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4 | Contract No. _____

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6 | UNITED STATES
7 | DEPARTMENT OF THE INTERIOR
8 | BUREAU OF RECLAMATION

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

11 | REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
12 | THE STATE OF COLORADO
13 | DEPARTMENT OF NATURAL RESOURCES
14 | COLORADO WATER CONSERVATION BOARD

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Contract No. _____

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 STATE OF COLORADO

THIS REPAYMENT CONTRACT, made this _____ day of _____, 2011,
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 STATE OF COLORADO, acting by and through the
Department of Natural Resources, Colorado Water Conservation Board, hereinafter
called the State, located in Denver, Colorado, 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 as a participating project of the
Colorado River Storage Project Act; 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 begun to construct said Animas-La Plata Project for the
storage, diversion, salvage, and distribution of the waters of the Animas River, which

1 Project has among its authorized purposes the furnishing of water for municipal,
2 industrial, domestic, and other beneficial purposes. The water rights settlement purposes
3 of the Project were authorized by the Colorado Ute Indian Water Rights Settlement Act
4 of 1988 (Public Law 100-585) as amended by the Colorado Ute Settlement Act
5 Amendments of 2000, Public Law 106-554 (hereafter referred to as the Settlement Act,
6 as amended).

7 (b) The Settlement Act, as amended, authorizes the construction of a reservoir,
8 pumping plant, inlet conduit, and appurtenant facilities with sufficient capacity to divert
9 and store water from the Animas River for an average annual depletion of 57,100 acre
10 feet of water to be used for a municipal and industrial water supply;

11 (c) Reclamation has completed the Animas-La Plata Final Supplemental
12 Environmental Impact Statement (FSEIS) dated July 2000 and subsequent Record of
13 Decision dated September 25, 2000, for compliance with the National Environmental
14 Policy Act. The State acknowledges that as a result of this regulatory compliance, and
15 the terms of this contract, it is limited in the Contract to an annual average depletion of

16 _____ acre-feet of water for this Project. The Consolidated Appropriations Act of 2005
17 (December 8, 2004) (P.L. 108-447) provides in Division C, Title II, Section 207
18 (commonly referred to as "Section 207") the Secretary the authority to forgive the
19 obligation of the non-Indian sponsors relative to the \$163 million increase in estimated
20 total project costs that occurred in 2003. On December 30, 2005, the last sentence of
21 Section 207 was amended to also forgive the costs of the effects of inflation on the \$163
22 million increase (Department of Defense Appropriations Act, 2006 - December 30, 2005,
23 P.L. 109-140).

Comment [BG1]: Addition of "207" information.

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

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

9 (f) The State is interested in contracting for the water supply allocated to the
10 State of Colorado pursuant to Public Law 106-554.

11 (g) The State has demonstrated its legal and financial capability to make the
12 contributions and payments required by this document, by demonstrating that it is a legal
13 entity under state law, and that it has ~~taxing authority appropriated funds in amounts~~
14 ~~sufficient for this obligation either on its own or in conjunction with others.~~

15 (h) In May of 2001, Reclamation prepared an Interim Cost Allocation, based on
16 October 2001 price levels of the estimated Project construction costs, which established
17 the repayment obligation of the State as \$32,808,350 at that time. This Interim Cost
18 Allocation continues to be updated annually to reflect the impacts of inflation on Project
19 construction costs as described in Article 7 herein.

20 (i) It is the intent of both the United States and the State that any rights granted
21 by this Agreement are not limited to a specific term but would instead continue in full
22 force and effect pursuant to section 9 of the Reclamation Project Act of 1939, 43 U.S.C. §

Comment [ppage2]: Assuming full allocation

1 485h, and this Agreement will remain in full force and effect during the Useful Project
2 Life, and as provided in Article 7(l) below.

Comment [BG3]: State and BOR to provided language to define "End of useful life of project"

3 (j) The parties hereto desire to enter into this contract in order to secure this
4 municipal and industrial water supply pursuant to the terms and conditions of Public Law
5 106-554 for the use of such water in and for the benefit of Colorado as hereinafter
6 provided.

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

9 1. GENERAL DEFINITIONS

10 Where used in this contract:

Comment [BOR4]: Add Useful Project Life
**** Added in GENERAL DEFINITIONS ****

11 (a) "United States" or "Contracting Officer" or either of them means the Secretary
12 of the United States Department of the Interior or his/her duly authorized representative.

13 (b) "State" or "Contractor" means the STATE OF COLORADO, acting by and
14 through the Department of Natural Resources, Colorado Water Conservation Board,
15 located in Denver, Colorado, or its assignees.

16 (c) "Project" means the Animas-La Plata Project, a participating project of the
17 Colorado River Storage Project Act, authorized by Title V of the Colorado River Basin
18 Project Act, approved September 30, 1968, as modified by the Settlement Act, as
19 amended.

20 (d) "Project Operator" means the entity Association operating the Project Works.

Comment [BOR5]: Add the Assoc name and contract information

21 ~~(d)~~(e) "Association" means the Animas-La Plata Operations, Maintenance, and
22 Replacement Association, established by the Project sponsors who were signatory to the
23 IGA, dated March 4, 2009, pursuant to the Colorado Uniform Unincorporated Nonprofit

1 Association Act, 7-30-101 et seq., CRS (2006), to carry out the OM&R activities and
2 responsibilities of the Project.

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

9 ~~(f)~~(g) "Project Construction Committee" means the committee made up of
10 representatives of those entities that have been identified by the Settlement Act, as
11 amended, to receive a water allocation and the Bureau of Reclamation. This committee
12 has provided and will provide coordination and consultation on the construction activities
13 among all the project beneficiaries, seeking common understanding and consensus on
14 decisions associated with such items as final plans for Project Works, project
15 construction completion schedule, and Project construction costs.

