

**AGREEMENT BETWEEN  
COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY  
AND  
ANIMAS LA PLATA WATER CONSERVANCY DISTRICT**

**THIS AGREEMENT** is made and entered into by and between the Colorado Water Resources and Power Development Authority ("CWRPDA") and the Animas-La Plata Water Conservancy District ("ALPD")

**RECITALS:**

WHEREAS, The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the planning and investigation of the Animas-La Plata Project as a participating project of the Colorado River Storage Project; subsequently, the construction, operation, and maintenance of the Animas-La Plata Project was authorized by Title V of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 896) (the Animas-La Plata Project as so originally authorized is hereinafter called the "Original ALP Project"); and

WHEREAS, the United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the CWRPDA, the ALPD, the New Mexico Interstate Stream Commission, the Southwestern Water Conservation District, the San Juan Water Commission, and Montezuma County, Colorado, entered into an Agreement in Principle concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas La Plata Project Cost Sharing" (the "1986 Cost Sharing Agreement") on June 30, 1986, which related to the construction of the Original ALP Project; and

WHEREAS, the 1986 Cost Sharing Agreement provided for the establishment of an escrow account upon the occurrence of certain conditions precedent, to be funded by the CWRPDA and drawn upon by the Secretary of Interior to defray a portion of the construction costs of certain facilities of the Original ALP Project, in fulfillment of the State of Colorado's obligations under the 1986 Cost Sharing Agreement; and

WHEREAS, on November 10, 1989, the United States and the CWRPDA entered into an Agreement and Instructions for Administering Escrow Account, and the United States, the CWRPDA, and the Colorado State Treasurer entered into an Escrow Agreement (collectively, the "Escrow Agreements"), both agreements relating to the Escrow Account for the State of Colorado's cost-sharing participation in the Original ALP Project; and

WHEREAS, pursuant to the Escrow Agreements, the CWRPDA paid from its own uncommitted funds the sum of \$29,948,432 into escrow with the Colorado State Treasurer under the terms of the Escrow Agreements, in order to fulfill the State of Colorado's obligations pursuant to the 1986 Cost Sharing Agreement (the ALP Escrow); and

WHEREAS, as a result of investment returns and interest, the amount on deposit in the ALP Escrow has increased to \$42,400,000; and

WHEREAS, the construction of the Original ALP Project has not occurred in the manner contemplated by the 1986 Cost Sharing Agreement and the Escrow Agreements; and

WHEREAS, the United States has investigated, planned, and proposes to construct a modified Animas-La Plata Project for the storage, diversion, salvage, and distribution of the waters of the Animas River (the "New ALP Project"), which New ALP Project has among its authorized purposes the furnishing of water for municipal, industrial, domestic, and other beneficial purposes. The water rights settlement purposes of the Original ALP Project were authorized by the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585), and have been amended for the New ALP Project by the Colorado Ute Settlement Act Amendments of 2000 (the "2000 Amendments"), Public Law 106-554; and

WHEREAS, The New ALP Project is authorized under the 2000 Amendments and will consist of the construction of a reservoir, pumping plant, inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the Animas River for an average annual depletion of 57,100 acre feet of water, to be used for a municipal and industrial water supply; and

WHEREAS, the 2000 Amendments eliminated the requirement for cost sharing in the construction of the Animas La Plata Project by the State of Colorado; and

WHEREAS, the 2000 Amendments eliminated the construction of irrigation features of the Original ALP Project for Indian and non-Indian interests in the La Plata River drainage; and

WHEREAS, the 2000 Amendments provide for the construction of the New ALP Project, and provide for an allocation to ALPD of a portion of the Project Water made available as a result of the New ALP Project, or from, through, or by means of Project Works, consisting of water provided by direct diversion and releases from Project storage, such allocation being equal to 2,600 acre-feet of municipal and industrial depletions (such allocation being herein called the "ALPD Depletion Allocation"), conditioned, however, upon payment of the nontribal water capital obligation for the New ALP Project attributable to such ALPD Depletion Allocation; and

WHEREAS, the parties to the 1986 Cost Sharing Agreement, including the CWRPDA and ALPD, have agreed upon an amendment thereto which replaces the 1986 Cost Sharing Agreement, releases Colorado from any cost sharing obligation for the New ALP Project except to the extent of the ALPD Depletion Allocation Funding Agreement and Repayment Contract described below, and provides for certain matters relating to the New ALP Project, and such amendment is entitled the Amended and Restated Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas La Plata Cost Sharing (the "New Cost Sharing Agreement"); and

