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4 UNITED STATES  
5 DEPARTMENT OF THE INTERIOR  
6 BUREAU OF RECLAMATION  
7  
8 ANIMAS-LA PLATA PROJECT  
9 COLORADO RIVER STORAGE PROJECT

10  
11 OPERATION, MAINTENANCE, AND REPLACEMENT CONTRACT  
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15	<u>EXPLANATORY RECITALS</u>	3
16	1. <u>DEFINITIONS</u>	4
17	2. <u>APPLICABLE LAW</u>	6
18	3. <u>TERM OF THE CONTRACT</u>	6
19	4. <u>TRANSFERRED WORKS</u>	7
20	5. <u>TRANSFER INSPECTION</u>	7
21	6. <u>ACCEPTANCE OF OPERATION, MAINTENANCE, AND REPLACEMENT</u>	
22	<u>RESPONSIBILITY</u>	9
23	7. <u>OPERATION, MAINTENANCE, AND REPLACEMENT COSTS</u>	9
24	8. <u>MEASUREMENT AND DISTRIBUTION OF STATUTORY WATER ALLOCATION</u>	12
25	9. <u>PROJECT WATER SUPPLY, DELIVERY, AND SHORTAGES</u>	13
26	10. <u>LIMIT OF LIABILITY</u>	13
27	11. <u>REMEDIES</u>	14
28	12. <u>COLLECTION OF INCIDENTAL REVENUES</u>	16
29	13. <u>CHARGES FOR DELINQUENT PAYMENTS</u>	16
30	14. <u>NOTICES</u>	17

1	15. <u>OPERATION AND MAINTENANCE OF TRANSFERRED WORKS PAYMENT OF</u>	
2	<u>MISCELLANEOUS COSTS</u>	17
3	16. <u>EXAMINATION, INSPECTION, AND AUDIT OF TRANSFERRED WORKS,</u>	
4	<u>RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND</u>	
5	<u>MAINTENANCE</u>	18
6	17. <u>EMERGENCY RESERVE FUND</u>	19
7	18. <u>CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS</u>	20
8	19. <u>OFFICIALS NOT TO BENEFIT</u>	20
9	20. <u>CHANGES IN ASSOCIATION'S ORGANIZATION</u>	20
10	21. <u>ASSIGNMENT LIMITED–SUCCESSORS AND ASSIGNS OBLIGATED</u>	20
11	22. <u>BOOKS, RECORDS AND REPORTS</u>	20
12	23. <u>RULES, REGULATIONS, AND DETERMINATIONS</u>	21
13	24. <u>ADMINISTRATION OF FEDERAL PROJECT LANDS</u>	21
14	25. <u>PROTECTION OF WATER AND AIR QUALITY</u>	21
15	26. <u>CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY</u>	22
16	27. <u>CLEAN AIR AND WATER</u>	22
17	28. <u>EQUAL EMPLOYMENT OPPORTUNITY</u>	24
18	29. <u>COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS</u>	25
19	30. <u>CERTIFICATION OF NONSEGREGATED FACILITIES</u>	25
20	31. <u>NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR</u>	
21	<u>CERTIFICATIONS OF NONSEGREGATED FACILITIES</u>	26
22	32. <u>RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION</u>	26
23	33. <u>PEST MANAGEMENT</u>	26
24	34. <u>MEDIUM FOR TRANSMITTING PAYMENTS</u>	26
25	35. <u>CONTRACT DRAFTING CONSIDERATIONS</u>	27

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12

13  
14 THIS CONTRACT, made this 30<sup>th</sup> day of December, 2009, pursuant to the  
15 Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or  
16 supplementary thereto, all of which acts are commonly known and referred to as the Federal  
17 Reclamation Laws, among the UNITED STATES OF AMERICA, hereinafter called the United  
18 States, and the Animas-La Plata Operations, Maintenance, and Replacement Association,  
19 hereinafter called the Association, with its principal place of business and office at Durango,  
20 Colorado.

21  
22 EXPLANATORY RECITALS

23 The following statements are made in explanation:

24 The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the planning and  
25 investigation of the Animas-La Plata Project (Project) as a participating project of the Colorado  
26 River Storage Project; subsequently, the construction, operation, and maintenance of the  
27 Animas-La Plata Project was authorized by Title V of the Colorado River Basin Project Act of  
28 September 30, 1968 (82 Stat. 896), and the United States has investigated, planned, and is  
29 constructing said Animas-La Plata Project for the storage, diversion, and distribution of the  
30 waters of the Animas River, which Project has among its authorized purposes the storage and  
31 furnishing of water for municipal and industrial purposes including such water to settle certain  
32 federal Indian water right claims. The water rights settlement purposes of the Project were  
33 authorized by the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-  
34 585) as amended by the Colorado Ute Settlement Act Amendments of 2000 (2000  
35 Amendments), Title III of Public Law 106-554. The operation of the Animas-La Plata Project is

1 also subject to the Animas-La Plata Project Compact between the States of New Mexico and  
2 Colorado, § 37-64-101, CRS, and NMSA § 72-15-1. The Southwestern Water Conservation  
3 District (District) holds Colorado water rights for the Animas La Plata Project under decrees  
4 entered in Civil Actions B-1751 and C-807, District Court, La Plata County, as changed in Case  
5 No. 80CW237, District Court, Water Division 7. The District has applied for a new water right  
6 for an additional filling source for Lake Nighthorse in Case No. 08CW81.

7 The Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Navajo Nation, Colorado Water  
8 Resources and Power Development Authority (CWRPDA) (for the Animas-La Plata Water  
9 Conservancy District (ALPWCD), the San Juan Water Commission (SJWC), and the La Plata  
10 Conservancy District (LPCD), have entered into an Intergovernmental Agreement (IGA)  
11 establishing the Association in order to carry out the operation, maintenance and replacement  
12 (“OM&R”) activities and responsibilities of the sponsors for the Project in accordance with the  
13 provisions of the IGA, the Enabling Law defined below, and this Contract.

14

15 The parties enter into this Contract to provide for the necessary OM&R activities of the  
16 Transferred Works (as defined below).

17 NOW THEREFORE, in consideration of the terms and conditions of this Contract, the  
18 parties agree as follows:

19

20 1.

DEFINITIONS

21 Where used in this Contract:

22 (a) “Association” means the Animas-La Plata Operations, Maintenance, and  
23 Replacement Association, established by the Project sponsors who were signatory to the  
24 IGA, dated March 4, 2009, pursuant to the Colorado Uniform Unincorporated Nonprofit  
25 Association Act, 7-30-101 et seq., CRS (2006), to carry out the OM&R activities and  
26 responsibilities of the Project.

27 (b) “IGA” or “Intergovernmental Agreement” means that agreement dated March 4,  
28 2009, entered into by the Colorado Water Resource and Power Development Authority, the  
29 La Plata Conservancy District, the Navajo Nation, the San Juan Water Commission, the  
30 Southern Ute Indian Tribe, and the Ute Mountain Ute Tribe to establish the Association and

1 provide for the terms, conditions, and concepts under which OM&R of the Transferred  
2 Works is to take place.

3 (c) "United States", "Secretary", "Reclamation" or "Contracting Officer" or any of them  
4 means the Secretary of the United States Department of the Interior or his/her duly  
5 authorized representative.

6 (d) "Four Corners Construction Office" means the Reclamation office responsible for  
7 overseeing the design and construction of the Animas-La Plata Project.

8 (e) "Western Colorado Area Office" means the Reclamation office responsible for  
9 overseeing the OM&R activities associated with the Animas-La Plata Project.

10 (f) "Regional Director" means the Regional Director of Reclamation's Upper Colorado  
11 Region.

12 (g) "Sponsors" means those entities that contract with the United States regarding water  
13 from this Project.

14 (h) "Project" means the Animas-La Plata Project, a participating Project of the Colorado  
15 River Storage Project.

16 (i) "Statutory Water Allocation" means the municipal and industrial (M&I) water  
17 allocation pursuant to the 2000 Amendments.

18 (j) "Project Storage Water" means the portion of the Statutory Water Allocation  
19 provided from storage in Lake Nighthorse (formerly Ridges Basin Reservoir), the storage  
20 component of the Project.

21 (k) "Transferred Works" means Ridges Basin Dam and Lake Nighthorse and their  
22 appurtenant facilities, including the downstream channel improvements on Basin Creek;  
23 Durango Pumping Plant, and its appurtenant facilities; Ridges Basin Inlet Conduit, and its  
24 appurtenant facilities; and the Operation and Maintenance Facilities which are necessary to  
25 support the operation and maintenance of the Project, and for which the OM&R  
26 responsibility is anticipated to be transferred to the Association by the United States, as  
27 further described in Article 5 herein.

28 (l) "Consultation" or "Consult" refers to an ongoing obligation of both parties to  
29 implement the provisions of this Contract with a full exchange of information so as to assure  
30 that each party is provided full participation in the decision making process. Consultation

1 shall be required of each party with respect to each section of the Contract regardless of  
2 whether the section itself sets forth a consultation requirement. The Consultation required  
3 shall be reasonable under the circumstances, and except in exigent circumstances  
4 Consultation shall be undertaken in advance of decision making. In the event that agreement  
5 cannot be reached and the United States makes a decision that is required in order to conduct  
6 operation, maintenance, and replacement for the Transferred Works, appeals are available to  
7 the extent allowed under applicable laws.

8  
9 2. APPLICABLE LAW

10 (a) In addition to the Project authorizations cited earlier, the transfer of operation and  
11 maintenance herein is authorized pursuant to Section 6 of the Reclamation Act (Act of June  
12 17, 1902, 32 Stat. 388); Section 5 of the Reclamation Extension Act (Act of August 13, 1914,  
13 38 Stat. 686); and Subsection G of the Second Deficiency Appropriation Act for 1924 (Fact  
14 Finders' Act, Act of December 5, 1924, 43 Stat. 672); the Transfer Title to Movable Property  
15 to Irrigation Districts Act (Act of July 29, 1954, 68 Stat. 580), and the Amend Movable  
16 Property Title Transfer Act (Act of June 24, 1965, 79 Stat. 172).

17 (b) OM&R of the Project shall be consistent with the Record of Decision dated  
18 September 25, 2000, and in accordance with the Environmental Commitments in Chapters 4  
19 and 5 of the Animas-La Plata Final Supplemental Environmental Impact Statement (FSEIS),  
20 which are attached as Exhibit A to this contract; the parties acknowledge that the IGA  
21 provides for operation of the Transferred Works in accordance with the Record of Decision.

22 (c) Any additions, changes to, or operation of Transferred Works different from that  
23 stated in the FSEIS dated July 2000 and subsequent Record of Decision dated September 25,  
24 2000, may be subject to further compliance with applicable environmental statutes and must  
25 be approved by the United States.

26  
27 3. TERM OF THE CONTRACT

28 This Contract shall become effective upon the date of execution by the Contracting  
29 Officer, and shall remain in full force and effect until terminated by mutual written  
30 agreement of the United States and the Association, unless terminated pursuant to Article 11

1 herein. The actual transfer of OM&R responsibility for the Transferred Works to the  
2 Association will occur as set forth in Article 5.

3  
4 4. TRANSFERRED WORKS

5 (a) As contemplated by Article 15 below, the United States shall transfer to the  
6 Association, pursuant to the process outlined in Article 5, the responsibility for the OM&R of  
7 the Transferred Works. In addition, the United States shall also transfer to the Association  
8 certain movable property and equipment determined by the Contracting Officer, after  
9 Consultation with the Association, to be required for the OM&R of the Transferred Works.  
10 A detailed list of the movable property and equipment will be mutually agreed to and  
11 included in the Transfer Inspection Report defined below.

12 (b) The Association shall not be responsible for the operation, maintenance, replacement  
13 and management of the following Project features, lands, facility relocations, or appurtenant  
14 facilities:

- 15 (1) Navajo Nation Municipal Pipeline, the OM&R responsibility for which will be  
16 addressed in the water delivery contract between the Contracting Officer and the Navajo  
17 Nation;  
18 (2) Recreation facilities at Lake Nighthorse;  
19 (3) Mitigation Area and related lands located in the La Plata River Basin;  
20 (4) County Road 211, gas lines, power lines;  
21 (5) And other facilities as specified between the United States and the Association.

22 (c) Consultation between and approval of both the Association and the United States will  
23 be required in any instance where a Contract duty of a party may be affected by any action or  
24 program undertaken by the other party.

25  
26 5. TRANSFER INSPECTION

27 Transfer from Reclamation construction status to Reclamation OM&R status and  
28 subsequent transfer of OM&R responsibility from Reclamation to the Association shall occur  
29 as set forth in this article. Title to all Project Works will remain with the United States unless  
30 and until the Congress of the United States provides otherwise.

1 (a) The transfer process will begin upon notification of substantial completion by the  
2 Four Corners Construction Office. The Western Colorado Area Office shall notify the  
3 Association upon receipt of the notification. Thereafter Reclamation shall conduct a transfer  
4 inspection in Consultation with the Association. Reclamation will then prepare a report on  
5 the inspection (the “Transfer Inspection Report”), which will contain:

6 (1) a detailed list of the facilities and of the movable property and equipment to be  
7 transferred, together with: (a) a description of manufacturers’ warranties to be provided  
8 and/or transferred to the Association in connection with the Transferred Works and other  
9 facilities and property to be transferred; (b) pertinent design, construction, and as-built  
10 documents for the Transferred Works; and (c) maintenance protocols, equipment  
11 manuals, and other like items relating to the operation and maintenance of the  
12 Transferred Works;

13 (2) a list of design and construction deficiencies, if any, identified by the transfer  
14 inspection in the Transferred Works and other facilities and property to be transferred;

15 (3) a plan for correcting any such deficiencies, setting forth: (a) the corrective  
16 measures to be applied; (b) the entity or entities responsible for undertaking such  
17 corrective measures, including when they will be undertaken and how they will be  
18 funded; (c) anticipated completion dates for the corrective measures; and

19 (4) any other matters required by Reclamation Directives and Standards.

20 (b) Approval by the Four Corners Construction Office, the Regional Director, and the  
21 Western Colorado Area Office of the Transfer Inspection Report will conclude the transfer  
22 process from Reclamation construction status to Reclamation OM&R Status. Upon  
23 conclusion of the transfer process, Reclamation will provide written notice to the Association  
24 of substantial completion of the Project. Unless hydrologic or unforeseen conditions prevent  
25 the completion of first fill by August 1, 2012, the first fill of Lake Nighthorse will be  
26 completed prior to transfer from Reclamation construction status to Reclamation OM&R  
27 Status. The transfer to Reclamation OM&R status shall not affect Reclamation’s obligation  
28 to complete the first fill of Lake Nighthorse.



1 (c) The transfer of OM&R responsibility from Reclamation to the Association shall be  
2 complete upon approval by the Association of the Transfer Inspection Report and any  
3 Supplemental Transfer Inspection Report, if any is required. The Association may request a  
4 Supplemental Transfer Inspection Report to address any outstanding measures or issues  
5 discovered following transfer to Reclamation OM&R Status.

6  
7 6. ACCEPTANCE OF OPERATION, MAINTENANCE, AND REPLACEMENT  
8 RESPONSIBILITY

9 After receiving the OM&R responsibility pursuant to Article 5, the Association shall,  
10 at its own cost and expense except as provided in Article 7(c) below, carry out the OM&R of  
11 the Transferred Works. The Association shall employ a competent and suitable manager or  
12 operating entity after Consultation with the United States. In the event the United States  
13 raises material concerns about the competence or suitability of the manager or operating  
14 entity, the parties shall promptly Consult as to the future best interests of the Project. Nothing  
15 in this Contract shall prevent the Association from implementing an appropriate program of  
16 Indian preference in hiring or contracting.

17  
18 7. OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

19 (a) The OM&R costs for the Transferred Works shall consist of both fixed and variable  
20 OM&R costs as specified in Exhibit A of the IGA.

21 (b) In addition to fixed OM&R costs provided in Sections 6.03, 6.04, 6.05, and 6.06 of  
22 Exhibit A of the IGA, fixed OM&R costs shall include costs incurred to replace water  
23 released for required operational tests subsequent to transfer of OM&R responsibility to the  
24 Association, annual payments to an Emergency Reserve Fund defined below, and annual  
25 payments to a replacement reserve fund (“Replacement Reserve Fund”). Payments to the  
26 Emergency Reserve Fund shall be made pursuant to the provisions of Article 17 herein. The  
27 Association shall make annual payments in the amount of \$45,000, as appropriately adjusted  
28 for inflation, to the Replacement Reserve Fund to ensure adequate funds are available to  
29 replace equipment when needed.

1 (c) The OM&R costs allocated under (a) and (b) above shall be developed by the  
2 Association. The Association will begin payment of OM&R costs when the Project has been  
3 transferred from construction status to Reclamation OM&R status.

4 (1) Fixed OM&R costs shall be allocated as follows:

5	1. Southern Ute Indian Tribe	35.5%
6	2. Ute Mountain Ute Indian Tribe	35.5%
7	3. La Plata Conservancy District	1.6%
8	4. SJWC	8.7%
9	5. CWRPDA (ALPWCD)	5.7%
10	6. Navajo	2.5%
11	7. Colorado	<u>10.5%</u>
12	Total	100%

13 During the time the United States is paying all or any portion of a Colorado Ute  
14 Tribe's OM&R costs, the Association may only change the foregoing fixed OM&R cost  
15 allocation with the approval of the United States. Thereafter, the allocation may be changed  
16 by the Association utilizing the processes set forth in the IGA.

17 (2) If part of an entity's Statutory Water Allocation is reallocated or relinquished, the  
18 proportionate share of the fixed OM&R costs shall be allocated to the entity that receives  
19 that portion of the Statutory Water Allocation. Colorado will have no obligation for  
20 OM&R costs if it does not acquire any portion of its Statutory Water Allocation, and its  
21 obligation will be reduced proportionately if it acquires less than its full allocation.

22 (3) Variable OM&R costs shall be calculated and paid as provided in Sections 7 and  
23 8 of Exhibit A of the IGA.

24 (d) With respect to the Statutory Water Allocation of a Colorado Ute Tribe from the  
25 Animas-La Plata Project, until that water is first used by that Tribe or used pursuant to a  
26 water use contract with that Tribe, the Secretary shall pay the annual OM&R costs allocable  
27 to that Statutory Water Allocation of that Tribe. Upon either Colorado Ute Tribe's first use of  
28 any increment of its water allocation, or the Tribe's first use of such water pursuant to a  
29 water use contract, that Tribe shall bear a pro rata share of the allocable annual OM&R costs  
30 for that increment of water. The Secretary's obligation to pay OM&R costs, as set forth

1 herein, shall not be diminished by reason of the transfer of OM&R responsibilities to the  
2 Association. The Secretary shall pay Colorado Ute OM&R costs consistent with the  
3 procedures established by the Association, and in accordance with the 2000 Amendments.

4 (e) The expenditure or advance of any money or the performance of any obligation of  
5 Reclamation under this contract shall be contingent upon appropriation or allotment of funds  
6 by the Congress of the United States. The United States shall Consult with, and timely  
7 apprise the Association of, its progress in securing funds to defray its OM&R payment  
8 obligation as allowed by budgetary statutes and regulations. In the event adequate funds are  
9 not appropriated or allotted by Congress, the Association will add any unappropriated,  
10 unallotted, or non-reimbursed amount to the OM&R costs that Reclamation is responsible for  
11 pursuant to Article 7(d) in the following water year provided, however, nothing in this article  
12 shall limit the rights of the Association to commence any appropriate action necessary  
13 against Reclamation to obtain any restitution, relief or remedy available by law in the event  
14 adequate funds are not appropriated or allotted by the Congress.

15 (f) During any period in which the United States is performing the OM&R on the  
16 Transferred Works, the Association agrees it will pay, in advance, on the basis of annual  
17 estimates made by the Contracting Officer, in accordance with standard Reclamation  
18 procedures and Reclamation law, the OM&R costs of the Transferred Works operated by the  
19 United States and determined by the Contracting Officer to be properly chargeable to the  
20 Association. A notice of annual estimates hereinafter referred to as the operation and  
21 maintenance charge notice, shall be furnished to the Association on or before June 1 of each  
22 year, and shall contain a statement of the estimated cost of operation and maintenance to be  
23 paid by the Association for the following calendar year. The Association agrees to pay the  
24 amount specified in such operation and maintenance charge notice on or before December 31  
25 of the year in which the notice is given. Notwithstanding the other provisions of this article,  
26 whenever funds so advanced are inadequate to pay the Association's share of operating and  
27 maintaining the works being operated by the United States, the Contracting Officer shall give  
28 a supplemental operation and maintenance charge notice stating therein the amount of  
29 additional funds required and the Association shall advance such additional funds on or  
30 before the date specified in any supplemental notice. If the funds advanced by the

1 Association, under this article, exceed the actual cost of operation, and maintenance, properly  
2 chargeable to the Association for the year for which advanced, an appropriate adjustment will  
3 be made in the notice issued the next succeeding year.

4 (g) If, during any period in which the United States is operating the Project, the  
5 Association fails to make payments pursuant to Articles 7(a) through 7(f) above, the OM&R  
6 payment provisions contained in individual Sponsors' repayment contracts with the United  
7 States will be invoked.

8 (h) ONE-YEAR WORK PLAN: Upon Reclamation's transfer of the OM&R  
9 responsibility of the Transferred Works to the Association, the Association will develop a  
10 one year detailed OM&R work plan. The Association will finalize and approve the work  
11 plan by October 1 of each year.

12 (i) THREE-YEAR WORK PLAN: Upon Reclamation's transfer of the OM&R  
13 responsibility of the Transferred Works pursuant to Article 5 herein, the Association will  
14 prepare a three year OM&R work plan and submit it to Reclamation by July 1 of each year  
15 for Reclamation's budget appropriation purposes.

16 (j) Consultation with Reclamation: During the period in which the United States is  
17 paying all or a portion of the two Ute Tribes' OM&R costs, the Association shall Consult  
18 with Reclamation prior to finalizing the three-year and one-year Work Plans described  
19 herein. Reclamation shall Consult with the Association regarding its progress in securing the  
20 funds needed for the United States to meet its obligations under this Contract.

21 (k) The payment of OM&R costs by the Association as identified in Article 7(a) through  
22 7(f) substitutes for the OM&R payment provisions required by Sponsors under their  
23 individual repayment or water delivery contracts. Payment of the Colorado Ute Tribes'  
24 OM&R costs by the United States shall be in accordance with Section 6 of the 2000  
25 Amendments.

26  
27 8. MEASUREMENT AND DISTRIBUTION OF STATUTORY WATER ALLOCATION

28 (a) The United States has installed measuring devices and the Association shall measure  
29 water delivered through the main outlet works of Ridges Basin Dam and/or in the Animas  
30 River at the Durango Pumping Plant. The Association shall operate, maintain, and replace

1 these measuring devices and shall install, operate, maintain and replace any devices  
2 necessary to measure water delivered directly out of Lake Nighthorse at points not through  
3 the main outlet works, or diverted directly from the river.

4 (b) All non-project facilities and appurtenant structures required for taking water  
5 furnished under this Contract from the points of delivery and putting it to use by the Sponsors  
6 and their subcontractors will be acquired, constructed or installed, and operated and  
7 maintained by the Sponsors or their subcontractors at their sole expense. Construction of  
8 facilities on Reclamation-owned land required to deliver water directly from Lake  
9 Nighthorse shall require review and written approval by the Contracting Officer after  
10 Consultation with the Association.

11 (c) The United States shall not be responsible for the control, carriage, handling, use,  
12 disposal, or distribution of water furnished the Sponsors from Lake Nighthorse, the outlet  
13 works of Ridges Basin Dam, or bypassed at the Durango Pumping Plant to the place of final  
14 use. The Association will hold the United States harmless on account of damage or claim of  
15 damage of any nature whatsoever arising out of or connected with the control, carriage,  
16 handling, use, disposal, or distribution of water by the Association.

17  
18 9. PROJECT WATER SUPPLY, DELIVERY, AND SHORTAGES

19 (a) Accounting for and delivery of Project water shall be pursuant to Article 4 of Exhibit  
20 A of the IGA.

21 (b) Shortages to Statutory Water Allocations. During periods of drought, there may be a  
22 time when insufficient water is available to fulfill the annual Statutory Water Allocation. In  
23 such cases, shortages shall be administered pursuant to Article 5 of Exhibit A of the IGA.

24  
25 10. LIMIT OF LIABILITY

26 (a) The United States or any of its officers, agents, or employees shall not be liable in any  
27 manner for the failure of the Project, for any reason, to supply water to which a Sponsor is  
28 entitled, except if such failure of delivery is caused by direct action of the United States, its  
29 officers, agents or employees. Nothing in this subarticle shall protect the Association from

1 any claim that it negligently or intentionally operated the Project so as to injure one or more  
2 of the Sponsors.

3 (b) There may occur at times during any year a shortage in the quantity of water available  
4 for furnishing to the Sponsors through and by means of the Project, but in no event shall any  
5 liability accrue against the United States or any of its officers, agents, or employees for any  
6 damage, direct or indirect, arising from a shortage on account of errors in operation, drought,  
7 or any other causes.

8  
9 11. REMEDIES

10 (a) In the event the Association is found to be operating the Transferred Works or any  
11 part thereof in violation of this Contract or failing any financial or other commitment to the  
12 United States under the terms and conditions of this Contract, then upon the election of the  
13 Contracting Officer, the United States may (1) enforce the OM&R payment provisions in the  
14 Sponsor's individual repayment or water delivery contracts, and/or (2) take over from the  
15 Association the OM&R responsibility for the Transferred Works by giving written notice to  
16 the Association of such election and the effective date thereof. Thereafter, during the period  
17 of operation by the United States, upon notification by the Contracting Officer, the  
18 Association shall pay to the United States, annually in advance, the cost of OM&R of the  
19 Transferred Works as determined by the Contracting Officer. During this period, the United  
20 States will attempt to operate the Transferred Works in accordance with the principles  
21 contained in the IGA. At such time as the Association and the United States agree that the  
22 Association can and will once again operate the Transferred Works and fulfill its financial  
23 and other obligations as required by this Contract (or any supplement or amendment thereto),  
24 then upon written notice of the Contracting Officer, OM&R responsibility for the Transferred  
25 Works will again be transferred and assumed by the Association. All costs incurred by the  
26 United States in preparing to reassume OM&R responsibilities of the Transferred Works will  
27 be reimbursable and allocated as fixed costs. If costs are allocated as provided in Article 7  
28 and water is allocated as provided in Article 9, the income from the Variable OM&R Fund  
29 (as defined in Exhibit A to the IGA) shall be made available to the United States for the  
30 purposes set forth in Exhibit A to the IGA. Nothing in this Agreement shall be deemed to

1 require the Association to convey the Variable OM&R Fund to the United States.

2 (b) During any period in which the United States is operating the Transferred Works, the  
3 United States shall not be responsible for the control, carriage, handling, use, disposal, or  
4 distribution of water that is delivered from Lake Nighthorse or bypasses the Durango  
5 Pumping Plant to the place of final use. The Association will hold the United States harmless  
6 on account of damage or claim of damage of any nature whatsoever arising out of or  
7 connected with the control, carriage, handling, use, disposal, or distribution of water by the  
8 Association.

9 (c) The Contracting Officer may terminate this Contract at any time before the expiration  
10 of its term whenever the Contracting Officer determines that the Association is in breach of  
11 the Contract. Prior to the effective date of any such termination, the Contracting Officer shall  
12 notify the Association in writing of the reason for the proposed termination, including with  
13 specificity, the purported deficiencies of the Association in carrying out the terms and  
14 conditions of this Contract. Such notice of purported deficiency shall be issued only after the  
15 designated representative of the Association has met with the Contracting Officer or his  
16 designated representative to attempt in good faith and with the use of best efforts to resolve  
17 any dispute arising from the purported deficiency. It is the intent of the parties that disputes  
18 be resolved pursuant to this Article 11 as expeditiously as is reasonably possible without the  
19 necessity of other relief at law or in equity. The Association shall have at least ninety (90)  
20 days from receipt of the written notice of said reasons for termination to correct all  
21 deficiencies referred to in said written notice or submit a plan to correct said deficiencies.

22 (d) Upon any termination of this Contract, the Association shall transfer to the United  
23 States (1) title to all tools, vehicles, supplies, and equipment transferred under Article 4(a) (to  
24 the extent still available) or purchased by the Association for the purposes of this Contract,  
25 (2) any unexpended funds in its possession that were collected for, or allocated to the OM&R  
26 of the Transferred Works for the then-current fiscal year, (3) upon appropriate credit to the  
27 Project Sponsors, and assurances that it will be used and maintained in accordance with  
28 Article 17 below, the Emergency Reserve Fund, (4) upon appropriate credit to the Project  
29 Sponsors, and assurances that it will be used and maintained solely for replacement purposes  
30 as set forth in Article 7, the Replacement Reserve Fund, and (5) provided that costs are

1 allocated as provided in Article 7 and water is allocated as provided in Article 9, the income  
2 from the Variable OM&R Fund shall be made available to the United States for the purposes  
3 set forth in Exhibit A to the IGA. Nothing in this Agreement shall be deemed to require the  
4 Association to convey the Variable OM&R Fund to the United States.

5 (e) Nothing in this Contract shall diminish the rights of either party to pursue claims or  
6 appeals otherwise recognized under applicable law.

7  
8 12. COLLECTION OF INCIDENTAL REVENUES

9 All revenues derived from the rental or sale of land, interests in land, or other  
10 property acquired and retained by the United States for project purposes shall belong to the  
11 United States and not be credited to the Association. Lands retained by the United States do  
12 not include that portion of the unencumbered lands retained by the ALPWCD after the  
13 permanent easement boundaries for the United States are established as required in the  
14 Assignment of Easement dated October 10, 2002, and recorded on October 30, 2002, in the  
15 La Plata County records at R. # 841681. Nothing in this Contract shall prohibit the  
16 Association from seeking reimbursement for services it provides.

17  
18 13. CHARGES FOR DELINQUENT PAYMENTS

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

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

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

36  
37 14. NOTICES



1 Any notice, demand, or request authorized or required by this Contract shall be  
2 deemed to have been given, on behalf of the Association, when mailed, postage prepaid, or  
3 delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125  
4 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the  
5 United States, when mailed, postage prepaid, or delivered to the Association, 103 Everett  
6 Street, Durango, CO 81301. The designation of the addressee or the address may be changed  
7 by notice given in the same manner as provided in this article for other notices.  
8

9 15. OPERATION AND MAINTENANCE OF TRANSFERRED WORKS PAYMENT OF  
10 MISCELLANEOUS COSTS

11 (a) Upon substantial completion of the Project, or as otherwise determined by the  
12 Contracting Officer, and following written notification, the care, operation, and maintenance  
13 of any or all of the Project may be transferred to the Association. Title to the Transferred  
14 Works will remain in the name of the United States, unless otherwise provided by the  
15 Congress of the United States.

16 (b) The Association, without expense to the United States, shall care for, operate, and  
17 maintain the Transferred Works in full compliance with the terms of this Contract and in a  
18 manner that the Transferred Works remain in good and efficient condition.

19 (c) Necessary repairs of the Transferred Works shall be made promptly by the  
20 Association. In case of unusual conditions or serious deficiencies in the care, operation, and  
21 maintenance of the Transferred Works threatening or causing interruption of water service,  
22 the Contracting Officer may issue to the Association a special written notice of those  
23 necessary repairs. Except in the case of an emergency, the Association will be given 60 days  
24 to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable  
25 to the Contracting Officer. In the case of an emergency, or if the Association fails to either  
26 make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the  
27 Contracting Officer within 60 days of receipt of the notice, the Contracting Officer may  
28 cause the repairs to be made, and the cost of those repairs shall be paid by the Association as  
29 directed by the Contracting Officer.

30 (d) The Association shall not make any substantial changes in the Transferred Works  
31 without first obtaining written consent of the Contracting Officer. The Association shall  
32 ensure that no unauthorized encroachment occurs on project land and rights-of-way.

33 (e) The Association agrees to indemnify the United States for, and hold the United States  
34 and all of its representatives harmless from, all damages resulting from suits, actions, or  
35 claims of any character brought on account of any injury to any person or property arising  
36 out of any act, omission, neglect, or misconduct in the manner or method of performing any  
37 construction, care, operation, maintenance, supervision, examination, inspection, or other  
38 duties of the Association or the United States on Transferred Works required under this  
39 Contract, regardless of who performs those duties. The Contractor does not agree to indemnify  
40 the United States for any damages arising from intentional torts or malicious actions committed  
41 by employees of the United States.

42 (f) The Association shall cooperate with the Contracting Officer in implementing an  
43 effective safety of dam(s) program. The United States agrees to provide the Association and  
44 the appropriate agency of the State or States in which the project facilities are located with  
45 design data, designs, and an operating plan for the dam(s) and related facilities consistent  
46 with the current memorandum of understanding between the United States and the State of

1 Colorado relating to the coordination of planning, design, construction, operation, and  
2 maintenance processes for dams and related facilities.

3 (g) In addition to all other payments to be made by the Association under this Contract,  
4 the Association shall reimburse to the United States, following the receipt of a statement  
5 from the Contracting Officer, all miscellaneous costs incurred by the United States for any  
6 work involved in the administration and supervision of this Contract.  
7

8 16. EXAMINATION, INSPECTION, AND AUDIT OF TRANSFERRED WORKS,  
9 RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND  
10 MAINTENANCE

11 (a) The Contracting Officer may from time to time, examine the following: the  
12 Association's books, records, and reports; the Transferred Works being operated by the  
13 Association; the adequacy of the operation, maintenance, and safety of dams programs; the  
14 reserve fund; and the water conservation program including the water conservation fund, if  
15 applicable. Notwithstanding title ownership, where the United States retains a financial,  
16 physical, or liability interest in facilities either constructed by the United States or with funds  
17 provided by the United States, the Contracting Officer may examine any or all of the  
18 Transferred Works providing such interest to the United States.

19 (b) The Contracting Officer may or the Association may request the Contracting Officer  
20 to, conduct special inspections of any Transferred Works being operated by the Association  
21 and special audits of the Association's books and records to ascertain the extent of any  
22 operation and maintenance deficiencies to determine the remedial measures required for their  
23 correction and to assist the Association in solving specific problems. Except in an  
24 emergency, any special inspection or audit shall be made only after written notice thereof has  
25 been delivered to the Association by the Contracting Officer.

26 (c) The Association shall provide access to the Transferred Works, operate any  
27 mechanical or electrical equipment, and be available to assist in the examination, inspection,  
28 or audit.

29 (d) The Contracting Officer shall prepare reports based on the examinations, inspections,  
30 or audits and furnish copies of such reports and any recommendations to the Association.

31 (e) The costs incurred by the United States in conducting operation and maintenance  
32 examinations, inspections, and audits and preparing associated reports and recommendations  
33 related to high- and significant hazard dams and associated facilities shall be nonreimbursable.  
34 Associated facilities include carriage, distribution, and drainage systems; pumping and pump-  
35 generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low  
36 hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road;  
37 regulating reservoirs (low hazard); fish passage and protective facilities, including hatcheries;  
38 river channelization features; rural/municipal water systems; desalting and other water treatment  
39 plants; maintenance buildings and service yards; facilities constructed under Federal loan  
40 programs (until paid out); and recreation facilities (reserved works only); and any other facilities  
41 as determined by the Contracting Officer.

42 (f) Expenses incurred by the Association, as applicable, in participating in the operation and  
43 maintenance site examination will be borne by the Association.

44 (g) Requests by the Association for consultations, design services, or modification reviews,  
45 and the completion of any operation and maintenance activities identified in the formal  
46 recommendations resulting from the examination (unless otherwise noted) are to be funded as

1 project operation and maintenance and are reimbursable by the Association to the extent of  
2 current project operation and maintenance allocations.

3 (h) Site visit special inspections that are beyond the regularly scheduled operation and  
4 maintenance examinations conducted to evaluate a particular concern(s) or problem(s) and  
5 provide assistance relative to any corrective action (either as a follow up to an operation and  
6 maintenance examination or when requested by the Association) shall be nonreimbursable.

7 (i) The Contracting Officer may provide the State of Colorado an opportunity to observe  
8 and participate in, at its own expense, the examinations and inspections. The State of  
9 Colorado may be provided copies of reports and any recommendations relating to such  
10 examinations and inspections.

11  
12 17. EMERGENCY RESERVE FUND

13 (a) Commencing with the date of transfer, the Association shall accumulate and maintain  
14 a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other funds  
15 are available for use as an Emergency Reserve Fund. The Association shall establish and  
16 maintain that Emergency Reserve Fund to meet costs incurred during periods of special  
17 stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies  
18 threatening or causing interruption of water service.

19 (b) The Association shall accumulate the Emergency Reserve Fund with annual deposits  
20 or investments of not less than \$60,000 to a Federally insured, interest- or dividend-bearing  
21 account or in securities guaranteed by the Federal Government: *Provided, That* money in the  
22 Emergency Reserve Fund, including accrued interest, shall be available within a reasonable  
23 time to meet expenses for such purposes as those identified in paragraph (d) herein. Such  
24 annual deposits and the accumulation of interest to the Emergency Reserve Fund shall  
25 continue until the basic amount of \$700,000 (April 2009 price levels) during the initial stages  
26 of the Project and \$1,400,000 (April 2009 price levels) once the Project is under full  
27 operation is accumulated. The above amounts will be adjusted (adjusted balance) as may be  
28 justified by reason of ordinary fluctuations in the construction, operation and maintenance  
29 costs as indicated by engineering cost indices applicable to the types of construction,  
30 operation and maintenance for which this Emergency Reserve Fund is established. Following  
31 an emergency expenditure from the fund, the annual deposits shall continue from the year  
32 following the emergency expenditure until the previous balance (or adjusted balance if an  
33 adjustment pursuant to this paragraph or paragraph (c) is made) is restored. After the initial  
34 amount is accumulated or after the previous balance is restored, the annual deposits may be  
35 discontinued, and the interest earnings shall continue to accumulate and be retained as part of  
36 the Emergency Reserve Fund.

37 (c) Upon mutual agreement between the Association and the Contracting Officer, the  
38 Emergency Reserve Fund may be adjusted to account for risk and uncertainty stemming from  
39 the size and complexity of the Project; the size of the annual operation and maintenance  
40 budget; additions to, deletions from, or changes in Transferred Works; cost index; and  
41 operation and maintenance costs not contemplated when this Contract was executed. Any  
42 funds identified as in excess of the adjusted balance of the Emergency Reserve Fund shall be  
43 transferred to the Replacement Reserve Fund established pursuant to Article 7, except that  
44 the interest earnings from the Emergency Reserve Fund shall continue to accumulate and be  
45 retained as part of the Emergency Reserve Fund.

1 (d) The Association may make expenditures from the Emergency Reserve Fund only for  
2 meeting usual operation and maintenance costs incurred during periods of special stress, as  
3 described in paragraph (a) herein; or for meeting unforeseen extraordinary operation and  
4 maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or for  
5 meeting betterment costs (in situations where recurrence of severe problems can be  
6 eliminated) during periods of special stress. Proposed expenditures from the fund shall be  
7 submitted to the Contracting Officer in writing for review and written approval prior to  
8 disbursement. Whenever the Emergency Reserve Fund is reduced below the adjusted  
9 balance pursuant to paragraphs (b) or (c) by expenditures therefrom, the Association shall  
10 restore that balance by the accumulation of annual deposits as specified in paragraph (b)  
11 herein.

12 (e) During any period in which any of the Transferred Works are operated and  
13 maintained by the United States, the Association agrees the Emergency Reserve Fund shall  
14 be available for like use by the United States.

15 (f) On or before October 1 of each year, the Association shall provide a current statement  
16 of the principal and accumulated interest of the Emergency Reserve Fund account to the  
17 Contracting Officer.

18  
19 18. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

25  
26 19. OFFICIALS NOT TO BENEFIT

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

30  
31 20. CHANGES IN ASSOCIATION'S ORGANIZATION

32 While this Contract is in effect, no change may be made in the Association's  
33 organization, by inclusion or exclusion of lands or by any changes which may affect the  
34 respective rights, obligations, privileges, and duties of either the United States or the  
35 Association under this Contract including, but not limited to, dissolution, consolidation, or  
36 merger, except upon the Contracting Officer's written consent.

37  
38  
39 21. ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED

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

43  
44 22. BOOKS, RECORDS AND REPORTS

45 The Association shall establish and maintain accounts and other books and records

1 pertaining to administration of the terms and conditions of this Contract, including the  
2 Association's financial transactions; water supply data; Project operation, maintenance, and  
3 replacement logs; Project land and rights-of-way use agreements; the water users' land-use  
4 (crop census), land ownership, land-leasing, and water-use data; and other matters that the  
5 Contracting Officer may require. Reports shall be furnished to the Contracting Officer in  
6 such form and on such date or dates as the Contracting Officer may require. Subject to  
7 applicable Federal laws and regulations, each party to this Contract shall have the right  
8 during office hours to examine and make copies of the other party's books and records  
9 relating to matters covered by this Contract.

10  
11 23. RULES, REGULATIONS, AND DETERMINATIONS

12 (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to  
13 this Contract is subject to Federal Reclamation law, as amended and supplemented, and the  
14 rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation  
15 law.

16 (b) The Contracting Officer shall have the right to make determinations necessary to  
17 administer this Contract that are consistent with the expressed and implied provisions of this  
18 Contract, the laws of the United States and the State, and the rules and regulations  
19 promulgated by the Secretary of the Interior. Such determinations shall be made in  
20 Consultation with the Association.

21  
22 24. ADMINISTRATION OF FEDERAL PROJECT LANDS

23 The lands and interests in lands acquired, withdrawn, or reserved and needed by the  
24 United States for the purposes of care, operation, and maintenance of the Project may be used  
25 by the Association for such purposes. The Association shall ensure that no unauthorized  
26 encroachment occurs on the Transferred Works. The Association does not have the authority  
27 to issue any land-use agreement or grant that conveys an interest in Federal real property, nor  
28 to lease or dispose of any interest of the United States.

29  
30 25. PROTECTION OF WATER AND AIR QUALITY

31 (a) Transferred Works used to make available and deliver water to the Association shall  
32 be operated and maintained in the most practical manner to maintain the quality of the water  
33 at the highest level possible as determined by the Contracting Officer: *Provided*, That the  
34 United States does not warrant the quality of the water delivered to the Association and is  
35 under no obligation to furnish or construct water treatment facilities to maintain or improve  
36 the quality of water delivered to the Association.

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

1 (c) This article shall not affect or alter any legal obligations of the United States to  
2 provide drainage or other discharge services.  
3

4 26. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

5 (a) The Association shall not allow contamination or pollution of Federal Project lands,  
6 Project waters, or Project works of the United States or administered by the United States and  
7 for which the Association has the responsibility for care, operation, and maintenance by its  
8 employees or agents. The Association shall also take reasonable precautions to prevent such  
9 contamination or pollution by third parties.

10 (b) The Association shall comply with all applicable Federal, State, and local laws and  
11 regulations and Reclamation policies and instructions existing, or hereafter enacted or  
12 promulgated, concerning any hazardous material that will be used, produced, transported,  
13 stored, released, or disposed of on or in Federal Project lands, Project waters, or Project  
14 works and for which the Association has the responsibility for care, operation, and  
15 maintenance.

16 (c) "Hazardous material" means (1) any substance defined as hazardous, a pollutant, or a  
17 contaminant under the Comprehensive Environmental Response, Compensation and Liability Act  
18 (CERCLA), 42 U.S.C. § 9601 (14) and (33); (2) oil as defined by the Clean Water Act, 33 U.S.C.  
19 § 1321 (a) and the Oil Pollution Act, 33 U.S.C. § 2701 (23); (3) thermal pollution, refuse,  
20 garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and  
21 other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal,  
22 State, local or Tribal law.

23 (d) Upon discovery of any event which may or does result in contamination or pollution of  
24 Federal Project lands, Project water, or Project works for which the Association has the  
25 responsibility for care, operation, and maintenance, the Association shall immediately  
26 undertake all measures necessary to protect public health and the environment, including  
27 measures necessary to contain or abate any such contamination or pollution and shall report such  
28 discovery with full details of the actions taken to the Contracting Officer. Reporting shall be  
29 within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is  
30 an emergency and the first working day following discovery in the event of a non-emergency.

31 (e) The Association shall be liable for any response action or corrective measure necessary to  
32 protect public health and the environment or to restore Federal Project lands, Project waters, or  
33 Project works for which the Association has the responsibility for care, operation, and  
34 maintenance that are adversely affected as a result of such violation, and for all costs, penalties  
35 or other sanctions that are imposed for violation of any Federal, State, local or Tribal laws and  
36 regulations concerning hazardous material. At the discretion of the Contracting Officer, the  
37 United States may also terminate this Contract as a result of such violation.

38 (f) The contractor shall defend, indemnify, protect and save the United States harmless from  
39 and against any costs, expenses, claims, damages, demands, or other liability arising from or  
40 relating to contractor's violation of this article.

41 (g) The United States agrees to provide information necessary for the Association, using  
42 reasonable diligence, to comply with the provisions of this article.  
43

44 27. CLEAN AIR AND WATER

45 (a) The Association agrees as follows:

1 (1) To comply with all the requirements of Section 114 of the Clean Air Act, as  
2 amended (42 U.S.C. 7414), and Section 308 of the Federal Water Pollution Control Act,  
3 as amended by Public Law 92-500 (33 U.S.C. 1318), respectively, relating to inspection,  
4 monitoring, entry, reports, and information, as well as other requirements specified in  
5 Section 114 of the Air Act and Section 308 of the Water Act, respectively, and all  
6 regulations and guidelines issued thereunder before the execution of this Contract.

7 (2) That no portion of the work required by this Contract will be performed in a  
8 facility listed on the Environmental Protection Agency List of Violating Facilities on the  
9 date when this Contract was executed unless and until the Environmental Protection  
10 Agency eliminates the name of such facility or facilities from such listing.

11 (3) To use its best efforts to comply with clean air standards and clean water  
12 standards at the facility where the contract work is being performed.

13 (4) To insert the substance of the provisions of this article into any nonexempt  
14 subcontract, including this paragraph (a)(4).

15 (b) The terms used in this article have the following meanings:

16 (1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 7401).

17 (2) The term "Water Act" means the Federal Water Pollution Control Act, as  
18 amended (33 U.S.C. 1251 *et seq.*).

19 (3) The term "clean air standards" means any enforceable rules, regulations,  
20 guidelines, standards, limitations, orders, controls, prohibitions, or other requirements  
21 which are contained in, issued under, or otherwise adopted pursuant to the Air Act or  
22 Executive Order 11738, an applicable implementation plan as described in Section 110 of  
23 the Air Act (42 U.S.C. 7410), an approved implementation procedure or plan under  
24 Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or(d)),  
25 or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C.  
26 7412(d)).

27 (4) The term "clean water standards" means any enforceable limitation, control,  
28 condition, prohibition, standard, or other requirement which is promulgated pursuant to  
29 the Water Act or contained in a permit issued to a discharger by the Environmental  
30 Protection Agency or by a state under an approved program, as authorized by Section 402  
31 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with  
32 pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

33 (5) The term "comply" means compliance with clean air or water standards. Comply  
34 shall also mean compliance with a schedule or plan ordered or approved by a court of  
35 competent jurisdiction, the Environmental Protection Agency, or an air or water pollution  
36 control agency in accordance with the requirements of the Air Act or Water Act and  
37 regulations issued pursuant thereto.

38 (6) The term "facility" means any building, plant, installation, structure, mine, vessel  
39 or other floating craft, location, or site of operations owned, leased, or supervised by a  
40 contractor or subcontractor to be utilized in the performance of a contract or subcontract.  
41 Where a location or site of operations contains or includes more than one building, plant,  
42 installation, or structure, the entire location or site shall be deemed to be a facility except  
43 where the Director, Office of Federal Activities, Environmental Protection Agency,  
44 determines that independent facilities are collocated in one geographical area.  
45

1 28.

EQUAL EMPLOYMENT OPPORTUNITY

2 During the performance of this Contract, the Association agrees as follows:

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

13 (b) The Association will, in all solicitations or advertisements for employees placed by or  
14 on behalf of the Association, 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 Association will send to each labor union or representative of workers with  
17 which it has a collective bargaining agreement or other contract or understanding, a notice, to  
18 be provided by the Contracting Officer, advising the labor union or workers' representative  
19 of the Association's commitments under Section 202 of Executive Order 11246 of September  
20 24, 1965, and shall post copies of the notice in conspicuous places available to employees  
21 and applicants for employment.

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

25 (e) The Association will furnish all information and reports required by Executive Order  
26 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of  
27 Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the  
28 Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain  
29 compliance with such rules, regulations, and orders.

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

37 (g) The Association will include the provisions of paragraphs (a) through (g) in every  
38 subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
39 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September  
40 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The  
41 Association will take such action with respect to any subcontract or purchase order as may be  
42 directed by the Secretary of Labor as a means of enforcing such provisions, including  
43 sanctions for noncompliance: *Provided, however*, that in the event the Association becomes  
44 involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such



1 direction, the Association may request the United States to enter into such litigation to  
2 protect the interests of the United States.

3  
4 29. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

26 (d) Complaints of discrimination against the Association shall be investigated by the  
27 Contracting Officer's Office of Civil Rights.

28  
29 30. CERTIFICATION OF NONSEGREGATED FACILITIES

30 The Association hereby certifies that it does not maintain or provide for its employees  
31 any segregated facilities at any of its establishments and that it does not permit its employees  
32 to perform their services at any location under its control where segregated facilities are  
33 maintained. It certifies further that it will not maintain or provide for its employees any  
34 segregated facilities at any of its establishments and that it will not permit its employees to  
35 perform their services at any location under its control where segregated facilities are  
36 maintained. The Association agrees that a breach of this certification is a violation of the  
37 Equal Employment Opportunity clause in this Contract. As used in this certification, the  
38 term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash  
39 rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or  
40 dressing areas, parking lots, drinking fountains, recreation or entertainment areas,  
41 transportation, and housing facilities provided for employees which are segregated by  
42 explicit directive or are in fact segregated on the basis of race, creed, color, or national origin,  
43 because of habit, local custom, disability, or otherwise. The Association further agrees that  
44 (except where it has obtained identical certifications from proposed subcontractors for  
45 specific time periods) it will obtain identical certifications from proposed subcontractors

1 prior to the award of subcontracts exceeding \$10,000 which are not exempt from the  
2 provisions of the Equal Employment Opportunity clause; that it will retain such certifications  
3 in its files; and that it will forward the following notice to such proposed subcontractors  
4 (except where the proposed subcontractors have submitted identical certifications for specific  
5 time periods).

6  
7 31. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
8 CERTIFICATIONS OF NONSEGREGATED FACILITIES

9 A Certification of Nonsegregated Facilities must be submitted prior to the award of a  
10 subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal  
11 Employment Opportunity clause. The certification may be submitted either for each  
12 subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).  
13 Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.  
14

15 32. RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

16 When acquiring land or an interest in land and relocating persons or personal property  
17 in connection with the construction, operation, and maintenance of Project facilities, the  
18 Association shall comply with the provisions of the Uniform Relocation Assistance and Real  
19 Property Acquisition Policies Act of 1970 (84 Stat. 1894) and Department of Transportation  
20 regulations (49 CFR Part 24).  
21

22 33. PEST MANAGEMENT

23 The Association shall take appropriate steps to prevent the introduction and spread of,  
24 and to otherwise control undesirable plants and animals, as defined by the Contracting  
25 Officer, on Federal Project lands, Project waters, and Project works for which the  
26 Association has operation and maintenance responsibility. The Association is responsible for  
27 inspecting its vehicles and equipment for reproductive and vegetative parts, foreign soil, mud or  
28 other debris that may cause the spread of weeds, invasive species and other pests, and for  
29 removing such materials before moving its vehicles and equipment onto any Federal land or out  
30 of any area on Federal Project land where work is performed. Where decontamination is required  
31 prior to entering Federal Project land, it shall be performed at the point of prior use, or at an  
32 approved offsite facility able to process generated cleaning wastes. Upon the completion of work,  
33 decontamination shall be performed within the work area before the vehicles and equipment are  
34 removed from Federal Project lands. Programs for the control of these undesirable plants and  
35 animals on Federal Project lands, Project waters, and Project works for which the  
36 Association has operation and maintenance responsibility will incorporate Integrated Pest  
37 Management (IPM) concepts and practices. IPM refers to a systematic and environmentally  
38 compatible program to maintain pest populations within economically and environmentally  
39 tolerable levels. In implementing an IPM program, the Association will adhere to applicable  
40 Federal and State laws and regulations and Department of the Interior and Bureau of  
41 Reclamation policies, directives, guidelines, and manuals.  
42

43 34. MEDIUM FOR TRANSMITTING PAYMENTS

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

1 by the medium requested by the United States on or before the date payment is due. The  
2 required method of payment may include checks, wire transfers, or other types of payment  
3 specified by the United States.

4 (b) Upon execution of the Contract, the Association shall furnish the Contracting Officer  
5 with the Association's taxpayer's identification number (TIN). The purpose for requiring the  
6 Association's TIN is for collecting and reporting any delinquent amounts arising out of the  
7 Association's relationship with the United States.  
8

9 35. CONTRACT DRAFTING CONSIDERATIONS


10 Articles 1 through 12 of this Contract have been drafted, negotiated, and reviewed by  
11 the parties hereto, each of whom is sophisticated in the matters to which this Contract  
12 pertains, and no one party shall be considered to have drafted the stated articles.  
13

14  
15 IN WITNESS WHEREOF, the parties hereto have signed their names this day and year  
16 first written above.  
17

18  
19 Approved:

UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR

20  
21   
22 CARTER BROWN  
23 Solicitor's Office

By:   
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

24  
25  
26  
27 Attest:

ASSOCIATION

28  
29  
30 By: 

By:   
Dan Israel

ANIMAS-LA PLATA OPERATION, MAINTENANCE AND REPLACEMENT ASSOCIATION  
103 EVERETT STREET  
DURANGO, CO 81303

**RESOLUTION 2009-01**

**A RESOLUTION AUTHORIZING THE CHAIR OF THE  
ANIMAS LA PLATA OPERATIONS AND MAINTENANCE ASSOCIATION TO SIGN THE  
ANIMAS LA PLATA PROJECT OPERATION, MAINTENANCE, AND REPLACEMENT  
CONTRACT WITH THE UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF RECLAMATION**

**WHEREAS**, Public Law 106-554 authorized the reduced Animas La Plata Project which is now nearing completion; and

**WHEREAS**, the Colorado Water Resources and Power Development Authority, the San Juan Water Commission, the La Plata Conservancy District, the Southern Ute Indian Tribe, the Navajo Nation, and the Ute Mountain Ute Tribe entered into the Intergovernmental Agreement on the 4<sup>th</sup> of March 2009; and

**WHEREAS**, the Intergovernmental Agreement established The Animas La Plata Operations and Maintenance Association (Association) and provided for operational procedures developed in cooperation with the United States Department of Interior Bureau of Reclamation (Bureau); and

**WHEREAS**, the Association and the Bureau have jointly developed an Animas La Plata Operation, Maintenance and Reclamation Contract to permit the Association to operate the project; and


**WHEREAS**, the Association in a properly noticed meeting September 30, 2009, in Ignacio, Colorado by a majority authorized signature by the current Chair Dan Israel, of the Animas La Plata Operation, Maintenance and Replacement Contract with the Bureau.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ANIMAS LA PLATA OPERATIONS AND MAINTENANCE ASSOCIATION:**

That the Association directs its Chair to execute the attached Animas La Plata Project Operation, Maintenance and Replacement Contract between the Association and the Bureau for the purpose of operating the Animas La Plata Water Development Project as contemplated in the Intergovernmental Agreement.

**PASSED, APPROVED AND ADOPTED THIS** 5<sup>th</sup> **DAY OF** November, 2009

**ANIMAS LA PLATA OPERATIONS AND MAINTENANCE ASSOCIATION**

  
\_\_\_\_\_  
Dan Israel, Chair