

Acre-feet under Contract: 200

## PINE RIVER IRRIGATION DISTRICT

THIRD-PARTY CONTRACT  
FOR LEASE OF PINE RIVER PROJECT WATER

This Third-Party Contract is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ among the Pine River Irrigation District, herein styled "District", a public corporation organized under the laws of the State of Colorado, the United States, acting through the Bureau of Reclamation, Department of the Interior, herein styled "Reclamation", pursuant to the provisions of Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and all acts amendatory and supplementary thereto, particularly the Act of February 25, 1920 (41 Stat. 451), and LA PLATA ARCHULETA WATER DISTRICT whose mailing address is 954 EAST SECOND AVENUE DURANGO, CO 81301 and whose property address is \_\_\_\_\_ herein styled "the Third Party Contractor".

## RECITALS

A. The District has entered into Contract No. 06-WC-40-710, dated March 16, 2007 (District Contract) with the United States of America (the United States), acting through the Secretary of the Interior, pursuant to the Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and all acts amendatory and supplementary thereto, particularly the Act of February 25, 1920 (41 Stat. 451), for 6,700 acre-feet of Pine River Contracted Water, herein styled "Contracted Water", stored in Vallecito Reservoir, a part of the Pine River Project (Project). The terms of the District Contract are incorporated into this Third Party Contract by this reference, and a copy is available from the District upon request,

B. The Act of February 25, 1920, authorizes Reclamation to enter into contracts to supply water from any project irrigation system for uses other than irrigation, upon such conditions of delivery, use, and payment as Reclamation may deem proper; Provided, that the approval of such contract by the water users' association or associations (the District) shall have been first obtained; Provided, that no such contract shall be entered into except upon a showing that there is no other practicable source of water supply for the purpose; Provided further, that no water shall be furnished for the uses aforesaid if the delivery of such water shall be detrimental to the water service for such irrigation project or to the rights of any prior appropriator; Provided further, that the moneys derived from such contracts shall be covered into the Reclamation Fund and be placed to the credit of the project from which such water is supplied.

C. Pursuant to Case No. 03CV300 dated June 28, 2004 in District Court, La Plata County, Colorado, Division 7, the District has the authority to lease water for the purposes of the District Contract.

D. The District Contract authorizes the District to lease up to 4,700 acre-feet of Contracted Water for municipal and industrial (M&I) purposes via Third Party Contracts, as defined by, and subject to, the terms and conditions of the District Contract. An initial 1,000 acre-feet of Contracted Water has undergone compliance with the National Environmental Policy Act (NEPA) and the 1920 Act for use in Third Party Contracts. Further NEPA compliance will be necessary prior to use of the remaining 3,700 acre-feet and shall be at the expense of the District or the Third Party Contractor.

E. The District is providing Contracted Water annually to the Third Party Contractor, as described in this Third Party Contract, for use as exchange water to the Pine River to permit out-of-priority diversions which would otherwise be curtailed by a call on the Pine River by senior water rights diverting water from the Pine River. This water is part of the initial 1,000 acre-feet of Contracted Water under compliance with NEPA and the 1920 Act, as stated in Part D above.

F. Contracted water will be diverted from the Pine River at the structure described as follows:  
 Type of Structure: domestic well \_\_\_\_\_ commercial well \_\_\_\_\_ pond \_\_\_\_\_ pump \_\_\_\_\_  
 Other (describe) TO BE DETERMINED surface area of pond \_\_\_\_\_  
 Permit # \_\_\_\_\_ Decree# \_\_\_\_\_  
 The property where the water is to be used is located in the WITHIN THE PRID SERVICE AREA  
1/4 \_\_\_\_\_ 1/4 of \_\_\_\_\_  
 Section \_\_\_\_\_ Township \_\_\_\_\_ (N/S) Range \_\_\_\_\_ (E/W)  
 Subdivision: \_\_\_\_\_  
 Lot No. \_\_\_\_\_ Parcel No. \_\_\_\_\_ Tax Account No. \_\_\_\_\_  
 Meter Location: \_\_\_\_\_

G. Leased Water and Standby Water are defined in the District Contract, and may be herein collectively referred to as "Contracted Water".

## AGREEMENT

In consideration of the mutual and dependent covenants contained herein, the parties to this Third Party Contract agree as follows:

1. This Third Party Contract shall become effective upon execution of the Third Party Contract by the District and Reclamation. This Third Party Contract is subject to the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof or supplementary thereto, particularly the Act of February 25, 1920 (41 Stat. 451), collectively known as the Federal Reclamation laws, applicable State law and is limited by the terms of the District Contract. In conflicts between this Third Party Contract and the District Contract, the District Contract governs.

2. The total amount of Contracted Water contracted for by the Third Party Contractor under this Third Party Contract is 200 acre-feet annually, initially in the amounts of 1.00 acre-feet of Leased Water and 199 acre-feet of Standby Water.
3. For the Contracted Water provided for under this Third Party Contract, according to the terms of the District Contract (Paragraph 6), the Third Party Contractor agrees to pay the District upon signing this Third Party Contract, and annually thereafter, as follows:
- 3.1. \$250.00 per acre-foot for Leased Water identified in Paragraph 2 to reimburse the District for annual operation and maintenance costs, system improvement costs, replacement costs, water conservation plus, and annual costs associated with the Project and administration of this Third Party Contract;
  - 3.2. \$40.00 per acre-foot for Standby Water identified in Paragraph 2; plus,
  - 3.3. A Federal charge, which is an annual charge based on 15 percent of the District's charges in effect for Leased Water and Standby Water, pursuant to the District Contract (Paragraph 5(a)(2)). This charge will be assessed for 40 years from the year that this Third Party Contract is executed.
4. Based upon the amounts in Paragraph 2 & 3 above, the total water cost paid by the Third Party Contractor upon signing this Third Party Contract, and prior to Contracted Water delivery shall be: \$ 9441.50. The amount in paragraphs 3.1 and 3.2 reflect the District's rates for 2011 (Insert Year). The rates may be adjusted by the District as necessary to ensure costs identified in those paragraphs are recovered.
- 4.1. On January 1 of each water year, which is November 1 through October 31, as defined in the District Contract, the District shall bill the Third Party Contractor the total water cost that is due upon receipt. In the event the total water cost is not paid by April 1, then this Third Party Contract may be terminated by the District, and the Division of Water Resources shall be notified of the termination. The District may adjust the annual charges with notice to the Third Party Contractor prior to the beginning of any water year.
  - 4.2. Prior to August 1 of each year the Third Party Contractor shall notify the District concerning the need for change of status of Standby Water to Leased Water. Standby Water that is changed to Leased Water shall remain Leased Water for the duration of this Third Party Contract.
  - 4.3. For payments collected from the Third Party Contractor, the District shall pay the United States the sum described in paragraph 3.3 herein, and shall retain the sums described in paragraphs 3.1 and 3.2 herein.
5. By signing this Third Party Contract, the Third Party Contractor acknowledges:
- 5.1. That the Third Party Contractor has read and understands the District Contract, incorporated by reference into this Third Party Contract, and agrees to be bound by its terms;
  - 5.2. That Contracted Water contracted for under this Third Party Contract will be released from Vallecito Reservoir and delivered to the Pine River at the outlet works of Vallecito Dam upon request of the Division Engineer, Division of Water Resources. The Third Party Contractor recognizes that it cannot request scheduled releases from Vallecito Dam which would damage Project facilities;
  - 5.3. That the amount of Contracted Water contracted for by the Third Party Contractor under this Third Party Contract has been determined solely by the Third Party Contractor, and that the District makes no representation that the amount contracted for by the Third Party Contractor, as either Leased Water or Standby Water, is sufficient to meet the Third Party Contractor's requirements;
  - 5.4. That the total water cost to be paid annually by the Third Party Contractor under this Third Party Contract is due and payable in full, whether or not the Leased Water or Standby Water is actually released from Vallecito Reservoir;
  - 5.5. That the Third Party Contractor shall have no holdover of water storage in Vallecito Reservoir from water year to water year; therefore, any Contracted Water contracted for under this Third Party Contract which is not released by November 1 in each year shall be returned to the storage pool for Project use;
  - 5.6. That in the event Contracted Water available to the District under the District Contract is curtailed pursuant to the provisions of the District Contract, no liability shall attach to the District or the United States for such curtailment, even if said curtailment results in a reduction of the amount of Contracted Water released under this Third Party Contract;
  - 5.7. That the right of the Third Party Contractor to use Leased Water, or have water on standby is based strictly on this Third Party Contract;
  - 5.8. That nothing in this contract is intended to create a water right to Contracted Water obtained pursuant to this contract, and the Third Party Contractor may not claim a water right based on any legal theory arising under State or Federal law, before any State or Federal judicial or administrative body based on the use of Contracted Water under this or any Third Party Contract;

- 5.9. That the Third Party Contractor agrees to establish and maintain records of receipt and use of Contracted Water acceptable to Reclamation and the Third Party Contractor shall provide these records in such form and at such time as Reclamation may reasonably require. Records obtained from the Division of Water Resources may be provided in lieu of the Third Party Contractor records;
6. The payment by the Third Party Contractor of the total water cost described in paragraph 4 herein is a requirement for continued Contracted Water delivery under this Third Party Contract. In the event that the Third Party Contractor's tendered payment is dishonored, the District shall not make Contracted Water available for the Third Party Contractor until the Third Party Contractor provides payment of the total water cost, plus interest at the rate one and one-half percent (1.5%) per month from the date of tender, in Good Funds (cash, electronic transfer funds, certified check or cashier's check).
7. This Third Party Contract may not be assigned, or the Contracted Water transferred, by the Third Party Contractor without the written consent of the District and Reclamation. Consent for the assignment or transfer is not guaranteed and is at the sole discretion of the District and Reclamation. Prior to any assignment or transfer, the Third Party Contractor shall notify the District in writing of the Third Party Contractor's intent to make such assignment or transfer. The notice shall include the name, address and telephone number of the person to whom the assignment or transfer will be made and an application for approval of the assignment or transfer. The District may, in its discretion, assess an administrative fee to record the assignment or transfer as a condition of approving the transfer. Any assignment of this Third Party Contract or transfer of the Contracted Water leased under this Third Party Contract without the consent and approval required by this paragraph shall be void.
8. In the event of failure by the Third Party Contractor to pay the total water cost due under the terms set forth in Paragraph 4 of this Third Party Contract the District may, at its option, continue payments to Reclamation on the Contracted Water by the time periods set forth in Article 6(d) of the District Contract or terminate this Third Party Contract and return the Contracted Water to storage. The District shall give written notice of termination to the Third Party Contractor, Reclamation, and the Division of Water Resources.
9. This Third Party Contract constitutes the entire and only agreement between the District, Reclamation, and the Third Party Contractor relating to the subject matter hereof. No subsequent modification of any of the terms of this Third Party Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties and Reclamation.
10. No guarantee is made by Reclamation or the District as to the quality of Contracted Water released under this Third Party Contract.
11. Any notice, demand, or request authorized or required by the Third Party Contract shall be deemed to have been given when mailed, postage prepaid, or delivered to: (a) the Pine River Irrigation District at 13029 County Road 501, Bayfield, CO 81122; (b) the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1102; and (c) the Third Party Contractor,

12. This Third Party Contract is subject to the determination by Reclamation that the Third Party Contract is in compliance with the Final Environmental Assessment and Finding of No Significant Impact (FONSI) completed for the District Contract, dated February 2007. If additional NEPA compliance is necessary, it shall be at the expense of the District or the Third Party Contractor.

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

Attest:

Christy Duran

Pine River Irrigation District

Christy Duran  
By: President / Superintendent

Attest:

Cheryl J. Lynn  
Board Secretary

(Third Party Contractor)

Richard T. Lencek  
By: President

Approved:

John  
Office of the Regional Solicitor

THE UNITED STATES OF AMERICA

Francesca Goff  
Regional Director  
Upper Colorado Region