

**AGREEMENT AMONG
LA PLATA CONSERVANCY DISTRICT,
SAN JUAN WATER COMMISSION
AND
HVCC, LLC**

THIS AGREEMENT is entered into this 12TH day of SEPTEMBER 2011 by and among La Plata Conservancy District (“LPCD”), located in San Juan County, New Mexico, a conservancy district duly incorporated and existing pursuant to the Decree Incorporating La Plata Conservancy District, dated August 5, 1946, by the District Court in San Juan County, and the laws of San Juan County and the State of New Mexico, San Juan Water Commission (“SJWC”), located in San Juan County, New Mexico, a political subdivision of the State of New Mexico duly organized and existing under the Joint Powers Agreement dated March 5, 1986, pursuant to the laws of San Juan County and the State of New Mexico, and HVCC, LLC a Limited Liability Company.

RECITALS

WHEREAS, the following statements are made in explanation:

1. LPCD and the United States Department of the Interior, Bureau of Reclamation (“Reclamation”), executed Repayment Contract No. 09-WC-40-355 on September 9, 2009 (the “Reclamation Contract”) for the use of the Animas-La Plata Project (the “Project”). The Reclamation Contract entitles LPCD to a municipal and industrial water allocation of 780 acre feet of water per year (“AFY”) of depletions (1580 AFY Diversions) to be delivered in New Mexico pursuant to State Engineer Permit No. 2883 though a combination of direct diversion of the natural flows from the San Juan River System and water released from Project storage;

further, LPCD may enter into third-party contracts for the use of water, provided that the agreement meets certain requirements.

2. LPCD, SJWC and four other entities executed that certain "Intergovernmental Agreement" on March 5, 2009 (the "IGA"), that created the Animas-La Plata Operation, Maintenance and Replacement Association ("ALP OM&R Association"), which is intended to manage the day-to-day operations of the Project and coordinate delivery of Project water. The ALP OM&R Association executed Contract No. 10-WC-40-370 on December 30, 2009 with Reclamation that establishes the Association's authority to manage the Project.

3. LPCD and the SJWC entered into that certain "Contract Between San Juan Water Commission and La Plata Conservancy District Concerning the District's Animas-La Plata Project Water" on December 31, 2008, which provides, among other terms, that SJWC will be the fiscal agent for LPCD in any contracts with third parties for Project water.

4. HVCC, LLC desires to lease 200 AFY of diversionary water from LPCD's Project water supply, to be delivered to a diversion point on the Animas River, under the terms and conditions of this Agreement, and LPCD desires to lease this amount of water to HVCC, LLC through this Agreement, which agreement LPCD intends to meet Reclamation requirements for such agreements.

5. LPCD's lease of up to 200 AFY of water to HVCC, LLC would not detrimentally affect any other water rights holder.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, it is understood and agreed as follows:

LEASE AGREEMENT

6. In consideration of a payment of \$120 per acre foot, HVCC, LLC may lease up to 200 AFY of water per year for municipal purposes on its golf course. The amount leased shall be based upon HVCC, LLC's schedule forecasting annual and monthly demands, prepared and

provided in Section 10 below. The annual amount may be less than the total of 200 AFY. HVCC, LLC may divert more than the amount of water it forecasted in any month, as long as the total amount diverted does not exceed the annual demand forecasted.

7. Payment for water will be based on the amount leased, forecasted as required below. The payment will be required as provided herein whether or not the water is diverted and used by HVCC, LLC.

CONTINGENCIES

8. This Agreement is contingent upon satisfaction of all of the following contingencies:

8.1. **Diversion Permit.** The parties must obtain a diversion permit from the New Mexico Office of the State Engineer (“OSE”) for use in conjunction with Permit No. 2883 for LPCD’s Project water in a final, non-appealable order (the “Diversion Permit”). SJWC shall prepare and prosecute a joint application for the Diversion Permit, and the co-permittees shall be LPCD and HVCC, LLC. If, at any time during the application process, LPCD or SJWC determines, in its sole discretion, that pursuing the Diversion Permit will be detrimental to its interests, it may withdraw the application, and this Agreement shall be of no further force or effect.

8.2. **Reclamation Approval.** Pursuant to the Reclamation Contract, Reclamation must approve this Agreement in order to determine the effects on the operation of the Project facilities, including compliance with existing environmental statutes. LPCD shall request approval of this Agreement and advise HVCC, LLC of Reclamation’s decision as soon as possible.

8.3. **Agreement with Lower Animas Ditch.** HVCC, LLC shall have sole responsibility to obtain an agreement with the Lower Animas Ditch for use of the ditch to convey the water from the ditch’s diversion point on the Animas River to HVCC, LLC. The parties anticipate that the Lower Animas Ditch will charge fees for use of its ditch, and any such fees

will be the sole responsibility of HVCC, LLC and shall not be included in the amount paid to SJWC under this Agreement.

9. If any one of these contingencies is not met, upon notice from LPCD or SJWC, this Agreement shall terminate without penalty and be of no further force or effect, and each party shall bear its own costs.

FORECAST OF LEASE AMOUNT, PAYMENT AND DELIVERY OF WATER

10. During each year this Agreement is in effect, HVCC, LLC shall submit an annual and monthly forecast for the water amounts it desires to lease for the following year by **September 1**. The forecasts shall be submitted to SJWC in a format determined by SJWC.

11. Based on the annual forecast, HVCC, LLC shall pay up front its annual lease cost by **September 15** to SJWC.

11.1. Payment is required whether or not HVCC, LLC ultimately uses the water.

11.2. Payment shall be made via a method acceptable to SJWC.

11.3. The annual lease cost shall be based on an initial rate of \$120/AF, which may be adjusted after the initial term of this Agreement as provided in Section 19 below.

11.4. If HVCC, LLC fails to make its payment in full by the deadline, LPCD shall have no obligation to deliver any water for the year, and LPCD shall have the option to terminate this Agreement or seek another legal remedy.

11.5. If HVCC, LLC makes its payment in full by the deadline, LPCD shall be obligated to deliver the full water supply for the year.

12. SJWC shall communicate HVCC, LLC's forecasts to the ALP OM&R Association and facilitate communications as needed between HVCC, LLC and the ALP OM&R Association.

13. If HVCC, LLC determines that it needs more water than it forecast for its annual demand, it shall notify SJWC as soon as possible with its additional demands. If the ALP OM&R

Association determines, in its sole discretion, that Project water is available for LPCD to deliver to HVCC, LLC the Association shall so notify SJWC, and HVCC, LLC may request this additional water.

13.1. HVCC, LLC shall pay SJWC for the additional water at the same rate it paid for its annual amount.

13.2. Payment to SJWC shall be made within three (3) days of notification from the ALP OM&R Association that the additional water is available. Payment shall be required whether or not HVCC, LLC ultimately uses the water.

14. SJWC shall determine a schedule and deadlines for HVCC, LLC to ask for deliveries of Project water. In setting the schedule, SJWC will consider its need to comply with requirements for notification from the ALP OM&R Association.

15. Deliveries and use of water shall be made consistent with ALP OM&R Association requirements, the Diversion Permit, and the Reclamation Contract, including terms of measurement, operations, environmental compliance, and the impacts of defaults on Project facilities.

15.1. The parties anticipate that, pursuant to the Diversion Permit, Project water will be delivered to Lower Animas Ditch's diversion point(s), and neither LPCD nor SJWC shall be responsible for delivery of the water beyond that point to the specific place of use for HVCC, LLC.

15.2. Using its existing facilities, HVCC, LLC will report its water diversions to SJWC on a schedule and through a method acceptable to SJWC.

15.3. HVCC, LLC may not sell or otherwise use water it may obtain through this Agreement except as provided in this Agreement.

16. HVCC, LLC and SJWC shall cooperate to ensure that HVCC, LLC, at its expense, meets all governmental regulations associated with its use of the Diversion Permit,

including making any necessary filings with the State Engineer or other state or federal government agency, obtains all other required permits from the State Engineer or other state or federal government agency, and fulfills all compliance obligations imposed by the State Engineer or other state or federal government agency.

NO BENEFICIAL INTEREST IN WATER; TERM

17. HVCC, LLC will not obtain any beneficial or other ownership interest in the water LPCD provides or in the Diversion Permit.

18. This Agreement shall be effective for ten (10) years from the date stated above.

19. This Agreement may be renewed for additional five-year terms upon the approval of LPCD, which approval may include an increase in the payment terms.

19.1. If HVCC, LLC desires to renew this Agreement, it shall give notice to SJWC at least one (1) year before the end of the then-current term.

19.2. LPCD shall determine, in its sole discretion, whether it wishes to renew this Agreement. LPCD shall make its determination within 45 days of receiving notice from SJWC of HVCC, LLC's request to renew the Agreement.

GENERAL PROVISIONS

20. This Agreement is non-assignable.

21. The foregoing constitutes the entire agreement among LPCD, SJWC and HVCC, LLC, and all prior and contemporaneous negotiations and/or understandings are null and void.

22. No amendment of this Agreement shall be valid unless reduced to writing and executed by the parties hereto.

23. This Agreement shall be governed by the laws of the State of New Mexico.

24. If any provision of this Agreement shall, for any reason, be determined to be illegal or unenforceable and does not materially alter the intent of the Agreement, the parties nevertheless intend for the remainder of the Agreement to remain in full force and effect.

