

4 | Contract No. _____
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6 | UNITED STATES
7 | DEPARTMENT OF THE INTERIOR
8 | BUREAU OF RECLAMATION
9 |

10 | ANIMAS-LA PLATA PROJECT
11 | COLORADO RIVER STORAGE PROJECT
12 |

13 | REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
14 | THE STATE OF COLORADO
15 | DEPARTMENT OF NATURAL RESOURCES
16 | COLORADO WATER CONSERVATION BOARD
17 |

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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.

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

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

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

6 (g) The State has demonstrated its legal and financial capability to make the
7 contributions and payments required by this document, by demonstrating that it is a legal
8 entity under state law, and that it has appropriated funds in amounts sufficient for this
9 obligation.

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

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

22 (j) It is the intent of both the United States and the State that any rights granted
23 by this Agreement are not limited to a specific term but would instead continue in full

1 force and effect pursuant to section 9 of the Reclamation Project Act of 1939, 43 U.S.C. §
2 485h, and this Agreement will remain in full force and effect during the Useful Project
3 Life, and as provided in **Article** 7(l) below.

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

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

10

11 1.

GENERAL DEFINITIONS

12 Where used in this contract:

13 (a) "Association" means the Animas-La Plata Operations, Maintenance, and
14 Replacement Association, established by the Project sponsors who were signatories to the
15 IGA, dated March 4, 2009, pursuant to the Colorado Uniform Unincorporated Nonprofit
16 Association Act, 7-30-101 et seq., CRS (2006), to carry out the OM&R activities and
17 responsibilities of the Project.

18 ~~(a)~~(b) "Colorado Ute Tribes" means the Southern Ute Indian Tribe, a federally
19 recognized Indian tribe, and the Ute Mountain Ute Tribe, a federally recognized Indian
20 tribe.

21 ~~(b)~~(c) "Consultation" means the United States shall notify and confer with the
22 State regarding significant decisions pertaining to this contract. In the event that

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

3 ~~(e)~~(d) "Estimated Repayment Obligation" means the reimbursable construction
4 costs allocated to the State's M&I uses associated with the construction of Project Works
5 plus any appropriate Interest During Construction (IDC).

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

10 ~~(e)~~(f) "IGA" or "Intergovernmental Agreement" means that agreement, effective
11 March 4, 2009, which has been executed by [the Colorado Water Resources and Power](#)
12 [Development Authority; the San Juan Water Commission, a political subdivision of the](#)
13 [State of New Mexico, the La Plata Water Conservancy District, a political subdivision of](#)
14 [the State of New Mexico; the Southern Ute Indian Tribe, a federally recognized Indian](#)
15 [tribe; the Navajo Nation, a federally recognized Indian tribe; and the Ute Mountain Ute](#)
16 [Tribe, a federally recognized Indian tribe](#) ~~those entities~~, and their authorized assignees,
17 that have been identified by the Settlement Act, as amended, to receive a water allocation
18 that created the Association to operate and maintain the Project.

Comment [BOR1]: Reclamation to spell out participants by name from paragraph 2.3.1 if the IGA.

19 ~~(f)~~(g) "Non Contract costs" means the costs of work or services provided by
20 Reclamation staff and/or service contractors in support of the project. Non-contract costs
21 refer to the costs of work or services provided in support of the project, some of which can be
22 expensed against a specific plant account, and other work which is of such a broad non-
23 specific nature that it can only be attributed to the project as a whole. These latter costs are
24 also referred to as "distributive costs." Non-contract costs refer to the work or services

Comment [BOR2]: This Definition will refer to Article 7- What is currently (i) and (j).

1 provided in support of the project, some of which can be expensed against a specific plant
2 account, and other work which is of such a broad non-specific nature that it can only be
3 attributed to the project as a whole. These costs generally originate for work or services
4 provided by agency personnel (or contractor personnel used to augment agency
5 resources), or land or right-of-way acquisitions to facilitate project development

Comment [BOR3]: Three statements as listed in FAC 09-01 & 02. **Reclamation Manual** Directives and Standards.

6 ~~(g)~~(h) "Operation and Maintenance Facilities" or "Permanent Operations
7 Facility" means those facilities necessary to support operations, maintenance and
8 replacement work, including permanent operating facility building headquarters with
9 associated office space, shop for repair and housing of the maintenance support
10 equipment, storage place for supplies, and equipment yard.

