

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND
THE NAVAJO NATION

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CONTRACT BETWEEN THE UNITED STATES AND
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PART I. SETTLEMENT

1. PREAMBLE

This contract is entered into this 17th day of December, 2010, between the United States of America, acting through the Secretary of the Interior pursuant to the Northwestern New Mexico Rural Water Projects Act of March 30, 2009 (123 Stat. 1367), the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, all of which acts are commonly known and referred to as the Federal Reclamation Laws, specifically the Act of June 13, 1962 (76 Stat. 96), the Act of April 11, 1956 (CRSP) (70 Stat. 105; 43 U.S.C. 620 et seq.), the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258), and the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385), and the Navajo Nation.

2. EXPLANATORY RECITALS

WHEREAS, the United States, the State of New Mexico, and the Navajo Nation have negotiated a resolution of all water right claims of the Navajo Nation to waters of the San Juan River Basin in New Mexico which are the subject of a general stream adjudication in New Mexico state court ; and

WHEREAS, the settlement of these claims will secure to the Navajo Nation a water supply; and

WHEREAS, it is the intent of this Contract that the Navajo Nation may exercise the right to market the water supply secured to it under this Contract subject to the provisions of this Contract and the agreement between the State of New Mexico, the Navajo Nation and the United States setting forth a stipulated and binding Settlement

1 Agreement, as amended, pursuant to Section 10701 of the Northwestern New Mexico
2 Rural Water Projects Act (123 Stat. 1367); and

3 WHEREAS, the Federal government is undertaking to construct additional water
4 development facilities to fulfill the terms and conditions of the Northwestern New
5 Mexico Rural Water Projects Act (123 Stat. 1367) and this Contract, as well as facilities
6 to extend the current service area of the Navajo Indian Irrigation Project and facilities to
7 convey municipal, industrial and domestic water supplies to Navajo Nation communities;
8 and

9 WHEREAS, the Secretary of the Interior has determined in accordance with
10 Section 11 of the Act of June 13, 1962 (76 Stat. 96), pursuant to the hydrologic
11 determination recognized at Section 10604(a)(1) of the Northwestern New Mexico Rural
12 Water Projects Act (123 Stat. 1367) that there is sufficient water reasonably likely to be
13 available for use in the State of New Mexico to enable the United States to enter into this
14 Contract:

15 NOW, THEREFORE, in consideration of mutual and dependent covenants and
16 conditions contained herein, the parties agree to the following:

17

18 3. GENERAL DEFINITIONS

19 For the purposes of this Contract only, unless otherwise distinctly expressed or
20 manifestly incompatible with the intent hereof, the term:

21 (a) “Animas-La Plata Project”, or “ALP”, means the project of the same name
22 authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-
23 258; Public Law 106-554, Appendix D, Title III) including Ridges Basin Dam and Lake
24 Nighthorse, the Durango Pumping Plant, the Ridges Basin Inlet Conduit, the Navajo
25 Nation Municipal Pipeline and related facilities.

26 (b) “Association” means the Animas-La Plata Operations, Maintenance, and
27 Replacement Association, established by the ALP Project sponsors who were signatory to
28 the IGA, dated March 4, 2009, pursuant to the Colorado Uniform Unincorporated
29 Nonprofit Association Act, 7-30-101 et seq., CRS (2006), to carry out the OM&R
30 activities and responsibilities of the Project.

1 (c) “Consultation” or “Consult” refers to an ongoing obligation of both parties
2 to implement the provisions of this Contract with a full exchange of information so as to
3 assure that each party is provided full participation in the decision making process.
4 Consultation shall be required of each party with respect to each section of the Contract
5 regardless of whether the section itself sets forth a Consultation requirement. The
6 Consultation required shall be reasonable under the circumstances, and except in exigent
7 circumstances Consultation shall be undertaken in advance of decision making. In the
8 event that agreement cannot be reached and the United States makes a decision, appeals
9 are available to the extent allowed under applicable laws.

10 (d) “Contracting Officer” means the representative of the Secretary of the
11 Interior authorized to administer this Contract.

12 (e) “Fixed OM&R costs” means costs of administration, overhead, labor,
13 materials, and equipment required to maintain all pumps, storage tanks, pipelines,
14 diversion facilities, reservoirs and inlet conduits, as may be appropriate. Fixed OM&R
15 costs shall also include annual payments to an emergency reserve fund to meet costs
16 incurred during periods of special stress caused by damaging droughts, storms,
17 earthquakes, floods, or other emergencies threatening or causing interruption of water
18 service, and annual payments to a replacement reserve fund to ensure adequate funds are
19 available to replace equipment when needed.

20 (f) “Intergovernmental Agreement” or “IGA” means that agreement dated
21 March 4, 2009 and entered into by the Colorado Water Resource and Power
22 Development Authority, the La Plata Conservancy District, the Navajo Nation, the San
23 Juan Water Commission, the Southern Ute Indian Tribe, and the Ute Mountain Ute
24 Indian Tribe to establish the Animas-La Plata Operations, Maintenance, and Replacement
25 Association (Association) and provide for the terms, conditions, and concepts under
26 which OM&R of the transferred works of the ALP is to take place.

27 (g) “Lake Nighthorse”, formerly Ridges Basin Reservoir, means the reservoir
28 created by the impoundment on Basin Creek by Ridges Basin Dam, a facility of the ALP
29 as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat.
30 2763A-258).

1 (h) “Navajo Dam and Reservoir” means Navajo Dam and the reservoir created
2 by the impoundment of the San Juan River at Navajo Dam as authorized by the Act of
3 April 11, 1956, the Colorado River Storage Project Act (70 Stat. 105; Public Law 84-
4 485), as amended.

5 (i) “Navajo-Gallup Water Supply Project”, or “NGWSP”, means the project of
6 the same name authorized by Section 10602 of the Northwestern New Mexico Rural
7 Water Projects Act (123 Stat. 1367).

8 (j) “Navajo Indian Irrigation Project”, or “NIIP”, means the project of the same
9 name authorized by the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), as
10 amended.

11 (k) “Navajo Lands” means lands set aside as reservation lands for the Navajo
12 People, whether by treaty, statute, executive order or public land order. Also included in
13 this definition are lands that are held in trust for the Navajo Nation by the United States,
14 held in trust for members of the Navajo Nation by the United States, or held in fee
15 ownership by the Navajo Nation.

16 (l) “Navajo Nation” means a body politic and federally-recognized Indian
17 nation as provided for in Section 101(2) of the Federally Recognized Indian Tribe List of
18 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the “Navajo
19 Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo Tribe of
20 Indians” and other similar names, and includes all bands of Navajo Indians and chapters
21 of the Navajo Nation, acting through its authorized representative.

22 (m) “Navajo Nation Municipal Pipeline”, or “NNMP”, means the pipeline to
23 convey the Navajo Nation’s ALP water from the City of Farmington, New Mexico, to
24 Navajo Nation communities along the San Juan River valley in New Mexico, including
25 the City of Shiprock, as a facility of the ALP authorized by the Colorado Ute Settlement
26 Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title
27 III).

28 (n) “Navajo Settlement Act” means Subtitle B of Title X the Act of March 30,
29 2009 (123 Stat. 1367; Public Law 111-11).

30 (o) “OM&R” means annual operation, maintenance and replacement.

1 (p) “Partial Final Decree” means a final and binding judgment and decree
2 entered by the court in the stream adjudication, setting forth the rights of the Navajo
3 Nation to use and administer waters of the San Juan River Basin in New Mexico, the
4 form of which is attached as Appendix 1 of the Settlement Agreement.

5 (q) “Project Operator” means the entity that has been transferred the OM&R
6 responsibilities for a specific project covered under this Contract.

7 (r) “Project Participant(s)” means participant(s) in the NGWSP, namely the
8 Navajo Nation, the City of Gallup and, should it choose to participate, the Jicarilla
9 Apache Nation.

10 (s) “San Juan River” means that river which originates in the State of Colorado
11 and flows through or constitutes the boundary of the Navajo Indian Reservation in
12 northwestern New Mexico and southeastern Utah, where it flows into Lake Powell.

13 (t) “Secretary” means the Secretary of the United States Department of the
14 Interior or an authorized designee.

15 (u) “Settlement Agreement” means the agreement between the State of New
16 Mexico, the Navajo Nation and the United States executed in 2010, pursuant to Section
17 10701 of the Northwestern New Mexico Rural Water Projects Act (123 Stat. 1367).

18 (v) “Statutory Water Allocation” means the municipal and industrial (M&I)
19 water allocation delivered to the Navajo Nation from the ALP pursuant to Section
20 6(a)(1)(A)(ii)(III) of the Colorado Ute Settlement Act Amendments of 2000, Public Law
21 106-554.

22 (w) “Subcontract” means a contract between the Navajo Nation and a third party,
23 pursuant to this Contract and subject to the provisions of the Navajo Settlement Act, the
24 Settlement Agreement, the Partial Final Decree, and approval of the Secretary or
25 authorized representative, to supply water for beneficial use on or off Navajo Lands in
26 the State of New Mexico, subject to and consistent with the same requirements and
27 conditions of State law, and any applicable Federal law, interstate compact, and
28 international treaty as they apply to the exercise of water rights held by non-federal, non-
29 Indian entities.

1 (x) “Subcontractor” means any entity and/or persons entering into a subcontract
2 with the Navajo Nation, subject to the approval of the Secretary or authorized
3 representative.

4 (y) “Transferred Works” means facilities which are necessary to support the
5 operation and maintenance of one of the three projects identified in this Contract, and for
6 which the OM&R responsibility has been transferred to the Navajo Nation by the United
7 States.

8 (z) “Variable OM&R costs” means the costs of power including power
9 consumption and a proportional percentage of power demand costs for the pumping of
10 water. In the case of the NGWSP, Variable OM&R costs also include costs associated
11 with the treatment of water.

12
13 4. CONDITIONS

14 This Contract will give rise to rights and obligations on the part of the Navajo
15 Nation and the United States. The provisions of Part IV, and the provisions of Article 32
16 Part V as they relate to Part II and Part IV, will become enforceable only after the Partial
17 Final Decree is entered by the District Court of San Juan County, New Mexico, in the
18 general stream adjudication of the San Juan River stream system, *New Mexico v. United*
19 *States*, No. 75-184, which Partial Final Decree adjudicates water rights of the Navajo
20 Nation in and from the San Juan River Basin in New Mexico per paragraph 3.0 of the
21 Settlement Agreement and is of the form provided in Appendix 1 to the Settlement
22 Agreement. All other provisions of the Contract will be enforceable upon execution of
23 the Contract.

24
25 5. PRELIMINARY UNDERSTANDINGS

26 (a) The Navajo Nation may purchase, receive and use ALP water in accordance
27 with the relevant provisions of this Contract prior to the entry of the Partial Final Decree.

28 (b) The obligations of the parties under Contract No. 14-06-W-269 between the
29 United States and the Navajo Nation for delivery of water from Navajo Reservoir for the
30 principal purpose of furnishing irrigation water to the NIIP shall continue in force until

1 the entry of the Partial Final Decree after which Contract No. 14-06-W-269 shall be
2 superseded by this Contract.

