

PARTICIPATION CONTRACT

WATER ACTIVITY ENTERPRISE SPECIAL IMPROVEMENT DISTRICT NO. 6 OF THE RIO GRANDE WATER CONSERVATION DISTRICT

THIS CONTRACT is entered into on this ____ day of _____, 20__, by and between THE WATER ACTIVITY ENTERPRISE of SPECIAL IMPROVEMENT DISTRICT NO. 6 of the RIO GRANDE WATER CONSERVATION DISTRICT (“Subdistrict”) and the CITY OF ALAMOSA (“Contract Holder”).

The purpose of this Contract is to allow the Contract Holder to seek inclusion of wells (“Contract Wells”) that are not Subdistrict Wells into the Subdistrict’s Annual Replacement Plan and thereby provide a remedy of the Contract Holder’s injurious stream depletions and provide for the proportional responsibility for achieving and maintaining a Sustainable Water Supply in the Confined Aquifer. The Contract Wells are wells that are located outside of the boundaries of the Subdistrict. Once the Contract is approved, the Subdistrict will add the Contract Wells in the Subdistrict’s next Annual Replacement Plan.

Terms used in this Contract have the same meaning as defined terms in the Subdistrict’s Plan of Water Management and the Rules and Regulations and the Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for all Irrigation Water Rights (Sept. 3, 2015) as they now exist or as they may be changed in the future (“Groundwater Use Rules”).

SPECIFIC CONDITIONS OF THIS CONTRACT

1. Term: The Contract term is from May 1, 2022, through April 30, 2024, if all of the conditions herein contained are continuously met.
2. Information about the Contract Wells: Included as Exhibit A
 - 2.1 Owner’s name: City of Alamosa.
 - 2.2 Owner’s address: 300 Hunt Ave., P.O. Box 419, Alamosa, CO, 81101
 - 2.3 WDIDs: Included as Exhibit A
 - 2.4 Well permit number: Included in Exhibit A
 - 2.5 Well water right decree number (if applicable): Included in Exhibit A

- 2.6 Decreed/permitted beneficial use(s): Included in Exhibit A
 - 2.7 Decreed/permitted withdrawal capacity: Included in Exhibit A
 - 2.8 Well location: Included in Exhibit A
 - 2.9 Description of place of use: Included in Exhibit A
 - 2.10 Description of period of use (year-round, or if seasonal, the specific months of use): Exhibit A
 - 2.11 The well meter identification number and the meter readings reported under the Division of Water Resources' Measurement Rules for the past five (5) Water Administration Years, or, in accordance with the Rules and Regulations of the Subdistrict, submit current and historical groundwater withdrawals calculated using a Subdistrict-approved alternative method of measurement: Exhibit A.
 - 2.12 The Contract Holder is seeking the approval of an individual plan for augmentation and agrees to provide any information to the Subdistrict when and if it becomes applicable to this contract.
3. The Contract Holder hereby agrees to the following Payment:
- 3.1 The Parties acknowledge that the inclusion of Contract Holder's Wells in the Subdistrict's ARP may result in a reduction of calculated injurious depletions to certain river reaches that the Subdistrict must remedy under the ARP.
 - 3.2 In recognition of this benefit provided to the Subdistrict by the inclusion of Contract Holder's Wells for the Term of this Contract, the Subdistrict will pay to Contract Holder a total of One Hundred Thirty Thousand Dollars (\$130,000.00) for the term of this Contract, with a payment of Sixty-Five Thousand Dollars (\$65,000.00) on June 30, 2022, and another payment of Sixty-Five Thousand Dollars (\$65,000) on June 30, 2023.
4. Contract Holder's Further Commitments:
- 4.2 Contract Holder agrees, covenants and commits to submit well meter readings as are required under the Water Division 3 Measurement Rules, or in accordance with the Rules and Regulations of the Subdistrict, but in any event, no later than December 1st following the end of any Water Administration Year in which groundwater withdrawals occur and to supplement or correct any submitted data as requested by the Subdistrict.

- 4.2 Contract Holder agrees that, as a condition of operating under the Subdistrict and its ARP, Contract Holder will take responsibility for the remedy of any injurious Post-Plan Depletions (aka lagged depletions) due to Groundwater Withdrawals by the Contract Holder while operating under this Contract. Such Post-Plan Depletions must be made part of any plan for augmentation, substitute water supply plan or similar judicial or administrative authority for future operation of Contract Holder's Wells outside of a Subdistrict ARP and must be in compliance with the Groundwater Use Rules.
- 4.3 Contract Holder recognizes that the Subdistrict Board of Managers will use best efforts in acquiring remedies sufficient to permit the use of the Contract Wells in the same manner as all other Subdistrict wells, but that it can make no guarantee that adequate remedies will be available in any given year, which may necessitate restrictions on groundwater withdrawals or the cessation of groundwater withdrawals altogether in any particular year and that Contract Holder hereby waives any claims against the Subdistrict and its Board of Managers if sufficient remedies cannot be obtained.
- 4.4 Contract Holder recognizes the Subdistrict Board of Managers will use best efforts to meet the requirement in the Groundwater Rules of a proportional responsibility for achieving and maintaining a Sustainable Water Supply in the Confined Aquifer, but that the Subdistrict in no way guarantees the requirement can be met in any given year, which may necessitate restrictions on groundwater withdrawals or the cessation of groundwater withdrawals altogether in any particular year and that Contract Holder hereby waives any claims against the Subdistrict and its Board of Managers if a proportionate share of the Sustainable Water Supply in the Confined Aquifer cannot be achieved and maintained.
- 4.5 Contract Holder agrees that he, she or it has reviewed and understands the Subdistrict's Plan of Water Management and Rules and Regulations, and agrees to fully comply with the Plan, together with all Rules and Regulations duly promulgated by the Board of Managers of the Subdistrict, and, furthermore, agrees not to challenge the same.
- 4.6 Notwithstanding the foregoing if the Subdistrict believes that Contract Holder is in breach of any obligation under this Participation Contract, then the Subdistrict must promptly give notice of the alleged breach to Contract Holder. The Contract Holder will have 60 days from effective date of the Notice to provide a written statement explaining why it is not in breach, or shall cure the alleged breach. If the alleged breach is not cured or otherwise resolved within 60 days, the Subdistrict may at its discretion pursue any of the remedies described in this

Participation Contract.

5. Subdistrict Commitments:

- 5.1 The Subdistrict agrees and commits to use its best efforts in securing remedies sufficient to provide remedy for injurious stream depletions caused by the Contract Wells during every year in which this Contract is in force and effect, to treat the Contract Wells the same as other Subdistrict wells for this purpose, and to provide the Contract Holder with prompt notification should the Subdistrict prove unable to acquire sufficient remedies in any year.
- 5.2 The Subdistrict agrees to remedy all injurious stream depletions calculated to occur from the operation of the Contract Wells, subject to paragraph 5.1 above, for the Term of this Contract if the Contract Holder complies with the terms of this Contract.
- 5.3 The Subdistrict agrees and commits to use its best efforts to meet the requirement in the Groundwater Rules of a proportional responsibility for achieving and maintaining a Sustainable Water Supply in the Confined Aquifer during every year in which this Contract is in force and effect, to treat the Contract Wells the same as other Subdistrict wells for this purpose, and to provide the Contract Holder with prompt notification should the Subdistrict prove unable to meet this requirement in any year.
- 5.4 The Subdistrict agrees to undertake all legal and engineering work necessary to ensure that the Annual Replacement Plan receives full and fair consideration by the State Engineer and to seek to have the Annual Replacement Plan approved annually by the State Engineer for the Contract Holder's wells and all other Subdistrict Wells covered by the Annual Replacement Plan.

6. General Conditions:

- 6.1 **Notices.** All notices and other communications that are required or permitted to be given to the Parties under this Contract shall be sufficient in all respects if given in writing and delivered in person, express courier, or by First Class U.S. Mail, postage prepaid, or by electronic mail. Notice delivered in person or by courier shall be effective upon such delivery; notice provided through U.S. Mail shall be effective three days after deposit in the U.S. Mail; notice delivered by electronic mail shall be effective when received. Notice shall be given to the receiving party at the following addresses:

If to Contract Holder:

Heather Brooks, City Manager
City of Alamosa
PO Box 419
Alamosa, CO 81101

If to Rio Grande Water
Conservation District or
Subdistrict:

Cleave Simpson, General Manager
Rio Grande Water Conservation District
8805 Independence Way
Alamosa, CO 81101

or such other address as such party may have given to the other by notice pursuant to this paragraph.

- 6.2 **Assignment.** This Contract may not be assigned by any Party without the prior written consent of each of the other Parties. Any attempted assignment in violation of this provision shall be void.
- 6.3 **No Costs or Attorneys' Fees.** In the event of any litigation or other dispute resolution process arising out of this Contract, the Parties agree that each shall be responsible for its own costs and attorney's or other fees associated with any such action.
- 6.4 **Entire Contract; Amendments.** The Parties recognize and acknowledge that there are numerous other Contracts between and among them addressing certain issues that are also addressed in this Contract. This Contract (together with the Exhibits hereto, which constitute parts of this Contract and which are hereby incorporated by this reference) constitutes the entire Contract between the Parties relating to the subject matter hereof. All prior or contemporaneous oral Contracts and discussions among all of the Parties or their respective agents or representatives relating to the subject hereof are merged into this Contract. This Contract may be altered, amended, or revoked only by an instrument in writing signed by all of the Parties.
- 6.5 **Applicable Law.** This Contract shall be governed by and construed according to the internal laws of the State of Colorado.
- 6.6 **Waiver.** The failure of one of the Parties to insist upon the strict performance of any provision of this Contract or to exercise any right, power, or remedy upon a breach thereof shall not constitute a waiver of that or any other provision of this Contract or limit that Party's, or any other Party's, right thereafter to enforce any provision or exercise any right.
- 6.7 **Captions.** All captions contained in this Contract are for convenience only and

shall not be deemed to be part of this Contract.

- 6.8 **Counterparts.** This Contract may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one Contract.
- 6.9 **Parties Bound by Contract.** This Contract is binding upon the Parties hereto and upon their respective, legal representatives and successors.
- 6.10 **Construction.** All section, paragraph, and exhibit references used in this Contract are to this Contract unless otherwise specified.
- 6.11 **Authorizations.** The governing bodies of each of the Parties have authorized by resolution the execution of this Contract.
- 6.12 **No Third-Party Beneficiaries.** This Contract is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any way the powers and responsibilities of the Parties or any other entity not a party hereto.
- 6.13 **Force Majeure.** Subject to the terms and conditions in this paragraph, no party to this Contract shall be liable for any delay or failure to perform under this Contract due solely to conditions or events of Force Majeure, specifically: a) acts of God; b) pandemics, epidemics, or quarantines (either global, national or local); c) governmental moratoriums, restrictions or prohibitions; d) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; e) sabotage; f) vandalism beyond that which can be reasonable prevented; g) terrorism; h) war; and, i) riots provided that: A) the non-performing Party gives the other Parties prompt written notice describing the particulars of the occurrence of the Force Majeure; B) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure event or condition; and, C) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Parties describing the actions taken to remedy the consequences of the Force Majeure event or condition. In the event of a change in municipal (or other local governmental entity), state or federal law or practice that prohibits or delays performance, the obligation to seek a remedy shall extend to making reasonable efforts to reform the Contract in a manner consistent with the change that provides the Parties substantially the same benefits as this Contract, provided, however, that no such reformation shall increase the obligations of any of the Parties. In the event any delay or failure of

performance on the part of the party claiming Force Majeure continues for an uninterrupted period of more than three hundred sixty-five (365) days from its occurrence or inception as noticed pursuant to this Contract, all of the Parties not claiming Force Majeure may, at any time following the end of such one year period, terminate this Contract upon written notice to the Party claiming Force Majeure, without further obligation by any of the Parties; provided, however, that any such decision to terminate this Contract shall not be effective unless agreed to by all of the Parties not claiming Force Majeure.

- 6.14 **Non-Business Days.** If any date for any action under this Contract falls on a Saturday, Sunday or a day that is a “holiday” as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.
- 6.15 **Joint Draft.** The Parties, with each having the opportunity to seek the advice of legal counsel and each having an equal opportunity to contribute to its content, drafted this Contract jointly.
- 6.16 **Non-Severability.** Each paragraph of this Contract is intertwined with the others and is not severable unless by mutual consent of the Parties.
- 6.17 **Effect of Invalidity.** If any portion of this Contract is held invalid or unenforceable for any reason by a court of competent jurisdiction as to any Party or as to all Parties, the Parties will immediately negotiate valid alternative portion(s) that as nearly as possible give effect to any stricken portion(s).
- 6.18 **Definitions.** Terms used in this Contract have the same meaning as the defined terms in the Subdistrict’s approved Plan of Water Management and Rules and Regulations, as they exist now or as they may be changed in the future.

This Contract is effective as of the day and year first above written.

**SPECIAL IMPROVEMENT DISTRICT
NO. 6 OF THE RIO GRANDE WATER
CONSERVATION DISTRICT**

CITY OF ALAMOSA, COLORADO

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

ATTEST:

ATTEST:

Name:

Name:

Title:

Title:

