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U.S. Contract No. 0-07-40-R1100

Colo. Agency No. 34-04-00

Contract Routing No. 90328

Dept./Natural Resources

Contract Encumb. No. C- 153570

\$5,600,000

Fund 4008

G/L 5602X

ABL 16020

ORG 7777777

\$5,600,000

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Animas-La Plata Project, Colorado

COST SHARING AGREEMENT

BETWEEN
THE UNITED STATES
AND THE
STATE OF COLORADO

THIS COST SHARING AGREEMENT is made this 2nd day of February, 1990, pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all commonly known and referred to as the Federal Reclamation Laws, between the UNITED STATES OF AMERICA, acting through the Regional Director, Upper Colorado Region, Bureau of Reclamation, who is the duly authorized representative of the Secretary of the Interior, and the STATE OF COLORADO, for the use and benefit of the Colorado Department of Natural Resources (Colorado Water Conservation Board).

WITNESSETH, THAT:

EXPLANATORY RECITALS

WHEREAS, the Secretary of the Interior has been authorized by section 501(a) of Public Law 90-537 (82 Stat. 885), as codified at 43 U.S.C. 620, to construct the Animas-La Plata Project, a participating project of the Colorado River Storage Project; and

WHEREAS, the Secretary of the Interior, the State of Colorado, and various other parties entered into a Binding Agreement for Animas-La Plata Project Cost Sharing, hereinafter

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referred to as the Binding Agreement, on June 30, 1986, pursuant to the requirements of Public Law 99-88 (99 Stat. 293, 319-321); and

WHEREAS, paragraph 3.f on page 5 of the Binding Agreement specifies that the State of Colorado is to provide \$5,600,000 to the Secretary of the Interior for the Ridges Basin Dam, a feature of the Animas-La Plata Project, on a schedule acceptable to the State and the Secretary beginning in the first year of construction of said dam; and

WHEREAS, the Colorado Water Conservation Board is authorized by section 37-60-119, Colorado Revised Statutes, to finance the construction of water supply projects; and

WHEREAS, the Colorado Water Conservation Board is authorized by section 37-60-121(6.1), Colorado Revised Statutes, to enter into this Agreement to provide \$5,600,000 for the Ridges Basin Dam on a non-reimbursable basis in accordance with the Binding Agreement; and

WHEREAS, \$5,600,000 is available for this Agreement in the Colorado Water Conservation Board construction fund created by section 37-60-121, Colorado Revised Statutes.

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties to this Agreement agree as follows:

GENERAL DEFINITIONS

1. Where used in this Agreement:

(a) "Secretary" or "United States" means the Secretary of the United States Department of the Interior or his duly authorized representative, which representative shall be the Regional Director, Upper Colorado Region, United States Bureau of Reclamation.

(b) "State" means the Colorado Department of Natural Resources (Colorado Water Conservation Board).

(c) "Project" means the phase 1 facilities of the Animas-La Plata Project as identified in the Binding Agreement.

(d) "Administrative costs" means those reasonable administrative overhead expenses not directly identified to the construction of a specific Project facility. These costs are incurred centrally and charged to the Project on the basis of the utilization of Bureau of Reclamation employee labor charges.

(e) "Dam" means the Ridges Basin Dam and Reservoir of the Project.

AGREEMENT TERM AND SCOPE

2. (a) This Agreement shall take effect when approved and executed by the Controller of the State of Colorado or such assistant as he may designate. This Agreement shall remain in effect until the end of the three year period provided for in Article 10 herein.

(b) This Agreement does not affect any other agreements between the State and the United States.

ENCUMBRANCE OF STATE MONIES

3. (a) The State hereby warrants that \$5,600,000 is available in the Colorado Water Conservation Board construction fund created by section 37-60-121, Colorado Revised Statutes, and will be encumbered and reserved exclusively for the purposes of this Agreement by virtue of the State's execution of this Agreement.