3 (c) Separate contracts for additional water, as available, may be negotiated
4 between the Navajo Nation and the United States in the future pursuant to the provisions
5 of paragraph 8.0 of the Settlement Agreement, but they do not constitute any part of the
6 consideration for this Contract.

7 (d) Except as specifically provided in this Contract and as provided in the
8 waivers and releases set forth in Section 10703 of the Navajo Settlement Act, nothing in
9 this Contract should be construed to affect or alter other obligations that the United States
10 may have under treaty, statute, or otherwise to provide or operate water project facilities
11 and water distribution systems on Navajo Lands.

12
13
14 **PART II. NIIP**

15 **6. WATER DELIVERY PROVISIONS**

16 (a) The United States agrees to deliver, or make available for delivery, to the
17 Navajo Nation an average diversion of not more than 508,000 acre-feet per year, or the
18 quantity of water necessary to supply an average depletion of 270,000 acre-feet per year
19 from the San Juan River, whichever is less, during any period of ten consecutive years,
20 and not more than 584,200 acre-feet in any one year for delivery to the NIIP from:

21 (i) Navajo Reservoir from the following delivery points under State
22 Engineer File No. 2849:

23 (A) the intake to the NIIP main canal; or

24 (B) the Navajo Dam outlet works; or

25 (ii) inflows below Navajo Dam under State Engineer File No. 3215 at
26 Cutter Reservoir or at Gallegos Reservoir or suitable alternative; or

27 (iii) both (i) and (ii) in combination.

28 (b) Pursuant to Section 2(c) of the Act of June 13, 1962, as amended by Section
29 10402(a) of the Navajo Settlement Act, water delivered pursuant to Part II Article 6(a)
30 may be used within the area served by the NIIP facilities for irrigation and the following
31 purposes:

1 (i) Aquaculture purposes, including the rearing of fish in support of the
2 San Juan River Basin Recovery Implementation Program authorized by Public
3 Law 106-392 (114 Stat. 1602).

4 (ii) Domestic, industrial, or commercial purposes relating to agricultural
5 production and processing.

6 (iii) The generation of hydroelectric power as an incident to the diversion
7 of water by the NIIP for authorized purposes.

8 (iv) The implementation of the alternate water source provisions described
9 in subparagraph 9.2 of the Settlement Agreement executed under Section
10 10701(a)(2) of the Navajo Settlement Act.

11 (c) Pursuant to Section 2(d) of the Act of June 13, 1962, as amended by Section
12 10402(a) of the Navajo Settlement Act, water diverted by the NIIP may be transferred to
13 areas located within or outside the area served by the NIIP facilities and on or off Navajo
14 Lands for any beneficial use in accordance with:

15 (i) the agreement executed under section 10701(a)(2) of the Navajo
16 Settlement Act;

17 (ii) this Contract; and

18 (iii) any other applicable law.

19 (d) If the Navajo Nation proposes to change the place or purpose of use or the
20 point of diversion in the exercise of its rights to use water for the uses described in Part II
21 Article 6(b) or 6(c) of this contract, in addition to providing notice to the New Mexico
22 State Engineer as required by Paragraph 18 of the Partial Final Judgment and Decree of
23 the Water Rights of the Navajo Nation, notice shall be provided to the United States
24 pursuant to Part VI Article 56 of this contract.

25 (e) The Navajo Nation shall be solely responsible for the construction,
26 operation, maintenance and replacement specific to all modifications and additions to
27 NIIP facilities that are necessary to use NIIP water for the purposes provided in Part II
28 Article 6(b)(i) through (iv) and 6(c) above. As long as title to NIIP facilities is held by
29 the United States, the Navajo Nation shall obtain the approval of the United States prior
30 to the construction of any modification or addition to the NIIP facilities.

1 (f) The Navajo Nation under this Contract shall have no holdover storage rights
2 in Navajo Reservoir from year to year. Any water at Navajo Reservoir subject to
3 delivery hereunder not called for by the end of each calendar year shall become
4 integrated with the water supply for all purposes of the reservoir at that time.

5 (g) The Navajo Nation must notify the Contracting Officer and the Project
6 Operator of its scheduled locations, amounts and timings of anticipated deliveries or
7 diversions prior to any delivery of water from Navajo Reservoir under State Engineer
8 File No. 2849. The requested delivery or change in delivery shall be made by the
9 Contracting Officer or the Project Operator in a reasonable time within the ability to
10 manage the operation of Navajo Dam or the NIIP intake, as appropriate, or as otherwise
11 agreed to between the Navajo Nation and the Contracting Officer .

12 (h) Nothing in this Contract is intended to impose on the United States any
13 obligation to maintain Navajo Dam and Reservoir or the NIIP beyond their useful lives,
14 or to take extraordinary measures to keep these facilities operating.

15 (i) The points of delivery of water made available for use pursuant to this
16 section from Navajo Reservoir and from inflows to the San Juan River arising below the
17 reservoir shall be as specified in Part II Article 6(a) unless changed consistent with the
18 Partial Final Decree and pursuant to agreement of the Contracting Officer and the Navajo
19 Nation. Water made available at Navajo Dam to make the diversions and depletions
20 described in subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree that are
21 supplied under this Contract pursuant to the alternate water source provisions of
22 subparagraph 9.2 of the Settlement Agreement shall be accounted under the contract
23 rights for delivery of water under the NIIP described in Part II herein.

24 (j) To the extent that delivery of water is made through or from federal
25 facilities, the Navajo Nation will reimburse costs associated with this delivery in
26 accordance with the provisions of Part II Article 8 of this Contract.

27
28 7. WATER SUPPLY AND SHORTAGE

29 (a) Notwithstanding any other provisions of this Contract, in times of shortage
30 in the Navajo Reservoir water supply to meet demands under contracts for delivery of
31 water from said supply, taking into account water available from inflows below Navajo

1 Dam to help meet the demands, the Navajo Nation will share in the available water
2 supply in the manner set forth in Section 11 of the Act of June 13, 1962 (76 Stat. 96) as
3 amended by Section 10402(b) of the Navajo Settlement Act.

4 (b) On account of drought or other causes outside the control of the United
5 States, there may occur at times during any year a shortage in the quantity of water
6 available for use by the Navajo Nation pursuant to this Contract. In no event shall any
7 liability accrue against the United States or any of its officers, agents, or employees, for
8 any damage, direct or indirect, arising out of any such shortage, and payments due the
9 United States provided for herein shall not be reduced because of such shortage.

10
11 8. COST PROVISIONS

12 Charges for water made available pursuant to Part II Article 6 will be as follows:

13 (a) The Navajo Nation's construction cost obligation for the NIIP within the
14 ability of the land to repay shall be allocated and payment deferred under the provisions
15 of the Leavitt Act (47 Stat. 564), as authorized in subsection 4(d) of the Colorado River
16 Storage Project Act (70 Stat. 105). The Navajo Nation's construction cost obligation for
17 the NIIP beyond the ability of the land to repay shall be non-reimbursable as authorized
18 in subsection (6) of the Colorado River Storage Project Act (70 Stat. 105).

19 (b) The Navajo Nation's OM&R obligation for the NIIP for the delivery of
20 water made available pursuant to Part II Article 6(b)(i) and (ii) will be based on the
21 incremental increase in OM&R costs associated with the conveyance and delivery of that
22 water. Provisions for payment of these costs shall be made in a future agreement
23 between the Navajo Nation and the United States pursuant to Section 4 of the 1962 Act.

24 (c) The Navajo Nation shall pay the United States or its designee if some
25 organization other than the United States is operating Navajo Dam and Reservoir, the
26 Navajo Nation's proportionate share of the OM&R costs for Navajo Dam and Reservoir
27 assignable to the amount of water made available pursuant to Section 10402(d) of the
28 Navajo Settlement Act. The Navajo Nation's obligation for Navajo Dam and Reservoir
29 OM&R costs shall be triggered by either a Subcontract or the notice provided by the
30 Navajo Nation to the United States, as described in Part II Article 6(c) and (d),
31 respectively. The Navajo Nation's obligation for Navajo Dam and Reservoir OM&R

1 costs shall be paid on the basis of annual cost estimates made by the United States, or its
2 designee, based upon the quantity of the NIIP water that is made available under
3 Subcontracts authorized by Section 10402(d). The estimates will be sent annually to the
4 Navajo Nation on or before May 1 for the next Federal Fiscal year, which begins October
5 1 of the same calendar year and ends September 30 of the next calendar year. The
6 Navajo Nation shall advance its annual share of the Navajo Dam and Reservoir OM&R
7 costs for the next Federal fiscal year on or before September 30. The first such billing
8 will be issued based upon the effective date NIIP water is provided under Subcontracts
9 and in the event this effective date shall be for costs of service of less than a full year,
10 such costs shall be prorated for the period covered.

11
12 9. **LIMITED RESPONSIBILITY FOR DISTRIBUTION**

13 (a) Upon delivery, as specified under Part II Article 6(a) herein, the Navajo
14 Nation shall hold the United States, its officers, agents, employees, and successors or
15 assigns, harmless from every claim for damages to persons or property, direct or indirect,
16 and of whatever nature, arising out of or in any manner connected with the control,
17 carriage, handling, distribution or use of such water beyond the point of delivery; except
18 to the extent that such responsibilities are placed on the United States by Act of Congress.

19
20
21 **PART III. ALP**

22 10. **WATER DELIVERY PROVISIONS**

23 (a) Pursuant to the Colorado Ute Settlement Act Amendments of 2000, the
24 United States agrees to deliver or make available for delivery to the Navajo Nation a
25 municipal and industrial water allocation with an average annual depletion not to exceed
26 2,340 acre-feet from the ALP water supply under New Mexico State Engineer File No.
27 2883, subject to the provisions of the Navajo Settlement Act, the Settlement Agreement,
28 the Partial Final Decree and this Contract. Water delivered pursuant to this article shall
29 be measured utilizing measuring facilities installed by the United States as a part of the
30 ALP at the following points of delivery:

31 (i) The outlet works of Ridges Basin Dam; or

- 1 (ii) Bypassed at the Durango Pumping Plant; or
- 2 (iii) Both in combination.

3 (b) The Navajo Nation may divert its ALP water at the points of diversion for
4 use by the Navajo Nation under its water rights for the ALP, consistent with the Navajo
5 Settlement Act, the Settlement Agreement, the Partial Final Decree and this Contract.
6 Sufficient water will be delivered from ALP water released from Lake Nighthorse or
7 bypassed at the Durango Pumping Plant to meet the annual water allocation requirements
8 of the Navajo Nation up to its Statutory Water Allocation.

9 (c) If the IGA is in effect, the Navajo Nation shall have the right to receive
10 water from storage from Lake Nighthorse in accordance with the Joint Storage Pool as
11 described in the IGA.

