

**SECOND AMENDED**

**LA PLATA WEST WATER AUTHORITY**

**ESTABLISHMENT AGREEMENT**

**AGREEMENT ESTABLISHING  
THE  
LA PLATA WEST WATER AUTHORITY**

***THIS SECOND AMENDMENT TO THE AGREEMENT*** to establish the La Plata West Water Authority is entered into by Animas La Plata Water Conservancy District ("ALP") and La Plata Water Conservancy District of Colorado ("LPWCD"), each a quasi-municipal corporation and political subdivision of the State of Colorado, all situated in La Plata County, Colorado, and hereafter referred to individually as a "Member" and collectively as the "Members". This Second Amendment amends section 2.2 c and was approved by the Board of Directors of the ALP at a regular meeting on November 11, 2008, and by the Board of Directors of the LPWCD at its regular meeting on November 17, 2008. All other sections of the Agreement are hereby re-affirmed.

**PREAMBLE**

The Members to this Agreement acknowledge that local governments can increase their efficiency and their effectiveness through cooperative efforts for the provision of domestic water service within La Plata County. The creation of this water authority will allow for public ownership and operation of a Rural Domestic Water System ("RDWS") that will provide domestic water service to portions of western La Plata County. The RDWS currently envisioned by the Authority is that described by Chaney Walters & Echols ("CWE"), in the "Preliminary Engineering Report: Southwestern La Plata County Rural Domestic Water System", and Bikis Water Consultants ("Bikis") in the "Project Overview", but further feasibility and other studies may lead to new Authority RDWS plans.

**RECITALS**

A. Each of the Members is authorized to own and operate water systems or facilities within its respective jurisdiction.

B. Pursuant to the provisions of the Colorado Constitution, Article XIV, § 18(2)(a) and (2)(b), and C.R.S. §29-1-201, *et seq.* (the “Intergovernmental Relationships Act” or the “IGA Act”), the Members have the authority to establish a water authority as a separate governmental entity in order to make the best use of their joint resources to effect the development of water resources, systems, or facilities in whole or in part for the benefit of the inhabitants of such Members; to further develop domestic water operations and facilities; to serve a public purpose, and to promote the health, safety, prosperity, security, and general welfare of the inhabitants of the Members.

***NOW THEREFORE***, in consideration of the mutual agreements set forth herein, the Members agree as follows:

## **1. INTRODUCTORY PROVISIONS**

**1.1. Establishment of the Water Authority.** There is hereby established the La Plata West Water Authority (“Authority”) as a legal entity, political subdivision, and public corporation of the State of Colorado, separate and distinct from each of the Members, with the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate, pursuant to C.R.S. § 29-1-204-2.

**1.2. Effective Date and Term.** This Agreement shall become effective and the Authority operations shall begin as of the date the Agreement is executed by all the Members and the Members have appointed the Authority Board of Directors, as provided herein. The term of this Agreement shall be unlimited and shall extend until terminated, as provided herein.

**1.3. Authority Service Area.** The Authority service area consists of all property which may be served by the La Plata West Water Authority as shown in the map attached hereto and made a part hereof (the “Authority Service Area”). The Authority Service area may be amended from time to time by the Authority. The Authority may contract with others outside the Authority Service Area in the manner provided for in section 2.2.b.

## 2. PURPOSE AND POWERS OF THE AUTHORITY

**2.1. Purpose.** The purpose of the Authority is to design, construct and operate a RDWS. To that end, it is the intent of the Members to extend to the Authority the maximum flexibility and authority to conduct the business of operating the RDWS, enter into additional intergovernmental agreements or perform any other necessary functions to further such purposes.

### **2.2. Powers.**

a. The power of the Authority is derived primarily from C.R.S. § 29-1-204.2, which authorizes the establishment of a water authority as a separate governmental entity.

b. The general powers of the Authority shall include all powers granted by the Colorado Revised Statutes, to wit, the power:

(i) To develop water resources, systems, or facilities in whole or in part for the benefit of the inhabitants of the Members or others, at the discretion of the board of directors of the Authority, subject to fulfilling any conditions or requirements set forth in this Agreement, provided however, that the Authority shall not develop systems or facilities for the collection and treatment of waste water effluent or have any power to manage such effluent;

(ii) To make and enter into contracts;

(iii) To employ agents and employees;

(iv) To acquire, construct, manage, maintain, or operate water systems, facilities, works, or improvements, or any interest therein;

(v) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property utilized only for the purposes of water treatment and distribution;

(vi) To condemn property for use as rights-of-way only if such property is not owned by any public utility and devoted to such public use pursuant to state authority;

(vii) To incur debts, liabilities, or obligations;

(viii) To sue and be sued in its own name;

(ix) To have and use a corporate seal;

(x) To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the Authority;

(xi) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purpose;

(xii) To exercise any other powers which are essential to the provision of functions, services, or facilities by the Authority and which are specified in this Agreement;

(xiii) To do and perform any acts and things authorized by the IGA Act under, through, or by means of an agent or by contracts with any person, firm, or corporation;

(xiv) To permit other municipalities, special districts, or political subdivisions of this state that are authorized to supply water to enter this Agreement, subject to the approval of the Members and to fulfilling any and all conditions or requirements of this Agreement; except that rates need not be uniform between the Authority and the contracting parties;

(xv) To provide for the rehabilitation of any surfaces adversely affected by the construction of water pipelines, facilities, or systems through the rehabilitation of plant cover, soil stability, and other measures appropriate to the subsequent beneficial use of such lands;

(xvi) To justly indemnify property owners or others affected for any losses or damages incurred, including reasonable attorney fees, or that may subsequently be caused by or which result from actions of such corporations.

(xvii) To do any and all other things necessary or desirable to establish and operate a RDWS for persons and property. It is the intent of the Members to extend maximum power to the Authority, consistent with the IGA Act, to fulfill the purposes set forth in this Agreement.

c. The Authority is authorized to issue bonds, notes, or other obligations payable solely from revenues derived from the function, service, system, or facility or the combined functions, services, systems, or facilities of the Authority or from any other available funds of the Authority. The terms conditions and details of said bonds, notes and other obligations shall be in accordance with the provisions of the IGA Act and all other applicable laws. The bonds, notes and other obligations of the Authority shall not be the debts, liabilities, or obligations of the Members.

### **3. GOVERNANCE OF THE AUTHORITY**

**3.1. Board of Directors.** The governing body of the Authority shall be a Board of Directors ("Board") in which all legislative power of the Authority is vested. Individuals serving on the Board are referred to as "Directors".

**3.2. Number of Directors.** The initial number of Directors shall be seven (7). The number of Directors may be expanded if other public entities join the Authority or as provided in section 3.9. The Board may appoint advisory Directors who shall not have the right to vote and shall not have the authority to exercise any governmental function.

**3.3. Appointment, qualifications and term.** The governing body of each Member shall each appoint three Directors. Directors appointed by the LPWCD shall reside within the boundaries LPWCD. The Directors so appointed shall appoint a seventh Director. Directors shall serve a term of three years, with a Director serving at the pleasure of the governing body appointing such Director. In order to provide for staggered terms, the initial appointments shall be as follows: two of the Member-appointed Directors shall serve three year terms, two of the Member-appointed Directors shall serve two year terms and one each of the Member-appointed Directors shall serve a one-year term, as shall the Board-appointed Director. A vacancy, whether the result of a Director's resignation, death, removal, or disability, shall be filled within a reasonable time by appointment of a replacement Director by the governing body of the appropriate Member.

**3.4. Compensation.** Directors may receive reasonable compensation for their services as may be determined by resolution of the Board, subject to approval by all the Members. The Board shall provide by resolution for the reimbursement of Directors for their actual and reasonable expenses incurred on behalf of the Authority, which reimbursements shall not be considered to be compensation. No Director shall be paid any additional compensation by the Authority except as authorized by this provision.

**3.5. Meetings and Decisions.**

a. The Board, from time to time, shall adopt a schedule for the holding of regular meetings and shall post a notice of the schedule in at least three public places within the Authority Service Area and one at the La Plata County Clerk's office. A copy shall also be mailed to each Member.

b. Special meetings of the Board may be called by the by the President or shall be called by the President at the request of any two Directors. It shall be the duty of the Secretary to cause notice of such meeting to be given by posting as provided above.

c. Written notice of regular and special meetings shall be delivered to each Director and each Member not less than 5 days before the date fixed for such meeting. The notice to the Directors may be given by personal delivery, by regular mail, by email, by facsimile or by electronic means.

d. In order to establish a quorum at any meeting for the transaction of Authority business: (1) the presence of five Directors shall be required which must include no less than two Directors appointed by each Member; (2) in the event that any Director is appointed pursuant to Section 3.9 the presence of a minimum of six Directors, two of whom shall have been appointed by each Member, shall be necessary. Each Director, including the President, shall be entitled to cast one vote. The action of a majority of the Directors present at a meeting at which a quorum is present, except as otherwise provided in this Agreement, shall be an act of the Board. Decisions of the Board may be made only at regular or special Board meetings called upon proper notice. The affirmation vote of five Directors is required to approve Authority debt or to enter into contracts with a term of more than one year which may prevent termination of this Agreement under Section 5 until such time as any Director is appointed pursuant to Section 3.9 after which the affirmation vote of 6 directors shall be required.

e. Meetings shall be conducted in accordance with the Colorado Open Meetings Law. Not less than 24 hours prior to any regular or special meeting, a notice of the meeting and an agenda of matters to be considered at the meeting shall be posted at the locations specified in subsection 3.5.a above.

**3.6. Officers.** The officers of the Authority shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be authorized by the Board. The President and Vice President shall be members of the Board, but the other officers of the Authority need not be Board members. The duties of the officers shall be those provided in Authority Bylaws. All officers shall serve for terms of one year or at the pleasure of the Board. Vacancies in any office may be filled at any meeting of the Board. Notwithstanding any dates for appointment, reappointment, or election, officers shall hold office until their successors are appointed.

**3.7. Minutes, Bylaws and Rules and Regulations.** The Secretary shall cause all minutes of the meetings of the Board to be kept in accordance with the provisions of the Colorado Open Meetings Law. The Board shall adopt bylaws and amendments thereto for the conducting of its meetings and its business affairs, subject to the approval thereof by all Members. The Board shall adopt, amend and enforce rules and regulations not in conflict with the constitution and laws of Colorado for carrying on the business, objects, and affairs of the Board and of the Authority.

**3.8. Indemnification of Directors, Officers and Employees.** To the maximum extent permitted by the Colorado Governmental Immunity Act (C.R.S. 24-10-101, *et seq.*), the Directors, Officers and employees of the Authority ("Public Employees") shall be indemnified by the Authority for claims against them arising from an act or omission of such Public Employee occurring during the performance of the Employee's duties and within the scope of the Public Employee's employment, except where such act or omission is willful and wanton. The Authority may purchase error and omissions insurance to provide additional indemnification to all Public Employees of the Authority.

**3.9 Tribal Directors.** If the Authority receives money from the Resource Funds of the Southern Ute Indian Tribe or the Ute Mountain Ute Indian Tribe for construction of the water system, each tribe contributing money may request a tribal representative be appointed as a Director and the Board shall appoint such person who shall serve until the appointing tribe requests appointment of a replacement.

#### **4. FINANCING PROVISIONS**

**4.1. Budget.** Each year commencing with the first year of the Authority's existence, the Authority shall adopt a budget in accordance with the Colorado Local Government Budget Law ("Budget Law"), C.R.S. § 29-1-101, *et seq.*



**4.2. Funding.** The operations of the Authority shall be funded by revenue received from the operation of the RDWS, revenue bonds, grants, contributions and any other legal sources of revenue. Members are not required to make any financial contribution to the Authority. Each Member, in its sole discretion, may make contributions or loans to the Authority, but only if such contributions or loans do not adversely impact the enterprise status of the Authority.

**4.3. Rates and Fees.** Authority rates and fees shall be established based on the following principles:

a. Tap Fees or Plant Investment Fees ("PIFs") shall be used only for capital construction, facilities replacement, reserve accounts for these purposes or repayment of revenue bonds, the proceeds of which were used for these purposes.

b. Rates for the installation of RDWS facilities, including, but not limited to, customer meters and vaults, shall be established at the cost of labor plus materials and reasonable overhead.

c. At the appropriate time, the Board shall engage qualified consultants to conduct a cost of service study for the purpose of designing just and reasonable cost of service based rates for all customer classes. The Board shall periodically review the need for changes in rates and implement such changes as may be appropriate based on established cost of service principles.

**4.4. Records and Accounts.** The Board shall provide for the keeping of accurate records and accounts showing in detail all Authority revenues and expenses. All of the financial affairs of the Authority shall be conducted in accordance with and subject to the requirements of the Local Government Uniform Accounting Law (Part 5 of Article 1 of Title 29, C.R.S.) and generally accepted governmental accounting principles. The Authority's books and records shall be open to public inspection at all times during normal Authority business hours at the Authority's principal place of business in accordance with C.R.S. §24-72-201, *et seq.*

**4.5. Audit.** The Board shall have an annual audit of the Authority conducted in accordance with the Local Government Audit Law, Part 5 of Article 1 of Title 29, C.R.S.

## **5. WITHDRAWAL OF A DISTRICT OR TERMINATION OF THIS AGREEMENT**

5.1. A Member may withdraw from the Authority by giving notice that it intends to withdraw. If there are at least two other Members such withdrawal shall not terminate the Authority.

5.2. If this Agreement is terminated due to withdrawal of a Member or by agreement of the Members, the Members shall cooperate in good faith and in a timely manner to transfer the Authority assets to either the Members, a subset of the Members or a new entity so that adequate water service may continue to be provided to the Authority's customers without a lapse or reduction in the scope of services provided. This Agreement may not be terminated so long as the Authority has any bonds, notes, or other obligations unless adequate provisions for the payment of such are made.

## 6. OPERATIONAL PROVISIONS

6.1. **Principal Place of Business.** The official offices of the Authority shall be located in La Plata County, Colorado, at a location selected by the Board. The Board may change the Authority's principal place of business at any Board meeting.

6.2. **Fiscal Year and Reports.** The fiscal year of the Authority shall be the calendar year. An annual report of the Authority's activities and operations for the prior calendar year shall be prepared and distributed to the Members on or before March 1 of each year. Such reports are expected to include the following:

- a. Service Area changes made or proposed;
- b. Changes or proposed changes in the Authority's policies, rules and regulations;
- c. Changes or proposed changes in the Authority's operations, including any changes in rates;
- d. Any changes in the financial status of the Authority, including revenue projections or operating costs;

- e. A summary of any litigation which involves the Authority.
- f. Proposed plans for any substantial changes in the current fiscal year.
- g. A list of all facilities and improvements acquired or constructed by the Authority in the past year.
- h. A copy of the budget for the current year, as filed with the Division of Local Government.
- i. A copy of the Authority's audit for the preceding year as filed with the State Auditor, when available at the time of the Annual Report. Otherwise, the audit will be provided to the Members as soon as it is prepared.
- j. Any defaults or anticipated defaults in the repayment of indebtedness or in the performance of any other obligations, contracts or agreements of the Authority.

The Annual Report is intended to be a summary of significant events affecting the Authority during the prior year. Since such Report could be issued more than a year after a significant event occurs which should be reported to the Members on a timely basis, any event described under e or j above shall be reported in writing by the Authority to the Members prior to its occurrence, if possible, but in any event no later than 10 days after the occurrence or discovery of such event. Any other significant events which may have a material adverse impact on the Authority shall be reported in writing to the Members within 10 days of the occurrence or discovery of such event.

**6.3. Insurance.** The Authority shall maintain, at a minimum, the types of liability insurance listed below in the amount of \$150,000 per person and \$600,000 per occurrence, or such

increased limits as may be established pursuant to §24-10-101 *et seq.*, C.R.S., commonly known as the Colorado Governmental Immunity Act:

a. Comprehensive liability coverage, protecting the Authority, Officers, Directors, employees, and volunteers against any loss, liability, or expense whatsoever resulting from personal injury, death, property damage or otherwise arising from, or in any way connected with, management, administration, and operation of the RDWS by the Authority.

b. Property insurance covering Authority facilities and property for broad form covered causes of loss in the kinds and amounts typically obtained by governmental entities which own and operate similar facilities.

c. Automobile liability insurance coverage including other common coverages such as uninsured motorist and no fault coverage.

When appropriate the Authority shall obtain workers compensation, disability and unemployment insurance for employees as required by any laws of the State of Colorado or the Federal Government. The Authority shall furnish to the Members certificates of insurance showing compliance with the foregoing, and naming each Member as an additional insured. The provisions of the policy or policies shall not be cancelled or altered without at least 30 days prior written notice to each of the Members.

**6.4. Execution of Contracts.** Except as otherwise provided by law, the Board may authorize any one or more Officers, employees, or agents to enter into any contract approved by the Board and deliver any instrument approved by the Board in the name and on behalf of the Authority.

**6.5. Negotiable Instruments.** All checks, drafts, or other orders for payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority, with the approval of the Board, shall be signed by two Officers, agents or employees of the Authority, and in such manner as, from time to time, shall be determined by the Board.

**6.6. Debts.**

a. The bonds, notes, and other obligations of the Authority payable from Authority revenue and all other financial obligations of the Authority, however incurred and for whatever purpose, shall not be debts, liabilities, or obligations of the Members.

b. Notwithstanding any other provisions of this Agreement, each of the Members, not the Authority, shall be responsible for the bonded indebtedness of such Member.

**6.7. Deposits.** All funds of the Authority shall be deposited, from time to time, to the credit of the Authority, in such bank or banks as the Board may determine. All such deposits shall be covered by the Public Deposit Protection Act, C.R.S. §11-10.5-101, *et seq.* Funds of the Authority shall be invested only in those lawful investments for public funds in accordance with the provisions of C.R.S. §24-75-601, *et seq.*

**7. GENERAL**

**7.1. Amendments.** This Agreement may be amended by written document approved by formal action of the governing bodies of all of the Members at Member Board meetings at which the proposed amendment has been noticed in advance of the meeting; provided however, that no amendment may affect outstanding obligations of the Authority unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to such amendment.

**7.2. Assignment/Consolidation.** Rights and obligations of the Authority or its Members under this Agreement shall not be assignable without the written consent of all the Members.

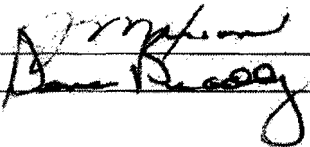
**7.3. Notices.** Unless otherwise provided herein, any formal notice, demand or request, except Board meeting notices, provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage pre-paid to the Members at the addresses set forth below, and to the Authority at its principal place of business as established herein, unless another address is provided to the Authority and the Members by any party by providing written notification to the other parties as set forth herein.

7.4. **Severability.** In the event that any of the terms or conditions of this Agreement or their application shall be held invalid as to any person, entity or circumstance by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby. If any provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable, such determination shall not affect or impair the validity or enforceability of any other provision, and the Members agree to renegotiate the invalid or unenforceable provision so as to cure such defect, if possible, and have it serve as closely as possible the original purpose of the provision unless to do so would render the Agreement inequitable.

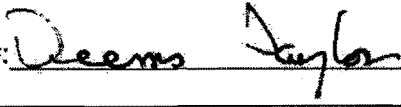
7.5. **Original Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

Date: 17. NOV 2008

Attest:

, Secretary

Animas La Plata Water Conservancy

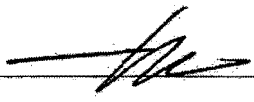
By: , Vice-President

Address:

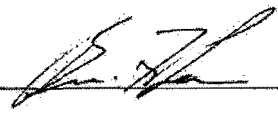
841 E. 2ND AVE  
DURANGO, CO 81301

Date: 17 NOV 2008

Attest:

, Secretary

La Plata Water Conservancy District of Colorado

By: , President

Address:

1302 CR 126  
HOSPETUS, CO 81326