

Appendix A

Draft Contract Between Bureau of Reclamation and the Town of Estes Park

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Colorado-Big Thompson Project, Colorado

REPAYMENT CONTRACT BETWEEN
THE UNITED STATES AND THE TOWN OF ESTES PARK
FOR DELIVERY OF MUNICIPAL AND INDUSTRIAL WATER

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Colorado-Big Thompson Project, Colorado

REPAYMENT CONTRACT BETWEEN
THE UNITED STATES AND THE TOWN OF ESTES PARK
FOR THE DELIVERY OF MUNICIPAL AND INDUSTRIAL WATER

THIS CONTRACT, made this ____ day of _____, 20____, pursuant generally to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly, but not limited to, the Act of August 9, 1937 (50 Stat. 564, 592, 595), and Subsection 9(c) of the Act of August 4, 1939 (53 Stat. 1194), as amended and supplemented, all collectively known as the Federal Reclamation laws, between the UNITED STATES OF AMERICA, hereinafter called the "United States," acting through the Secretary of the Interior, and the Town of Estes Park, Colorado, acting by and through its Water Enterprise, hereinafter called the "Town," each sometimes hereinafter individually called "Party," and sometimes hereinafter collectively called "Parties."

1. EXPLANATORY RECITALS

The following statements are made in explanation:

- a. WHEREAS, the United States has constructed the Colorado-Big Thompson (C-BT) Project in the State of Colorado, for the development and use of the waters of the Colorado and Big Thompson Rivers for irrigation, municipal, industrial, hydropower generation and other beneficial purposes; and
- b. WHEREAS, the United States and the Town entered into Amendatory Contract No. 4-07-60-W1075 (Amendatory Contract) for annual delivery of 500 acre-feet (AF) of municipal and industrial (M&I) water at the points of connection located at the Estes Powerplant penstocks and the Marys Lake Powerplant gatehouse; and
- c. WHEREAS, the Amendatory Contract expires on November 23, 2019; and
- d. WHEREAS, the Town has requested a renewal of the Amendatory Contract pursuant to Federal Reclamation laws and the laws of the State of Colorado; and
- e. WHEREAS, the Town has requested to terminate the connection at the Estes Park Powerplant penstocks, described in Paragraph 1.b. above, but still has need of the Estes Park Powerplant penstocks to deliver water to Lake Estes when the Town desires to exchange water to the Town's existing intake on Glacier Creek and the proposed Big Thompson Intake for the Glacier Creek Water Treatment Plant (GCWTP); and

f. WHEREAS, the Town has submitted District Court, Water Division 1 water right applications, Case Nos. 18CW3229, 2019CW3065, and 2019CW3080 for water rights and appropriative rights of exchange which would confirm water rights for and right of exchange to the new point of diversion at the Town's existing intake on Glacier Creek and the proposed Big Thompson Intake as an additional supply to the GCWTP; and

g. WHEREAS, the United States agrees to enter into a repayment Contract pursuant to the applicable Federal laws, rules and regulations and state laws.

h. NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

2. DEFINITIONS

Where used in this Contract:

a. "Annual Water Supply" shall mean the 500 acre-feet of M&I water the Town receives during the 12-month period November 1 through October 31 from the Project facilities in accordance with Article 25 of Contract No. 9-07-70-W0020 between the United States and the Northern Colorado Water Conservancy District.

b. "Contract" shall mean this Contract No. 199F650068.

c. "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or the Secretary's duly authorized representative.

d. "Municipal and Industrial use" shall mean the use of Project water for municipal, industrial, and miscellaneous purposes including but not limited to residential lawns other than the use of Project water to irrigate land primarily to produce commercial agricultural crops or livestock.

e. "Operation, Maintenance, and Replacement (OM&R) costs" shall mean those expenses incurred in connection with the water control, and activities and actions necessary to ensure the continued structural integrity and operational reliability of Project Works, including major nonrecurring maintenance on a Project Work that is intended to ensure the continued safe, dependable, and reliable delivery of authorized Project benefits and appropriate charges for associated indirect costs and administration as determined by the Contracting Officer, and shall include such additional costs as hereinafter provided. Such expenses shall include those required to remedy conditions brought about by ordinary use of the Project or to restore or replace components of the existing Project and shall not include expenses to increase or enlarge such works beyond the purposes for which they were originally authorized and constructed.

f. "Olympus Dam Outlet Works" shall mean those components of the Olympus Dam that enable the release of water from Lake Estes to both the Olympus Tunnel and the Big Thompson River.

g. "Project" shall mean the C-BT Project, Colorado.

h. "Project Works" shall mean all C-BT Project facilities which are necessary to store and deliver the Annual Water Supply under the terms of this Contract.

i. "Water Supply System" shall mean the facilities owned, operated, and maintained by the Town for delivery of municipal water.

