

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT
COLORADO RIVER STORAGE PROJECT

FUNDING AGREEMENT AND REPAYMENT CONTRACT
BETWEEN THE UNITED STATES AND THE
COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

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10
11 FUNDING AGREEMENT AND REPAYMENT CONTRACT
12 BETWEEN THE UNITED STATES AND THE
13 COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

14 THIS CONTRACT, made this 9th day of November 2001, pursuant to the Act of
15 Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary
16 thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws,
17 between the UNITED STATES OF AMERICA, hereinafter referred to as the United States,
18 represented by the officer executing this contract, and the COLORADO WATER RESOURCES
19 AND POWER DEVELOPMENT AUTHORITY, a political subdivision of the State of
20 Colorado, hereinafter called the Authority, located in Denver, Colorado.

21
22 WITNESSETH, That:

23 WHEREAS, the following statements are made in explanation:

24 (a) 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
29 proposes to construct said Animas-La Plata Project for the storage, diversion, salvage, and
30 distribution of the waters of the Animas River, which Project has among its authorized purposes
31 the furnishing of water for municipal, industrial, domestic, and other beneficial purposes. The
32 water rights settlement purposes of the Project were authorized by the Colorado Ute Indian Water
33 Rights Settlement Act of 1988 (Public Law 100-585) as amended by the Colorado Ute
34 Settlement Act Amendments of 2000 (2000 Amendments), Public Law (P.L.) 106-554.

35 (b) The 2000 Amendments authorize the construction of a reservoir, pumping plant,
36 inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the

1 Animas River for an average annual depletion of 57,100 acre feet of water to be used for a
2 municipal and industrial water supply;

3 (c) Reclamation has completed the Animas-La Plata Final Supplemental Environmental
4 Impact Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September
5 25, 2000, for compliance with the National Environmental Policy Act.

6 (d) As provided by Public Law 100-585, the design and construction functions of the
7 Bureau of Reclamation with respect to the Animas-La Plata Project shall be subject to the
8 provisions of the Indian Self-Determination and Education Assistance Act (Public Law 93-638)
9 to the same extent as if such functions were performed by the Bureau of Indian Affairs.

10 (e) Adequate water rights for the Project have been obtained in Colorado and New
11 Mexico, and the United States is satisfied that any conflicts between private water rights and
12 Project water rights have been resolved.

13 (f) The Authority is interested in contracting for the water supply allocated to the
14 Animas-La Plata Water Conservancy District in Public Law 106-554.

15 (g) The parties hereto desire to enter into this contract in order to secure this municipal
16 and industrial water supply pursuant to the terms and conditions of Public Law 106-554 for the
17 use of such water in Colorado as hereinafter provided.

18 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
19 contained, the parties hereto agree as follows:

20
21 GENERAL DEFINITIONS

22 1. Where used in this contract:

23 (a) "United States" or "Contracting Officer" or "Secretary" or any of them means the
24 Secretary of the United States Department of the Interior or his/her duly authorized
25 representative.

26 (b) "Authority" means the Colorado Water Resources and Power Development
27 Authority, a political subdivision of the State of Colorado, located in Denver, Colorado, or its
28 assignees.

29 (c) "Project" means the Animas-La Plata Project, a participating Project of the
30 Colorado River Storage Project, as modified by Public Law 106-554.

1
2 (d) "Project Operator" means either the United States or the entity operating the
3 Project Works.

4 (e) "Project Works" means all works or facilities as described in Public Law 106-
5 554, including a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities
6 with sufficient capacity to divert and store water from the Animas River for an average annual
7 depletion of 57,100 acre-feet of water to be used for a municipal and industrial water supply, to
8 be constructed under the Project, together with lands and rights-of-way for such works, as
9 described in Article 2 herein.

10 (f) "Appurtenant Facilities" includes, but is not limited to, transmission lines, roads,
11 buildings, and other facilities related to the following Project Works to be constructed as a part of
12 the Project.

13 (g) "Project Water" means all water made available as a result of the Project, or from,
14 through, or by means of Project Works, and consists of water provided by direct diversion and
15 releases from project storage.

16 (h) "Project Storage Water" means Project Water provided from storage in Ridges
17 Basin Reservoir, the storage component of the Project.

18 (i) "Cost Sharing Agreement" refers to the "Agreement in Principle Concerning the
19 Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata
20 Project Cost Sharing" dated June 30, 1986, between the United States, the State of Colorado,
21 certain political subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute
22 Tribe, and the Southern Ute Indian Tribe, as amended contemporaneously herewith, which is
23 attached as Exhibit A.

