

Contract No. _____

Neg Mtg: 12/08/14; 03/04/15

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT
COLORADO RIVER STORAGE PROJECT

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
THE SOUTHERN UTE INDIAN TRIBE

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4 UNITED STATES
5 DEPARTMENT OF THE INTERIOR
6 BUREAU OF RECLAMATION
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8 ANIMAS-LA PLATA PROJECT
9 COLORADO RIVER STORAGE PROJECT
10

11 REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
12 THE SOUTHERN UTE INDIAN TRIBE
13

14
15 THIS REPAYMENT CONTRACT (Contract), entered into this _____ day of
16 _____, 2015, pursuant to the Act of Congress approved June 17, 1902 (32 Stat.
17 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly
18 known and referred to as the Federal Reclamation Laws, between the UNITED STATES OF
19 AMERICA, hereinafter referred to as the United States, represented by the officer executing this
20 Contract, and THE SOUTHERN UTE INDIAN TRIBE, hereinafter referred to as the Tribe,
21 (individually as "Party" and collectively as "the Parties" to this Contract) acting through their
22 representatives.

23 WITNESSETH, That:

24 WHEREAS, the following statements are made in explanation:

25 (a) The Act of Congress approved April 11, 1956 (70 Stat. 105), authorized the planning
26 and investigation of the Animas-La Plata Project (Project), as a participating project of the
27 Colorado River Storage Project; subsequently, the construction, operation, and maintenance of
28 the Animas-La Plata Project was authorized by Title V of the Colorado River Basin Project Act
29 of September 30, 1968 (82 Stat. 896), and the United States has investigated, planned, and
30 constructed the said Project for the diversion, storage, salvage, and delivery of the waters of the
31 Animas River, which the Project has among its authorized purposes the furnishing of water for
32 municipal, industrial, domestic, and other beneficial purposes. The water rights settlement
33 purposes of the Project were authorized by the Colorado Ute Indian Water Rights Settlement Act
34 of 1988, Public Law 100-585 (102 Stat. 2973), as amended by the Colorado Ute Settlement Act

1 Amendments of 2000, Public Law 106-554 (114 Stat. 2763) (hereinafter referred to as the
2 Settlement Act).

3 (b) The Settlement Act authorized the Secretary to settle the outstanding claims of the Tribe
4 on the Animas and La Plata Rivers, acting through the Bureau of Reclamation (Reclamation) to
5 complete construction of, and operate and maintain Project Works with sufficient capacity to
6 divert and store, and use water from the Animas River to provide for an average annual depletion
7 of 57,100 acre-feet of water to be used for a municipal and industrial (M&I) water supply.

8 (c) Pursuant to the Settlement Act, the United States agrees to deliver through the use of
9 Project Works, or make available for delivery to the Tribe, an M&I water allocation with an
10 average annual depletion not to exceed 16,525 acre-feet for its present and future needs.

11 (d) The Secretary has determined in accordance with Section 6(a)(2) of the Settlement Act,
12 the Tribe's construction costs allocable to the Project Works that are required to deliver the
13 Tribe's Statutory Water Allocation shall be nonreimbursable to the United States.

14 (e) Reclamation has completed the Animas-La Plata Final Supplemental Environmental
15 Impact Statement (FSEIS) dated July 2000, and subsequent Record of Decision (ROD) dated
16 September 25, 2000, for compliance with the National Environmental Policy Act. The Tribe
17 acknowledges that as a result of this regulatory compliance, and the terms of this Contract, it is
18 limited in this Contract to an M&I water allocation with an average annual depletion not to
19 exceed 16,525 acre-feet of water.

20 (f) Water rights for the Project have been obtained in Colorado and New Mexico.

21 (g) The Tribe has an interest in contracting for the water supply allocated to the Southern
22 Ute Indian Tribe pursuant to the Settlement Act.

23 (h) The Tribe has demonstrated its legal and financial capability to make the contributions
24 and payments required by this Contract.

25 (i) The Project will be used to provide dependable long-term M&I water storage for the
26 Tribe as described in the FSEIS and the ROD.

27 (j) It is the intent of both Parties that any rights granted by this Contract are not limited to a
28 specific term, but would instead continue in full force and effect pursuant to Section 9(c)(1) of
29 the Reclamation Project Act of 1939, 43 U.S.C. § 485h. This Contract will remain in full force
30 and effect for the useful Project life, or until mutually agreed upon by the Parties.

1 (k) The Southern Ute Indian Tribe, by letter dated May, 14, 2012, concurs with the method
2 of payment in which the Secretary shall pay, directly to the Project Operator, the Tribe's pro-rata
3 portion of the unused fixed annual operation, maintenance, and replacement (OM&R) costs,
4 pursuant to Section 6 (a)(4)(A) of the Settlement Act.