11 ~~(h)~~(i) "Project" means the Animas-La Plata Project, a participating project of the
12 Colorado River Storage Project Act, authorized by Title V of the Colorado River Basin
13 Project Act, approved September 30, 1968, as modified by the Settlement Act, as
14 amended.

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

22 ~~(j)~~(k) "Project Operator" means the Association operating the Project Works.

1 | ~~(k)~~(l) "Project Water" means all water provided through the Animas-La Plata
2 | Project.

3 | ~~(j)~~(m) "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 | ~~(m)~~(n) "Remaining Repayment Obligation" means the difference, if any,
10 | between the Estimated Repayment Obligation and the Final Repayment Obligation as
11 | determined through the Final Cost Allocation described in Articles 7(d) and 7(g) below.

12 | ~~(n)~~(o) "San Juan River System" means the San Juan River and its tributaries.

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

16 | ~~(p)~~(q) "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 | ~~(q)~~(r) "United States" or "Contracting Officer" or "Secretary" either of them
20 | means the Secretary of the United States Department of the Interior or his/her duly
21 | authorized representative.

1 | ~~(s)~~“Useful Project Life” means the period of time the Project is able to provide the
2 | authorized Project benefits pursuant to Sec. 6(a)(1)(A)(i)(VI) of the Settlement Act, as
3 | amended.

4 | ~~(s)(i)~~“Water Rights Settlement Agreement” refers to the “Colorado Ute Indian Water
5 | Rights Final Settlement Agreement” dated December 10, 1986 among the United States,
6 | the State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and
7 | the additional governmental and private entities in Colorado signatory thereto, as
8 | implemented by the Settlement Act, as amended.

9 |
10 | 2. PROJECT WORKS

11 | Subject to the terms and conditions of this and other applicable contracts related
12 | specifically to this Project, the United States will construct the following Project Works
13 | and 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, 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.

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 3. PROJECT COORDINATION COMMITTEES

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

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

18 (b) The Project Operations Committee consisted of representatives from those
19 entities that were identified by the Settlement Act, as amended, to receive a water
20 allocation and the Bureau of Reclamation. This committee determined an appropriate
21 entity to contract with Reclamation for the operation, maintenance, and replacement
22 (OM&R) of the Project Works and developed a common understanding among the
23 project beneficiaries of the appropriate level of annual OM&R activities to be performed

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

7

8 4. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF
9 STATUTORY WATER ALLOCATION

10

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

23 (b) Once water is released from the outlet works of Ridges Basin Dam, bypassed at
24 the Durango Pumping Plant or diverted from Lake Nighthorse, the United States will not
25 be responsible for the control, carriage, handling, use, disposal, or distribution of the

1 Statutory Water Allocation furnished to the State, except when caused by direct action of
2 the United States. The State will hold the United States harmless on account of damage or
3 claim of damage of any nature whatsoever arising out of or connected with the control,
4 carriage, handling, treatment, use, disposal, or distribution of the Statutory Water
5 Allocation by the State below the Project points of measurement, except when caused by
6 the United States.

Comment [BOR4]: Needs SOL Office review.

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

11

12 5. ALLOCATION AND USE OF PROJECT WATER

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

19 (b) Except as provided in Article 7(h) herein, the State shall have the right to 10,440
20 acre-feet of storage in Lake Nighthorse to supplement the amount of direct flow diversion
21 as necessary to fulfill the State's annual Project Water allocation of ____ acre-feet
22 average annual depletion. Unless the Intergovernmental Agreement is in effect, any
23 portion of the 10,440 acre-feet of unused storage shall be retained in Lake Nighthorse and

Comment [ppage5]: Assumes full allocation

1 shall be available for the State's use in succeeding years. The State shall have the
2 opportunity to purchase excess Project water from other Project participants.

3 (c) If required to ensure that the average annual depletion allocation of _____ acre-
4 feet is met, the water may be used and reused to the extent permitted by the Project
5 decrees and Federal authorizations. In addition, the water may be used at any location in
6 the ~~Project service area~~ State of Colorado, ~~and-or~~ may be used by exchange or
7 augmentation, ~~to achieve the municipal and industrial uses permitted. Also, the water~~
8 may be used for compact compliance purposes.

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

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

17

18 6. WATER RIGHT PROVISIONS

19 (a) Upon request of the United States, and if the State agrees in writing, the State
20 will assign the water rights, if any, that it holds associated with the Project water rights to
21 the United States for the benefit of users of Project Water. The State, or its assignee, will
22 also protect its interest in the Project Water rights and in case a dispute arises as to the
23 character, extent, priority or validity of the rights of the United States or the State to use

1 or permit use of Project Water, the State shall promptly bring and diligently prosecute
2 and/or defend judicial proceedings for the determination of such dispute and shall take all
3 other measures necessary toward the defense and protection of the Project water supply.
4 The United States, upon request of the State, will enter into the proceedings to defend
5 such rights.

6
7 (b) The construction of the Project Works, the allocation of the water supply from
8 those facilities to the Colorado Ute Tribes, and the provision of funds to the Colorado Ute
9 Tribes in accordance with section 16 of Public Law 106-554, and the issuance of an
10 amended final consent decree by the State of Colorado as contemplated in subsection
11 18(c) of Public Law 106-554 shall constitute final settlement of the tribal claims to water
12 rights on the Animas and La Plata Rivers in the State of Colorado.

Comment [BOR6]: Reclamation to make reference to Tribes to be as Colorado Ute Tribes throughout contract

Comment [BG7]: Reference made in General Definitions.

13
14 7. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

15 (a) Reclamation has developed a Fiscal Year 2011 (FY11) Update to the May 2001
16 Interim Cost Allocation using October 2010 price levels of the estimated Project
17 construction costs. The FY11 Update to the May 2001 Interim Cost Allocation allocates
18 the reimbursable costs of the project among the Project beneficiaries based on the pro rata
19 share of Project storage each respective entity receives in Lake Nighthorse. The State's
20 water capital obligation allocable to its Project storage in the FY11-FY12 Update to the
21 May 2001 Interim Cost Allocation is \$36,352,172 which includes construction costs of
22 \$27,914,909,28,010,288 and estimated IDC of \$8,437,263 through September 30, 2010
23 and which takes into account Section 207 of Public Law 108-447 as amended. This
24 amount is the State's Estimated Repayment Obligation.

Comment [BOR8]: M Loring to add input for year to be entered here.

Comment [BOR9]: Reclamation – ML to provide updated information i.e. Years, #'s.

Another/Additional information to be added if reduced amount.

Comment [ppage10]: These \$ amounts assume State takes full allocation of water. State will need defined number data identified for quantity of water and construction costs.

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

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

9 (d) At the end of the construction period of the multipurpose Project Works a final
10 cost allocation will be performed by the Secretary pursuant to Section 6(a)(3)(B) of the
11 Settlement Act, as amended. The State will pay only its allocable share of joint costs of
12 the Project Works. Any additional repayment shall be warranted only for reasonable and
13 unforeseen costs associated with project construction as determined by the Secretary in
14 consultation with the State, taking into account Section 207 of Public Law 108-447 as
15 amended and, Reclamation’s Decision Memorandum, “Methodology Regarding
16 Implementation of Section 207 on Up-Front Cost-Sharing and Repayment, Animas-La
17 Plata Project (August 2, 2006)” as amended and attached, and other appropriate
18 documents. Section 207 limits the non-tribal repayment obligation to \$43 million for the
19 \$500 million project (10/03 prices). The language, as amended, results in:

- 20 • No repayment of the \$163 million of cost increases
- 21 • No repayment of the effects of inflation on the \$163 million of cost increases

Comment [BOR11]: State may provide further comment.

1 • Implies repayment on the effects of inflation on the \$337 million (\$500
2 million -\$163 million), which implies some inflation of the reimbursement
3 cap.

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

11 (f) The United States shall give the State written notice of the State's Final
12 Repayment Obligation as established by the final cost allocation. In the event the final
13 cost allocation establishes that the Final Repayment Obligation is in excess of any
14 payments made by the State toward the Estimated Repayment Obligation of \$36,352,172
15 the State will have the option to pay the remaining balance of the Final Repayment
16 Obligation 180 days from the date of written notice, ~~as an alternative to repaying this~~
17 ~~additional debt with amortization interest over a repayment period as described in Article~~
18 ~~7(g) below.~~

19 (g) ~~After~~ the 180-day final payment option established in Article 7(f) has expired,
20 the unpaid portion of the Final Repayment Obligation shall become the Remaining
21 Repayment Obligation of the State. The United States will assign that Remaining
22 Repayment Obligation, on a pro rata basis, to a portion of the State's Project interest,
23 subject to the procedures of Section 6(a)(3)(B) of the Settlement Act, as amended. The

Comment [BOR12]: M Loring will be providing updated numbers

Comment [ppage13]: Assuming full allocation of water.

Percentage maximum verbiage (sub-article) may be proposed by Reclamation. Block notice may be an avenue.

Both State and Reclamation to explore options for future discussions.

Comment [BOR14]: State may provide language for paragraph.

1 formula to determine the portion of the State’s Project interest that this Remaining
2 Repayment Obligation will be assigned is as follows:

3	Remaining		Total
4	Project interest	= $\frac{(\text{Final Repayment Obligation} - \text{Repayment Received})}{\text{Final Repayment Obligation}}$	Project
5	Requiring		interest
	Repayment		

6 The above calculation to identify the Project interest assigned to the Remaining
7 Repayment Obligation will be rounded to the nearest whole acre-foot of storage. The
8 United States will derive a repayment plan for the Remaining Repayment Obligation
9 assigned to this Project interest, and will issue a repayment block notice as described in
10 Article 9 herein. The Remaining Repayment Obligation will be paid in annual
11 installments due on or before January 10 of each year and in accordance with an annuity
12 due payment schedule or schedules issued by the United States. Pursuant to Section
13 9(c)(1) of the Reclamation Project Act of 1939, the Remaining Repayment Obligation
14 shall be repaid within a 40-year period, and shall accrue amortization interest at the
15 project interest rate of 8.315 percent on the unpaid portion, as established pursuant to the
16 provision of Section 5(f) of the Act of April 11, 1956 (70 Stat. 105) as amended by the
17 Act of June 27, 1960 (74 Stat. 255).

Comment [BOR15]: Look at the addition of Storage Allocation or 10,440 into the boxed formula.

18 (h) Upon final cost allocation, if the State elects not to pay the Remaining
19 Repayment Obligation to the United States for the remaining Project interest described
20 and calculated in Article 7(g), then this portion of the State’s Project interest shall be
21 subject to the procedures of relinquishment as specified by Section 6(a)(3)(B) of the
22 Settlement Act, as amended.

Comment [BOR16]: With remaining project storage

1 (i) It is agreed that during construction every attempt will be made to keep non-
2 contract costs at or below 30 percent of the final contract costs. The United States will
3 continue to annually report to the State the dollar amount of the non-contract costs and all
4 other construction costs.

Comment [BOR17]: Reclamation PP to see if within range.

5 (j) The United States has consulted and will consult annually with the State
6 concerning the allocation of construction costs and any interest during construction to be
7 payable by the State under this Contract. The Use of Facilities Procedure is the
8 methodology used to allocate construction costs for the Project, and it will not be
9 changed for the administration of this Contract.

Comment [BOR18]: Reclamation ML to provide further verbiage.

Comment [BOR19]: For that Use of Facilities explanation, I think if you just add: , whereby each participant is allocated its share of joint costs proportionate to its use of joint facilities,

So the sentence would read:

. The Use of Facilities Procedure, whereby each participant is allocated its share of joint costs proportionate to its use of joint facilities, is the methodology used to allocate construction costs for the Project, and it will not be changed for the administration of this Contract .

10 (k) All payments required under this Contract are due on the specified due date and
11 will be made by electronic fund transfers.

12 (l) Pursuant to section 9(c)(1) of the Reclamation Project Act of 1939, 43 U.S.C. §
13 485h, following payment of the Final Repayment Obligation described herein, all other
14 contract terms will remain in full force and effect for the Useful Project Life, or until
15 mutually agreed upon by the State and the United States.

16 (m) Upon payment of the State's Final Repayment Obligation as defined in the final
17 cost allocation, the State's Project interest shall not be subject to relinquishment to the
18 Secretary for any reason, subject to applicable law.

19
20 8. ALTERNATIVE DISPUTE RESOLUTION

21 (a) If a dispute pertaining to the terms of this contract should arise between the State
22 and the United States arising out of the final cost allocation prepared by the United
23 States, each party shall communicate in good faith and seek to resolve the dispute

Comment [BOR20]: State to provide further verbiage. May incorporate Remedies from OM&R

1 expeditiously and amicably. Prior to seeking judicial review of the final cost allocation,
2 the State may pursue non-binding Alternative Dispute Resolution ("ADR") of any issue
3 arising out of the final cost allocation which affects the State and remains unresolved
4 after direct communication between the parties.

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

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

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

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

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

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

1 (c) Nothing in this Article shall be construed to restrain or prevent the United States
2 from performing any act required or authorized under federal law, or the State from
3 otherwise challenging any such act.

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

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

10

11

12 9. METHOD FOR ESTABLISHING BLOCKS FOR PROJECT DELIVERY AND
13 REPAYMENT

14
15 (a) When the Project Works defined in Article 2(a) are completed, tested, and the
16 Project becomes available for use by the State, the United States shall, after consultation,
17 give the State written notice, referred to herein as the "block notice". The block notice
18 shall contain:

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

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

Comment [BOR21]: Could change based upon language pertaining to Maximum Percentage verbiage from Reclamation ML.

1 (1) A designation of that part of the State's municipal and industrial cost
2 allocation apportioned to the block.

3 (2) A payment schedule for repayment of those costs, including a breakdown of
4 the amount and due date of each payment to be paid by the State.

5 (c) Each block notice and amendment thereto shall become a part of this contract.
6

7 **10. PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS**

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

10 (1) Fixed OM&R costs, as defined in the Intergovernmental Agreement. The
11 State's share, as identified in the Intergovernmental Agreement, would be
12 10.5% of the total Fixed OM&R costs. The final allocation of Fixed OM&R
13 costs will be finalized and stated in the OM&R Contract between Reclamation
14 and the Association, which transfers OM&R responsibility to the Association;

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

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

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

Comment [BOR22]: Ensure consistency with IGA – pro-rata.

Comment [BOR23]: Could be rewritten based upon discussions between State and Association.

1 (1) While the Intergovernmental Agreement is in effect, the Project Operator
2 shall annually prepare an OM&R charge notice which shall be furnished to the
3 Association and to the State, which the State shall pay in advance annually.

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

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

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

17 (1) the State's pro-rata share of OM&R costs actually incurred by the Project
18 Operator in connection with Project facilities and/or operations that benefit all
19 users of the Project, based on the amount of water storage actually purchased
20 and paid for by the State, in accordance with **Article 7** above;

21 (2) the actual cost of replacing Project Water released by request of the State.

22
23 11. USE AND DISPOSAL OF WATER DURING CONSTRUCTION

1 (a) During construction, Project Water that is not made available to the State under
2 a block notice as provided in **Article 9** herein may be disposed of by the United States at
3 terms and charges fixed by the United States. The charges shall only be sufficient to
4 cover the operation, maintenance, and replacement costs appropriate for such water
5 delivery. Payment for use of such water shall be in advance and the proceeds shall be
6 applied to operation and maintenance expense and other appropriate accounts as
7 determined by the United States, and shall accrue to the benefit of the United States. The
8 State shall, however, have the first opportunity to purchase said Project Water paying
9 only the applicable OM&R costs.

10

11 12.

WATER SHORTAGES

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

23

Comment [BOR24]: SOL review and input on causes.

Comment [BOR25]: Same as above comment

Comment [BOR26]: State may provide further detail.

1 13. LEVY OF ASSESSMENTS, TOLLS AND CHARGES STATE'S OBLIGATIONS

2 FOR APPROPRIATIONS

Comment [BOR27]: SOL review

3 The State shall, to the extent allowed by law, cause to be levied and collected all
4 necessary assessments, tolls, and other charges and will use all of the authority and
5 resources of the State to meet the obligations of the State specified herein, to make in full
6 all payments to be made pursuant to this contract on or before the date such payments
7 become due, and to meet its other obligations under this contract. The State intends to
8 fulfill its obligations under this Contract. The State reasonably believes that funds in
9 amount sufficient to fulfill these obligations lawfully can and will be available for this
10 purpose. In the event funds are not appropriated in amounts sufficient to fulfill these
11 obligations, the State shall use its best efforts to satisfy any requirements for payments or
12 contributions of funds under this contract from any other source of funds legally available
13 for this purpose.

14
15
16 14. COVENANT AGAINST CONTINGENT FEES

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

1 the repayment obligation or consideration the full amount of such commission,
2 percentage, brokerage, or contingent fee.

3

4 15. THIRD-PARTY CONTRACTS

Comment [BOR28]: Both parties to create verbiage and merge under paragraph (a)

5 (a) Any contract entered into between the State and any third-party for the use of
6 the State's Statutory Water Allocation under this Contract shall be subject to written
7 approval of the United States in order to determine solely the effects on the operation of
8 the Project facilities in light of existing environmental statutes compliance, including
9 compliance with existing environmental statutes. The third party contract requires the
10 third party to be bound to the provisions of this Contract including, but not be limited to,
11 terms of measurement, operations, environmental compliance, and the impact of defaults
12 on Project Works. Approval shall not be unreasonably withheld. The United States shall
13 have 60 days after receipt of the proposed third-party contract to inform the State of its
14 approval or denial of the contract. If additional environmental compliance is required,
15 the State and the United States will develop a schedule for approval.

Comment [BOR29]: SOL review.

16 (b) The State shall not receive any valuable consideration for such subcontract in
17 excess of the cost of the water to the State (including administrative costs and water
18 conservation measures pursuant to Article 29). The State shall not extract any brokerage,
19 profits, commission or fee, from any person on the water to be delivered under this
20 subcontract. In connection with any such subcontract, the State shall certify to the United
21 States that the conveyance with respect to water delivery was without consideration
22 except as provided above, and that no brokerage, profits, commission, fee, or other
23 charge of any kind was charged to the subcontractor or any person acting on behalf of the

1 subcontractor. Any exceptions to this Article will be covered under a separate agreement
2 between the State and the United States.

Comment [BOR30]: State to provide more possible Constitution language. BOR to talk with Policy.

3
4 16. TITLE TO PROJECT WORKS AND PROJECT REPAIR

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

8
9 17. SEVERABILITY

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

15
16 **STANDARD ARTICLES**

17 18. CHARGES FOR DELINQUENT PAYMENTS

18
19 (a) The State shall be subject to interest, administrative, and penalty charges on
20 delinquent payments. If a payment is not received by the due date, the State shall pay an
21 interest charge on the delinquent payment for each day the payment is 45 days delinquent
22 beyond the due date. If a payment becomes 60 days delinquent, the State shall pay, in
23 addition to the interest charge, an administrative charge to cover additional costs of
24 billing and processing the delinquent payment. If a payment is delinquent 90 days or
25 more, the State shall pay, in addition to the interest and administrative charges, a penalty
26 charge for each day the payment is delinquent beyond the due date, based on the
27 remaining balance of the payment due at the rate of 6 percent per year. The State shall
28 also pay any fees incurred for debt collection services associated with a delinquent
29 payment.

Comment [BOR31]: This would meet State requirements. Reclamation ML to run by.

1 (b) The interest rate charged shall be the greater of either the rate prescribed
2 quarterly in the Federal Register by the Department of the Treasury for application to
3 overdue payments, or the interest rate of 0.5 percent per month, not to exceed 1.0 percent
4 per month. The interest rate charged will be determined as of the due date and remain
5 fixed for the duration of the delinquent period.

Comment [BOR32]: Same as above comment.

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

9
10 19. GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

Comment [BG33]: 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.

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

16
17 (b) The payment of charges becoming due pursuant to this contract is a condition
18 precedent to receiving benefits under this contract. The United States shall not make
19 water available to the State through Animas La Plata project facilities during any period
20 in which the State is in arrears in the advance payment of any operation and maintenance
21 charges due the United States or is in arrears for more than 12 months in the payment of
22 any construction charges due the United States. The State shall not deliver water under
23 the terms and conditions of this contract for lands or parties that are in arrears in the
24 advance payment of operation and maintenance charges, or is in arrears more than 12
25 months in the payment of construction charges as levied or established by the State.

26 Suggested from State

27 OBLIGATIONS OF FUTURE APPROPRIATIONS

28 Nothing herein shall constitute, nor be deemed to constitute, an obligation of future
29 appropriations by the General Assembly of the State of Colorado where creating such an
30 obligation would be inconsistent with Colorado Revised Statutes or the Colorado
31 Constitution.

Comment [BOR34]: Proposed from State. Either add this as (c) or clarify (a)

State to clarify (a).

Can this be added here as a sub section (c)?

32
33 20. CONFIRMATION OF CONTRACT

34
35 Promptly after the execution of this contract, the State shall provide evidence to
36 the Contracting Officer that, pursuant to the laws of the State of Colorado, the State is a
37 legally constituted entity and the contract is lawful, valid, and binding on the State. This
38 contract shall not be binding on the United States until such evidence has been provided
39 to the Contracting Officer's satisfaction.

40
41 21. NOTICES

42
43 Any notice, demand, or request authorized or required by this contract shall be
44 deemed to have been given, on behalf of the State, when mailed, postage prepaid, or
45 delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125
46 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the

1 United States, when mailed, postage prepaid, or delivered to the State of Colorado,
2 Department of Natural Resources, Colorado Water Conservation Board, 1313 Sherman
3 Street, Room 721, Denver, CO 80203. The designation of the addressee or the address
4 may be changed by notice given in the same manner as provided in this article for other
5 notices.

6
7 22. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

Comment [BOR35]: SOL review. State proposed.

State to review OM&R (7e)

14
15 23. OFFICIALS NOT TO BENEFIT

16
17 No Member of or Delegate to Congress, Resident Commissioner or official of the
18 State shall benefit from this contract other than as a water user in the same manner as
19 other water users.

20
21 24. CHANGES IN STATE'S ORGANIZATION

22
23 While this contract is in effect, no change may be made in the State's
24 organization, by inclusion or exclusion of lands or by any other changes which may
25 affect the respective rights, obligations, privileges, and duties of either the United States
26 or the State under this contract including, but not limited to, dissolution, consolidation, or
27 merger, except upon the Contracting Officer's written consent.

28
29
30 25. ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

31
32 The provisions of this contract shall apply to and bind the successors and assigns
33 of the parties hereto, but no assignment or transfer of this contract or any right or interest
34 therein by either party shall be valid until approved in writing by the other party.

35
36
37 26. BOOKS, RECORDS, AND REPORTS

38
39 The State shall establish and maintain accounts and other books and records
40 pertaining to administration of the terms and conditions of this contract, including the
41 State's financial transactions; water supply data; project operation, maintenance, and
42 replacement logs; project land and rights-of-way use agreements; the water users' land-
43 use (crop census), land-ownership, land-leasing, and water-use data; and other matters
44 that the Contracting Officer may require. Reports shall be furnished to the Contracting
45 Officer in such form and on such date or dates as the Contracting Officer may require.
46 Subject to applicable Federal laws and regulations, each party to this contract shall have

1 the right during office hours to examine and make copies of the other party's books and
2 records relating to matters covered by this contract.

3
4
5 27. RULES, REGULATIONS, AND DETERMINATIONS

6
7 (a) The parties agree that the delivery of water or the use of Federal facilities
8 pursuant to this contract is subject to Federal reclamation law, as amended and
9 supplemented, and the rules and regulations promulgated by the Secretary of the Interior
10 under Federal reclamation law.

11 (b) The Contracting Officer shall have the right to make determinations necessary to
12 administer this contract that are consistent with its provisions, the laws of the United
13 States and the State of Colorado, and the rules and regulations promulgated by the
14 Secretary of the Interior. Such determinations shall be made in consultation with the
15 State.

16
17
18 28. PROTECTION OF WATER AND AIR QUALITY

19
20 (a) Project facilities used to make available and deliver water to the State shall be
21 operated and maintained in the most practical manner to maintain the quality of the water
22 at the highest level possible as determined by the Contracting Officer: *Provided, That* the
23 United States does not warrant the quality of the water delivered to the State and is under
24 no obligation to furnish or construct water treatment facilities to maintain or improve the
25 quality of water delivered to the State.

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

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

35
36 29. WATER CONSERVATION

37
38 Prior to the delivery of water provided from or conveyed through federally
39 constructed or federally financed facilities pursuant to this contract, the State shall
40 develop a water conservation plan specific to Project water, as required by subsection
41 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation
42 Rules and Regulations).

Comment [BOR36]: Proposed verbiage from State.

43
44 30. EQUAL EMPLOYMENT OPPORTUNITY

45
46 During the performance of this contract, the State agrees as follows:

1
2 (a) The State will not discriminate against any employee or applicant for
3 employment because of race, color, religion, sex, disability, or national origin. The State
4 will take affirmative action to ensure that applicants are employed, and that employees
5 are treated during employment, without regard to their race, color, religion, sex,
6 disability, or national origin. Such action shall include, but not be limited to the
7 following: employment, upgrading, demotion, or transfer; recruitment or recruitment
8 advertising; layoff or termination; rates of pay or other forms of compensation; and
9 selection for training, including apprenticeship. The State agrees to post in conspicuous
10 places, available to employees and applicants for employment, notices to be provided by
11 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

12
13 (b) The State will, in all solicitations or advertisements for employees placed by or
14 on behalf of the State, state that all qualified applicants will receive consideration for
15 employment without regard to race, color, religion, sex, disability, or national origin.

16 (c) The State will send to each labor union or representative of workers with which
17 it has a collective bargaining agreement or other contract or understanding, a notice, to be
18 provided by the Contracting Officer, advising the labor union or workers' representative
19 of the State's commitments under section 202 of Executive Order 11246 of September
20 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available
21 to employees and applicants for employment.

22
23 (d) The State will comply with all provisions of EO 11246, and of the rules,
24 regulations, and relevant orders of the Secretary of Labor.

25
26 (e) The State will furnish all information and reports required by EO 11246, and by
27 the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will
28 permit access to his books, records, and accounts by the Contracting Agency and the
29 Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
30 regulations, and orders.

31
32 (f) In the event of the State's noncompliance with the nondiscrimination clauses of
33 this contract or with any of such rules, regulations, or orders, this contract may be
34 canceled, terminated or suspended in whole or in part and the State may be declared
35 ineligible for further Government contracts in accordance with procedures authorized in
36 EO 11246, and such other sanctions may be imposed and remedies invoked as provided
37 in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise
38 provided by law.

39
40 (g) The State will include the provisions of paragraphs (1) through (7) in every
41 subcontract or purchase order unless exempted by the rules, regulations, or orders of the
42 Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions
43 will be binding upon each subcontractor or vendor. The State will take such action with
44 respect to any subcontract or purchase order as may be directed by the Secretary of Labor
45 as a means of enforcing such provisions, including sanctions for noncompliance:
46 *Provided, however,* that in the event the State becomes involved in, or is threatened with,

1 litigation with a subcontractor or vendor as a result of such direction, the State may
2 request that the United States enter into such litigation to protect the interests of the
3 United States.

4
5 31. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

6
7 (a) The State shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L.
8 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
9 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,
10 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of
11 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights
12 laws, and with the applicable implementing regulations and any guidelines imposed by
13 the U.S. Department of the Interior and/or Bureau of Reclamation.

14
15 (b) These statutes prohibit any person in the United States from being excluded
16 from participation in, being denied the benefits of, or being otherwise subjected to
17 discrimination under any program or activity receiving financial assistance from the
18 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.
19 By executing this contract, the State agrees to immediately take any measures necessary
20 to implement this obligation, including permitting officials of the United States to inspect
21 premises, programs, and documents.

22
23 (c) The State makes this agreement in consideration of and for the purpose of
24 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal
25 financial assistance extended after the date hereof to the State by the Bureau of
26 Reclamation, including installment payments after such date on account of arrangements
27 for Federal financial assistance which were approved before such date. The State
28 recognizes and agrees that such Federal assistance will be extended in reliance on the
29 representations and agreements made in this article and that the United States reserves the
30 right to seek judicial enforcement thereof.

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

33
34
35 32. MEDIUM FOR TRANSMITTING PAYMENTS

36
37 (a) All payments from the State to the United States under this contract shall be by
38 the medium requested by the United States on or before the date payment is due. The
39 required method of payment may include checks, wire transfers, or other types of
40 payment specified by the United States.

41
42 (b) Upon execution of the contract, the State shall furnish the Contracting Officer
43 with the State's taxpayer's identification number (TIN). The purpose for requiring the
44 State's TIN is for collecting and reporting any delinquent amounts arising out of the
45 State's relationship with the United States.

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33. CONTRACT DRAFTING CONSIDERATIONS

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

34. CONSTRAINTS ON AVAILABILITY OF WATER

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

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

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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