16 ~~(g)~~(h) "Statutory Water Allocation" means the municipal and industrial (M&I)
17 water allocation delivered to the State through the use of the project components,
18 pursuant to Sec. 6(a)(1)(ii)(VII) of the Settlement Act, as amended.

19 ~~(h)~~(i) "Project Water" means all water provided through the Animas-La Plata
20 Project.

21 ~~(i)~~(j) "Water Rights Settlement Agreement" refers to the "Colorado Ute Indian Water
22 Rights Final Settlement Agreement" dated December 10, 1986 among the United States,
23 the State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and

1 the additional governmental and private entities in Colorado signatory thereto, as
2 implemented by the Settlement Act, as amended.

3 ~~(j)~~(k) "Consultation" means the United States shall notify and confer with the
4 State regarding significant decisions pertaining to this contract. In the event that
5 consensus cannot be reached and the United States makes a decision, appeals are
6 available to the extent allowed under applicable laws.

7 ~~(k)~~(l) "San Juan River System" means the San Juan River and its tributaries.

8 ~~(l)~~(m) "Operation and Maintenance Facilities" or "Permanent Operations
9 Facility" means those facilities necessary to support operations, maintenance and
10 replacement work, including permanent operating facility building headquarters with
11 associated office space, shop for repair and housing of the maintenance support
12 equipment, storage place for supplies, and equipment yard. ~~means those facilities~~
13 ~~necessary to support operations and maintenance work, for example operation and~~
14 ~~maintenance headquarters and associated office space, shop for repair of equipment,~~
15 ~~storage place for supplies, and equipment yard.~~

16 ~~(m)~~(n) "Estimated Repayment Obligation" means the reimbursable construction
17 costs allocated to the State's M&I uses associated with the construction of Project Works
18 plus any appropriate Interest During Construction (IDC).

19 ~~(n)~~(o) "Final Repayment Obligation" means the final reimbursable construction
20 costs allocated to the State's M&I uses associated with the construction of Project Works,
21 plus any appropriate IDC, as determined through the Final Cost Allocation described in
22 **Article** 7(d) below.

1 | ~~(p)~~ “Remaining Repayment Obligation” means the difference, if any, between
2 | the Estimated Repayment Obligation and the Final Repayment Obligation as determined
3 | through the Final Cost Allocation described in **Articles** 7(d) and 7(g) below.

4 | ~~(p)~~ “IGA” or “Intergovernmental Agreement” means that agreement, effective
5 | March 4, 2009, which has been executed by those entities, and their authorized assignees,
6 | that have been identified by the Settlement Act, as amended, to receive a water
7 | allocation, that created the ~~Animas-La Plata Operations, Maintenance, and Replacement~~
8 | Association to operate and maintain the Project ~~after construction is completed~~.

9 |
10 | 2. PROJECT WORKS

11 | Subject to the terms and conditions of this and other applicable contracts related
12 | to this Project, the United States will construct the following Project Works and
13 | appurtenant facilities, acquire lands, and provide certain moveable property and
14 | equipment to the Project Operator needed for Project operation and maintenance as, in
15 | the opinion of the United States in consultation with the Project Operations Committee,
16 | are necessary for Project purposes, without being limited by enumeration and within the
17 | limit of funds made available by the Congress and the contracting parties.

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

- 19 | (1) Ridges Basin Dam and Lake Nighthorse and appurtenant facilities, the main
20 | storage facility for the Project, are located on Basin Creek in Ridges Basin
21 | approximately 3 miles southwest of Durango, Colorado. The reservoir will
22 | have a total capacity of approximately 120,000 acre-feet.

1 (2) Durango Pumping Plant and appurtenant facilities are located adjacent to the
2 Animas River and will pump water from the Animas River for storage in Lake
3 Nighthorse.

4 (3) Ridges Basin Inlet Conduit and appurtenant facilities extend from the
5 Durango Pumping Plant to Lake Nighthorse.

6 (4) Operation and Maintenance Facilities will be constructed as determined
7 necessary by the United States, after consultation with the Project
8 Construction Coordinating Committee, for the required operation and
9 maintenance of Project Works.

10 (b) The United States, after consultation with the State, shall have the right at any
11 time to increase the capacity of the Project Works or any unit or feature thereof for other
12 than currently authorized project purposes without additional capital or operation and
13 maintenance cost to the State; provided, that the State's use of the Statutory Water
14 Allocation shall not be impaired thereby. The right of use of such increased capacity is
15 reserved to the United States.

16 (c) Any additions, changes to, or operation of Project Works or changes in use of
17 the water allocations pursuant to Sec. 6(a)(1)(A)(ii) of the Settlement Act, as amended,
18 from that stated in the Animas-La Plata Final Supplemental Environmental Impact
19 Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September
20 25, 2000, will, as-if required by law, be subject to further compliance with applicable
21 environmental statutes, which shall include an analysis of potential impacts on other
22 project participants.

Comment [BOR6]: State may provide language.

1 (d) Construction and operation of the Project will be in accordance with the
2 Environmental Commitments in Chapters 4 and 5 of the FSEIS, which are attached as
3 Exhibit A to this contract.
4
5
6

7 3. PROJECT COORDINATION COMMITTEES

8 Coordination of Project construction, operations, and maintenance activities has
9 been, in part, and will be accomplished through the establishment of two committees: one
10 to focus on those activities associated with the construction of the Project Works, the
11 other to oversee the operations and maintenance activities.

12 (a) The Project Construction Coordination Committee is made up of representatives
13 of those entities that have been identified by the Settlement Act, as amended, to receive a
14 water allocation and the Bureau of Reclamation. This committee has provided and will
15 provide coordination and consultation on the construction activities among all the project
16 beneficiaries, seeking common understanding and consensus on decisions associated with
17 such items as final plans for Project Works, project construction completion schedule,
18 and Project construction costs. Upon Project completion, this committee will be
19 dissolved.