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

10 (m) The Parties hereto desire to enter into this Contract in order to secure this M&I water
11 supply pursuant to the terms and conditions of the Settlement Act for the use of such water in
12 and for the benefit of the Tribe as hereinafter provided.

13

14 NOW, THEREFORE, in consideration of the mutual and dependent covenants and
15 conditions contained herein, the Parties hereto agree as to the following:

16

17 1. GENERAL DEFINITIONS

18 For the purposes of this Contract only, unless otherwise distinctly expressed or manifestly
19 incompatible with the intent hereof, the term:

20 (a) "Appurtenant Facilities" includes, but is not limited to, transmission lines, roads,
21 buildings, and other facilities related to the Project Works constructed as a part of the Project.

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

27 (c) "Average Annual Depletion" means the depletion of Project Water accounted for over an
28 interval of time as a whole or by an individual Project participant, pursuant to the Settlement Act,
29 to be determined by the United States in cooperation with Project participants.

30 (d) "Colorado Ute Tribes" means the Southern Ute Indian Tribe, and the Ute Mountain Ute

1 Tribe, both federally recognized Indian tribes.

2 (e) "Consultation" or "consult" refers to an ongoing obligation of both parties to implement
3 the provisions of this Contract with a full exchange of information so as to assure that each party
4 is provided full participation in the decision making process. Consultation shall be required of
5 each party with respect to each section of the Contract regardless of whether the section itself
6 sets forth a Consultation requirement. The Consultation required shall be reasonable under the
7 circumstances, and except in exigent circumstances, Consultation shall be undertaken in advance
8 of decision making. In the event that agreement cannot be reached and the United States makes
9 a decision, appeals are available to the extent allowed under applicable laws.

10 (f) "Contracting Officer" or "Secretary" or "United States" means the Secretary of the
11 United States, Department of the Interior or his/her duly authorized representative to administer
12 this Contract.

13 (g) "First Use" means the date in which water is first used by the Tribe or used
14 pursuant to a Third-Party Contract with the Tribe. First Use of water shall be deemed to occur in
15 any water year in which the Tribe actually uses water or when a third party pays the Tribe under
16 the terms of the Third-Party Contract or accepts delivery of water. A Third-Party Contract
17 pursuant to which the only income to the Tribe is in the nature of a standby charge is deemed not
18 to be a first use of water. The Tribe's First Use shall not be triggered when a portion of its
19 Statutory Water Allocation is used for emergency purposes, including, fire, contamination of the
20 water in the Animas River or in Lake Nighthorse, or as otherwise approved by Reclamation.
21 Releases made for drought response, compact compliance, or as provided in federal legislation
22 shall not be considered First Use, provided the Tribe does not receive compensation for such
23 uses. Use of joint pool by others, as provided in Exhibit A of the IGA, is not to be considered as
24 First Use, provided the Tribe does not receive compensation for such use, beyond that identified
25 in Exhibit A of the IGA. However, use of the Tribe's water as provided in 4.08 of Exhibit A of
26 the IGA shall be considered First Use.

27 (h) "Fixed OM&R Costs" includes, but is not limited to costs of labor, materials and
28 equipment required to maintain Project Works; Project administration and overhead; energy
29 consumption and power demand costs attributable to the pumping of water to Lake Nighthorse to
30 account for testing; evaporation and seepage losses; and annual payments to reserve fund(s).

1 | ~~(h)~~(i) “IGA” means the intergovernmental agreement, effective March 4, 2009, which
2 | has been executed by and among the Colorado Water Resource and Power Development
3 | Authority; the San Juan Water Commission, a political subdivision of the state of New Mexico;
4 | the La Plata Conservancy District, a political subdivision of the state of New Mexico; the
5 | Southern Ute Indian Tribe, a federally recognized Indian tribe; the Navajo Nation, a federally
6 | recognized Indian tribe; and the Ute Mountain Ute Tribe, a federally recognized Indian tribe; and
7 | their authorized assignees, that have been identified by the Settlement Act to receive a water
8 | allocation that established the Association to carry out OM&R activities and responsibilities of
9 | the Project.

10 | ~~(j)~~(j) “Operation and Maintenance Facilities” means those facilities necessary to support
11 | OM&R obligations, including a permanent operating facility with associated office space,
12 | shop(s) for repair and housing of the maintenance support equipment, storage place for supplies,
13 | and equipment yard.

14 | ~~(k)~~(k) “Point of Delivery” means the point where the water is released at the outlet
15 | works of Ridges Basin Dam or bypassed at the Durango Pumping Plant, or other location where
16 | water is diverted directly from Lake Nighthorse and/or in the Animas River below the Durango
17 | Pumping Plant.

18 | ~~(l)~~(l) “Project Operator” means the Association, pursuant to OM&R Contract No. 10-
19 | WC-40-370, or the United States.

20 | ~~(m)~~(m) “Project Storage Water” means Project Water provided from storage in Lake
21 | Nighthorse, the storage component of the Project.

