

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
  
ANIMAS-LA PLATA PROJECT  
COLORADO RIVER STORAGE PROJECT

OPERATION, MAINTENANCE, AND REPLACEMENT CONTRACT

15	<u>EXPLANATORY RECITALS</u>	3
16	1. <u>DEFINITIONS</u>	4
17	2. <u>APPLICABLE LAW</u>	5
18	3. <u>TERM OF THE CONTRACT</u>	6
19	4. <u>TRANSFERRED WORKS</u>	6
20	5. <u>TRANSFER INSPECTION</u>	7
21	6. <u>ACCEPTANCE OF OPERATION, MAINTENANCE, AND REPLACEMENT</u>	
22	<u>RESPONSIBILITY</u>	8
23	7. <u>OPERATION, MAINTENANCE, AND REPLACEMENT COSTS</u>	9
24	8. <u>MEASUREMENT AND DISTRIBUTION OF STATUTORY WATER ALLOCATION</u>	12
25	9. <u>PROJECT WATER SUPPLY, DELIVERY, AND SHORTAGES</u>	12
26	10. <u>LIMIT OF LIABILITY</u>	13
27	11. <u>REMEDIES</u>	13
28	12. <u>COLLECTION OF INCIDENTAL REVENUES</u>	15
29	13. <u>CHARGES FOR DELINQUENT PAYMENTS</u>	15
30	14. <u>NOTICES</u>	16
31	15. <u>OPERATION AND MAINTENANCE OF TRANSFERRED WORKS--</u>	16

1	<u>PAYMENT OF MISCELLANEOUS COSTS</u>	16
2	16. <u>EXAMINATION, INSPECTION, AND AUDIT OF TRANSFERRED WORKS,</u>	
3	<u>RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND</u>	
4	<u>MAINTENANCE</u>	17
5	17. <u>EMERGENCY RESERVE FUND</u>	18
6	18. <u>CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS</u>	19
7	19. <u>OFFICIALS NOT TO BENEFIT</u>	19
8	20. <u>CHANGES IN ASSOCIATION'S ORGANIZATION</u>	19
9	21. <u>ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED</u>	20
10	22. <u>BOOKS, RECORDS AND REPORTS</u>	20
11	23. <u>RULES, REGULATIONS, AND DETERMINATIONS</u>	20
12	24. <u>ADMINISTRATION OF FEDERAL PROJECT LANDS</u>	20
13	25. <u>PROTECTION OF WATER AND AIR QUALITY</u>	20
14	26. <u>CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY</u>	21
15	27. <u>CLEAN AIR AND WATER</u>	22
16	28. <u>EQUAL EMPLOYMENT OPPORTUNITY</u>	23
17	29. <u>COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS</u>	24
18	30. <u>CERTIFICATION OF NONSEGREGATED FACILITIES</u>	25
19	31. <u>NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR</u>	
20	<u>CERTIFICATIONS OF NONSEGREGATED FACILITIES</u>	25
21	32. <u>RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION</u>	25
22	33. <u>PEST MANAGEMENT</u>	26
23	34. <u>MEDIUM FOR TRANSMITTING PAYMENTS</u>	26
24	35. <u>CONTRACT DRAFTING CONSIDERATIONS</u>	26
25		

1  
2  
3  
4 UNITED STATES  
5 DEPARTMENT OF THE INTERIOR  
6 BUREAU OF RECLAMATION  
7

8 ANIMAS-LA PLATA PROJECT  
9 COLORADO RIVER STORAGE PROJECT  
10

11 OPERATION, MAINTENANCE, AND REPLACEMENT CONTRACT  
12  
13

14 THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, pursuant to the  
15 Act of Congress approved June 17, 1902 (32 Stat. 388) , and acts amendatory thereof or  
16 supplementary thereto, all of which acts are commonly known and referred to as the Federal  
17 Reclamation Laws, among the UNITED STATES OF AMERICA, hereinafter called the United  
18 States, and the Animas-La Plata Operations, Maintenance, and Replacement Association,  
19 hereinafter called the Association, with its principal place of business and office at Durango,  
20 Colorado.  
21

22 EXPLANATORY RECITALS

23 The following statements are made in explanation:

24 The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the  
25 planning and investigation of the Animas-La Plata Project as a participating project of the  
26 Colorado River Storage Project; subsequently, the construction, operation, and maintenance of  
27 the Animas-La Plata Project was authorized by Title V of the Colorado River Basin Project Act  
28 of September 30, 1968 (82 Stat. 896), and the United States has investigated, planned, and is  
29 constructing said Animas-La Plata Project for the storage, diversion, and distribution of the  
30 waters of the Animas River, which Project has among its authorized purposes the storage and  
31 furnishing of water for municipal and industrial purposes including such water to settle certain  
32 federal Indian- water right claims. The water rights settlement purposes of the Project were  
33 authorized by the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-  
34 585) as amended by the Colorado Ute Settlement Act Amendments of 2000 (2000

1 Amendments), Title III of Public Law 106-554.

2 The Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Navajo Nation,  
3 Colorado Water Resources and Power Development Authority (CWRPDA) (for the Animas-La  
4 Plata Water Conservancy District (ALPWCD), the San Juan Water Commission (SJWC), and the  
5 La Plata Conservancy District (LPCD), have entered into an Intergovernmental Agreement  
6 (IGA) establishing the Association in order to carry out the operation, maintenance and  
7 replacement (“OM&R”) activities and responsibilities of the Sponsors for the Project in  
8 accordance with the provisions of the IGA, the Enabling Law, and this Contract.

9  
10 The parties enter into this Contract to provide for the necessary OM&R activities  
11 of the Transferred Works (as defined below).

12 NOW THEREFORE, in consideration of the terms and conditions of this Contract, the  
13 parties agree as follows:

14  
15 1. DEFINITIONS

16 Where used in this Contract:

17 (a) "Association" means the Animas-La Plata Operations, Maintenance, and  
18 Replacement Association, established by the Project sponsors who were signatory to the  
19 IGA, dated \_\_\_\_\_, pursuant to the Colorado Uniform Unincorporated Nonprofit Association  
20 Act, 7-30-101 et seq. CRS (2006), to carry out the OM&R activities and responsibilities of  
21 the Project.

22 (b) “IGA” or “Intergovernmental Agreement” means that agreement dated March 4, 2009  
23 entered into by the Colorado Water Resource and Power Development Authority, the La  
24 Plata Conservancy District, the Navajo Nation, the San Juan Water Commission, the  
25 Southern Ute Indian Tribe, and the Ute Mountain Ute Tribe to establish the Association and  
26 provide for the terms, conditions, and concepts under which OM&R of the Transferred  
27 Works is to take place.

28 (c) "United States" or "Contracting Officer" or either of them means the Secretary of the  
29 United States Department of the Interior or his/her duly authorized representative.

30 (d) "Sponsors" means those entities that contract with the United States regarding water

1 from this Project.

