

**FIRST AMENDED AGREEMENT  
BETWEEN**

**THE STATE OF COLORADO  
AND  
THE REPUBLICAN RIVER WATER CONSERVATION DISTRICT  
WATER ACTIVITY ENTERPRISE**

**CONCERNING**

**IMPLEMENTATION OF THE REPUBLICAN RIVER CONSERVATION RESERVE  
ENHANCEMENT PROGRAM (CREP)**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the State of Colorado, acting by and through the Department of Natural Resources, and the Republican River Water Conservation District Water Activity Enterprise, whose address is 410 Main Street, Suite 8, Wray, Colorado 80758, sometimes collectively referred to as the “Parties” or singularly as “Party”.

**RECITALS**

R.1 The Republican River Water Conservation District (“District”) was created pursuant to section 37-50-103(1), Colorado Revised Statutes (“C.R.S.”), to, among other purposes, cooperate with and assist the State of Colorado to carry out the State’s duty to comply with the limitations and duties imposed upon the State by the Republican River Compact.

R.2 Pursuant to section 37-50-107(1)(k), C.R.S., the District has established a water enterprise pursuant to Article 45.1 of Title 37 of the Colorado Revised Statutes known as the Republican River Water Conservation District Water Activity Enterprise (“Enterprise”).

R.3 The Board of Directors of the District (“Board”) is the governing body of the Enterprise (“Governing Body”).

R.4 The Board, acting as the Governing Body of the Enterprise, adopted Resolution No. 04-01 establishing an annual use fee on the diversion of water within the District, which, as amended, provides revenues to the Enterprise that can be used to assist the State of Colorado in complying with the limitations and duties imposed upon the State by the Republican River Compact.

R.5 In 2006, the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Wildlife Commission and the Division of Wildlife (hereinafter referred to as the “State”), entered into an agreement with the United States Department of Agriculture, Commodity Credit Corporation (hereinafter referred to as the “CCC”), to implement a Conservation Reserve Enhancement Program to address water issues as they relate to the Ogallala Aquifer and associated streams, reduce sedimentation and agricultural chemical runoff, and enhance habitat for wildlife populations, including several declining species in the Republican River Basin in eastern Colorado (hereinafter referred to as “the proposed Republican River CREP”).

R.6 The Republican River CREP provides incentives, cost sharing, and annual rental payments to participants who enter irrigated land into eligible conservation practices such as native vegetation establishment or wildlife preservation for a period of 14 or 15 years.

R.7 The Republican River CREP requires producers enrolled in the program to forego irrigation in perpetuity, convert those acres to grass or other native vegetation, and receive financial and technical assistance.

R.8 A reduction of irrigated acreage in the Republican River Basin assists the State of Colorado in complying with the limitations and duties imposed upon the State by the Republican River Compact.

R.9 Providing incentives, cost sharing, and annual rental payments through programs such as the Republican River CREP will provide vital assistance in helping sustain water resources in the Republican River Basin without disastrously impacting the local economy and social fabric in the basin.

R.10 The Board, acting as the Governing Body of the Enterprise, adopted Resolution No. 05-06, in which the Board committed to provide approximately 20 percent of the necessary non-federal funding for the proposed Republican River CREP under certain conditions.

R.11 The State and the Board entered into an agreement on April 21, 2006 regarding the original Republican River CREP.

R.12 On June 21, 2017, The Board, acting as the Governing Body of the Enterprise approved requesting an Amendment to the Republican River CREP to, among other things, increase the total acres that can be enrolled under the Republican River CREP.

R.13 The State and the Board desire to define and clarify the Enterprise's commitment to provide necessary non-federal funding for the Republican River CREP and update their previous agreement to reflect the proposed Revised Republican River CREP Agreement.