22 | ~~(n)~~(n) “Project Water” means all water released from storage through the Animas-La
23 | Plata Project, or bypassed and measured from the natural flow of the Animas River, at the
24 | Durango Pumping Plant, as part of the Project participant’s statutory water allocation.

25 | ~~(o)~~(o) “Project Works” means all works or facilities as described in the Settlement Act,
26 | including a reservoir, a pumping plant, a reservoir inlet conduit, and Appurtenant Facilities, not
27 | including recreation facilities, with sufficient capacity to divert and store water from the Animas
28 | River for an average annual depletion of 57,100 acre-feet of water to be used for an M&I water
29 | supply, together with lands and rights-of-way for such works, as described in **Article 2**.

30 | ~~(p)~~(p) “Settlement Act” means the Colorado Ute Indian Water Rights Settlement Act of

1 1988, Public Law 100-585 (102 Stat. 2973), as amended by the Colorado Ute Settlement Act
2 Amendments of 2000, Public Law 106-554 (114 Stat. 2763), as amended by the Energy and
3 Water Development Appropriations Act of 2006, Public Law 109-103 (119 Stat. 2268) and as
4 amended by the Consolidated Appropriations Act of 2008, Public Law 110-161 (121 Stat. 2123).

5 ~~(p)(q)~~ “Third-Party Contract” means any contract entered into between the Tribe and a
6 third party for the beneficial use of the Tribe’s Statutory Water Allocation.

7 ~~(q)(r)~~ “Tribe” or “Tribal” means the Southern Ute Indian Tribe of the Southern Ute
8 Indian Reservation, headquartered in Ignacio, Colorado, a body politic and federally recognized
9 Indian tribe as provided in Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108
10 Stat. 4791, 4792).

11 ~~(s)(s)~~ “Tribe’s Statutory Water Allocation” means the M&I water allocation with an average
12 annual depletion not to exceed 16,525 acre-feet of water, pursuant to Section 6(a)(1)(A)(ii)(I) of
13 the Settlement Act.

14 ~~(t)(t)~~ “Variable OM&R Costs” are the costs of power including energy consumption and that
15 share of power demand costs for the pumping of water not designated as Fixed OM&R costs.

16
17 2. PROJECT WORKS

18 Subject to the terms and conditions of this and other applicable contracts related specifically to
19 this Project, the United States has constructed the Project Works and Appurtenant Facilities,
20 acquired lands, and provided certain moveable property and equipment to the Project Operator
21 needed to carry out OM&R activities and responsibilities as necessary for Project purposes.

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

23 (1) Ridges Basin Dam and Lake Nighthorse are located on Basin Creek approximately 3
24 miles southwest of Durango, Colorado. The reservoir has a total storage capacity of
25 123,541 acre-feet.

26 (2) Durango Pumping Plant is located adjacent to the Animas River which pumps water
27 from the Animas River for storage in Lake Nighthorse.

28 (3) Ridges Basin Inlet Conduit extends from the Durango Pumping Plant to Lake
29 Nighthorse.

30 (4) Operation and Maintenance Facilities have been constructed, as determined necessary

1 by the United States, for the required OM&R of Project Works.

2 (b) The United States, after Consultation with the Tribe, shall have the right at any time to
3 increase the capacity of the Project Works, or any unit or feature thereof, for other than currently
4 authorized project purposes without additional capital or OM&R costs to the Tribe; provided,
5 that the Tribe's use of the Tribe's Statutory Water Allocation shall not be impaired thereby. The
6 right of use of such increased capacity is reserved to the United States.

7 (c) Any additions, changes to, or operation of Project Works or changes in use of the Tribe's
8 Statutory Water Allocation from that stated in the FSEIS, and subsequent ROD, will, if required
9 by law, be subject to further compliance with applicable environmental statutes, which shall
10 include an analysis of potential impacts on other Project participants.

11
12
13 3. WATER DELIVERY PROVISIONS

14 (a) Pursuant to the Settlement Act, the United States agrees to deliver or make available for
15 delivery to the Tribe an M&I water allocation with an average annual depletion not to exceed
16 16,525 acre-feet from the Project. The water released or bypassed for the Tribe pursuant to this
17 Contract, or a third party pursuant to a Third-Party Contract, as provided by Article 9 shall be
18 measured at the outlet works of Ridges Basin Dam, and/or in the Animas River below the
19 Durango Pumping Plant, with measuring facilities installed by the United States as a part of the
20 Project. The Tribe may take its water from additional points of diversion directly from Lake
21 Nighthorse after Consultation and approval of the United States. Water delivered at these
22 additional points of diversion on Lake Nighthorse shall be measured at those points of diversion
23 by facilities provided by the Tribe or its third party contractors. Water will be available at the
24 outlet works of Ridges Basin Dam, additional points of diversion on Lake Nighthorse and/or the
25 Animas River in such quantities as the Tribe determines, subject to capacity limitations of the
26 relevant facilities, to ensure that the Tribe receives the Tribe's Statutory Water Allocation.