2 (e) "Project" means the Animas-La Plata Project, a participating Project of the Colorado  
3 River Storage Project.

4 (f) "Statutory Water Allocation" means the municipal and industrial (M&I) water  
5 allocation pursuant to the 2000 Amendments.

6 (g) "Project Storage Water" means the portion of the Statutory Water Allocation  
7 provided from storage in Lake Nighthorse (formerly Ridges Basin Reservoir), the storage  
8 component of the Project.

9 (h) "Transferred Works" means Ridges Basin Dam and Lake Nighthorse and their  
10 appurtenant facilities, including the downstream channel improvements on Basin Creek;  
11 Durango Pumping Plant, and its appurtenant facilities; Ridges Basin Inlet Conduit, and its  
12 appurtenant facilities; and the Operation and Maintenance Facilities which are necessary to  
13 support the operation and maintenance of the Project, and for which the OM&R  
14 responsibility is anticipated to be transferred to the Association by the United States, as  
15 further described in **Article 5** herein.

16 (i) "Consultation" or "Consult" refers to an ongoing obligation of both parties to  
17 implement the provisions of this Contract with a full exchange of information so as to assure  
18 that each party is provided full participation in the decision making process. Consultation  
19 shall be required of each party with respect to each section of the Contract regardless of  
20 whether the section itself sets forth a consultation requirement. Such duty of consultation  
21 shall be reasonable under the circumstances and except in exigent circumstances shall be  
22 undertaken in advance of decision making. In the event that consensus cannot be reached and  
23 the United States makes a decision, appeals are available to the extent allowed under  
24 applicable laws.

25  
26 2. APPLICABLE LAW

27 (a) In addition to the Project authorizations cited earlier, the transfer of operation and  
28 maintenance herein is authorized pursuant to Section 6 of the Reclamation Act (Act of June  
29 17, 1902, 32 Stat. 388); Section 5 of the Reclamation Extension Act (Act of August 13, 1914,  
30 38 Stat. 686); and Subsection G of the Second Deficiency Appropriation Act for 1924 (Act

1 Finders' Act, Act of December 5, 1924, 43 Stat. 672); the Transfer Title to Movable Property  
2 to Irrigation Districts Act (Act of July 29, 1954, 68 Stat. 580), and the Amend Movable  
3 Property Title Transfer Act (Act of June 24, 1965, 79 Stat. 172).

4 (b) OM&R of the Project shall be consistent with the Record of Decision dated  
5 September 25, 2000, and in accordance with the Environmental Commitments in Chapters 4  
6 and 5 of the Animas-La Plata Final Supplemental Environmental Impact Statement (FSEIS),  
7 which are attached as Exhibit XX to this contract; the parties acknowledge that the IGA  
8 provides for operation of the Transferred Works in accordance with the Record of Decision.

9 (c) Any additions, changes to, or operation of Transferred Works different from that  
10 stated in the FSEIS dated July 2000 and subsequent Record of Decision dated September 25,  
11 2000, may be subject to further compliance with applicable environmental statutes and must  
12 be approved by the United States.

13  
14 3. TERM OF THE CONTRACT

15 This Contract shall become effective upon the date of execution by the Contracting  
16 Officer, and shall remain in full force and effect until terminated by mutual written agreement of  
17 the United States and the Association, unless terminated pursuant to Article **Error! Reference**  
18 **source not found.** herein. The actual transfer of OM&R responsibility for the Transferred  
19 Works to the Association will occur as set forth in Article 5.

20  
21 4. TRANSFERRED WORKS

22 (a) As contemplated by Article 15 below, the United States shall transfer to the  
23 Association, pursuant to the process outlined in Article 5, the responsibility for the OM&R of  
24 the Transferred Works. In addition the United States shall also transfer to the Association  
25 certain movable property and equipment determined by the Contracting Officer, after  
26 consultation with the Association, to be required for the OM&R of the Transferred Works. A  
27 detailed list of the movable property and equipment will be mutually agreed to and included  
28 in the Transfer Inspection Report.

29 (b) The Association shall not be responsible for the operation, maintenance, replacement  
30 and management of the following project features, lands, facility relocations, or appurtenant

1 facilities:

- 2 (1) Navajo Nation Municipal Pipeline, the OM&R responsibility for which will be
- 3 addressed in the water delivery contract between the Contracting Officer and the Navajo
- 4 Nation;
- 5 (2) Recreation facilities at Lake Nighthorse;
- 6 (3) Mitigation Area and related lands located in the La Plata River Basin; and
- 7 (4) County Road 211, gas lines, power lines and other facilities, except as specified
- 8 between the United States and the Association.

9 (c) Consultation between, and approval of both the Association and the United States  
10 will be required in any instance where a Contract duty of a party may be impacted by any  
11 action or program undertaken by the other party.

12  
13 5. TRANSFER INSPECTION

14 Transfer from Reclamation Construction Status to Reclamation O&M status and the  
15 subsequent transfer from Reclamation O&M status to Association O&M status shall occur as set  
16 forth in this article. Title to all Project Works will remain with the United States unless and until  
17 the Congress of the United States provides otherwise.

18 a) The transfer process will begin upon request by the Western Colorado Area Office  
19 (WCAO) for the certification of substantial completion. The WCAO shall notify the Association  
20 at least XXX days prior to requesting a certification of substantial completion from the  
21 construction engineer. Prior to transfer from Reclamation Construction Status to Reclamation  
22 OM&R Status a transfer inspection will be conducted in consultation with the Association. The  
23 United States will then prepare a report on the inspection (the “Transfer Inspection Report”),  
24 which will contain:

- 25 i) a detailed list of the facilities and of the movable property and equipment to be
- 26 transferred, together with: (a) a description of warranties to be provided and/or
- 27 transferred to the Association in connection with the Transferred Works and other
- 28 facilities and property to be transferred; (b) pertinent design, construction, and as-
- 29 built documents for the Transferred Works; and (c) maintenance protocols, equipment

1 manuals, and other like items relating to the operation and maintenance of the  
2 Transferred Works;

3 ii) a list of design and construction deficiencies, if any, identified by the transfer  
4 inspection in the Transferred Works and other facilities and property to be  
5 transferred; and

6 iii) a plan for correcting any such deficiencies, setting forth: (a) the corrective measures  
7 to be applied; (b) the entity or entities responsible for undertaking such corrective  
8 measures, including when they will be undertaken and how they will be funded; and  
9 (c) anticipated completion dates for the corrective measures.

10 b) Upon approval by the construction engineer, the Regional Director, and the Area  
11 Manager of the Transfer Inspection Report, the certification of substantial completion shall be  
12 issued by the construction engineer and will conclude the transfer process from Reclamation  
13 Construction Status to Reclamation OM&R Status. Unless hydrologic conditions prevent the  
14 completion of first fill by August 1, 2011, the first fill of Lake Nighthorse will be completed  
15 prior to transfer from Reclamation Construction Status to Reclamation OM&R Status.