3. EFFECTIVE DATE AND TERM OF CONTRACT

This Contract shall become effective on the date of execution and the Amendatory Contract shall terminate on that same date. This Contract shall remain in full force and effect unless and until otherwise terminated under the provisions of paragraph 6, below.

4. WATER TO BE FURNISHED, POINT OF DELIVERY, POINT OF DIVERSION, MEASUREMENT, AND RESPONSIBILITY FOR WATER DELIVERY

a. Water to be delivered to the Town pursuant to this Contract shall be delivered at the point of connection to the Marys Lake Powerplant Gatehouse or the Olympus Dam Outlet Works at such times and flow rates as requested by the Town and shall be measured by the Town utilizing the Town's Water Supply System. Such delivery shall be limited by the capacity of the water supply connections and the Town's Water Supply System.

b. The water to be delivered from the Olympus Dam Outlet Works pursuant to this Contract shall be released from Lake Estes at such time and in such quantity to offset the Town's diversion of water from approved intake points upstream of Lake Estes.

i. As of the date of execution of this Contract, the Town's Glacier Creek Water Treatment Plant intake is located on the Glacier Creek tributary at NE1/4, Section 5, Township 4 North, Range 73 West, P.M., Larimer County, Colorado, as shown on attached Exhibit A.

ii. The Town has applied for an additional point of diversion at the Big Thompson Intake located on the Big Thompson River approximately 200 feet downstream of the confluence with Glacier Creek. This point is further described as being located in the NE1/4, Section 4, Township 4 North, Range 73 West, P.M. Larimer County, Colorado, as shown on attached Exhibit A.

iii. The Town shall be solely responsible for making whatever arrangements are necessary to divert or exchange Project water under this Contract pursuant to Colorado law including, but not limited to, obtaining any necessary approvals from the State of Colorado's Division of Water Resources.

c. The Town shall measure the Annual Water Supply from the Big Thompson River system at the appropriate intake upstream of Lake Estes.

d. The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water furnished to the Town pursuant to this Contract beyond the points of delivery, and the Town shall hold the United States harmless on account of damage or claim of any nature, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water

delivered to the Town. The Parties to this Contract understand and agree that the Town is relying on and does not waive, by any provision of this Contract, the monetary limitation or terms, or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., C.R.S., as may be amended or otherwise available to the Town or any of its officers, agents, or employees.

e. The Town shall not be responsible for the OM&R of the Project Works and the United States shall protect, indemnify, and hold the Town harmless from and against all claims, demands, and causes of action of any nature resulting from or in any manner connected with the OM&R of Project facilities within the limits of the Federal Tort Claims Act (28 U.S.C. 2671-2680).

5. PAYMENTS FOR CONSTRUCTION, POWER INTERFERENCE, AND OM&R

a. The Town's 40-year-construction cost repayment obligation to the United States for the Annual Water Supply was completed on December 31, 1992. No further construction obligation is due and no annual construction charge will be assessed for water delivered pursuant to this Contract.

b. The Town will pay the United States an annual obligation consisting of two components as described below.

i. A charge for power interference for each acre-foot of the Annual Water Supply that is diverted at Mary's Lake Powerplant Gatehouse that shall be the product of the energy component of the Loveland Area Power Rate of the Western Area Power Administration and the average Kilowatt Hour per acre-foot as determined by the Contracting Officer for power generation at the Marys Lake, Estes, Pole Hill, and Flatiron Powerplants.

