

## YAMPA WATER SUPPLY CONTRACT

This Contract is made between the COLORADO RIVER WATER CONSERVATION DISTRICT (herein the “River District”), a political subdivision of the State of Colorado acting by and through its Colorado River Water Projects Enterprise, and \_\_\_\_\_ (herein “Contractor”) effective as of the date of the River District’s execution indicated below.

### RECITALS

A. The River District is authorized to contract to deliver water for beneficial use from River District water projects pursuant to provisions of C.R.S. § 37-46-101, *et seq.* (herein “River District Organic Act”).

B. The River District’s Board of Directors has adopted a Water Marketing Policy, as revised by the Board from time to time, to provide for the use of water available from the River District’s sources of supply pursuant to contracts, and that Water Marketing Policy is to be implemented through the River District’s Water Projects Enterprise.

D. Contractor has a need for wholesale water supply, demonstrated in its submittal to the River District pursuant to the Water Marketing Policy’s contracting process, in the amount of \_\_\_\_\_ acre feet annually for [municipal/industrial or agricultural] purposes, which beneficial uses will be accomplished by Contractor generally in the vicinity of \_\_\_\_\_ [check map or application] by [Select as appropriate: surface or ground water] diversions from or within the \_\_\_\_\_ River drainage [Optional: which is a tributary to the Yampa River].

### AGREEMENT

The foregoing Recitals are incorporated into this agreement between the River District and Contractor.

### DEFINITIONS

In this Contract certain terms will have definitions as stated below:

- The “River District” means the Colorado River Water Conservation District created and existing pursuant to the River District Organic Act defined in Recital A and acting by and through its Colorado River Water Projects Enterprise which is currently described and memorialized in the Resolution of the Colorado River Water Conservation District’s Board of Directors dated April 20, 2005.

- The “Project” means the River District’s Yampa River Basin Supply from Elkhead Reservoir, pursuant to the water right decree dated May 9, 2005, in Case No. 02CW106, Water Division 6.
- “Agricultural” means the use of water for commercial production of agricultural crops and livestock and other uses consistent with any right decreed for irrigation purposes, which uses are made on a parcel of land of at least ten acres.
- “Municipal and Industrial” means the use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners associations, or other entities for domestic, municipal, and miscellaneous related purposes as those terms are traditionally and commonly construed, including the use of water for purposes of producing or processing a non-agricultural product or service for sale, including without limitation, such uses as manufacturing, mining, milling, land reclamation, golf course irrigation, snowmaking, and non-hydroelectric power generation; but excepting the agricultural use of water defined herein.
- “Contracted Water” means the water which is the subject of this Contract which is to be released and delivered by the River District and used by Contractor. The Contracted Water is \_\_\_\_\_ acre feet of Yampa River Basin Supply available during each Project Year during the term of this Contract, subject to the provisions hereof, for Contractor’s use without right of carryover of any amount not used in any Project Year.
- “Project Year” means a period of time from July 1 through and including the subsequent June 30.
- “Water Marketing Policy” means the River District’s policy statement as revised and readopted as of the execution date of this Contract and as the same may be amended in the future.

1. River District Water Delivery Obligations and Responsibilities.

- a. Delivery. The River District will deliver the Contracted Water at the outlet works of Elkhead Reservoir into the receiving natural streams in quantities provided herein. Unless otherwise agreed to by the River District’s General Manager based upon written request of Contractor, the River District will make releases or request that releases be made for Contractor, based upon Contractor’s written schedule of anticipated demand, adjusted as necessary by the ongoing status of river administration *vis-a-vis* the priority status of Contractor’s diversions, provided that the releases can be made within the operational limitations of the River District’s project facilities as determined by the River District in its sole discretion. Contractor shall be solely responsible after delivery for the legal and physical delivery and use of the Contracted Water.

- b. Delivery Contingencies. The River District's delivery of Contracted Water shall be subject to Contractor's payments pursuant to paragraph 3 below, and the provisions for curtailment of deliveries in paragraph 5 below.
  - c. Water Measurements. The River District shall measure at the outlet works of the Contracted Water's sources of supply all Contracted Water and shall notify the Division Engineer of Colorado Water Division No. 6 of the date, time and amount of Contracted Water released pursuant to this Contract. Copies of such records shall be provided to Contractor upon request.
  - d. Water Quality. The River District shall have no obligation to Contractor or any other person regarding and makes no warranties or representations to Contractor concerning the quality of Contracted Water delivered pursuant to this Contract by releases of raw water to natural streams.
  - e. Maintenance of Facilities. The River District, to the extent that it has ownership and maintenance control, shall use its best efforts to maintain in good working condition the water storage and release facilities of the Contracted Water.
  - f. Withholding of Delivery. The River District may withhold deliveries of Contracted Water in the event of Contractor's nonpayment for Contracted Water or any other breach of this Contract by Contractor. Such remedy shall not be the River District's exclusive remedy in the event of any such breach.
  - g. Delivery from Primary or Alternate Sources. The River District will deliver the Contracted Water from the sources of the Project described herein, which will meet the Contractor's need to satisfy calls by senior water rights or the Contractor's physical need for any direct delivery of Contracted Water to Contractor's diversions. Subject to meeting those objectives, the River District reserves the right to provide all or any of the Contracted Water to Contractor from alternate reservoirs for Contractor's use, provided that the alternate sources are suitable to physically satisfy calls by senior water rights or Contractor's need for direct delivery.
2. Contractor's Water Use Obligations and Responsibilities.
- a. [Option: Lawful Presence in the United States. If Contractor is an individual as opposed to a corporate entity:] Contractor, pursuant to C.R.S. § 24-76.5-103, must provide an executed affidavit, attached hereto as Exhibit A, verifying Contractor's lawful presence in the United States and a photocopy of Contractor's valid driver's license or other proof of lawful presence in the United States. [NOTE: if individual cannot provide a driver's license or other proof, individual must