16 c) The transfer of OM&R responsibility from Reclamation to the Association shall be  
17 complete upon the Association's approval of the Transfer Inspection Report. The Association  
18 may request a supplemental Transfer Inspection Report to address any outstanding measures or  
19 issues discovered following transfer to Reclamation OM&R Status. The supplemental Transfer  
20 Inspection Report shall be prepared and approved by both parties.

21  
22 6. ACCEPTANCE OF OPERATION, MAINTENANCE, AND REPLACEMENT  
23 RESPONSIBILITY

24 After receiving the OM&R responsibility pursuant to Article 5, the Association shall, at its  
25 own cost and expense except as provided in Article 7(c) below, carry out the OM&R of the  
26 Transferred Works. The Association shall employ a competent and suitable manager or operating  
27 entity after consultation with the United States. In the event the United States raises material  
28 concerns about the competence or suitability of the manager or operating entity, the parties shall

1 promptly consult as to the future best interests of the Project. Nothing in this Contract shall  
2 prevent the Association from implementing an appropriate program preference in hiring or  
3 contracting.  
4

5 7. OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

6 (a) The OM&R costs for the Transferred Works shall consist of both fixed and variable  
7 OM&R costs as specified in, and shall be allocated in accordance with, Exhibit A of the IGA.

8 (b) In addition to fixed OM&R costs provided in Sections 6.03, 6.04, 6.05, and 6.06 of  
9 Exhibit A of the IGA, fixed OM&R costs shall include costs incurred to replace water  
10 released for required operational tests subsequent to transfer of OM&R responsibility to the  
11 Association, annual payments to an Emergency Reserve Fund, and annual payments to a  
12 replacement reserve fund (“Replacement Reserve Fund”). Payments to the emergency  
13 reserve fund shall be made pursuant to the provisions of Article 17 herein. The Association  
14 shall make annual payments in the amount of \$23,000, as appropriately adjusted for inflation,  
15 to the Replacement Reserve Fund to ensure adequate funds are available to replace  
16 equipment that has met or exceeded its normal service life.

17 (c) The OM&R costs allocated under (a) and (b) above shall be developed by the  
18 Association. The Association will begin payment of OM&R costs when the Project has been  
19 transferred from construction status to OM&R status.

20 (1) Fixed OM&R costs shall be allocated as follows:

21	1. Southern Ute Indian Tribe	35.5%
22	2. Ute Mountain Ute Indian Tribe	35.5%
23	3. La Plata Conservancy District	1.6%
24	4. SJWC	8.7%
25	5. CWRPDA (ALPWCD)	5.7%
26	6. Navajo	2.5%
27	7. Colorado	<u>10.5%</u>
28	Total	100%

29 (2) If part of a Party’s Statutory Water Allocation is reallocated or relinquished, the  
30 proportionate share of the Fixed OM&R Costs shall be allocated to the entity that  
31 receives that portion of the Statutory Water Allocation.

1 (d) With respect to the Statutory Water Allocation of a Colorado Ute Tribe from the  
2 Animas-La Plata Project, until that water is first used by that Tribe or used pursuant to a  
3 water use contract with that Tribe, the Secretary shall pay the annual OM&R costs allocable  
4 to that Statutory Water Allocation of that Tribe. Upon either Tribe's first use of any  
5 increment of its water allocation, or the Tribe's first use of such water pursuant to a water use  
6 contract, that Tribe shall bear a pro rata share of the allocable annual OM&R costs for that  
7 increment of water. The Secretary's obligation to pay OM&R costs, as set forth herein, shall  
8 not be diminished by reason of the transfer of OM&R responsibilities to the Association.

9 (e) The expenditure or advance of any money or the performance of any obligation of  
10 Reclamation under this contract shall be contingent upon appropriation or allotment of funds  
11 by the Congress of the United States. The United States shall consult with, and timely apprise  
12 the Association of, its progress in securing funds to defray its OM&R payment obligation as  
13 allowed by budgetary statutes and regulations. In the event adequate funds are not  
14 appropriated or allotted by Congress, the Association will add any unappropriated,  
15 unallotted, or non-reimbursed amount to the charge notice(s) that Reclamation is responsible  
16 for pursuant to Article 7(c) in the following water year provided, however, nothing in this  
17 article shall limit the rights of the Association to commence any appropriate action necessary  
18 against Reclamation to obtain any restitution, relief or remedy available by law in the event  
19 adequate funds are not appropriated or allotted by the Congress.

20 (f) During any period in which the United States is performing the OM&R on the  
21 Transferred Works, the Association agrees it will pay, in advance, on the basis of annual  
22 estimates made by the Contracting Officer, in accordance with standard Reclamation  
23 procedures and Reclamation law, the OM&R costs of the Transferred Works operated by the  
24 United States and determined by the Contracting Officer to be properly chargeable to the  
25 Association. A notice of annual estimates hereinafter referred to as the operation and  
26 maintenance charge notice, shall be furnished to the Association on or before June 1 of each  
27 year, and shall contain a statement of the estimated cost of operation and maintenance to be  
28 paid by the Association for the following calendar year. The Association agrees to pay the  
29 amount specified in such operation and maintenance charge notice on or before December 31  
30 of the year in which the notice is given. Notwithstanding the other provisions of this Article,

1 whenever funds so advanced are inadequate to pay the Association's share of operating and  
2 maintaining the works being operated by the United States, the Contracting Officer shall give  
3 a supplemental operation and maintenance charge notice stating therein the amount of  
4 additional funds required and the Association shall advance such additional funds on or  
5 before the date specified in any supplemental notice. If the funds advanced by the  
6 Association, under this article, exceed the actual cost of operation, and maintenance, properly  
7 chargeable to the Association for the year for which advanced, an appropriate adjustment will  
8 be made in the notice issued the next succeeding year.

9 (g) If, during any period in which the United States is operating the Project, the  
10 Association fails to make payments pursuant to Articles 7(a) through 7(f) above, the OM&R  
11 Payment provisions contained in individual Sponsors' repayment contracts with the United  
12 States will be invoked.

13 (h) **THREE YEAR WORK PLAN:** Upon Reclamation's transfer of the OM&R  
14 responsibility of the Transferred Works pursuant Article 5 herein, the Association will  
15 prepare a three year OM&R work plan and submit it to Reclamation by July 1 of each year  
16 for Reclamation's budget appropriation purposes.

17 (i) **ONE YEAR WORK PLAN:** Upon Reclamation's transfer of the OM&R  
18 responsibility of the Transferred Works to the Association, the Association will develop a  
19 one year detailed OM&R work plan. The Association will finalize and approve the work  
20 plan by October 1 of each year.