24 (j) "Water Rights Settlement Agreement" refers to the "Colorado Ute Indian Water
25 Rights Final Settlement Agreement" dated December 10, 1986 among the United States, the
26 State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and the additional
27 governmental and private entities signatory thereto, as implemented by Public Law 100-585 as
28 amended by Public Law 106-554.

29 (k) "Consultation" means the United States shall notify and confer with the
30 Authority regarding significant decisions pertaining to this contract. In the event that consensus

1 cannot be reached and the United States makes a decision, appeals are available to the extent
2 allowed under applicable laws.

3 (l) "Operation and Maintenance Facilities" means those facilities necessary to
4 support operations and maintenance work, for example operation and maintenance headquarters,
5 office space, shops for repair of equipment, storage places for supplies, and equipment yards.

6 (m) "Payment Obligation" means the total water capital payment obligation of the
7 Authority in order to receive the municipal and industrial water supply allocated to the Animas-
8 La Plata Water Conservancy District by Public Law 106-554. The Payment Obligation shall be
9 satisfied as set forth in Article 8 hereof. The Payment Obligation comprises:

10 (1) the Up-front Payment as described in Article 8(a) herein; and

11 (2) the Additional Repayment Obligation as described in Article 8(b) herein.

12 (n) "Interest During Construction" means the interest charged for the construction
13 period on the Additional Repayment Obligation, which shall be at the rate determined by the
14 Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated,
15 on the basis of the computed average interest rate payable by the Treasury upon its outstanding
16 marketable public obligations, which are neither due nor callable for redemption for fifteen years
17 from the date of issue, as specified under Section 5(f) of the Colorado River Storage Act of April
18 11, 1956.

19 (o) "Amortization Interest" means the interest charged on the outstanding balance of
20 the Additional Repayment Obligation during the relevant repayment period, which shall be at the
21 rate determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which
22 construction is initiated, on the basis of the computed average interest rate payable by the
23 Treasury upon its outstanding marketable public obligations, which are neither due nor callable
24 for redemption for fifteen years from the date of issue, as specified under Section 5(f) of the
25 Colorado River Storage Act of April 11, 1956.

26 (p) "Relinquished Water" means that portion of Project Storage Water, along with a
27 proportionate share of the project depletion allowance, available to the Secretary for allocation to
28 other Project purposes if the Authority elects not to enter into a new agreement or does not make
29 the Additional Repayment Obligation component of its Payment Obligation established in the
30 final cost allocation as provided in Section 302(a)(3)(B) of Public Law 106-554.

1 PROJECT WORKS

2 2. Subject to the terms and conditions of this and other applicable contracts related to this
3 Project, the United States will construct the following Project Works and Appurtenant Facilities,
4 acquire lands, and provide certain moveable property and equipment to the Project Operator
5 needed for Project operation and maintenance as, in the opinion of the United States in
6 consultation with the Project Operations Committee, are necessary for Project purposes, without
7 being limited by enumeration and within the limit of funds available by the Congress and the
8 contracting parties.

9 (a) The Project Works are presently identified as the following:

10 (1) Ridges Basin Dam and Reservoir and Appurtenant Facilities, the main storage
11 facility for the Project, will be located on Basin Creek in Ridges Basin approximately 3 miles
12 southwest of Durango, Colorado. The reservoir will have a capacity of approximately 120,000
13 acre-feet.

14 (2) Durango Pumping Plant and Appurtenant Facilities will be located adjacent to
15 the Animas River and will pump Project Water from the Animas River for storage in Ridges
16 Basin Reservoir.

17 (3) Ridges Basin Inlet Conduit and Appurtenant Facilities will extend from the
18 Durango Pumping Plant to Ridges Basin Reservoir.

19 (4) Operation and Maintenance Facilities will be constructed as determined
20 necessary by the United States, after consultation with the Project Construction Coordinating
21 Committee and the Project Operations Committee, for the required operation and maintenance of
22 Project Works.

23 (b) The United States, after consultation with the Authority, shall have the right at
24 any time to increase the capacity of the Project Works or any unit or feature thereof for other than
25 current Project purposes without additional capital or operation and maintenance cost to the
26 Authority; Provided, that the Authority's use of Project Water shall not be impaired thereby. The
27 right of use of such increased capacity is reserved to the United States.

28 (c) Any additions, changes to, or operation of Project Works or changes in use of
29 water from that stated in the Animas-La Plata Final Supplemental Environmental Impact
30 Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September 25,

1 2000, will be subject to further compliance with applicable environmental statutes and must be
2 approved by the Secretary of the Interior.

3 (d) Construction and operation of the Project will be in accordance with the
4 Environmental Commitments in Chapters 4 and 5 of the FSEIS, which are attached as Exhibit B
5 to this contract.

