

Contract No. _____
Draft

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT
COLORADO RIVER STORAGE PROJECT

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
THE SOUTHERN UTE INDIAN TRIBE

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THE SOUTHERN UTE INDIAN TRIBE

THIS REPAYMENT CONTRACT (Contract), entered into this _____ day of _____, 2015, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the officer executing this Contract, and THE SOUTHERN UTE INDIAN TRIBE, hereinafter referred to as the Tribe, (individually as “Party” and collectively as “the Parties” to this Contract) acting through their representatives.

WITNESSETH, That:

WHEREAS, the following statements are made in explanation:

(a) The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the planning and investigation of the Animas-La Plata Project (Project), as a participating project of the Colorado River Storage Project; subsequently, the construction, operation, and maintenance of the Animas-La Plata Project was authorized by Title V of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 896), and the United States has investigated, planned, and constructed the said Project for the diversion, storage, salvage, and delivery of the waters of the Animas River, which the Project has among its authorized purposes the furnishing of water for municipal, industrial, domestic, and other beneficial purposes. The water rights settlement purposes of the Project were authorized by the Colorado Ute Indian Water Rights Settlement Act of 1988, Public Law 100-585 (102 Stat. 2973), as amended by the Colorado Ute Settlement Act

1 Amendments of 2000, Public Law 106-554 (114 Stat. 2763) (hereinafter referred to as the
2 Settlement Act).

3 (b) The Settlement Act authorized the Secretary to settle the outstanding claims of the Tribe
4 on the Animas and La Plata Rivers, acting through the Bureau of Reclamation (Reclamation) to
5 complete construction of, and operate and maintain Project Works with sufficient capacity to
6 divert and store, and use water from the Animas River to provide for an average annual depletion
7 of 57,100 acre-feet of water to be used for a municipal and industrial (M&I) water supply.

8 (c) Pursuant to the Settlement Act, the United States agrees to deliver through the use of
9 Project Works, or make available for delivery to the Tribe, an M&I water allocation with an
10 average annual depletion not to exceed 16,525 acre-feet for its present and future needs.

11 (d) The Secretary has determined in accordance with Section 6(a)(2) of the Settlement Act,
12 the Tribe's construction costs allocable to the Project Works that are required to deliver the
13 Tribe's Statutory Water Allocation shall be nonreimbursable to the United States.

14 (e) Reclamation has completed the Animas-La Plata Final Supplemental Environmental
15 Impact Statement (FSEIS) dated July 2000, and subsequent Record of Decision (ROD) dated
16 September 25, 2000, for compliance with the National Environmental Policy Act. The Tribe
17 acknowledges that as a result of this regulatory compliance, and the terms of this Contract, it is
18 limited in this Contract to an M&I water allocation with an average annual depletion not to
19 exceed 16,525 acre-feet of water.

20 (f) Water rights for the Project have been obtained in Colorado and New Mexico.

21 (g) The Tribe has interest in contracting for the water supply allocated to the Southern Ute
22 Indian Tribe pursuant to the Settlement Act.

23 (h) The Tribe has demonstrated its legal and financial capability to make the contributions
24 and payments required by this Contract.

25 (i) The Project will be used to provide dependable long-term M&I water storage for the
26 Tribe as described in the FSEIS and the ROD.

27 (j) It is the intent of both Parties that any rights granted by this Contract are not limited to a
28 specific term, but would instead continue in full force and effect pursuant to Section 9(c)(1) of
29 the Reclamation Project Act of 1939, 43 U.S.C. § 485h. This Contract will remain in full force
30 and effect for the useful Project life, or until mutually agreed upon by the Parties.

1 (k) The Southern Ute Indian Tribe, by letter dated May, 14, 2012, concurs to the method of
2 payment in which the Secretary shall pay, directly to the Project Operator, the Tribe's pro-rata
3 portion of the unused Fixed annual operation, maintenance, and replacement costs, pursuant to
4 Section 6 (a)(4)(A) of the Settlement Act.

5 (l) The construction of the Project Works, the allocation of the water supply from those
6 facilities to the Colorado Ute Tribes, the provision of funds to the Colorado Ute Tribes, and the
7 issuance of an amended final consent decree by the State of Colorado, as contemplated in the
8 Settlement Act, shall constitute final settlement of the Colorado Ute Tribe claims to water rights
9 on the Animas and La Plata Rivers in the State of Colorado.

10 (m) The Parties hereto desire to enter into this Contract in order to secure this M&I water
11 supply pursuant to the terms and conditions of the Settlement Act for the use of such water in
12 and for the benefit of the Tribe as hereinafter provided.

13

14 NOW, THEREFORE, in consideration of the mutual and dependent covenants and
15 conditions contained herein, the Parties hereto agree as to the following:

16

17 1. GENERAL DEFINITIONS

18 For the purposes of this Contract only, unless otherwise distinctly expressed or manifestly
19 incompatible with the intent hereof, the term:

20 (a) "Appurtenant Facilities" includes, but is not limited to, transmission lines, roads,
21 buildings, and other facilities related to the Project Works constructed as a part of the Project.