21 (j) **Consultation with Reclamation:** During the period in which the United States is  
22 paying all or a portion of the two Ute Tribes' OM&R costs, the Association shall consult with  
23 Reclamation prior to finalizing the Three-Year and One-Year Work Plans described herein.  
24 Reclamation shall consult with the Association regarding its progress in securing the funds  
25 needed for the United States to meet its obligations under this contract.

26 (k) The payment of OM&R costs by the Association as identified in Article 6 substitutes  
27 for the OM&R payment provisions required by Sponsors under their individual repayment or  
28 water delivery contracts. However, if the Association fails to pay OM&R costs identified in  
29 Article 6, the United States retains the ability to enforce the OM&R payment provisions in  
30 the Sponsors' individual repayment or water delivery contracts. Payment of the Colorado Ute

1 Tribes' OM&R costs by the United States shall be in accordance with Section 6 of the 2000  
2 Amendments.

3  
4 8. MEASUREMENT AND DISTRIBUTION OF STATUTORY WATER ALLOCATION

5 (a) The United States has installed measuring devices and the Association shall measure  
6 water delivered through the main outlet works of Ridges Basin Dam and/or in the Animas  
7 River at the Durango Pumping Plant. The Association shall operate, maintain, and replace  
8 these measuring devices and shall install, operate, maintain and replace any devices  
9 necessary to measure water delivered directly out of Lake Nighthorse at points not through  
10 the main outlet works, or diverted directly from the river.

11 (b) All non-project facilities and appurtenant structures required for taking water  
12 furnished under this Contract from the points of delivery and putting it to use by the Sponsors  
13 and their subcontractors will be acquired, constructed or installed, and operated and  
14 maintained by the Sponsors or their subcontractors at their sole expense. Construction of  
15 facilities on Reclamation-owned land required to deliver water directly from Lake  
16 Nighthorse shall require review and written approval by the Contracting Officer.

17 (c) The United States shall not be responsible for the control, carriage, handling, use,  
18 disposal, or distribution of water furnished the Sponsors from Lake Nighthorse, the outlet  
19 works of Ridges Basin Dam, or bypassed at the Durango Pumping Plant to the place of final  
20 use. The Association will hold the United States harmless on account of damage or claim of  
21 damage of any nature whatsoever arising out of or connected with the control, carriage,  
22 handling, use, disposal, or distribution of water by the Association.

23  
24 9. PROJECT WATER SUPPLY, DELIVERY, AND SHORTAGES

25 (a) Accounting for and delivery of Project water shall be pursuant to Article 4 of Exhibit  
26 A of the IGA.

27 (b) Shortages to Statutory Water Allocations. During periods of drought, there may be a  
28 time when insufficient water is available to fulfill the annual Statutory Water Allocation. In  
29 such cases, shortages shall be administered pursuant to Article 5 of Exhibit A of the IGA.

30

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

10.

LIMIT OF LIABILITY

(a) The United States or any of its officers, agents, or employees shall not be liable in any manner for the failure of the Project, for any reason, to supply water to which a Sponsor is entitled, except if such failure of delivery is caused by direct action of the United States, its officers, agents or employees. Nothing in this subarticle shall protect the Association from any claim that it negligently or intentionally operated the Project so as to injure one or more of the Sponsors.

(b) There may occur at times during any year a shortage in the quantity of water available for furnishing to the Sponsors through and by means of the Project, but in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage on account of errors in operation, drought, or any other causes.

11.

REMEDIES

(a) In the event the Association is found to be operating the Transferred Works or any part thereof in violation of this contract or the Association is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this contract, then upon the election of the Contracting Officer, the United States may take over from the Association the OM&R responsibilities of the Transferred Works by giving written notice to the Association of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer the Association shall pay to the United States, annually in advance, the cost of OM&R of the works as determined by the Contracting Officer. During this period, the United States will attempt to operate the Project in accordance with the principles contained in the IGA. Following written notification from the Contracting Officer the OM&R responsibilities of the works may be transferred back to the Association pursuant to the provisions of this. All costs incurred by the United States in the reassumption and OM&R responsibilities of the facilities will be reimbursable.

1 (b) During any period in which the United States in operating the Project, the United  
2 States shall not be responsible for the control, carriage, handling, use, disposal, or  
3 distribution of water furnished the Sponsors from Lake Nighthorse, the outlet works of  
4 Ridges Basin Dam, or bypassed at the Durango Pumping Plant to the place of final use. The  
5 Association will hold the United States harmless on account of damage or claim of damage  
6 of any nature whatsoever arising out of or connected with the control, carriage, handling, use,  
7 disposal, or distribution of water by the Association.

8 (c) The Contracting Officer may terminate this Contract at any time before the expiration  
9 of its term whenever the Contracting Officer determines that the Association is in breach of  
10 the Contract.

11 (1) Prior to the effective date of any such termination, the Contracting Officer shall  
12 notify the Association in writing of the reason for the proposed termination, including  
13 with specificity, the purported deficiencies of the Association in carrying out the terms  
14 and conditions of this Contract. Such notice of purported deficiency shall be issued only  
15 after the designated representative of the Association has met with the Contracting  
16 Officer or his designated representative to attempt in good faith and with the use of best  
17 efforts to resolve any dispute arising from the purported deficiency. It is the intent of the  
18 parties that disputes be resolved pursuant to this Article **Error! Reference source not**  
19 **found.** as expeditiously as is reasonably possible without the necessity of other relief at  
20 law or in equity. The Association shall have at least ninety (90) days from receipt of the  
21 written notice of said reasons for termination to correct all deficiencies referred to in said  
22 written notice.

23 (2) The Contracting Officer may specify a period of less than ninety (90) days to cure  
24 deficiencies, under those circumstances which the Contracting Officer finds a ninety day  
25 period could impair the safety or integrity of the Transferred Works.

26 (3) The Contracting Officer may order immediate repairs or replacements as are  
27 required when the Contracting Officer determines that the health and safety of the general  
28 public is threatened. Such costs shall be charged to the Association.

29 (d) Upon any termination of this Contract, the Association shall transfer to the United  
30 States (1) title to all tools, vehicles, supplies, and equipment transferred under Article 4(a) (to

1 the extent still available) or purchased by the Association for the purposes of this Contract,  
2 (2) any unexpended funds in its possession which were collected for, or allocated to the  
3 OM&R of the Transferred Works for the then-current Fiscal Year, (3) upon appropriate  
4 credit to the Project Sponsors, and assurances that it will be used and maintained in  
5 accordance with Article 19 below, the Emergency Reserve Fund, and (4) upon appropriate  
6 credit to the Project Sponsors, and assurances that it will be used and maintained solely for  
7 replacement purposes as set forth in Article 7, the Replacement Reserve Fund.

8 (e) Nothing in this Contract shall diminish the rights of either party to pursue claims or  
9 appeals otherwise recognized under applicable law.