6
7 CONDITIONS PRECEDENT TO CONSTRUCTION

8 3. The United States shall be under no obligation to commence, or having commenced,
9 to continue construction of Project Works necessary for the delivery of Project Water under this
10 contract until:

11 (a) Any non-Tribal entity that desires to pay its capital obligations for its municipal
12 and industrial water prior to construction pursuant to Public Law 106-554 has had an opportunity
13 to enter into such an agreement with the United States prior to the initiation of construction.

14 (b) The United States, before initiation of construction of any Project Works, has
15 notified the Authority in writing of any other agreements or conditions precedent that must be
16 met prior to the construction of those Project Works; Provided, however, that no such conditions
17 precedent shall be imposed unless such conditions precedent are mandated or required by Federal
18 laws, State law, or policy promulgated pursuant thereto.

19
20 PROJECT COORDINATION COMMITTEES

21 4. Coordination of Project construction, operations, and Project Works maintenance
22 activities will be accomplished through the establishment of two committees: one to focus on
23 those activities associated with the construction of the Project Works, the other to oversee the
24 operations and maintenance activities.

25 (a) The Project Construction Coordination Committee will be made up of
26 representatives of those entities that have been identified by the 2000 Amendments to receive
27 Project Water, the Bureau of Reclamation and a representative of the Authority. This committee
28 will provide coordination and consultation on the construction activities among all the project
29 beneficiaries, seeking common understanding and consensus on decisions associated with such
30 items as final plans for Project Works, project construction completion schedule, and Project

1 construction costs. Upon Project completion, this committee will be dissolved.

2 (b) The Project Operations Committee will initially consist of representatives from
3 those entities that have been identified by the 2000 Amendments to receive Project Water, the
4 Bureau of Reclamation, and a representative of the Authority. Initially, this committee will
5 determine the appropriate entity to contract with Reclamation for the operation and maintenance
6 of the Project Works and the development of a common understanding among the project
7 beneficiaries of the appropriate level of annual operation, maintenance, and replacement
8 (OM&R) activities to be performed on the Project Works to assure the Project's long term
9 operational integrity and public safety. Ultimately, this committee will oversee the ongoing
10 operations, maintenance, and replacement activities of the Project Works, providing consultation
11 and coordination among the committee members on such items as annual OM&R funding,
12 maintenance schedules, and public safety issues.

13
14 MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

15 5. (a) Water delivered to the Authority pursuant to this contract shall be measured at the
16 outlet works of Ridges Basin Dam and/or in the Animas River at the Durango Pumping Plant
17 with measuring facilities installed by the United States as a part of the Project. Water delivered
18 to the Authority pursuant to this contract directly out of the reservoir shall be measured by
19 facilities provided by the Authority or its subcontractors. Water delivered to the Authority's
20 subcontractors pursuant to this contract shall be measured by the users at their points of
21 diversion. Sufficient water will be available for diversion at any approved points of diversion on
22 the Animas River, at the dam outlet, or in the reservoir in such proportions as the Authority
23 determines from time to time, subject to capacity limitations of the relevant facilities, to ensure
24 that the Authority annually receives a municipal and industrial water allocation with an average
25 annual depletion not to exceed 2,600 acre-feet.

26 (b) The United States will not be responsible for the control, carriage, handling, use,
27 disposal, or distribution of water furnished the Authority from the reservoir, the outlet works of
28 Ridges Basin Dam, or bypassed at the Durango Pumping Plant to the place of final use. The
29 Authority will hold the United States harmless on account of damage or claim of damage of any
30 nature whatsoever arising out of or connected with the control, carriage, handling, treatment, use,
31 disposal, or distribution of water by the Authority below the Project points of measurement.

1 (c) All facilities required for taking water furnished under this contract from the
2 points of delivery and putting it to use by the Authority and its subcontractors will be acquired,
3 constructed or installed, and operated and maintained by the Authority at their sole expense.
4

5 ALLOCATION AND USE OF PROJECT WATER

6 6. (a) The Authority's allocation of water provided by the Project consists of a municipal
7 and industrial water allocation with an average annual depletion not to exceed 2,600 acre-feet,
8 except as otherwise provided under Subarticle 8(b)(2)(iii) herein. This allocation may be met by
9 a combination of direct diversion of the natural flows from the Animas River and water released
10 from Project storage and diverted from the Animas River.

