

Contract No. Final 02/06/2002

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT
COLORADO RIVER STORAGE PROJECT

AMENDATORY FUNDING AGREEMENT AND REPAYMENT CONTRACT BETWEEN
THE UNITED STATES AND THE SAN JUAN WATER COMMISSION, NEW MEXICO

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THIS AMENDATORY CONTRACT, made this day of , 2002, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the officer executing this contract, and the SAN JUAN WATER COMMISSION, hereinafter called the Commission, located in San Juan County, New Mexico, a commission duly organized and existing pursuant to the Joint Powers Agreement, dated March 5, 1986 ("JPA"), by the Cities of Aztec, Bloomfield, and Farmington, the San Juan County Rural Water Users Association, and San Juan County, and the laws of San Juan County and the State of New Mexico, acting through their representatives.

WITNESSETH, That:

WHEREAS, the following statements are made in explanation:

(a) The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the planning and investigation of the Animas-La Plata Project as a participating project of the Colorado River Storage Project; subsequently, the construction, operation, and maintenance of the Animas-La Plata Project was authorized by Title V of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 896), and the United States has investigated, planned, and proposes to construct said Animas-La Plata Project for the storage, diversion, salvage, and distribution of the waters of the Animas River, which 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 Project were authorized by the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585) as amended by the

Colorado Ute Settlement Act Amendments of 2000, Public Law 106-554 (hereafter referred to as the Settlement Act, as amended).

(b) The Settlement Act, as amended, authorizes 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;

(c) Reclamation has completed the Animas-La Plata Final Supplemental Environmental Impact Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated September 25, 2000, for compliance with the National Environmental Policy Act. The Commission acknowledges that as a result of this regulatory compliance, it is limited in the Contract to an annual average depletion of 10,400 acre-feet of water for this Project.

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

(e) The Commission has demonstrated its legal and financial capability to make the contributions and payments required by this document, by demonstrating that it is a legal entity under state law, and that it has taxing authority either on its own or in conjunction with others.

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

(g) Contract No. 0-07-40-R1080, dated January 8, 1990, was judicially confirmed by a district court of the State of New Mexico, and by the New Mexico Supreme Court in *San Juan Water Commission v. Taxpayers*, 116 N.M. 106, 860 P.2d 748 (1993), and thus this amendment does not require judicial confirmation.

(h) The project will be used to provide dependable long-term water storage for the Commission as described in the July 2000 Final Supplemental Environmental Impact Statement and the September 25, 2000, Record of Decision.

(i) The construction of the Project Works, the allocation of the water supply from those facilities to the Colorado Ute Tribes, the provision of funds to the Colorado Ute Tribes and the issuance of an amended final consent decree by the State of Colorado as contemplated in the Settlement Act, as amended, shall constitute final settlement of the tribal claims to water rights on the Animas and La Plata Rivers in the State of Colorado.

(j) The June 30, 1986 Cost Sharing Agreement will be amended by all parties to that agreement in order to make that agreement consistent with the Settlement Act, as amended .

(k) The San Juan Water Commission desires to amend its Contract No. 0-07-40-R1080 dated January 8, 1990 with the United States for a municipal and industrial water supply pursuant to the terms and conditions of the Joint Powers Agreement dated March 5, 1986, and the Settlement Act, as amended, including a right to pay its capital obligation through an up-front payment for its proportional share of those Project Works necessary to store, deliver, and use its water from the Project and for the right to the storage and use of such water in New Mexico.

(l) Contract No. 0-07-40-R1080, dated January 8, 1990, did not contain an expiration date. It was the intent of both the United States and the Commission as of the time of execution of Contract No. 0-07-40-R1080, that any rights granted by that agreement would not be limited to a specific term but would

instead continue in full form and effect pursuant to section 9 of the Reclamation Project Act of 1939, 43 U.S.C. ' 485h. The absence of any specific language in this amendment to Contract No. 0-07-40-R1080 that was originally contained in Contract No. 0-07-40-R1080 as to the issue of term shall not be construed as having any effect on the term of this amended contract, which will remain in full force and effect as provided in subarticle 8(l) below.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the parties hereto agree that this amendatory contract hereby amends, supercedes, and modifies Contract No. 0-07-40-R1080 dated January 8, 1990 to read as follows:

GENERAL DEFINITIONS

1. Where used in this contract:

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

(b) "Commission" means the San Juan Water Commission, San Juan County, New Mexico, created by the Joint Powers Agreement, San Juan Water Commission, dated March 5, 1986, and currently comprised of the Cities of Aztec, Bloomfield, and Farmington, the San Juan County Rural Water Users Association, and San Juan County.