12 (d) If the IGA is voided or otherwise terminated, the Navajo Nation under this
13 Contract shall have 869 acre-feet of storage capacity space allocated for its exclusive use
14 in Lake Nighthorse to support use of the ALP water supply as described in Part III Article
15 10(a). The United States, or the Project Operator, shall fill and refill the Navajo Nation's
16 storage capacity space as often as direct flow is available from the Animas River to fill
17 said space under the ALP diversion right issued in the State of Colorado and the Animas-
18 La Plata Project Compact (82 Stat. 898). The Navajo Nation shall have holdover storage
19 rights in Lake Nighthorse from year to year to the extent that water stored in the Navajo
20 Nation's storage capacity space may be held for exclusive delivery to the Navajo Nation
21 in future years as necessary to meet the delivery demands of the Navajo Nation in
22 accordance with Part III Article 10(a) and 13(a). Nothing in this Contract shall prohibit
23 the Navajo Nation from acquiring additional storage capacity space in Lake Nighthorse if
24 additional space becomes available.

25 (e) The Navajo Nation must notify the Contracting Officer and the Project
26 Operator of any requests for or changes in delivery of water from the ALP under State
27 Engineer File No. 2883. The requested delivery or change in delivery shall be made by
28 the Project Operator in a reasonable time within its ability to manage the operation of the
29 project and in accordance with the IGA if the IGA is in effect, or as otherwise agreed to
30 between the Navajo Nation, the Contracting Officer, and the Project Operator.

1 (f) Nothing in this section is intended to impose on the United States any
2 obligation to maintain Ridges Basin Dam and Lake Nighthorse and related facilities or
3 the NNMP beyond their useful lives, or to take extraordinary measures to keep these
4 facilities operating

5 (g) The points of delivery of water made available for use pursuant to this
6 section from the ALP shall be as specified in Part III Article 10(a) unless changed
7 consistent with the Partial Final Decree and pursuant to written agreement of the
8 Contracting Officer and the Navajo Nation.

9 (h) To the extent that delivery of water is made through or from federal
10 facilities, the Navajo Nation will reimburse costs associated with this delivery in
11 accordance with the provisions of Part III Article 15 of this Contract.

12
13 11. ALP PROJECT WORKS

14 Subject to the terms and conditions of this and other applicable contracts related
15 to the ALP, the United States has constructed the following ALP Project Works and
16 appurtenant facilities, has acquired lands, and shall provide certain moveable property
17 and equipment to the Project Operator needed for ALP operation and maintenance as, in
18 the opinion of the United States in consultation with the Association, are necessary for
19 ALP purposes, without being limited by enumeration and within the limit of funds made
20 available by the Congress and the contracting parties.

21 (a) The Project Works consist of the following:

22 (i) Ridges Basin Dam and Lake Nighthorse and appurtenant facilities, the
23 storage facility for the Project, are located on Basin Creek in Ridges Basin
24 approximately 3 miles southwest of Durango, Colorado. The reservoir has a
25 capacity of approximately 120,000 acre-feet.

26 (ii) Durango Pumping Plant and appurtenant facilities are located adjacent
27 to the Animas River and pumps water from the Animas River for storage in
28 Lake Nighthorse.

29 (iii) Ridges Basin Inlet Conduit and appurtenant facilities extend from the
30 Durango Pumping Plant to Lake Nighthorse.

1 (iv) Operation and Maintenance Facilities will be constructed as
2 determined necessary by the United States, after consultation with the Project
3 Construction Coordinating Committee, for the required operation and
4 maintenance of ALP Project Works.

5 (b) In addition to the ALP Project Works identified in Part III Article 11(a)
6 above, the United States is constructing the Navajo Nation Municipal Pipeline to
7 augment the existing system that conveys municipal water supplies, in an amount not less
8 than 4,680 acre-feet per year, to the Navajo Indian Reservation at or near Shiprock, NM
9 as a facility of the ALP authorized under Section 15(b) of the Colorado Ute Settlement
10 Act Amendments of 2000.

11 (c) The United States, after consultation with the Navajo Nation, shall have the
12 right at any time to increase the capacity of the ALP Project Works or any unit or feature
13 thereof for other than currently authorized project purposes without additional capital or
14 operation and maintenance cost to the Navajo Nation; provided, that the Navajo Nation's
15 use of the Statutory Water Allocation shall not be impaired thereby. The right of use of
16 such increased capacity is reserved to the United States.

17 (d) Any additions, changes to, or operation of ALP Project Works or changes in
18 use of the water allocations pursuant to Sec. 6(a)(1)(A)(ii) of the Colorado Ute Settlement
19 Act Amendments of 2000, as amended, from that stated in the Animas-La Plata Final
20 Supplemental Environmental Impact Statement (FSEIS) dated July 2000 and subsequent
21 Record of Decision dated September 25, 2000, shall, as required by law, be subject to
22 further compliance with applicable environmental statutes, which shall include an
23 analysis of potential impacts on other project Sponsors.

24 (e) Construction and operation of the ALP will be in accordance with the
25 Environmental Commitments in Chapters 4 and 5 of the FSEIS, which are attached as
26 Exhibit A to this Contract.

27
28 12. CONSTRUCTION AND OPERATION OF FACILITIES

29 (a) Nothing in this Contract shall be construed to obligate the United States to
30 construct, install, operate or maintain dams, pumps, pipelines, storage tanks, distribution
31 lines or other facilities required to take, measure, convey or distribute water for use

1 beyond agreed upon points of delivery; except, that the United States shall have such
2 obligations as conferred upon the Secretary by the authorities to construct, maintain and
3 operate the ALP in accordance with the Colorado River Storage Project Act (70 Stat.
4 105), the Act of June 13, 1962 (76 Stat. 96), and the Colorado Ute Settlement Act
5 Amendments of 2000 (114 Stat. 2763A-258). The ALP shall be operated in a manner
6 consistent with applicable law.

7 (b) Coordination of construction, operation and maintenance of the ALP shall be
8 accomplished through the following two committees:

9 (i) The Project Construction Coordination Committee, which consists of
10 representatives of the Bureau of Reclamation and Project contractors,
11 including the Navajo Nation, provides coordination and consultation on the
12 construction activities among all ALP sponsors, seeking common
13 understanding and consensus on decisions associated with final plans,
14 construction schedules and costs for ALP facilities, and shall dissolve upon
15 completion of ALP construction.

16 (ii) The Association consists of representatives of those entities which
17 have been identified by the Colorado Ute Settlement Act Amendments of
18 2000, as amended, to receive a water allocation. This Association has
19 contracted with Reclamation for the operation and maintenance of ALP
20 multipurpose facilities and developed, among the ALP sponsors, a common
21 understanding of the appropriate level of OM&R activities to be performed on
22 the ALP multipurpose facilities to assure the long-term operational integrity of
23 ALP and public safety. Ultimately, the Association will oversee the ongoing
24 OM&R activities of ALP, providing consultation and coordination among the
25 Association members and Reclamation on such items as annual OM&R
26 funding, maintenance schedules, and public safety issues.

27 (iii) Failure of the committees to reach common understandings or to
28 otherwise coordinate with the Bureau of Reclamation on construction,
29 operation and maintenance of the ALP shall in no way nullify or reduce the
30 obligation of the United States to construct, operate and maintain ALP
31 facilities, including the NNMP, or to deliver water to the Navajo Nation as

1 authorized by the Colorado Ute Settlement Act Amendments of 2000 (114
2 Stat. 2763A-258), the Navajo Settlement Act, the Settlement Agreement, and
3 this Contract.

4
5 13. WATER SUPPLY SHORTAGE

6 (a) With respect to water made available from the ALP under the terms of this
7 Contract, during periods when the Contracting Officer, or the ALP Operator finds that the
8 direct flow of the Animas River is insufficient to supply 100 percent of the water
9 deliveries under contracts for ALP water, the Navajo Nation shall share in the available
10 direct flow consistent with Article 1 of the Animas-La Plata Project Compact (82 Stat.
11 898).

12 (b) In any year in which there may occur a shortage in the Statutory Water
13 Allocation from any cause at the points of delivery, the ALP Operator reserves the right
14 to make a conclusive determination of shortage and to apportion the available ALP water
15 allocation among the ALP sponsors subject to the Colorado Ute Settlement Act
16 Amendments of 2000, as amended, the IGA, and applicable laws, including the Animas-
17 La Plata Project Compact.

18 (c) On account of drought or other causes outside the control of the United
19 States, there may occur at times during any year a shortage in the quantity of water
20 available for delivery to the Navajo Nation pursuant to this Contract. In no event shall
21 any liability accrue against the United States or any of its officers, agents, or employees,
22 for any damage, direct or indirect, arising out of any such shortage, and payments due the
23 United States provided for herein shall not be reduced because of such shortage.

24
25 14. BLOCK NOTICE FOR ALP WATER DELIVERY

26 (a) When the ALP Project Water becomes available for use by the Navajo
27 Nation, the United States shall, after consultation, give the Navajo Nation written notice,
28 referred to herein as the "ALP Block Notice". The ALP Block Notice shall contain: (1)
29 the quantity of Project Water available to the Navajo Nation from the ALP, and (2) the
30 effective date that water is available for delivery to the Navajo Nation.

1 (b) The ALP Block Notice and any amendments thereto shall become a part of
2 this Contract.

3
4 15. COST PROVISIONS

5 The Navajo Nation's cost obligations for the ALP will be as follows:

6 (a) Prior to water becoming available for use by the Navajo Nation, pursuant to
7 Part III Article 14(a) above, the OM&R costs allocated to the Navajo Nation's ALP
8 Project Water shall be paid by Reclamation. Upon water becoming available for use by
9 the Navajo Nation, pursuant to Part III Article 14(a) above, the Contracting Officer will
10 notify the Navajo Nation of the transfer of responsibility for the Navajo Nation's ALP
11 OM&R costs at least sixty (60) days prior to the effective date of the transfer.

12 (b) The OM&R costs allocated to the Navajo Nation's Statutory Water
13 Allocation will be comprised of:

14 (i) the Navajo Nation's share of Fixed OM&R costs of the multipurpose
15 facilities as defined in the IGA. The Navajo Nation's share, as identified in
16 the IGA is 2.5% of the total Fixed OM&R costs. If the IGA is voided or
17 otherwise terminated, the Navajo Nation's share of Fixed OM&R costs will be
18 defined by the final cost allocation;

19 (ii) the Navajo Nation's share of Variable OM&R costs of the
20 multipurpose facilities, which are actual costs of replacing water released
21 from storage in Lake Nighthorse by request of the Navajo Nation, as defined
22 in the IGA, which contains provisions for a Variable OM&R fund, designed to
23 pay all or part of the ALP Variable OM&R costs;

24 (iii) all OM&R costs associated with the NNMP during the period in which
25 title to the pipeline is held by the United States. In addition, the Navajo
26 Nation shall be responsible for providing OM&R of the NNMP and for
27 funding the OM&R costs of the pipeline when title of the pipeline is
28 transferred to the Navajo Nation. The Navajo Nation's OM&R
29 responsibilities associated with the NNMP shall be further identified and
30 provisions for payment made in the NNMP operations agreement identified in
31 Section 10605(b) of the Navajo Settlement Act. If title is not conveyed, the

1 OM&R responsibilities and the Navajo Nation's share of OM&R costs
2 associated with the NNMP shall be further identified and provisions for
3 payment made in a separate OM&R contract that will be required between
4 Reclamation and the NNMP operator.