11 (b) Except as provided in Subarticle 8(b)(2)(iii) herein, the Authority shall have the
12 right to utilize storage space in Ridges Basin Reservoir in the amount of 2,919 acre-feet to
13 supplement direct flow diversion amounts necessary to fulfill the Authority's annual Project
14 Water allocation. Any unused water remaining in this Project storage space shall be retained in
15 Ridges Basin Reservoir and shall be available for the Authority's use in succeeding years. The
16 Authority shall have the opportunity to purchase excess Project Water stored in Ridges Basin
17 Reservoir from other users.

18 (c) If required to ensure that the average annual depletion allocation of 2,600 acre-
19 feet is met, the water may be used and reused to the extent permitted by the Project decrees. In
20 addition, the water may be used at any location in the Project service area, and may be used by
21 exchange or augmentation to achieve the municipal and industrial uses permitted.

22 (d) The United States, after compliance with applicable environmental compliance
23 statutes, shall cooperate with the Authority, its subcontractors or assignees to provide appropriate
24 interests in land needed for delivery of Project Water through non-project facilities.

25 (e) Any use of Project Water other than that contemplated in the July 2000 Final
26 Supplemental Environmental Impact Statement and subsequent Record of Decision dated
27 September 25, 2000 for the Animas-La Plata Project shall be subject to compliance with
28 applicable environmental statutes.
29
30

1 WATER RIGHT PROVISIONS

2 7. (a) Upon request of the United States, the Authority will assign the water rights, if any,
3 that it holds associated with the Project water rights to the United States for the benefit of users of
4 Project Water. The Authority, or its assignee, will also protect its interest in the Project water
5 rights and in case a dispute arises as to the character, extent, priority or validity of the rights of the
6 United States or the Authority to use or permit use of Project Water, the Authority shall promptly
7 bring and diligently prosecute and/or defend judicial proceedings for the determination of such
8 dispute and shall take all other measures necessary toward the defense and protection of the
9 Project water supply. If the Authority does not defend Project water rights for the protection of
10 the Project water supply to the satisfaction of the United States, the United States, upon 30 days
11 prior written notice to the Authority, itself will enter into the proceedings to defend such rights.

12 (b) The construction of the Project Works, the allocation of the water supply from
13 those facilities to the Colorado Ute Tribes, and the provision of funds to the Colorado Ute Tribes
14 in accordance with section 16 of Public Law 106-554, and the issuance of an amended final
15 consent decree by the State of Colorado as contemplated in subsection 18(c) of Public Law 106-
16 554 shall constitute final settlement of the tribal claims to water rights on the Animas and La Plata
17 Rivers in the State of Colorado.

18
19 METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

20 8. The Authority's Payment Obligation consists of the Up-front Payment Obligation,
21 which may, pursuant to Section 302(a)(3)(A) of Public Law 106-554, be satisfied by payment in
22 full of the Authority's water capital obligation prior to the initiation of construction, and of any
23 Additional Repayment Obligation, which may, pursuant to Section 302(a)(3)(B) be warranted
24 upon final cost allocation upon completion of construction for reasonable and unforeseen costs
25 associated with Project construction, as determined by the Secretary in consultation with the
26 relevant repayment entities.

27 (a) Up-front Payment Obligation. The Authority shall enter into the Amended and
28 Restated Escrow Agreement and the Amended and Restated Escrow Agreement and Instructions
29 attached hereto as Exhibits C and D contemporaneously herewith, and establish the Escrow
30 Account contemplated by those agreements. The initial sum escrowed, \$7,256,750, is derived

1 from the May 2001 Interim Cost Allocation based on October 2001 price levels. The initial sum
2 escrowed and the interest and investment income on that sum during the time of escrow, up to 3%
3 per year, shall be expended as set forth in the Amended and Restated Escrow Agreement and
4 Instructions attached hereto as Exhibit D to pay: (1) the Authority's share of costs incurred on the
5 Project prior to October 1, 1999 (Sunk Costs) totaling \$1,161,088; (2) the Authority's 3.07%
6 share of Joint Project Costs; (3) the Authority's share, up to \$582,400, of items provided solely
7 for the benefit of the Authority and its subcontractors (Specific Costs); and (4) inflationary
8 increases in the cost of construction during the period of construction, currently estimated at 3%
9 per year, which inflationary increases are anticipated to be met by the interest and investment
10 income on the Escrow Account. Establishment of the Escrow Agreement as set forth above shall
11 constitute payment in full prior to initiation of construction of the Authority's water capital
12 obligation as mandated by Section 302(a)(3)(A) of Public Law 106-554.

13 (b) Additional Repayment Obligation.

