

AGREEMENT  
BETWEEN THE  
UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION,  
AND THE  
CENTRAL UTAH WATER CONSERVANCY DISTRICT

for

PLANNING AND CONSTRUCTION OF THE SPANISH FORK CANYON PIPELINE AND  
THE SPANISH FORK – PROVO RESERVOIR CANAL PIPELINE

I. Authority

This Agreement between the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) and Central Utah Water Conservancy District (District), individually or collectively known as the Party or Parties, is entered into pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575, 106 Stat. 4605, October 30, 1992, as amended).

II. Background

The Central Utah Project Completion Act (“CUPCA”) is contained within Titles II through VI of the Reclamation Projects Authorization and Adjustment Act of 1992. Its purpose is to provide for the orderly completion of the Central Utah Project (“CUP”), a participating project of the 1956 Colorado River Storage Project. CUPCA does this by authorizing an increase in the appropriations ceiling for CUP, for which Section 202 addresses funding for completion of water development features including instream flows and water conservation, Section 302 addresses Increased Project Water Capability, and Section 303(c) addresses Stream Flows.

The Parties entered into Implementation Agreement (Contract No. WS-04-140) (“the Implementation Agreement”) whereby the Parties acknowledged that a portion of planning, construction and operation, maintenance and replacement costs of certain features of the Utah Lake Drainage Basin Water Delivery System (“the ULS”) (described in the Draft 2004 Supplement to the Definite Plan Report of the Bonneville Unit of the CUP (“the Draft 2004 DPR”), planned to deliver water for instream flow purposes on the lower Provo River in accordance with CUPCA should be treated as a Section 8 cost, which cost should be borne by the Mitigation Commission. The Mitigation Commission acknowledged its intent to pay an estimated \$33,284,279 (as estimated in the Draft 2004 DPR, which is subject to change; and as

indexed by Reclamation engineering cost indices) to the District for those planning and construction costs.

### III. Purpose

The purpose of this Agreement is to provide Federal funding by the Mitigation Commission to the District of an estimated \$33,284,279 (as estimated in the Draft 2004 DPR, which is subject to change; and as indexed by Reclamation engineering cost indices) as payment for the planning and construction of the Spanish Fork Canyon Pipeline (SFC Pipeline) and Spanish Fork – Provo Reservoir Canal Pipeline (SFPR Pipeline) as further described in the Implementation Agreement, (“the Project”).

### IV. Term of Agreement

This Agreement shall become effective when signed by all Parties and upon issuance of Records of Decision on the ULS by the Secretary of the Department of the Interior and by the Mitigation Commission, and shall remain in force until the scope of work identified herein is completed, unless terminated pursuant to Article IX.

### V. Scope of Work

#### A. The District:

1. The District is responsible for the construction of the SFC Pipeline and the SFPR Pipeline and appurtenant facilities as described in the ULS Final Environmental Impact Statement and the Draft 2004 DPR, and in accordance with the Records of Decision referenced in Article IV.
2. The District is responsible for the operation, maintenance and replacement of all facilities associated with the SFC Pipeline and the SFPR Pipeline and their appurtenant facilities.
3. The District shall not perform or cause to be performed any modification, construction or replacement of any feature in implementation of this Agreement unless such action is in compliance with the National Environmental Policy Act and other Federal fish, wildlife, recreation, and environmental laws and regulations and such proposed course of action has been approved by the Mitigation Commission, where such approval is necessary.
4. Upon execution of the Implementation Agreement and upon appropriation of Federal funds by Congress for the project purposes described herein, and annually thereafter until final payment is received, the District shall submit an annual invoice to the Mitigation Commission in accordance with the schedule proposed in Attachment A, for up to an estimated \$33,284,279 (as estimated in the Draft

2004 DPR, which is subject to change; and as indexed by Reclamation engineering cost indices).

5. The District shall develop an internal fiscal process that provides financial documentation of all transactions relative to this Agreement. See also Article VII. Payment of Funds.
6. The District shall appoint a Project Officer to represent the District in all matters dealing with this Agreement.
7. The District shall attend and participate in all checkpoint conferences and coordination meetings scheduled to exchange technical information, provide progress reports, or other information requested by the Parties pertaining to activities under this Agreement.

B. The Mitigation Commission:

1. Upon receipt of the annual invoices and other documentation required as per Article V.A.4. of this Agreement, the Mitigation Commission shall make annual payments to the District in accordance with the schedule proposed in Attachment A, up to an estimated \$33,284,279 (as estimated in the Draft 2004 DPR, which is subject to change; and as indexed by Reclamation engineering cost indices) for planning and construction of the SFC Pipeline and the SFPR Pipeline and their appurtenant facilities.

No legal liability on the part of the Mitigation Commission for any payment may arise from performance under this Agreement until funds are made available to the Mitigation Commission for performance.

2. The Mitigation Commission shall appoint a Project Officer to represent the Mitigation Commission in all matters regarding this Agreement, and designate staff members responsible for monitoring implementation.
3. The Mitigation Commission shall attend and participate in all checkpoint conferences and coordination meetings scheduled to exchange technical information, provide progress reports, or other information requested by the Parties pertaining to activities under this Agreement.

C. The Parties mutually agree:

1. That this Agreement is pursuant to Sections 202(c) and 302(a) of CUPCA and will provide for Federal funding of the Section 8 planning and construction costs by the Mitigation Commission for: 1) up to an estimated \$7,639,660 (indexed according to Reclamation engineering indices), for the SFC Pipeline; and 2) up to an estimated

\$25,644,619 (indexed according to Reclamation engineering indices), for the SFPR Pipeline. The non-Federal share of costs will be the responsibility of the District. The costs herein are estimates according to the Draft 2004 DPR and are subject to change.