10  
11  
12 12. COLLECTION OF INCIDENTAL REVENUES

13 All revenues derived from the rental or sale of land, interests in land, or other real property  
14 acquired and retained by the United States for project purposes shall belong to the United States  
15 and not be credited to the Association. Lands retained by the United States do not include that  
16 portion of the lands to be conveyed to the Animas-La Plata Water Conservancy District as  
17 required in the Assignment of Easement dated October 10, 2002 and recorded on October 30,  
18 2008 in the La Plata County records at R. # 841681. Nothing in this Contract shall prohibit the  
19 Association from seeking reimbursement for services it provides.

20  
21 13. CHARGES FOR DELINQUENT PAYMENTS

22 (a) The Association shall be subject to interest, administrative, and penalty charges on  
23 delinquent payments. If a payment is not received by the due date, the Association shall pay  
24 an interest charge on the delinquent payment for each day the payment is delinquent beyond  
25 the due date. If a payment becomes 60 days delinquent, in addition to the interest charge, the  
26 Association shall pay an administrative charge to cover additional costs of billing and  
27 processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to  
28 the interest and administrative charges, the Association shall pay a penalty charge for each  
29 day the payment is delinquent beyond the due date, based on the remaining balance of the  
30 payment due at the rate of 6 percent per year. The Association shall also pay any fees  
31 incurred for debt collection services associated with a delinquent payment.

32 (b) The interest charge rate shall be the greater of either the rate prescribed quarterly in  
33 the Federal Register by the Department of the Treasury for application to overdue payments  
34 or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of

1 the due date and remain fixed for the duration of the delinquent period.

2 (c) When a partial payment on a delinquent account is received, the amount received  
3 shall be applied first to the penalty charges, second to the administrative charges, third to the  
4 accrued interest, and finally to the overdue payment.

5  
6 14. NOTICES

7 Any notice, demand, or request authorized or required by this Contract shall be deemed to  
8 have been given, on behalf of the Association, when mailed, postage prepaid, or delivered to the  
9 Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street,  
10 Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed,  
11 postage prepaid, or delivered to the Association \* (Add address etc.). The designation of the  
12 addressee or the address may be changed by notice given in the same manner as provided in this  
13 article for other notices.  
14

15 15. OPERATION AND MAINTENANCE OF TRANSFERRED WORKS--

16 PAYMENT OF MISCELLANEOUS COSTS

17 (a) Upon substantial completion of the Project, or as otherwise determined by the  
18 Contracting Officer, and following written notification, the care, operation, and maintenance  
19 of any or all of the Project may be transferred to the Association. Title to the Transferred  
20 Works will remain in the name of the United States, unless otherwise provided by the  
21 Congress of the United States.

22 (b) The Association, without expense to the United States, shall care for, operate, and  
23 maintain the Transferred Works in full compliance with the terms of this contract and in a  
24 manner that the Transferred Works remain in good and efficient condition.

25 (c) Necessary repairs of the Transferred Works shall be made promptly by the  
26 Association. In case of unusual conditions or serious deficiencies in the care, operation, and  
27 maintenance of the Transferred Works threatening or causing interruption of water service,  
28 the Contracting Officer may issue to the Association a special written notice of those  
29 necessary repairs. Except in the case of an emergency, the Association will be given 60 days  
30 to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable  
31 to the Contracting Officer. In the case of an emergency, or if the Association fails to either  
32 make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the  
33 Contracting Officer within 60 days of receipt of the notice, the Contracting Officer may  
34 cause the repairs to be made, and the cost of those repairs shall be paid by the Association as  
35 directed by the Contracting Officer.

36 (d) The Association shall not make any substantial changes in the Transferred Works  
37 without first obtaining written consent of the Contracting Officer. The Association shall  
38 ensure that no unauthorized encroachment occurs on project land and rights-of-way.

39 (e) The Association agrees to indemnify the United States for, and hold the United States  
40 and all of its representatives harmless from, all damages resulting from suits, actions, or  
41 claims of any character brought on account of any injury to any person or property arising  
42 out of any act, omission, neglect, or misconduct in the manner or method of performing any

1 construction, care, operation, maintenance, supervision, examination, inspection, or other  
2 duties of the Association or the United States on Transferred Works required under this  
3 contract, regardless of who performs those duties. The Contractor does not agree to indemnify  
4 the United States for any damages arising from intentional torts or malicious actions committed  
5 by employees of the United States.

6 (f) The Association shall cooperate with the Contracting Officer in implementing an  
7 effective safety of dam(s) program. The United States agrees to provide the Association and  
8 the appropriate agency of the State or States in which the project facilities are located with  
9 design data, designs, and an operating plan for the dam(s) and related facilities consistent  
10 with the current memorandum of understanding between the United States and the State of  
11 Colorado relating to the coordination of planning, design, construction, operation, and  
12 maintenance processes for dams and related facilities.

13 (g) In addition to all other payments to be made by the Association under this contract,  
14 the Association shall reimburse to the United States, following the receipt of a statement  
15 from the Contracting Officer, all miscellaneous costs incurred by the United States for any  
16 work involved in the administration and supervision of this contract.  
17

18 16. EXAMINATION, INSPECTION, AND AUDIT OF TRANSFERRED WORKS,  
19 RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND  
20 MAINTENANCE

21 (a) The Contracting Officer may from time to time, examine the following: the  
22 Association's books, records, and reports; the Transferred Works being operated by the  
23 Association; the adequacy of the operation, maintenance, and safety of dams programs; the  
24 reserve fund; and the water conservation program including the water conservation fund, if  
25 applicable. Notwithstanding title ownership, where the United States retains a financial,  
26 physical, or liability interest in facilities either constructed by the United States or with funds  
27 provided by the United States, the Contracting Officer may examine any or all of the  
28 Transferred Works providing such interest to the United States.

29 (b) The Contracting Officer may or the Association may request the Contracting Officer  
30 to, conduct special inspections of any Transferred Works being operated by the Association  
31 and special audits of the Association's books and records to ascertain the extent of any  
32 operation and maintenance deficiencies to determine the remedial measures required for their  
33 correction and to assist the Association in solving specific problems. Except in an  
34 emergency, any special inspection or audit shall be made only after written notice thereof has  
35 been delivered to the Association by the Contracting Officer.

36 (c) The Association shall provide access to the Transferred Works, operate any  
37 mechanical or electrical equipment, and be available to assist in the examination, inspection,  
38 or audit.

39 (d) The Contracting Officer shall prepare reports based on the examinations, inspections,  
40 or audits and furnish copies of such reports and any recommendations to the Association.

41 (e) The costs incurred by the United States in conducting operation and maintenance  
42 examinations, inspections, and audits and preparing associated reports and recommendations  
43 related to high- and significant hazard dams and associated facilities shall be nonreimbursable.

1 Associated facilities include carriage, distribution, and drainage systems; pumping and pump-  
2 generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low  
3 hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road;  
4 regulating reservoirs (low hazard); fish passage and protective facilities, including hatcheries;  
5 river channelization features; rural/municipal water systems; desalting and other water treatment  
6 plants; maintenance buildings and service yards; facilities constructed under Federal loan  
7 programs (until paid out); and recreation facilities (reserved works only); and any other facilities  
8 as determined by the Contracting Officer.

9 (f) Expenses incurred by the Association, as applicable, in participating in the operation and  
10 maintenance site examination will be borne by the Association.

11 (g) Requests by the Association for consultations, design services, or modification reviews,  
12 and the completion of any operation and maintenance activities identified in the formal  
13 recommendations resulting from the examination (unless otherwise noted) are to be funded as  
14 project operation and maintenance and are reimbursable by the Association to the extent of  
15 current project operation and maintenance allocations.

16 (h) Site visit special inspections that are beyond the regularly scheduled operation and  
17 maintenance examinations conducted to evaluate a particular concern(s) or problem(s) and  
18 provide assistance relative to any corrective action (either as a follow up to an operation and  
19 maintenance examination or when requested by the Association) shall be nonreimbursable.

20 (i) The Contracting Officer may provide the State of Colorado an opportunity to observe  
21 and participate in, at its own expense, the examinations and inspections. The State of  
22 Colorado may be provided copies of reports and any recommendations relating to such  
23 examinations and inspections.  
24

## 25 17. EMERGENCY RESERVE FUND

26 (a) Commencing with [add date], the Association shall accumulate and maintain a  
27 reserve fund or demonstrate to the satisfaction of the Contracting Officer that other funds are  
28 available for use as an emergency reserve fund. The Association shall establish and maintain  
29 that emergency reserve fund to meet costs incurred during periods of special stress caused by  
30 damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing  
31 interruption of water service.

32 (b) The Association shall accumulate the reserve fund with annual deposits or  
33 investments of not less than \$XXXX to a Federally insured, interest- or dividend-bearing  
34 account or in securities guaranteed by the Federal Government: *Provided, That* money in the  
35 reserve fund, including accrued interest, shall be available within a reasonable time to meet  
36 expenses for such purposes as those identified in paragraph (d) herein. Such annual deposits  
37 and the accumulation of interest to the reserve fund shall continue until the basic amount of  
38 \$XXXX during the initial stages of the Project and \$XXXX once the Project is under full  
39 operation is accumulated. Following an emergency expenditure from the fund, the annual  
40 deposits shall continue from the year following the emergency expenditure until the previous  
41 balance is restored. After the initial amount is accumulated or after the previous balance is  
42 restored, the annual deposits may be discontinued, and the interest earnings shall continue to  
43 accumulate and be retained as part of the reserve fund.

1 (c) Upon mutual agreement between the Association and the Contracting Officer, the  
2 basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and  
3 uncertainty stemming from the size and complexity of the project; the size of the annual  
4 operation and maintenance budget; additions to, deletions from, or changes in Transferred  
5 Works; and operation and maintenance costs not contemplated when this contract was  
6 executed.

7 (d) The Association may make expenditures from the reserve fund only for meeting usual  
8 operation and maintenance costs incurred during periods of special stress, as described in  
9 paragraph (a) herein; or for meeting unforeseen extraordinary operation and maintenance  
10 costs; or for meeting unusual or extraordinary repair or replacement costs; or for meeting  
11 betterment costs (in situations where recurrence of severe problems can be eliminated) during  
12 periods of special stress. Proposed expenditures from the fund shall be submitted to the  
13 Contracting Officer in writing for review and written approval prior to disbursement.  
14 Whenever the reserve fund is reduced below the current balance by expenditures therefrom,  
15 the Association shall restore that balance by the accumulation of annual deposits as specified  
16 in paragraph (b) herein.

17 (e) During any period in which any of the Transferred Works are operated and  
18 maintained by the United States, the Association agrees the reserve fund shall be available  
19 for like use by the United States.

20 (f) On or before \_\_\_\_\_ of each year, the Association shall provide a current  
21 statement of the principal and accumulated interest of the reserve fund account to the  
22 Contracting Officer.  
23

24 18. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

25 The expenditure or advance of any money or the performance of any obligation of the United  
26 States under this Contract shall be contingent upon appropriation or allotment of funds. Absence  
27 of appropriation or allotment of funds shall not relieve the Association from any obligations  
28 under this Contract. No liability shall accrue to the United States in case funds are not  
29 appropriated or allotted.  
30

31 19. OFFICIALS NOT TO BENEFIT

32 No Member of or Delegate to the Congress, Resident Commissioner, or official of the  
33 Association shall benefit from this Contract other than as a water user or landowner in the same  
34 manner as other water users and landowners.  
35

36 20. CHANGES IN ASSOCIATION'S ORGANIZATION

37 While this Contract is in effect, no change may be made in the Association's organization, by  
38 inclusion or exclusion of lands or by any changes which may affect the respective rights,  
39 obligations, privileges, and duties of either the United States or the Association under this  
40 Contract including, but not limited to, dissolution, consolidation, or merger, except upon the  
41 Contracting Officer's written consent.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38

21. ASSIGNMENT LIMITED–SUCCESSORS AND ASSIGNS OBLIGATED

The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

22. BOOKS, RECORDS AND REPORTS

The Association shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Association's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

23. RULES, REGULATIONS, AND DETERMINATIONS

- (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.
- (b) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Association.

24. ADMINISTRATION OF FEDERAL PROJECT LANDS

The lands and interests in lands acquired, withdrawn, or reserved and needed by the United States for the purposes of care, operation, and maintenance of the Project may be used by the Association for such purposes. The Association shall ensure that no unauthorized encroachment occurs on the Transferred Works. The Association does not have the authority to issue any land-use agreement or grant that conveys an interest in Federal real property, nor to lease or dispose of any interest of the United States.

25. PROTECTION OF WATER AND AIR QUALITY

1 (a) Project facilities used to make available and deliver water to the Sponsors shall be  
2 operated and maintained in the most practical manner to maintain the quality of the water at  
3 the highest level possible as determined by the Contracting Officer: *Provided, That* the  
4 United States does not warrant the quality of the water delivered to the Sponsors and is under  
5 no obligation to furnish or construct water treatment facilities to maintain or improve the  
6 quality of water delivered to the Sponsors.

7 (b) The Sponsors shall comply with all applicable water and air pollution laws and  
8 regulations of the United States and the States of Colorado and New Mexico; and shall obtain  
9 all required permits or licenses from the appropriate Federal, State, Tribal or local authorities  
10 necessary for the delivery of water by the Association; and shall be responsible for  
11 compliance with all Federal, State, Tribal, and local water quality standards applicable to  
12 surface and subsurface drainage and/or discharges generated through the use of Federal or  
13 individual Sponsor facilities or project water provided by the Association within the  
14 individual Sponsors' Project Water Service Area.