20 (b) The Project Operations Committee consisted of representatives from those
21 entities that were identified by the Settlement Act, as amended, to receive a water
22 allocation and the Bureau of Reclamation. This committee determined an appropriate
23 entity to contract with Reclamation for the operation, maintenance, and replacement

Comment [PJP7]: Proposed changes in this section are to show that the POC was replaced by the Association.

1 (OM&R) of the Project Works and developed a common understanding among the
2 project beneficiaries of the appropriate level of annual OM&R activities to be performed
3 on the Project Works to assure the Project's long term operational integrity and public
4 safety. This committee was essentially replaced by the Association who subsequently
5 entered into an OM&R contract with Reclamation. Ultimately, the Association will
6 oversee the ongoing OM&R activities of the Project Works, providing consultation and
7 coordination among Association members on such items as annual OM&R funding,
8 maintenance schedules, and public safety issues.

9 ~~(b) The Project Operations Committee will initially consist of representatives from~~
10 ~~those entities that have been identified by the Settlement Act, as amended, to receive a~~
11 ~~water allocation and the Bureau of Reclamation. Initially, this committee will determine~~
12 ~~the appropriate entity to contract with Reclamation for the operation and maintenance of~~
13 ~~the Project Works and the development of a common understanding among the project~~
14 ~~beneficiaries of the appropriate level of annual operation, maintenance, and replacement~~
15 ~~(OM&R) activities to be performed on the Project Works to assure the Project's long term~~
16 ~~operational integrity and public safety. Ultimately, this committee will oversee the~~
17 ~~ongoing operations, maintenance, and replacement activities of the Project Works,~~
18 ~~providing consultation and coordination among the committee members on such items as~~
19 ~~annual OM&R funding, maintenance schedules, and public safety issues. The providing~~
20 ~~of OM&R and the Project Operations Committee's duties may be modified by the~~
21 ~~Intergovernmental Agreement or the OM&R Contract.~~

22
23 4. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF
24 STATUTORY WATER ALLOCATION

1
2 (a) The water released or bypassed for the State pursuant to this contract shall be
3 measured at the outlet works of Ridges Basin Dam, and/or in the Animas River at the
4 Durango Pumping Plant with measuring facilities installed by the United States as a part
5 of the Project. Additional points of diversion directly from Lake Nighthorse may be made
6 in the future with approval of the United States after consultation with the State. Water
7 delivered at these additional points of diversion on Lake Nighthorse shall be measured at
8 those points of diversion by facilities provided by the State or its subcontractors. Water
9 will be available at the outlet works of Ridges Basin Dam and/or the Animas River in
10 such quantities as the State determines, subject to capacity limitations of the relevant
11 facilities, to ensure that the State annually receives a municipal and industrial water
12 allocation with an average annual depletion not to exceed _____ acre-feet.

13 (b) Once water is released from the outlet works of Ridges Basin Dam, bypassed at
14 the Durango Pumping Plant or diverted from Lake Nighthorse, the United States will not
15 be responsible for the control, carriage, handling, use, disposal, or distribution of the
16 Statutory Water Allocation furnished to the State, except when caused by direct action of
17 the United States. The State will hold the United States harmless on account of damage or
18 claim of damage of any nature whatsoever arising out of or connected with the control,
19 carriage, handling, treatment, use, disposal, or distribution of the Statutory Water
20 Allocation by the State below the Project points of measurement.

Comment [BOR8]: State to review

21 (c) All facilities required for taking the water furnished under this contract from the
22 points of delivery and putting it to use by the State and its users or subcontractors will be
23 acquired, constructed or installed, and operated and maintained by the State or its users or
24 subcontractors at their sole expense.

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5. ALLOCATION AND USE OF PROJECT WATER

(a) The State's allocation of water provided by the Project consists of a municipal and industrial water allocation with an average annual depletion not to exceed _____ acre-feet, except as otherwise provided under Article 7(h) herein. This allocation may be met by a combination of direct diversion of the natural flows from the Animas River and water released and/or diverted from Project storage and subsequently diverted from the Animas River.

Comment [BOR9]: State may provide language on whole paragraph.

(b) Except as provided in Article 7(h) herein, the State shall have the right to 10,440 acre-feet of storage in Lake Nighthorse to supplement the amount of direct flow diversion as necessary to fulfill the State's annual Project Water allocation of _____ acre-feet average annual depletion. Unless the Intergovernmental Agreement is in effect, any portion of the 10,440 acre-feet of unused storage shall be retained in Lake Nighthorse and shall be available for the State's use in succeeding years. The State shall have the opportunity to purchase excess Project water from other Project participants.

Comment [ppage10]: Assumes full allocation

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

(d) The United States, after compliance with applicable environmental compliance statutes, shall cooperate with the State, its subcontractors or assignees, to provide

1 appropriate interests in land needed for delivery of Project Water through non-project
2 facilities.

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

Comment [BG11]: Corrected Indent.

7

8 6. WATER RIGHT PROVISIONS

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

Comment [BOR12]: State may propose language. Verbiage from other.

20
21 (b) The construction of the Project Works, the allocation of the water supply from
22 those facilities to the Colorado Ute Tribes, and the provision of funds to the Colorado Ute
23 Tribes in accordance with section 16 of Public Law 106-554, and the issuance of an
24 amended final consent decree by the State of Colorado as contemplated in subsection

1 18(c) of Public Law 106-554 shall constitute final settlement of the tribal claims to water
2 rights on the Animas and La Plata Rivers in the State of Colorado.