provide a request for waiver--Page 2 of the affidavit]. The River District, in its sole discretion, reserves the right to request additional proof of Contractor's lawful presence in the United States.]

- b. Scheduling of Use. Contractor [shall provide] [has provided] the River District a preliminary written schedule of its anticipated monthly demands for the Contracted Water during the [current] [upcoming] Project Year (July \_\_\_\_ - June \_\_\_\_). The schedule provided by Contractor [in its application for this Contract] shall serve as the schedule to be used until it is modified in a written notice given by Contractor to the River District [interim option only: on or before June 1<sup>st</sup> annually], or as necessary in response to river administration of the Contractor's diversions. The schedule shall identify the volume of any Contracted Water anticipated by Contractor not to be needed by it during any particular Project Year. Contractor shall update said schedule periodically during the Project Year as conditions require and give the River District written notice of all such revisions.
- c. Carriage Losses. Contractor shall bear carriage losses in such amount as is determined by the Division Engineer for Colorado Water Division No. 6, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.
- d. Use Per Contract and Law. Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of the Project, the Water Marketing Policy, as it may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Contractor is not authorized to apply for or secure any change in the water rights for or associated with any of the sources of supply of the Contracted Water.
- e. Legal Approvals. Contractor shall at its sole expense adjudicate a plan or plans for augmentation or exchange and/or secure administrative approvals of any temporary substitute supply plans which are needed for Contractor to use its Contracted Water. Any such plans shall identify Elkhead Reservoir as the source of supply. [Optional: Contractor already has filed such an application in Water Court, Water Division No. 6, Case No. \_\_CW\_\_\_. If necessary, Contractor shall amend the application to identify the River District's Elkhead Reservoir source of supply. If Contractor intends to make any [additional (leave in if optional applies)] application(s) for any augmentation or exchange plan(s) or substitute supply plan(s) needed for Contractor to use its Contracted Water, Contractor shall submit the proposed application(s) to the River District within a reasonable time before Contractor proposes to file such application(s). The River District shall grant written approval of such applications before they are submitted or filed, and the River District's approval shall not be unreasonably withheld. The River

District may in its discretion become a co-applicant in the prosecution of any such applications for the purpose of protecting its water rights and related policies. Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of a River District contract.

- f. Limitation on Disposition.
  - i. Contractor shall not sublet, sell, donate, loan, assign or otherwise dispose of any of its rights to this Contract or to Contracted Water without prior written notice to, and the written approval of, the River District and the payment of a transfer fee at the prevailing rate set forth in the Water Marketing Policy. The River District's approval of such disposition shall be granted in all instances in which the Contractor is transferring the water system which supplies the Contracted Water, or a permanent transfer of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the River District to be served with the Contracted Water.
  - ii. The assignment of a Contract is subject to the Water Marketing Policy as revised as of the effective date of the assignment. In accordance with this subparagraph (ii), any assignee must pay for the Contracted Water at the then-current price determined by the River District Board of Directors.
- g. Contractor's Water Rates. Contractor may charge its water customers who are supplied with Contracted Water such rates and charges as are permitted by Colorado law.
- h. Nondiscrimination. Contractor shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, or national origin or any other criteria prohibited under state or federal law.
- i. Accounting of Use. Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to the River District specifically for the purpose of enabling the River District to prove the use of River District Project water rights and to administer and operate the Project and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to the River District promptly upon request and shall assist the River District as it may

reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

- j. Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, *et seq.*) if Contractor proposes physical alterations to the designated critical habitat of the Yampa River endangered fish species.

3. Contractor's Payments.

- a. In addition to the application fee already paid by Contractor, in order for the River District's delivery obligation to become effective [immediately] [on or about July 1, \_\_\_\_], Contractor shall pay to the River District on the execution of this Contract the total sum of \$\_\_\_\_\_, being \$\_\_\_\_\_ for each acre foot of \_\_\_\_\_ acre feet of Contracted Water for the [current] [upcoming] Project Year (July \_\_\_\_\_-June \_\_\_\_\_). Thereafter, the River District shall provide Contractor an annual invoice for the Contracted Water, and Contractor shall pay the invoice within thirty (30) days of receipt. The price for each type of water will be reviewed and set annually by the River District's Enterprise Board of Directors (which decision normally will be made prior to March 1 each year). Any annual increase in the contract price shall not exceed the then-current published Consumer Price Index (CPI) plus New Growth Index (NGI).
- b. Contractor also shall pay any special assessment levied by the River District on Contractor to recoup all or a portion of costs attributable to extraordinary maintenance incurred by the River District.

4. Contract Term.

- a. Except in the event of an early termination or partial termination as provided for in paragraph 6 below and subject to the other terms and conditions of this Contract, the term of this Contract shall be for a period of up to forty (40) years from the date of the execution of this Contract (through June 30, \_\_\_\_).

[Optional subparagraph 4.a for interim (1-5 yr) contracts]: The term of this Contract shall be for a period of \_\_\_\_\_ year(s).

[Subparagraph 4.b is included only for/with 40-year version of subparagraph 4.a.]

- b. At the end of the 40-year term of this Contract (June 30, \_\_\_\_\_), the Contractor shall have the right to renew this Contract for the same Contracted Water amount for a secondary term of thirty-five (35) years, upon such terms and conditions as the River District is offering at that time, provided that the River District is offering up the full amount of Contracted Water for lease. In the event that the River District, on a non-discriminatory basis, decides not to offer up the full amount of the Contracted Water for lease, Contractor shall have the right to renew for a secondary term of thirty-five (35) years such lesser portion of the Contracted Water as may be offered by the River District. If Contractor desires to so renew this Contract, it shall provide the River District written notice of its intention to do so at least ninety (90) days prior to the expiration of the initial term of this Contract. Thereafter, and prior to the expiration of the initial term, the River District and Contractor shall execute a supplemental agreement of renewal in a form mutually acceptable to the River District and Contractor. If such notice of intention to renew is not provided and such supplemental agreement is not executed, no renewal term shall commence.
5. Water Shortage. In the event that the River District is unable, because of either legal or physical reasons (including, but not limited to, hydrologic shortages and operational restrictions), to deliver any or all of the full amount of water contracted from the Project, including the Contracted Water, the River District reserves the right to apportion the Project's available water among its several contractors, including Contractor, in the manner provided in paragraph \_\_\_ of the Water Marketing Policy.
6. Contract Termination.
- a. Termination by River District.
    - i. The River District may terminate this Contract for any violation or breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any sum or amount due under this Contract within thirty (30) days after receiving written notice from the River District of such breach.
    - ii. The River District also may terminate this Contract if, in its discretion, any judicial or administrative proceedings initiated by Contractor as contemplated in subparagraph 2.d above, threaten the River District's authority to contract for delivery of Project Water or the River District's water rights, permits, or other interests associated with the Project.
    - iii. The River District may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other

authorizations which are needed to deliver the Contracted Water.

- b. Termination by Contractor.
    - i. Contractor may terminate this Contract in its entirety for any reason by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment.
    - ii. Every fifth year after the year in which this Contract is executed, Contractor may partially terminate this Contract as to the amount of Contracted Water by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment. Partial termination by Contractor shall not exceed more than fifty percent (50%) of the amount of Contracted Water which is then under contract.
    - iii. Within thirty (30) days of final approval of the Water Court application contemplated by subparagraph 2.d. above, Contractor may by written notice to the River District partially terminate this Contract as to the amount of Contracted Water which is not needed under that approval.
  - c. Notice of Termination to Affected Officials. The River District will notify the Division Engineer and any other appropriate governmental officials of any full or partial contract termination except for any partial termination under subparagraph 6.b.(iii).
7. Force Majeure. The River District shall not be responsible for any losses or damages incurred as a result of the River District's inability to perform pursuant to this Agreement due to the following causes if beyond the River District's control and when occurring through no direct or indirect fault of the River District, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to the River District's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.
8. Miscellaneous/Standard Provisions.
- a. Notices.
    - i. All notices required or appropriate under or pursuant to this Contract shall be given in writing mailed or delivered to the parties at the following addresses:

River District:

Colorado River Water Conservation District  
Attention: General Manager / Secretary  
201 Centennial Street, Suite 200  
P. O. Box 1120  
Glenwood Springs, Colorado 81602  
Phone: (970) 945-8522  
Fax: (970) 945-8799

Contractor:

with copy to:

_____	_____
_____	_____
_____	_____
_____	_____

- ii. Either party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.
- b. Amendments. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.
- c. This Contract is subject to the River District’s Water Marketing Policy, as it may be revised from time to time by the River District’s Board.

COLORADO RIVER WATER CONSERVATION  
DISTRICT acting by and through its Colorado  
River Water Projects Enterprise

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
R. Eric Kuhn, General Manager/Secretary

ATTEST:

\_\_\_\_\_  
Dan Birch, Deputy General Manager/Asst. Sec.

**CONTRACTOR:**

By:\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