WHEREAS, the CWRPDA is authorized by C.R.S. §§37-95-101, *et. seq.*, C.R.S., and by Resolution of the General Assembly of the State of Colorado, Senate Joint Resolution 6, 1982

Session Laws 702, to consider financing or participating in the financing of the Animas La Plata Project including contracting with any person or governmental agency for the construction and/or the sale of the output of the Animas La Plata Project; and

WHEREAS, the ALPD has requested that the CWRPDA fund the payment of the nontribal water capital obligation of the New ALP Project attributable to the ALPD Depletion Allocation, and the CWRPDA is willing to do so upon certain terms and conditions, including the assignment from the ALPD to the CWRPDA of the ALPD's interest in the ALPD Depletion Allocation and the execution of agreements with the United States Department of the Interior, Bureau of Reclamation ("BOR"), acceptable to the CWRPDA amending the Escrow Agreements and providing for the up-front payment by the CWRPDA to the BOR of the share of the nontribal water capital obligation for the New ALP Project allocated to the ALPD Depletion Allocation; and

WHEREAS, the CWRPDA has negotiated with the BOR and will execute and enter into contemporaneously herewith amendments to the Escrow Agreements and a Funding Agreement and Repayment Contract between the United States and the CWRPDA (the "ALPD Depletion Allocation Funding Contract"), which provides for up-front payment by the CWRPDA to the BOR for acquisition of the ALPD Depletion Allocation, including the obligation to pay, at the completion of the construction of the New ALP Project, if necessary, a pro-rata share of any unforeseen and reasonable expenses incurred over and above those contemplated in the up-front payment agreement; and

WHEREAS, the ALPD and the CWRPDA desire to establish an escrow for potential financial assistance by the CWRPDA for a reasonable period of time for possible planning and construction of new water storage and/or water supply projects in the La Plata River basin that would be beneficial to existing and future non-Indian interests in that basin.

#### AGREEMENT:

For and in consideration of the mutual promises and agreements herein, the ALPD and CWRPDA do therefore hereby covenant, agree, promise, and acknowledge to each other as follows:

#### Article 1. ALP Depletion Allocation

1.1 Assignment to CWRPDA. The ALPD hereby assigns, transfers, and sets over to the CWRPDA all its right, title, and interest in and to the ALPD Depletion Allocation, and all interests it may have pursuant to the 2000 Amendments relating to the ALPD Depletion Allocation, without reservation or condition but subject to the further provisions, terms, and conditions of this Agreement.

1.1.1 The ALPD agrees that it shall participate in the Project Coordination Committees established by the United States for the Project, and will cooperate with the Authority's representative on those committees. In addition, the ALPD will assume, on request,

any obligation of the Authority pursuant to the ALPD Depletion Allocation Funding Contract to defend the Project water rights or Project water supply.

1.2 **Cost Sharing Agreement.** Contemporaneously with the execution of this Agreement, ALPD and CWRPDA will execute the New Cost Sharing Agreement, provided that all other parties to the 1986 Cost Sharing Agreement have executed either the New Cost Sharing Agreement or a similar agreement or agreements acceptable to CWRPDA..

1.3 **Escrow and Funding Agreements.** Contemporaneously with the execution of this Agreement, CWRPDA will execute the ALPD Depletion Allocation Funding Contract with the BOR, and will execute amendments to the Escrow Agreements acceptable to the CWRPDA (the "Amended Escrow Agreements") that will include, among other provisions, agreements (i) for the deposit into or retention in the ALP Escrow of the amount determined by the CWRPDA and BOR to be necessary for payment in full of the nontribal water capital obligation for the ALPD Depletion Allocation prior to initiation of construction, estimated to be approximately \$7,300,000.00 (the "Remaining Escrow Funds"), and (ii) the release and repayment to the CWRPDA of all funds then held in the ALP Escrow under the Escrow Agreements other than the Remaining Escrow Funds, estimated to be approximately \$35,100,000.00. If requested or required by the BOR, the ALPD shall also execute such ALPD Depletion Allocation Funding Contract to acknowledge the assignment described in paragraph 1.1 above. ALPD hereby acknowledges, that, except as set forth in Paragraph 2.1 below, it has no legal, equitable, or moral claim or interest in the funds released and repaid to the CWRPDA from the ALP Escrow under the Escrow Agreements.

1.4 **Option.** The CWRPDA hereby grants to the ALPD an exclusive option (the "Option") to purchase from the CWRPDA for the Option Purchase Price set forth below all of the remaining portion of the ALPD Depletion Allocation owned by the CWRPDA at the time of exercise of such option, and all right, title, and interest of the CWRPDA in and to the ALPD Depletion Allocation Funding Contract, the Amended Escrow Agreements, the New Cost Sharing Agreement, and any other related agreements. The option is subject to any earlier sale, allocation, or lease of any of the ALPD Depletion Allocation prior to the exercise of such option.

1.4.1 The option shall terminate absolutely upon the earlier to occur of the completion of construction of the New ALP Project or the 8th anniversary of the date of execution hereof by the CWRPDA.

1.4.2 The option shall be exercised by written notice of exercise from ALPD to CWRPDA. Approval of the purchase by ALPD by the BOR shall be a condition precedent to closing, which shall occur 30 days after exercise of the option, or on the next business day thereafter. At the closing, ALPD shall pay in cash the Option Purchase Price and shall assume and agree to perform and pay all remaining obligations of CWRPDA under the ALPD Depletion Allocation Funding Contract, the New Cost Sharing Agreement, the Amended Escrow Agreements, and any other related agreements, and the CWRPDA shall be relieved and discharged of any and all further liability or obligations under such agreements. The CWRPDA will assign to ALPD without recourse the ALPD Depletion Allocation Funding Contract, the

New Cost Sharing Agreement, the Amended Escrow Agreements, and any other related agreements, except that CWRPDA shall reserve, and ALPD shall assign (if appropriate) to CWRPDA, all right to receive under such agreements (i) credits or payments from the BOR relating to the construction of the New ALP Project, and (ii) all funds, if any, remaining in the ALP Escrow at termination of such escrow that are not otherwise payable to the BOR.

1.4.3 The Option Purchase Price shall be a sum equal to the "Purchase Option Percentage " (as hereinbelow defined) of the sum of (i) the Remaining Escrow Funds, plus (ii) any additional funds that have been paid or provided by the CWRPDA as of the time of the exercise of the option under the ALPD Depletion Allocation Funding Contract or otherwise for a pro-rata share of any expenses incurred in the completion of construction of the New ALP Project, (iii) but less all funds previously paid to the CWRPDA pursuant to contracts concerning the ALPD Depletion Allocation between the CWRPDA and other persons or entities. The Purchase Option Percentage is (a) the amount in acre-feet of the ALPD Depletion Allocation owned by CWRPDA and not sold, leased, or otherwise disposed of, or under firm contract for sale, or lease, or other disposition as of the time of the exercise of the option; (b) divided by 2,600; (c) with the result multiplied by 100.

1.5 Marketing Agreement. The CWRPDA and ALPD will negotiate in good faith and with due diligence to enter into a written agreement within one year from the date of execution of this Agreement by CWRPDA (or such later deadline as determined in writing by the parties hereto) for the appointment of ALPD as the CWRPDA's exclusive agent to market the ALPD Depletion Allocation for sale, lease, or other disposition (the Marketing Agreement). The initial term of the Marketing Agreement shall be for 15 years from the execution of this agreement by CWRPDA, with successive automatic renewals for five (5) year terms, unless either party has notified the other in writing prior to the end of the initial or applicable renewal term of its election to terminate the agreement as of the end of the current term. The Marketing Agreement shall provide for the marketing of the ALPD Depletion Allocation upon such price, limitations, and other terms and conditions as may be set forth in such agreement. In the Marketing Agreement, the CWRPDA will reserve the right and option to market the ALPD Depletion Allocation if ALPD is unable or unwilling or despite diligent and good faith efforts fails to market and dispose of the ALPD Depletion Allocation upon the price, limitations, and other terms and conditions set forth in the Marketing Agreement. The Marketing Agreement shall be submitted by the parties to BOR for review and comment prior to execution. If despite negotiations in good faith and with due diligence within such 1-year period (or any later agreed-upon deadline) the CWRPDA and ALPD do not reach agreement upon and execute such Marketing Agreement, or the BOR expresses its disapproval of the Marketing Agreement in writing, then the provisions of this paragraph 1.5 shall cease and terminate.

1.6 Further Agreements. The ALPD and the CWRPDA agree that they will cooperate in the negotiation and execution of any further agreements necessary or required to implement the provisions of this Article 1.

## Article 2. Financial Assistance for Future Projects.

The ALPD and the CWRPDA acknowledge the potential for financial assistance by the CWRPDA and other governmental entities (including the ALPD, the Southwestern Water Conservation District, and the Colorado Water Conservation Board) in planning and construction of new water storage and/or water supply projects in the La Plata River basin that would be beneficial to those existing and future non-Indian interests in the La Plata River basin that would have benefitted from the irrigation features planned for construction in such basin under the Original ALP Project.