3

4 7. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

5 (a) Reclamation has developed a Fiscal Year 2011 (FY11) Update to the May 2001
6 Interim Cost Allocation using October 2010 price levels of the estimated Project
7 construction costs. The FY11 Update to the May 2001 Interim Cost Allocation allocates
8 the reimbursable costs of the project among the Project beneficiaries based on the pro rata
9 share of Project storage each respective entity receives in Lake Nighthorse. The State's
10 water capital obligation allocable to its Project storage in the FY11 Update to the May
11 2001 Interim Cost Allocation is \$36,352,172 which includes construction costs of
12 \$27,914,909 and estimated IDC of \$8,437,263 through September 30, 2010 and which
13 takes into account Section 207 of Public Law 108-447 as amended. This amount is the
14 State's Estimated Repayment Obligation.

15 (b) The construction costs allocated to the State shall accrue interest during
16 construction at the Project Interest Rate of 8.315% as established pursuant to the
17 provision of Section 5(f) of the Act of April 11, 1956 (70 Stat. 105) as amended by the
18 Act of June 27, 1960 (74 Stat.255).

19 (c) The Estimated, Final or Remaining Repayment Obligation may be reduced by
20 payment(s) of all or a part of that repayment obligation, without penalty. No additional
21 interest shall be added to the repayment obligation for the amounts paid pursuant to this
22 subsection.

Comment [ppage13]: These \$ amounts assume State takes full allocation of water. State will need defined number data identified for quantity of water and construction costs.

1 (d) At the end of the construction period of the multipurpose Project Works a final
2 cost allocation will be performed by the Secretary pursuant to Section 6(a)(3)(B) of the
3 Settlement Act, as amended. The State will pay only its allocable share of joint costs of
4 the Project Works. Any additional repayment shall be warranted only for reasonable and
5 unforeseen costs associated with project construction as determined by the Secretary in
6 consultation with the State, taking into account Section 207 of Public Law 108-447 as
7 amended and, Reclamation’s Decision Memorandum, “Methodology Regarding
8 Implementation of Section 207 on Up-Front Cost-Sharing and Repayment, Animas-La
9 Plata Project (August 2, 2006)” as amended and attached, and other appropriate

10 documents. Section 207 limits the non-tribal repayment obligation to \$43 million for the
11 \$500 million project (10/03 prices). The language, as amended, results in:

- 12 • No repayment of the \$163 million of cost increases
- 13 • No repayment of the effects of inflation on the \$163 million of cost increases
- 14 • Implies repayment on the effects of inflation on the \$337 million (\$500
15 million -\$163 million), which implies some inflation of the reimbursement
16 cap.

17 (d)(e) The details of said costs and a draft final cost allocation will be furnished
18 to the State by the United States, and the State reserves the right to review the input to the
19 cost allocation, including the assignment of costs to the municipal and industrial water
20 purpose and the allocation thereof to the State's repayment obligation. Following
21 consultation and review by the State, the final allocation of reimbursable costs will be
22 prepared by the United States. These costs will be subject to alternative dispute resolution
23 as described in Article 8 if there remains a dispute in the allocation of costs.

Comment [BOR14]: State may provide further comment.

Comment [BG15]: BOR added information for updated memo for 207

1 | ~~(e)~~(f) The United States shall give the State written notice of the State's Final
 2 | Repayment Obligation as established by the final cost allocation. In the event the final
 3 | cost allocation establishes that the Final Repayment Obligation is in excess of any
 4 | payments made by the State toward the Estimated Repayment Obligation of \$36,352,172
 5 | the State will have the option to pay the remaining balance of the Final Repayment
 6 | Obligation 180 days from the date of written notice as an alternative to repaying this
 7 | additional debt with amortization interest over a repayment period as described in **Article**
 8 | 7(g) below.

Comment [ppage16]: Assuming full allocation of water.

9 | ~~(f)~~(g) After the 180-day final payment option established in **Article** 7(f) has
 10 | expired, the unpaid portion of the Final Repayment Obligation shall become the
 11 | Remaining Repayment Obligation of the State. The United States will assign that
 12 | Remaining Repayment Obligation, on a pro rata basis, to a portion of the State's Project
 13 | interest, subject to the procedures of Section 6(a)(3)(B) of the Settlement Act, as
 14 | amended. The formula to determine the portion of the State's Project interest that this
 15 | Remaining Repayment Obligation will be assigned is as follows:

Comment [BOR17]: State may provide language for paragraph.

16 Remaining		Total
17 Project interest	= $\frac{(\text{Final Repayment Obligation} - \text{Repayment Received})}{\text{Final Repayment Obligation}}$	Project
17 Requiring		interest
18 Repayment		

19 | The above calculation to identify the Project interest assigned to the Remaining
 20 | Repayment Obligation will be rounded to the nearest whole acre-foot of storage. The
 21 | United States will derive a repayment plan for the Remaining Repayment Obligation
 22 | assigned to this Project interest, and will issue a repayment block notice as described in
 23 | **Article** 9 herein. The Remaining Repayment Obligation will be paid in annual

1 installments due on or before January 10 of each year and in accordance with an annuity
2 due payment schedule or schedules issued by the United States. Pursuant to Section
3 9(c)(1) of the Reclamation Project Act of 1939, the Remaining Repayment Obligation
4 shall be repaid within a 40-year period, and shall accrue amortization interest at the
5 project interest rate of 8.315 percent on the unpaid portion, as established pursuant to the
6 provision of Section 5(f) of the Act of April 11, 1956 (70 Stat. 105) as amended by the
7 Act of June 27, 1960 (74 Stat. 255).

8 | ~~(g)~~(h) Upon final cost allocation, if the State elects not to pay the Remaining
9 Repayment Obligation to the United States for the remaining Project interest described
10 and calculated in Article 7(g), then this portion of the State's Project interest shall be
11 subject to the procedures of relinquishment as specified by Section 6(a)(3)(B) of the
12 Settlement Act, as amended.

