

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

This System Conservation Implementation Agreement (“SCIA”) is entered into this **1** day of June, 20 23 (“Effective Date”), by and between the Upper Colorado River Commission (“UCRC”), acting through the officials executing this Agreement and MS Cubed, LLC (“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 January 6, 2023. 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 December 31, 2023, 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 Colorado 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: The water that is the subject of this SCIA is/has been previously used pursuant to the following court decrees on file with the State of Colorado Division of Water Resources. The field is irrigated with water allocation of the [REDACTED] [REDACTED] water rights, which is diverted from the Colorado River through the [REDACTED]:

Ditch	Case No.	Priority Date	Amount	Interest Owned
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- ii. Contractor Use of Subject Water: The Contractor historically uses the water to flood irrigate 5.31 acres of alfalfa and grass hay, as shown in Figure 1 of Exhibit A, Verification Plan (“Project Field”). Typically, the Project Field is irrigated with water allocation of the [REDACTED] from the Colorado River at the [REDACTED], which is delivered to the Contractor through the [REDACTED] and diverted on to the Project Field through an alfalfa valve. The Project Field has an average annual depletion of 13.1 acre-feet.

- i. Project: As part of the Pilot Program, the Contractor will not irrigate 5.31 acres of forage crops from April 1, 2023 to September 10, 2023. Starting April 1, 2023, and through September 10, 2023, the Contractor will not irrigate the Project Field and will keep the alfalfa valve associated with the Project Field closed. Water not used by the Contractor will stay in the [REDACTED] and be delivered into a wasteway (wash) and returned to the Colorado River. Although this is the preferred operation, if delivering the water associated with the Project Fields through the [REDACTED] or the wasteway/wash is causing or is likely to cause flooding, to the extent necessary to prevent such flooding, the water may instead be delivered to the Colorado River through other laterals or wasteways or left undiverted at the river headgate for the [REDACTED].

- iii. Right of Entry: The Contractor agrees that after providing the Contractor 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:

M.S. Cubed, LLC
[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; if the Colorado Division of Water Resources, through its employees or agents, determines that the Project is causing or is likely to cause material injury to other vested water rights; 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.
- 17.6 No Further Payment After Termination: In the event termination of this SCIA occurs under Section 17, the Contractor will not be entitled to receive any further payment, and no monetary or other liability shall accrue to the UCRC.

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

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

20.2 Should any portion of this SCIA be declared or determined by any court to be illegal, invalid, or unenforceable, the illegal, invalid, or unenforceable portion of this SCIA shall be interpreted as narrowly as possible and shall be deemed stricken and

severed from this SCIA, and all other parts, terms, provisions, and portions of this SCIA shall remain unaffected and shall be given full force and effect.

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.

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:

[REDACTED]
M.S. Cubed, LLC
[REDACTED]
[REDACTED]
[REDACTED]

UPPER COLORADO RIVER COMMISSION:

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

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 1 day June of 2023.

CONTRACTOR:

Michelle R. Shaffer, manager

By: ~~Matt Shaffer~~ Michelle R. Shaffer
MS Cubed, LLC

Date: 05/21/2023

THE UPPER COLORADO RIVER COMMISSION:

Charles R. Cullom

By: Charles R. Cullom
Executive Director

Date: 6/1/2023