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

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

(e) "Project Works" means all works or facilities as described in the Settlement Act, as amended, to be constructed under the Project, including a reservoir, a pumping plant, a reservoir 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, together with lands and rights-of-way for such works, as described in Article 2 herein.

(f) "Statutory Water Allocation" means the municipal and industrial (M&I) water allocation delivered to the Commission through the use of the project components, pursuant to Sec. 6(a)(1)(ii)(IV) of the Settlement Act, as amended.

(g) "Project Water" means all water provided through Ridges Basin Reservoir.

(h) "Cost Sharing Agreement" refers to the "Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing" dated June 30, 1986, between the United States, the State of Colorado, the New Mexico Interstate Stream Commission, certain political subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute Tribe, and the Southern Ute Indian Tribe, as amended.

(i) "Water Rights Settlement Agreement" refers to the "Colorado Ute Indian Water Rights Final Settlement Agreement" dated December 10, 1986 among the United States, the State of Colorado, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, and the additional governmental and private entities in Colorado signatory thereto, as implemented by the Settlement Act, as amended.

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

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

(l) "Operation and Maintenance Facilities" means those facilities necessary to support operations and maintenance work, for example operation and maintenance headquarters, office space, shop for

repair of equipment, storage place for supplies, and equipment yard.

(m) "Repayment Obligation" means final reimbursable construction costs allocated to the Commission's M&I uses associated with the construction of Project Works exceeding \$6,916,722 plus additional payments to escrow, if any.

PROJECT WORKS

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

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

(1) Ridges Basin Dam and Reservoir and appurtenant facilities, the main storage facility for the Project, will be located on Basin Creek in Ridges Basin approximately 3 miles southwest of Durango, Colorado. The reservoir will have a capacity of approximately 120,000 acre-feet.

(2) Durango Pumping Plant and appurtenant facilities will be located adjacent to the Animas River and will pump water from the Animas River for storage in Ridges Basin Reservoir.

(3) Ridges Basin Inlet Conduit and appurtenant facilities will extend from the Durango Pumping Plant to Ridges Basin Reservoir.

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

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

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

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

CONDITIONS PRECEDENT TO CONSTRUCTION

3. The United States shall be under no obligation to commence, or having commenced, to continue construction of Project Works until:

(a) Any non-Tribal entity that desires to pay its capital obligations for its municipal and industrial water prior to construction pursuant to the Settlement Act, as amended, has had an opportunity to enter into such an agreement with the United States prior to the initiation of construction.

(b) The United States, before initiation of construction of any Project Works, has notified the Commission in writing of any other agreements or conditions precedent that must be met prior to the

construction of those Project Works; Provided, however, that no such conditions precedent shall be imposed unless such conditions precedent are mandated or required by Federal laws, State law, or policy promulgated pursuant thereto.

PROJECT COORDINATION COMMITTEES

4. Coordination of Project construction, operations, and maintenance activities will be accomplished through the establishment of two committees: one to focus on those activities associated with the construction of the Project Works, the other to oversee the operations and maintenance activities.

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

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

MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF STATUTORY WATER ALLOCATION

5. (a) The water released or bypassed to meet the Statutory Water Allocation for the Commission pursuant to this contract shall be measured at the outlet works of Ridges Basin Dam and/or in the Animas River at the Durango Pumping Plant with measuring facilities installed by the United States as a part of the Project. Water delivered to the Commission's Animas and San Juan River users pursuant to this contract shall be measured by the users at their points of diversion on the Animas and San Juan Rivers. The Statutory Water Allocation diverted from the San Juan River will be either replaced with Project Water released from Ridges Basin Reservoir or natural river flows bypassed at the Durango Pumping Plant. Sufficient water will be delivered from Project storage or bypassed to ensure that the Commission annually receives its Statutory Water Allocation to be available for diversion at all approved points of diversion on the San Juan River System.