27 (b) Once water is released from the outlet works of Ridges Basin Dam, bypassed at the
28 Durango Pumping Plant, or diverted from Lake Nighthorse, the United States will not be
29 responsible for the control, carriage, handling, use, disposal, or distribution of the Tribe's
30 Statutory Water Allocation, or for any damage of any nature whatsoever arising out of or

1 connected to the control, carriage, handling, transportation loss, treatment, use, disposal of the
2 Tribe's Statutory Water Allocation, except when caused by the direct action of the United States.

3 (c) All facilities required for taking the water furnished under this Contract from the points
4 of delivery, and putting it to use by the Tribe and its users or Third-Party Contractors will be
5 acquired, constructed or installed, and operated and maintained by the Tribe, its users, or Third
6 Party Contractors at their sole expense, unless otherwise agreed to by the United States.
7

8 4. ALLOCATION AND USE OF PROJECT WATER

9 (a) The Tribe's Statutory Water Allocation consists of a combination of direct diversion
10 from the natural flows from the Animas River, and/or water released from storage to Basin Creek
11 and subsequently diverted from the Animas River, and/or water released to non-project facilities.

12 (b) The Tribe shall have the right of up to 38,108.5 acre-feet of storage capacity in Lake
13 Nighthorse to supplement the amount of direct flow diversion as necessary to fulfill the Tribe's
14 Statutory Water Allocation. Unless the IGA is in effect, any portion of the 38,108.5 acre-feet of
15 the unused storage shall be retained in Lake Nighthorse, and shall be available for the Tribe's use
16 in succeeding years. The Tribe shall not purchase excess Project Water from other Project
17 participants until full use of the Tribe's Statutory Water Allocation, unless approved by
18 Reclamation.

19 (c) If required to ensure that the Tribe's Statutory Water Allocation with an average annual
20 depletion not to exceed 16,525 acre-feet of water is met, the water may be used and reused to the
21 extent permitted by the Project water right decrees and Federal authorizations. In addition, the
22 water may be used at any location in the State of Colorado, in accordance with all applicable
23 laws, or may be used by exchange or augmentation. Also, the water may be used for compact
24 compliance purposes. Any use of water contemplated in this Article shall be subject to the
25 conditions in **Article 2(c)**.

26 (d) The United States, after compliance with applicable environmental compliance statutes
27 and consistent with appropriate land use regulations, shall cooperate with the Tribe, its
28 subcontractors or assignees, to provide appropriate means for access to land needed for delivery
29 of Project Water through non-project facilities.

1

2 5. LIMITED RESPONSIBILITY FOR DISTRIBUTION

3 Upon delivery, as specified under Article 3 herein, the Tribe shall hold the United States,
4 its officers, agents, employees, and successors or assigns, harmless from every claim for
5 damages to persons or property, direct or indirect, and of whatever nature, arising out of or in
6 any manner connected with the control, carriage, handling, distribution or use of such water
7 beyond the Point of Delivery.

8 6. TRUST RESPONSIBILITIES

9 Nothing in this Contract diminishes the obligations of the United States pursuant to the
10 Settlement Act.

11 7. WATER RIGHT PROVISIONS

12 (a) The Tribe, or its assignee, shall protect its interest in the Project water rights, and in
13 case a dispute arises as to the character, extent, priority or validity of the rights of the United
14 States, or the Tribe to use or permit use of Project Water, the Tribe shall promptly bring and
15 diligently prosecute and/or defend judicial proceedings for the determination of such dispute, and
16 shall take all other measures necessary toward the defense and protection of the Project water
17 supply. The United States, upon request of the Tribe, will enter into the proceedings to defend
18 such rights.

Comment [BG1]: 120814 DOI SOL to review with Indian Affairs Office.
030415 Further SOL Review

20 8. PROCEDURE TO INITIATE PROJECT WATER DELIVERY

21 (a) Effective upon the date of execution of this Contract, the Tribe’s Statutory Water
22 Allocation shall be available for beneficial use by the Tribe upon their request for Project Water
23 delivery, as provided herein. The initial request by the Tribe for any new delivery of a specified
24 quantity of Project Water (rounded to the nearest acre-foot) shall be conducted in the following
25 two ways:

26 (1) Delivery of the Tribe’s Statutory Water Allocation to the Tribe, for use by the Tribe,
27 shall be accomplished through written notice to Reclamation, pursuant to Article 17, and
28 the Project Operator. The written notice shall include the quantity of water to be diverted,
29 a description of the use, the location of the diversion point(s), and the estimated depletion

1 amount of the Tribe's Statutory Water Allocation. The date the water is taken at a Point
2 of Delivery will establish the date of First Use by the Tribe of that portion of the Tribe's
3 Statutory Water Allocation as stipulated under Section 6(a)(4)(A) of the Settlement Act.