15 (c) This article shall not affect or alter any legal obligations of the United States to  
16 provide drainage or other discharge services.  
17

18 26. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

19 (a) The Association shall not allow contamination or pollution of Federal project lands,  
20 project waters, or project works of the United States or administered by the United States and  
21 for which the Association has the responsibility for care, operation, and maintenance by its  
22 employees or agents. The Association shall also take reasonable precautions to prevent such  
23 contamination or pollution by third parties.

24 (b) The Association shall comply with all applicable Federal, State, and local laws and  
25 regulations and Reclamation policies and instructions existing, or hereafter enacted or  
26 promulgated, concerning any hazardous material that will be used, produced, transported,  
27 stored, released, or disposed of on or in Federal project lands, project waters, or project  
28 works.

29 (c) "Hazardous material" means (1) any substance defined as hazardous, a pollutant, or a  
30 contaminant under the Comprehensive Environmental Response, Compensation and Liability Act  
31 (CERCLA), 42 U.S.C. § 9601 (14) and (33); (2) oil as defined by the Clean Water Act, 33 U.S.C.  
32 § 1321 (a) and the Oil Pollution Act, 33 U.S.C. § 2701 (23); (3) thermal pollution, refuse,  
33 garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and  
34 other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal,  
35 State, local or Tribal law.

36 (d) Upon discovery of any event which may or does result in contamination or pollution of  
37 Federal project lands, project water, or project works, the Association shall immediately  
38 undertake all measures necessary to protect public health and the environment, including  
39 measures necessary to contain or abate any such contamination or pollution and shall report such  
40 discovery with full details of the actions taken to the Contracting Officer. Reporting shall be  
41 within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is  
42 an emergency and the first working day following discovery in the event of a non-emergency.

43 (e) The Association shall be liable for any response action or corrective measure necessary to  
44 protect public health and the environment or to restore Federal project lands, project waters, or

1 project works that are adversely affected as a result of such violation, and for all costs, penalties  
2 or other sanctions that are imposed for violation of any Federal, State, local or Tribal laws and  
3 regulations concerning hazardous material. At the discretion of the Contracting Officer, the  
4 United States may also terminate this Contract as a result of such violation.

5 (f) The contractor shall defend, indemnify, protect and save the United States harmless from  
6 and against any costs, expenses, claims, damages, demands, or other liability arising from or  
7 relating to contractor's violation of this article.

8 (g) The United States agrees to provide information necessary for the Association, using  
9 reasonable diligence, to comply with the provisions of this Article.  
10

11 27. CLEAN AIR AND WATER

12 (a) The Association agrees as follows:

13 (1) To comply with all the requirements of Section 114 of the Clean Air Act, as  
14 amended (42 U.S.C. 7414), and Section 308 of the Federal Water Pollution Control Act,  
15 as amended by Public Law 92-500 (33 U.S.C. 1318), respectively, relating to inspection,  
16 monitoring, entry, reports, and information, as well as other requirements specified in  
17 Section 114 of the Air Act and Section 308 of the Water Act, respectively, and all  
18 regulations and guidelines issued thereunder before the execution of this contract.

19 (2) That no portion of the work required by this contract will be performed in a  
20 facility listed on the Environmental Protection Agency List of Violating Facilities on the  
21 date when this contract was executed unless and until the Environmental Protection  
22 Agency eliminates the name of such facility or facilities from such listing.

23 (3) To use its best efforts to comply with clean air standards and clean water  
24 standards at the facility where the contract work is being performed.

25 (4) To insert the substance of the provisions of this article into any nonexempt  
26 subcontract, including this paragraph (a)(4).

27 (b) The terms used in this article have the following meanings:

28 (1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 7401).

29 (2) The term "Water Act" means the Federal Water Pollution Control Act, as  
30 amended (33 U.S.C. 1251 *et seq.*).

31 (3) The term "clean air standards" means any enforceable rules, regulations,  
32 guidelines, standards, limitations, orders, controls, prohibitions, or other requirements  
33 which are contained in, issued under, or otherwise adopted pursuant to the Air Act or  
34 Executive Order 11738, an applicable implementation plan as described in Section 110 of  
35 the Air Act (42 U.S.C. 7410), an approved implementation procedure or plan under  
36 Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or(d)),  
37 or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C.  
38 7412(d)).

39 (4) The term "clean water standards" means any enforceable limitation, control,  
40 condition, prohibition, standard, or other requirement which is promulgated pursuant to  
41 the Water Act or contained in a permit issued to a discharger by the Environmental  
42 Protection Agency or by a state under an approved program, as authorized by Section 402

1 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with  
2 pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

3 (5) The term "comply" means compliance with clean air or water standards. Comply  
4 shall also mean compliance with a schedule or plan ordered or approved by a court of  
5 competent jurisdiction, the Environmental Protection Agency, or an air or water pollution  
6 control agency in accordance with the requirements of the Air Act or Water Act and  
7 regulations issued pursuant thereto.

8 (6) The term "facility" means any building, plant, installation, structure, mine, vessel  
9 or other floating craft, location, or site of operations owned, leased, or supervised by a  
10 contractor or subcontractor to be utilized in the performance of a contract or subcontract.  
11 Where a location or site of operations contains or includes more than one building, plant,  
12 installation, or structure, the entire location or site shall be deemed to be a facility except  
13 where the Director, Office of Federal Activities, Environmental Protection Agency,  
14 determines that independent facilities are collocated in one geographical area.  
15

16 28. EQUAL EMPLOYMENT OPPORTUNITY

17 During the performance of this contract, the Association agrees as follows:

18 (1) The Association will not discriminate against any employee or applicant for  
19 employment because of race, color, religion, sex, disability, or national origin. The  
20 Association will take affirmative action to ensure that applicants are employed, and that  
21 employees are treated during employment, without regard to their race, color, religion,  
22 sex, disability, or national origin. Such action shall include, but not be limited to the  
23 following: employment, upgrading, demotion, or transfer; recruitment or recruitment  
24 advertising; layoff or termination; rates of pay or other forms of compensation; and  
25 selection for training, including apprenticeship. The Association agrees to post in  
26 conspicuous places, available to employees and applicants for employment, notices to be  
27 provided by the Contracting Officer setting forth the provisions of this nondiscrimination  
28 clause.

29 (2) The Association will, in all solicitations or advertisements for employees placed  
30 by or on behalf of the Association; state that all qualified applicants will receive  
31 consideration for employment without regard to race, color, religion, sex, disability, or  
32 national origin.

33 (3) The Association will send to each labor union or representative of workers with  
34 which it has a collective bargaining agreement or other contract or understanding, a  
35 notice, to be provided by the Contracting Officer, advising the labor union or workers'  
36 representative of the Association's commitments under Section 202 of Executive Order  
37 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places  
38 available to employees and applicants for employment.

39 (4) The Association will comply with all provisions of Executive Order No. 11246 of  
40 September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of  
41 Labor.

