCRC may withhold any payment to the Contractor for the purpose of mitigating the UCRC's damages, until such time as the exact amount of damages due to the UCRC from the Contractor is determined. The UCRC may withhold any amount that may be due the Contractor as the UCRC deems necessary to protect the UCRC against loss.
- 13.8 Remedies not Involving Termination: The UCRC, 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 SCIA, the UCRC may require the Contractor to bring the Work promptly into conformity with the requirements of this SCIA, at the Contractor's sole expense.
 - ii. Suspend Performance: The UCRC may suspend the Contractor's performance with respect to all or any portion of this SCIA pending necessary corrective action as specified by the UCRC 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 UCRC's directive and the UCRC shall not be liable for costs incurred by the

Contractor due to the suspension of performance under this provision.

- iii. Withhold Payment: The UCRC may withhold payment to the Contractor until corrections in the Contractor's performance are made and completed to the satisfaction of the UCRC.
- iv. Deny Payment: The UCRC may 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 UCRC; provided, that any denial of payment shall be reasonably related to the value to the UCRC of the obligations not performed.

13.9 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 SCIA pending necessary corrective action as specified by the Contractor, in addition to other remedies available to it under this SCIA. The Contractor recognizes that the UCRC shall not be liable for any costs incurred by the Contractor during suspension of performance consistent with this provision.

14. General Provisions

14.1 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 UCRC, 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 UCRC 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 UCRC is solely responsible for all aspects of its subcontracting arrangements and performance.

14.2 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.

15. Conflict of Interest

15.1 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 SCIA, even the appearance of a conflict of interest is harmful to the UCRC's interests. Absent the UCRC'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 UCRC hereunder. If a conflict or the appearance of a conflict 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 UCRC a disclosure statement setting forth the relevant details for the UCRC's consideration. Failure to promptly submit a disclosure statement or to follow the UCRC's direction in regard to the apparent conflict constitutes a breach of this SCIA.

15.2 UCRC: The individual Upper Colorado River Commissioners, employees, and agents of the UCRC shall not personally benefit from this SCIA. The UCRC 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 SCIA.

16. Legal Effect

16.1 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.

- 16.2 Except as otherwise expressly stated herein, nothing in this SCIA is intended to affect the legal status, nor to diminish or modify the rights and entitlements of any Party or water user under existing law to water from the Colorado River System.
- 16.3 The Contractor agrees that the UCRC is not responsible for, and no action or conduct of UCRC, 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.

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

The Effective Date is stated on page 1 of this SCIA.

- 17.1 Early Termination: Subject to notice provided in accordance with Section 28.1, this SCIA may be terminated by either Party at any time prior to the Contractor engaging in any work in accordance with this SCIA and provided that the UCRC has not made any payment to the Contractor.
- 17.2 Extension: The UCRC and the Contractor may mutually agree in writing to extend the term of this SCIA 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 SCIA is approved and signed by the Parties.
- 17.3 Mutual Consent: Subject to notice provided in accordance with Section 28.1, this SCIA may be terminated at any time with the consent of both Parties under mutually acceptable terms executed in writing by the Parties.
- 17.4 By UCRC: The UCRC may terminate this SCIA unilaterally if required by changes in federal or state law or regulation, or by early termination of the Funding Agreement. Notice of termination shall be given as provided in Section 28.1.

17.5 By Contractor: The Contractor may terminate this SCIA unilaterally before receiving any payments made by the UCRC pursuant to this SCIA. Notice of termination shall be given as provided in Section 28.1.

18. Amendment

This SCIA may not be modified or amended except as follows:

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

18.2 By Operation of Law: This SCIA 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 SCIA on the effective date of such change, as if fully set forth herein. Either party may terminate this SCIA 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 SCIA.

19. No Precedent

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

20. Entire Agreement/Severability

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

21. Counterparts

This SCIA 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.

22. Compliance with Existing Laws

The Parties intend that implementation of this SCIA 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 SCIA is consistent with the water rights and administration laws of the state in which the SCIA is to be implemented.

23. Indemnification and Waiver of Negligence Claims

23.1 To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the UCRC, 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 or its Agents pursuant to the terms of this SCIA. The Contractor will not have to indemnify the UCRC for claims caused by any act or omission of, or breach of contract by the UCRC, its employees, or agents pursuant to the terms of this SCIA.

23.2 If the indemnification provision set forth in Section 23.1 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 SCIA. In the event a person or entity other than a Party or third-party beneficiary designated in Section 25 of this SCIA 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.

24. UCRC Employee Non-Liability

The Contractor acknowledges that the UCRC's employees or agents are not parties to this SCIA in their individual capacities and the Contractor agrees not to bring any legal proceeding or claim against a UCRC 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 SCIA. To the extent suit is brought against a UCRC member in which it is alleged Contractor's negligence caused any alleged injury, Contractor will defend and indemnify the UCRC member relating to the lawsuit.

25. Third Party Beneficiaries

Consistent with the terms and obligations of the Funding Agreement, Reclamation is an intended third-party beneficiary of this SCIA and may enforce the terms of this SCIA against the Contractor in the same manner as the UCRC. Except for Reclamation as provided in this Section 25, this SCIA does not confer any right or entitlement to benefits from this SCIA on any person or entity that is not signatory to this SCIA, including any of the Upper Division States, regardless of the legal theory on which such a claim is made.

26. Jurisdiction/Venue

This SCIA shall be interpreted, governed by, and construed under applicable state law. Venue for adjudication of any disputes under this SCIA shall be the appropriate state

court within the state in which the Project is located. Any dispute involving Reclamation under this SCIA will be resolved according to federal law.

Or, if the Contractor is a Tribe or Tribal entity:

Nothing in this SCIA shall be construed as an express or implied waiver of sovereign immunity. If any dispute arises regarding this SCIA, the Parties agree to meet and attempt to resolve the dispute before seeking any remedy.

27. Force Majeure

27.1 No Party shall be considered to be in default in the performance of any of its obligations under this SCIA 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, 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 SCIA 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.

27.2 The Parties agree that compliance with environmental laws shall not be included in any of the conditions described in Section 27.1 that would affect the Parties' ability to perform obligations under this SCIA.

28. Contacts

28.1 Notice: All notices required to be given hereunder shall be in writing via email with confirmation of receipt or First Class U.S. mail to a Party's principal representative at the address set forth below. 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.

28.2 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:

CONTRACTOR’S REPRESENTATIVE

[Redacted Contractor Name]

[Redacted Contractor’s Representative Name]

Email: [Redacted Contractor Email]

Email: [Redacted Contractor’s Representative Email]

UPPER COLORADO RIVER COMMISSION
Charles R. Cullom, Executive Director
50 S 600 E, Suite 100
Salt Lake City, Utah 84111
Email: ccullom@ucrcommision.com

29. Waiver

None of the provisions of this SCIA 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 SCIA, 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.

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30. Open/Public Records Act

This SCIA, 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 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 SCIA.

IN WITNESS WHEREOF, the Parties hereto have executed this System Conservation Implementation Agreement on _____ day _____ of 2023.

CONTRACTOR:

By: _____

Date: _____

THE UPPER COLORADO RIVER COMMISSION:

By: Charles R. Cullom
Executive Director

Date: _____