5 (c) The Navajo Nation agrees to pay, in advance, its share of the ALP Fixed and
6 Variable OM&R costs. Payment of the Navajo Nation's, or its assignee's, allocated
7 OM&R costs shall be made annually in advance, within 60 days of receipt of the annual
8 charge notice issued by the Project Operator based on the Association's annual estimate
9 of ALP OM&R costs. If the Navajo Nation's allocated OM&R costs exceed the sum
10 paid in advance, then a supplemental charge notice will be issued and the Navajo Nation
11 will pay the sum required within 60 days of receipt. If the Navajo Nation's allocated
12 OM&R costs are less than the sum advanced, then the Navajo Nation shall receive a
13 credit for the overpayment upon its next annual charge notice.

14 (d) In the event either the ALP OM&R cost estimate falls short of the actual
15 costs in any period, or whenever it is anticipated by the Contracting Officer that a deficit
16 will occur during the year, supplemental notices may be issued by the Contracting Officer
17 requesting additional funds. OM&R funds not spent during one calendar year will be
18 carried over for use during the next calendar year with funds required for that year being
19 reduced accordingly. An itemized statement of actual costs incurred during each year
20 shall be furnished to the Navajo Nation.

21 (e) Billings from the Contracting Officer or the Project Operator, and payments
22 by the Navajo Nation of the OM&R costs outlined under this section shall be made on the
23 basis of Part III Articles 15(b) and 15(c). For project operation purposes, the Navajo
24 Nation will provide an annual notice to the Contracting Officer, or the Project Operator,
25 identifying the amount of water estimated to be used by the Navajo Nation, the estimated
26 period and point of diversion for each intended purpose and a listing of all executed
27 Subcontracts with third parties, including those Subcontracts anticipated to be executed
28 during the year of applicability. The Navajo Nation shall send this notice on or before
29 February 1 of the year preceding the year of use described in the notice. Upon receipt of
30 such notice, the Contracting Officer, or the Project Operator, will bill the Navajo Nation
31 for payment of costs as prescribed herein. Billing adjustments will be made to correct for

1 differences in the estimated and actual use of water, as well as, the estimated and actual
2 costs during the preceding year.

3
4 16. **TITLE TRANSFER**

5 Title to NNMP facilities shall remain in the name of the United States, until
6 transferred to the Navajo Nation pursuant to Section 10605(b) of the Navajo Settlement
7 Act.

8
9 17. **LIMITED RESPONSIBILITY FOR DISTRIBUTION**

10 (a) Upon delivery, as specified under Part III Article 10(a) herein, the Navajo
11 Nation shall hold the United States, its officers, agents, employees, and successors or
12 assigns, harmless from every claim for damages to persons or property, direct or indirect,
13 and of whatever nature, arising out of or in any manner connected with the control,
14 carriage, handling, distribution or use of such water beyond the point of delivery. Section
15 10605(b) of the Navajo Settlement Act acknowledges the City of Farmington's role for
16 the diversion, treatment and conveyance of water made available under this Contract.

17
18
19 **PART IV. NGWSP**

20 18. **WATER DELIVERY PROVISIONS**

21 (a) The United States agrees to deliver, or make available for delivery, to the
22 Navajo Nation a diversion of not more than 22,650 acre-feet, or the quantity of water
23 necessary to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is
24 less, in any one year, water allocated to the Navajo Nation under its water rights for the
25 NGWSP uses in New Mexico from Navajo Reservoir or from the points of diversion
26 from the San Juan River as authorized by Section 10603 of the Navajo Settlement Act,
27 under State Engineer File Nos. 2849 and 3215, subject to the provisions of the Navajo
28 Settlement Act, the Settlement Agreement, the Partial Final Decree, and this Contract.

29 (b) Nothing in this section is intended to impose on the United States any
30 obligation to maintain the NGWSP beyond its useful life or to take extraordinary
31 measures to keep the facilities operating.

1 (c) The points of delivery of water made available for use pursuant to this
2 section from Navajo Reservoir and the San Juan River shall be as specified in Part IV
3 Article 18(a) unless changed as allowed by the Partial Final Decree and pursuant to
4 written agreement of the Contracting Officer and the Navajo Nation.

5 (d) To the extent that delivery of water is made through or from federal
6 facilities, the Navajo Nation will reimburse costs associated with this delivery in
7 accordance with the provisions of Part IV Article 26 of this Contract.

8 (e) The Navajo Nation must notify the Contracting Officer, the NIIP Project
9 Operator, and the NGWSP Project Operator of its scheduled locations, amounts and
10 timings of anticipated diversions prior to any delivery of water from the NGWSP under
11 State Engineer File Nos. 2849 and 3215. The requested delivery or change in delivery
12 shall be made by the Contracting Officer, the NIIP Project Operator, and the NGWSP
13 Project Operator in a reasonable time within their abilities to manage the operation of
14 Navajo Dam and the NIIP intake, as appropriate, or as otherwise agreed to between the
15 Navajo Nation, the Contracting Officer, the NIIP Project Operator, the NGWSP Project
16 Operator.

17
18 19. **NGWSP FACILITIES**

19 Subject to the terms and conditions of this and other applicable contracts related
20 to the NGWSP, the United States will construct the following NGWSP facilities and
21 appurtenant facilities without being limited by enumeration and within the limit of funds
22 made available pursuant to the Navajo Settlement Act.

23 (a) The NGWSP facilities consist of two laterals, the San Juan Lateral and the
24 Cutter Lateral, as generally described in the Navajo-Gallup Water Supply Project Final
25 Environmental Impact Statement (FEIS) dated July 2009 and subsequent Record of
26 Decision dated October 1, 2009.

27 (b) Operation and maintenance facilities will be constructed as determined
28 necessary by the United States, after Consultation with the Project Construction
29 Committee, for the required operation and maintenance of NGWSP facilities.

30 (c) As a condition of construction of the facilities authorized under Section
31 10602 (b) of the Navajo Settlement Act, the Project Participants shall provide all land or

1 interest in land, as appropriate, that the United States identifies as necessary for
2 acquisition under Section 10602 (c) of the Navajo Settlement Act at no cost to the United
3 States.

4 (d) Any additions, changes to, or operation of NGWSP facilities or changes in
5 use of the water allocations pursuant to Section 10603(b)(1)(B) of the Settlement Act
6 from that stated in the Navajo-Gallup Water Supply Project FEIS dated July 2009 and
7 subsequent Record of Decision dated October 1, 2009, will, as required by law, be
8 subject to further compliance with applicable environmental statutes, which shall include
9 an analysis of potential impacts on other Project Participants.

10 (e) Construction and operation of the NGWSP will be in accordance with the
11 Environmental Commitments in Chapter VI of the FEIS, which are attached as Exhibit B
12 to this Contract.

13
14 20. CONSTRUCTION AND OPERATION OF FACILITIES

15 (a) Nothing in this Contract shall be construed to obligate the United States to
16 construct, install, operate or maintain dams, pumps, pipelines, storage tanks, distribution
17 lines or other facilities required to take, measure, convey or distribute water for use
18 beyond agreed upon points of delivery; except, that the United States shall have such
19 obligations as conferred upon the Secretary by the authorities to construct, maintain and
20 operate Navajo Dam and Reservoir, the NIIP and the NGWSP in accordance with the
21 Colorado River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96),
22 and the Navajo Settlement Act

23 (b) Coordination of construction, operation and maintenance of the NGWSP
24 shall be accomplished through the establishment of a Project Construction Committee
25 which will consist of representatives of the Bureau of Reclamation and the Project
26 Participants, and may include the State of New Mexico.

27 (i) The Project Construction Committee shall:

28 (A) review cost factors and budgets for construction and operation and
29 maintenance activities; and

30 (B) improve construction management through enhanced communication;

31 and

1 (C) seek additional ways to reduce overall NGWSP costs.

2 (ii) Failure of the committee to reach common understandings or to
3 otherwise coordinate with the Bureau of Reclamation on construction,
4 operation and maintenance of the NGWSP shall in no way nullify or reduce
5 the obligation of the United States to construct, operate and maintain NGWSP
6 facilities or to deliver water to the Navajo Nation as authorized by the Navajo
7 Settlement Act, the Settlement Agreement, and this Contract.

8
9 21. WATER SUPPLY AND SHORTAGE

10 (a) Notwithstanding any other provisions of this Contract, during times of
11 shortage in the Navajo Reservoir water supply to meet demands under contracts for
12 delivery of water from said supply, taking into account water available from inflows
13 below Navajo Dam to help meet the demands, the Navajo Nation will share in the
14 available water supply in the manner set forth in Section 11 of the Act of June 13, 1962
15 (76 Stat. 96), and Section 10402 (b) of the Navajo Settlement Act.

16 (b) On account of drought or other causes outside the control of the United
17 States, there may occur at times during any year a shortage in the quantity of water
18 available for use by the Navajo Nation pursuant to this Contract. In no event shall any
19 liability accrue against the United States or any of its officers, agents, or employees, for
20 any damage, direct or indirect, arising out of any such shortage, and payments due the
21 United States provided for herein shall not be reduced because of such shortage.

22
23 22. NOTIFICATION OF SUBSTANTIAL COMPLETION

24 When features or reaches of the NGWSP have been declared to be substantially
25 complete and water can be made available to the Navajo Nation, the United States shall,
26 after consultation, give the Navajo Nation written notice, referred to herein as the "Notice
27 of Substantial Completion". The Notice of Substantial Completion shall contain: (1) a
28 description of the NGWSP facilities that have been determined to be substantially
29 complete and can generate water delivery, (2) a list of the feature(s) or reach(es) which are
30 completed, (3) the effective date of that substantial completion declaration, and (4) the

1 proportionate share of OM&R costs associated with the completed NGWSP facilities that
2 are allocated to the Navajo Nation pursuant to Article 26 of this Contract.

3
4 23. BLOCK NOTICE FOR NGWSP WATER AVAILABILITY

5 (a) When NGWSP water can be made available to the Navajo Nation, the
6 United States shall, after consultation, give the Navajo Nation written notice, referred to
7 herein as the “NGWSP Block Notice”. The NGWSP Block Notice shall contain: (1) the
8 effective date that NGWSP water is made available, (2) the quantity of NGWSP water
9 available to the Navajo Nation from the block, (3) the designation of the lateral, either
10 Cutter Lateral or San Juan Lateral, that will be used to convey the available block of
11 NGWSP water under notice, and (4) a description of the feature(s) or reach(es) which can
12 receive NGWSP water.

13 (b) The NGWSP Block Notice and any amendments thereto shall become a part
14 of this Contract.