2. That the proposed schedule contained in Attachment A is an estimate and is subject to revision; that actual invoice and payment amounts may vary from those shown in Attachment A without need of modification of this Agreement; and that actual dates and amounts of invoices and payments will be determined by and subject to appropriation of Federal funds by Congress for the purposes of this Agreement.
3. To arrange for, or confirm, all necessary compliance with Federal and state laws, and pertinent ordinances of the City and County governments.
4. To review progress of work done under this Agreement and notify one another in advance of substantive changes in work to be done or expected accomplishment. All such changes shall be subject to negotiation, agreement, and modification of the Agreement by the Parties, pursuant to Article VIII.
5. That no member of or Delegate to Congress shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this restriction will not be construed to extend to this contract if made with a corporation or company for its general benefit.

#### VI. Project Officers

For the Mitigation Commission:

Mr. Michael C. Weland, Executive Director  
Utah Reclamation Mitigation and Conservation Commission  
102 West 500 South, Suite 315  
Salt Lake City, Utah 84101  
801/524-3146 FAX 801/524-3148

For the District:

Mr. Lee Wimmer, CUPCA Program Manager  
Central Utah Water Conservancy District  
355 West University Parkway  
Orem UT 84058  
(801) 226-7139 FAX (801) 226-7150

## VII. Payment of Funds

Within 30 days of Federal appropriation of funds for the Project features described herein, the District will prepare and submit to the Mitigation Commission:

1. An annual invoice to the Mitigation Commission, that references this Agreement and the goods and services to be received by the Mitigation Commission in exchange for the payment; and
2. A completed Federal Request for Reimbursement Form (SF-270).

The District may use the funds only to finance the work approved under the provisions of this Agreement.

On no less than an annual basis, the District shall provide a narrative description of activities and accomplishments under this Agreement to the Mitigation Commission's Project Officer. The narrative must also identify activities planned for the next fiscal year.

The District shall retain all original receipts, invoices, vouchers, etc. substantiating all expenditures and make same available to the Mitigation Commission for audit upon request. The above listed forms and documents shall be mailed to:

Utah Reclamation Mitigation and Conservation Commission  
Attn: Financial Officer, Channa Vyfvinkel  
102 West 500 South, #315  
Salt Lake City, Utah 84101

The Mitigation Commission's Project Officer will provide a timely verification of the invoice and approval of the payment. Upon approval, the Mitigation Commission will authorize the District to utilize the Department of Treasury's Automated Standard Application for Payments ("ASAP") system to request reimbursement. ASAP is a recipient-initiated payment and information system designed to provide a single point of contact for the request and delivery of Federal funds. Once a request is made through ASAP, funds are provided to the recipient either through Automated Clearing House (ACH) or Federal Reserve Bank's wire transfer system (Fedwire).

The District is required to submit, independently, a completed Standard Form 269A, Financial Status Report, upon completion of the Project.

## VIII. Modifications

Modifications to this Agreement may be proposed by either Party and shall become effective only upon being reduced to a written instrument executed by signature of both Parties.

The District will assume all risks, liabilities, and consequences of performing additional work outside of their specified scope of work, unless prior written approval is secured from the Mitigation Commission's Project Officer.

#### IX. Termination

This Agreement may be terminated prior to the completion date specified in Article IV by any Party only for non-performance and only upon 60 days written notice to the other Party. Upon receipt of such written notice, the District will provide an accounting of remaining funds and outstanding contractual obligations of funds and return such funds to the Mitigation Commission.

The Mitigation Commission shall pay for all work which, in the exercise of due diligence, the District is unable to cancel prior to the effective date of termination. Payments made under this Agreement, including payments under this article, shall not exceed the amount elsewhere specified herein.

#### X. Resolving Disagreements

The Parties agree to work harmoniously to achieve the objectives of the Project. When disagreements arise between/among the Parties, they must be resolved according to the procedures discussed below:

1. The Parties shall attempt first to resolve disagreements through informal discussion among the subordinate staff responsible for project implementation.
2. If the disagreement cannot be resolved through informal discussion, each shall document the nature of the disagreement and bring it to the attention of their respective Project Officers.
3. After reviewing the facts of the disagreement, the Project Officers will arrange a formal meeting. The Parties will collectively decide on any varied approaches which might be used to resolve the disagreement. The Parties shall be responsible for their individual expenses related to any approach utilized to resolve the disagreement.
4. Ultimately, if all other attempts at resolving the disagreement fail, a decision will be made by the Department of the Interior – Office of the Secretary (or the Secretary's designated representative) pursuant to Section 201(e) of CUPCA, whose decision shall be final and conclusive.

Any issue related to the performance of this Agreement will be open for resolution in accordance with the above procedures, with the exception of continuation of the Agreement (since either Party may terminate the Agreement pursuant to the provisions of Article IX above), or other matters specifically addressed by the Agreement itself.

XI. Contingent upon Appropriation

The liability of the Mitigation Commission under this Agreement is contingent upon appropriation and reservation of funds being made therefore.


IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed by an authorized official on the day and year set forth opposite their signature below.

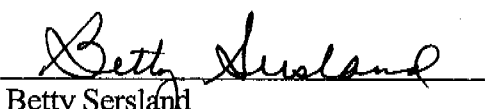
UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

By:  Date: 3/15/05  
Jody L. Williams, Chair

 Date: 3/15/05  
Approved by Regional Solicitor

CENTRAL UTAH WATER CONSERVANCY DISTRICT

By:  Date: 9/23/04  
Don A. Christiansen  
General Manager

Attest:  Date: Sept 23, 2004  
Betty Sersland  
Assistant to the General Manager