

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Fryingpan-Arkansas Project, Colorado**

**CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE CITY OF FOUNTAIN FOR THE USE OF EXCESS CAPACITY IN THE
FACILITIES OF THE FRYINGPAN-ARKANSAS PROJECT**

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Contract No. 11XX6C0004

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THIS CONTRACT, made this 4TH day of MAY, 2011, pursuant generally to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. § 391, et seq.), and acts amendatory thereof and supplementary thereto, particularly, but not limited to, Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197; 43 U.S.C. § 389) and the Fryingpan-Arkansas (Fry-Ark) Project Act of August 16, 1962 (76 Stat. 389; 43 U.S.C. § 616) as amended, all collectively known as the Federal Reclamation laws, is between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," represented by the Contracting Officer executing this Contract, and the CITY OF FOUNTAIN, COLORADO, acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise, hereinafter referred to as the "Contractor." The United States and the Contractor collectively are referred to as the "Parties."

EXPLANATORY RECITALS

The following statements are made in explanation:

a. WHEREAS, the Secretary of the Interior (Secretary), acting through the Bureau of Reclamation (Reclamation), was authorized by the Fry-Ark Project Act of August 16, 1962 (76 Stat. 389; 43 U.S.C. § 616) as amended, to construct, operate and maintain the Fry-Ark Project (Project), Colorado, in substantial accordance with the engineering plans set forth in House Document 187, 83rd Congress, 1st Session, as modified by House Document 353, 86th Congress, 2nd Session, and as further modified and described in the description of the proposal contained in the final environmental statement for the Fry-Ark Project; and

b. WHEREAS, Section 1 of the Fry-Ark Project Act states that the Secretary is authorized to construct, operate and maintain the Project for the purposes of supplying water for irrigation, municipal, domestic, industrial, hydroelectric power, flood control and other beneficial incidental uses including recreation and the conservation and development of fish and wildlife; and

c. WHEREAS, Section 3 of the Fry-Ark Project Act requires that the Project shall be operated in accordance with the Operating Principles as adopted by the State of Colorado on December 9, 1960 (House Document 130, 87th Congress, 1st Session); and

d. WHEREAS, the Project is a multipurpose project in Colorado that diverts water from the Colorado River Basin on the West Slope and transports it through the Continental Divide to the Arkansas River Basin on the East Slope; and

e. WHEREAS, Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197; 43 U.S.C. § 389) authorizes the Secretary to enter into contracts for the exchange or replacement of water as in the judgment of the Secretary are necessary and in the interests of the United States and the Project; and

f. WHEREAS, Southeastern Colorado Water Conservancy District (District) is the repayment entity for the reimbursable costs of the Project; pursuant to Contract No. 5-07-70-W0086 (January 21, 1965), as amended, with the United States; and

g. WHEREAS, Article 13 of Contract No. 5-07-70-W0086, as amended, establishes and describes the order of priority for evacuation of excess water stored in order to meet Project purposes; and

h. WHEREAS, the United States and the Contractor have had a continuous and long-standing contractual relationship dating back to the original Project authorization, that includes municipal and industrial water conveyance service through the Fountain Valley Conduit and, since 2002, annual temporary Excess Capacity contracts; and

i. WHEREAS, by letter dated August 6, 2004, the Contractor requested a long-term contract for storage of Nonproject Water and Project Water Return Flows in Pueblo Reservoir for up to 2,500 acre-feet per year; and

j. WHEREAS, the Parties desire to enter into a contract, pursuant to applicable Federal Reclamation laws and the laws of the State of Colorado, for use of Excess Capacity pursuant to the terms and conditions set forth herein; and

k. WHEREAS the City of Fountain is a home rule city located within El Paso County, Colorado. The Contractor, the City of Fountain's community-owned utility enterprise, is responsible for Fountain's water system, including formulation of policy, review and approval of the budget, setting rates, and long-range planning, to ensure that the Contractor's water system is operated and maintained in an efficient and cost-effective manner. As such, the Contractor has need and necessity for a storage contract that is the subject hereof for the purpose of supplying water for municipal and other uses, including augmentation, for the benefit of present and future inhabitants of the City of Fountain and to those persons, firms, or corporations desiring water from the Contractor's water system. The Contractor's service area is within the Arkansas River basin and within the District's boundaries; and

l. WHEREAS, the Contractor currently holds water rights, operates facilities and undertakes other lawful transactions concerning water operations in the Arkansas River Valley; and

m. WHEREAS, the Southern Delivery System (SDS) is a proposed non-federal regional water delivery project that is designed to meet future water needs of the SDS Participants. Currently, in addition to the Contractor, the other area participants are the Security Water District Enterprise, acting by and through its Water Activity Enterprise, the City of Colorado Springs, acting by and through its Utility Enterprise, and Pueblo West Metropolitan District, acting by and through its Water Enterprise, hereinafter referred to collectively as the SDS Participants; and

n. WHEREAS, a proposed purpose for SDS is to provide additional yield and system redundancy for the SDS Participants; and

o. WHEREAS, the current proposal is to modify the existing Project river outlet works on Pueblo Dam in order to attach a pipeline to convey water north to the service areas of the SDS Participants while still maintaining the functionality and integrity of Pueblo Dam; and

p. WHEREAS, the modified outlet capacity from Pueblo Reservoir and other facilities to be constructed as part of SDS, in conjunction with potential future facility connections and agreements among the entities and others, subsequent to all appropriate environmental analyses and assessments, and applicable contracts could result in facility redundancy that could be of mutual benefit to the entities during future periods of emergency or other outlet outages; and

q. WHEREAS, SDS will be constructed by the SDS Participants at their sole expense; and

r. WHEREAS, contemporaneous with this Contract, the United States and the City of Colorado Springs, acting by and through its Utility Enterprise are executing Contract No. 11XX6C0005, to provide for the conveyance of water through the modified outlet works and each SDS Participant will be executing the following Excess Capacity contracts: the Security Water District Enterprise, acting by and through its Water Activity Enterprise Contract No. 11XX6C0003, the City of Colorado Springs, acting by and through its Utility Enterprise Contract No. 11XX6C0002 and Pueblo West Metropolitan District acting by and through its Water Enterprise Contract No. 11XX6C0006.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

DEFINITIONS

1. Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent hereof, the term:

a. "Colorado Springs Utilities" shall mean the entity that is acting on its own behalf and behalf of the other SDS Participants, the Security Water District Enterprise, acting by and through its Water Activity Enterprise, the City of Fountain, acting by and through its Electric, Water, and Wastewater Utility Enterprise and Pueblo West Metropolitan District acting by and through its Water Enterprise under an Intergovernmental Agreement among these entities.

b. "Contracting Officer" shall mean the Secretary of the Interior or a duly authorized representative. Unless stated otherwise, the Contracting Officer shall be deemed to be the Secretary's authorized representative.

c. "Contractor" shall mean the City of Fountain, Colorado, acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise.

d. "District" shall mean the Southeastern Colorado Water Conservancy District organized under the laws of the State of Colorado which is the repayment entity for the reimbursable water supply costs of the Project; pursuant to Contract No. 5-07-70-W0086 (January 21, 1965), as amended.

e. "Excess Capacity" shall mean capacity within Project facilities that is in excess of the needs of the Project, if and when available, as determined solely by the Contracting Officer, within the bounds of applicable laws and regulations, to store, and convey water.

f. "Nonproject Water" shall mean all water that meets all of the following specifications: (i) water that is not defined as Project Water herein; (ii) water that was included in meeting the demands of the SDS Participants and was analyzed pursuant to the National Environmental Policy Act of 1969 (NEPA) (P.L. 91-190; 42 U.S.C § 4321) in the Final Environmental Impact Statement (FEIS) Numbered 08-63 and Record of Decision (ROD) Numbered GP-2009-01; and (iii) water that is listed on the table attached as Exhibit D which is hereby made a part of this Contract.

g. "North Outlet Works" shall mean those facilities as more fully described in Contract No. 11XX6C0005.

h. "Operating Principles" shall mean the Project Operating Principles set forth in House Document 130, 87th Congress, 1st Session, 1961.

i. "Project" shall mean the Fryingpan-Arkansas Project, Colorado.

j. "Project Water" shall mean the water available to the Project through the State of Colorado decreed water rights for the Project pursuant to the Operating Principles.

k. "Project Water Return Flows" shall mean the Project Water that is returned to the Project and accrues back to the Contractor for its reuse.

l. "Single Purpose SDS Works" shall mean those works constructed by the SDS Participants to convey SDS Water from the North Outlet Works to the SDS Participants' service areas.

m. "Southern Delivery System" (SDS) shall mean the non-federal regional water delivery project that consists of capacity in the North Outlet Works sufficient to deliver 96 million gallons per day (mgd) and the Single Purpose SDS Works.

n. "SDS Participants" shall mean the entities that will use SDS to meet their future water needs. The SDS Participants are the City of Colorado Springs, City of Fountain, Security Water District, and Pueblo West Metropolitan District.

o. "SDS Water" shall mean only the following types of water defined in this section as: (i) Project Water legally available to the Contractor; (ii) Non-Project Water; and (iii) Project Water Return Flows.

p. "Spill" shall mean evacuation from Pueblo Reservoir pursuant to the spill priorities described in Article 13 of Contract Number 5-07-70-W0086, as amended, between the District and the United States.

PURPOSE

2. The purpose of this Contract is to provide for the use of Excess Capacity in Project facilities to store the Contractor's Nonproject Water and Project Water Return Flows for the Contractor's subsequent use pursuant to the terms and conditions of this Contract.

TERM OF CONTRACT

3. a. This Contract will become effective on January 1, 2011, and shall remain in effect until December 31, 2049, unless terminated sooner in accordance with the provisions of Article 12.

b. The Contractor may request renewal of this Contract upon written request to the Contracting Officer on or before two years prior to the expiration of this Contract, *Provided, That* upon such renewal request, the Contracting Officer will enter into good faith negotiation which shall be upon mutually agreeable terms and conditions and shall be in accordance with the applicable federal laws and policies and State laws in effect at that time.

LIMITATIONS

4. a. Nothing in this Contract is to be construed to affect any contractual commitments under any long-term contract in effect at the date of execution of this Contract concerning the Project, including, but not limited to Contract No. 5-07-70-W0086 dated January 21, 1965, as amended.

b. Nothing in this Contract is to be construed to increase the total quantity of water which the State of Colorado is entitled to use, and to which the State is limited, under applicable compacts, statutes and treaties. To the extent applicable, this Contract is subject to the following:

- (1) The Boulder Canyon Project Act, approved December 21, 1928, (45 Stat. 1057; 43 U.S.C. §§ 617 *et seq.*).
- (2) The Colorado River Compact signed November 24, 1922.
- (3) The Upper Colorado River Basin Compact.
- (4) The Boulder Canyon Project Adjustment Act, approved July 19, 1940 (54 Stat. 774, 43 U.S.C. §§ 681 *et seq.*).
- (5) The Colorado River Storage Project Act, approved April 11, 1956 (70 Stat. 105, 43 U.S.C. §§ 620 *et seq.*).
- (6) The Mexican Water Treaty.
- (7) The Arkansas River Compact.

- c. The Contracting Officer shall operate the Project in accordance with the Operating Principles.
- d. Except as explicitly provided in this Contract nothing in this Contract is to be construed to require a change in Project operations, including, but not limited to, a change in the spill priorities as established in Article 13 of Contract No. 5-07-70-W0086 (January 21, 1965), as amended nor to effect the Contractor's rights thereunder.
- e. Nothing in this Contract is to be construed to require the Contracting Officer to take any action which as determined solely by the Contracting Officer within the bounds of all applicable laws and regulations may cause harm to the Project.
- f. Nothing in this Contract is to be construed to grant the Contractor any right, title, or interest other than that explicitly provided for in this Contract.
- g. In accordance with Article 17, the Contractor's receipt of any benefit under this Contract is conditioned upon payment of charges due.
- h. This Contract is to be construed to allow legally authorized discharges of water from Pueblo Reservoir into the Arkansas River.

CONTRACTED SERVICE

5. a. STORAGE

- (1) Pursuant to Reclamation law, the Contractor may store up to 2,500 acre-feet of Nonproject Water and Project Water Return Flows in Pueblo Reservoir at any one time pursuant to the terms and conditions of this Contract.
- (2) The Contractor is authorized to utilize 400 acre-feet of storage in 2011 and to utilize 300 acre-feet of additional storage every other year thereafter until the maximum 2,500 acre-feet per year is reached. The maximum amount of storage available to the Contractor in any year during this build-up schedule (the "Schedule") shall be known as the "Storage Floor". The Contractor may notify the Contracting Officer at any time that it wishes to utilize storage, up to the maximum 2,500 acre-feet, in advance of the Schedule. A storage amount requested in advance of the Schedule then becomes the Storage Floor and cannot be decreased. The Storage Floor will only increase again when the storage amount established by the Schedule exceeds the then-current Storage Floor. Storage Floor increases will then resume according to the Schedule, unless the Contractor again requests storage in advance of the Schedule, until the maximum 2,500 acre-feet of storage is reached.
- (3) The Contracting Officer shall have sole authority, within the bounds of applicable laws and regulations, to determine if and when the Contractor may store Nonproject Water and Project Water Return Flows.
- (4) The Contracting Officer shall account for all the water stored through reservoir water accounting procedures and storage will be determined in accordance with the terms of this Contract.

- (5) If the Contracting Officer determines that Project operations may require a spill, the Contracting Officer shall notify the Contractor as soon as reasonably possible of the quantity and timing of the water that may be spilled.
- (6) The amount of Nonproject Water and Project Water Return Flows that is not delivered or spilled during the calendar year may be carried over to the next year while the Contract is in effect, but total Nonproject Water and Project Water Return Flows in the Project may not exceed the acre-feet established in Subarticle 5.a.(2) at any one time.

PAYMENT CHARGES

6. a. STORAGE

- (1) Initially upon execution of this Contract, through the year 2017, the Contractor will be billed through Colorado Springs Utilities as outlined in Contract No. 11XX6C0002. In the year 2018, and each subsequent year thereafter, the Contractor shall submit an advance non-refundable payment due on or before November 1, in accordance with the storage schedule, the rate and the established escalator described in Exhibit A.
- (2) After the initial contract payment, subsequent advance nonrefundable payments will be due on or before November 1 of each year for the following calendar year. Beginning for water storage in 2012 and each year thereafter, the water storage rate, determined under Article 6, shall be increased annually at the rate of 1.79 percent. In 2018, the SDS Participants' billings shall be in accordance with their respective Excess Capacity contracts identified in whereas clause "r" of the Explanatory Recitals. For water storage in 2011, this charge shall be in the amount of \$36.00 per acre-foot multiplied by the amount of the Storage Floor, as that term is defined in Subarticle 5.a.(2), regardless of the amount stored by the Contractor with recognition of the oversized pipe. In the years 2011-2017 the Storage Floor and storage rate is depicted below.

Year	Storage Floor	Storage Rate
2011	400	\$36.00
2012	400	\$36.64
2013	700	\$37.30
2014	700	\$37.97
2015	1,000	\$38.65
2016	1,000	\$39.34
2017	1,300	\$40.04

Each year thereafter, the water storage charge shall be the rate per acre-foot shown on Exhibit A, which is attached to and made a part of this Contract, multiplied by the amount of that year's Storage Floor, plus any additional storage requested by the Contractor. When the maximum amount of storage

specified by Article 5 reaches the full 2,500 acre feet, the annual charge thereafter shall be the applicable rate as shown in Exhibit A, multiplied by 2,500 acre-feet.

- (3) The Contractor shall not be relieved of the obligation to pay the annual storage charge described above for any reason, including the failure or inability to store water in any year.

b. No further rate adjustment is required under this Contract because the charges for storage are already subject to annual upward adjustment.

c. Revenues from the storage charges described in Subarticles 6.a.(1) will be credited in accordance with Section 2(b) of the Project Act, as amended by Section 9115, Title IX of Public Law 111-11.

d. If, in the future, Reclamation adopts criteria for a market-based pricing policy for use of Excess Capacity at either Fry-Ark Project facilities specifically or for Reclamation facilities generally, then at the request of either party, the price set forth in Article 6 of this Contract may be reevaluated and adjusted by the Contracting Officer to conform to that pricing policy. The decision to adopt a market-based pricing policy will rest solely with Reclamation, and it is understood that the policy may not require Reclamation to apply identical pricing for similar services. The terms of this article will expire five years from the date of Contract execution unless extended by the written, mutual consent of the Parties.

NORTH OUTLET WORKS

7. a. The United States and the City of Colorado Springs, acting by and through its Utility Enterprise have executed Contract No. 11XX6C0005 for the North Outlet Works ("NOW Contract").

b. The Contractor shall receive recognition for over-sizing approximately the first 1,600 feet of pipe within the North Outlet Works to a 90-inch diameter which will be to the benefit of Project beneficiaries and the United States.

c. The Contracting Officer shall retain the option to adjust the schedule in Subarticle 6.a.(1) of Contract No. 11XX6C0002 in the years 2011 through 2017 if additional payments for storage are made pursuant to Article 6 and/or through an increase in the Contractor's Storage Floor as determined in Subarticle 5(a)(2). A revised schedule shall be inserted into Contract No. 11XX6C0002 if the Contracting Officer's option described herein is exercised.

MEASUREMENT AND ACCOUNTING FOR THE USE OF EXCESS CAPACITY

8. a. If requested by the Contracting Officer, the Contractor shall submit and revise, if necessary, a written schedule of the anticipated monthly demands for the Excess Capacity of the Contractor's Nonproject Water and Project Return Flows.

b. The Contractor is solely responsible for making whatever arrangements are necessary for making water available to the Contractor under Colorado law, including but not limited to, obtaining approval of the State of Colorado's Division of Water Resources. The Contractor is solely responsible for any transportation losses assessed by the State of Colorado's Division of Water Resources and/or associated with the use of Excess Capacity for the Contractor's Nonproject Water and Project Water Return Flows. The Contractor shall account for Nonproject Water and Project Water Return Flows according to the limitations in the water rights listed in Exhibit D and provide the same to the Contracting Officer upon request. The Contracting Officer shall account for any such transit and evaporation losses assessed on Nonproject Water and Project Water Return Flows stored and conveyed under this Contract.

c. The Contracting Officer shall provide for the daily accounting of the Contractor's water showing:

- (1) The amount of water placed into storage in the Project;
- (2) The evaporation losses charged against the Contractor's water, which shall be on a proportional basis with all other water stored in Pueblo Reservoir; and
- (3) The amount of Contractor's water remaining in storage at the end of each day (Midnight).

d. The Contractor shall furnish the Contracting Officer, or the Contracting Officer's designee, without charge such Contractor records as may be required for such daily accounting.

ENVIRONMENTAL COMPLIANCE AND COMMITMENTS

9. a. Colorado Springs Utilities, as project manager for the SDS Participants shall implement the environmental commitments as described in Exhibit B, attached, and are made a part of this Contract. If at any time during the term of this Contract, Colorado Springs Utilities fails to implement or comply with the environmental commitments, the Contracting Officer may immediately cease storage and conveyance of Nonproject Water and Project Water Return Flows until the commitments are implemented and fulfilled to the satisfaction of the Contracting Officer. Failure of Colorado Springs Utilities to implement or comply with the environmental commitments may also result in termination of this Contract by the United States in accordance with Article 12.

b. The Contractor shall be responsible for the costs of all current and future NEPA and Endangered Species Act (ESA) compliance and mitigation measures identified in the FEIS and the ROD associated with the use of the Excess Capacity described in this Contract.

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