15
16 24. CARRIAGE OF NON-PROJECT WATER

17 (a) During the period where Title to NGWSP facilities is held by the United
18 States, the Secretary may enter into a contract for the treatment and carriage of non-
19 Project water through the NGWSP if, after consultation with the Navajo Nation, it is
20 determined that capacity is available without impairing delivery to a Project Participant.
21 Any contract for treatment and carriage of non-Project water shall include the following
22 terms:

23 (i) the beneficiary shall pay the OM&R costs associated with treatment
24 and carriage of the non-Project water;

25 (ii) the beneficiary shall pay an appropriate fee that may be established by
26 the Secretary to assist in the recovery of any capital cost allocable to that use;
27 and

28 (iii) the contract for treatment and carriage of non-Project water shall
29 terminate if delivery to a Project Participant is impaired.

30 (b) Following transfer of Title to an NGWSP facility to the Navajo Nation
31 pursuant to Article 27, the Navajo Nation may enter into a contract for the treatment and

1 carriage of non-Project water through that NGWSP facility if capacity is available
2 without impairing delivery to a Project Participant. Any contract for treatment and
3 carriage of non-Project water shall include the following terms:

4 (i) the beneficiary shall pay the OM&R costs associated with treatment
5 and carriage of the non-Project water;

6 (ii) the beneficiary shall pay an appropriate fee that may be established by
7 the Secretary to assist in the recovery of any capital cost allocable to that use;
8 and

9 (iii) the contract for treatment and carriage of non-Project water shall
10 terminate if delivery to a Project Participant is impaired.

11
12 25. ADDITIONAL CAPACITY

13 (a) During the period where Title to NGWSP facilities is held by the United
14 States, the Navajo Nation may request of the Secretary the use of additional capacity in
15 an NGWSP facility for treatment and carriage of water if capacity is available without
16 impairing delivery to a Project Participant. The Secretary shall approve or disapprove the
17 request within 180 days of receipt of the request. Prior to use of any additional capacity,
18 the Navajo Nation must agree to the following terms:

19 (i) pay the OM&R costs associated with the additional capacity to be
20 used;

21 (ii) pay any fee established by the Secretary to assist in recovering capital
22 costs relating to the additional use; and

23 (iii) use of additional capacity shall be terminated if delivery to a Project
24 Participant is impaired.

25 (b) Following transfer of Title to an NGWSP facility pursuant to Article 27, the
26 Navajo Nation may request of the owner of the NGWSP reach or facility the use of
27 additional capacity in an NGWSP facility for treatment and carriage of water if capacity
28 is available without impairing delivery to a Project Participant. The owner of the NGWSP
29 reach or facility shall approve or disapprove the request within 180 days of receipt of the
30 request. Prior to use of any additional capacity, the Navajo Nation must agree to the
31 following terms:

- 1 (i) pay the OM&R costs associated with the additional capacity to be
- 2 used;
- 3 (ii) pay any fee established by the owner of the NGWSP reach or facility
- 4 relating to the additional use; and
- 5 (iii) use of additional capacity shall be terminated if delivery to a Project
- 6 Participant is impaired.

7

8 26. COST PROVISIONS

9 (a) The Navajo Nation shall pay the United States or its designee if some

10 organization other than the United States is operating Navajo Dam and Reservoir, the

11 Navajo Nation's proportionate share of the OM&R costs for Navajo Dam and Reservoir

12 assignable to the amount of water made available to the Navajo Nation through Part IV

13 Article 23 of this Contract. The Navajo Nation's proportionate share of Navajo Dam and

14 Reservoir OM&R costs will be based upon 100 percent of the water supply available

15 under NGWSP Block Notice and designated for the Cutter Lateral and 50 percent of the

16 water supply available under NGWSP Block Notice and designated for the San Juan

17 Lateral.

18 (b) The Navajo Nation shall pay the United States or its designee if some

19 organization other than the United States is operating the NIIP, a proportionate share of

20 OM&R costs for the NIIP facilities that are used to convey NGWSP water made

21 available to the Navajo Nation through Part IV Article 23 of this Contract. The

22 proportionate share of OM&R costs for the NIIP facilities used to convey NGWSP water

23 shall be identified and provisions for payment made in the OM&R contract that will be

24 required between Reclamation and the NGWSP operator. The Navajo Nation's

25 construction cost obligation for the NGWSP shall be allocated, waived and declared non-

26 reimbursable by the Secretary.

27 (c) The Navajo Nation's OM&R cost obligation for the NGWSP shall be paid to

28 the United States, or its designee if some organization other than the United States is

29 operating the NGWSP facilities, as follows:

- 30 (i) For any feature or reach of the NGWSP, declared substantially complete
- 31 under Part IV Article 22, through or by which water can only be delivered to

1 the Navajo Nation, the Navajo Nation shall pay all OM&R costs associated
2 with water delivery, until such time water can be delivered through or by that
3 feature or reach to other Project Participants, at which time Part IV Article
4 26(d)(ii) below shall apply.

5 (ii) For any feature or reach of the NGWSP through or by which water
6 delivery is a benefit to the Navajo Nation and any other Project Participant,
7 the Navajo Nation's OM&R cost obligation will be comprised of:

8 (A) the Navajo Nation's share of Fixed OM&R costs based upon its
9 proportionate share of the design capacity for all NGWSP facilities, or
10 reaches of those facilities, which have been declared substantially
11 complete through Part IV Article 22 of this Contract.

12 (B) the Navajo Nation's share of Variable OM&R costs.

13 (d) Billing and payment for the Navajo Nation's OM&R cost obligations shall
14 be conducted as follows:

15 (i) The Navajo Nation's obligation for Navajo Dam and Reservoir
16 OM&R, as provided under Part IV Article 26(a) above, shall be paid on the
17 basis of annual cost estimates made by the Contracting Officer, or its
18 designee. An estimate from the Contracting Officer will be sent annually to
19 the Navajo Nation on or before May 1 for the next Federal fiscal year, which
20 begins October 1 of the same calendar year and ends September 30 of the next
21 calendar year. The Navajo Nation shall advance its annual share of the
22 Navajo Dam and Reservoir OM&R costs for the succeeding Federal fiscal
23 year on or before September 30. The first such billing will be issued based
24 upon the effective date stated in the NGWSP Block Notice and in the event
25 this effective date shall be for costs of service of less than a full year, such
26 costs shall be prorated for the period covered.

27 (ii) Fixed OM&R costs for the NGWSP shall be paid on the basis of
28 annual cost estimates made by the Contracting Officer, or the NGWSP
29 Operator, based upon the proportionate share of the design capacity for those
30 NGWSP facilities which have been declared substantially complete through
31 Part IV Article 22 of this Contract. An estimate from the Contracting Officer,

1 or the NGWSP Operator, will be sent to the Navajo Nation on or before May
2 1 for the next Federal fiscal year, which begins October 1 of the same
3 calendar year and ends September 30 of the next calendar year. The Navajo
4 Nation shall advance its share of the OM&R costs for each Federal fiscal year
5 in quarterly payments which will be due on September 30, December 31,
6 March 31, and June 30 of the Federal fiscal year of applicability. The first
7 such billing will be issued immediately following a notice of substantial
8 completion as provided in Part IV Article 22 of this Contract. In the event the
9 first notice shall be for costs of service of less than a full year, such costs shall
10 be prorated for the period covered. An itemization of the estimated Fixed
11 OM&R costs will accompany the billing.

12 (iii) Variable OM&R costs for the NGWSP shall be paid on the basis of an
13 annual notice provided by the Navajo Nation to the Contracting Officer, or the
14 NGWSP Operator, on or before May 1 for the next Federal fiscal year, which
15 begins October 1 of the same calendar year and ends September 30 of the next
16 calendar year. The annual notice will provide an estimate of the Navajo
17 Nation's anticipated water delivery requirements on a quarterly basis. Based
18 upon these anticipated water delivery requirements, the Contracting Officer,
19 or the NGWSP Operator, will bill the Navajo Nation quarterly on September
20 30, December 31, March 31, and June 30 of the Federal fiscal year of
21 applicability. An itemization of the estimated Variable OM&R costs will
22 accompany the billing.

23 (e) In the event either the OM&R cost estimates fall short of the actual costs in
24 any period, or whenever it is anticipated by the Contracting Officer that a deficit will
25 occur during the fiscal year, supplemental notices may be issued by the Contracting
26 Officer requesting additional funds. OM&R funds not spent during one fiscal year will
27 be carried over for use during the next fiscal year with funds required for that year being
28 reduced accordingly. An itemized statement of actual costs incurred during each year
29 shall be furnished to the Navajo Nation. Billing adjustments will be made to correct for
30 differences in the estimated and actual costs at the beginning of the next fiscal year, and

1 in the case of Variable OM&R costs, for differences in the Navajo Nation’s estimated
2 water delivery requirements and the actual metered flow.

3 (f) The Fixed OM&R costs and Variable OM&R costs of the NGWSP allocated
4 to the Navajo Nation for the NGWSP facilities that have been determined to be
5 substantially complete for water delivery under Part IV Article 22 of this Contract, that
6 the Secretary determines are in excess of the ability of the Navajo Nation to pay, may be
7 waived and declared non-reimbursable by the Secretary for not more than ten (10) years
8 from the effective date established by the notice of substantial completion, pursuant to
9 Sec. 10604(f)(1) of the Navajo Settlement Act. This waiver authority shall terminate on
10 the date on which title to a facility is transferred to the Navajo Nation pursuant to Sec.
11 10604(f)(5).

12 (g) OM&R responsibilities and the Navajo Nation’s share of OM&R costs
13 associated with the NGWSP shall be further identified and provisions for payment made
14 in the NGWSP operations agreement identified in Section 10602(f) of the Navajo
15 Settlement Act. If title is not conveyed on a feature or reach, the OM&R responsibilities
16 and the Navajo Nation’s share of OM&R costs associated with NGWSP features and
17 reaches shall be further identified and provisions for payment made in a separate OM&R
18 contract that will be required between Reclamation and the NGWSP project operator.

19
20 27.

CONVEYANCE OF TITLE

21 Title to NGWSP facilities shall remain in the name of the United States, until
22 conveyed pursuant to Section 10602(f) of the Navajo Settlement Act.

23
24 28.

LIMITED RESPONSIBILITY FOR DISTRIBUTION

25 (a) Upon delivery, as specified under Part IV Article 18(a) herein, the Navajo
26 Nation shall hold the United States, its officers, agents, employees, and successors or
27 assigns, harmless from every claim for damages to persons or property, direct or indirect,
28 and of whatever nature, arising out of or in any manner connected with the control,
29 carriage, handling, distribution or use of such water beyond the point of delivery. Section
30 10602(f) of the Navajo Settlement Act acknowledges the City of Gallup’s role for the
31 conveyance and distribution of water made available under this Contract for the NGWSP.

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PART V. GENERAL

29. TERM OF CONTRACT

The water delivery rights recognized by this Contract shall be perpetual unless limited by a term of years, canceled, terminated, or rescinded by an Act of Congress.

30. TRANSPORTATION LOSSES

No conveyance losses beyond the points of delivery as specified in Part II Article 6(a), Part III Article 10(a), and Part IV Article 18 shall be borne by the United States. In the event that points of delivery are changed, transportation of water from the original points of delivery to other points of delivery shall be the sole responsibility of the Navajo Nation, so that no conveyance losses, including channel losses, shall be borne by the United States.