22 (b) "Association" means the Animas-La Plata Operations, Maintenance, and Replacement
23 Association, established by the Project sponsors who are signatories to the Intergovernmental
24 Agreement (IGA) dated March 4, 2009, pursuant to the Colorado Uniform Unincorporated
25 Nonprofit Association Act, 7-30-101 et seq., CRS (2006), to carry out the operation,
26 maintenance and replacement (OM&R) activities and responsibilities of the Project.

27 ~~(b)(c)~~ "Average Annual Depletion" means the depletion of Project Water accounted for
28 over an interval of time as a whole or by an individual Project participant, pursuant to the
29 Settlement Act, to be determined by the United States in cooperation with Project participants.

30 ~~(e)(d)~~ "Colorado Ute Tribes" means the Southern Ute Indian Tribe, and the Ute

Comment [RKC1]: In order to address the Tribe's concern regarding consultation of the method of calculating Average Annual Depletions, the term is defined using the language from the IGA.

1 Mountain Ute Tribe, both being federally recognized Indian tribes.

2 | ~~(d)~~(e) “**Consultation**” means the United States shall notify and confer with the Tribe
3 regarding significant decisions pertaining to this Contract. In the event that consensus cannot be
4 reached and the United States makes a decision, appeals are available to the extent allowed under
5 applicable laws.

6 | ~~(f)~~ “**Contracting Officer**” or “**Secretary**” or “**United States**” means the Secretary of the
7 United States, Department of the Interior or his/her duly authorized representative to administer
8 this Contract.

9 | ~~(e)~~(g) “**First Use**” means the date in which water is first used by the Tribe or used
10 pursuant to a Third-Party Contract with the Tribe. First Use of water shall be deemed to occur in
11 any water year in which a Tribe actually uses water or during the term of any Third-Party
12 Contract. A Third-Party Contract pursuant to which the only income to the Tribe is in the nature
13 of a standby charge is deemed not to be a first use of water.

14 | ~~(f)~~(h) “**Fixed OM&R Costs**” includes, but is not limited to costs of labor, materials and
15 equipment required to maintain Project Works; Project administration and overhead; energy
16 consumption and power demand costs attributable to the pumping of water to Lake Nighthorse to
17 account for testing; evaporation and seepage losses; and annual payments to reserve fund(s).

18 | ~~(e)~~(i) “**IGA**” means the intergovernmental agreement, effective March 4, 2009, which
19 has been executed by and among the Colorado Water Resource and Power Development
20 Authority; the San Juan Water Commission, a political subdivision of the state of New Mexico;
21 the La Plata Conservancy District, a political subdivision of the state of New Mexico; the
22 Southern Ute Indian Tribe, a federally recognized Indian tribe; the Navajo Nation, a federally
23 recognized Indian tribe; and the Ute Mountain Ute Tribe, a federally recognized Indian tribe; and
24 their authorized assignees, that have been identified by the Settlement Act to receive a water
25 allocation that established the Association to carry out OM&R activities and responsibilities of
26 the Project.

27 | ~~(h)~~(j) “**Operation and Maintenance Facilities**” means those facilities necessary to
28 support OM&R obligations, including a permanent operating facility with associated office
29 space, shop(s) for repair and housing of the maintenance support equipment, storage place for
30 supplies, and equipment yard.

Comment [RKC2]: This definition is consistent with the other Repayment Contracts. Tribe would like to consider the language from the Navajo Settlement Contract. From the Navajo Settlement Contract:

“Consultation” or “consult” refers to an ongoing obligation of both parties to implement the provisions of this Contract with a full exchange of information so as to assure that each party is provided full participation in the decision making process. Consultation shall be required of each party with respect to each section of the Contract regardless of whether the section itself sets forth a Consultation requirement. The Consultation required shall be reasonable under the circumstances, and except in exigent circumstances, Consultation shall be undertaken in advance of decision making. In the event that agreement cannot be reached and the United States makes a decision, appeals are available to the extent allowed under applicable laws.

Comment [RKC3]: All situations that will not trigger first use to be further discussed. The Tribe would like to add “The Tribe’s First Use shall not be triggered when a portion of its Statutory Water Allocation is used for emergency purposes, including, but not limited to, fire, contamination of the water in the Animas River or in Lake Nighthorse, drought response, compact compliance or as otherwise provided in federal legislation.”

1 | ~~(j)~~(k) “Point of Delivery” means the point where the water is released at the outlet
2 | works of Ridges Basin Dam or bypassed at the Durango Pumping Plant, or other location where
3 | water is diverted directly from Lake Nighthorse and/or in the Animas River below the Durango
4 | Pumping Plant.

5 | ~~(j)~~(l) "Project Operator" means the Association, pursuant to OM&R Contract No. 10-WC-40-
6 | 370, or the United States.

7 | ~~(k)~~(m) “Project Storage Water” means Project Water provided from storage in Lake
8 | Nighthorse, the storage component of the Project.

9 | ~~(j)~~(n) “Project Water” means all water released from storage through the Animas-La
10 | Plata Project, or bypassed and measured from the natural flow of the Animas River, at the
11 | Durango Pumping Plant, as part of the Project participant’s statutory water allocation.

12 | ~~(m)~~(o) "Project Works" means all works or facilities as described in the Settlement Act,
13 | including a reservoir, a pumping plant, a reservoir inlet conduit, and Appurtenant Facilities, not
14 | including recreation facilities, with sufficient capacity to divert and store water from the Animas
15 | River for an average annual depletion of 57,100 acre-feet of water to be used for an M&I water
16 | supply, together with lands and rights-of-way for such works, as described in [Article 2](#).

17 | ~~(m)~~(p) “Settlement Act” means the Colorado Ute Indian Water Rights Settlement Act of
18 | 1988, Public Law 100-585 (102 Stat. 2973), as amended by the Colorado Ute Settlement Act
19 | Amendments of 2000, Public Law 106-554 (114 Stat. 2763).

20 | ~~(o)~~(q) “Third-Party Contract” means any contract entered into between the Tribe and a
21 | third party for the beneficial use of the Tribe’s Statutory Water Allocation.

22 | ~~(p)~~(r) “Tribe” or “Tribal” means the Southern Ute Indian Tribe of the Southern Ute
23 | Indian Reservation, headquartered in Ignacio, Colorado, a body politic and federally recognized
24 | Indian tribe as provided in Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108
25 | Stat. 4791, 4792).

26 | ~~(q)~~(s) “Tribe’s Statutory Water Allocation” means the M&I water allocation with an
27 | average annual depletion not to exceed 16,525 acre-feet of water, pursuant to Section
28 | 6(a)(1)(A)(ii)(I) of the Settlement Act.

29 | ~~(r)~~(t) “Variable OM&R Costs” are the costs of power including energy consumption and that
30 | share of power demand costs for the pumping of water not designated as Fixed OM&R costs.

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PROJECT WORKS

2. Subject to the terms and conditions of this and other applicable contracts related specifically to this Project, the United States has constructed the Project Works and Appurtenant Facilities, acquired lands, and provided certain moveable property and equipment to the Project Operator needed to carry out OM&R activities and responsibilities as necessary for Project purposes.

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

- (1) Ridges Basin Dam, and Lake Nighthorse, are located on Basin Creek approximately 3 miles southwest of Durango, Colorado. The reservoir has a total storage capacity of 123,541 acre-feet.
- (2) Durango Pumping Plant is located adjacent to the Animas River which pumps water from the Animas River for storage in Lake Nighthorse.
- (3) Ridges Basin Inlet Conduit extends from the Durango Pumping Plant to Lake Nighthorse.
- (4) Operation and Maintenance Facilities have been constructed, as determined necessary by the United States, for the required OM&R of Project Works.

(b) The United States, after Consultation with the Tribe, shall have the right at any time to increase the capacity of the Project Works, or any unit or feature thereof, for other than currently authorized project purposes without additional capital or OM&R costs to the Tribe; provided, that the Tribe's use of the Tribe's Statutory Water Allocation shall not be impaired thereby. The right of use of such increased capacity is reserved to the United States.

(c) Any additions, changes to, or operation of Project Works or changes in use of the Tribe's Statutory Water Allocation from that stated in the FSEIS, and subsequent ROD, will, if required by law, be subject to further compliance with applicable environmental statutes, which shall include an analysis of potential impacts on other Project participants.

WATER DELIVERY PROVISIONS

3. (a) Pursuant to the Settlement Act, the United States agrees to deliver or make available for delivery to the Tribe an M&I water allocation with an average annual depletion not to exceed

1 16,525 acre-feet from the Project. The water released or bypassed for the Tribe pursuant to this
2 Contract, or a third party pursuant to a Third-Party Contract, as provided by **Article 8** shall be
3 measured at the outlet works of Ridges Basin Dam, and/or in the Animas River below the
4 Durango Pumping Plant, with measuring facilities installed by the United States as a part of the
5 Project. The Tribe may take its water from additional points of diversion directly from Lake
6 Nighthorse after Consultation and approval of the United States. Water delivered at these
7 additional points of diversion on Lake Nighthorse shall be measured at those points of diversion
8 by facilities provided by the Tribe or its third party contractors. Water will be available at the
9 outlet works of Ridges Basin Dam, additional points of diversion on Lake Nighthorse and/or the
10 Animas River in such quantities as the Tribe determines, subject to capacity limitations of the
11 relevant facilities, to ensure that the Tribe receives the Tribe's Statutory Water Allocation.

12 (b) Once water is released from the outlet works of Ridges Basin Dam, bypassed at the
13 Durango Pumping Plant, or diverted from Lake Nighthorse, the United States will not be
14 responsible for the control, carriage, handling, use, disposal, or distribution of the Tribe's
15 Statutory Water Allocation, or for any damage of any nature whatsoever arising out of or
16 connected to the control, carriage, handling, transportation loss, treatment, use, disposal of the
17 Tribe's Statutory Water Allocation, except when caused by the direct action of the United States.

18 (c) All facilities required for taking the water furnished under this Contract from the points
19 of delivery, and putting it to use by the Tribe and its users or Third-Party Contractors will be
20 acquired, constructed or installed, and operated and maintained by the Tribe, its users, or Third
21 Party Contractors at their sole expense, unless otherwise agreed to by the United States.
22

23 4. ALLOCATION AND USE OF PROJECT WATER

24 (a) The Tribe's Statutory Water Allocation consists of a combination of direct diversion
25 from the natural flows from the Animas River, and/or water released from storage to Basin Creek
26 and subsequently diverted from the Animas River, and/or water released to non-project facilities.

27 (b) The United States shall have full use of the Tribe's Statutory Water Allocation, or an
28 unused portion of the Statutory Water Allocation, until the Tribe's First water Use of that
29 portion of the Project Water supply. Such use by the United States would not constitute First

1 [Use of the Tribe's Statutory Water Allocation, and the Tribe would not be responsible for any](#)
2 [costs associated with such use.](#)

3
4 (c) The Tribe shall have the right of up to 38,108.5 acre-feet of storage capacity in Lake
5 Nighthorse to supplement the amount of direct flow diversion as necessary to fulfill the Tribe's
6 Statutory Water Allocation. Unless the IGA is in effect, any portion of the 38,108.5 acre-feet of
7 the unused storage shall be retained in Lake Nighthorse, and shall be available for the Tribe's use
8 in succeeding years. [Until full use of the Tribe's Statutory Water Allocation, the Tribe shall then](#)
9 [have the opportunity to purchase excess Project Water from other Project participants.](#)

10 (d) If required to ensure that the Tribe's Statutory Water Allocation with an average annual
11 depletion not to exceed 16,525 acre-feet of water is met, the water may be used and reused to the
12 extent permitted by the Project decrees and Federal authorizations. In addition, the water may be
13 used at any location in the State of Colorado, in accordance with all applicable laws, or may be
14 used by exchange or augmentation. Also, the water may be used for compact compliance
15 purposes. Any use of water contemplated in this Article shall be subject to the conditions in
16 [Article 2\(c\).](#)

17 (e) The United States, after compliance with applicable environmental compliance statutes
18 and consistent with appropriate land use regulations, shall cooperate with the Tribe, its
19 subcontractors or assignees, to provide appropriate means for access to land needed for delivery
20 of Project Water through non-project facilities.
21

22 5. LIMITED RESPONSIBILITY FOR DISTRIBUTION

23 Upon delivery, as specified under [Article 3](#) herein, the Tribe shall hold the United States,
24 its officers, agents, employees, and successors or assigns, harmless from every claim for
25 damages to persons or property, direct or indirect, and of whatever nature, arising out of or in
26 any manner connected with the control, carriage, handling, distribution or use of such water
27 beyond the Point of Delivery, [except when caused by the negligence of the United States.](#)
28 [Nothing herein shall be deemed to increase the liability of the United States beyond the](#)
29 [provisions of the Federal Tort Claims Act, Act of June 25, 1948, 62 Stat. 982 \(28 U.S.C.](#)

Comment [RKC4]: Suggested addition to clarify the Tribe's concern that such use could be considered First Use. The Tribe would like to see Article 4(b) deleted.

Comment [RKC5]: Tribe may want to discuss further

Comment [BG6]: 060514 – CB to further review

1 | [§1346\(b\), 2671 et seq.\) or other applicable law.](#)

2 | 6. WATER RIGHT PROVISIONS

Comment [RKC7]: The Tribe would like this article removed, as it is not in the Navajo Settlement Contract.

3 | (a) The Tribe, or its assignee, shall protect its interest in the Project water rights, and in
4 | case a dispute arises as to the character, extent, priority or validity of the rights of the United
5 | States, or the Tribe to use or permit use of Project Water, the Tribe shall promptly bring and
6 | diligently prosecute and/or defend judicial proceedings for the determination of such dispute, and
7 | shall take all other measures necessary toward the defense and protection of the Project water
8 | supply. The United States, upon request of the Tribe, will enter into the proceedings to defend
9 | such rights.