4 (2) Delivery of the Tribe's Statutory Water Allocation under Third-Party Contracts shall
5 be accomplished as provided under Article 9. The date upon which a third party pays the
6 Tribe under the terms of the Third-Party Contract for delivery of water, whether or not the
7 third party takes delivery, will establish the date of First Use by the Tribe of that portion
8 of the Tribe's Statutory Water Allocation as stipulated under Section 6(a)(4)(A) of the
9 Settlement Act.

10 (b) The Tribe's Statutory Water Allocation associated with all the Project Water deliveries
11 shall be measured and delivered pursuant to Articles 3 and 4.

12
13 9. THIRD-PARTY CONTRACTS

14 (a) Any contract entered into between the Tribe and any third party for the beneficial use of
15 the Tribe's Statutory Water Allocation under this Contract shall be subject to written approval by
16 the United States. United States' approval will be based on a determination that the Third-Party
17 Contract will not negatively affect Project operations, benefits, or authorized purposes, and is
18 consistent with applicable federal law and commitments. Nothing in these Third-Party
19 Contracts shall interfere with other contractual, legal, or regulatory obligations of the United
20 States. The Third-Party Contract will require the third-party to be bound to the provisions of this
21 Contract including, but not be limited to, terms of measurement, operations, environmental
22 compliance, and the impact of defaults on Project Works.

23 (b) The Third-Party Contract will state the total amount of water to be diverted,
24 description of use, location of diversion point(s) of water, the initial estimated depletion amount,
25 any amount of water under terms of a standby option, and the water delivery schedule, all
26 consistent with the Average Annual Depletion.

27 (c) Approval by the United States shall not be unreasonably withheld. The United
28 States shall have 60 days after receipt of the proposed Third-Party Contract to inform the Tribe
29 of its approval or denial of the Third-Party Contract. If additional environmental compliance is
30 required, the Tribe and the United States will develop a schedule for approval. Water made

Comment [CC2]: SUIT would like to discuss the terms set forth in the Jicarilla Contract.

1 available under Third-Party Contracts shall be delivered from the Tribe's Statutory Water
2 Allocation. The Tribe will be the responsible party to pay the applicable share of the OM&R
3 costs of the contracted water to the Project Operator.

4
5 10. CONSTRUCTION CHARGE OBLIGATION

6 Pursuant to Sections 6(a)(2) of the Settlement Act, all construction and all interest costs
7 allocated to the Tribe's Statutory Water Allocation are declared non-reimbursable and hereby
8 waived.

9
10 11. COST PROVISIONS

11 (a) Pursuant to Section 6(a)(4)(A) of the Settlement Act, and with respect to the Tribe's
12 Statutory Water Allocation, until that water is put to First Use the Secretary shall pay the annual
13 Fixed OM&R Costs allocable to The Tribe's M&I water allocation in accordance with the
14 Settlement Act. Once First Use has been established for a quantity of the Tribe's Statutory
15 Water Allocation as provided under Article 8, the Tribe shall then be solely responsible for both
16 the Fixed OM&R Costs and Variable OM&R Costs allocable to that quantity from that time
17 forward pursuant to Section 6(a)(5)(b) of the Settlement Act.

18 (b) Pursuant to Section 6(a)(5)(b) of the Settlement Act, upon the Tribe's First Use of an
19 increment of the Tribe's Statutory Water Allocation, or the Tribe's First Use of such water
20 pursuant to the terms of a Third-Party Contract, the Tribe shall bear all Variable OM&R costs
21 associated with all increments of water established under First Use, and the pro rata share of all
22 annual Fixed OM&R costs of such increments from that point in time on, throughout the life of
23 the Project. The pro rata share of the Tribe's total annual Fixed OM&R Costs to be borne by the
24 Tribe will be based upon the formula:

25
26
$$\frac{\text{Pro Rata Share of Total}}{\text{Tribal Fixed OM\&R Obligation}} = \frac{\text{Accumulated Increments Established Under First Use}}{\text{Statutory Water Allocation}}$$

27
28
29 (b)(c) During the period in which the Secretary is paying any portion of the Tribe's
30 Fixed OM&R costs, Reclamation, in conjunction with the three-year and one-year OM&R work

Comment [BG3]: 030415 – Article has been reorganized to separate terms that are "Under IGA" and "Not Under IGA"

Comment [CC4]: Why do we need this sentence? It seems to repeat 2nd sentence in 11(a).

1 plans required under its OM&R Contract with the Association, will confer with the Tribe.
2 Reclamation will continue to confer with the Tribe on the Association's annual OM&R budget
3 until the Tribe has assumed the responsibility to pay 100 percent of its OM&R costs.