31. UNCONTROLLABLE FORCES

Neither party shall be considered to be in default in respect to any obligation hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces. The term uncontrollable forces shall mean, for the purposes of this Contract, any cause beyond the control of the party affected, including but not limited to, drought, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove expeditiously such inability.

32. SUBCONTRACTS

(a) When water made available under this Contract is not being used by the Navajo Nation, the Navajo Nation may subcontract with third parties, subject to the provisions of the Navajo Settlement Act, the Settlement Agreement, the Partial Final Decree, and approval of the Contracting Officer in accordance with this section, to supply water for beneficial use on or off Navajo Lands in the State of New Mexico, subject to

1 and consistent with the same requirements and conditions of State law, and any
2 applicable Federal law, interstate compact, and international treaty as apply to the
3 exercise of water rights held by non-federal, non-Indian entities. Such Subcontracts shall
4 not be considered subcontracts for purposes of Articles 44 and 46 of this Contract.
5 Nothing in this Contract shall be construed to establish, address, or prejudice whether, or
6 to prevent any party from litigating whether, or to the extent to which, any of the
7 aforementioned laws do or do not permit, govern, or apply to the use of the Navajo
8 Nation's water outside the State.

9 (b) Water identified in this Contract that is transferred or otherwise made
10 available to entities other than the Navajo Nation shall require a Subcontract.

11 (c) Subcontracts made by the Navajo Nation with third parties shall be subject
12 to the provisions of the Navajo Settlement Act, the Settlement Agreement, the Partial
13 Final Decree, and this Contract, and must include terms of use, purchase, measurement,
14 operations and default. A copy of each proposed Subcontract shall be filed with the New
15 Mexico Interstate Stream Commission at least 30 days prior to being executed by the
16 Navajo Nation; provided, that proposed emergency Subcontracts may be filed with less
17 than 30 days notice. A copy of each executed Subcontract shall be filed with the New
18 Mexico Interstate Stream Commission.

19 (d) Prior to approving any Subcontract, the Contracting Officer shall comply
20 with subsection 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42
21 U.S.C. § 4332(2)(C). The Navajo Nation will furnish any data and information as may
22 be required by the Contracting Officer for NEPA compliance documentation. The
23 Contracting Officer has the authority under the Contributed Funds Act of 1921 (43 USC
24 §395) to charge any Subcontractor for the costs associated with this compliance
25 documentation. The Contracting Officer will coordinate with the Navajo Nation and the
26 Subcontractor throughout the NEPA process, including furnishing copies of all related
27 documentation.

28 (e) The Contracting Officer shall approve any Subcontract submitted by the
29 Navajo Nation if the Contracting Officer determines that:

- 30 (i) the diversion and use of water under the Subcontract would comply
31 with the Settlement Agreement, the Partial Final Decree, and other applicable

1 law, including any applicable permitting requirements and permit conditions
2 of the New Mexico State Engineer, and the provisions of this Contract;

3 (ii) the sum of the term of the Subcontractor plus all renewals is no more
4 than 99 years;

5 (iii) the use of water under the Subcontract is not inconsistent with the
6 provisions of the Endangered Species Act or other provisions of federal law
7 designed to protect the environment;

8 (iv) the Subcontract is sufficiently specific as to the amount of water and
9 points of diversion to enable the Contracting Officer to account for the water
10 as it is diverted; or, in the alternative, that the Subcontract reserves the
11 Contracting Officer's right to review and approve future diversions sought
12 under the Subcontract, such review and approval to be consistent with this
13 Contract;

14 (v) the delivery obligations under the Subcontract are not inconsistent
15 with other obligations of the Contracting Officer to deliver water under
16 preexisting contracts.

17 (f) The annual OM&R assessments specified in Part III Article 15, and Part IV
18 Article 26 above shall be charged to the Navajo Nation for all water contracted to third
19 parties.

20 (g) The Secretary shall approve or disapprove a Subcontract submitted to the
21 Secretary not later than the later of:

22 (i) the date that is 180 days after the date on which the Subcontract is
23 submitted to the Secretary; and

24 (ii) the date that is 60 days after the date on which the Subcontractor
25 complies with subsection 102(2)(C) of the National Environmental Policy Act
26 (NEPA) of 1969, 42 U.S.C. § 4332(2)(C) and any other requirement of
27 Federal law.

28
29 33. SEVERABILITY

30 If any provisions of this contract shall be held, by a court of competent
31 jurisdiction, to be invalid, illegal, unenforceable or in conflict with the law of any

1 jurisdiction, the parties intend that the validity, legality and enforceability of the
2 remaining provisions shall not in any way be affected or impaired thereby.

3
4 34. TERMINATION

5 In the event that the Settlement Agreement is terminated pursuant to Section
6 10701(e)(2) of the Navajo Settlement Act, the parties agree that this Contract terminates
7 and further agree to reinstate and continue in full force and effect those portions of the
8 Contract for which separate authority is provided other than pursuant to the Navajo
9 Settlement Act.

10
11 35. CONTRACT AMENDMENTS

12 Any modifications to this Contract necessitated by future negotiations between
13 the parties can be accomplished by amending this Contract to the extent such
14 amendments are consistent with the provisions of the Partial Final Decree and the Navajo
15 Settlement Act, including any future amendments.

16
17 36. SAVINGS CLAUSES

18 (a) Nothing in this Contract shall be construed as an admission, or be used by
19 any party as evidence, that the Navajo Nation is or is not legally entitled to reserved
20 water rights in the San Juan River stream system.

21 (b) Nothing contained in this Contract shall be construed to alter, amend, repeal,
22 construe, interpret, modify, or be in conflict with the provisions of: the Boulder Canyon
23 Project Act (45 Stat. 1057); the Boulder Canyon Project Adjustment Act (54 Stat. 774);
24 the Colorado River Compact, proclaimed on June 25, 1929 (46 Stat. 3000); the Upper
25 Colorado River Basin Compact (63 Stat. 31); the 1944 Treaty with the United Mexican
26 States, Treaty Series 994 (59 Stat. 1219); the Act of June 13, 1962 (76 Stat. 96); the
27 Colorado River Basin Project Act (82 Stat. 885); the Colorado River Storage Project Act
28 (70 Stat. 105); the Animas-La Plata Project Compact (82 Stat. 898); the Jicarilla Apache
29 Tribe Water Rights Settlement Act (106 Stat. 2237); the Colorado Ute Settlement Act
30 Amendments of 2000 (114 Stat. 2763A-258); or the Navajo Settlement Act.

1 (c) The uses of water in the State of New Mexico through works constructed
2 under the authority of the Colorado River Storage Project Act (70 Stat. 105), the Act of
3 June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114
4 Stat. 2763A-258) and the Navajo Settlement Act shall be subject to and controlled by the
5 Colorado River Compact, the Upper Colorado River Basin Compact, the Animas-La
6 Plata Project Compact, the Boulder Canyon Project Act, the Boulder Canyon Project
7 Adjustment Act, the Colorado River Storage Project Act, the Colorado River Basin
8 Project Act, the Mexican Water Treaty (Treaty Series 994), the Colorado Ute Settlement
9 Act Amendments of 2000 and the Navajo Settlement Act, and shall be included within
10 and shall in no way increase the total quantity of water to the use of which the State of
11 New Mexico is entitled under said compacts, statutes, and treaty.

12 (d) Nothing in this Contract shall be construed in any way to quantify or
13 otherwise adversely affect the land and water rights, claims or entitlements to water of
14 any Indian tribe or community other than those of the Navajo Nation in, to and from the
15 San Juan River Basin in New Mexico; except, that the right of the Navajo Nation to use
16 water under water rights it may have in other river basins in New Mexico shall be
17 forborne only so long as and to the extent that the Navajo Nation supplies the uses for
18 which said water rights may exist by diversions of water from the San Juan River Basin
19 under this Contract consistent with subparagraph 9.11 of the Settlement Agreement.

20
21 37. ENVIRONMENTAL COMPLIANCE AND COORDINATION

22 (a) The Navajo Nation, the United States Fish and Wildlife Service, the Bureau
23 of Reclamation and the Bureau of Indian Affairs agree to cooperate and coordinate in the
24 planning and construction of projects, diversions and changes in water management
25 associated with the water made available to the Navajo Nation under the terms of this
26 agreement as required by federal law, including, but not limited to, the Bald and Golden
27 Eagle Protection Act, the Fish and Wildlife Coordination Act, the Endangered Species
28 Act, the Clean Water Act, and the National Environmental Policy Act.

29 (b) The Navajo Nation and the Department of the Interior agree to work with the
30 State of New Mexico and affected water users to assure that Navajo Dam and Reservoir,

1 the NIIP, the ALP and the NGWSP are operated in compliance with applicable laws
2 while meeting water delivery obligations.

3 (c) Any modifications to project works, changes in operation of project works,
4 or changes in use of the water from that stated in the respective NEPA documents of the
5 three projects identified in this Contract, as well as the Final Environmental Impact
6 Statement for Navajo Reservoir Operations dated April, 2006 shall be subject to the
7 review and approval of the Contracting Officer for the sole purpose of ensuring that such
8 uses are consistent with the operational capacities of the respective projects and all
9 applicable laws, including ensuring that appropriate environmental review has been
10 conducted.

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13 **PART VI. STANDARD ARTICLES**

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15 38. **AIR AND WATER POLLUTION CONTROL**

16 The Navajo Nation agrees that in taking delivery of water under this contract, it
17 will comply with federal air and water pollution control laws, now or hereafter in force,
18 that may be applicable or relevant to the use being made of the water. Also, the Navajo
19 Nation agrees that any subcontract it may enter into for the furnishing of water pursuant
20 to this contract will contain similar air and water pollution control provisions including
21 state and local requirements, where applicable. The Navajo Nation further agrees that
22 any such subcontract it may enter into will require that its designs and plans for air and
23 water pollution control facilities or equipment which are necessary parts of any design,
24 facility, plant or process which utilizes water delivered pursuant to this contract will be
25 submitted to the Secretary for his review and written comments prior to contracting for
26 said facilities, their installation or major modification thereof.

27
28 39. **ADMINISTRATION OF FEDERAL PROJECT LANDS**

29 The lands and interests in lands acquired, withdrawn, or reserved and needed by
30 the United States for the purposes of care, operation, and maintenance of Federal project
31 works may be used by the Navajo Nation for such purposes. The Navajo Nation shall
32 ensure that no unauthorized encroachment occurs on Federal project lands and rights-of-
33 way needed for the care, operation, and maintenance of Federal project works that the
34 Navajo Nation has responsibility for. The Nation does not have the authority to issue any
35 land-use agreement or grant that conveys an interest in Federal real property, nor to lease
36 or dispose of any interest of the United States.