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

(c) All facilities required for taking the Statutory Water Allocation furnished under this contract from the points of delivery and putting it to use by the Commission and its members will be acquired, constructed or installed, and operated and maintained by the Commission or its members at their sole expense.

ALLOTMENT AND USE OF STATUTORY WATER ALLOCATION

6. (a) The Commission's Statutory Water Allocation consists of a municipal and industrial water allocation with an average annual depletion not to exceed 10,400 acre-feet, except as otherwise provided under Subarticle 8(h) herein. This allocation may be met by a combination of direct diversion of the natural flows from the San Juan River System and water released from Project storage.

(b) The Commission's Statutory Water Allocation shall be diverted and put to beneficial use under Permit Nos. 4487 through 4501 issued by the New Mexico State Engineer.

(c) Except as provided in Subarticle 8(h) herein, the Commission shall have the right to 3,025 acre-feet of storage in Ridges Basin Reservoir to supplement the amount of direct flow diversion as necessary to fulfill the Commission's Statutory Water Allocation of 10,400 acre-feet average annual depletion. Any of the 3,025 acre-feet of unused storage shall be retained in Ridges Basin Reservoir and shall be available for the Commission's use in succeeding years. The Commission shall have the opportunity to purchase excess Project water from other Project participants.

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

WATER RIGHT PROVISIONS

7. (a) As provided by Section 15 of the Settlement Act, as amended, upon the request of the State Engineer of the State of New Mexico, the Secretary shall, as soon as practicable, in a manner consistent with applicable law, assign, without consideration, to the New Mexico Animas-La Plata Project beneficiaries or to the New Mexico Interstate Stream Commission in accordance with the request of the State Engineer, the Department of the Interior's interest in New Mexico State Engineer Permit Number 2883, dated May 1, 1956, in order to fulfill the New Mexico non-Navajo purposes of the Project, so long as the permit assignment does not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the use of the water involved. The parties agree that "as soon as practicable" is intended to refer to the time necessary for the Secretary to process the request and that the assignment will not depend on other factors or progress of the Project.

(b) Upon assignment as described in (a) above, the Commission, through its member entities, shall diligently work to put its water to beneficial use and file proofs of beneficial use under New Mexico State law as may be necessary to develop the water in the permit assigned. The Commission will protect its Project water rights and in case a dispute arises as to the character, extent, priority or validity of the rights of the Commission to use or permit use of its Statutory Water Allocation, the Commission shall promptly bring and diligently prosecute and/or defend judicial proceedings for the determination of such dispute and shall take all other measures necessary toward the defense and protection of the Commission's Project water rights.

(c) If requested by the United States and the Commission agrees, the Commission will assign all or part of such water rights secured under New Mexico Permit No. 2883 to the United States if such

assignment is necessary to protect the Statutory Water Allocation.

METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

8. (a) As provided by Section 6(a)(3)A) of the Settlement Act, as amended, the Commission's water capital obligations for the facilities described therein may be satisfied upon the payment in full of the Commission's share of the non-Tribal water capital obligations prior to the initiation of construction. Reclamation has developed a May 2001 Interim Cost Allocation based on October 2001 price levels of the estimated Project construction costs. The May 2001 Interim Cost Allocation allocates the reimbursable costs of the project among the Project beneficiaries based on the pro rata share of Project storage each respective entity receives in Ridges Basin Reservoir. The Commission's water capital obligation allocable to its Project storage in the May 2001 Interim Cost Allocation is \$6,916,722. Such payment to escrow will be made by November 9, 2001, as provided in Article 8(b) herein. The Commission agrees to pay this amount of \$6,916,722 to an acceptable escrow account, prior to November 9, 2001, to satisfy the up-front payment in full of its water capital obligation requirement of Section 6(a)(3)(A) of the Settlement Act, as amended, subject to acceptance by the Commission that the amount is reasonable.

(b) The escrow account funds will be available to fund the estimated annual cost of constructing the Commission's share of the Project Works as defined in Article 2(a) herein. As provided in the Escrow Agreement, payments will be made quarterly from the escrow account concurrent with the construction of Ridges Basin Dam, Durango Pumping Plant, Ridges Basin Inlet Conduit and appurtenant facilities. The quarterly payments will be consistent with the instructions provided in the Escrow Agreement. The payment amounts will be based on the annual construction schedule prepared by the United States and provided to the Commission. Any interest from the escrow account shall be returned to the Commission. The administration of the escrow account is further described in the attached Escrow Agreement, Exhibit B. If the Escrow Account is closed pursuant to paragraph 12 of Schedule A of that Agreement and there are funds from the initial payment of \$6,916,722 remaining in the Escrow Account, the Commission will have the option to: (1) pay the remaining amount in the account; or (2) seek an extension of the Escrow Agreement.

(c) The United States, in consultation with the Commission, may determine at any time that the construction costs allocated to the Project storage to be made available under this contract will exceed \$6,916,722 and shall give the Commission written notice of an additional water capital obligation. The Commission will be allowed to make additional contribution(s) to the escrow account during the construction period to cover any additional water capital obligations.

(d) At the end of the construction period, a final cost allocation will be performed by the Secretary pursuant to Section 6(a)(3)(B) of the Settlement Act, as amended. The Commission will pay only its allocable share of joint costs of the Project Works. Any additional repayment shall only be warranted only for reasonable and unforeseen costs associated with project construction as determined by the Secretary in consultation with the Commission.

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

(f) The United States shall give the Commission written notice of the Commission's total water capital obligations as established by the final cost allocation. In the event the final cost allocation establishes that the total water capital obligation of the Commission is more than the up-front payment amount of \$6,916,722 plus additional deposits, if any, to the Escrow account, then the Commission will have the option to pay the additional amount, with appropriate Interest During Construction charges, 180 days from the date of written notice as an alternative to repaying this additional debt with amortization interest over a repayment period as described in Subarticle 8(g) below. In the event the final cost allocation establishes that the total water capital obligation of the Commission is less than the up-front payment amount of \$6,916,722 plus additional deposits, if any, to the Escrow account, then the United States will refund the difference to the Commission within 180 days of such determination.

(g) After the 180-day final payment option established in Subarticle 8(f) has expired, the construction costs that are in addition to the up-front payment amount of \$6,916,722 plus additional deposits, if any, to the Escrow account, and the associated Interest During Construction, shall become a "Repayment Obligation" of the Commission. The United States will assign this Repayment Obligation to a pro rata share of the Commission's Project interest consistent with and subject to the procedures of Section 6(a)(3)(B) of the Settlement Act, as amended, and will issue a repayment block notice, as described in Article 10 herein, to the Commission prior to its receiving any of the pro rata Project interest assigned to the additional Repayment Obligation. The Repayment Obligation will be paid in annual installments due on or before January 10 of each year and in accordance with an annuity due payment schedule or schedules issued by the United States. Pursuant to Section 9(c)(1) of the Reclamation Project Act of 1939, the Repayment Obligation above shall be repaid within a 40-year period, and shall accrue amortization interest on the unpaid portion at the rate to be established pursuant to the provision of Section 5(f) of the Act of April 11, 1956 (70 Stat. 105) as amended by the Act of June 27, 1960 (74 Stat. 255).

(h) Upon final allocation, if the Commission elects not to pay the Repayment Obligation described in Subarticle 8(g) to the United States, the Commission shall be subject to the procedures of relinquishment as specified by Section 6(a)(3)(B) of the Settlement Act, as amended.

(i) It is agreed that during construction every attempt will be made to keep non-contract costs at or below 30 percent of the final contract costs. Once construction begins, the United States will annually report to the Commission the dollar amount of the non-contract costs and all other construction costs.

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

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

(l) Pursuant to section 9(c)(1) of the Reclamation Project Act of 1939, 43 U.S.C. ' 485h, following payment of the water capital obligation described herein, all other contract terms will remain in full force and effect until mutually agreed upon by the Commission and the United States.

(m) Upon payment of the Commission's total water capital obligation as defined in the final cost allocation, the Commission's Project interest shall not be subject to relinquishment to the Secretary for any reason, subject to applicable law.

ALTERNATIVE DISPUTE RESOLUTION

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

(b) (1) Either party may demand ADR in writing, which demand shall include the name of a qualified individual suggested by the party demanding ADR, together with a statement of the matter of controversy.

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

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

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

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

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

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

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

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

METHOD FOR ESTABLISHING BLOCKS FOR PROJECT DELIVERY AND REPAYMENT

10. (a) When the Project Works defined in Article 2(a) are completed, tested, and the the Project becomes available for use by the Commission, the United States shall, after consultation, give the Commission written notice, referred to herein as the "block notice," at least 12 months prior to the date when the Project becomes available for use by the Commission. The block notice shall contain:

(1) A description of the member entities included in the block.

(2) The quantity of Project Water available to the Commission for the block.

(3) That portion of Statutory Water Allocation available to the Commission as a firm full water supply.

(b) If a repayment obligation has been assigned pro rata to a quantity of the Commission's Project interest pursuant to Article 8(g) herein, then the block notice establishing the availability of that water supply will also contain:

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

(2) A payment schedule for repayment of those costs, including a breakdown of the amount

and due date of each payment to be paid by the Commission.

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

PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

11. (a) The operation, maintenance, and replacement (OM& R) costs allocated to the Commission will comprise: (1) the Commission's pro-rata share of OM&R costs actually incurred by the Project Operator in connection with Project facilities and/or operations that benefit all users of the Project, based on the amount of water storage actually purchased and paid for by the Commission in accordance with Article 8 above; and (2) the actual cost of replacing Project Water released by request of the Commission.

(b) The Commission agrees to pay the Project Operator, in advance, its proportionate share of the OM&R costs allocated to said Project Works. OM&R costs shall be allocated by the Project Operations Committee pursuant to Article 4. An OM&R charge notice shall be furnished annually by the Project Operator, which amount will be paid by the Commission in advance quarterly. If the funds advanced by the Commission under this article are less than the actual cost of OM&R properly chargeable to the Commission for the period advanced, a supplemental notice will be issued and the Commission shall advance such additional funds by the date specified in the supplemental notice. If the actual costs are less than the funds advanced, an appropriate adjustment will be made in the notice issued the next succeeding period.

USE AND DISPOSAL OF WATER DURING CONSTRUCTION

12. (a) Prior to the completion of the Project Works as defined in Article 2(a), the Commission may continue to use that portion of the Statutory Water Allocation that is met by direct diversion of flows from the San Juan River System, pursuant to Permit Nos. 4487 through 4501 issued by the New Mexico State Engineer. The United States has no objection to such use of this water until such water is necessary for Project purposes.

(b) Upon completion and initial testing of the Project Works as defined in Article 2(a), and at any other subsequent time, Project Water which is not made available to the Commission as provided in Articles 6 and 10, may be disposed of by the United States. The charges shall only be sufficient to cover the operation, maintenance, and replacement costs appropriate for such water delivery. The Commission shall, however, have the first opportunity to utilize this Project Water paying only the applicable OM&R costs.

WATER SHORTAGES

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

LEVY OF ASSESSMENTS, TOLLS AND CHARGES

14. The Commission shall, to the extent allowed by law, cause to be levied and collected all necessary assessments, tolls, and other charges and will use all of the authority and resources of the Commission to meet the obligations of the Commission specified herein, to make in full all payments to be made pursuant to this contract on or before the date such payments become due, and to meet its other obligations under this contract.

COVENANT AGAINST CONTINGENT FEES

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

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

16. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract shall be valid until approved in writing by the United States. Approval pursuant to this section shall be for the sole purposes of ensuring that any assignment or transfer complies with the terms of this contract, that the assignee is capable of fulfilling the Commission's duties and obligations under this contract, and that the end use of the Statutory Water Allocation falls within the uses contemplated in the environmental compliances for the Project.

DISSOLUTION OF COMMISSION

17. In the event of the dissolution of the Commission, pursuant to Article VIII.F. of the Joint Powers Agreement, this contract shall continue in the names of the cities and of San Juan County as trustee for the rural water users association with the continued support of the mill levy by the County. The cities and the County would become successors to the Commission and assume all the Commission's duties, as appropriate, in this Contract. Dissolution shall not be deemed an assignment, requiring the consent of the United States pursuant to Article 16 of this Agreement

THIRD PARTY CONTRACTS

18. (a) Any contract entered into between the Commission and any third-party for the use of its Statutory Water Allocation under this Contract shall be subject to written approval of the United States in order to determine solely whether the subcontract requires the third party to be bound to the provisions of this Contract including, but not be limited to, terms of measurement, operations, environmental compliance, and the impact of defaults on Project Works. Approval shall not be unreasonably withheld. The United States shall have 60 days after receipt of the proposed third-party contract to inform the Commission of its approval or denial of the contract. If additional environmental compliance is required, the Commission and the United States will develop a schedule for approval.

(b) The Commission shall not receive any valuable consideration for such subcontract in excess of the cost of the water to the Commission (including administrative costs). The Commission shall not extract any brokerage, profits, commission or fee, from any person on the water to be delivered under this subcontract. In connection with any such subcontract, the Chairman of the Commission shall certify to the United States that the conveyance with respect to water delivery was without consideration

except as provided above, and that no brokerage, profits, commission, fee, or other charge of any kind was charged to the subcontractor or any person acting on behalf of the subcontractor. Any exceptions to this article will be covered under a separate agreement.

TITLE TO PROJECT WORKS

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

SEVERABILITY

20. (a) If any provisions of Articles 21 through 33 are in conflict with Articles 1 through 20, then the provisions of Articles 1 through 20 shall take precedence.

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

CHARGES FOR DELINQUENT PAYMENTS

21. (a) The Commission shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Commission shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Commission shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Commission shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Commission shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

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

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. The United States shall not make water available to the Commission through project facilities during any period in which the Commission may be in arrears in the advance payment of any operation and maintenance charges due the Project Operator or in arrears for more than 12 months in the payment of any construction charges due the United States. The Commission shall not furnish water made available pursuant to this contract for parties which are in arrears in the

advance payment of operation and maintenance charges or in arrears more than 12 months in the payment of construction charges as levied or established by the Commission.

NOTICES

23. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Commission, when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed, postage prepaid, or delivered to the San Juan Water Commission, 800 Municipal Drive, Farmington, New Mexico 87401. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

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

CHANGES IN COMMISSION'S ORGANIZATION

26. While this contract is in effect, no change may be made in the Commission's organization, by dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent, unless all obligations of the Commission under this contract have been satisfied, or provision has been made for the satisfaction of all such obligations.

BOOKS, RECORDS AND REPORTS

27. The Commission shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Commission's financial transactions, water supply data, water-use data; and other matters that the Contracting Officer may reasonably require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may reasonably require. Subject to applicable Federal and State laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

RULES, REGULATIONS, AND DETERMINATIONS

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

(b) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with the expressed and implied provisions of this contract, the laws of the United States and the State of New Mexico, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Commission.

QUALITY OF WATER

29. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

WATER AND AIR POLLUTION CONTROL

30. The Commission, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of New Mexico, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

WATER CONSERVATION

31. Prior to the delivery of water provided from or conveyed through Federally constructed or Federally financed facilities pursuant to this contract, the Commission shall develop an effective water conservation program acceptable to the Contracting Officer. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent 5-year intervals, the Commission shall submit a report on the results of the program to the Contracting Officer for review. Based upon the conclusions of the review, the Contracting Officer and the Commission shall consult and agree to continue or to revise the existing water conservation program.

EQUAL OPPORTUNITY

32. During the performance of this contract, the Commission agrees as follows:

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

(b) The Commission will, in all solicitations or advertisements for employees placed by or on behalf of the Commission, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

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

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

(e) The Commission will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor

for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

33. (a) The Commission shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U. S. Department of the Interior and/or Bureau of Reclamation.

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

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

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