4 ~~(e)~~(d) As long as the IGA is in effect, the Tribe and the Secretary shall follow the terms
5 and conditions set forth in the IGA. The Secretary shall pay the Tribe's share of Fixed OM&R
6 costs for the Tribe's water not established under First Use in accordance with the procedures set
7 forth by the Association. The Tribe's share of Fixed OM&R Costs of the multipurpose facilities,
8 as identified in the IGA, is 35.5% of the total Fixed OM&R Costs for the Project Works. The
9 Tribe's share of Variable OM&R Costs include actual costs of replacing Project Storage Water
10 released or diverted from Lake Nighthorse by request of the Tribe, or any Third Party
11 Contractor.

12
13 ~~(d)~~(e) In the unlikely event that the IGA is voided or otherwise terminated, the OM&R
14 costs allocated to the Tribe will be comprised of the Tribe's share of Fixed OM&R Costs, as
15 defined by the final cost allocation, and the Tribe's share of Variable OM&R Costs. The
16 procedures for the payment to the Project Operator of the Tribe's OM&R obligation by the
17 Secretary for the Tribe's Statutory Water Allocation not established under First Use, and by the
18 Tribe for the Tribe's Statutory Water Allocation established under First Use are as follows:

- 19 (1) The Tribe's share of Fixed OM&R costs will be established by the final cost
20 allocation for the Project which will base that share on a proration of the Tribe's
21 38,108.5 acre-feet of storage capacity to the total active capacity of 95,030 acre-
22 feet;
- 23 (2) The Tribe's share of Variable OM&R costs include actual costs of replacing
24 Project Storage Water released or diverted from Lake Nighthorse by request of
25 the Tribe, or any Third Party Contractor.
- 26 (3) The Tribe under this Contract shall have 38,108.5 acre-feet of storage capacity
27 allocated for its exclusive use in Lake Nighthorse annually to the extent that
28 water stored in the Tribe's storage capacity space may be held for exclusive
29 delivery to the Tribe in future years as necessary to meet the delivery demands of
30 the Tribe and to support use of the Project Water supply, in accordance with

1 Article 3(a). The Project Operator shall fill and refill the Tribe's storage capacity
2 space as often as direct flow is legally available from the Animas River to fill
3 said space under the Project diversion right issued in the State of Colorado, or as
4 free river conditions allow. The Project participants recognize, however, that at
5 times it may be preferable to delay pumping water to replace the Project water
6 supply in the Reservoir until power costs are less expensive and thus that the
7 Reservoir may not be full at all times.

8 (4) An OM&R charge notice shall be furnished annually by the Project Operator, in
9 advance, to the Secretary and the Tribe stating the Tribe's share of OM&R costs
10 associated with said Project Works.

11 ~~(2)(5)~~ Payment will be made to the Project Operator, within a reasonable amount
12 of time, in advance, for the Tribe's share of the OM&R costs associated with
13 said Project Works.

14 ~~(e)(f)~~ It is the intent of both parties that the Tribe will pay its obligations under this
15 Contract and the Tribe agrees to take all reasonable actions to ensure adequate funds are
16 available to pay the amounts as required under this Article. In the event that the Tribe
17 demonstrates to the Secretary that it is unable to pay in whole or in part of its Project OM&R
18 obligations from the gross revenues which could be generated from a Third-Party Contract for
19 the use of its water, pursuant to Section 6(d) of the Settlement Act, then the Secretary will bear
20 those obligations to the Project Operator on behalf of the Tribe, subject to Congressional
21 appropriations.

22
23 12. WATER SUPPLY SHORTAGE

24 (a) With respect to water made available from the Project under the terms of this Contract,
25 the Tribe shall share proportionally in any water shortages to the Project, consistent with all
26 applicable law.

27 (b) Unless the IGA is in effect, in any year in which there may occur a shortage from any
28 cause, the United States reserves the right to apportion the available water allocation pursuant to
29 the Settlement Act, as amended, and applicable laws, including the Animas-La Plata Project
30 Compact, among the Tribe and others entitled to receive water from the Project in accordance

1 | with conclusive determinations of the Contracting Officer.
2

Comment [CC5]: What are the available appeal procedures?

3 13. TITLE TO PROJECT

4 Title to the Project Works shall be held by the United States, unless specifically provided
5 otherwise by Congress, notwithstanding transfer of the OM&R of any said works to the Project
6 Operator.
7

8 14. SEVERABILITY

9 If any provisions of this Contract shall, for any reason be determined to be illegal or
10 unenforceable, the Parties, nevertheless, intend that the remainder of this Contract shall remain in
11 full force and effect. Furthermore, any adjustments or variations to this Contract necessitated by
12 future negotiations with other Project beneficiaries can be accomplished by amending this
13 Contract. In the event that unforeseen issues arise, the Tribe and the United States will work
14 together to attempt to resolve the issue by either amending this Contract, entering into a
15 memorandum of understanding or other appropriate means.
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STANDARD ARTICLES

15. CHARGES FOR DELINQUENT PAYMENTS

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

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

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

16. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

(b) The payment of charges becoming due pursuant to this contract is a condition precedent to receiving benefits under this contract. The Project Operator shall not make water available to the Tribe through Animas-La Plata project facilities during any period in which the Tribe is in arrears in the advance payment of any operation and maintenance charges due the Project Operator. The Tribe shall not deliver water under the terms and conditions of this contract for lands or parties that are in arrears in the advance payment of operation and maintenance charges as levied or established by the Tribe.