14 (1) Determination of Additional Repayment Obligation. Upon completion of
15 Project construction, the Secretary, in consultation with the Authority and other relevant
16 repayment entities, shall prepare a final cost allocation pursuant to Section 302(a)(3)(B) of Public
17 Law 106-554 and determine whether reasonable and unforeseen costs associated with Project
18 construction warrant additional repayment by the Authority. If additional repayment is so
19 warranted, then the Authority's share of such additional repayment shall be determined based
20 upon its share of Project Storage Water and overall reimbursable costs, with such share not to
21 exceed 3.07% of the Joint Project Costs in excess of \$217,287,950 that are reasonable and
22 unforeseen and 100% of the Specific Costs that exceed \$582,400 that are reasonable and
23 unforeseen, and such share shall constitute the Authority's Additional Repayment Obligation.

24 (2) Satisfaction of Additional Repayment Obligation.

25 (i) Lump Sum Payment. The Authority may, at its option, pay any
26 Additional Repayment Obligation, together with applicable Interest During Construction charges,
27 in a lump sum within 60 days of the determination of the Additional Repayment Obligation. Such
28 payment may be made from funds accrued in and not otherwise expended from the Escrow
29 Account or from other funds of the Authority.

1 (ii) Payment Over Time. If the Authority elects not to make a lump sum
2 payment of any Additional Repayment Obligation, then the United States will attribute and assign
3 the Additional Repayment Obligation to a pro-rata share of the Authority's total Project Water,
4 and will include in the block notice for such pro-rata share of the water supply the information
5 regarding the Additional Repayment Obligation set forth in Article 9 below. Upon receipt of such
6 block notice, the Authority may:

7 1. Pursuant to Section 9(c)(1) of the Reclamation Projects Act of
8 1939, elect to enter into a new agreement for payment of the Additional Repayment Obligation
9 assigned to the block notice, which new agreement may provide for (a) payment of the Additional
10 Repayment Obligation assigned to the relevant block notice (together with Interest During
11 Construction charges and Amortization Interest charges) over a 25 year repayment period in
12 annual installments due on or before January 10 of each year; provided, however, that if the
13 Authority or its subcontractor for the relevant water supply commits to the measures in its water
14 conservation plan described in Article 28 below, then repayment may be completed over a 40 year
15 period;

16 2. Pursuant to the provisions of the Water Supply Act of 1958 (72
17 Stat. 297), as amended, elect to defer payment of the Additional Repayment Obligation and use of
18 the pro-rata water supply assigned to the Additional Repayment Obligation in which case (a) no
19 principal or interest payments need be made with respect to storage of water for future water
20 supply as provided by the Water Supply Act of 1958 until such supply is first used, but such
21 deferral of repayment shall not exceed ten (10) years; (b) no interest shall be charged on such
22 cost until such supply is first used, but in no case shall the interest-free period exceed ten (10)
23 years; and (c) once repayment is initiated, the Additional Repayment Obligation, together with
24 Interest During Construction and Amortization Interest shall be paid in annual installments over
25 the remainder of the repayment period, provided, however, that the repayment period, including
26 deferral, shall not exceed 50 years.

27 (iii) Relinquishment. Alternatively, the Authority may elect, at its option,
28 not to pay the Additional Repayment Obligation, and thereby relinquish any use or contract right
29 to the Project Water assigned to the Additional Repayment Obligation. The resulting
30 Relinquished Water shall be available to the Secretary for allocation to other purposes as provided

1 by Section 302(a)(3)(B) of Public Law 106-554.

2 (c) Other Provisions.

3 (1) Consultation. Upon request, the United States will consult annually with the
4 Authority concerning the allocation of construction costs and of any Interest During Construction
5 Cost to be payable under this Contract. The Use-of-Facilities method of cost allocation is based
6 on the storage space required in Ridges Basin Reservoir necessary to meet water delivery
7 requirements of the beneficiaries. This Use-of-Facilities method will be used to allocate costs for
8 the Project, and will not be changed during the administration of this Contract.

9 (2) Continuing Effect. In accordance with Section 9(c)(1) of the Reclamation
10 Projects Act of 1939, following payment of the Payment Obligation herein, the other contract
11 terms shall remain in full force and effect until mutually agreed by the Authority and the United
12 States.

13
14 METHOD FOR ESTABLISHING BLOCKS FOR PROJECT DELIVERY AND REPAYMENT

15 9. (a) When the Project Works defined in Article 2(a) are completed, tested, and the
16 Project Storage Water becomes available for use by the Authority, the United States shall, after
17 consultation, give the Authority written notice, referred to herein as the "block notice," at least 12
18 months prior to the date when water will be first delivered to the affected block. The block notice
19 shall contain:

20 (1) A description of the entities included in the block.

21 (2) The quantity of Project Water available to the Authority for the block.

22 (b) If an Additional Repayment Obligation has been assigned pro rata to a quantity of
23 the Authority's Project Storage Water, pursuant to Article 8(b)(2)(ii) herein, then the block notice
24 establishing the availability of that water supply will also set forth:

25 (1) The Additional Repayment Obligation allocated to that block; and

26 (2) The payment schedule for the Additional Repayment Obligation allocated to
27 that block, as established by the new agreement for payment of the additional repayment
28 obligation entered into pursuant to Article 8(b)(2)(ii) including a breakdown of the amount and
29 due date of each payment.

30 (c) Each block notice and amendment thereto shall become a part of this contract.

1
2 PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

3 10. (a) The operation, maintenance, and replacement (OM&R) costs allocated to the
4 Authority's Project Water will comprise: (1) the Authority's pro-rata share of OM&R costs
5 actually incurred by the Project Operator in connection with Project facilities and/or operations that
6 benefit all users of Project Water (General OM&R Costs), based on the amount of Project Storage
7 Water actually purchased and paid for by the Authority in accordance with article 8 above; (2) the
8 Authority's pro-rata share of OM&R costs actually incurred by the Project Operator in connection
9 with Project facilities and/or operations that benefit the Authority (and/or its subcontractors), but
10 do not benefit all other users of Project Water (Specific OM&R Costs), based on the Authority's
11 pro-rata use of such facilities; and (3) the actual cost required to refill Project storage to replace
12 water released by request of the Authority.

13 (b) Payment of the Authority's, or its assignee's, allocated OM&R costs shall be made
14 annually in advance, within 60 days of receipt of the annual charge notice issued by the Project
15 Operator based on the Project Operations Committee's annual estimate of Project OM&R costs. If
16 the Authority's allocated OM&R costs exceed the sum paid in advance, then a supplemental charge
17 notice will be issued and the Authority will pay the sum required within 60 days of receipt. If the
18 Authority's allocated OM&R costs are less than the sum advanced, then the Authority shall receive
19 a credit for the overpayment upon its next charge notice.
20

21 USE AND DISPOSAL OF PROJECT WATER DURING CONSTRUCTION

22 11. During construction, Project Water that is not made available to the Authority under a
23 block notice as provided in Article 9 herein, may be disposed of by the United States at terms and
24 charges fixed by the United States. The charges shall be sufficient to at least cover the operation,
25 maintenance, and replacement costs appropriate for such water delivery. Payment for use of such
26 water shall be in advance and the proceeds shall be applied to operation and maintenance expense
27 and other appropriate accounts as determined by the United States, and shall accrue to the benefit
28 of the United States. The Authority shall, however, have the first opportunity to purchase said
29 Project Water at the price and terms offered.
30

1 WATER SHORTAGES

2 12. There may occur at times during any year a shortage in the quantity of water available
3 for furnishing to the Authority through and by means of the Project, but in no event shall any
4 liability accrue against the United States or any of its officers, agents, or employees for any
5 damage, direct or indirect, arising from a shortage, on account of errors in operation, drought, or
6 any other causes. In any year in which there may occur a shortage from any cause, the United
7 States reserves the right to apportion the available water supply, exclusive of carryover storage,
8 among the Authority, Tribes, and others entitled to receive water from the Project in accordance
9 with conclusive determinations of the Contracting Officer, and in accordance with applicable law,
10 including the Animas-La Plata Compact.

11
12 COVENANT AGAINST CONTINGENT FEES

13 13. The Authority warrants that it has not employed or retained any person or selling
14 agency to solicit or secure this contract upon an agreement or understanding for a commission,
15 percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established
16 commercial or selling agencies maintained by the Authority for the purpose of securing business.
17 For breach or violation of this warranty, the United States shall have the right to annul this contract
18 without liability, or at its discretion, to add to the repayment obligation or consideration the full
19 amount of such commission, percentage, brokerage, or contingent fee.

20
21 THIRD PARTY CONTRACTS

22 14. (a) Any contract entered into between the Authority and any third-party for the use of
23 Project Water under this Contract shall be subject to written approval of the United States in order
24 to determine the effects on the operation of the Project Works. Any such subcontracts shall be
25 subject to the provisions of this Contract and must include, but not be limited to, terms of
26 measurement, operations, environmental compliance, and the impact of defaults on Project Works.
27 Approval shall not be unreasonably withheld. The United States shall have 60 days after
28 environmental compliance, if required, or after receipt of the proposed third-party contract to
29 inform the Authority of its approval or denial of the contract. If the United States approves an
30 assignment of all of the Authority's rights and obligations under this contract, then the Authority

1 shall be relieved of any further liability under this contract.

2 (b) The Authority shall not receive any valuable consideration for such subcontract
3 in excess of the total cumulative cost of the water to the Authority (such cost of water includes
4 interest on Authority funds used to procure such water, administrative costs, and OM&R costs).
5 The Authority shall not extract any brokerage, profits, commission or fee, from any person on the
6 water to be delivered under such subcontract. In connection with any such subcontract, the Chair
7 of the Authority, or designee, shall certify to the United States that the conveyance with respect to
8 water delivery was without consideration except as provided above, and that no brokerage, profits,
9 commission, fee, or other charge of any kind was charged to the subcontractor or any person acting
10 on behalf of the subcontractor. Any exceptions to this article will be covered under a separate
11 agreement.

12 TITLE TO PROJECT WORKS

13 _____ 15. Title to the Project Works shall be held by the United States, unless specifically
14 provided otherwise by Congress, notwithstanding transfer of the care, operation, and maintenance
15 of any said works to the Project Operator.

16 SEVERABILITY

17 16. (a) If any provisions of Articles 17 through 30 are in conflict with Article 1 through
18 16, then the provisions of Article 1 through 16 shall take precedence.

19 (b) If any provisions of the contract shall, for any reason be determined to be illegal or
20 unenforceable, the parties, nevertheless, intend that the remainder of the contract shall remain in
21 full force and effect. Furthermore, any adjustments or variations to this contract necessitated by
22 future negotiations with other Project beneficiaries can be accomplished by amending this contract.
23

24 CHARGES FOR DELINQUENT PAYMENTS

25 17. (a) The Authority shall be subject to interest, administrative and penalty charges on
26 delinquent installments or payments. When a payment is not received by the due date, the
27 Authority shall pay an interest charge for each day the payment is delinquent beyond the due date.
28 When a payment becomes 60 days delinquent, the Authority shall pay an administrative charge to
29 cover additional costs of billing and processing the delinquent payment. When a payment is
30 delinquent 90 days or more, the Authority shall pay an additional penalty charge of 6 percent per
31 year for each day the payment is delinquent beyond the due date. Further, the Authority shall pay
32 any fees incurred for debt collection services associated with a delinquent payment.
33
34
35

1 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the
2 Federal Register by the Department of the Treasury for application to overdue payments, or the
3 interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of
4 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and
5 remain fixed for the duration of the delinquent period.

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

9
10 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

11
12 18. (a) The obligation of the Authority to pay the United States as provided in this contract
13 is a general obligation of the Authority notwithstanding the manner in which the obligation may be
14 distributed among the Authority's subcontractors and notwithstanding the default of individual
15 subcontractors in their obligations to the Authority.

16 (b) The payment of charges becoming due hereunder is a condition precedent to
17 receiving benefits under this contract. The United States shall not make water available to the
18 Authority through project facilities during any period in which the Authority may be in arrears in
19 the advance payment of any operation and maintenance charges due the United States or in arrears
20 for more than 12 months in the payment of any construction charges due the United States. The
21 Authority shall not furnish water made available pursuant to this contract for parties which are in
22 arrears in the advance payment of operation and maintenance charges or in arrears more than 12
23 months in the payment of construction charges as levied or established by the Authority.

24
25 NOTICES

26
27 19. Any notice, demand, or request authorized or required by this contract shall be deemed
28 to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered to the
29 Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Room
30 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed, postage
31 prepaid, or delivered to the Colorado Water Resources and Power Development Authority, 1580
32 Logan Street - Suite 620, Denver, Colorado 80203. The designation of the addressee or the address
33 may be changed by notice given in the same manner as provided in this article for other notices.

34
35 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

36
37 20. The expenditure or advance of any money or the performance of any obligation of the
38 United States under this contract shall be contingent upon appropriation or allotment of funds.
39 Absence of appropriation or allotment of funds shall not relieve the Authority from any obligations
40 under this contract. No liability shall accrue to the United States in case funds are not appropriated
41 or allotted.

42 OFFICIALS NOT TO BENEFIT

43
44 21. No Member of or Delegate to Congress, Resident Commissioner or official of the
45 Authority shall benefit from this contract other than as a water user or landowner in the same
46 manner as other water users or landowners.

47
48 CHANGES IN AUTHORITY'S ORGANIZATION

49
50 22. While this contract is in effect, no change may be made in the Authority's organization,
51 by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written
52 consent, unless all obligations of the Authority under this contract have been satisfied, or provision
53 has been made for the satisfaction of all such obligations.

1 ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

2
3 23. (a) The provisions of this contract shall apply to and bind the successors and assigns of
4 the parties hereto, but no assignment or transfer of this contract or any right or interest therein shall
5 be valid until approved in writing by the United States.
6

7 BOOKS, RECORDS AND REPORTS

8
9 24. The Authority, and/or its subcontractors, shall establish and maintain accounts and
10 other books and records pertaining to administration of the terms and conditions of this contract,
11 including: the Authority's and /or its subcontractors' financial transactions, water supply data,
12 water-use data; and other matters that the Contracting Officer may reasonably require. Reports
13 thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the
14 Contracting Officer may reasonably require. Subject to applicable Federal laws and regulations,
15 each party to this contract shall have the right during office hours to examine and make copies of
16 the other party's books and records relating to matters covered by this contract.
17

18 RULES, REGULATIONS, AND DETERMINATIONS

19
20 25. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant
21 to this contract is subject to Reclamation law, as amended and supplemented, and the rules and
22 regulations promulgated by the Secretary of the Interior under Reclamation law.

23 (b) The Contracting Officer shall have the right to make determinations necessary to
24 administer this contract that are consistent with the expressed and implied provisions of this
25 contract, the laws of the United States and the State, and the rules and regulations promulgated by
26 the Secretary of the Interior. Such determinations shall be made in consultation with the Authority.
27

28 QUALITY OF WATER

29
30 26. The operation and maintenance of project facilities shall be performed in such manner
31 as is practicable to maintain the quality of raw water made available through such facilities at the
32 highest level reasonably attainable, as determined by the Contracting Officer. The United States
33 does not warrant the quality of water and is under no obligation to construct or furnish water
34 treatment facilities to maintain or better the quality of water.
35

36 WATER AND AIR POLLUTION CONTROL

37
38 27. The Authority, in carrying out this contract, shall comply with all applicable water and
39 air pollution laws and regulations of the United States and the State of Colorado, and shall obtain
40 all required permits or licenses from the appropriate Federal, State, or local authorities.
41

42 WATER CONSERVATION

43
44 28. Prior to the delivery of water provided from or conveyed through Federally constructed
45 or Federally financed facilities pursuant to this contract, the Authority, and/or its subcontractors,
46 shall develop an effective water conservation program acceptable to the Contracting Officer. The
47 water conservation program shall contain definite water conservation objectives, appropriate
48 economically feasible water conservation measures, and time schedules for meeting those
49 objectives. At subsequent 5-year intervals, the Authority, and/or its subcontractors, shall submit a
50 report on the results of the program to the Contracting Officer for review. Based upon the
51 conclusions of the review, the Contracting Officer and the Authority, and/or its subcontractors,
52 shall consult and agree to continue or to revise the existing water conservation program.
53

EQUAL OPPORTUNITY

29. During the performance of this contract, the Authority agrees as follows:

(a) The Authority will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Authority 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, 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 Authority 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 Authority will, in all solicitations or advertisements for employees placed by or on behalf of the Authority, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Authority 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 said labor union or workers' representative of the Authority's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Authority will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Authority will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Authority's noncompliance with the nondiscrimination clauses of this contract or with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Authority may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Authority 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 said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Authority 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 Authority becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Authority may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

30. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U. S. Department of the Interior and/or Bureau of Reclamation.

1 (b) These statutes require that no person in the United States shall, on the grounds of
2 race, color, national origin, handicap, or age, be excluded from participation in, be denied the
3 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
4 financial assistance from the Bureau of Reclamation. By executing this contract, the Authority
5 agrees to immediately take any measures necessary to implement this obligation, including
6 permitting officials of the United States to inspect premises, programs and documents.

7 (c) The Authority makes this agreement in consideration of and for the purpose of
8 obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial
9 assistance extended after the date hereof to the Authority by the Bureau of Reclamation, including
10 installment payments after such date on account of arrangements for Federal financial assistance
11 which were approved before such date. The Authority recognizes and agrees that such Federal
12 assistance will be extended in reliance on the representations and agreements made in this article,
13 and that the United States reserves the right to seek judicial enforcement thereof.
14
15
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19 IN WITNESS WHEREOF, the parties hereto have
20 caused this contract to be duly executed as of the day and year first above written.
21
22
23

24 Approved

THE UNITED STATES OF AMERICA

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Solicitor's Office

By 
Regional Director
Upper Colorado Region
Bureau of Reclamation

ATTEST:

COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY


ASST. SEC.

By 
Chair

List of Attachments: Exhibit A - Cost Sharing Agreement, as amended
Exhibit B - Environmental Commitments
Exhibit C - Amended and Restated Escrow Agreement
Exhibit D - Amended and Restated Escrow Agreement and Instructions.