42 (5) The Association will furnish all information and reports required by Executive  
43 Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the

1 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
2 accounts by the Contracting Agency and the Secretary of Labor for purposes of  
3 investigation to ascertain compliance with such rules, regulations, and orders.

4 (6) In the event of the Association's noncompliance with the nondiscrimination  
5 clauses of this contract or with any of such rules, regulations, or orders, this contract may  
6 be canceled, terminated or suspended in whole or in part and the Association may be  
7 declared ineligible for further Government contracts in accordance with procedures  
8 authorized in Executive Order 11246 of September 24, 1965, and such other sanctions  
9 may be imposed and remedies invoked as provided in Executive Order 11246 of  
10 September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as  
11 otherwise provided by law.

12 (7) The Association will include the provisions of paragraphs (1) through (7) in every  
13 subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
14 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of  
15 September 24, 1965, so that such provisions will be binding upon each subcontractor or  
16 vendor. The Association will take such action with respect to any subcontract or  
17 purchase order as may be directed by the Secretary of Labor as a means of enforcing such  
18 provisions, including sanctions for noncompliance: *Provided, however*, that in the event  
19 the Association becomes involved in, or is threatened with, litigation with a subcontractor  
20 or vendor as a result of such direction, the Association may request the United States to  
21 enter into such litigation to protect the interests of the United States.  
22

23 29. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

24 (a) The Association shall comply with Title VI of the Civil Rights Act of 1964 (42  
25 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the  
26 Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title II of the Americans with  
27 Disabilities Act of 1990, and any other applicable civil rights laws, as well as with their  
28 respective implementing regulations and guidelines imposed by the U.S. Department of the  
29 Interior and/or Bureau of Reclamation.

30 (b) These statutes require that no person in the United States shall be excluded from  
31 participation in, be denied the benefits of, or be otherwise subjected to discrimination under  
32 any program or activity receiving financial assistance from the Bureau of Reclamation on the  
33 grounds of race, color, national origin, disability, or age. By executing this contract, the  
34 Association agrees to immediately take any measures necessary to implement this obligation,  
35 including permitting officials of the United States to inspect premises, programs, and  
36 documents.

37 (c) The Association makes this Contract in consideration of and for the purpose of  
38 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal  
39 financial assistance extended after the date hereof to the Association by the Bureau of  
40 Reclamation, including installment payments after such date on account of arrangements for  
41 Federal financial assistance which were approved before such date. The Association  
42 recognizes and agrees that such Federal assistance will be extended in reliance on the  
43 representations and agreements made in this article and that the United States reserves the  
44 right to seek judicial enforcement thereof.

1 (d) Complaints of discrimination against the Association shall be investigated by the  
2 Contracting Officer's Office of Civil Rights.  
3

4 30. CERTIFICATION OF NONSEGREGATED FACILITIES

5 The Association hereby certifies that it does not maintain or provide for its employees any  
6 segregated facilities at any of its establishments and that it does not permit its employees to  
7 perform their services at any location under its control where segregated facilities are  
8 maintained. It certifies further that it will not maintain or provide for its employees any  
9 segregated facilities at any of its establishments and that it will not permit its employees to  
10 perform their services at any location under its control where segregated facilities are  
11 maintained. The Association agrees that a breach of this certification is a violation of the Equal  
12 Employment Opportunity clause in this contract. As used in this certification, the term  
13 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,  
14 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
15 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
16 facilities provided for employees which are segregated by explicit directive or are in fact  
17 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
18 disability, or otherwise. The Association further agrees that (except where it has obtained  
19 identical certifications from proposed subcontractors for specific time periods) it will obtain  
20 identical certifications from proposed subcontractors prior to the award of subcontracts  
21 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment  
22 Opportunity clause; that it will retain such certifications in its files; and that it will forward the  
23 following notice to such proposed subcontractors (except where the proposed subcontractors  
24 have submitted identical certifications for specific time periods):  
25  
26

27 31. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
28 CERTIFICATIONS OF NONSEGREGATED FACILITIES

29 A Certification of Nonsegregated Facilities must be submitted prior to the award of a  
30 subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal  
31 Employment Opportunity clause. The certification may be submitted either for each subcontract  
32 or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The  
33 penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.  
34

35 32. RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

36 When acquiring land or an interest in land and relocating persons or personal property in  
37 connection with the construction, operation, and maintenance of project facilities, the  
38 Association shall comply with the provisions of the Uniform Relocation Assistance and Real  
39 Property Acquisition Policies Act of 1970 (84 Stat. 1894) and Department of Transportation  
40 regulations (49 CFR Part 24).  
41

1 33.

PEST MANAGEMENT

2 The Association shall take appropriate steps to prevent the introduction and spread of, and to  
3 otherwise control undesirable plants and animals, as defined by the Contracting Officer, on  
4 Federal project lands, project waters, and project works for which the Association has operation  
5 and maintenance responsibility. The Contractor is responsible for inspecting its vehicles and  
6 equipment for reproductive and vegetative parts, foreign soil, mud or other debris that may cause the  
7 spread of weeds, invasive species and other pests, and for removing such materials before moving its  
8 vehicles and equipment onto any Federal land or out of any area on Federal project land where work  
9 is performed. Where decontamination is required prior to entering Federal project land, it shall be  
10 performed at the point of prior use, or at an approved offsite facility able to process generated  
11 cleaning wastes. Upon the completion of work, decontamination shall be performed within the work  
12 area before the vehicles and equipment are removed from Federal project lands. . Programs for the  
13 control of these undesirable plants and animals on Federal project lands, project waters, and  
14 project works for which the Association has operation and maintenance responsibility will  
15 incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a  
16 systematic and environmentally compatible program to maintain pest populations within  
17 economically and environmentally tolerable levels. In implementing an IPM program, the  
18 Association will adhere to applicable Federal and State laws and regulations and Department of  
19 the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals.

21 34.

MEDIUM FOR TRANSMITTING PAYMENTS

- 22 (a) All payments from the Association to the United States under this contract shall be by  
23 the medium requested by the United States on or before the date payment is due. The  
24 required method of payment may include checks, wire transfers, or other types of payment  
25 specified by the United States.
- 26 (b) Upon execution of the contract, the Association shall furnish the Contracting Officer  
27 with the Association’s taxpayer’s identification number (TIN). The purpose for requiring the  
28 Association’s TIN is for collecting and reporting any delinquent amounts arising out of the  
29 Association’s relationship with the United States.

31 35.

CONTRACT DRAFTING CONSIDERATIONS

32 Articles 1 through 33 of this Contract have been drafted, negotiated, and reviewed by the  
33 parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and  
34 no one party shall be considered to have drafted the stated articles.

37 IN WITNESS WHEREOF, the parties hereto have signed their names this day and year  
38 first written above.

41 Approved:

UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR

42  
43

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11

\_\_\_\_\_  
Solicitor's Office

Attest:

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

By: \_\_\_\_\_  
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

ASSOCIATION

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

DRAFT