17. NOTICES

Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Tribe, when mailed, certified postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, UT 84138-1102; and on behalf of the United States, when mailed, certified postage prepaid, or delivered to the Tribal Chairman, Southern Ute Indian Tribe, PO Box 737, Ignacio, CO 81137, with a copy to the Director, Department of Natural Resources,

1 Southern Ute Indian Tribe, PO Box 737, Ignacio, CO 81137. The designation of the addressee
2 or the address may be changed by notice given in the same manner as provided in this article for
3 other notices.

4
5 18. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

6
7 The expenditure or advance of any money or the performance of any obligation of the
8 United States under this contract shall be contingent upon appropriation or allotment of funds.
9 Absence of appropriation or allotment of funds shall not relieve the Tribe from any obligations
10 under this contract. No liability shall accrue to the United States in case funds are not
11 appropriated or allotted.

12
13 19. OFFICIALS NOT TO BENEFIT

14
15 No Member of or Delegate to the Congress, Resident Commissioner, or official of the
16 Tribe shall benefit from this contract other than as a water user or landowner in the same manner
17 as other water users or landowners.

18
19
20 20. ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

21
22 The provisions of this contract shall apply to and bind the successors and assigns of the
23 parties hereto, but no assignment or transfer of this contract or any right or interest therein by
24 either party shall be valid until approved in writing by the other party.

25
26 21. BOOKS, RECORDS, AND REPORTS

27
28 The Secretary and the Tribe shall jointly establish and maintain accounts and other books
29 and records pertaining to administration of the terms and conditions of this contract as are
30 necessary to operate the subject facilities, including the Tribe's financial transactions; water
31 supply data; project operation, maintenance, and replacement logs; and other matters that the
32 Contracting Officer may require as it pertains to the obligations under this contract. Reports
33 shall be furnished to the Contracting Officer in such form and on such date or dates as the
34 Contracting Officer may require. Subject to applicable Federal laws and regulations, each party
35 to this contract shall have the right during office hours to examine and make copies of the other
36 party's books and records relating to matters covered by this contract.

37
38 22. RULES, REGULATIONS, AND DETERMINATIONS

39
40 (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to
41 this contract is subject to Federal reclamation law, as amended and supplemented, and the rules
42 and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

43 (b) The Contracting Officer shall have the right to make determinations necessary to
44 administer this contract that are consistent with its provisions, the laws of the United States and

1 the state of Colorado, and the rules and regulations promulgated by the Secretary of the Interior.
2 Such determinations shall be made in Consultation with the Tribe.

3
4 23. PROTECTION OF WATER AND AIR QUALITY

5
6 (a) Project facilities used to make available and deliver water to the Tribe shall be operated
7 and maintained in the most practical manner to maintain the quality of the water at the highest
8 level possible as determined by the Contracting Officer: *Provided, That* the United States does
9 not warrant the quality of the water delivered to the Tribe and is under no obligation to furnish or
10 construct water treatment facilities to maintain or improve the quality of water delivered to the
11 Tribe.

12 (b) The Tribe shall comply with all applicable water and air pollution laws and regulations
13 of the United States and the state of Colorado; and shall obtain all required permits or licenses
14 from the appropriate federal [, state, or local] authorities necessary for the delivery of water by
15 the Tribe; and shall be responsible for compliance with all federal[, state, and local] water quality
16 standards applicable to surface and subsurface drainage and/or discharges generated through the
17 use of Federal or Tribe facilities or project water provided by the Tribe within the Tribe's Project
18 Water Service Area.

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

21
22 24. WATER CONSERVATION

23
24 Prior to the delivery of water provided from or conveyed through federally constructed or
25 federally financed facilities pursuant to this contract, the Tribe shall develop an effective -water
26 conservation plan program which shall contain definite water conservation objectives,
27 appropriate economically feasible water conservation measures, and time schedules for meeting
28 those objectives, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and
29 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

30
31 25. INDIAN EMPLOYMENT – EQUAL EMPLOYMENT OPPORTUNITY

32
33 (a) The Tribe shall give preference in employment to Indians in accordance with applicable
34 law. The Bureau of Indian Affairs Office of Employment Assistance shall be notified of
35 employment opportunities 48 hours before any positions are advertised to the general public.