37
38 40. **BOOKS, ACCOUNTS AND RECORDS**

39 The Navajo Nation shall furnish to the Contracting Officer, as requested,
40 information pertaining to land use and crop census, water supply, water use, changes in
41 project works, and to other matters relating to the NIIP, the ALP, the NGWSP, and other

1 projects that may utilize the Navajo Nation's water rights supplied under this contract for
2 miscellaneous municipal, industrial, commercial and domestic uses. The Secretary and
3 the Navajo Nation shall jointly establish and maintain accounts and other books and
4 records such as are necessary to enable the Secretary to operate the subject facilities.
5 Reports thereon shall be furnished to the Contracting Officer in such form and on such
6 date or dates as the Contracting Officer may require. Subject to applicable Federal laws
7 and regulations, each party shall have the right during office hours to examine and make
8 copies of the other party's books and records relating to matters covered by this contract.
9 Records of diversions of water for use by the Navajo Nation pursuant to this contract
10 shall be supplied to the New Mexico State Engineer.

11
12 41. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

13 (a) The Navajo Nation shall not allow contamination or pollution of Federal
14 project lands, project waters, or project works of the United States or administered by the
15 United States and for which the Navajo Nation has the responsibility for care, operation,
16 and maintenance by its employees or agents. The Navajo Nation shall also take
17 reasonable precautions to prevent such contamination or pollution by third parties.

18 (b) The Navajo Nation shall comply with all applicable Federal laws and
19 regulations and Reclamation policies and instructions existing, or hereafter enacted or
20 promulgated, concerning any hazardous material that will be used, produced, transported,
21 stored, released, or disposed of on or in Federal project lands, project waters, or project
22 works.

23 (c) "Hazardous material" means (1) any substance defined as hazardous, a
24 pollutant, or a contaminant under the Comprehensive Environmental Response,
25 Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 (14) and (33); (2) oil as
26 defined by the Clean Water Act, 33 U.S.C. § 1321 (a) and the Oil Pollution Act, 33
27 U.S.C. § 2701 (23); (3) thermal pollution, refuse, garbage, sewage effluent, industrial
28 waste, mine or mill tailings, mineral salts, pesticides, and other solid waste, and (4) any
29 other substance regulated as hazardous or toxic under Federal or Navajo Nation law.

30 (d) Upon discovery of any event which may or does result in contamination or
31 pollution of Federal project lands, project water, or project works, the Navajo Nation
32 shall immediately undertake all measures necessary to protect public health and the
33 environment, including measures necessary to contain or abate any such contamination or
34 pollution and shall report such discovery with full details of the actions taken to the
35 Contracting Officer. Reporting shall be within a reasonable time period but shall not
36 exceed 24 hours from the time of discovery if it is an emergency and the first working
37 day following discovery in the event of a non-emergency.

38 (e) If violation of the provisions of this Article occurs and the Navajo Nation
39 does not take immediate corrective action as determined by the Contracting Officer, the
40 Navajo Nation may be subject to remedies imposed by the Contracting Officer, which
41 may include termination of this contract.

42 (f) The Navajo Nation shall be liable for any response action or corrective
43 measure necessary to protect public health and the environment or to restore Federal
44 project lands, project waters, or project works that are adversely affected as a result of
45 such violation, and for all costs, penalties or other sanctions that are imposed for violation
46 of any Federal or Tribal laws and regulations concerning hazardous material. At the

1 discretion of the Contracting Officer, the United States may also terminate this Contract
2 as a result of such violation.

3 (g) The Navajo Nation shall defend, indemnify, protect and save the United
4 States harmless from and against any costs, expenses, claims, damages, demands, or
5 other liability arising from or relating to Navajo Nation's violation of this article.

6 (h) Reclamation agrees to provide information necessary for the Navajo Nation,
7 using reasonable diligence, to comply with the provisions of this Article.

8
9 42. CLEAN AIR AND WATER

10 (a) The Navajo Nation agrees as follows:

11 (i) To comply with all the requirements of Section 114 of the Clean Air
12 Act, as amended (42 U.S.C. 7414), and Section 308 of the Federal Water
13 Pollution Control Act, as amended by Public Law 92-500 (33 U.S.C. 1318),
14 respectively, relating to inspection, monitoring, entry, reports, and
15 information, as well as other requirements specified in Section 114 of the Air
16 Act and Section 308 of the Water Act, respectively, and all regulations and
17 guidelines issued thereunder before the execution of this contract.

18 (ii) That no portion of the work required by this contract will be performed
19 in a facility listed on the Environmental Protection Agency List of Violating
20 Facilities on the date when this contract was executed unless and until the
21 Environmental Protection Agency eliminates the name of such facility or
22 facilities from such listing.

23 (iii) To use its best efforts to comply with clean air standards and clean
24 water standards at the facility where the contract work is being performed.

25 (iv) To insert the substance of the provisions of this article into any
26 nonexempt subcontract, including this paragraph (a)(4).

27 (b) The terms used in this article have the following meanings:

28 (i) The term "Air Act" means the Clean Air Act, as amended
29 (42 U.S.C. 7401 *et seq.*).

30 (ii) The term "Water Act" means the Federal Water Pollution Control Act,
31 as amended (33 U.S.C. 1251 *et seq.*).

32 (iii) The term "clean air standards" means any enforceable rules,
33 regulations, guidelines, standards, limitations, orders, controls, prohibitions, or
34 other requirements which are contained in, issued under, or otherwise adopted
35 pursuant to the Air Act or Executive Order 11738, an applicable
36 implementation plan as described in Section 110 of the Air Act (42 U.S.C.
37 7410), an approved implementation procedure or plan under Section 111(c) or
38 Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or (d)), or an
39 approved implementation procedure under Section 112(d) of the Air Act (42
40 U.S.C. 7412(d)).

41 (iv) The term "clean water standards" means any enforceable limitation,
42 control, condition, prohibition, standard, or other requirement which is
43 promulgated pursuant to the Water Act or contained in a permit issued to a
44 discharger by the Environmental Protection Agency or by a state under an
45 approved program, as authorized by Section 402 of the Water Act
46 (33 U.S.C. 1342), or by local government to ensure compliance with

1 pretreatment regulations as required by Section 307 of the Water Act
2 (33 U.S.C. 1317).

3 (v) The term “comply” means compliance with clean air or water
4 standards. Comply shall also mean compliance with a schedule or plan
5 ordered or approved by a court of competent jurisdiction, the Environmental
6 Protection Agency, or an air or water pollution control agency in accordance
7 with the requirements of the Air Act or Water Act and regulations issued
8 pursuant thereto.

9 (vi) The term “facility” means any building, plant, installation, structure,
10 mine, vessel or other floating craft, location, or site of operations owned,
11 leased, or supervised by a contractor or subcontractor to be utilized in the
12 performance of a contract or subcontract. Where a location or site of
13 operations contains or includes more than one building, plant, installation, or
14 structure, the entire location or site shall be deemed to be a facility except
15 where the Director, Office of Federal Activities, Environmental Protection
16 Agency, determines that independent facilities are collocated in one
17 geographical area.
18

19 43. PEST MANAGEMENT

20 The Navajo Nation shall take appropriate steps to prevent the introduction and
21 spread of, and to otherwise control undesirable plants and animals, as defined by the
22 Contracting Officer, on Federal project lands, project waters, and project works for which
23 the Navajo Nation has operation and maintenance responsibility. The Navajo Nation is
24 responsible for inspecting its vehicles and equipment for reproductive and vegetative
25 parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive
26 species and other pests, and for removing such materials before moving its vehicles and
27 equipment onto any Federal land or out of any area on Federal project land where work is
28 performed. Where decontamination is required prior to entering Federal project land, it
29 shall be performed at the point of prior use, or at an approved offsite facility able to
30 process generated cleaning wastes. Upon the completion of work, decontamination shall
31 be performed within the work area before the vehicles and equipment are removed from
32 Federal project lands. Programs for the control of these undesirable plants and animals
33 on Federal project lands, project waters, and project works for which the Navajo Nation
34 has operation and maintenance responsibility will incorporate Integrated Pest
35 Management (IPM) concepts and practices. IPM refers to a systematic and
36 environmentally compatible program to maintain pest populations within economically
37 and environmentally tolerable levels. In implementing an IPM program, the Navajo
38 Nation will adhere to applicable Federal and State laws and regulations and Department
39 of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals.
40

41 44. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY

42 (a) In accordance with the provisions of Title 42 U.S.C. 2000-e-2(i), the Navajo
43 Nation shall, during the performance of this contract, give preference in employment to
44 Indian members of the Navajo Nation Indian Reservation. The Bureau of Indian Affairs
45 Office of Employment Assistance shall be notified of employment opportunities 48 hours
46 before any positions are advertised to the general public. Nothing in this section shall be

1 read as prohibiting the Navajo Nation from giving preferential employment to members
2 of the Navajo Nation.

3 (b) Except as provided above, during the performance of this contract the
4 Navajo Nation agrees as follows:

5 (i) The Navajo Nation will not discriminate against any employee or
6 applicant for employment because of race, color, religion, sex, disability, or
7 national origin. The Navajo Nation will take affirmative action to ensure that
8 applicants are employed, and that employees are treated during employment,
9 without regard to their race, color, religion, sex, disability, or national origin.
10 Such action shall include, but not be limited to the following: employment,
11 upgrading, demotion, or transfer; recruitment or recruitment advertising;
12 layoff or termination; rates of pay or other forms of compensation; and
13 selection for training, including apprenticeship. The Navajo Nation agrees to
14 post in conspicuous places, available to employees and applicants for
15 employment, notices to be provided by the Contracting Officer setting forth
16 the provisions of this nondiscrimination clause.

17 (ii) The Navajo Nation will, in all solicitations or advertisements for
18 employees placed by or on behalf of the Navajo Nation, state that all qualified
19 applicants will receive consideration for employment without regard to race,
20 color, religion, sex, disability, or national origin.

21 (iii) The Navajo Nation will send to each labor union or representative of
22 workers with which it has a collective bargaining agreement or other contract
23 or understanding, a notice, to be provided by the Contracting Officer, advising
24 the labor union or workers' representative of the Navajo Nation's
25 commitments under Section 202 of Executive Order 11246 of September 24,
26 1965, and shall post copies of the notice in conspicuous places available to
27 employees and applicants for employment.

28 (iv) The Navajo Nation will comply with all provisions of Executive Order
29 No. 11246 of September 24, 1965, and of the rules, regulations, and relevant
30 orders of the Secretary of Labor.

31 (v) The Navajo Nation will furnish all information and reports required by
32 Executive Order 11246 of September 24, 1965, and by the rules, regulations,
33 and orders of the Secretary of Labor, or pursuant thereto, and will permit
34 access to his books, records, and accounts by the Contracting Agency and the
35 Secretary of Labor for purposes of investigation to ascertain compliance with
36 such rules, regulations, and orders.

37 (vi) In the event of the Navajo Nation's noncompliance with the
38 nondiscrimination clauses of this contract or with any of such rules,
39 regulations, or orders, this contract may be canceled, terminated or suspended
40 in whole or in part and the Navajo Nation may be declared ineligible for
41 further Government contracts in accordance with procedures authorized in
42 Executive Order 11246 of September 24, 1965, and such other sanctions may
43 be imposed and remedies invoked as provided in Executive Order 11246 of
44 September 24, 1965 or by rule, regulation, or order of the Secretary of Labor,
45 or as otherwise provided by law.

1 (vii) The Navajo Nation will include the provisions of paragraphs (i)
2 through (vii), modified to refer to the party to be bound, in every subcontract
3 or purchase order unless exempted by the rules, regulations, or orders of the
4 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246
5 of September 24, 1965, so that such provisions will be binding upon each
6 subcontractor or vendor. The Navajo Nation will take such action with
7 respect to any subcontract or purchase order as may be directed by the
8 Secretary of Labor as a means of enforcing such provisions, including
9 sanctions for noncompliance: *Provided, however*, that in the event the Navajo
10 Nation becomes involved in, or is threatened with, litigation with a
11 subcontractor or vendor as a result of such direction, the Navajo Nation may
12 request the United States to enter into such litigation to protect the interests of
13 the United States.
14

15 45. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

16 (a) The Navajo Nation shall comply with Title VI of the Civil Rights Act of
17 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as
18 amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Americans with
19 Disabilities Act of 1990, as applicable, and any other applicable civil rights laws, as well
20 as with its respective implementing regulations and guidelines imposed by the U.S.
21 Department of the Interior and/or Bureau of Reclamation.

22 (b) These statutes require that no person in the United States shall be excluded
23 from participation in, be denied the benefits of, or be otherwise subjected to
24 discrimination under any program or activity receiving financial assistance from the
25 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.
26 By executing this contract, the Navajo Nation agrees to immediately take any measures
27 necessary to implement this obligation, including permitting officials of the United States
28 to inspect premises, programs, and documents.

29 (c) The Navajo Nation makes this agreement in consideration of and for the
30 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or
31 other Federal financial assistance extended after the date hereof to the Navajo Nation by
32 the Bureau of Reclamation, including installment payments after such date on account of
33 arrangements for Federal financial assistance which were approved before such date.
34 The Navajo Nation recognizes and agrees that such Federal assistance will be extended in
35 reliance on the representations and agreements made in this article and that the
36 United States reserves the right to seek judicial enforcement thereof.

37 (d) Complaints of discrimination against the Navajo Nation shall be investigated
38 by the Contracting Officer's Office of Civil Rights.
39

40 46. CERTIFICATION OF NONSEGREGATED FACILITIES

41 The Navajo Nation hereby certifies that it does not maintain or provide for its
42 employees any segregated facilities at any of its establishments and that it does not permit
43 its employees to perform their services at any location under its control where segregated
44 facilities are maintained. It certifies further that it will not maintain or provide for its
45 employees any segregated facilities at any of its establishments and that it will not permit
46 its employees to perform their services at any location under its control where segregated

1 facilities are maintained. The Navajo Nation agrees that a breach of this certification is a
2 violation of the Equal Employment Opportunity clause in this contract. As used in this
3 certification, the term "segregated facilities" means any waiting rooms, work areas, rest
4 rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and
5 other storage or dressing areas, parking lots, drinking fountains, recreation or
6 entertainment areas, transportation, and housing facilities provided for employees which
7 are segregated by explicit directive or are in fact segregated on the basis of race, creed,
8 color, or national origin, because of habit, local custom, disability, or otherwise. The
9 Navajo Nation further agrees that (except where it has obtained identical certifications
10 from proposed subcontractors for specific time periods) it will obtain identical
11 certifications from proposed subcontractors prior to the award of subcontracts exceeding
12 \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity
13 clause; that it will retain such certifications in its files; and that it will forward the
14 following notice to such proposed subcontractors (except where the proposed
15 subcontractors have submitted identical certifications for specific time periods):

16
17 **47. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR**
18 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

19 A Certification of Nonsegregated Facilities must be submitted prior to the award
20 of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal
21 Employment Opportunity clause. The certification may be submitted either for each
22 subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or
23 annually). Note: The penalty for making false statements in offers is prescribed in
24 18 U.S.C. 1001.

25
26 **48. COMPLIANCE WITH RECLAMATION LAWS**

27 The parties agree that the delivery of irrigation water or the use of federal
28 facilities pursuant to this contract is governed by applicable Reclamation law, except that
29 this delivery or use is not subject to the Reclamation Reform Act of 1982, as amended.

30
31 **49. RULES, REGULATIONS, AND DETERMINATIONS**

32 (a) The United States or its assigns shall take all prudent and ordinary measures
33 to operate and maintain all existing facilities necessary to this contract, but nothing in this
34 section shall be construed to require the United States to operate such facilities beyond
35 the useful life of the existing facilities. These facilities will be operated for multiple
36 benefits of the project in accordance with project authorization and contracts, including
37 this contract. The Contracting Officer, in consultation with the Navajo Nation, shall have
38 the right to make determinations necessary to administer this contract that are consistent
39 with the express and implicit conditions of this contract, the laws of the United States and
40 rules and regulations promulgated by the Secretary of the Interior.

41 (b) Where the terms of this contract provide for action to be based upon the
42 opinion or determination of either party to this contract, whether or not stated to be
43 conclusive, said terms shall not be construed as permitting such action to be predicted
44 upon arbitrary, capricious, or unreasonable opinions or determinations.

1 50. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

2 (a) The obligation of the Navajo Nation to pay the United States as provided in
3 this contract is a general obligation of the Navajo Nation notwithstanding the manner in
4 which the obligation may be distributed among the Navajo Nation’s water users and
5 notwithstanding the default of individual water users in their obligation to the Navajo
6 Nation.

7 (b) The payment of charges becoming due hereunder is a condition precedent to
8 receiving benefits under this contract. The Navajo Nation shall not have the right to the
9 use of water supplied from any project facilities during any period in which the Navajo
10 Nation may be in arrears in the payment of any operation, maintenance, and replacement
11 charges due the United States or in arrears for more than 12 months in the payment of
12 any construction and interest installments due the United States. The Navajo Nation shall
13 not deliver water under the terms and conditions of this contract for lands or parties that
14 are in arrears in the advance payment of water rates or OM&R charges or in arrears more
15 than 12 months in the payment of construction charges as levied or established by the
16 Navajo Nation.

17
18 51. MEDIUM FOR TRANSMITTING PAYMENTS

19 All payments from the Navajo Nation to the United States under this contract
20 shall be by the medium requested by the United States on or before the date payment is
21 due. The required method of payment may include checks, wire transfers, or other types
22 of payment specified by the United States.

23
24 52. CHARGES FOR DELINQUENT PAYMENTS

25 (a) The Navajo Nation shall pay penalty charges on delinquent installments or
26 payments. When payment is not received by the due date, the Navajo Nation shall pay an
27 interest charge for each day the payment is delinquent beyond the due date. When a
28 payment becomes 60 days delinquent, the Navajo Nation shall pay an administrative
29 charge to cover additional costs of billings and processing the delinquent payment. When
30 a payment is delinquent 90 days or more, the Navajo Nation shall pay an additional
31 penalty charge of 6.0 percent per year for each day the payment is delinquent beyond the
32 due date. Further, the Navajo Nation shall pay any fees incurred for debt collection
33 services associated with the delinquent payment.

34 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in
35 the Federal Register by the Department of the Treasury for application to overdue
36 payments or the interest rate of 0.5 percent per month prescribed by section 6 of the
37 Reclamation Project Act of 1939, 53 Stat. 1191. The interest charge rate shall be
38 determined as of the due date and remain fixed for the duration of the delinquent period.

39 (c) When a partial payment for a delinquent account is received, the amount
40 received shall be applied first to the penalty, second to the administrative charges, third to
41 the accrued interest and finally to the overdue payment.

42
43 53. WATER QUALITY

44 The operation and maintenance of project facilities shall be performed in such
45 manner as is practicable to maintain the quality of raw water made available through such
46 facilities at the highest level reasonably attainable, as determined by the United States.

1 The United States does not warrant the quality of water and is under no obligation to
2 construct or furnish water treatment facilities to maintain or better the quality of water;
3 except as provided for by Section 10602 of the Navajo Settlement Act.
4

5 54. **WATER CONSERVATION**

6 Prior to the delivery of water to the Navajo Nation provided from or conveyed
7 through federally constructed or federally financed facilities pursuant to this contract, the
8 Navajo Nation shall develop an effective water conservation program which shall contain
9 definite water conservation objectives, appropriate economically feasible water
10 conservation measures, and time schedules for meeting those objectives. At subsequent
11 three-year intervals, the Navajo Nation shall submit a report on the results of the program
12 to the Contracting Officer for review. Based on the conclusions of the review, the
13 Contracting Officer and the Navajo Nation shall consult and agree to continue or to revise
14 the existing water conservation program. This paragraph shall be included in all
15 subcontracts, and such measures shall be required for all water purchasers.
16

17 55. **CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS**

18 The expenditure of any money or the performance of any obligation by the United
19 States under this contract shall be contingent upon appropriations or allotments of funds.
20 Absence of appropriation or allotment of funds shall not relieve the Navajo Nation from
21 any obligations under this contract. No liability shall accrue against the United States in
22 case funds are not appropriated or allotted.
23

24 56. **NOTICES**

25 Any notice, demand, or request authorized or required by this contract shall be
26 deemed to have been given on behalf of the Navajo Nation when mailed, postage prepaid,
27 or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation,
28 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84111, and on behalf of the
29 United States when mailed, postage prepaid, or delivered to the President, Navajo Nation,
30 Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515, and the Director
31 of Water Resources, Navajo Nation, Post Office Box 678, Fort Defiance, Arizona 86504.
32 The designation of the addressee or the address may be changed by notice given in the
33 same manner as provided in this section for other notices.
34

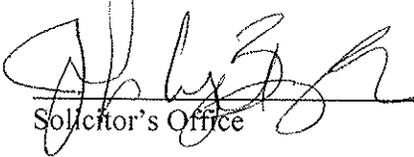
35 57. **OFFICIALS NOT TO BENEFIT**

36 No Member of or Delegate to Congress or Resident Commissioner or official of
37 the Navajo Nation shall benefit from this contract or any subcontract other than as a
38 water user or landowner in the same manner as other water users or landowners.
39

1 In witness whereof, the parties hereto have duly executed this contract the day and
2 year first above written.
3

4
5 Approved:

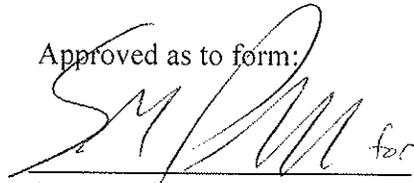
UNITED STATES OF AMERICA

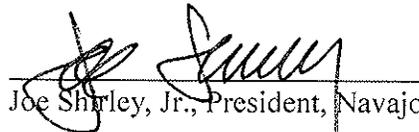
6
7 
8
9 Solicitor's Office


10 Commissioner
11 Bureau of Reclamation

12
13 Approved as to form:

THE NAVAJO NATION

14
15 
16
17 Attorney General


18 Joe Shirley, Jr., President, Navajo Nation