13 | ~~(h)~~(i) It is agreed that during construction every attempt will be made to keep
14 non-contract costs at or below 30 percent of the final contract costs. The United States
15 will continue to annually report to the State the dollar amount of the non-contract costs
16 and all other construction costs.

17 | ~~(i)~~(j) The United States has consulted and will consult annually with the State
18 concerning the allocation of construction costs and any interest during construction to be
19 payable by the State under this Contract. The Use of Facilities Procedure is the
20 methodology used to allocate construction costs for the Project, and it will not be
21 changed for the administration of this Contract.

22 | ~~(j)~~(k) All payments required under this Contract are due on the specified due
23 date and will be made by electronic fund transfers.

1 | ~~(k)~~(l) Pursuant to section 9(c)(1) of the Reclamation Project Act of 1939, 43
2 | U.S.C. § 485h, following payment of the Final Repayment Obligation described herein,
3 | all other contract terms will remain in full force and effect until mutually agreed upon by
4 | the State and the United States.

Comment [BOR18]: Both parties to provide language and merge.

5 | ~~(j)~~(m) Upon payment of the State's Final Repayment Obligation as defined in the
6 | final cost allocation, the State's Project interest shall not be subject to relinquishment to
7 | the Secretary for any reason, subject to applicable law.

8 |
9 | 8. ALTERNATIVE DISPUTE RESOLUTION

10 | (a) If a dispute should arise between the State and the United States arising out of
11 | the final cost allocation prepared by the United States, each party shall communicate in
12 | good faith and seek to resolve the dispute expeditiously and amicably. Prior to seeking
13 | judicial review of the final cost allocation, the State may pursue non-binding Alternative
14 | Dispute Resolution ("ADR") of any issue arising out of the final cost allocation which
15 | affects the State and remains unresolved after direct communication between the parties.

16 | (b) Either party may demand ADR in writing, which demand shall include the name
17 | of a qualified individual suggested by the party demanding ADR, together with a
18 | statement of the matter of controversy.

- 19 | (1) Within twenty (20) days after such demand the other party shall either agree
20 | to the named individual, or suggest another arbitrator. If the parties cannot
21 | agree on such naming within 20 additional days, such individual shall be
22 | named by the American Arbitration Association.

1 (2) The ADR costs and expenses of each party shall be borne by that party and
2 all the joint fees and other expenses pursuant to this Article shall be borne
3 equally by both parties.

4 (3) The hearing shall be held at such time and place as designated by the
5 arbitrator on at least twenty (20) days written notice to the parties.

6 (4) All decisions determined by this ADR process shall be sent to all parties to
7 the proceedings.

8 (5) As to any procedures regarding the conduct of the ADR that are not
9 specified either in this Contract or in any other written agreement signed in
10 advance of the hearing, the parties shall follow the Commercial Arbitration
11 Rules of the American Arbitration Association.

12 (c) Nothing in this Article shall be construed to restrain or prevent the United States
13 from performing any act required or authorized under federal law, or the Conservancy
14 from otherwise challenging any such act.

15 (d) Nothing contained in this Article shall be deemed to give the arbitrator any
16 authority, power, or right to alter, change, amend, add to, or subtract from any of the
17 provisions of this Contract. Nothing in this Article shall be construed as a delegation of
18 authority by the United States.

19 (e) Nothing in this Article shall be construed as a waiver of sovereign immunity by
20 any party or consent to suit by any party in any forum.

21
22
23

1 9. METHOD FOR ESTABLISHING BLOCKS FOR PROJECT DELIVERY AND
2 REPAYMENT

3
4 (a) When the Project Works defined in Article 2(a) are completed, tested, and the
5 Project becomes available for use by the State, the United States shall, after consultation,
6 give the State written notice, referred to herein as the "block notice". The block notice
7 shall contain:

- 8 (1) A description of the member entities included in the block.
9 (2) The quantity of Project Water available to the State for the block.
10 (3) That portion of Statutory Water Allocation available to the State as a firm
11 full water supply.

12 (b) If a Remaining Repayment Obligation has been assigned pro rata to a quantity
13 of the State's Project interest pursuant to Article 7(g) herein, then the block notice
14 establishing the availability of that water supply will also contain:

- 15 (1) A designation of that part of the State's municipal and industrial cost
16 allocation apportioned to the block.
17 (2) A payment schedule for repayment of those costs, including a breakdown of
18 the amount and due date of each payment to be paid by the State.

19 (c) Each block notice and amendment thereto shall become a part of this contract.
20

21 10. PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

22 (a) The operation, maintenance, and replacement (OM&R) costs allocated to the
23 State will be comprised of the State's pro-rata share of:

- 24 (1) ~~the State's share of~~ Fixed OM&R costs, as defined in the Intergovernmental
25 Agreement. The State's share, as identified in the Intergovernmental

Comment [BOR19]: Ensure consistency with IGA – pro-rata.

1 Agreement, would be 10.5% of the total Fixed OM&R costs. The final
2 allocation of Fixed OM&R costs will be finalized and stated in the OM&R
3 Contract between Reclamation and the ~~Animas La Plata Operations,
4 Maintenance, and Replacement~~ Association, which transfers OM&R
5 responsibility to the ~~Animas La Plata Operations, Maintenance, and
6 Replacement~~ Association;

7 (2) Variable OM&R costs, which are actual costs of replacing Project Water
8 released by request of the State, are further defined in the Intergovernmental
9 Agreement;

10 (3) provided, however, that the Intergovernmental Agreement contains
11 provisions for a Variable OM&R fund, designed to pay all or part of the
12 Project Variable OM&R costs.

13 (b) The State agrees to pay, in advance, its share of the OM&R costs associated
14 with said Project Works.