36 (b) Except as provided above, during the performance of this contract the Tribe agrees as
37 follows:

38 (1) The Tribe will not discriminate against any employee or applicant for employment
39 because of race, color, religion, sex, disability, or national origin. The Tribe will take
40 affirmative action to ensure that applicants are employed, and that employees are treated
41 during employment, without regard to their race, color, religion, sex, disability, or
42 national origin. Such action shall include, but not be limited to the following:
43 employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;
44 layoff or termination; rates of pay or other forms of compensation; and selection for

Comment [CC6]: Tribe contends this should be deleted and replaced with "in accordance with applicable law." That language is contained in Florida Contract. There is no reason why it shouldn't work here.

Comment [BG7]: DOI SOL to look in to.

030415 – SOL "RRA needs to stay"

1 training, including apprenticeship. The Tribe agrees to post in conspicuous places,
2 available to employees and applicants for employment, notices to be provided by the
3 Contracting Officer setting forth the provisions of this nondiscrimination clause.

4 (2) The Tribe will, in all solicitations or advertisements for employees placed by or on
5 behalf of the Tribe; state that all qualified applicants will receive consideration for
6 employment without regard to race, color, religion, sex, disability, or national origin.

7 (3) The Tribe will send to each labor union or representative of workers with which it
8 has a collective bargaining agreement or other contract or understanding, a notice, to be
9 provided by the Contracting Officer, advising the labor union or workers' representative
10 of the Tribe's commitments under section 202 of Executive Order 11246 of September
11 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available
12 to employees and applicants for employment.

13 (4) The Tribe will comply with all provisions of EO 11246, and of the rules,
14 regulations, and relevant orders of the Secretary of Labor.

15 (5) The Tribe will furnish all information and reports required by EO 11246, and by the
16 rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will
17 permit access to his books, records, and accounts by the Contracting Agency and the
18 Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
19 regulations, and orders.

20 (6) In the event of the Tribe's noncompliance with the nondiscrimination clauses of this
21 contract or with any of such rules, regulations, or orders, this contract may be canceled,
22 terminated or suspended in whole or in part and the Tribe may be declared ineligible for
23 further Government contracts in accordance with procedures authorized in EO 11246,
24 and such other sanctions may be imposed and remedies invoked as provided in EO 11246
25 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

26 (7) The Tribe will include the provisions of paragraphs (1) through (7) in every
27 subcontract or purchase order unless exempted by the rules, regulations, or orders of the
28 Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions
29 will be binding upon each subcontractor or vendor. The Tribe will take such action with
30 respect to any subcontract or purchase order as may be directed by the Secretary of Labor
31 as a means of enforcing such provisions, including sanctions for noncompliance:
32 *Provided, however,* that in the event the Tribe becomes involved in, or is threatened with,
33 litigation with a subcontractor or vendor as a result of such direction, the Tribe may
34 request that the United States enter into such litigation to protect the interests of the
35 United States.

36
37 26. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

38
39 (a) The Tribe shall comply to the extent applicable with Title VI of the Civil Rights Act of
40 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112,
41 Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-
42 135, Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of
43 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.),] [Title III of the Americans with Disabilities
44 Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.),] and any other applicable civil rights
45 laws, and with the applicable implementing regulations and any guidelines imposed by the
46 U.S. Department of the Interior and/or Bureau of Reclamation.

1 (b) These statutes prohibit any person in the United States from being excluded from
2 participation in, being denied the benefits of, or being otherwise subjected to discrimination
3 under any program or activity receiving financial assistance from the Bureau of Reclamation on
4 the grounds of race, color, national origin, disability, or age. By executing this contract, the
5 Tribe agrees to immediately take any measures necessary to implement this obligation, including
6 permitting officials of the United States to inspect premises, programs, and documents.

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

14 (d) Complaints of discrimination against the Tribe shall be investigated by the Contracting
15 Officer's Office of Civil Rights.

16
17 27. MEDIUM FOR TRANSMITTING PAYMENTS

18
19 (a) All payments from the Tribe to the Project Operator under this contract shall be by the
20 medium requested by the Project Operator on or before the date payment is due. The required
21 method of payment may include checks, wire transfers, or other types of payment specified by
22 the Project Operator.

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

27
28 28. CONTRACT DRAFTING CONSIDERATIONS

29
30 This Contract has been, negotiated and reviewed by the parties hereto, each of whom is
31 sophisticated in the matters to which this Contract pertains. Article 1 through 13 of this
32 Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be
33 considered to have drafted the stated articles.

34
35
36 29. CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

1 indirect, arising therefrom.
2

DRAFT

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

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As to legal sufficiency:

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

Office of the Solicitor

By: _____
Regional Director
Upper Colorado Region
Bureau of Reclamation

Attest:

By: _____

By: _____
Chairman, Southern Ute Indian Tribe

List of Attachments: