UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
ANIMAS-LA PLATA PROJECT  
NAVAJO NATION MUNICIPAL PIPELINE  
COLORADO RIVER STORAGE PROJECT  

OPERATIONS AGREEMENT BETWEEN THE UNITED STATES,  
THE NAVAJO NATION,  
AND  
THE CITY OF FARMINGTON, NEW MEXICO  

THIS OPERATIONS AGREEMENT, hereinafter referred to as the Operations Agreement, entered this________ day of_________________, 2012, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, and particularly pursuant to the Colorado River Storage Project Act of April 11,1956 (70 Stat. 105), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 896), the Colorado Ute Indian Water Rights Settlement Act of 1988 (P.L. 100-585), as amended by the Colorado Ute Settlement Act Amendment of 2000 (P.L. 106-554), which authorized the construction of the Animas-La Plata (A-LP) Project (A-LP Project), and Section 10605(b)(1)of Public Law 111-11 (Omnibus Public Land Management Act of 2009); among the UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting through the Secretary of the Department of the Interior (Secretary), Bureau of Reclamation (Reclamation), and the NAVAJO NATION, a Federally recognized Indian Tribe; and the CITY OF FARMINGTON, New Mexico, hereinafter called the City; (collectively, “the Parties” to this Operations Agreement) acting through their representatives.  

WITNESSETH, That:  

WHEREAS, Reclamation has constructed the Navajo Nation Municipal Pipeline (NNMP), a feature of the A-LP Project; and  

WHEREAS, the City has the right and authority to manage, construct, alter, and perform Operations, Maintenance, and Replacement (OM&R) of the facilities and properties of the City’s water supply distribution system; and  

Draft 07/06/2012 CLEAN VERSION  
Negotiation Meetings - 05/30/2012, and 06/29/2012.  
Contract No. ___________________  

Comment [BG1]: The following edits, as discussed in the June 29, 2010 negotiation meeting, have been implemented into this "CLEAN VERSION" draft.  
1. Additional descriptions for Contracts for Water Delivery article.  
2. Corrected sub article numbering.  
3. Provided language under 4.3 C. 7 & 8  
4. Not Discussed in Neg Meeting - Recommend “NTUA” instead of “the Navajo Nation” in section 3.2  
5. Added language - 4.3 A. 4.
WHEREAS, The Navajo Nation has established the Navajo Tribal Utility Authority (NTUA) as an enterprise of the Navajo Nation, with authority to acquire and perform OM&R of utility systems throughout the Navajo Nation, including the performance of OM&R of a water supply distribution system for water users within, and in the vicinity of, the community of Shiprock, New Mexico, and to accomplish this purpose, NTUA requires a supply of treated water; and

WHEREAS, the City owns and operates the Farmington water supply distribution system with a capacity currently capable of serving the present customers of the City’s system, and those reasonably expected to become customers of the City in the future, and with sufficient capacity to furnish NTUA with treated potable water; and

WHEREAS, by approval from the Farmington City Council and signature by the mayor, the City has granted to NTUA a utility easement for access to Tract 1 for the purpose of OM&R of the Crossing Section; and

WHEREAS, by letter dated June 13, 2008, NTUA agrees to OM&R the NNMP in accordance with conditions stated within the letter; and

WHEREAS, by Public Law 111-11, Section 10605(b), states that on completion of the NNMP, the Secretary may enter into separate agreements with the City and the Navajo Nation to convey title to each portion of the NNMP facility or section of the NNMP to the City and the Navajo Nation after execution of a A-LP Project operations agreement approved by the Secretary, the City, and the Navajo Nation that sets forth any terms and conditions that the Secretary determines are necessary; and

WHEREAS, by Public Law 111-11, Section 10605(b)(2)(A), the Secretary shall convey to the City, the facilities and any land or interest in land acquired by the United States for the construction, operation, and maintenance of the NNMP that are located within the corporate boundaries of the City; and

WHEREAS, by Public Law 111-11, Section 10605(b)(2)(B), the Secretary shall convey to the Navajo Nation, the facilities and any land or interests in land acquired by the United States for the construction, operation, and maintenance of the NNMP that are located outside the corporate boundaries of the City; and

WHEREAS, the Parties hereto desire to enter into this Operations Agreement in order to secure operations protocol for this Municipal and Industrial (M&I) water supply, pursuant to the terms and conditions of Public Law 111-11, for the use of such water in and for the benefit of the Navajo Nation as hereinafter provided; and

WHEREAS, the United States will deliver to the Navajo Nation, an M&I water allocation with an average annual depletion not to exceed 2,340 acre feet per year from the A-LP Project water supply under New Mexico State Engineer file number 2883, pursuant to the Navajo Settlement Contract (number 10-WC-40-384), dated December 18, 2010, parts I, III, V & VI.
THEREFORE, the Parties recognize the following terms and conditions herein to constitute an Operations Agreement for the NNMP and the Parties agree as follows:

1. DEFINITIONS

When used in this Operations Agreement, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the following definitions shall apply:

1C Water Zone – The area served by gravity flow from the Farmington 1C water tank.


City-Nation Boundary Point – The point where the centerline of the NNMP crosses the boundary between the City and the Navajo Nation in the approximate vicinity of 36° 43’ 36.2” N, 108° 15’ 8.58” W (San Juan County, New Mexico).

Conveyance Contract – The City of Farmington and Navajo Tribal Utility Authority Water Treatment and Conveyance Contract entered December 18, 2007, provided herein incorporated as Exhibit A.

Crossing Section – The pipeline section of the Farmington Reach, constructed by the United States, located within the corporate boundaries of the City, straddling the San Juan River, from the Delivery Point to the City-Nation Boundary Point.

Delivery Point – The point at the meter/valve vault on the Farmington Reach, located on the northeast side of the San Juan River in the approximate vicinity of 36°44'05.61493"N, 108°14'55.30147"W, (San Juan County, New Mexico).

Farmington Reach – The portion of the NNMP extending approximately 2.8 miles from the City’s 1C water tank and appurtenances to the City-Nation Boundary Point.

MOU – Memorandum of Understanding, dated November 27, 2006 among the Navajo Nation, City, and Reclamation for the design, construction, and ownership of the Farmington Reach of the NNMP, provided herein incorporated as Exhibit B.

NNMP – The Navajo Nation Municipal Pipeline means the pipeline used to convey the water of the Animas-La Plata Project of the Navajo Nation from the City of Farmington, New Mexico, to communities of the Navajo Nation located in close proximity to the San Juan River Valley in the State of New Mexico, as authorized by Section 15(b) of the 2000 Amendments.

Statutory Water Allocation – The M&I water allocated to the Navajo Nation through the use of NNMP components, pursuant to Sec. 6(a)(1)(ii)(VII) of the 2000 Amendments.
Tract 1 – The tract of land designated as Tract 1 in the Utility Easement and Temporary
Construction Easement, and recorded with the San Juan County Clerk at Book 1478 Page
904, on July 16, 2008, provided herein incorporated as Exhibit C.

2. CONTRACTS FOR WATER DELIVERY

2.1 The Navajo Nation, City, and Reclamation entered into; Memorandum of
Understanding, executed November 27, 2006. This understanding is for the design,
construction, and ownership of the Farmington Reach of the NNMP, herein
incorporated as Exhibit B.

2.2 The City and NTUA entered into; Water Treatment and Conveyance Contract,
executed December 18, 2007. This contract is a 40-year term with a 10-year
termination notice on the 30th year of the contract, herein incorporated as Exhibit A.
This Conveyance Contract supersedes the December 22, 1998 dated contract, herein
incorporated as Exhibit A.

2.3 The United States and the City entered into Contract Number 07-WC-40-270;
Contract between the United States and the City of Farmington, New Mexico for
Right of Capacity in Farmington Reach, herein incorporated as Exhibit D. This
contract obligates sufficient capacity in the Farmington Reach to make available
4,680 acre-feet of water per year for the beneficial use of the Navajo Nation.

2.4 The United States and the Navajo Nation entered into Contract Number 10-WC-40-
384, Navajo Settlement Contract, executed December 17, 2010. This contract
provides terms and conditions for the Statutory Water Allocation including, but not
limited to, the Navajo Nation’s OM&R responsibilities and water delivery provisions
associated with the NNMP.

3. GENERAL PROVISIONS

3.1 Compliance with Federal Law
The terms of this Operations Agreement are subject to and governed by applicable
federal law.

3.2 Other Agreements
This Operations Agreement is not intended to conflict with terms of any prior
agreements or contracts between the City and NTUA, or the City and the United
States, or NTUA and the Navajo Nation and the United States, or among all of the
Parties; however, this Operations Agreement represents the current conditions and
present understanding that future OM&R shall be as provided for herein unless
further modified upon having reached unanimous consent of the Parties.

3.3 Appropriations
Nothing contained in this Operations Agreement shall be construed as binding the
United States to expend in any one fiscal year any sum in excess of appropriations
made by Congress for the purposes of this Operations Agreement for that fiscal year
or as involving the United States in any contract or other obligation for the further
expenditures of money in excess of such appropriations.

3.4 Modification of Agreement
The Parties may modify any provisions of this Operations Agreement upon having reached unanimous written consent.

3.5 Assignment Limited – Successors and Assigns Obligated

The provisions of this Operations Agreement shall apply to and bind the successors and assigns of the Parties hereto. No assignment of any right of obligation shall be made by any Party without first obtaining written approval by the other Parties.

3.6 Notices

Any notice, demand, or request authorized or required by this Operations Agreement shall be deemed to have been given, on behalf of any Party when mailed, certified postage prepaid, or delivered to the respective authorized representatives of the Parties to this Operations Agreement. The designation of the addressee or the address may be changed by notice given in the same manner as provide in this article for other notices.

For The Navajo Nation:

President
The Navajo Nation
P.O. Box 9000
Window Rock, AZ 86515
(928) 871-6000

Director
Navajo Department of Water Resources
P.O. Box 678
Ft. Defiance, AZ 86504
(928) 729-4003

For The Navajo Tribal Utility Authority:

Deputy General Manager
P.O. Box 170
Ft. Defiance, AZ 86504
(928) 729-5721

For The City of Farmington, New Mexico:

Mayor and Director of Public Works
City of Farmington
800 Municipal Dr.
Farmington, NM 87401
(505) 327-7701

For Reclamation:

Area Manager
NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the Parties hereto agree as follows:

4. TERMS AND CONDITIONS

4.1 Terms and conditions the Secretary determines necessary include:

A. The Navajo Nation and the City, at their own expense, without expense to the United States, shall own and be responsible for the OM&R of their respective portions of the NNMP in full compliance with the terms of this Operations Agreement.

B. The Navajo Nation will receive 4,680 AFY (2,340 AFY depletion) and will use it in accordance with Parts I, III, V and VI of the Navajo Settlement Contract.

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

D. To ensure the continuation of the intended benefits of the NNMP.

4.2 Operation, Maintenance, and Replacement:

A. The accounting and management of water conveyance and NNMP finances, as necessary to administer and fulfill the conditions required for the conveyance of water.

B. The allocation and payment of annual OM&R costs of the NNMP or section of a NNMP facility based on the proportionate uses of NNMP facilities.

C. The City and NTUA would conduct ground inspection of the pipelines, pumping plants, water treatment plants, and water storage facilities on a regular basis for evidence of excavation activity on or near the right-of-way by landowners or other parties, erosion and wash-out areas, areas of sparse vegetation, damage to permanent erosion control devises, exposed pipe, and other potential problems that might affect the safety and operation of the pipeline and all associated facilities from the 1C water tank to the Delivery Point.

4.3 Responsibilities:
A. The Navajo Nation agrees to the following:
   1. The Navajo Nation and/or their representative enterprise will work
diligently to enter into future mutually beneficial water delivery
contract(s) with the City.
   2. The Navajo Nation and/or their representative enterprise will work
diligently to enter into an ownership transfer agreement with the City
for the Crossing Section.
   3. The Navajo Nation has entered into the Conveyance Contract and
hereby agrees to comply with the terms and conditions within.
   4. The NTUA shall be responsible for OM&R of all portions of the
NNMP downstream from the Delivery Point.

B. The City agrees to the following:
   1. The City shall owns, and shall be responsible for OM&R of the
portion of the Farmington Reach from the City’s 1C Water Tank to the
Delivery Point.
   2. The City shall abide by the terms and conditions of the Right of
Capacity Agreement.
   3. The City will work diligently to enter into future mutually beneficial
water delivery contract(s) with the Navajo Nation and/or their
representative enterprise.
   4. The City will work diligently to enter into an ownership transfer
agreement for the Crossing Section with the NTUA.
   5. The City has entered into the Conveyance Contract and hereby agrees
to comply with the terms and conditions within.
   6. The City has designed, and constructed, and after title transfer will
own, and OM&R the portion of the Farmington Reach from the
City’s 1C Water Zone through the meter/valve vault to the Point of
Delivery Point. The City also has will OM&R responsibilities for the
metering equipment, which includes an adequately sized meter, a
meter house vault, and required standard devices for properly
measuring the quantity of water delivered to NTUA. The City will
keep this metering equipment, within two (2) percent of the test
result, at least once every twelve (12) months.

C. Both the Navajo Nation and City agree to the following:
   1. The United States has constructed and after conveyance of title, the
City will own the Crossing Section. During the life of the Farmington
Reach, Reclamation will own a capacity right to furnish NTUA with
the quantities of water agreed to in the Right of Capacity Agreement.
Upon its completion, the City shall OM&R the pipeline and equipment
upstream of, and through, the meter/valve to the Delivery Point. And
after title transfer by the Secretary, the City will own, and NTUA will
OM&R the Crossing Section pipeline and all equipment downstream
from the meter/valve at the Delivery Point.

Comment [BG6]: Moved from NN agrees section.

Comment [PW7]: See comments above
2. Reclamation will have a right of capacity in the Farmington Reach such that the capacity of water for delivery to NTUA discussed in Section 15b of the 2000 Amendments is protected. At such time in the future, if the Navajo Nation and the City determine that it is no longer necessary to utilize the Farmington Reach in order to obtain its water supply, Reclamation and the City will enter negotiations over the potential transfer of the right of capacity, subject to applicable state and federal law and potential approval by Congress, if required. The City may not transfer ownership of any portion of the necessary facilities constructed pursuant to the MOU, or this Operations Agreement, nor alienate or encumber such facilities in any manner without the express written consent of Reclamation or its assignee.

3. After title transfer, outlined in Article 5.4.4 herein, of the Crossing Section from the Secretary to the City, the City will own, and NTUA will OM&R the Crossing Section downstream from the Delivery Point. After title transfer from the Secretary to the City, the City may transfer ownership of the Crossing Section pipeline to the Navajo Nation. During such time, NTUA shall perform OM&R of the Crossing Section pipeline.

4. The City and Navajo Nation both agree to conform to the Operation and Maintenance Procedures and Impacts within the A-LP FSEIS, Volume 1, Chapter 2.

5. The City and Navajo Nation both agree OM&R of the NNMP will be in accordance with the Environmental Commitments in Chapters 4 and 5 of the FSEIS.

6. In the event of an Act of God or Force Majeure event that impacts the City’s water treatment or conveyance capacity, the supply of water to NTUA will be reduced in the same ratio or proportion that the supply of water to the City’s other users is reduced.

7. Effective on the date of the conveyance of title authorized by Public Law 111-11, Section 10605, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the facilities conveyed, other than damages caused by acts of negligence committed by the United States or by employees or agents of the United States prior to the date of conveyance.

8. Upon execution of this Operation Agreement, United States shall not be further responsible for OM&R of any portion of the NNMP. OM&R shall be performed by the City or the NTUA for their respective responsibility.

D. The United States agrees to the following

1. 

4.4 Conveyance of Title:
A. Conveyance of titles shall occur after execution of this Operations Agreement in separate title transfer agreements with the City and the Navajo Nation.

5. DISTRIBUTION OF WATER

5.1 The Parties to this Operations Agreement agree that any unforeseen restriction in the capacity for the augmentation of water in NNMP will be shared by such Parties on a pro-rata basis.

5.2 If there is a shortage in capacity and/or delivery because of errors in physical operations of the Project, drought, other physical causes beyond the control of Reclamation or actions taken by Reclamation to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

6. TERM OF THIS OPERATIONS AGREEMENT

This Operations Agreement shall become effective upon the date of execution and shall remain in effect for a period of 25 years from the date of execution. Prior to expiration, this Operations Agreement may be renewed for an additional term of 25 years upon mutual agreement of the Parties hereto. Any such renewal shall be subject to federal and state law in existence at the time of renewal. Upon transfer of title to the City and the Navajo Nation in accordance with Section 10605(b)(1) of P.L. 111-11 and the MOU, this Operations Agreement shall either be assumed, or terminated as provided. In either event, all rights of Reclamation hereunder, and all duties and obligations owed by the City and Navajo Nation to Reclamation hereunder, shall cease and terminate, and Reclamation shall no longer be considered a “Party” hereunder, effective upon such title transfer.
IN WITNESS WHEREOF, the Parties hereto have caused this Operations Agreement to be duly executed on the date first above written.

ATTEST: THE NAVAJO NATION

By: _____________________________ By: _____________________________

Ben Shelly
President
Navajo Nation

ATTEST: CITY OF FARMINGTON, NEW MEXICO

By: _____________________________ By: _____________________________

Dianne Fuhrman
City Clerk
City of Farmington, NM

Tommy Roberts
Mayor
City of Farmington, NM

ATTEST: UNITED STATES OF AMERICA, BUREAU OF RECLAMATION

Approved: _______________________ By: __________________________

Office of the Solicitor
Larry Walkoviak
Regional Director, Upper Colorado Region

List of Attachments:
- Exhibit A – City of Farmington and Navajo Tribal Utility Authority Water Treatment and Conveyance Contract
- Exhibit B – Memorandum of Understanding
- Exhibit C – Letter from City of Farmington containing Tract 1 recording
- Exhibit D – Right of Capacity in Farmington Reach Contract