ii. The Town's proportionate share, as determined by the Contracting Officer, of the annual OM&R costs, calculated on a fiscal year (October 1 to September 30) basis, incurred by the United States on the Project Works for the Annual Water Supply. Said Project Works shall include Green Mountain Dam and Reservoir; Granby Dam and Reservoir, Granby Pumping Plant, and Granby Pump Canal; Willow Creek Dam and Reservoir, Willow Creek Pumping Plant, and Willow Creek Canal; Shadow Mountain Dam and Reservoir; Alva B. Adams Tunnel; East Portal Reservoir; Aspen Creek Siphon; and Ram's Horn Tunnel. The annual OM&R charge shall be the product of the annual OM&R costs for the facilities listed above divided by the total amount (acre-feet) of water conveyed through the Alva B. Adams Tunnel during the 12-month period of November 1 through October 31 and the Annual Water Supply (Total OM&R / Total AF x 500 AF). The annual OM&R charges shall be based on estimates furnished by the Contracting Officer. In the event the estimated annual OM&R costs are less than the actual annual OM&R cost, or whenever it is determined by the Contracting Officer that a deficit will occur in the annual OM&R, the Contracting Officer shall bill the Town for the amount of the deficiency. In the event the estimated annual OM&R costs exceed the actual annual OM&R costs, the excess will be carried forward and applied as a credit to the next annual OM&R payment. The OM&R costs shall be paid in advance based on the Contracting Officer's estimated OM&R costs for the Project for the following fiscal year.

c. Notwithstanding that all works constructed on the Estes Powerplant penstocks and on United States right-of-way including all valves, meters, meter vault(s), and pipelines, except all pipelines beyond the meter vault(s), shall be and remain a part of the Project Works, the Town shall be responsible for OM&R of such works at the sole expense of the Town.

d. Notwithstanding that the water tap outlet at the Mary's Lake Gatehouse, including a 24-inch diameter steel sleeve, flanges, bolts, gaskets, and regulating valve, shall be and remain a part of the Project Works, the Town shall be responsible for OM&R of such works at the sole expense of the Town.

e. The annual payments required by this Article shall be billed annually by the Contracting Officer and shall become due and payable on December 31 of each calendar year (January 1 to December 31), or within 30 days of receipt of the bill if such bill is not received by the Town prior to December 1 of each calendar year, for the term of this Contract.

f. All the Town's financial obligations under this Contract are contingent upon appropriation, budgeting, and availability of specific funds to discharge those obligations. Nothing in this Contract constitutes a debt, a direct or indirect multiple fiscal year financial obligation, a pledge of the Town's credit, or a payment guarantee by the Town to the United States. However, the payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract, as stipulated in Article 14 herein.

6. RIGHT-OF-WAY EASEMENTS

The Town has granted perpetual right-of-way easements to the United States for construction of Project facilities and all contemplated construction has been completed by the United States. The United States shall have the right to continued perpetual use of such right-of-way easements until they are formally relinquished or abandoned by the United States.

7. WATER SHORTAGES OR INTERRUPTIONS IN SERVICE

The Contracting Officer will use all reasonable means to prevent a condition of shortage or interruption in the Annual Water Supply available to the Town. However, should shortages or interruptions occur, 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 out of such shortages or interruptions. The Town will periodically provide the United States with a list of individuals that Reclamation should provide with a schedule for water conveyance through the Alva B. Adams Tunnel, and the United States will periodically provide a copy of the schedule to these individuals, and will notify the Town, by telephone, of any unscheduled operational interruptions or outages that may exceed three (3) consecutive days.

8. TERMINATION OF CONTRACT

a. Upon failure of the Town to perform any of the obligations under this Contract, the Contracting Officer may give notice in writing of the nature of the default and require the Town to perform within a period specified in such notice, but not less than 60 days except in the case of an emergency. Upon the Town's failure to perform as required in the notice, the Contracting Officer may elect to terminate this Contract or may withhold water delivery until the Town

performs. The Contracting Officer's options under this Article shall be in addition to any other remedies available under law or policy.

b. The Town shall have the right to terminate this Contract in the event there is no further need of the water service provided herein. Notice of intent by the Town to terminate this Contract shall be provided in writing to the Contracting Officer at least 60 days prior to the termination date proposed.

c. Termination of this Contract for any cause shall not relieve the Town of any obligations incurred by way of this Contract prior to termination.

9. CONTRACT NOT A WATER RIGHT

No provisions of this Contract, nor any renewal thereof, nor the furnishing of water hereunder will be construed to bind the United States after the expiration of this Contract, or as the basis of a water right.

