

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Fryingpan-Arkansas Project, Colorado**

**CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE CITY OF AURORA, COLORADO FOR THE USE OF EXCESS CAPACITY
IN THE FACILITIES OF THE FRYINGPAN-ARKANSAS PROJECT**

TABLE OF CONTENTS

Article No.	Title.....	Page No.
	Preamble and Explanatory Recitals.....	1
1	Definitions	3
2	Purpose	4
3	Term of Contract	4
4	Limitations	4
5	Contracted Service.....	5
6	Payment Charges	6
7	Delivery, Measurement and Accounting For The Use of Excess Capacity For Nonproject Water	7
8	Environmental Compliance and Commitments.....	8
9	Contractor’s Use of Water.....	9
10	Termination of Contract	9
11	Contract Drafting Considerations.....	9
12	Notices.....	10
13	Charges for Delinquent Payments	10
14	General Obligation—Benefits Conditioned Upon Payment	11
15	Emergency Reserve Fund.....	11
16	Confirmation of Contract	11
17	Contingent Upon Appropriation or Allotment of Funds	11
18	Officials Not to Benefit	11
19	Changes in Contractor’s Organization	12
20	Assignments Limited—Successors and Assigns Obligated	12
21	Books, Records and Reports.....	12
22	Rules, Regulations and Determinations	12
23	Protection of Water and Air Quality	12
24	Water Conservation	13
25	Equal Employment Opportunity.....	13
26	Compliance with Civil Rights Laws and Regulations.....	14
27	Medium for Transmitting Payments.....	15
	Signature Page	16
	Contractor Signature Page.....	16
	Exhibit A (Cost of Service for Storage)	A-1
	Exhibit B (Cost of Service for Exchange)	B-1
	Exhibit C (Environmental Commitments)	C-1

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THIS CONTRACT, made this ____ day of _____, 2007, pursuant generally to the Act of June 17, 1902 (32 Stat. 388; 43 USC §391), and acts amendatory thereof and supplementary thereto, particularly, but not limited to, Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197; 43 USC §389) and the Fryingpan-Arkansas (Fry-Ark) Project Act of August 16, 1962 (76 Stat. 389; 43 USC §616) as amended, all collectively known as the Federal Reclamation laws, is between the UNITED STATES OF AMERICA, hereinafter referred to as the “United States”, represented by the Contracting Officer executing this Contract, and the CITY OF AURORA, COLORADO, acting by and through its UTILITY ENTERPRISE, hereinafter referred to as the “Contractor”, and collectively are referred to as the “Parties.”

EXPLANATORY RECITALS

The following statements are made in explanation:

- a. WHEREAS, the Secretary of the Interior (Secretary), acting through the Bureau of Reclamation, was authorized by the Fryingpan-Arkansas (Fry-Ark) Project Act of August 16, 1962 (76 Stat. 389; 43 USC §616) as amended, to construct, operate and maintain the Fry-Ark Project (Project), Colorado, in substantial accordance with House Document 187, 83rd Congress, as modified by House Document 353, 86th Congress; and
- b. WHEREAS, Section 1 of the Fry-Ark Act states that the Secretary is authorized to construct, operate and maintain the Project for the purposes of supplying water for irrigation, municipal, domestic, industrial, hydroelectric power, flood control and other beneficial incidental uses including recreation and the conservation and development of fish and wildlife; and
- c. WHEREAS, Section 3 of the Fry-Ark Act states that the Project shall be operated in accordance with the Operating Principles; and
- d. WHEREAS, the Project is a multipurpose project in Colorado that diverts water from the Colorado River Basin on the West Slope and transports it through the Continental Divide to the Arkansas River Basin on the East Slope; and
- e. WHEREAS, Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197; 43 USC §389) authorizes the Secretary to enter into contracts for the exchange or

replacement of water as in the judgment of the Secretary are necessary and in the interests of the United States and the Project; and

f. WHEREAS, Southeastern Colorado Water Conservancy District (District) is the repayment entity for the reimbursable costs of the Project; pursuant to Contract No. 5-07-70-W0086 (January 21, 1965), as amended and supplemented, with the United States; and

g. WHEREAS, Article 13 of Contract No. 5-07-70-W0086, as amended and supplemented, establishes and describes the order of priority for evacuation of excess water stored to meet Project purposes; and

h. WHEREAS, the United States and the Contractor have had a continuous and long-standing contractual relationship dating back to the original Project authorization, that includes several long-term contracts and, since 1986, annual temporary Excess Capacity contracts in variable amounts; and

i. WHEREAS, by letter dated June 5, 2003, the Contractor requested a long-term contract for storage of native Arkansas River Basin water in Pueblo Reservoir for up to 10,000 acre-feet per year. The Contractor also requested a long-term contract to exchange up to 10,000 acre-feet per year of Nonproject Water stored in Pueblo Reservoir with the Project water stored upstream in Twin Lakes or Turquoise Reservoirs; and

j. WHEREAS, the Parties desire to enter into a contract, pursuant to the Federal Reclamation laws and the laws of the State of Colorado, for use of Excess Capacity pursuant to the terms and conditions set forth herein; and

k. WHEREAS the Contractor is a municipal corporation of the State of Colorado, acting by and through its Utility Enterprise, and as such has need and necessity for the storage and exchange contracts that are the subject hereof for the purpose of supplying water for municipal and other uses to the present and future inhabitants of the City of Aurora and to those persons, firms, or corporations desiring water from the Contractor's Utility Enterprise water system; and

l. WHEREAS, the Contractor currently owns water rights, operates facilities and undertakes other lawful transactions concerning water operations in the Arkansas River Valley; and

m. WHEREAS, the United States represented by the Contracting Officer has been delegated the authority from the Secretary, through the Commissioner of Reclamation, to enter into this Contract.

NOW, THEREFORE, The Parties hereto agree as follows:

DEFINITIONS

1. Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent hereof, the term:

a. “Contracting Officer” shall mean the Secretary of the Interior or a duly authorized representative. Unless stated otherwise, the Contracting Officer shall be deemed to be the Secretary’s authorized representative.

b. “Contractor” shall mean the City of Aurora, Colorado, acting by and through its Utility Enterprise, a quasi-municipal entity.

c. “District” shall mean the Southeastern Colorado Water Conservancy District organized under the laws of the State of Colorado which is the repayment entity for the reimbursable costs of the Project; pursuant to Contract No. 5-07-70-W0086 (January 21, 1965), as amended and supplemented.

d. “Excess Capacity” shall mean capacity within Project facilities that is in excess of the needs of the Project, if and when available, as determined by the Contracting Officer, to store, convey, and exchange the Contractor’s Nonproject Water.

e. “Nonproject Water” shall mean the Contractor’s Arkansas River water rights under Colorado decrees numbered 84CW62, 84CW63, 84CW64 (Colorado Canal decrees) 83CW18, 87CW63 (Rocky Ford I decrees), 99CW169 and 99CW170 (Rocky Ford II decrees) and the Contractor’s leased Arkansas River water rights pursuant to the laws of the State of Colorado that were analyzed in the National Environmental Policy Act of 1969 (NEPA) (P.L. 91-190; 42 USC §4321) compliance document.

f. “Operating Principles” shall mean the Fry-Ark Project Operating Principles set forth in House Document 130, 87th Congress, 1st Session, 1961, as amended and supplemented.

g. “Operation, Maintenance & Replacement costs”(“OM&R costs”) shall mean the Contractor’s proportionate share of those costs incurred to operate, maintain, replace, or repair the Project facilities including any administrative, overhead or general expenses incurred by the Contracting Officer, either directly or indirectly, as necessary or to remedy conditions brought about by ordinary use of the Fry-Ark facilities.

h. “Project” shall mean the Fryingpan-Arkansas Project, Colorado.

i. “Project Water” shall mean the water available to the Project through the State of Colorado decreed water rights acquired by the District pursuant to the Operating Principles.

j. "Spill" shall mean evacuation from Pueblo Reservoir pursuant to Article 13 of Contract Number 5-07-70-W0086, as amended and supplemented, between the District and the United States.

PURPOSE

2. The purpose of this Contract is to provide for the use of Excess Capacity in Project facilities for the Contractor's Nonproject Water, which is primarily intended for use outside of the District boundaries, pursuant to the terms and conditions of this Contract.

TERM OF CONTRACT

3. a. This Contract becomes effective on the date first written above and shall remain in effect for a period of 40 years, unless terminated sooner in accordance with the provisions of Article 10.

b. The Contractor may request renewal of this Contract upon written request to the Contracting Officer on or before two years prior to the expiration of this Contract, *Provided, That* such renewal shall be upon mutually agreeable terms and conditions and shall be in accordance with applicable federal laws and policies, and state laws in effect at that time.

LIMITATIONS

4. a. This Contract shall not affect any contractual commitments under any long-term contract concerning the Project, including but not limited to Contract No. 5-07-70-W0086 dated January 21, 1965, as amended and supplemented, between the United States and the District.

b. This Contract shall in no way increase the total quantity of water to the use of which the State of Colorado is entitled and limited under applicable compacts, statutes and treaties. To the extent applicable, this Contract is subject to the following:

- (1) The Boulder Canyon Projects Act, approved December 21, 1928, (45 Stat. 1057; 43 USC §617).
- (2) The Colorado River Compact signed November 24, 1922.
- (3) The Upper Colorado River Basin Compact.
- (4) The Boulder Canyon Project Adjustment Act.
- (5) The Colorado River Storage Act.
- (6) The Mexican Water Treaty.
- (7) The Arkansas River Compact.

c. The Nonproject Water stored under this Contract in Pueblo Reservoir is limited to native Arkansas River Basin water.

d. The Contracting Officer shall operate the Project in accordance with the Operating Principles as amended and supplemented.

e. The use of Excess Capacity pursuant to this Contract shall not cause harm to the Project or Project beneficiaries.

f. This Contract shall not entitle the Contractor to any right, title, or interest in the Project other than that explicitly provided for in this Contract.

CONTRACTED SERVICE

5. a. STORAGE

(1) For the purpose of facilitating exchanges and other decreed purposes not inconsistent with Reclamation law, the Contractor may store up to 10,000 acre-feet of Nonproject Water in Pueblo Reservoir at any one time pursuant to the terms and conditions of this Contract.

(2) Nonproject Water stored by the Contractor is primarily intended for use outside of the District boundaries and, therefore, is subject to spill pursuant to Article 13 of Contract Number 5-07-70-W0086, as amended and supplemented between the District and the United States.

b. EXCHANGE

(1) Based on Project water availability as determined by the Contracting Officer, the Contractor may exchange up to 10,000 acre-feet per year of Nonproject Water stored in Pueblo Reservoir for an equal amount of Project Water stored in either Twin Lakes or Turquoise Reservoirs pursuant to the terms and conditions of this Contract. After the Contracting Officer notifies the Contractor of the amount of exchange that is available to the Contractor for the year, the Contractor shall notify the Contracting Officer within 15 business days of the amount of exchange service that the Contractor requires for the year and shall submit payment for the exchange service as required in Article 6. If the Contractor has not requested all of the exchange service available, the Contractor may submit additional requests for exchange service. The additional requests shall be limited to one request per month in increments of at least 1,000 acre-feet up to a total of 10,000 acre-feet for the year. If the additional exchange service is available, the Contracting Officer may allow such additional requests after the Contractor submits payment for the additional exchange service as required in Article 6.

(2) The Contracting Officer shall have exclusive authority to determine if and when an exchange may occur.

(3) The Contracting Officer shall execute the exchanges herein contemplated through reservoir water accounting procedures.

(4) Exchanges of Nonproject water will be offered to the Contractor on an annual basis only after requests for exchanges by entities that will use the water within the boundaries of the District have first been met.

PAYMENT CHARGES

6. a. STORAGE:

(1) The Contractor shall make an annual advance non-refundable payment as shown in “Exhibit A” attached and made part of this Contract; initially this charge shall be in the amount of \$43.00 per acre-foot for the 10,000 acre-feet of storage space in Pueblo Reservoir. This charge shall be increased annually at the rate of 1.79 percent. This annual payment is required on or before January 1 of each year for the term of the Contract.

(2) The Contractor shall make an annual advance non-refundable payment for its proportionate share of the OM&R costs associated with the use of Pueblo Reservoir. Initially, this OM&R charge shall be \$4.15 per acre-foot for the 10,000 acre-feet of contracted storage, regardless of the amount stored. This charge will be adjusted each year based on actual OM&R costs for Pueblo Reservoir. This annual payment is required on or before January 1 of each year for the term of the Contract.

b. EXCHANGE:

(1) The Contractor shall make an annual advance non-refundable payment as shown in “Exhibit B” attached and made part of this Contract; initially this charge shall be in the amount of \$49.00 per acre-foot for the amount of water that the Contractor requests pursuant to Subarticle 5.b. for exchange service up to 10,000 acre-feet of exchange of Nonproject Water. This charge shall be increased annually at the rate of 1.79 percent. This annual payment is required before the Contractor is provided the requested exchange service.

(2) The Contractor shall make an annual advance non-refundable payment for its proportionate share of the OM&R costs associated with the use of FryArk multipurpose facilities. Initially, this OM&R cost will be \$15.45 per acre-foot for the amount of water that the Contractor requests for exchange service up to 10,000 acre-feet. This charge will be adjusted each year based on actual OM&R costs for the FryArk multipurpose facilities. This annual payment is required before the Contractor is provided the requested exchange service.

c. The rates in Subarticles 6.a.(1) and 6.b.(1) may be reviewed and adjusted upward when determined appropriate by the Contracting Officer but not more than every five years. The annual increase of 1.79 percent satisfies the review requirements of this Subarticle, therefore, further reviews and adjustments are not required.

d. Revenues described in Article 6 will be applied to construction costs, interest on construction and OM&R as appropriate pursuant to the Fry-Ark Act of August 16, 1962,

as amended. The amounts applied to construction costs and OM&R will be indicated on the annual billing sent to the Contractor.

e. In the event that the Contractor fails or is unable to use the quantities of Nonproject Water stored or is unable to exchange the amount of water requested to be exchanged, the Contractor shall not be relieved of the obligation to pay the annual storage and exchange charges described in this Article and the associated OM&R costs required above.

**DELIVERY, MEASUREMENT, AND ACCOUNTING FOR THE USE
OF EXCESS CAPACITY FOR NONPROJECT WATER**

7. a. STORAGE

(1) Upon the Contractor's request and after payment as provided in Subarticles 6.a. and 6.c., the United States will deliver to the Contractor the scheduled Nonproject Water stored within the Project. Should it be necessary at any time as determined by the United States to spill the Contractor's Nonproject Water, the Contracting Officer will notify the Contractor of the quantity and timing of Nonproject Water to be released and any release so made shall be as if made on the demand of the Contractor.

(2) The amount of the Contractor's Nonproject Water that is not delivered or spilled during the calendar year may be carried over to the next year while the Contract is in effect.

b. EXCHANGE

(1) Upon the Contractor's request and after payment as provided in Subarticles 6b. and 6.c., the United States will exchange the Contractor's Nonproject Water stored in Pueblo Reservoir for an equal amount of Project water stored upstream in either Twin Lakes or Turquoise Reservoirs.

(2) The United States reserves the right to limit the cumulative total amount of exchange service under contract. If there is a demand for exchange service in excess of the available exchange service, the available exchange service will be prorated first among the existing contractors for exchange service who will use the water within the boundaries of the District based upon the total amount of exchange service under contract. After exchange service demands for water to be used within the District have been satisfied, Aurora shall have priority for exchange service over all other entities that use water outside of the District boundaries who obtain Excess Capacity exchange service contracts executed after the date of this Contract.

c. PROVISIONS APPLICABLE TO EXCESS CAPACITY

(1) If requested by the Contracting Officer, the Contractor will submit and revise if necessary a written schedule of the anticipated monthly demands for the Excess Capacity of Nonproject Water.

(2) The Contractor shall be solely responsible for making whatever arrangements, including but not limited to approval of the State of Colorado's Division of Water Resources, under Colorado water laws that are necessary for making water available to the Contractor. The Contracting Officer is not responsible for any transportation losses assessed by the State of Colorado's Division of Water Resources and/or associated with the use of Excess Capacity for the Contractor's Nonproject Water from the point of delivery at the outlet works of Pueblo Dam or other dams to the place of use.

(3) The Contracting Officer shall maintain daily accounting of the Contractor's Nonproject Water showing:

- (i) The amount of Contractor Nonproject Water placed into storage in the Project;
- (ii) The amount delivered to the Contractor;
- (iii) The amount of the Contractor's Nonproject Water exchanged for Project water stored upstream in either Twin Lakes or Turquoise Reservoirs;
- (iv) The evaporation losses charged against the Contractor's Nonproject Water, which shall be on a proportional basis with all other water stored in Pueblo Reservoir; and
- (v) The amount of Nonproject Water remaining in storage at the end of each day (Midnight).

(4) The Contractor shall furnish the Contracting Officer without charge such Contractor records as may be required for such daily accounting.

ENVIRONMENTAL COMPLIANCE AND COMMITMENTS

8. a. As a condition of granting this Contract, Aurora agrees to implement the environmental commitments set forth in the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) Number EC-1300-06-09. The environmental commitments are described in Exhibit C, attached, and are made part of this Contract. If at any time during the term of this Contract, the Contractor fails to implement the environmental commitments, the Contracting Officer may immediately cease storage, exchange and delivery of Nonproject Water until the commitments are implemented to the satisfaction of the Contracting Officer. Failure to comply with the environmental commitments may also result in the termination of this Contract at the sole discretion of the United States.

b. The Contractor shall be responsible for the costs of any additional NEPA and Endangered Species Act compliance or mitigation measures associated with the use of the Excess Capacity described in this Contract which may be required by the laws of the United States.

c. The Contractor shall make advance payment for costs to be incurred by the United States which are the Contractor's responsibility under this Article 8.

CONTRACTOR'S USE OF WATER

9. a. Nonproject Water stored or exchanged for the Contractor pursuant to this Contract may be used within the Contractor's service areas for all lawfully decreed purposes not inconsistent with Reclamation laws. Any sale, transfer, or assignment by the Contractor of the storage or exchange rights under this Contract, or any portion thereof, to store or exchange Nonproject Water will be prohibited unless approved in writing by the Contracting Officer.

b. The Nonproject Water stored under this Contract shall be limited to water derived from the Contractor's Arkansas River water rights and leased Arkansas River water rights that were evaluated in the Final EA and FONSI Number EC-1300-06-09.

TERMINATION OF CONTRACT

10. a. The Contractor may terminate this Contract at the end of any year by providing written notice of such termination to the United States pursuant to Article 12 not less than 90 days prior to the effective date of termination.

b. The United States may, at any time, terminate this Contract for cause and cease the use of Excess Capacity hereunder upon failure of the Contractor: to make payments as required by this Contract; to abide by the terms and conditions of this Contract; or to abide by any lawful notice, order, or final administrative or judicial determination that the Contractor has violated a law, rule, or regulation of the United States or the State of Colorado directly relating to this Contract; *Provided, That* this Contract shall not be terminated unless such failure or violation continues 60 days after the United States gives the Contractor written notice to correct the problem.

c. No waiver at any time by the United States of its rights with respect to default or any other matter arising in connection with this Contract shall be deemed to be a waiver with respect to any subsequent default or matter. All rights of action for breach of this Contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States, as amended (41 USC §15).

STANDARD CONTRACT ARTICLES

CONTRACT DRAFTING CONSIDERATIONS

11. Articles 1 through 10 of this Contract have been drafted, negotiated, and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated articles.

NOTICES

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

Regional Director
Great Plains Region
Bureau of Reclamation
P.O. Box 36900
Billings, Montana 59107-6900

or street address:
316 North 26th Street
Billings, Montana 59101

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

Director of Utilities
Aurora Water
15151 East Alameda Parkway Suite 3600
Aurora, Colorado 80012-1555

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

CHARGES FOR DELINQUENT PAYMENTS

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

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

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

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

14. a. The obligation of the Utility Enterprise to pay the United States, on behalf of the City, as provided in this Contract is a valid corporate obligation of the City of Aurora, acting by and through its Utility Enterprise notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligation to the Contractor.

b. The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make excess capacity available to the Contractor through the Fryingpan-Arkansas Project facilities during any period in which the City of Aurora, acting by and through its Utility Enterprise is in arrears in the advance payment of water charges due the United States.

EMERGENCY RESERVE FUND

15. The Contractor has provided a letter dated _____, 2007 (Exhibit D) that adequately demonstrates to the Contracting Officer that sufficient funds are available for the Contractor to use to meet its obligations under the Contract in the event of an emergency. Exhibit D herein referenced is made part of this Contract. The Contractor shall maintain unencumbered cash balances to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service. Funding that is to be provided from the Contractor's unencumbered cash balances shall be available within a reasonable time to meet expenses for the purposes described in this Contract.

CONFIRMATION OF CONTRACT

16. The Contractor, after the execution of this Contract, shall furnish to the United States evidence that pursuant to the laws of the State of Colorado, the Contractor is a legally constituted entity and the contract is lawful, valid, and binding on the Contractor. This Contract shall not be binding on the United States until such evidence has been provided to the United States satisfaction.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR'S ORGANIZATION

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

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

BOOKS, RECORDS, AND REPORTS

21. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Contractor's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use, land-ownership, land-leasing, and water-use data; and other matters that the United States may require. Reports shall be furnished to the United States in such form and on such date or dates as the United States may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

RULES, REGULATIONS, AND DETERMINATIONS

22. a. The Parties agree that the delivery of water or the use of Federal facilities pursuant to this Contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

b. The United States shall have the right to make determinations necessary to administer this Contract that are consistent with the expressed and implied provisions of this Contract, the laws of the United States and the State of Colorado, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

PROTECTION OF WATER AND AIR QUALITY

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

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

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

WATER CONSERVATION

24. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop a water conservation plan, as required by Section 210(b) of the Reclamation Reform Act of 1982 (RRA) and Part 427.1 of the Water Conservation Rules and Regulations effective January, 1, 1998.

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

26. a. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 USC §2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 USC §6101, *et seq.*), Title III of the Americans with Disabilities Act of 1990, and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

d. Complaints of discrimination against the Contractor shall be investigated by the United States' Office of Civil Rights.

MEDIUM FOR TRANSMITTING PAYMENTS

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

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

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

THE UNITED STATES OF AMERICA

By _____
Regional Director

CITY OF AURORA, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE

By: _____
Edward J. Tauer

Title: Mayor

ATTEST:

Debra A. Johnson
City Clerk

SEAL:

APPROVED AS TO FORM FOR AURORA,
Acting by and through its Utility Enterprise

Special Counsel

State of Colorado)
) ss.
County of Arapahoe)

The foregoing Contract was acknowledged before me this _____ day of _____, 2007 by Edward J. Tauer, Mayor and attested to by Debra A. Johnson, City Clerk of the City of Aurora, a Colorado Municipal Corporation of the Counties, Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise.

Witness my hand and official seal

Notary Public

SEAL

My Commission Expires: _____

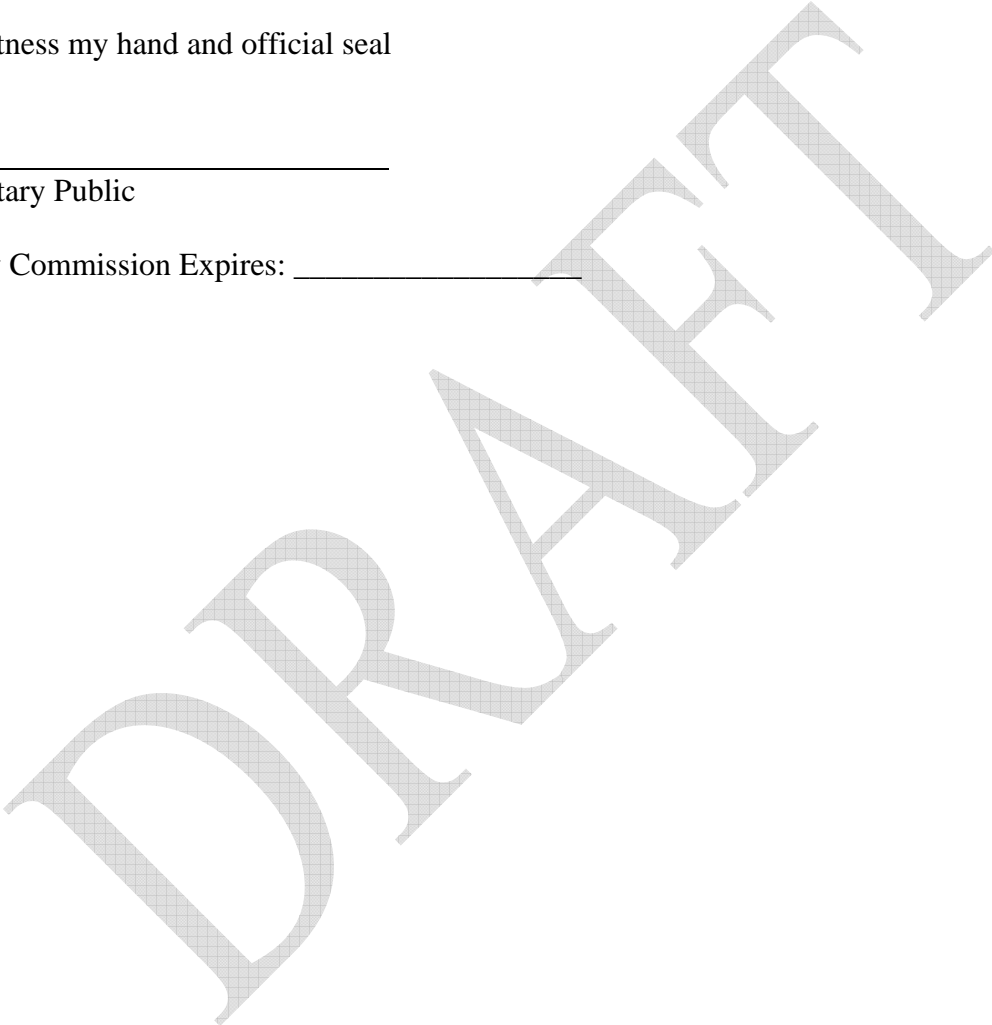


EXHIBIT A

Aurora annual cost of service for storage

YEAR	ANNUAL INCREASE	STORAGE COST PER AF
2007		\$43.00
2008	1.79%	\$43.77
2009	1.79%	\$44.55
2010	1.79%	\$45.35
2011	1.79%	\$46.16
2012	1.79%	\$46.99
2013	1.79%	\$47.83
2014	1.79%	\$48.69
2015	1.79%	\$49.56
2016	1.79%	\$50.44
2017	1.79%	\$51.35
2018	1.79%	\$52.27
2019	1.79%	\$53.20
2020	1.79%	\$54.15
2021	1.79%	\$55.12
2022	1.79%	\$56.11
2023	1.79%	\$57.12
2024	1.79%	\$58.14
2025	1.79%	\$59.18
2026	1.79%	\$60.24
2027	1.79%	\$61.32
2028	1.79%	\$62.41
2029	1.79%	\$63.53
2030	1.79%	\$64.67
2031	1.79%	\$65.83
2032	1.79%	\$67.00
2033	1.79%	\$68.20
2034	1.79%	\$69.42
2035	1.79%	\$70.67
2036	1.79%	\$71.93
2037	1.79%	\$73.22
2038	1.79%	\$74.53
2039	1.79%	\$75.86
2040	1.79%	\$77.22
2041	1.79%	\$78.60
2042	1.79%	\$80.01
2043	1.79%	\$81.44
2044	1.79%	\$82.90
2045	1.79%	\$84.38
2046	1.79%	\$85.90

EXHIBIT B

**Aurora annual cost of service
for exchange**

YEAR	ANNUAL INCREASE	EXCHANGE COST PER AF
2007		\$49.00
2008	1.79%	\$49.88
2009	1.79%	\$50.77
2010	1.79%	\$51.68
2011	1.79%	\$52.60
2012	1.79%	\$53.55
2013	1.79%	\$54.50
2014	1.79%	\$55.48
2015	1.79%	\$56.47
2016	1.79%	\$57.48
2017	1.79%	\$58.51
2018	1.79%	\$59.56
2019	1.79%	\$60.63
2020	1.79%	\$61.71
2021	1.79%	\$62.82
2022	1.79%	\$63.94
2023	1.79%	\$65.08
2024	1.79%	\$66.25
2025	1.79%	\$67.44
2026	1.79%	\$68.64
2027	1.79%	\$69.87
2028	1.79%	\$71.12
2029	1.79%	\$72.40
2030	1.79%	\$73.69
2031	1.79%	\$75.01
2032	1.79%	\$76.35
2033	1.79%	\$77.72
2034	1.79%	\$79.11
2035	1.79%	\$80.53
2036	1.79%	\$81.97
2037	1.79%	\$83.44
2038	1.79%	\$84.93
2039	1.79%	\$86.45
2040	1.79%	\$88.00
2041	1.79%	\$89.57
2042	1.79%	\$91.17
2043	1.79%	\$92.81
2044	1.79%	\$94.47
2045	1.79%	\$96.16
2046	1.79%	\$97.88

EXHIBIT C

Environmental Commitments

The Parties hereby agrees to honor the environmental commitments set forth below. The following environmental commitments are extracted from the Finding of No Significant Impact No. EC-1300-06-09, dated March 22, 2007, and shall be implemented by the Parties as part of the proposed action:

The United States' agrees to the following commitments to avoid adverse effects to Fry-Ark Project:

1. The Contracting Officer will reduce the amount of storage allowable under temporary excess capacity contracts by 10,000 acre-feet, from 80,000 acre-feet to 70,000 acre-feet consistent with mitigation measure number 3 in the Environmental Assessment (EA) and FONSI number EC-1300-06-02, *Temporary Excess Capacity Contracts 2006-2010* dated April 3, 2006.
2. The Contracting Officer will monitor excess capacity operations under this Contract including daily storage, exchange, and release data for Aurora's account, to better understand real-time use of contracted storage.
3. If the Contracting Officer receives credible information that operations under this Contract are causing a violation of the Arkansas River Compact, the Contracting Officer will immediately initiate discussions among the Parties, including the party alleging the Compact violation, to develop a solution and remedy the violation.
4. Contract exchanges will not be made prior to the Contracting Officer determining how much Fry-Ark Project water will be available for contract exchanges. This determination will be made after the Contracting Officer estimates how much water will be needed to support the Voluntary Flow Program and after the Voluntary Flow Program recommendations of the Department of Natural Resources are received by the Contracting Officer. This will assure that contract exchanges do not adversely affect the United States' participation in the Voluntary Flow Program.
5. If the Contracting Officer receives credible information that Aurora's operations under this Contract are causing a violation of regulations established by the Colorado Water Quality Control Commission in accordance with CRS 25-8-101 et. seq., the Contracting Officer will immediately initiate discussions among the appropriate parties, including the Colorado Water Quality Control Division and the entity or entities that submitted the information to the Contracting Officer, to develop a solution.

The City of Aurora, acting by and through its Utility Enterprise agrees to the following commitments to avoid adverse effects to Fry-Ark Project: Some of these commitments originate from commitments previously made in the temporary contract EA that the United States believes should be included in this Contract.

1. As long as it is in existence during the term of this Contract, Aurora will continue to participate in a long-term water quality monitoring and maintenance program as described in Paragraph ITI.B.2.a.ix.b of the Interagency Agreement dated October 3, 2003, titled *Interagency Agreement Between the Southeastern Colorado Water Conservancy District and the City of Aurora*, to establish a water quality baseline and to monitor the effects of the storage and exchange of native Arkansas River water on the overall quality of water in the Arkansas Basin. With respect to this commitment, the United States will retain continuing jurisdiction and the right to renegotiate this commitment if, at any time during this Contract, the Contracting Officer determines, based on credible information, that this Contract is causing a significant adverse effect on water quality that the Contracting Officer believes is directly attributable to this Contract.
2. Aurora will not make physical exchanges of water stored in Pueblo Reservoir under this Contract to upstream facilities when the United States is releasing water to maintain flows for the Upper Arkansas River Voluntary Flow Program (Voluntary Flow Program). Also, Aurora will not make exchanges from Pueblo Reservoir which would require the United States to release additional water to meet the objectives of the Voluntary Flow Program.
3. Aurora agrees to operate all exchanges and storage in Pueblo Reservoir in accordance with applicable water rights decrees and agrees that a violation of those water rights decrees, as determined by the State Engineers office or a court of competent jurisdiction must be immediately rectified and if not remedied would constitute a violation of the Contract terms.
4. Aurora agrees to curtail exchanges of water into Pueblo Reservoir whenever flows in the Arkansas River below Pueblo Reservoir are less than 100 cfs as measured by the sum of the Arkansas River above Pueblo gage and return flows from the Pueblo Fish Hatchery.
5. Under this Contract Aurora may not store water that originates in the Colorado River basin. Only those owned and leased water rights described in EA No. EC-1300-06-09 will be stored under this Contract.
6. Aurora agrees to limit their long-term excess capacity contract operations that have the potential to affect the Arkansas River below Pueblo Reservoir in accordance with the Arkansas River flow program as outlined in the six party Intergovernmental Agreement titled *Intergovernmental Agreement among the City of Pueblo, the City of Aurora, the Southeastern Colorado Water Conservancy District, the City of Fountain, the City of Colorado Springs, and the Board of Water Works of Pueblo, Colorado* or any subsequent amendment of this agreement as may be agreed to by the parties.

7. Aurora will not allow flows on the Arkansas River, as measured at the Avondale gage, to fall below 86 cfs because of physical exchanges of water stored in Pueblo Reservoir under this Contract.

DRAFT