10 |
11 | 7. PROCEDURE TO INITIATE PROJECT WATER DELIVERY

12 | (a) Effective upon the date of execution of this Contract, the Tribe's Statutory Water
13 | Allocation shall be available for beneficial use by the Tribe upon their request for Project Water
14 | delivery, as provided herein. The initial request by the Tribe for any new delivery of a specified
15 | quantity of Project Water (rounded to the nearest acre-foot) shall be conducted in the following
16 | two ways:

17 | (1) Delivery of the Tribe's Statutory Water Allocation to the Tribe, for use by the Tribe,
18 | shall be accomplished through written notice to Reclamation, pursuant to **Article 17**, and
19 | the Project Operator. The written notice shall include the quantity of water, ~~including and~~
20 | the equivalent depletion amount consistent with the Average Annual Depletion, of the
21 | Tribe's Statutory Water Allocation ~~under the request~~ (rounded to the nearest acre-foot), a
22 | description of the use ~~of the requested amount~~, and the location of the diversion point(s)
23 | for the requested amount. The date the water is taken at a Point of Delivery will establish
24 | the date of First Use by the Tribe of that portion of the Tribe's Statutory Water Allocation
25 | as stipulated under Section 6(a)(4)(A) of the Settlement Act.

26 | (2) Delivery of the Tribe's Statutory Water Allocation under Third-Party Contracts shall
27 | be accomplished as provided under **Article 8**. The date upon which a third party pays the
28 | Tribe under the terms of the Third-Party Contract or accepts delivery of water, will
29 | establish the date of First Use by the Tribe of that portion of the Tribe's Statutory Water

1 Allocation as stipulated under Section 6(a)(4)(A) of the Settlement Act.

2 (b) The Tribe's Statutory Water Allocation associated with all the Project Water deliveries
3 shall be measured and delivered pursuant to **Articles** 3 and 4.

4
5 8. THIRD-PARTY CONTRACTS

6 (a) Any contract entered into between the Tribe and any third-party for the beneficial use of
7 the Tribe's Statutory Water Allocation under this Contract shall be subject to written approval by
8 the United States. United States' approval will be based on a determination that the Third-Party
9 Contract will not negatively affect Project operations, benefits, or authorized purposes, and is
10 consistent with applicable federal law and commitments. Nothing in these Third-Party
11 Contracts shall interfere with other contractual, legal, or regulatory obligations of the United
12 States. The Third-Party Contract will require the third-party to be bound to the provisions of this
13 Contract including, but not be limited to, terms of measurement, operations, environmental
14 compliance, and the impact of defaults on Project Works. The Third-Party Contract will also
15 state the amount of water and the equivalent depletion amount, consistent with the Average
16 Annual Depletion, under the Third-Party Contract.

17 (b) Approval by the United States shall not be unreasonably withheld. The United States
18 shall have 60 days after receipt of the proposed Third-Party Contract to inform the Tribe of its
19 approval or denial of the Third-Party Contract. If additional environmental compliance is
20 required, the Tribe and the United States will develop a schedule for approval. Water made
21 available under Third-Party Contracts shall be delivered from the Tribe's Statutory Water
22 Allocation. The Tribe will be the responsible party to pay the applicable share of the OM&R
23 costs of the contracted water to the Project Operator.

24
25 9. CONSTRUCTION CHARGE OBLIGATION

26 Pursuant to Sections 6(a)(2) of the Settlement Act, all construction and all interest costs
27 allocated to the Tribe's Statutory Water Allocation are declared non-reimbursable and hereby
28 waived.

1 10.

COST PROVISIONS

2 (a) The United States recognizes the desirability of implementing the IGA while in effect.
3 In the unlikely event that the IGA is voided or otherwise terminated, the applicable provisions in
4 this article will determine payment due to the Project Operator.

Comment [RKCB]: The Tribe would like some sort of recognition that the IGA will govern the cost provisions while it is in effect. This could possibly be recognized in the recital section, alternatively.

5 (b) Pursuant to Section 6(a)(4)(A) of the Settlement Act, and with respect to the Tribe’s
6 Statutory Water Allocation, until that water is put to First Use the Secretary shall pay the annual
7 Fixed OM&R Costs allocable to that M&I water allocation of the Tribe. The Secretary shall pay
8 the Tribe’s Fixed OM&R costs consistent with the procedures established by the Association,
9 and in accordance with the Settlement Act. Once First Use has been established for a quantity of
10 the Tribe’s Statutory Water Allocation as provided under Article 7, the Tribe shall then be solely
11 responsible for both the Fixed OM&R Costs and Variable OM&R Costs allocable to that
12 quantity from that time forward pursuant to Section 6(a)(5)(b) of the Settlement Act.

13 (c) During the period in which the Secretary is paying any portion of the Tribe’s OM&R
14 costs, Reclamation, in conjunction with the three-year and one-year OM&R work plans required
15 under its OM&R Contract with the Association, will confer with the Tribe. Reclamation will
16 continue to confer with the Tribe on the Association’s annual OM&R budget until the Tribe has
17 assumed the responsibility to pay 100 percent of its OM&R costs.

18 (d) Pursuant to Section 6(a)(5)(b) of the Settlement Act, upon the Tribe’s First Use of
19 an increment of the Tribe’s Statutory Water Allocation, or the Tribe’s First Use of such water
20 pursuant to the terms of a Third-Party Contract, the Tribe shall bear all Variable OM&R costs
21 associated with all increments of water established under First Use, and the pro rata share of all
22 annual Fixed OM&R costs of such increments from that point in time on, throughout the life of
23 the Project. The pro rata share of the Tribe’s total annual Fixed OM&R Costs to be borne by the
24 Tribe will be based upon the formula:

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26
27
$$\text{Pro Rata Share of Total Tribal Fixed OM\&R Obligation} = \frac{\text{Accumulated Increments Established Under First Use}}{\text{Statutory Water Allocation}}$$

28
29

30 (e) In the unlikely event that the IGA is voided or otherwise terminated, the OM&R
31 costs allocated to the Tribe will be comprised of:

1 (1) The Tribe's share of Fixed OM&R Costs of the multipurpose facilities as further
2 defined in the IGA. The Tribe's share, as identified in the IGA is 35.5% of the
3 total Fixed OM&R Costs. If the IGA is voided or otherwise terminated, the
4 Tribe's share of Fixed OM&R Costs will be defined by the final cost allocation;

5 (2) The Tribe's share of Variable OM&R Costs include actual costs of replacing
6 Project Storage Water released or diverted from Lake Nighthorse by request of
7 the Tribe, or any Third Party Contractor.

8 ~~(e)~~(f) Upon First Use of the Tribe's Statutory Water Allocation, the Tribe agrees to pay
9 the Project Operator, within a reasonable amount of time, in advance, its share of the OM&R
10 costs associated with said Project Works.

11 (1) While the IGA is in effect, the Tribe shall follow the terms and conditions set
12 forth in the IGA.

13 (2) In the unlikely event that the IGA is voided or is otherwise terminated:

14 i. The Tribe agrees to pay the Project Operator, in advance, its share of
15 OM&R costs associated with said Project Works. An OM&R charge
16 notice shall be furnished annually by the Project Operator, which will be
17 paid by the Tribe in advance annually.

18 ii. The Tribe under this Contract shall have 38,108.5 acre-feet of storage
19 capacity allocated for its exclusive use in Lake Nighthorse to support use
20 of the Project Water supply as described in **Article 3(a)**. The United
21 States, or the Project Operator, shall fill and refill the Tribe's storage
22 capacity space as often as direct flow is legally available from the
23 Animas River to fill said space under the Project diversion right issued in
24 the State of Colorado, or as free river conditions allow. The Project
25 participants recognize, however, that at times it may be preferable to
26 delay pumping water to replace the Project water supply in the Reservoir
27 until power costs are less expensive and thus that the Reservoir may not
28 be full at all times. The Tribe shall have 38,108.5 acre-feet of storage
29 capacity in Lake Nighthorse from year to year to the extent that water
30 stored in the Tribe's storage capacity space may be held for exclusive

1 delivery to the Tribe in future years as necessary to meet the delivery
2 demands of the Tribe in accordance with Article 3(a).

3 iii. The Tribe's OM&R allocation will be comprised of:

4 A. The Tribe's pro-rata share of OM&R costs actually incurred by
5 the Project Operator in connection with Project facilities and/or
6 operations that benefit all users of the Project, based on the
7 amount of water storage actually allocated to the Tribe.

8 B. The actual cost of replacing Project Storage Water released by
9 request of the Tribe or any Third Party Contractor.

10 (g) It is the intent of both parties that the Tribe will pay its obligations under this Contract
11 and the Tribe agrees to take all reasonable actions to ensure adequate funds are available to pay
12 the amounts as required under this Article. In the event that the Tribe demonstrates to the
13 Secretary that it is unable to pay in whole or in part of its Project OM&R obligations from the
14 gross revenues which could be generated from a Third-Party Contract for the use of its water,
15 pursuant to Section 6(d) of the Settlement Act, then the Secretary will pay those deferred
16 obligations to the Project Operator on behalf of the Tribe, subject to Congressional
17 appropriations.

Comment [RKC9]: Language inserted from Section 6(d) of the Settlement Act. May need to include some timing language.

18
19 11. WATER SUPPLY SHORTAGE

20 (a) With respect to water made available from the Project under the terms of this Contract,
21 the Tribe shall share proportionally in any water shortages to the Project, consistent with Article
22 1 of the Animas-La Plata Project Compact (82 Stat.898).

23 (b) Unless the IGA is in effect, in any year in which there may occur a shortage from any
24 cause, the United States reserves the right to apportion the available water allocation pursuant to
25 the Settlement Act, as amended, and applicable laws, including the Animas-La Plata Project
26 Compact, among the Tribe and others entitled to receive water from the Project in accordance
27 with conclusive determinations of the Contracting Officer.

28
29 12. COVENANT AGAINST CONTINGENT FEES

30 The Tribe warrants that it has not employed or retained any person or selling agency to

Comment [RKC10]: Tribe would like this article removed.

1 solicit or secure this Contract upon an agreement or understanding for a commission, percentage,
2 brokerage or contingent fee, excepting bona fide employees or bona fide established commercial
3 or selling agencies maintained by the Tribe for the purpose of securing business. For breach or
4 violation of this warranty, the United States shall have the right to annul this Contract without
5 liability, or at its discretion, to add to payment obligation or consideration the full amount of
6 such commission, percentage, brokerage, or contingent fee.

7

8 13. TITLE TO PROJECT

9 Title to the Project Works shall be held by the United States, unless specifically provided
10 otherwise by Congress, notwithstanding transfer of the OM&R of any said works to the Project
11 Operator.

12

13 14. SEVERABILITY

14 If any provisions of this Contract shall, for any reason be determined to be illegal or
15 unenforceable, the Parties, nevertheless, intend that the remainder of this Contract shall remain in
16 full force and effect. Furthermore, any adjustments or variations to this Contract necessitated by
17 future negotiations with other Project beneficiaries can be accomplished by amending this
18 Contract. In the event that unforeseen issues arise, the Tribe and the United States will work
19 together to attempt to resolve the issue by either amending this Contract, entering into a
20 memorandum of understanding or other appropriate means.

21

22

23

Comment [RKC11]: Article included in SJWC and State of Colorado Repayment Contracts. Tribe would like this article removed.

1 Southern Ute Indian Tribe, PO Box 737, Ignacio, CO 81137. The designation of the addressee
2 or the address may be changed by notice given in the same manner as provided in this article for
3 other notices.

4
5 18. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

6
7 The expenditure or advance of any money or the performance of any obligation of the
8 United States under this contract shall be contingent upon appropriation or allotment of funds.
9 Absence of appropriation or allotment of funds shall not relieve the Tribe from any obligations
10 under this contract. No liability shall accrue to the United States in case funds are not
11 appropriated or allotted.

12
13 19. OFFICIALS NOT TO BENEFIT

14
15 No Member of or Delegate to the Congress, Resident Commissioner, or official of the
16 Tribe shall benefit from this contract other than as a water user or landowner in the same manner
17 as other water users or landowners.

18
19
20 20. ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

21
22 The provisions of this contract shall apply to and bind the successors and assigns of the
23 parties hereto, but no assignment or transfer of this contract or any right or interest therein by
24 either party shall be valid until approved in writing by the other party.

25
26 21. BOOKS, RECORDS, AND REPORTS

27
28 The Secretary and the Tribe shall jointly establish and maintain accounts and other books
29 and records pertaining to administration of the terms and conditions of this contract as are
30 necessary to operate the subject facilities, including the Tribe's financial transactions; water
31 supply data; project operation, maintenance, and replacement logs; and other matters that the
32 Contracting Officer may require as it pertains to the obligations under this contract. Reports
33 shall be furnished to the Contracting Officer in such form and on such date or dates as the
34 Contracting Officer may require. Subject to applicable Federal laws and regulations, each party
35 to this contract shall have the right during office hours to examine and make copies of the other
36 party's books and records relating to matters covered by this contract.

37
38 22. RULES, REGULATIONS, AND DETERMINATIONS

39
40 (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to
41 this contract is subject to Federal reclamation law, as amended and supplemented, and the rules
42 and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

43 (b) The Contracting Officer shall have the right to make determinations necessary to
44 administer this contract that are consistent with its provisions, the laws of the United States and

1 the state of Colorado, and the rules and regulations promulgated by the Secretary of the Interior.
2 Such determinations shall be made in Consultation with the Tribe.

3
4 23. PROTECTION OF WATER AND AIR QUALITY

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

12 (b) The Tribe shall comply with all applicable water and air pollution laws and regulations
13 of the United States and the state of Colorado; and shall obtain all required permits or licenses
14 from the appropriate federal [, state, or local] authorities necessary for the delivery of water by
15 the Tribe; and shall be responsible for compliance with all federal[, state, and local] water quality
16 standards applicable to surface and subsurface drainage and/or discharges generated through the
17 use of Federal or Tribe facilities or project water provided by the Tribe within the Tribe's Project
18 Water Service Area.

19 (c) This article shall not affect or alter any legal obligations of the Secretary to provide
20 drainage or other discharge services.

21
22 24. WATER CONSERVATION

23
24 Prior to the delivery of water provided from or conveyed through federally constructed or
25 federally financed facilities pursuant to this contract, the Tribe shall develop a water
26 conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and
27 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

Comment [RKC12]: Required to remain

28
29 25. INDIAN EMPLOYMENT – EQUAL EMPLOYMENT OPPORTUNITY

30
31 (a) In accordance with 42 U.S.C. § 2000e-2(i), the Tribe shall give preference in
32 employment to Indian residents ~~of the Southern Ute Indian Reservation~~. The Bureau of Indian
33 Affairs Office of Employment Assistance shall be notified of employment opportunities 48 hours
34 before any positions are advertised to the general public.

Comment [RKC13]: Statute must remain

Comment [RKC14]: Tribe would like to include preference for all Indians, not just residents of the SUIT Reservation.

35 (b) Except as provided above, during the performance of this contract the Tribe agrees as
36 follows:

37 (1) The Tribe will not discriminate against any employee or applicant for employment
38 because of race, color, religion, sex, disability, or national origin. The Tribe will take
39 affirmative action to ensure that applicants are employed, and that employees are treated
40 during employment, without regard to their race, color, religion, sex, disability, or
41 national origin. Such action shall include, but not be limited to the following:
42 employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;
43 layoff or termination; rates of pay or other forms of compensation; and selection for
44 training, including apprenticeship. The Tribe agrees to post in conspicuous places,

1 available to employees and applicants for employment, notices to be provided by the
2 Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

6 (3) The Tribe will send to each labor union or representative of workers with which it
7 has a collective bargaining agreement or other contract or understanding, a notice, to be
8 provided by the Contracting Officer, advising the labor union or workers' representative
9 of the Tribe's commitments under section 202 of Executive Order 11246 of September
10 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available
11 to employees and applicants for employment.

12 (4) The Tribe will comply with all provisions of EO 11246, and of the rules,
13 regulations, and relevant orders of the Secretary of Labor.

14 (5) The Tribe will furnish all information and reports required by EO 11246, and by the
15 rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will
16 permit access to his books, records, and accounts by the Contracting Agency and the
17 Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
18 regulations, and orders.

19 (6) In the event of the Tribe's noncompliance with the nondiscrimination clauses of this
20 contract or with any of such rules, regulations, or orders, this contract may be canceled,
21 terminated or suspended in whole or in part and the Tribe may be declared ineligible for
22 further Government contracts in accordance with procedures authorized in EO 11246,
23 and such other sanctions may be imposed and remedies invoked as provided in EO 11246
24 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

25 (7) The Tribe will include the provisions of paragraphs (1) through (7) in every
26 subcontract or purchase order unless exempted by the rules, regulations, or orders of the
27 Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions
28 will be binding upon each subcontractor or vendor. The Tribe will take such action with
29 respect to any subcontract or purchase order as may be directed by the Secretary of Labor
30 as a means of enforcing such provisions, including sanctions for noncompliance:

31 *Provided, however,* that in the event the Tribe becomes involved in, or is threatened with,
32 litigation with a subcontractor or vendor as a result of such direction, the Tribe may
33 request that the United States enter into such litigation to protect the interests of the
34 United States.

35
36 26. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

37
38 (a) The Tribe shall comply to the extent applicable with Title VI of the Civil Rights Act of
39 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112,
40 Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-
41 135, Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of
42 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.),] [Title III of the Americans with Disabilities
43 Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.),] and any other applicable civil rights
44 laws, and with the applicable implementing regulations and any guidelines imposed by the
45 U.S. Department of the Interior and/or Bureau of Reclamation.

46 (b) These statutes prohibit any person in the United States from being excluded from

1 participation in, being denied the benefits of, or being otherwise subjected to discrimination
2 under any program or activity receiving financial assistance from the Bureau of Reclamation on
3 the grounds of race, color, national origin, disability, or age. By executing this contract, the
4 Tribe agrees to immediately take any measures necessary to implement this obligation, including
5 permitting officials of the United States to inspect premises, programs, and documents.

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

13 (d) Complaints of discrimination against the Tribe shall be investigated by the Contracting
14 Officer's Office of Civil Rights.

15
16 27. MEDIUM FOR TRANSMITTING PAYMENTS

17
18 (a) All payments from the Tribe to the Project Operator under this contract shall be by the
19 medium requested by the Project Operator on or before the date payment is due. The required
20 method of payment may include checks, wire transfers, or other types of payment specified by
21 the Project Operator.

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

26
27 28. CONTRACT DRAFTING CONSIDERATIONS

28
29 This Contract has been, negotiated and reviewed by the parties hereto, each of whom is
30 sophisticated in the matters to which this Contract pertains. Article 1 through 13 of this
31 Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be
32 considered to have drafted the stated articles.

33
34
35 29. CONSTRAINTS ON THE AVAILABILITY OF WATER

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

41 (b) If there is a condition of shortage because of errors in physical operations of the Project,
42 drought, other physical causes beyond the control of the Contracting Officer or actions taken by
43 the Contracting Officer to meet current and future legal obligations, then no liability shall accrue
44 against the United States or any of its officers, agents, or employees for any damage, direct or
45 indirect, arising therefrom.

1 IN WITNESS WHEREOF, the Parties hereto have signed their names this day and year
2 first written above.

3
4
5 UNITED STATES OF AMERICA
6 As to legal sufficiency: DEPARTMENT OF THE INTERIOR

7
8
9 _____ By: _____
10 Office of the Solicitor Regional Director
11 Upper Colorado Region
12 Bureau of Reclamation

13
14 Attest:

15
16
17 By: _____ By: _____
18 Chairman, Southern Ute Indian Tribe

19
20
21 List of Attachments:

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