10. APPLICABLE LAW

The Town shall be subject to all applicable Federal, State, and local laws in its performance of its obligations under this Contract.

11. SEVERABILITY

In the event that any one or more of the provisions contained herein is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Contract, but this Contract is to be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause the fundamental benefits afforded the Parties by this Contract to become unavailable or materially altered.

12. ENVIRONMENTAL COMMITMENTS

A site-specific Environmental Assessment (Project No. 2017-34) was conducted for this Contract and Finding of No Significant Impact (FONSI) No. 2019-03 was issued. The following mitigation measures and environmental commitments measures incorporated from FONSI No. 2019-03 will be implemented and followed by Estes Park and their contractors. Mitigation measures are intended to minimize or eliminate environmental effects associated with the future construction of the Big Thompson Intake and expansion of the GCWTP.

a. Colorado – Big Thompson Project Operations:

i. Contract Water deliveries cannot adversely impact with Colorado – Big Thompson Project operation and maintenance activities.

ii. All water must be transported, released and/or exchanged in accordance with Colorado water law.

b. Future Glacier Creek Water Treatment Plant Expansion:

i. Visual Resources: Future expansion and improvement of Glacier Creek Water Treatment Plant and construction of the Big Thompson Intake shall incorporate the use of natural screening and nonreflective natural colors in each feature's design.

ii. Cultural Resources: To mitigate any potential impacts to historic resources associated with Contract Water exchanges from Lake Estes to the Big Thompson Intake, Estes Park shall complete and submit to Reclamation, cultural resource inventories prior to construction of the Big Thompson Intake and Glacier Creek Water Treatment Plant Pipeline. All cultural resource inventories shall include a Class III surveys of potential disturbances within construction footprint, staging areas, and borrow/disposal sites. Estes Park shall coordinate inventories with Reclamation archaeologist and all contracted Cultural Resource professional must hold valid permits issued by the state of Colorado. More information on permit and inventory requirements can be found at: <https://www.historycolorado.org/archaeology-and-paleontology-law-permits>.

Once cultural resource inventories are completed, Reclamation shall determine if any sites eligible to the National Register of Historic Places and complete the National Historic Preservation Act Section 106 consultation process with the Colorado State Historical Preservation Office. In the event historic resources are identified and would be adversely affected by the Proposed Action, mitigation measures shall be developed and implemented pursuant to a Memorandum of Agreement (MOA) between Reclamation, Colorado State Historical Preservation Office, and the Town of Estes Park. Reclamation shall also invite the Advisory Council on Historic Preservation and any eligible local historic preservation entity to participate in development of the MOA.

In the unlikely event that historic resources are encountered during all ground disturbing construction activities, all construction related activities shall be stopped and Reclamation notified. Reclamation shall evaluate the discovery and complete the National Historic Preservation Act 106 consultation process and implement protective measures as appropriate, prior to resuming ground disturbing construction activities

c. Clean Water Act 404 Compliance: Estes Park shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contract Water requires Clean Water Act Section 404 compliance, which may include obtaining a 404 permit.

STANDARD CONTRACT ARTICLES

13. CHARGES FOR DELINQUENT PAYMENTS

a. The Town shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Town shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Town shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Town shall pay, in addition

to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, which shall be calculated on the remaining balance of the payment due at the rate of 6 percent per year. The Town shall also pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

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

14. GENERAL OBLIGATION — BENEFITS CONDITIONED UPON PAYMENT

a. The obligation of the Town to pay the United States as provided in this Contract is a general obligation of the Town notwithstanding the manner in which the obligation may be distributed among the Town's water users and notwithstanding the default of individual water users in their obligation to the Town.

b. The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Town through Project facilities during any period in which the Town is in arrears in the advance payment of charges due the United States under this Contract. The Town shall not deliver water under the terms and conditions of this Contract for lands or Parties that are in arrears in the advance payment of rates as levied or established by the Town.