15 (1) While the Intergovernmental Agreement is in effect, the Project Operator
16 shall annually prepare an OM&R charge notice which shall be furnished to the
17 ~~Animas La Plata Operations and Maintenance~~ Association and to the State,
18 which the State shall pay in advance annually.

19 (2) If the Intergovernmental Agreement is voided or is otherwise terminated, the
20 State agrees to pay the Project Operator, in advance, its share of OM&R costs
21 associated with said Project Works. An OM&R charge notice shall be
22 furnished annually by the Project Operator, which will be paid by the State in
23 advance annually.

1 (3) If the funds advanced by the State under this Article are less than the actual
2 cost of OM&R properly chargeable to the State for the period advance, a
3 supplemental notice will be issued and the State shall advance such additional
4 funds by the date specified in the supplemental notice. If the actual costs are
5 less than the funds advanced, an appropriate adjustment will be made in the
6 notice issued the next succeeding period.

7 (c) If the Intergovernmental Agreement is voided or is otherwise terminated, the
8 State's OM&R allocation will be comprised of:

- 9 (1) the State's pro-rata share of OM&R costs actually incurred by the Project
10 Operator in connection with Project facilities and/or operations that benefit all
11 users of the Project, based on the amount of water storage actually purchased
12 and paid for by the State, in accordance with **Article 7** above;
- 13 (2) the actual cost of replacing Project Water released by request of the State.
14

15 11. USE AND DISPOSAL OF WATER DURING CONSTRUCTION

16 (a) During construction, Project Water that is not made available to the State under
17 a block notice as provided in **Article 9** herein may be disposed of by the United States at
18 terms and charges fixed by the United States. The charges shall only be sufficient to
19 cover the operation, maintenance, and replacement costs appropriate for such water
20 delivery. Payment for use of such water shall be in advance and the proceeds shall be
21 applied to operation and maintenance expense and other appropriate accounts as
22 determined by the United States, and shall accrue to the benefit of the United States. The

1 State shall, however, have the first opportunity to purchase said Project Water paying
2 only the applicable OM&R costs.

3

4 12. WATER SHORTAGES

5 There may occur at times during any year a shortage in the quantity of water
6 available for furnishing to the State through and by means of the Project, but in no event
7 shall any liability accrue against the United States or any of its officers, agents, or
8 employees for any damage, direct or indirect, arising from a shortage, on account of
9 errors in operation, drought, or any other causes. Unless the Intergovernmental
10 Agreement is in effect, in any year in which there may occur a shortage from any cause,
11 the United States reserves the right to apportion the available water allocation pursuant to
12 the Settlement Act, as amended, and applicable laws, including the Animas-La Plata
13 Project Compact, among the State, Tribes, and others entitled to receive water from the
14 Project in accordance with conclusive determinations of the Contracting Officer.

Comment [BOR20]: State may provide further detail.

15

16 13. LEVY OF ASSESSMENTS, TOLLS AND CHARGES

17 ~~The State shall, to the extent allowed by law, cause to be levied and collected all~~
18 ~~necessary assessments, tolls, and other charges and will use all of the authority and~~
19 ~~resources of the State to meet the obligations of the State specified herein, to make in full~~
20 ~~all payments to be made pursuant to this contract on or before the date such payments~~
21 ~~become due, and to meet its other obligations under this contract. The State intends to~~
22 ~~fulfill its obligations under this Contract. The State reasonably believes that funds in~~
23 ~~amount sufficient to fulfill these obligations lawfully can and will be available for this~~

1 purpose. In the event funds are not appropriated in amounts sufficient to fulfill these
2 obligations, the State shall use its best efforts to satisfy any requirements for payments or
3 contributions of funds under this contract from any other source of funds legally available
4 for this purpose.

7 14. COVENANT AGAINST CONTINGENT FEES

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

17 15. THIRD-PARTY CONTRACTS

18 (a) Any contract entered into between the State and any third-party for the use of
19 the State's Statutory Water Allocation under this Contract shall be subject to written
20 approval of the United States in order to determine the effects on the operation of the
21 Project facilities including compliance with existing environmental statutes. The third
22 party contract requires the third party to be bound to the provisions of this Contract
23 including, but not be limited to, terms of measurement, operations, environmental

Comment [BOR21]: Both parties to create verbiage and merge under paragraph (a)

Comment [BOR22]: State has issue with verbiage.

1 compliance, and the impact of defaults on Project Works. Approval shall not be
2 unreasonably withheld. The United States shall have 60 days after receipt of the proposed
3 third-party contract to inform the State of its approval or denial of the contract. If
4 additional environmental compliance is required, the State and the United States will
5 develop a schedule for approval.

Comment [BOR23]: State has issue with
verbiage.

6 (b) The State shall not receive any valuable consideration for such subcontract in
7 excess of the cost of the water to the State (including administrative costs and water
8 conservation measures pursuant to Article 29). The State shall not extract any brokerage,
9 profits, commission or fee, from any person on the water to be delivered under this
10 subcontract. In connection with any such subcontract, the State shall certify to the United
11 States that the conveyance with respect to water delivery was without consideration
12 except as provided above, and that no brokerage, profits, commission, fee, or other
13 charge of any kind was charged to the subcontractor or any person acting on behalf of the
14 subcontractor. Any exceptions to this Article will be covered under a separate agreement
15 between the State and the United States.

Comment [BOR24]: State to provide
Constitution language.
BOR to talk with Policy.

16
17 16. TITLE TO PROJECT WORKS AND PROJECT REPAIR

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

21

22 17. SEVERABILITY

1 If any provisions of the contract shall, for any reason be determined to be illegal
2 or unenforceable, the parties, nevertheless, intend that the remainder of the contract shall
3 remain in full force and effect. Furthermore, any adjustments or variations to this contract
4 necessitated by future negotiations with other Project beneficiaries can be accomplished
5 by amending this contract.

