

Contract No. 20-WC-40-854

DRAFT

Public Neg. Mtg – 082020, 092420

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

NAVAJO-GALLUP WATER SUPPLY PROJECT
COLORADO RIVER STORAGE PROJECT

CONTRACT BETWEEN THE UNITED STATES AND THE NAVAJO TRIBAL UTILITY
AUTHORITY FOR PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT
COSTS FOR THE USE OF FEDERAL PROJECT FACILITIES

THIS CONTRACT, is entered into this _____ day of _____, 2020,
between the United States of America, hereinafter called the United States, acting through the
Secretary of the Interior, acting through the Bureau of Reclamation (Reclamation), represented
by the officer executing this Contract, or the duly appointed successor or authorized
representative (Contracting Officer), pursuant to the Act of Congress approved June 17, 1902 (32
Stat. 388), the Act of Congress approved April 11, 1956 (70 Stat. 105), as amended, and
particularly pursuant to Section 10606(g) of Public Law 111-11, (P.L. 111-11), as amended, and
all of which acts are commonly known and referred to as the Federal Reclamation Laws, and the
Navajo Tribal Utility Authority (NTUA), acting on behalf of the Nation, with its principal place
of business and headquarters at Fort Defiance, Arizona.

Commented [GBA1]: 082020 – “acting on behalf of the Nation”
has been added to areas that seem appropriate for such use.
Additional areas may need such based upon further
discussion/negotiations.

The following statements are made in explanation:

EXPLANATORY RECITALS

The Act of Congress approved December 15, 1971 (85 Stat. 664), authorized the
Secretary of the Interior to engage in the feasibility planning, and investigation of the Navajo-
Gallup Water Supply Project (Project). Subsequently, the construction, operation, and
maintenance of the Project was authorized by P.L. 111-11. The United States has investigated,

1 planned, and is constructing the Project for the diversion and distribution of the waters of the San
2 Juan River, New Mexico.

3 Pursuant to Section 10606(g) of P.L. 111-11, Project facilities may be used to treat and
4 convey groundwater to Nation communities if the Nation provides for payment of the operation,
5 maintenance, and replacement costs associated with the use of the facilities or pipelines.

6 NTUA, acting on behalf of the Nation, desires to use certain Federal Project Facilities to
7 convey an initial amount of 350 acre-feet of groundwater annually. The parties agree to allow up
8 to 1,000 acre-feet annually, to provide maximum flexibility.

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10 Reclamation and NTUA, acting on behalf of the Nation, enter into this Contract to
11 establish the terms and conditions under which the conveyance of groundwater through Federal
12 Project Facilities is conveyed.

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14 NOW THEREFORE, in consideration of the terms and conditions of this Contract,
15 Reclamation and NTUA, acting on behalf of the Nation, agree as follows:

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18 1. DEFINITIONS

19 Where used in this Contract:

20 (a) "Federal Project Facilities" means facilities included as part of the Navajo-
21 Gallup Water Supply Project, and where title is held by the United States. Specific
22 facilities utilized under this Contract will be identified under Exhibits, as attached.

23 (b) ~~"Navajo Nation"~~ "Nation" as represented by NTUA, means the Navajo Nation,
24 a body politic and federally-recognized Indian nation as provided for in Section 101(2)
25 of the Federally Recognized Indian Tribe List of 1994 (~~Public Law 103-454~~, 25 U.S.C.
26 497a(2)), also known variously as the "Navajo Tribe," the "Navajo Tribe of Arizona,
27 New Mexico & Utah," and the "Navajo Tribe of Indians" and other similar names, and
28 includes all bands of Navajo Indians and chapters of the Navajo Nation, acting through

Commented [GBA2]: 082020 - PL 111-11 language/def.

As represented by NTUA per.... Contract.... Or Title 21 NN

From PL 111-11:

"Nation" means the Navajo Nation, a body politic and federally-recognized Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe List of 1994 (25 U.S.C. 497a(2)), also known variously as the "Navajo Tribe," the "Navajo Tribe of Arizona, New Mexico & Utah," and the "Navajo Tribe of Indians" and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation.

1 its authorized representative.

2 (c) "Navajo Tribal Utility Authority" (NTUA) an enterprise of the Navajo Nation,
3 is ~~duly authorized by the Navajo Nation Council, pursuant to NNC, Title 21 §§ 1-27,~~
4 as amended, with jurisdiction over Navajo Nation utility operations, to construct and
5 operate water supply distribution systems for water users within the Navajo Nation,
6 including portions of the service area of the Project, and enter into this Contract, as
7 acting on behalf of the Nation.

8 (d) "Operation, Maintenance and Replacement" or "OM&R" means the ongoing,
9 regular, or routine operation, maintenance, repairs, replacements, and other activities
10 and actions necessary for continued structural integrity and operational reliability of
11 facilities required for the delivery of water.

12 (e) "Project" or "NGWSP" means reaches and facilities of the Navajo-Gallup Water
13 Supply Project, as authorized by P. L. 111-11, constructed and/or funded by
14 Reclamation.

15 (f) "Project Water" means the water allocated within Section 10603(b) of P. L.
16 111-11.

17 (g) "United States" or "Contracting Officer" or "Regional Director" means the
18 Secretary of the United States, Department of the Interior, acting through Reclamation,
19 or any other designee.

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21 2. TERM AND MODIFICATION OF THE CONTRACT

22 (a) This Contract will become effective upon the date of execution by the Contracting
23 Officer, and shall remain in full force and effect until Project Water becomes available
24 to Federal Project Facilities, unless terminated prior to that by mutual agreement of the
25 parties hereto, or conveyance of title of the Federal Project Facilities has occurred as
26 authorized by Section 10602(f) of P. L. 111-11. This Contract does not provide the
27 permanent right to utilize Federal Project Facilities beyond the term of this Contract.

28 (b) If NTUA desires to continue use of Federal Project Facilities after this Contract
29 expires or is terminated, the parties hereto will enter into good faith negotiations with
30 regard to a new contract.

Commented [GBA3]: 082020 - MEMORANDUM OF UNDERSTANDING BETWEEN THE NAVAJO NATION, THE JICARILLA APACHE NATION AND THE CITY OF GALLUP FOR THE OPERATION OF THE NAVAJO GALLUP WATER SUPPLY PROJECT *executed 082612*

WHEREAS, the NTUA, an enterprise of the Navajo Nation, is duly authorized by the Navajo Nation Council, pursuant to 21 N.N.C.- 1 — 27, with jurisdiction over all utility operation, to construct and operate water supply distribution systems for water users within the Navajo Nation, including portions of the service area of the Project, and

Title 21 PUC Chapter 1 - <http://www.navajonationcouncil.org/Navajo%20Nation%20Codes/V0040.pdf>

B. By CN-61-59, the Navajo Tribal Utility Authority was authorized to acquire, construct, operate and maintain utility systems throughout the Navajo Nation. Since then the Authority has extended the benefits of utility services to substantial portions of the Reservation. Over time the Plan of Operation of the Authority has been amended to meet needs associated with changing circumstances.

1 (c) The terms of this Contract may only be modified by written mutual agreement of
2 the parties of this Contract.
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6 3. CONVEYANCE OF GROUNDWATER

7 (a) Groundwater will be conveyed through Federal Project Facilities. Quantities
8 and specific Federal Project Facilities are identified in Exhibits attached to this
9 Contract.

10 (b) Pursuant to Section 10606(g) of P. L. 111-11, the capacities of the Federal
11 Project Facilities may be used to treat and convey groundwater to the Navajo Nation's
12 communities, if the Nation agrees to pay provides for payment of the OM&R costs
13 associated with use of the Federal Project Facilities.

14 (c) NTUA shall have use of the capacity within Federal Project Facilities for up to
15 one thousand (1,000) acre-feet per year for conveyance of groundwater.

16 (d) Reclamation has no authority or responsibility for treatment and conveyance of
17 groundwater outside of any Federal Project Facility.

Commented [GBA4]: 082020 – Nation thru out. search and change COMPLETED.

Commented [GBA5]: 082020 – Use language from 111-11 From 10606(g) –

(g) USE OF PROJECT FACILITIES.—The capacities of the treatment facilities, main pipelines, and lateral pipelines of the Project authorized by section 10602(b) may be used to treat and convey groundwater to Nation communities if the Nation provides for payment of the operation, maintenance, and replacement costs associated with the use of the facilities or pipelines.

Commented [MMB6]: On behalf of the Nation? Looks like NTUA appears over 80 times in this contract, are we going to insert this everywhere?

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19 4. TRANSPORTATION LOSSES

20 No conveyance losses before and beyond the points of delivery shall be borne by the
21 United States. In the event that points of delivery are changed, transportation of
22 groundwater from the original points of delivery to other points of delivery shall be the
23 sole responsibility of NTUA, so that no conveyance losses shall be borne by the United
24 States.
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26 5. PAYMENT FOR CONVEYANCE OF GROUNDWATER

27 (a) NTUA shall pay will provide for payment, on behalf of the Nation, to the
28 United States the OM&R costs associated with the use of the Federal Project Facilities,
29 as identified in Exhibits to this Contract. Billing and payment of OM&R costs are as

1 follows:

2 (1) An estimate from the Contracting Officer will be sent annually to NTUA
3 on or before May 1 for the next Federal fiscal year, which begins October 1 and
4 ends September 30 of the next calendar year. NTUA, acting on behalf of the
5 Nation, shall advance the estimated costs for the following Federal fiscal year on
6 or before September 30. The first such billing will be issued upon the effective
7 date of this Contract, and in the event this effective date is for costs of service of
8 less than a full year, such costs will be prorated for the period covered.

9 (2) In the event either the OM&R estimates are less than the actual costs in any
10 period, or whenever is anticipated by the Contracting Officer that a deficit will
11 occur during a Federal fiscal year, supplemental notices may be issued by the
12 Contracting Officer requesting additional funds.

13 (3) OM&R funds not spent during one fiscal year will be carried over for use
14 during the next fiscal year with funds required for that year being reduced
15 accordingly.

16 (4) An itemized statement of actual costs incurred during the year will be
17 provided to NTUA. Billing adjustments will be made to correct for differences in
18 the estimated and actual costs at the beginning of the next fiscal year.

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20 6. CONDITIONS AFFECTING CONVEYANCE OF GROUNDWATER

21 (a) Prior to the introduction of groundwater into and through Federal Project
22 Facilities, NTUA, acting on behalf of the Nation, will be responsible for filing any
23 necessary water right change application(s), as required by applicable law(s), and
24 provide copies at no cost to the United States.

25 (b) The United States shall not be responsible for the failure to convey groundwater
26 as provided in this Contract resulting from lack of capacity or for any cause beyond the
27 reasonable control of the United States. The United States also reserves the right to
28 temporarily cease deliveries of groundwater through the Federal Project Facilities
29 during periods when the facilities are dewatered for inspection, maintenance, and other
30 operating requirements.

1 (c) NTUA agrees not to interfere with any measuring device used for the
2 distribution of groundwater through Federal Project Facilities by any means whatsoever
3 and shall not in any way obstruct any Federal Project Facility or permit its agents or
4 employees to do so. The United States is hereby authorized to cease conveyance of
5 groundwater for such periods of time as may be determined by the United States if
6 NTUA, its agents or employees violate the provisions of this Article.
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10 7. RESPONSIBILITY FOR MEASUREMENT OF WATER

11 (a) The groundwater conveyed and treated by the Federal Project Facilities will be
12 measured and recorded with devices furnished and installed by NTUA and approved by
13 the United States.

14 (b) NTUA will maintain accurate records of the quantity of groundwater, expressed
15 in acre-feet, conveyed by and through Federal Project Facilities, and will provide such
16 records to the United States upon request.

17 (c) NTUA shall be responsible for the OM&R of installed measuring, collection,
18 transmission and control devices, and shall be responsible to install and OM&R any
19 additional devices necessary for groundwater delivery.

20 (d) All structures and measuring devices required to treat and convey groundwater
21 under this Contract beyond the Federal Project Facilities, will be acquired, contracted,
22 constructed, installed, operated, maintained and replaced by NTUA at their sole
23 expense.
24

25 8. LIMIT OF LIABILITY

26 (a) The United States will not be responsible for the control, care, or distribution of
27 the groundwater before it is introduced into or after it is discharged from the Federal
28 Project Facilities. It is specifically understood by NTUA that the United States is only
29 providing conveyance of groundwater within and through Federal Project Facilities and

Commented [GBA7]: 082020 – JM - Further discussions for meter/measuring devices.

1 does not claim any interest in the acquisition, quality or use of the groundwater beyond
2 the terms specifically set forth in this Contract.

3 (b) The United States shall not be responsible for the control, conveyance and
4 treatment, handling, use, disposal, or distribution of groundwater furnished to NTUA or
5 their subcontractors. NTUA, acting on behalf of the Nation, will hold the United States
6 harmless on account of damage or claim of damage of any nature whatsoever arising
7 out of or connected with the control, conveyance and treatment, handling, use, disposal,
8 or distribution of groundwater.

9 (c) NTUA, acting on behalf of the Nation, agrees to indemnify and hold harmless
10 the United States and all of their representatives from all damages resulting from suits,
11 actions, or claims of any character brought on account of any injury to any person or
12 property arising out of any act omission, neglect, or misconduct in the manner or
13 method of performing any construction, care operation, maintenance, supervision,
14 examination, inspection, or other duties, including the manner or method in which
15 groundwater is introduced and diverted from Federal Project Facilities.

Commented [GBA8]: 082020 – LY to resend email regarding indem...

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17 9. ENTIRE CONTRACT

18 This Contract and Exhibits constitute the full and entire understanding and agreement
19 between and among the parties and is binding upon the parties. Subsequent Exhibits may
20 vary in form and content, as may be agreed upon by the parties on a case by case basis.

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23 10. SEVERABILITY

24 If any provisions of this Contract shall be held, by a court of competent jurisdiction, to be
25 invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the parties
26 intend that the validity, legality and enforceability of the remaining provisions shall not in
27 any way be affected or impaired thereby.

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29 STANDARD ARTICLES

1 11. CHARGES FOR DELINQUENT PAYMENTS

2 (a) NTUA on behalf of the Nation, shall be subject to interest, administrative, and
3 penalty charges on delinquent payments. If a payment is not received by the due date,
4 NTUA, acting on behalf of the Nation, shall pay an interest charge on the delinquent
5 payment for each day the payment is delinquent beyond the due date. If a payment
6 becomes 60 days delinquent, NTUA, acting on behalf of the Nation, shall pay, in
7 addition to the interest charge, an administrative charge to cover additional costs of
8 billing and processing the delinquent payment. If a payment is delinquent 90 days or
9 more, NTUA, acting on behalf of the Nation, shall pay, in addition to the interest and
10 administrative charges, a penalty charge for each day the payment is delinquent beyond
11 the due date, based on the remaining balance of the payment due at the rate of 6 percent
12 per year. NTUA, acting on behalf of the Nation, shall also pay any fees incurred for
13 debt collection services associated with a delinquent payment.

14 (b) The interest rate charged shall be the greater of either the rate prescribed
15 quarterly in the Federal Register by the Department of the Treasury for application to
16 overdue payments, or the interest rate of 0.5 percent per month. The interest rate
17 charged will be determined as of the due date and remain fixed for the duration of the
18 delinquent period.

19 (c) When a partial payment on a delinquent account is received, the amount
20 received shall be applied first to the penalty charges, second to the administrative
21 charges, third to the accrued interest, and finally to the overdue payment.
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23 12. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

24 (a) The obligation of NTUA, acting on behalf of the Nation, to pay the United
25 States as provided in this Contract is a general obligation of NTUA, acting on behalf of
26 the Nation, notwithstanding the manner in which the obligation may be distributed
27 among NTUA's water users and notwithstanding the default of individual water users in
28 their obligation to NTUA, acting on behalf of the Nation.

29 (b) The payment of charges becoming due pursuant to this Contract is a condition
30 precedent to receiving benefits under this Contract. The United States shall not make
31 water available to NTUA through Federal Project Facilities during any period in which
32 NTUA, acting on behalf of the Nation, is in arrears in the advance payment of any
33 operation and maintenance charges due the United States. NTUA shall not deliver
34 water under the terms and conditions of this Contract for lands or parties that are in
35 arrears in the advance payment of operation and maintenance charges as levied or
36 established by NTUA.
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39 13. NOTICES

40 Any notice, demand, or request authorized or required by this Contract shall be deemed to
41 have been given, on behalf of NTUA, when provided electronically, mailed, postage prepaid, or
42 delivered to the Area Manager, Western Colorado Area Office, Bureau of Reclamation, 445
43 West Gunnison Ave., Suite 221, Grand Junction, CO 81501, and on behalf of the United States,

Commented [GBA9]: 082020 – BB/ST to further addition of such.

1 when mailed, postage prepaid, or delivered to the General Manager of the Navajo Tribal Utility
2 Authority, Route 12, P.O. Box 170, Fort Defiance, AZ 86504. The designation of the addressee
3 or the address may be changed by notice given in the same manner as provided in this Article for
4 other notices.

Commented [GBA10]: 082020 – BB VD , Can email be an added option for contact/correspondence ??

Commented [GBA11]: 082020 – End of Public Negotiation Meeting.

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6 14. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

7 The expenditure or advance of any money or the performance of any obligation of the United
8 States under this Contract shall be contingent upon appropriation or allotment of funds. Absence
9 of appropriation or allotment of funds shall not relieve NTUA, acting on behalf of the Nation,
10 from any obligations under this Contract. No liability shall accrue to the United States in case
11 funds are not appropriated or allotted.
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13 15. ASSIGNMENT LIMITED–SUCCESSORS AND ASSIGNS OBLIGATED

14 The provisions of this Contract shall apply to and bind the successors and assigns of the
15 parties hereto, but no assignment or transfer of this Contract or any right or interest therein by
16 either party shall be valid until approved in writing by the other party.
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19 16. BOOKS, RECORDS AND REPORTS

20 NTUA shall establish and maintain accounts and other books and records pertaining to
21 administration of the terms and conditions of this Contract, including NTUA's, acting on behalf
22 of the Nation, financial transactions; water supply data; project operation, maintenance, and
23 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
24 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
25 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
26 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
27 and regulations, each party to this Contract shall have the right during office hours to examine
28 and make copies of the other party's books and records relating to matters covered by this
29 Contract.
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31
32 17. RULES, REGULATIONS, AND DETERMINATIONS

- 33 (a) The parties agree that the delivery of water or the use of Federal Project
34 Facilities pursuant to this Contract is subject to Federal reclamation law, as amended
35 and supplemented, and the rules and regulations promulgated by the Secretary of the
36 Interior under Federal reclamation law.
37 (b) The Contracting Officer shall have the right to make determinations necessary
38 to administer this Contract that are consistent with its expressed and implied provisions,
39 the laws of the United States and the State(s) of New Mexico, and the rules and
40 regulations promulgated by the Secretary of the Interior. Such determinations shall be
41 made in Consultation with NTUA, acting on behalf of the Nation.

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18. PROTECTION OF WATER AND AIR QUALITY

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

19. INDIAN EMPLOYMENT – EQUAL EMPLOYMENT OPPORTUNITY

- (a) In accordance with 42 U.S.C. § 2000e-2(i), NTUA will give preference in employment to Indian residents of the Navajo Indian Reservation. The Bureau of Indian Affairs Office of Employment Assistance will be notified of employment opportunities 48 hours before any positions are advertised to the general public.
- (b) The following language is required by Executive Order No. 11246 of September 24, 1965, in all government contracts unless and until it is superseded or amended.

Except as provided by clause (a), during the performance of this Contract NTUA agrees as follows:

- (1) NTUA will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. NTUA will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. NTUA agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1 (2) NTUA will, in all solicitations or advancements for employees placed by or
2 on behalf of NTUA, state that all qualified applicants will receive consideration for
3 employment without regard to race, color, religion, sex, sexual orientation, gender
4 identity, or national origin.

5 (3) NTUA will not discharge or in any other manner discriminate against any
6 employee or applicant for employment because such employee or applicant has
7 inquired about, discussed, or disclosed the compensation of the employee or
8 applicant or another employee or applicant. This provision shall not apply to
9 instances in which an employee who has access to the compensation information
10 of other employees or applicants as a part of such employee's essential job
11 functions discloses the compensation of such other employees or applicants to
12 individuals who do not otherwise have access to such information, unless such
13 disclosure is in response to a formal complaint or charge, in furtherance of an
14 investigation, proceeding, hearing, or action, including an investigation conducted
15 by the employer, or is consistent with NTUA's legal duty to furnish information.

16 (4) NTUA will send to each labor union or representative of workers with
17 which he has a collective bargaining agreement or other contract or understanding,
18 a notice, to be provided by the agency Contracting Officer, advising the labor
19 union or workers' representative of NTUA's commitments under section 202 of
20 Executive Order No. 11246 of September 24, 1965, and shall post copies of the
21 notice in conspicuous places available to employees and applicants for
22 employment.

23 (5) NTUA will comply with all provisions of Executive Order No. 11246 of
24 Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
25 Labor.

26 (6) NTUA will furnish all information and reports required by Executive Order
27 No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the
28 Secretary of Labor, or pursuant thereto, and will permit access to his books,
29 records, and accounts by the Contracting Agency and the Secretary of Labor for
30 purposes of investigation to ascertain compliance with such rules, regulations, and
31 orders.

32 (7) In the event of NTUA's noncompliance with the nondiscrimination clauses
33 of this Contract or with any of such rules, regulations, or orders, this Contract may
34 be canceled, terminated or suspended in whole or in part and NTUA may be
35 declared ineligible for further Government contracts in accordance with procedures
36 authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other
37 sanctions may be imposed and remedies invoked as provided in Executive Order
38 No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary
39 of Labor, or as otherwise provided by law.

40 (8) NTUA will include the provisions of paragraphs (1) through (8) in every
41 subcontract or purchase order unless exempted by the rules, regulations, or orders
42 of the Secretary of Labor issued pursuant to section 204 of Executive Order No.
43 11246 of September 24, 1965, so that such provisions will be binding upon each
44 subcontractor or vendor. NTUA will take such action with respect to any

1 subcontract or purchase order as may be directed by the Secretary of Labor as a
2 means of enforcing such provisions, including sanctions for noncompliance:
3 *Provided, however,* that in the event NTUA becomes involved in, or is threatened
4 with, litigation with a subcontractor or vendor as a result of such direction, NTUA
5 may request the United States to enter into such litigation to protect the interests of
6 the United States.
7

8 20. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

9 (a) NTUA shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-
10 352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
11 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-
12 135, Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities
13 Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.)] [Title III of the Americans
14 with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.)], and any
15 other applicable civil rights laws, and with the applicable implementing regulations and
16 any guidelines imposed by the U.S. Department of the Interior and/or Bureau of
17 Reclamation.

18 (b) These statutes prohibit any person in the United States from being excluded
19 from participation in, being denied the benefits of, or being otherwise subjected to
20 discrimination under any program or activity receiving financial assistance from the
21 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.
22 By executing this Contract, NTUA agrees to immediately take any measures necessary
23 to implement this obligation, including permitting officials of the United States to
24 inspect premises, programs, and documents.

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

33 (d) Complaints of discrimination against NTUA shall be investigated by the
34 Contracting Officer's Office of Civil Rights.
35

36 21. CERTIFICATION OF NONSEGREGATED FACILITIES

37 NTUA hereby certifies that it does not maintain or provide for its employees any segregated
38 facilities at any of its establishments and that it does not permit its employees to perform their
39 services at any location under its control where segregated facilities are maintained. It certifies
40 further that it will not maintain or provide for its employees any segregated facilities at any of its
41 establishments and that it will not permit its employees to perform their services at any location
42 under its control where segregated facilities are maintained. NTUA agrees that a breach of this
43 certification is a violation of the Equal Employment Opportunity clause in this Contract. As

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

13
14 **NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR**
15 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

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

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22 22. **MEDIUM FOR TRANSMITTING PAYMENTS**

23 (a) All payments from NTUA, acting on behalf of the Nation, to the United States |
24 under this Contract shall be by the medium requested by the United States on or before
25 the date payment is due. The required method of payment may include checks, wire
26 transfers, or other types of payment specified by the United States.

27 (b) Upon execution of the contract, NTUA, acting on behalf of the Nation, shall |
28 furnish the Contracting Officer with NTUA's taxpayer's identification number (TIN).
29 The purpose for requiring NTUA's TIN is for collecting and reporting any delinquent
30 amounts arising out of NTUA's relationship with the United States.
31

32 23. **CONTRACT DRAFTING CONSIDERATIONS**

33 This Contract has been negotiated and reviewed by the parties hereto, each of whom is
34 sophisticated in the matters to which this Contract pertains. Articles 1 through 10 of this
35 Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be
36 considered to have drafted the stated Articles.
37
38

1 IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly
2 executed as of the day and year first above written.

3
4
5
6
7
8 UNITED STATES OF AMERICA
9 Approved for legal sufficiency: DEPARTMENT OF THE INTERIOR
10
11 _____
12 Office of the Solicitor By: _____
13 Regional Director
14 Interior Region 7 – Upper Colorado Basin
15 Bureau of Reclamation
16
17
18
19

20
21 ATTEST: NAVAJO TRIBAL UTILITY AUTHORITY
22
23
24 _____ By: _____
25 General Manager
26
27

28 List of Exhibits: Exhibit A
29