15. EMERGENCY RESERVE FUND (One-Time Deposit)

The Town has provided a letter dated October 16, 2019 (Exhibit B), attached and incorporated into this Contract that adequately demonstrates to the Contracting Officer that sufficient funds are available and will be available throughout the term of this Contract for the Town to meet its obligations under the Contract in the event of an emergency. The Town shall maintain unencumbered cash balances to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service. Funding that is to be provided from the Town's unencumbered cash balances shall be available within a reasonable time to meet expenses for the purposes described in this Contract. This fulfills the requirement for the following Standard Article:

a. Commencing on execution of this Contract, the Town shall establish and maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other funds are available for use as an emergency reserve fund. The Town shall establish and maintain that emergency reserve fund to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service.

b. *The Town shall accumulate the reserve fund with a one-time deposit or investment of not less than \$_____ to a Federally insured, interest or dividend-bearing account or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund, including accrued interest, shall be available within a reasonable time to meet expenses for such purposes as those identified in paragraph (d) herein. Following an emergency expenditure from the fund, annual deposits of \$_____ shall continue from the year following the emergency expenditure until the previous balance is restored. After the previous balance is restored, the annual deposits may be discontinued and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.*

c. *Upon mutual written agreement between the Town and the Contracting Officer, the accumulated reserve fund may be adjusted to account for risk and uncertainty stemming from the size and complexity of the Project; the size of the annual OM&R budget; additions to, deletions from, or changes in the Project Works; and OM&R costs not contemplated when this Contract was executed.*

d. *The Town may make expenditures from the reserve fund only for meeting routine or recurring OM&R costs incurred during periods of special stress, as described in paragraph (a) herein; for meeting unforeseen extraordinary OM&R costs; or for meeting unusual or extraordinary repair or replacement costs; or for meeting betterment costs (in situations where recurrence of severe problems can be eliminated) during periods of special stress. Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Whenever the reserve fund is reduced below the current balance by expenditures therefrom, the Town shall restore that balance by annual deposits as specified in paragraph (b) herein.*

e. *During any period in which any of the Project Works are operated and maintained by the United States, the Town agrees the reserve fund shall be available for like use by the United States.*

f. *On or before _____ of each Year, the Town shall provide a current statement of the principal and accumulated interest of the reserve fund account to the Contracting Officer.*

16. CONFIRMATION OF CONTRACT

The Town has provided a letter dated October 2, 2019, (Exhibit C), attached and incorporated into this Contract, which fulfills the requirement of the following Standard Article:

Promptly after the execution of this Contract, the Town shall provide evidence to the Contracting Officer that, pursuant to the laws of the State of Colorado, the Town is a legally constituted entity and the Contract is lawful, valid, and binding on the Town. This Contract shall not be binding on the United States until such evidence has been provided to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet the requirements of this Article, the Town may provide or the Contracting Officer may require a certified copy of a final decree of a court of competent jurisdiction in the State of Colorado, confirming the proceedings on the part of the Town for the authorization of the execution of this Contract.

17. NOTICES

Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Town, when mailed, postage prepaid, or delivered to:

Area Manager
Eastern Colorado Area Office
Bureau of Reclamation
11056 West County Road 18 East
Loveland, CO 80537

and on behalf of the United States, when mailed, postage prepaid, or delivered to:

Town Administrator
Town of Estes Park
P.O. Box 1200
Estes Park Colorado, 80517.

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

18. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

19. OFFICIALS NOT TO BENEFIT

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

20. CHANGES IN TOWN'S ORGANIZATION

While this Contract is in effect, no change may be made in the Town's organization, which may affect the respective rights, obligations, privileges, and duties of either the United States or the Town under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

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 Town shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Town's financial transactions; water supply data; Project land and rights-of-way use agreements; 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 its expressed and implied provisions, the laws of the United States and the State of Colorado, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Town.

24. PROTECTION OF WATER AND AIR QUALITY

a. The United States will care for and operate, maintain, and replace reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Town and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Town.

b. The Town shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Town; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Town facilities or Project water provided by the Town within the Town's Project Water Service Area.

c. This Article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

**25. EQUAL EMPLOYMENT OPPORTUNITY
(Federal Construction)**

During the performance of this Contract, the Town agrees as follows:

a. The Town will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability,

or national origin. The Town will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Town agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

b. The Town will, in all solicitations or advertisements for employees placed by or on behalf of the Town, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c. The Town will send to each labor union or representative of workers with which it has a collective bargaining agreement or other Contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Town's commitments under section 202 of Executive Order 11246 of September 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Town will comply with all provisions of EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Town will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Town's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Town may be declared ineligible for further Government Contracts in accordance with procedures authorized in EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Town will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions will be binding upon each subcontractor or vendor. The Town will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Town becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Town may request the United States to enter into such litigation to protect the interests of the United States.

26. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

a. The Town shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

b. These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, the Town agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The Town makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, Contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Town by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Town recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article and that the United States reserves the right to seek judicial enforcement thereof.

d. Complaints of discrimination against the Town shall be investigated by the Contracting Officer's Office of Civil Rights.

27. CERTIFICATION OF NONSEGREGATED FACILITIES

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

proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

*NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
CERTIFICATIONS OF NONSEGREGATED FACILITIES*

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

28. MEDIUM FOR TRANSMITTING PAYMENTS

a. All payments from the Town to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

b. Upon execution of the Contract, the Town shall furnish the Contracting Officer with the Town's taxpayer's identification number (TIN). The purpose for requiring the Town's TIN is for collecting and reporting any delinquent amounts arising out of the Town's relationship with the United States.

29. CONTRACT DRAFTING CONSIDERATIONS

This Contract has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 12 of this Contract have been drafted, negotiated, and reviewed by the Parties, and no one party shall be considered to have drafted the stated Articles.

30. CONSTRAINTS ON THE AVAILABILITY OF WATER

a. In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Town pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Town of said determination as soon as practicable.

b. If there is a condition of shortage because of inaccurate runoff forecasting or other similar operational errors affecting the Project; drought and other physical or natural causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
Michael S. Black
Regional Director

TOWN OF ESTES PARK
ACTING BY AND THROUGH ITS WATER ENTERPRISE

By _____
Todd Jirsa
Mayor

ATTEST:

By _____

Title: _____

Exhibit A
Project Area Map

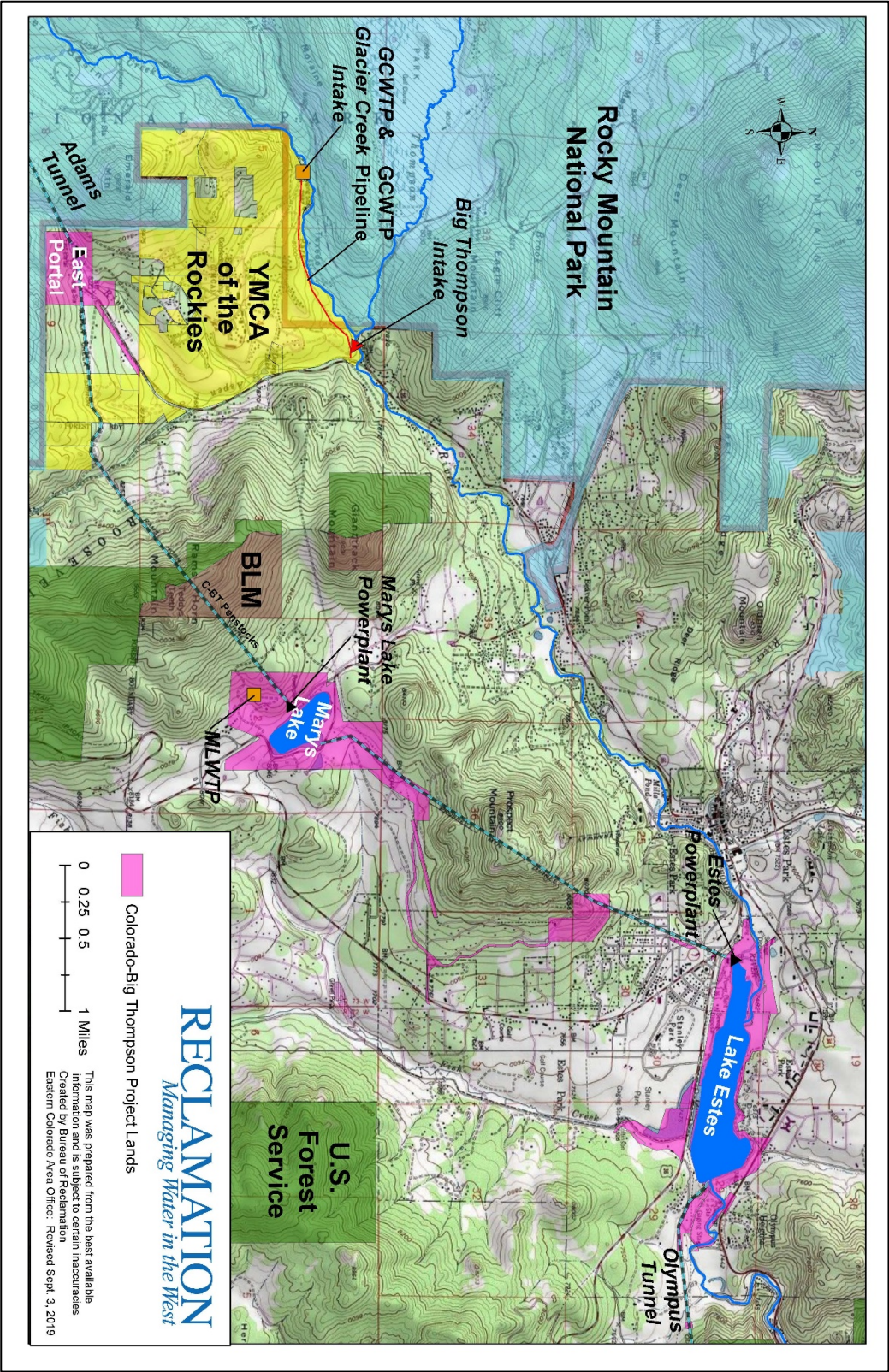


Exhibit B
Emergency Reserve Fund Letter



October 16, 2019

Area Manager, Eastern Colorado Area Office
Bureau of Reclamation
11056 West County Road 18 East
Loveland, CO 80537

RE: Contract No. 199F650068, Emergency Reserves

Dear Area Manager,

This letter describes how the Town of Estes Park's Water Enterprise meets the contractual obligation for Emergency Reserves. The Water Enterprise's existing emergency reserve is sufficient to cover the "Operation, Maintenance, and Replacement (OM&R) costs" obligation as outlined in the United States Department of the Interior, Bureau of Reclamation, Colorado-Big Thompson Project contract No. 199F650068.

The Town's Water Enterprise maintains a minimum unrestricted balance equal to 90 days of the previous year's annual Water Enterprise operations and maintenance expenses. This cash reserve is established for emergency situations. As listed in the Town's 2018 Comprehensive Annual Financial Report the 90 days O&M reserve minimum was \$1.1 million. The Water Enterprise's 2018 unrestricted balance was approximately four times higher than the minimum.

Every three years the Town's Water Enterprise hires an independent financial firm to create a five-year financial plan which includes new water rates. The proposed rates ensure the fund maintains the 90-day unrestricted balance.

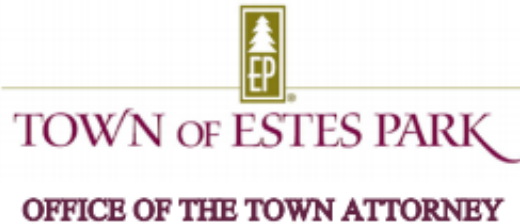
The Town's Water Enterprise 90 day emergency reserves are more than sufficient and will meet this contractual obligation throughout the term of the contract.

Sincerely,



Duane Hudson, Finance Director
Town of Estes Park

Exhibit C
Confirmation of Contract Letter



October 2, 2019

Robert Rice
Water Rights/Contract Specialist
Eastern Colorado Area Office, Bureau of Reclamation
11056 W. County Rd. 18E
Loveland, CO 80537

Re: Repayment Contract for Delivery of Municipal and Industrial Water

Dear Mr. Rice:

In connection with the Repayment Contract between the United States and the Town of Estes Park for Delivery of Municipal and Industrial Water (Contract No. 199F650068), it is my opinion that the Town of Estes Park is a Colorado municipality legally constituted according to the laws of the State of Colorado, as codified in Title 31 of the Colorado Revised Statutes.

Further, it is my opinion that the proposed contract, as a whole, when executed by authorized representatives of both parties, and construed in light of all applicable laws as required by its section 10, will be lawful, valid, and binding on the Town of Estes Park.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dan Kramer', is written over a light blue horizontal line.

Daniel E. Kramer
Town Attorney