7 STANDARD ARTICLES

8 18. CHARGES FOR DELINQUENT PAYMENTS

9
10 (a) The State shall be subject to interest, administrative, and penalty charges on
11 delinquent payments. If a payment is not received by the due date, the State shall pay an
12 interest charge on the delinquent payment for each day the payment is delinquent beyond
13 the due date. If a payment becomes 60 days delinquent, the State shall pay, in addition to
14 the interest charge, an administrative charge to cover additional costs of billing and
15 processing the delinquent payment. If a payment is delinquent 90 days or more, the State
16 shall pay, in addition to the interest and administrative charges, a penalty charge for each
17 day the payment is delinquent beyond the due date, based on the remaining balance of the
18 payment due at the rate of 6 percent per year. The State shall also pay any fees incurred
19 for debt collection services associated with a delinquent payment.

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

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

28 29 19. GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

30
31 (a) The obligation of the State to pay the United States as provided in this contract
32 is a general obligation of the State notwithstanding the manner in which the obligation
33 may be distributed among the State's water users and notwithstanding the default of
34 individual water users in their obligations to the State.

35
36 (b) The payment of charges becoming due pursuant to this contract is a condition
37 precedent to receiving benefits under this contract. The United States shall not make
38 water available to the State through Animas La Plata project facilities during any period
39 in which the State is in arrears in the advance payment of any operation and maintenance

Comment [BG25]: State has concerns w/ this language (can't obligate future legislations). State would like to propose alternate language developed for contracts they have w/ Army Corps of Engineers.

1 charges due the United States or is in arrears for more than 12 months in the payment of
2 any construction charges due the United States. The State shall not deliver water under
3 the terms and conditions of this contract for lands or parties that are in arrears in the
4 advance payment of operation and maintenance charges, or is in arrears more than 12
5 months in the payment of construction charges as levied or established by the State.

6 Suggested from State

7 OBLIGATIONS OF FUTURE APPROPRIATIONS

8 Nothing herein shall constitute, nor be deemed to constitute, an obligation of future
9 appropriations by the General Assembly of the State of Colorado where creating such an
10 obligation would be inconsistent with Colorado Revised Statutes or the Colorado
11 Constitution.

Comment [BOR26]: Proposed from State.
Either add this as (c) or clarify (a)

State to clarify (a).

13 20. CONFIRMATION OF CONTRACT

14
15 Promptly after the execution of this contract, the State shall provide evidence to
16 the Contracting Officer that, pursuant to the laws of the State of Colorado, the State is a
17 legally constituted entity and the contract is lawful, valid, and binding on the State. This
18 contract shall not be binding on the United States until such evidence has been provided
19 to the Contracting Officer's satisfaction.

21 21. NOTICES

22
23 Any notice, demand, or request authorized or required by this contract shall be
24 deemed to have been given, on behalf of the State, when mailed, postage prepaid, or
25 delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125
26 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the
27 United States, when mailed, postage prepaid, or delivered to the State of Colorado,
28 Department of Natural Resources, Colorado Water Conservation Board, 1313 Sherman
29 Street, Room 721, Denver, CO 80203. The designation of the addressee or the address
30 may be changed by notice given in the same manner as provided in this article for other
31 notices.

33 22. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

34
35 The expenditure or advance of any money or the performance of any obligation of
36 the United States under this contract shall be contingent upon appropriation or allotment
37 of funds. Absence of appropriation or allotment of funds shall not relieve the State from
38 any obligations under this contract. No liability shall accrue to the United States in case
39 funds are not appropriated or allotted.

41 23. OFFICIALS NOT TO BENEFIT

42
43 No Member of or Delegate to Congress, Resident Commissioner or official of the
44 State shall benefit from this contract other than as a water user in the same manner as
45 other water users.

1 24. CHANGES IN STATE’S ORGANIZATION

2
3 While this contract is in effect, no change may be made in the State’s
4 organization, by inclusion or exclusion of lands or by any other changes which may
5 affect the respective rights, obligations, privileges, and duties of either the United States
6 or the State under this contract including, but not limited to, dissolution, consolidation, or
7 merger, except upon the Contracting Officer’s written consent.
8
9

10 25. ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

11
12 The provisions of this contract shall apply to and bind the successors and assigns
13 of the parties hereto, but no assignment or transfer of this contract or any right or interest
14 therein by either party shall be valid until approved in writing by the other party.
15
16

17 26. BOOKS, RECORDS, AND REPORTS

18
19 The State shall establish and maintain accounts and other books and records
20 pertaining to administration of the terms and conditions of this contract, including the
21 State’s financial transactions; water supply data; project operation, maintenance, and
22 replacement logs; project land and rights-of-way use agreements; the water users’ land-
23 use (crop census), land-ownership, land-leasing, and water-use data; and other matters
24 that the Contracting Officer may require. Reports shall be furnished to the Contracting
25 Officer in such form and on such date or dates as the Contracting Officer may require.
26 Subject to applicable Federal laws and regulations, each party to this contract shall have
27 the right during office hours to examine and make copies of the other party’s books and
28 records relating to matters covered by this contract.
29
30

31 27. RULES, REGULATIONS, AND DETERMINATIONS

32
33 (a) The parties agree that the delivery of water or the use of Federal facilities
34 pursuant to this contract is subject to Federal reclamation law, as amended and
35 supplemented, and the rules and regulations promulgated by the Secretary of the Interior
36 under Federal reclamation law.

37 (b) The Contracting Officer shall have the right to make determinations necessary to
38 administer this contract that are consistent with its provisions, the laws of the United
39 States and the State of Colorado, and the rules and regulations promulgated by the
40 Secretary of the Interior. Such determinations shall be made in consultation with the
41 State.
42
43

44 28. PROTECTION OF WATER AND AIR QUALITY

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

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

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

16
17 29. WATER CONSERVATION

18
19 Prior to the delivery of water provided from or conveyed through federally
20 constructed or federally financed facilities pursuant to this contract, the State shall
21 develop a water conservation plan, as required by subsection 210(b) of the Reclamation
22 Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

23
24 30. EQUAL EMPLOYMENT OPPORTUNITY

25
26 During the performance of this contract, the State agrees as follows:

27
28 (a) The State will not discriminate against any employee or applicant for
29 employment because of race, color, religion, sex, disability, or national origin. The State
30 will take affirmative action to ensure that applicants are employed, and that employees
31 are treated during employment, without regard to their race, color, religion, sex,
32 disability, or national origin. Such action shall include, but not be limited to the
33 following: employment, upgrading, demotion, or transfer; recruitment or recruitment
34 advertising; layoff or termination; rates of pay or other forms of compensation; and
35 selection for training, including apprenticeship. The State agrees to post in conspicuous
36 places, available to employees and applicants for employment, notices to be provided by
37 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

38
39 (b) The State will, in all solicitations or advertisements for employees placed by or
40 on behalf of the State, state that all qualified applicants will receive consideration for
41 employment without regard to race, color, religion, sex, disability, or national origin.

42 (c) The State will send to each labor union or representative of workers with which
43 it has a collective bargaining agreement or other contract or understanding, a notice, to be
44 provided by the Contracting Officer, advising the labor union or workers' representative
45 of the State's commitments under section 202 of Executive Order 11246 of September

1 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available
2 to employees and applicants for employment.

3
4 (d) The State will comply with all provisions of EO 11246, and of the rules,
5 regulations, and relevant orders of the Secretary of Labor.

6
7 (e) The State will furnish all information and reports required by EO 11246, and by
8 the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will
9 permit access to his books, records, and accounts by the Contracting Agency and the
10 Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
11 regulations, and orders.

12
13 (f) In the event of the State's noncompliance with the nondiscrimination clauses of
14 this contract or with any of such rules, regulations, or orders, this contract may be
15 canceled, terminated or suspended in whole or in part and the State may be declared
16 ineligible for further Government contracts in accordance with procedures authorized in
17 EO 11246, and such other sanctions may be imposed and remedies invoked as provided
18 in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise
19 provided by law.

20
21 (g) The State will include the provisions of paragraphs (1) through (7) in every
22 subcontract or purchase order unless exempted by the rules, regulations, or orders of the
23 Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions
24 will be binding upon each subcontractor or vendor. The State will take such action with
25 respect to any subcontract or purchase order as may be directed by the Secretary of Labor
26 as a means of enforcing such provisions, including sanctions for noncompliance:
27 *Provided, however,* that in the event the State becomes involved in, or is threatened with,
28 litigation with a subcontractor or vendor as a result of such direction, the State may
29 request that the United States enter into such litigation to protect the interests of the
30 United States.

31
32 31. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

33
34 (a) The State shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L.
35 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
36 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,
37 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of
38 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights
39 laws, and with the applicable implementing regulations and any guidelines imposed by
40 the U.S. Department of the Interior and/or Bureau of Reclamation.

41
42 (b) These statutes prohibit any person in the United States from being excluded
43 from participation in, being denied the benefits of, or being otherwise subjected to
44 discrimination under any program or activity receiving financial assistance from the
45 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.
46 By executing this contract, the State agrees to immediately take any measures necessary

1 to implement this obligation, including permitting officials of the United States to inspect
2 premises, programs, and documents.

3
4 (c) The State makes this agreement in consideration of and for the purpose of
5 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal
6 financial assistance extended after the date hereof to the State by the Bureau of
7 Reclamation, including installment payments after such date on account of arrangements
8 for Federal financial assistance which were approved before such date. The State
9 recognizes and agrees that such Federal assistance will be extended in reliance on the
10 representations and agreements made in this article and that the United States reserves the
11 right to seek judicial enforcement thereof.

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

14
15
16 32. MEDIUM FOR TRANSMITTING PAYMENTS

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

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

27
28
29 33. CONTRACT DRAFTING CONSIDERATIONS

30
31 This Contract has been, negotiated and reviewed by the parties hereto, each of
32 whom is sophisticated in the matters to which this Contract pertains. Articles 1 through
33 17 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one
34 party shall be considered to have drafted the stated articles.

35
36
37 34. CONSTRAINTS ON AVAILABILITY OF WATER

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

44
45 (b) If there is a condition of shortage because of errors in physical operations of the
46 Project, drought, other physical causes beyond the control of the Contracting Officer or

1 actions taken by the Contracting Officer to meet current and future legal obligations, then
2 no liability shall accrue against the United States or any of its officers, agents, or
3 employees for any damage, direct or indirect, arising therefrom.
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DRAFT

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IN WITNESS WHEREOF, the parties hereto have caused this contract to be duly executed as of the day and year first above written.

Approved: THE UNITED STATES OF AMERICA

Solicitor's Office

By: _____
Regional Director
Upper Colorado Region
Bureau of Reclamation

Legal Review
John W. Suthers, Attorney General

STATE OF COLORADO
John W. Hickenlooper, Governor
Mike King, Executive Director, Department
of Natural Resources

By: _____
Assistant Attorney General

By: _____
Jennifer Gimbel, Director, Colorado Water
Conservation Board

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated by the State Controller or delegate.

State Controller
David J. McDermott, CPA

By: _____
Date: _____

List of Attachments: Exhibit A Environmental Commitments
Exhibit B Methodology Regarding Implementation of Section 207
on Up-Front Cost-Sharing and Repayment, Animas-La Plata Project (August 2, 2006), as amended