(b) These monies shall remain in the said construction fund until required to be paid to the United States pursuant to Article 6 herein. The investment of these monies shall be the sole prerogative of the State and all earnings from such investment shall accrue to the State for its sole benefit.

ACCOUNTING FOR PREVIOUS EXPENDITURES

4. On or before March 1, 1990, the United States shall provide to the State a detailed accounting of all costs, including administrative costs, incurred for the planning and designing of the Dam through December 31, 1989.

ACCOUNTING FOR FUTURE EXPENDITURES

5. (a) On or before April 1, 1990, and on or before each quarter beginning on July 1, October 1, January 1, and April 1 thereafter until construction of the Dam is completed or the State has paid \$5,600,000 to the United States, whichever occurs first, the United States shall provide to the State a detailed itemization of the costs, including administrative costs, which the United States estimates will be incurred in the upcoming quarter for design and construction (including utilities relocation and land acquisition) of the Dam.

(b) By April 30, 1990, and within 30 days after the end of each quarter thereafter, the United States shall provide to the State a detailed itemization of costs, including administrative costs, which have been incurred for design and construction (including utilities relocation and land

acquisition) of the Dam in the immediately preceding quarter. If the State questions any of the costs, it shall so advise the United States in writing within 30 days after receipt of the accounting from the United States. The parties shall make a best faith effort to resolve any differences they may have. However, the final decision in this regard shall be the United States'. If the United States makes any adjustments in the costs, including administrative costs, previously reflected in a quarterly statement, such adjustments shall be set forth and fully explained in the quarterly statement next following the time that the adjustment is made.

STATE COST SHARING

6. (a) Within 45 days after execution of this Agreement, the State shall pay to the United States \$200,000. The State shall then pay to the United States \$100,000 on or before April 20, 1990, and \$100,000 on or before July 20, 1990. Should work on the Project be terminated for any reason prior to the due date of any of the payments specified in this subarticle (a), then the State may withhold any remaining payments until work on the Project resumes.

(b) Subject to paragraphs (1) through (6) of this subarticle (b), the State shall, commencing with federal fiscal year 1991 and continuing thereafter until subarticle (c) or (d) herein applies, pay to the United States on or before the twentieth day of each quarter (October 20, January 20, April 20, and July 20) \$100,000 if the appropriation of federal money for the Project equals or exceeds the following figures for the applicable federal fiscal year:

<u>Fiscal Year</u>	<u>Figure</u>
1991	\$ 8,800,000
1992	\$12,500,000
1993	\$16,900,000
1994	\$37,000,000

If the appropriation of federal money exceeds these figures for any given fiscal year, the Board shall not be obligated to, but may, at its sole discretion, pay more than \$100,000 to the United States per quarter. If the appropriation of federal money is less than these figures for any given fiscal year, then the State may, at its sole discretion, pay to the United States either \$100,000 for each quarter of such fiscal year or such lesser sum as bears the same ratio to \$100,000 as the actual appropriation bears to the applicable figure from above.

(1) If the Commissioner of the United States Bureau of Reclamation has not given approval for construction to commence on the Project prior to October 1, 1990, then the

State shall not be obligated to make any payments to the United States pursuant to this subarticle (b) until such approval is given. When approval is given, the State shall make payment within 45 days thereof for the quarter in which the approval occurred and the State shall thereafter make the quarterly payments called for by this subarticle (b).

(2) Consultation pursuant to section 7 of the Endangered Species Act, 16 U.S.C. 1536, originally occurred in 1979. If consultation is reinitiated on the Project for any reason prior to September 30, 1990, and if the Secretary finds prior to September 30, 1990, that the requirements of section 7 of the Endangered Species Act have been met for the Project, then the state's obligation to make payments pursuant to this subarticle (b) shall continue without interruption. If the Secretary does not so find prior to September 30, 1990, or if consultation is reinitiated after September 30, 1990, then the State's obligation to make payments pursuant to this subarticle (b) shall cease as of September 30, 1990, or as of the date on which consultation is reinitiated, whichever is later. If the Secretary finds after September 30, 1990, that the requirements of section 7 of the Endangered Species Act have been met, then the State shall make payment within 45 days of the date of such finding for the quarter in which the finding was made and the State shall thereafter make the quarterly payments called for by this subarticle (b).

(3) If an appropriation of federal money for the Project is reduced, spending authority limited, or funds sequestered for any reason during the course of a fiscal year, then each of the State's remaining quarterly payments in that fiscal year shall be reduced proportionately, with the first such remaining quarterly payment being further reduced to reflect previous overpayments.

(4) If an appropriations act or continuing resolution has not been enacted into law by October 1 of a fiscal year, then the State shall not be obligated to make any payments to the United States for that fiscal year until such an act or resolution has been enacted into law. Payment shall be due within 45 days after an appropriations act or continuing resolution becomes law for the quarter in which that event occurs. Thereafter, the State shall make the quarterly payments called for by this subarticle (b).

(5) Should work on the Project be terminated for any reason prior to the due date of any of the payments specified in this subarticle (b), then the State may withhold any remaining payments until work on the Project resumes. Payment shall be due within 45 days after the resumption of work for the quarter in which work is resumed. Thereafter, the State shall make the quarterly payments called for by this subarticle (b).

(6) Any quarterly payments not required by reason of the operation of paragraphs (1), (2), (4), or (5) above may be made by the State at its sole discretion at such time and in such manner as it chooses.

(c) With the award of the first construction contract on the Dam (excluding land acquisition and utilities relocation contracts), the State shall cease making payments pursuant to subarticle (b) hereof and shall begin making payments to the United States, subject to subarticle (d) hereof, as follows:

(1) For the quarter immediately following the quarter during which work pursuant to the first construction contract is undertaken, the State shall pay to the United States, within 45 days of the first day of the quarter, 5.5 percent of the projected construction costs for the Dam, including administrative costs, which the United States has estimated pursuant to Article 5(a) herein will be incurred in that quarter.

(2) For each quarter thereafter, the State shall pay to the United States, within 45 days of the first day of a quarter, 5.5 percent of the construction costs, including administrative costs, which the United States has estimated pursuant to Article 5(a) herein will be incurred in a quarter, plus or minus any adjustments for differences between actual costs and projected costs for any prior quarter.

(d) The United States understands and agrees that the State's obligation to make payments to the United States pursuant to this Article 6 is limited to a total of \$5,600,000 without adjustment for inflation or deflation. The United States further understands and agrees that it is obligated to complete the entire Project, subject to the availability of Congressional appropriations, even after the State's limit of \$5,600,000 for the Dam is reached and no further monies are forthcoming from the State.

(e) Monies paid by the State to the United States pursuant to this Article 6 shall be used only for the costs of designing and constructing the Dam (including the costs of utilities relocation and land acquisition) and shall be non-reimbursable.

(f) Within 120 days of final payment of construction contracts for the Dam, or of payment in resolution of any contract claims, whichever occurs last, the United States shall provide to the State a complete accounting of total costs for the Dam, including administrative costs, incurred as of the date of such final payment, which accounting shall detail and itemize all costs incurred, identify expenditures of federal monies by the United States, and identify the receipt and expenditure of State monies.

7. Much of the land for the Dam is presently owned by the Colorado Division of Wildlife (Division). This land was conveyed to the Division by The Nature Conservancy subject to a reverter interest. The Division and The Nature Conservancy differ over the value of the reverter interest and have been attempting to reach a negotiated settlement in this regard. Should those two parties reach a settlement concerning the reverter interest in the lands needed for the Dam (as determined by the United States), and should the State choose, at its sole discretion, to pay The Nature Conservancy for the release of the reverter interest in those lands, then any sum so paid by the State, not to exceed \$50,000, shall be credited against the \$5,600,000 owed by the State and the total to be paid by the State to the United States pursuant to Article 6 herein shall be reduced accordingly.

8. Pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604 (92 Stat. 3021), and regulations promulgated pursuant thereto, the State and the United States shall pursue a transfer or donation of the land required for the Durango pumping plant of the Project from the Colorado Department of Health to the United States. The value of such land will be determined and agreed to between the State and the United States pursuant to P.L. 95-604 and applicable regulations. The agreed to value shall be credited against the \$5,600,000 owed by the State and the total to be paid by the State to the United States pursuant to Article 6 herein shall be reduced accordingly.

COMPLETION OF THE PROJECT

9. (a) The United States acknowledges and agrees that it must complete the Project in fulfillment of the Binding Agreement, the Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986, and the Colorado Ute Indian Water Rights Settlement Act of 1988, Public Law 100-585 (102 Stat. 2973). The United States further acknowledges that the State has already met all of its financial obligations pursuant to the above three documents to provide \$30 million for the Project via the Colorado Water Resources and Power Development Authority, \$5 million for the tribal development funds, and all funds necessary for the construction of the Towaoc Pipeline to the Ute Mountain Ute Reservation.

(b) The Secretary shall seek to include in the President's annual budget request to Congress such appropriations as will enable completion of the entire Project as soon as possible, but not later than September 30, 2000. The State shall support and use its best efforts to assist in obtaining the requested appropriations.

(c) Subject to the availability of appropriations, the United States shall complete the entire Project in the most cost effective manner possible.

MAINTENANCE OF RECORDS

10. The United States shall maintain full and complete records of all costs incurred, including administrative costs, for the Dam and the Project and of all monies received from the State for the construction of the Dam for a period of three years after completion of the Project. Said records shall be open to inspection and audit by representatives of the State at all times during regular business hours.

OFFICIALS NOT TO BENEFIT

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

NOTICES

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

Regional Director
Upper Colorado Region
Bureau of Reclamation
Box 11568
Salt Lake City, UT 84147

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

Director
Colorado Water Conservation Board
Department of Natural Resources
1313 Sherman Street, Room 721
Denver, Colorado 80203

(b) Each party shall be responsible for providing changes of address to the other party in writing.

ASSIGNMENT LIMITED -- SUCCESSORS AND ASSIGNS OBLIGATED

13. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right of

interest therein shall be valid until approved in writing by the United States and the State.

MISCELLANEOUS ARTICLES

14. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with the laws, rules, and regulations of the State and applicable federal statutes, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaining, defense, or otherwise. Any provision rendered null and void by the operation of this article will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

15. At all times during the performance of this Agreement, the parties shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established.

16. The parties hereto aver that they are familiar with section 18-08-301, et. seq., (Bribery and Corrupt Influences) and section 18-08-401, et. seq., (Abuse of Public Offices), Colorado Revised Statutes 1978 Replacement Vol., and that no violation of such provisions is present to the extent these provisions apply to the parties.

17. The parties aver that to their knowledge, no State employee has personal or beneficial interest whatsoever in the service or property described herein.

18. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to State fiscal rules.

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

STATE OF COLORADO
ROY ROMER, GOVERNOR

THE UNITED STATES OF AMERICA

By: J. William McDonald
For the Executive Director
DEPARTMENT OF NATURAL RESOURCES
(COLO. WATER CONSERVATION BOARD)
J. WILLIAM McDONALD, DIRECTOR)

By: Robert R. Brown
Regional Director
Upper Colorado Region
Bureau of Reclamation
Department of the Interior

APPROVALS:

APPROVALS:

ATTORNEY GENERAL
STATE OF COLORADO

SOLICITOR'S OFFICE
DEPARTMENT OF THE INTERIOR

201 By: [Signature]
General Legal Services

By: W. H. Conkin

CONTROLLER
STATE OF COLORADO

By: [Signature]
CLIFFORD W. HALL