NOW, THEREFORE, for good and valuable consideration and the mutual covenants and agreements set forth herein, the State and the Board, acting as the Governing Body of the Enterprise, agree as follows:

1. The Revised Republican River CREP Agreement was authorized by the United States Department of Agriculture on August 28, 2018 (attached) ("Program"). The Enterprise agrees to contribute approximately 20 percent of the overall costs of the Revised Republican River CREP ("the necessary non-federal funding") under the following conditions:

- a. The Program is limited to 60,000 acres in the Republican River Basin of which up to 5,000 acres may be dryland cropped to accommodate non-irrigated pivot corners;
- b. The program contracts are for 14 to 15 years;
- c. The Program provides incentives, cost sharing, and annual rental payments to participants to convert irrigated acres in the Republican River

Basin to grass or native vegetation that will no longer be irrigated, except as permitted to establish grass or native vegetation in the first year;

- d. The Enterprise's funding can be structured in a manner to provide incentives, as approved by the Board, acting as the Governing Body of the Enterprise, for producers to enroll irrigated lands nearest to certain streams in the Republican River Basin in the Program that will be of greater benefit in assisting the State of Colorado in complying with the limitations and duties imposed upon the State by the Republican River Compact;
- e. The Enterprise's funding will be provided over the period of the Program contracts as stipulated by the approved program incentive structure;
- f. The Enterprise's commitment to provide the necessary non-federal funding is subject to the availability of revenues derived from use fees imposed by the Enterprise and to the extent permitted by law;
- g. Any contributions of non-federal funds or non-federal in-kind services that are accepted by CCC or its designee for the Program, whether contributed by the State, the District, the Enterprise, or other non-federal sources, will be included in the necessary non-federal funding, and will thereby reduce the Enterprise's commitment to provide the necessary non-federal funding, subject to the approved program incentive structure;
- h. The Enterprise is entitled to hold or control any water right or permit to use ground water that has been used to irrigate land enrolled in the program, which water right or permit will be abandoned, to ensure that the land is no longer irrigated, except as permitted to establish grass or native vegetation, and that a condition of the Enterprise's funding can be that the water right or permit not be used in perpetuity, and that the Enterprise can use a surface right that has been used to irrigate land enrolled in the program to assist the State of Colorado in carrying out the State's duty to comply with the Republican River Compact consistent with the goals of the Revised Republican River CREP Agreement by using such surface right to increase streamflow in the Republican River Basin or Virgin Water Supply under the Compact.

2. All financial commitments of the State and the Enterprise are subject to the appropriation and availability of funds. This Agreement does not nor is it intended to obligate or require the present obligation of any funds. Both Parties will proceed in accordance with their controlling statutes and regulations to secure annual funding otherwise necessary to perform their obligations under this Agreement. In the event either Party is subject to a funding limitation or cannot otherwise secure the necessary funding for this Agreement, it will notify the other Party expeditiously and any necessary modifications will be made to this Agreement. While the Agreement does not currently obligate any State or Enterprise funds, the parties intend over the term of this Agreement and assuming agricultural landowner participation at the proposed levels that the CCC expenditures will approximate \$136,500,000, the non-federal in-kind expenditures will approximate an additional \$12,600,000, and the Enterprise cash expenditures will approximate an additional \$14,700,000.

3. All CRP contracts under the Revised Republican River CREP Agreement shall be subject to all limitations set forth in the regulations at 7 CFR Part 1410, including, but not limited to, such matters as economic use, transferability, violations, and contract modifications. Agreements between owners or operators and the State or the Enterprise may impose additional conditions not in conflict with those under the CRP regulations.

4. Except as otherwise provided herein, neither the State nor the Enterprise shall assign or transfer any rights or obligations under this Agreement without the prior written approval of the other party.

5. The State and the Enterprise agree that each party will be responsible for its own acts and results to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof.

FOR THE REPUBLICAN RIVER WATER CONSERVATION DISTRICT  
WATER ACTIVITY ENTERPRISE

\_\_\_\_\_  
Rod Lenz  
President  
Republican River Water Conservation District  
Board of Directors

Date: \_\_\_\_\_

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

ATTEST: \_\_\_\_\_

FOR THE STATE OF COLORADO

\_\_\_\_\_  
Robert Randall  
Executive Director  
Department of Natural Resources  
State of Colorado

Date: \_\_\_\_\_

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

ATTEST: \_\_\_\_\_