

WHITEWATER BUILDING MATERIALS CORPORATION

940 South 10th Street, P.O. Box 1769
GRAND JUNCTION, COLORADO 81502



SAND & GRAVEL PRODUCTS
Phone 242-7537



READY MIXED CONCRETE
Phone 242-4843

May 22, 2024

Division of Reclamation, Mining and Safety
1313 Sherman St. Room 215
Denver, Co 80203

Regarding: October 26, 2022 Inspection Report corrective action

Permittee: Whitewater Building Materials Corp.
Permit #: M-2012-024
Operation Name: Warren Pit
Anniversary Date: November 6th

The above referenced pit location was inspected on October 26, 2022 by Rob Zuber P.E. The inspection report indicates the corrective action listed below.

Inspection Topic Hydrologic Balance: The Division has no evidence of a valid contract to fulfill the Well Permit.

Corrective action: Whitewater has received the executed water service contract to fulfill the corrective action required. Water contract included.

Sincerely

A handwritten signature in blue ink that reads "Mark Gardner".

Mark Gardner VP
Whitewater Building Materials Corp.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

COLORADO RIVER STORAGE PROJECT
WAYNE N. ASPINALL STORAGE UNIT

WATER SERVICE CONTRACT BETWEEN
THE UNITED STATES
AND
WHITEWATER BUILDING MATERIALS CORPORATION

THIS CONTRACT, is made this 16th day of April, 2024, under the authority of the Reclamation Act (Act of June 17, 1902, ch 1093, 32 Stat. 388), and acts amendatory thereof and supplementary thereto, and particularly the Colorado River Storage Project Act of April 11, 1956 (43 U.S.C. §§ 620, et seq.), and the Reclamation Project Act of 1939, Section 9(c) (Pub. L. 76-260, 43 U.S.C. § 485h(c)); between THE UNITED STATES OF AMERICA, (United States), represented by the officer executing this Contract, or the duly appointed successor or authorized representative (Contracting Officer), and WHITEWATER BUILDING MATERIALS CORPORATION hereinafter referred to as the Contractor (collectively, Parties).

Recitals:

- (a) The United States constructed Blue Mesa Dam and Reservoir as part of the Wayne N. Aspinall Unit of the Colorado River Storage Project for the purposes of irrigation, municipal, industrial, and other beneficial uses.
- (b) The Contractor requests a water service contract for two (2) acre-feet of municipal and industrial water from Blue Mesa Reservoir. Two (2) acre-feet equals six hundred fifty-one thousand, seven hundred and two (651,702) gallons.
- (c) The Contractor desires this water supply to augment a depletion of water in the Gunnison River Basin resulting from a gravel pit well located at NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 9, Township 15 S, Range 95 west of the 6th Prime Meridian. The augmentation plan for the well(s) was adjudicated in the State of Colorado District Court, Water Court Division 4, Case No. 2012CW38.

NOW THEREFORE, in consideration of the mutual and dependent covenants herein contained, the United States and the Contractor agree as follows:

1. TERM OF CONTRACT

This Contract will be effective for twenty-five (25) years from the date it is executed by the Regional Director.

2. TERMINATION

- (a) Subject to article 2(b) below, the Contractor may terminate this Contract by sending written notice to the United States at the address listed in Article 22 below.
- (b) If the Contractor fails to perform its obligations under this Contract, the United States will notify the Contractor in writing of its intent to terminate this Contract. The notice of termination will specify each of the Contractor's failures, and will provide that the Contractor may, within 90 days from the date of notice, present a detailed plan to correct the failures. The United States will reasonably accept the plan and waive the termination notice.

3. DELIVERY OF WATER

- (a) During the term of this Contract, the Contracting Officer will release water, not to exceed 2 acre-feet annually, measured at the outlet works of the Blue Mesa Dam.
- (b) The United States will release water from Blue Mesa Reservoir at the request of the Water Division 4 Engineer, Colorado Division of Water Resources.
- (c) The Contractor will have no holdover storage rights in Blue Mesa Reservoir from year to year. Any water paid for under this Contract but not called for by the end of each calendar year will be integrated with the water supply of the Blue Mesa Reservoir.

4. RATE AND METHOD OF PAYMENT

- (a) The Contractor will make a one-time payment in the amount of \$164.94 upon execution of the Contract.
- (b) The Contractor's payment made under this Contract will be credited to the Basin Fund, as required by Section 5 of the Colorado River Storage Project Act, 43 U.S.C. 620d.

5. ENVIRONMENTAL COMPLIANCE

Compliance with the provisions of the National Environmental Policy Act, as amended, and the Endangered Species Act, as amended, is a prerequisite to executing this Contract. Compliance was addressed through Categorical Exclusion Checklist No. WCN-CE#: GJO-WCAO-CE-2023-40.

6. INDEMNIFICATION

The Contractor agrees to indemnify the United States for, and to hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of the Contractor or the United States required under this Contract, regardless of who performs those duties.

7. CHARGES FOR DELINQUENT PAYMENTS

- (a) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor 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 Contractor 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 Contractor 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 Contractor 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.

8. GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

- (a) The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.
- (b) The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Colorado River Storage Project, Wayne N. Aspinall Unit, project facilities during any period in which the Contractor is in arrears in the advance payment of water service and operation and maintenance charges due the United

States.

9. CONFIRMATION OF CONTRACT

Promptly after the execution of this Contract, the Contractor shall provide evidence to the Contracting Officer that, pursuant to the laws of the State of Colorado, the Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the Contractor. This Contract shall not be binding on the United States until such evidence has been provided to the Contracting Officer's satisfaction.

10. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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 Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

11. OFFICIALS NOT TO BENEFIT

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

12. CHANGES IN CONTRACTOR'S ORGANIZATION

While this Contract is in effect, no change may be made in the Contractor's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

13. ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

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 or any right or interest therein by either Party shall be valid until approved in writing by the other Party.

14. BOOKS, RECORDS, AND REPORTS

The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Contractor's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users'

land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal 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.

15. RULES, REGULATIONS, AND DETERMINATIONS

- (a) The Parties agree that the delivery of water or the use of Federal facilities pursuant to this Contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.
- (b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with its expressed and implied provisions, the laws of the United States and the State of Colorado, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

16. PROTECTION OF WATER AND AIR QUALITY

- (a) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.
- (b) The Contractor will comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado; and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and will be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.
- (c) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

17. EQUAL EMPLOYMENT OPPORTUNITY

The following language is required by Executive Order No. 11246 of September 24, 1965, in all government contracts unless and until it is superseded or amended.

During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor 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, sexual orientation, gender identity, 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 Contractor 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.
- (2) The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions

may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The Contractor will include the provisions of paragraphs (1) through (8) 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 Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor 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 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

18. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

- (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.)] [Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.)], and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.
- (b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this contract, the Contractor 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 Contractor 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 Contractor 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 Contractor 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.
- (d) Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

19. MEDIUM FOR TRANSMITTING PAYMENTS

- (a) All payments from the Contractor to the United States under this Contract shall be by the

medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

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

20. CONTRACT DRAFTING CONSIDERATIONS

This Contract has been, negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 22 of this Contract have been drafted, negotiated, and reviewed by the Parties, and no one party shall be considered to have drafted the stated articles.

21. CONSTRAINTS ON THE AVAILABILITY OF WATER

- (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.
- (b) If there is a condition of shortage because of inaccurate runoff forecasting or other similar operational errors affecting the Project; drought and other physical or natural causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

22. NOTICES

Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the:

Mr. Ed Warner
Area Manager
Western Colorado Area Office
Bureau of Reclamation
445 W. Gunnison Ave., Ste. 221
Grand Junction, CO 81501

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

WHITEWATER BUILDING MATERIALS CORPORATION

Attn: Mark Gardner

Whitewater Building Materials Corp

940 South 10th Street

Grand Junction, CO 81501

Accounting/Billing Contact – Email: whiteh2o@acsol.net Phone: 970-242-7538

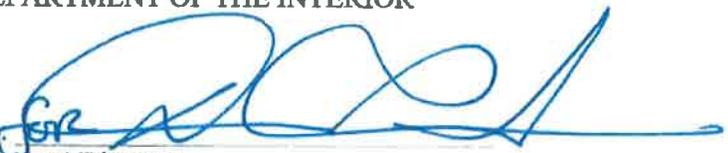
The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

The United States and the Contractor agree, by their signatures below, to be bound to this Contract beginning on the date written above.

Approved for legal sufficiency:


Office of the Solicitor

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

By: 
Regional Director
Interior Region 7 – Upper Colorado Basin
Bureau of Reclamation

ATTEST:

WHITWATER BUILDING MATERIALS
CORPORATION

S

By: 
Mark Gardner VP
Whitewater Building Materials Corporation

ACKNOWLEDGMENT

State of: Colorado

County of: El Paso

The foregoing instrument was acknowledged before me this 08/11/2023 (date)

by Frank Gardner

REBECCA J MORAN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20034002777
(MY COM) MISSION EXPIRES JANUARY 24, 2027

Notary Public in and for the

State of: Colorado
Residing at: 919 Ute St. E. CO 81506

Rebecca J Moran
(Notary's official signature)

01/24/2027
(Commission Expiration)