2.1 Financial Assistance Escrow. To that end, the ALPD and the CWRPDA will negotiate in good faith and with due diligence to enter into a written escrow agreement within one year from the date of execution of this agreement by CWRPDA (or such later deadline as determined in writing by the parties hereto) by which \$15,000,000.00 of CWRPDA funds to be released from the ALP Escrow pursuant to the Amended Escrow Agreements will be placed in a Future Project Escrow for the purposes set forth in this Article 2 (the Future Project Escrow Agreement). The Future Project Escrow Agreement shall provide as follows:

2.1.1 Amount Escrowed. The initial sum available shall be \$15,000,000. This sum (and the resulting Future Project Escrow) shall be reduced by the cumulative amount of funds (i) appropriated or required by any future Colorado statute to be paid without necessity of CWRPDA consent from available CWRPDA funds (exclusive of drinking water revolving fund and water pollution control revolving fund programs) to the Colorado general fund or any state special fund or state account or to any other Colorado agency, authority, or political subdivision; or (ii) expended in the future by the CWRPDA for any study within the La Plata River basin; or (iii) expended in the future by the CWRPDA for or to provide financial assistance to any "project" as defined by C.R.S. §37-95-103 (10), (as it may hereafter be amended), within the boundaries of the ALPD, (exclusive of financial assistance provided out of the CWRPDA's drinking water revolving fund or water pollution control revolving fund programs). At the beginning of each calendar year, the increase in escrowed funds (on an accrual basis) resulting from investment of the escrowed funds that exceeds 3% of the amount in the Future Project Escrow as of the end of the preceding calendar year shall be released from the Future Project Escrow and transferred to the CWRPDA free of the escrow, and irrespective of any draw-down or payout of funds from the Future Project Escrow for the purposes of the escrow.

2.1.2 Use for Projects. Financial Assistance shall be provided from funds in the Future Project Escrow only upon Resolution of the Board of Directors of the CWRPDA specifying: (1) the specific project for which assistance shall be provided; (2) the total amount of escrowed funds dedicated to such financial assistance; and (3) the means (which may include loans, grants, or other means of assistance) by which the financial assistance will be provided, and the terms, conditions, and limitations upon such assistance, all of which shall be determined by the Board of Directors of the CWRPDA within its sole discretion. Irrigation projects should be given precedence.

2.1.3 No ALPD Claim. The ALPD shall acknowledge and covenant that it has no legal, equitable, or moral claim or interest in the funds in the Future Project Escrow, until and unless, and only to the extent that, the Board of Directors of the CWRPDA adopts Resolutions dedicating escrowed funds to financial assistance for specific projects.

2.1.4 Investment and Reporting. The CWRPDA alone will direct the investments of the funds in the Future Projects Escrow. It will provide an Annual Report to the ALPD concerning the Future Projects Escrow, detailing the funds remaining in the escrow and the financial assistance provided from the escrow.

2.1.5 Termination of the Future Projects Escrow. The Future Projects Escrow shall terminate and be closed on September 30, 2016, or earlier upon dissolution or consolidation of ALPD, and all funds then in the Future Projects Escrow shall be released from escrow and transferred to the CWRPDA free of the escrow; except that funds in the Future Projects Escrow that were previously dedicated, pursuant to resolutions of the CWRPDA Board of Directors, to financial assistance for projects and are reasonably anticipated to be needed to complete the projects for which they were dedicated, shall remain in the Future Projects Escrow until such time as the project is completed, or the escrowed funds dedicated thereto have been exhausted.

### Article 3. General.

3.1 Notices. Whenever any notice, demand, or request is required or provided for under this Agreement, such notice, demand, or request shall be provided in writing, or by facsimile to the following addresses or such other addresses as may be designated by a party by notice. Notice shall be deemed received when personally delivered, or when transmitted by facsimile, or three (3) days after having been deposited in a U.S. Postal Service depository to be sent by certified mail, return receipt by addressee requested, with all required postage prepaid, or one (1) business day after having been sent by overnight courier:

To the CWRPDA: Colorado Water Resources and Power Development Authority  
1580 Logan Street, Suite 620  
Denver, Colorado 80203-1942  
Telephone: (303) 830-1550  
Facsimile: (303) 832-8205

Copy to: Mary Mead Hammond, Esq.  
Carlson, Hammond & Paddock, LLC  
1700 Lincoln Street, Suite 3900  
Denver, Colorado 80203  
Telephone: (303) 861-9000  
Facsimile: (303) 861-9026

To the ALPD: Animas-La Plata Water Conservancy District  
and Southwestern Colorado Water Conservation District  
P.O. Box 2099  
Durango, Colorado 81302  
Telephone: (970) 247-1302  
Facsimile: (970) 259-8423

Copy to: Frank E. Maynes, Esq.  
Maynes, Bradford, Shipps & Sheftel  
The West Building, Suite 123  
835 East 2<sup>nd</sup> Avenue  
Durango, Colorado 81301  
Telephone: (970) 247-1755  
Facsimile: (970) 247-8827

3.2 Authorization. The individuals executing this Agreement on behalf of their respective entities are authorized by those entities to execute this Agreement and by their signature certify that all steps or actions required to ensure such authorizations have been taken.

3.3 Inducements. The execution of this Agreement by the parties has not been induced by any representations, statements, warranties or agreement other than those expressed in this Agreement.

3.4 Entire Agreement. This Agreement embodies the entire understanding of the parties as to the subject matter hereof and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to its subject matter, unless expressly referred to in this Agreement.

3.5 Amendment. Modification of this Agreement by the parties may be made only by a writing duly authorized and executed by the CWRPDA and ALPD.

3.6 Recording. This Agreement shall be recorded at the office of the La Plata County Clerk and Recorder.

3.7 No Waiver. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement, except by a signed written instrument of the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated in its terms. Each such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

3.8 Assignment. Neither party may assign this Agreement or the rights, benefits, burdens, or obligations hereunder, to any other person or entity, unless such assignment is of the entirety of this Agreement and is made with the prior written approval of the other party, whose approval may be granted or withheld by such party in its sole and absolute discretion. Any assignee under an

assignment approved by both parties shall assume in writing all obligations and burdens imposed pursuant to this Agreement upon the assigning party. Any purported assignment not approved in advance in writing by the non-assigning party shall be void.

3.9 No Merger. The rights and obligations of the parties hereunder shall not be merged into any deeds of conveyance, and remain fully enforceable until such time as any and all terms and conditions of this Agreement are completely fulfilled.

3.10 Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement, and the parties hereto state and agree that they do not intend that any other person or entity shall have any interest in or rights or duties under this Agreement.

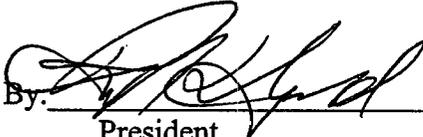
3.11 ALPD Dissolution. If ALPD shall be dissolved, or shall be consolidated into any other governmental entity, then this Agreement and any escrow agreement entered into pursuant to Paragraph 2.1 above shall terminate effective on the date of such dissolution or consolidation.

3.12 Counterparts. This Agreement may be executed in counterparts and all counterparts so executed shall constitute one agreement binding on both parties, notwithstanding that both parties are not signatories to the original or the same counterpart.

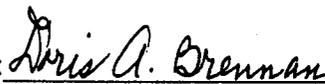
3.13 Controlling Law. This Agreement shall be governed under and controlled pursuant to the laws of the State of Colorado.

3.14 Effective Date. This Agreement shall be effective only when signed by both parties hereto, and shall become binding and effective when signed by the last party to execute this Agreement.

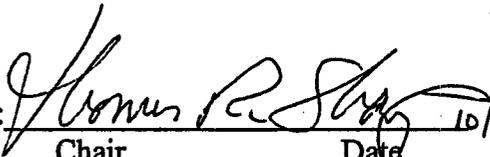
THE ANIMAS LA PLATA WATER  
CONSERVANCY DISTRICT

By:  11/07/01  
President Date

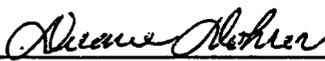
ATTEST:

By:  Nov. 5, 2001  
Secretary Date

THE COLORADO WATER RESOURCES AND  
POWER DEVELOPMENT AUTHORITY

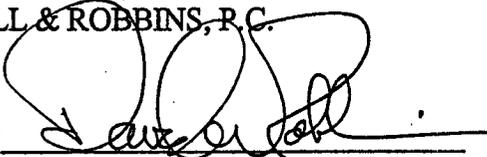
By:  10/30/01  
Chair Date

ATTEST:

By:  10-30-01  
AST. Secretary Date

APPROVED AS TO FORM:

HILL & ROBBINS, P.C.

By:   
David W. Robbins, Esq.  
1441 Eighteenth Street, Suite 100  
Denver, CO 80202-1256  
Telephone: (303) 296-8100

Attorney for the Animas La Plata Water Conservancy  
District

CARLSON, HAMMOND &: PADDOCK, LLC

By:   
Mary Mead Hammond, Esq.  
1700 Lincoln Street, Suite 3900  
Denver, Colorado 80203  
Telephone: (303) 861-9000

Attorney for the Colorado Water Resources and  
Power Development Authority