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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

NAVAJO-GALLUP WATER SUPPLY PROJECT
COLORADO RIVER STORAGE PROJECT

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
THE CITY OF GALLUP, NEW MEXICO

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PREAMBLE

THIS REPAYMENT CONTRACT, made this 10th day of January, 2012,
pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts
amendatory thereof or supplementary thereto, all of which acts are commonly known and
referred to as the Federal Reclamation Laws, between the UNITED STATES OF
AMERICA, hereinafter referred to as the United States, represented by the officer
executing this contract, and THE CITY OF GALLUP, hereinafter called the City, located
in McKinley County, New Mexico, a municipality duly incorporated and existing
pursuant to chapter 32, session act of 1891, in the territory of New Mexico, and the laws
of the State of New Mexico, acting through its representatives.

EXPLANATORY RECITALS

WITNESSETH, That:

WHEREAS, the following statements are made in explanation:

The Act of Congress approved December 15, 1971 (85 Stat. 664), authorized the
planning and investigation of the Navajo-Gallup Water Supply Project (Project);
subsequently, the construction, operation, and maintenance of the Project was authorized
by the Northwestern New Mexico Rural Water Projects Act of March 30, 2009 (123 Stat.
1367), and the United States has investigated, planned, and is preparing to construct said
Project for the diversion and distribution of the waters of the San Juan River, which
Project has among its authorized purposes the furnishing of water for municipal,
industrial, commercial, domestic, and stock watering purposes. The water rights

1 settlement purposes of the Project were authorized by the Northwest New Mexico Rural
2 Water Projects Act of March 30, 2009 (hereafter referred to as the Navajo Settlement
3 Act).

4 The Navajo Settlement Act authorizes the design and construction of the Project
5 Facilities as described in Article 2.

6 The City is in need of a reliable supply of municipal and industrial water.

7 Provisions of the Navajo Settlement Act require the City to secure a water supply
8 for a term of not less than forty (40) years prior to execution of this contract or initiation
9 of the Project.

10 The City has entered into an agreement with the Jicarilla Apache Nation to secure
11 a reliable water supply for 40 years.

12 The City and Reclamation have determined that Reclamation will provide the
13 funds necessary for the City to construct Reach 13 and Reach 27, and the City will have
14 ownership and sole responsibility over all aspects of Reach 13 and Reach 27.

15
16 NOW, THEREFORE, in consideration of the mutual and dependent covenants
17 herein contained, the parties hereto agree as follows:

18
19 1. GENERAL DEFINITIONS

20 Where used in this contract:

21 a) "City" means the City of Gallup, New Mexico a municipality duly incorporated
22 and existing pursuant to chapter 32, session act of 1891, in the territory of New Mexico.

23 b) "Consultation" or "Consult" refers to an ongoing obligation of both parties to
24 implement the provisions of this Contract with a full exchange of information so as to
25 assure that each party is provided full participation in the decision making process.

26 Consultation shall be required of each party with respect to each section of the Contract
27 regardless of whether the section itself sets forth a consultation requirement. The
28 Consultation required shall be reasonable under the circumstances, and except in exigent
29 circumstances Consultation shall be undertaken in advance of decision making. In the
30 event that agreement cannot be reached and the United States makes a decision, appeals
31 are available to the extent allowed under applicable laws.

- 1 c) "Cooperative Agreement" or "Financial Assistance Agreement" means
2 agreement number R11AC40002, which provides support in order to accomplish a public
3 purpose authorized by a law or regulation of the United States to include all work
4 associated with project planning, management, design, acquisition of all land, easements
5 and right-of-way, permitting, construction, construction management, Operation,
6 Maintenance, and Replacement (OM&R) during construction and transfer of the facilities
7 to "in service" for Reach 13 and/or Reach 27.
- 8 d) "Delivery Capacity Allocation" means the portion of the Project capacity
9 reserved for use by the City to deliver the City's Project Water, described in Article 6
10 herein, pursuant to Sec. 10603(b)(1)(B) of the Navajo Settlement Act.
- 11 e) "Estimated Repayment Obligation" means the estimated reimbursable
12 construction costs allocated to the City's Municipal and Industrial (M&I) uses associated
13 with the construction of Project Facilities plus any appropriate Interest During
14 Construction (IDC) as identified in the Construction Cost Estimate further defined in
15 Article 7(a) below.
- 16 f) "Final Repayment Obligation" means the final reimbursable construction costs
17 allocated to the City's M&I uses associated with the construction of Project Facilities,
18 plus any appropriate IDC, as determined through the Final Cost Allocation described in
19 Article 7(m) below.
- 20 g) "Fixed OM&R costs" means costs of administration, overhead, labor, materials,
21 and equipment required to maintain all pumps, storage tanks, pipelines, and diversion
22 facilities.
- 23 h) "Gallup Regional System" also known as Reach 27 for Project identification
24 purposes, means all Project facilities starting at the end of Reach 13 and ending at the
25 beginning of Reach 14. The term Reach 27 will be used to describe the Gallup Regional
26 System in this document.
- 27 i) "Non-Project Water" means water that is not allocated by Section 10603(b) of
28 the Navajo Settlement Act but is authorized to be treated and conveyed through Project
29 Facilities pursuant to Section 10602(h) of the Navajo Settlement Act.
- 30 j) "Northwestern New Mexico Rural Water Projects Act", or "Navajo Settlement
31 Act", means Subtitle B of Title X the Act of March 30, 2009 (123 Stat. 1367).

- 1 k) "Operation and Maintenance Facilities" means those Project Facilities necessary
2 to support operation, maintenance, and replacement ("OM&R") work(s), including, but
3 not limited to operation and maintenance headquarters, office space, shop for repair of
4 equipment, storage place for supplies, and equipment yard.
- 5 l) "Operation, Maintenance, and Replacement (OM&R) Contract" means the
6 contract between the United States and the Project Operator for the OM&R of the Project
7 Facilities.
- 8 m) "Project" means the Navajo-Gallup Water Supply Project, a participating project
9 of the Colorado River Storage Project, authorized by the Navajo Settlement Act.
- 10 n) "Project Construction Committee" means the committee made up of
11 representatives of the Project Participants and the Bureau of Reclamation.
12 Representatives of the State of New Mexico may also participate in the committee if the
13 State so desires.
- 14 o) "Project Facilities" means for the purpose of this contract, the San Juan Lateral
15 portion of the Project that is necessary to divert water from the San Juan River, treat, and
16 deliver treated water to the City of Gallup, including Reach 27, as further described in
17 Articles 2 and 3.
- 18 p) "Project Operations Agreement" or "Operations Agreement" means the
19 agreement approved by the Secretary and the Project Participants pursuant to Section
20 10602(f), that sets forth terms and conditions that the Secretary determines necessary to
21 ensure the continuation of the benefits of the Project, and the allocation and payment of
22 annual OM&R costs of the Project, and replaces the applicability of the OM&R Contract
23 to those reaches for which title has been transferred.
- 24 q) "Project Operator" means the entity operating the Project Facilities excluding
25 Reach 13 and Reach 27.
- 26 r) "Project Participants" means the Navajo Nation, the City of Gallup and, should
27 it choose to participate through a separate repayment contract, the Jicarilla Apache
28 Nation.
- 29 s) "Project Water" means the municipal and industrial water supply allocated to
30 the City pursuant to Section 10603(b)(2)(B) of the Navajo Settlement Act and secured by
31 the City to satisfy requirements of Section 10604(b)(7) of the Navajo Settlement Act.

1 t) "Reach 13" means all Project facilities starting at the end of Reach 12 located
2 near the north line of Section 17, T16N, R18W, and ending at the beginning of Reach 27.
3 The final determination of the actual facilities that are included in Reach 13 will be made
4 during the final design process for that reach. The City will have construction
5 responsibility and retain ownership of Reach 13.

6 u) "Reach 14" means all Project Facilities beginning at the end of Reach 27 which
7 serve the following Navajo communities: Church Rock/Iyanbito, Mariano Lake/Pinedale,
8 Red Rock/Chichiltah/Breadsprings, and Manuelito.

9 v) "Reach 27" means all project facilities conveying water from the end of Reach
10 13 to Reach 14, and will be used to describe the Gallup Regional System in this
11 document. The City will have construction responsibility and retain ownership of Reach
12 27.

13 w) "Remaining Repayment Obligation" means the amount of the Final Repayment
14 Obligation as determined through the Final Cost Allocation described in Article 7(m)
15 below that is in excess of any payments made by the City toward its Estimated
16 Repayment Obligation.

17 x) "Right of Capacity Agreement" means the agreement 11-WC-40-437 allocating
18 the sufficient capacity right in Reaches 13 and 27 to provide 7,500 AF/yr to the City in
19 Reach 27, and 4,647 AF/yr to the Navajo communities in Reach 14.

20 y) "San Juan River Basin" means the San Juan River and its tributaries.

21 z) "United States" or "Contracting Officer" or "Secretary" means the Secretary of
22 the United States Department of the Interior or his/her duly authorized representative.

23 aa) "Variable OM&R costs" means the costs of power including power
24 consumption and a proportional percentage of power demand costs for the pumping of
25 water and costs associated with the treatment of water by Project Facilities.

26

27 2. PROJECT FACILITIES CONSTRUCTED BY THE UNITED STATES

28 a) The features of the Project are generally described in Section 10602(b) of the of
29 the Navajo Settlement Act, and are described in more detail in the Navajo-Gallup Water
30 Supply Project Planning Report and Final Environmental Impact Statement dated July
31 2009, and the subsequent Record of Decision dated October 1, 2009. Subject to the terms

1 and conditions of this and other applicable contracts related to this Project, the United
2 States will construct the following Project Facilities and appurtenant facilities that, in the
3 opinion of the United States in Consultation with the Project Construction Committee,
4 are necessary for Project purposes, without being limited by enumeration and within the
5 limit of funds made available by the Congress and the contracting parties:

6 (1) Project Facilities to be constructed by Reclamation and having capacity
7 allocated to the City are shown on the map included herein as Exhibit A, and are
8 defined as Reaches 1 through 12, excluding Reaches 10.1, 10.2, 10.3, 12.1, 12.2,
9 and all turnout facilities including pumping plants and storage tanks which are
10 solely constructed for the benefit of the Navajo Nation.

11 (2) Reach 14 will be constructed by Reclamation at no cost to the City.

12 (3) Reach 13 and Reach 27 will be constructed by the City of Gallup under the
13 provision of Article 3.

14 b) Operation and Maintenance Facilities will be constructed as determined
15 necessary by the United States, after Consultation with the Project Construction
16 Committee, for the required OM&R of Project Facilities.

17 c) As a condition of construction of the facilities, the City shall provide all land or
18 interest in land already owned by the City, as appropriate, that the United States identifies
19 as necessary for acquisition under Section 10602(c) of the Navajo Settlement Act at no
20 cost to the United States.

21 d) The United States, after Consultation with the City, shall have the right at any
22 time to increase the capacity of the Project Facilities or any unit or feature thereof for
23 other than currently authorized project purposes without additional capital or OM&R
24 costs to the City; provided, that the City's use of the Delivery Capacity Allocation shall
25 not be impaired thereby. The right of use of such increased capacity is reserved to the
26 United States.

27 e) Any additions or changes to Project Facilities or project operations, or changes
28 in use of the water allocations pursuant to Section 10603(b)(1)(B) of the Navajo
29 Settlement Act that vary from that stated in the Navajo-Gallup Water Supply Project
30 Final Environmental Impact Statement (FEIS) dated July 2009 and subsequent Record of
31 Decision dated October 1, 2009, will, as required by law, be subject to further compliance

1 with applicable environmental statutes, which shall include an analysis of potential
2 impacts on other Project Participants.

3 f) Construction and OM&R of the Project will be in accordance with the
4 Environmental Commitments in Chapter VI of the FEIS, which are attached as Exhibit B
5 to this contract.

6

7 3. PROJECT FACILITIES CONSTRUCTED BY THE CITY OF GALLUP

8 a) Subject to the terms and conditions of this Contract and Cooperative Agreement
9 and the Right of Capacity Agreement, the City of Gallup will construct Reach 13 and
10 Reach 27, and take full design and construction responsibility of all of Reach 13 and
11 Reach 27 subject to Reclamation's oversight. The City will maintain ownership of Reach
12 13 and Reach 27. The City will be solely responsible for OM&R of Reach 13 and Reach
13 27 and for the transmission and distribution of water within Reach 13 and Reach 27 to
14 Reach 14.

15 b) The United States will provide funding for construction by the City. The City's
16 acceptance of this financial assistance from the United States creates a legal
17 responsibility on the part of the City to ensure water delivery to Reach 14 as set forth in
18 the Right of Capacity Agreement, and a legal responsibility on the part of the City to
19 repay the United States the reimbursable construction costs and any Interest During
20 Construction (IDC) costs, if applicable, for the financial assistance to construct and
21 Reach 13 and Reach 27, as is provided under Article 7 of this contract.

22

23 4. PROJECT COORDINATION COMMITTEES

24 Consultation concerning, and coordination of, Project construction, and OM&R
25 activities will be accomplished through the establishment of two committees: one to
26 focus on those activities associated with the construction of the Project Facilities, the
27 other to oversee the OM&R activities. The committees will be made up of
28 representatives of the Project Participants and the Bureau of Reclamation. The State of
29 New Mexico may also appoint a representative to the Project Construction Committee.

1 a) The Project Construction Committee will serve to review cost factors and
2 budgets for construction; improve construction management through enhanced
3 communication; and seek additional ways to reduce overall Project costs.

4 b) The Project Operations Committee will determine the appropriate entity to
5 contract with Reclamation for the OM&R of the Project excluding Reach 13 and Reach
6 27; will review cost factors and budgets for OM&R activities; and develop a common
7 understanding among the Project Participants of the appropriate level of annual OM&R
8 activities to be performed on the Project Facilities to assure the Project's long term
9 operational integrity and public safety.

10
11 5. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF
12 DELIVERY CAPACITY ALLOCATION

13 a) This is not a water supply contract between the United States and the City. The
14 terms and conditions of the delivery and conveyance of Project and Non-Project Water
15 through Project facilities to the Project participants will be set forth in separate
16 agreements.

17 b) The Project water diverted through Project Facilities for use by the City shall be
18 measured at the San Juan Lateral diversion from the San Juan River with measuring
19 facilities installed by the United States as a part of the Project.

20 c) The City will hold the United States harmless on account of damage or claim of
21 damage of any nature whatsoever arising out of or connected with the control, carriage,
22 handling, treatment, use, disposal, or distribution of Project and Non-Project Water by the
23 City, upon delivery said water.

24 d) All non-Project facilities required for conveying Project and Non-Project Water
25 from Project Facilities and putting it to use by the City and its users will be acquired,
26 constructed or installed, and operated and maintained by the City or its users. These
27 facilities are not part of the Project and are not authorized for funding through the Navajo
28 Settlement Act.

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1 7. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

2 a) Reclamation has published the July 2009, Navajo-Gallup Water Supply Project
3 Planning Report and Final Environmental Impact Statement (July 2009 Planning Report).
4 Part I of Appendix D of Volume II of the July 2009 Planning Report, using January 2007
5 price levels, which establishes the cost allocation that will be used to allocate Project
6 construction costs, Interest During Construction (IDC) costs, and OM&R costs among
7 the Project Participants with the exception of the allocation for Reach 27, as further
8 explained in Article 7(b) below. The Use of Facilities Methodology employed in the July
9 2009 Planning Report to allocate Project costs will not be changed for the administration
10 of this Contract. The July 2009 Planning Report allocation is based upon the
11 proportionate share of Project Facilities used by the Project Participants for delivery of
12 water.

13 b) It has been recognized by the City, the Navajo Nation, and the United States that
14 the allocation of Reach 27, as presented in Table C1 of Part I of Appendix D of Volume
15 II of the July 2009 Planning Report, requires greater detail and precision. Pursuant to
16 Section 10604(d)(1) of the Navajo Settlement Act, the Secretary shall review and, as
17 appropriate, perform a supplement to the July 2009 Planning Report cost allocation with
18 the concurrence of the City and the Navajo Nation. The Reach 27 Cost Allocation
19 Supplement will employ the Use of Facilities Methodology, based upon the proportionate
20 share of Project Facilities used by the Project Participants for delivery of water, and will
21 become an appendix to this Contract. Upon completion of Reach 27 Cost Allocation
22 Supplement, the Secretary will notify the City by registered letter, of the change in the
23 construction costs and OM&R costs allocable to the City, and the change in the City's
24 obligation to repay estimated reimbursable costs, and estimated IDC. The Reach 27 Cost
25 Allocation Supplement will become integrated into the final cost allocation of the Project.

26 c) Using January 2007 price levels, the July 2009 Planning Report estimated the
27 total Project construction costs to be \$865,000,000 and estimated the construction costs
28 allocable to the City's Delivery Capacity Allocation to be \$154,600,000. This amount
29 included an estimated \$7,300,000 of cultural resources and fish and wildlife mitigation
30 costs allocated to the City, which were later deemed non-reimbursable pursuant to
31 Section 10609(e) and (f) of the Act. Therefore, the July 2009 Planning Report estimated

1 Project construction costs allocable to the City's Delivery Capacity Allocation, at the
2 January 2007 price level, to be \$147,300,000.

3 d) As a refinement to the cost estimate used in the July 2009 Planning Report, the
4 Secretary has prepared a detailed Construction Cost Estimate (CCE) based upon the
5 summary project cost estimates used in the July 2009 Planning Report at the same
6 January 2007 price levels. The total Project construction costs estimated by the January
7 2007 price level CCE is \$865,000,000 and the construction costs allocable to the City's
8 Delivery Capacity Allocation are estimated from the CCE to be \$147,605,000 rounded to
9 the nearest thousand dollars. As provided in Section 10602(d)(1)(D) of the Navajo
10 Settlement Act, the Secretary of the Interior and the State of New Mexico are required to
11 enter into an agreement "under which the State of New Mexico will provide a share of
12 the Project construction costs of not less than \$50,000,000, except that the State of New
13 Mexico shall receive credit for funds the State has contributed to construct water
14 conveyance facilities to the Project Participants to the extent that the facilities reduce the
15 cost of the Project as estimated in the Draft Impact Statement." The City has agreed on
16 the methodology to be implemented regarding how to apply the New Mexico cost-share
17 to reduce the cost of the Project and how it subsequently affects their respective
18 repayment obligations. The document, signed by both the City and the Jicarilla Apache
19 Nation and, describing the methodology to be implemented is included herein as Exhibit
20 C. Exhibit C provides an attachment entitled, "Cost and Repayment Summary", which
21 presents the New Mexico cost-share methodology using October 2011 price levels and
22 using current estimations of the amount of credit received by the State toward its
23 contribution to the construction of water conveyance facilities.

24 e) The CCE was subsequently indexed for inflation to October 2011 price levels
25 making the total Project construction costs \$994,858,000. Based upon an estimate of the
26 amount of credit received by the State toward its contribution to the construction of water
27 conveyance facilities, as describe above in Article 7(e), and as presented in the Cost and
28 Repayment Summary attachment to Exhibit C, the remaining Federal construction costs
29 allocable to the Project Participants are estimated to be \$922,097,000 with the portion of
30 those costs allocable to the City's Delivery Capacity Allocation estimated to be
31 \$155,202,000, rounded to the nearest thousand dollars.

1 f) The construction costs allocated to the City, and determined to be reimbursable,
2 shall accrue IDC, and the unpaid balance of the City's repayment obligation shall accrue
3 amortization interest, at the interest rate for Federal water resource planning, pursuant to
4 Section 10305 of the Navajo Settlement Act, to be established as of the beginning of the
5 fiscal year in which construction is initiated, pursuant to the provision of Section 5(f) of
6 the Act of April 11, 1956 (70 Stat. 105) as amended by the Act of June 27, 1960 (74
7 Stat.255). IDC shall start when the first disbursement is made to initiate construction on
8 a reach/feature. IDC shall stop accruing on a reach/feature when that reach/feature has
9 been declared substantially complete, as provided in Article 9 below.

10 g) Based upon the October 2011 price level CCE prepared by the Secretary, the
11 construction costs allocable to the City's Delivery Capacity Allocation are estimated to
12 be \$155,202,000, and for the purposes of establishing a contract amount, the repayment
13 obligation is assumed to be 35 percent of these allocable construction costs, taking into
14 account the remaining balance of the New Mexico cost-share funds allocated to the City,
15 is estimated to be \$1,134,000. Based upon the planning interest rate for fiscal year 2012
16 of 4.000 percent and an estimated construction completion by fiscal year 2025, the
17 accrued IDC on the reimbursable construction costs of \$54,321,000 is estimated to be
18 \$20,363,000, rounded to the nearest thousand dollars, for a total Estimated Repayment
19 Obligation of \$73,550,000. This figure does not include increases to the cost as a result
20 of inflation which the City would be obligated to pay. The City's Final Repayment
21 Obligation will be based upon the final Project cost allocation described in Article 7(m).

22 h) As provided in Section 10604(b)(3)(B) of the Navajo Settlement Act, the City
23 may demonstrate, to the satisfaction of the Contracting Officer, that the City has an
24 ability-to-pay of a lesser amount than the maximum of 35 percent of allocated
25 construction costs. The Contracting Officer may reduce the City's share of allocated
26 construction costs, but such reduction cannot be less than 25 percent of construction costs
27 allocated to the City, plus accrued IDC. The ability-to-pay analysis for the City shall
28 hereby be incorporated as part of this Contract. Adjustments made to the ability-to-pay
29 analysis, as provided in Article 8, will be provided as a supplement to this contract.

30 i) Pursuant to Section 10604(b)(2) of the Navajo Settlement Act, the City may
31 elect to prepay their repayment obligation prior to the initiation of construction. The

1 prepayment will be based upon the most recent repayable construction cost estimate
2 available, currently estimated to be \$54,321,000 at October 2011 price levels. The
3 prepayment amount will be adjusted to reflect any change in the reimbursable percentage
4 if an ability-to-pay reduction has been approved by the Contracting Officer, as provided
5 in Article 7(g) above. No IDC shall accrue on the construction costs that have been
6 prepaid.

7 j) After the initiation of construction, the City may at any time elect to prepay their
8 remaining repayment obligation on those features or reaches that have yet to be
9 constructed. No IDC shall accrue on the construction costs that have been prepaid.
10 However, IDC would accrue on any of the City's allocable construction costs that had
11 been expended to date but not paid by the City, and IDC would continue to accrue on the
12 principle until those costs were paid. Prepayment would be used to reduce the amount of
13 annual Federal appropriations necessary to construct the Project.

14 k) If the City does not elect to prepay under Article 7(j) above, then upon a
15 Notification of Substantial Completion of each reach or feature, as provided in Article 9
16 of this contract, the City will pay the portion of the Estimated Repayment Obligation
17 assigned to that Notification of Substantial Completion in not more than 50 annual
18 installments at the interest rate described under Article 7(f) herein. The repayment
19 schedule assigned to each Notification of Substantial Completion shall be revised by the
20 Contracting Officer at intervals of no longer than 5 years to conform to the current cost
21 estimates at that time or other changes that have occurred which justify amendment to the
22 notice.

23 l) Although the City retains title to the facilities of Reach 13 and Reach 27, the
24 City will continue to repay, with amortization interest, that portion of Reach 13 and
25 Reach 27 costs under repayment status and a part of the Estimated Repayment
26 Obligation, as provided in Article 7(k) above. Upon final cost allocation the Secretary
27 will amend the Estimated Repayment Obligation assigned to Reach 13 and Reach 27 to
28 conform to the Final Repayment Obligation, as provided in Article 7(m). The City must
29 repay any reimbursable construction costs in excess of the Estimated Repayment
30 Obligation (if any), plus the IDC accrued on any excess construction cost as provided in
31 Article 7(m), subject to reassessment under the provisions of Article 8.

1 m) At the end of the construction period of the Project Facilities, the Secretary will
2 perform a final cost allocation, pursuant to Section 10604(d)(2) of the Navajo Settlement
3 Act, and, after consultation with the City, shall give the City written notice of the City's
4 Final Repayment Obligation as established by the final cost allocation, subject to
5 reassessment under the provisions of Article 8. Once the City's Final Repayment
6 Obligation has been established:

7 (1) If the City did not elect to prepay the total reimbursable construction cost
8 estimate as provided in Article 7(j), then all Notice of Substantial Completion
9 repayment schedules will be amended to conform to the Final Repayment
10 Obligation, or;

11 (2) If the City elected to prepay as provided in Article 7(j), then it will have the
12 option to prepay the reimbursable construction costs in excess of the estimated
13 prepayment amount (if any), plus the IDC accrued on any excess construction
14 costs, within 180 days from the date of written notice. After the 180-day final
15 payment option has expired, the reimbursable construction costs in excess of the
16 estimated prepayment amount, plus the IDC accrued on those excess construction
17 costs shall become a repayment obligation of the City to be repaid in not more
18 than 50 annual installments, at the amortization interest rate described in Article
19 7(f) herein.

20 n) During construction, the United States will consult annually with the City
21 concerning the allocation of construction costs and any IDC to be payable by the City
22 under this Contract. All payments required under this Contract are due on the specified
23 due date and will be made by electronic fund transfers.

24 o) Pursuant to section 9(c)(1) of the Reclamation Project Act of 1939, 43 U.S.C. §
25 485h, following payment of the Final Repayment Obligation described herein, all other
26 contract terms will remain in full force and effect until mutually agreed upon by the City
27 and the United States.

28
29 8. REASSESSMENT OF ABILITY TO PAY ANALYSIS

30 a) As provided in Section 10604(b)(3)(B) of the Navajo Settlement Act, the City
31 may demonstrate, to the satisfaction of the Contracting Officer, that the City has an

1 ability-to-pay of a lesser amount than the maximum of 35 percent of allocated
2 construction costs. The Contracting Officer may adjust the City's share of allocated
3 construction costs, but such reduction cannot be less than 25 percent of construction costs
4 allocated to the City, plus accrued IDC. At intervals of not less than 5-years, starting the
5 year of contract execution, either the City or the Contracting Officer may elect to initiate
6 the process for a reassessment of the City's Ability to Pay (ATP) analysis. Initiation of
7 the reassessment process shall be by written notification as provided in Article 20. The
8 last and final reassessment of the ATP analysis shall be conducted no later than the 40th
9 year of the City's repayment term. On the year the City has ten (10) annual payments
10 remaining to fully repay its capital obligation to the United States, the ATP analysis that
11 is in effect at that year shall be the final reassessment that determines the final percentage
12 of reimbursable allocated construction costs that will be the City's obligation.

13 b) Upon written notification by either party to initiate the reassessment process, the
14 Contracting Officer will be responsible for the reassessment analysis and will draft and
15 publish the final report, in consultation with the City. All future reassessments of the
16 ATP analysis shall conform to the methodology employed in the original analysis unless
17 otherwise approved by the Commissioner. The cost of a reassessment analysis will be
18 borne by the party that initiated the reassessment through formal written notification.

19 c) If a reassessment of the ATP analysis confirms that the reimbursable percentage
20 of allocated construction costs has changed for the City, then the Contracting Officer will
21 adjust and amend all repayment obligations and repayment schedules to conform to that
22 change in the reimbursable percentage, in accordance with the Navajo Settlement Act.
23 Upon implementing the change in the reimbursable percentage of construction costs, the
24 Contracting Officer shall also recalculate reimbursable IDC based upon the new
25 percentage and will adjust repayment obligations and schedules accordingly. All
26 adjustments to the City's obligation will be addressed through the repayment schedules at
27 the project interest rate. No credit because of an adjustment will ever be made to the
28 City's obligation to account for alternative investment rates.

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1 9. NOTIFICATION OF SUBSTANTIAL COMPLETION

2 a) When features or reaches of the Project have been declared to be substantially
3 complete and when Project or Non-Project Water is available to the City for its use, the
4 City may utilize Project facilities to deliver such water and the United States shall, after
5 consultation, give the City written notice, referred to herein as the “Notice of Substantial
6 Completion”. The Notice of Substantial Completion shall contain: (1) a list of the
7 feature(s) or reach(es) of Project Facilities that have been determined to be substantially
8 complete for water delivery, (2) the effective date of that substantial completion
9 declaration, (3) a repayment schedule, as provided in Article 7 herein, for the portion of
10 the City’s Estimated Repayment Obligation assigned to the Project Facilities declared
11 substantially complete, and (4) the proportionate share of OM&R costs associated with
12 each completed Project Facility allocated to the City. The OM&R responsibilities and
13 cost provisions associated with each completed Project Facility where title is held by the
14 United States will be identified in the OM&R Contract between Reclamation and the
15 Project Operator.

16 b) Each Notice of Substantial Completion shall become a part of this contract.
17

18 10. PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

19 a) The City’s OM&R cost obligation for those features or reaches for which they
20 have received a Notification of Substantial Completion pursuant to Article 9, shall be
21 paid to the United States, or its designee if some organization other than the United States
22 is operating the Project Facilities.

23 1) For any feature or reach of the Project through or by which water cannot
24 be delivered to the City for its beneficial use, the City shall not pay any Fixed or
25 Variable OM&R costs associated with that feature or reach.

26 2) For any feature or reach of the Project through or by which water can only
27 be delivered to the City for its beneficial use, the City shall pay all OM&R costs
28 associated with water delivery, until such time water can be delivered through or
29 by that feature or reach to other Project Participants, at which time Article
30 10(a)(iii) below, shall apply.

1 3) For any feature or reach of the Project through or by which water can be
2 delivered to the City and other Project Participants, the City's OM&R cost
3 obligation will be comprised of:

4 (A) The City's share of Fixed OM&R costs shall be based upon its
5 proportionate share of the design capacity for all Project Facilities, or
6 reaches of those facilities, which have identified through a Notice of
7 Substantial Completion pursuant to Article 9(a) of this contract, Fixed
8 OM&R costs include costs of labor, materials, equipment and
9 replacements required to maintain all Project Facilities, as well as, the
10 administration and overhead costs of the Project.

11 (B) The City's share of Variable OM&R costs shall be based on actual
12 costs of power including energy consumption and that share of power
13 demand costs for operation of the water treatment plants and pumping
14 plants based on the proportionate share of water treated and delivered, as
15 well as water treatment chemical costs.

16 b) Billing and payment for the City's OM&R cost obligations shall be conducted as
17 follows:

18 1) Fixed OM&R costs for the Project shall be paid on the basis of annual
19 cost estimates made by the Contracting Officer, or the Project Operator, based
20 upon the proportionate share of the design capacity for those Project Facilities
21 which have been identified in the Notice of Substantial Completion pursuant to
22 Article 9(a) of this contract. An estimate from the Contracting Officer, or the
23 Project Operator, will be sent to the City on or before March 1 for the next
24 Federal fiscal year, which begins October 1 of the same calendar year and ends
25 September 30 of the next calendar year. The City shall advance its share of the
26 OM&R costs for each Federal fiscal year in quarterly payments which will be
27 due on September 30, December 31, March 31, and June 30 of the Federal fiscal
28 year of applicability. The first such billing will be issued immediately following
29 a Notice of Substantial Completion as provided in Article 9(a) of this contract. In
30 the event the first notice shall be for costs of service of less than a full year, such

1 costs shall be prorated for the period covered. An itemization of the estimated
2 Fixed OM&R costs will accompany the billing.

3 2) Variable OM&R costs for the Project shall be paid on the basis of an
4 annual notice provided by the City to the Contracting Officer, or the Project
5 Operator, on or before March 1 for the next Federal fiscal year, which begins
6 October 1 of the same calendar year and ends September 30 of the next calendar
7 year. The annual notice will provide an estimate of the City's anticipated water
8 delivery requirements on a quarterly basis. Based upon these anticipated water
9 delivery requirements, the Contracting Officer, or the Project Operator, will bill
10 the City quarterly on September 30, December 31, March 31, and June 30 of the
11 Federal fiscal year of applicability. An itemization of the estimated Variable
12 OM&R costs will accompany the billing.

13 c) In the event either the OM&R cost estimates fall short of the actual costs in any
14 period, or whenever it is anticipated by the Contracting Officer that a deficit will occur
15 during the fiscal year, supplemental notices may be issued by the Contracting Officer
16 requesting additional funds. OM&R funds not spent during one fiscal year will be
17 carried over for use during the next fiscal year with funds required for that year being
18 reduced accordingly. An itemized statement of actual costs incurred during each year
19 shall be furnished to the City. Billing adjustments will be made to correct for differences
20 in the estimated and actual costs at the beginning of the next fiscal year, and in the case
21 of Variable OM&R costs, for differences in the City's estimated water delivery
22 requirements and the actual metered flow. Upon transfer of the OM&R responsibilities
23 from the Contracting Officer to a Project Operator, the Contracting Officer will also
24 transfer to the Project Operator any outstanding billing adjustments of the City as either a
25 credit or a debit to the City's OM&R obligation.

26 d) OM&R responsibilities and the City's share of OM&R costs associated with
27 the Project shall be further identified and provisions for payment made in the Project
28 Operations Agreement identified in Section 10602(f) of the Navajo Settlement Act. If
29 title is not conveyed on a feature or reach, the OM&R responsibilities and the City's
30 share of OM&R costs associated with those Project features and reaches shall be further

1 identified and provisions for payment made in a separate OM&R contract that will be
2 required between Reclamation and the Project Operator.

3
4 11. USE AND DISPOSAL OF WATER DURING CONSTRUCTION

5 Prior to the completion of all Project Facilities as defined in Article 2(a), the City
6 may use a completed portion of the Project for delivery of water. Payment of OM&R
7 costs for such use shall be made pursuant to Article 10, above.

8
9 12. WATER SHORTAGES

10 There may occur at times during any year a shortage in the quantity of water
11 available from Project Water for furnishing to the City through and by means of the
12 Project, but in no event shall any liability accrue against the United States or any of its
13 officers, agents, or employees for any damage, direct or indirect, arising from a shortage,
14 on account of errors in operation, drought, or any other causes, other than damages
15 caused by acts of negligence committed by the United States, or by employees or agents
16 of the United States, prior to the date of conveyance .

17
18 13. PAYMENT OBLIGATIONS

19 No provision of this contract shall create or be deemed to create a general
20 obligation debt of the City, nonetheless, the City shall, to the extent allowed by law,
21 utilize all available revenues to pay the United States in full and shall make all payments
22 pursuant to this contract on or before the date such payments become due. *Provided*, if
23 the City fails to perform under this article for any reason, Reclamation or the Project
24 Operator may cease all deliveries of water to the City, and the City shall hold
25 Reclamation or the Project Operator harmless for any damages that occur as a result of
26 water not being delivered under this contract. In meeting its obligation, the City may
27 adopt an ordinance or ordinances establishing special fund obligations or other
28 obligations to pay the United States as provided in this contract, which irrevocably pledge
29 the revenues under the ordinance or ordinances and which pledge may be subordinate to
30 the prior lien of outstanding special fund bonds and future special fund bonds that may be
31 issued in the normal course of City business. *Provided further*, the City shall be

1 responsible for payments regardless of whether any ordinances establishing special funds
2 are adopted.

3

4 14. COVENANT AGAINST CONTINGENT FEES

5 The City warrants that it has not employed or retained any person or selling
6 agency to solicit or secure this contract upon an agreement or understanding for a
7 commission, percentage, brokerage or contingent fee, excepting bona fide employees or
8 bona fide established commercial or selling agencies maintained by the City for the
9 purpose of securing business. For breach or violation of this warranty, the United States
10 shall have the right to annul this contract without liability, or at its discretion, to add to
11 the repayment obligation or consideration the full amount of such commission,
12 percentage, brokerage, or contingent fee.

13

14 15. TITLE TO PROJECT FACILITIES

15 a) Title to Reach 13 and Reach 27 that have both been constructed by the City
16 shall be retained by the City

17 b) Title to other Project Facilities shall be held by the United States, unless
18 conveyed to the City or the Navajo Nation as authorized under Section 10602(f) of the
19 Navajo Settlement Act. Effective on the date of the conveyance authorized by Section
20 10602(f), the City of Gallup agrees to indemnify the United States for, and hold the
21 United States and all of its representatives harmless from, all damages resulting from
22 suits, actions, or claims of any character brought on account of any injury to any person
23 or property arising out of any act, omission, or occurrence relating to the land, buildings,
24 or facilities conveyed under this subsection, other than damages caused by acts of
25 negligence committed by the United States, or by employees or agents of the United
26 States, prior to the date of conveyance.

27 c) The City, as owner and/or operator of Reach 13 and Reach 27 being constructed,
28 modified, or rehabilitated with funds being provided by the United States under
29 provisions of this contract, accepts all responsibility for the structural integrity and safety
30 of Reach 13 and Reach 27 and related facilities being constructed, modified, or
31 rehabilitated. The City hereby releases the United States and its officers and employees

1 from any liability whatsoever relating to the planning, design, construction, OM&R for
2 Reach 13 and Reach 27 and related facilities other than damages caused by acts of
3 negligence committed by the United States, or by employees or agents of the United
4 States, prior to the date of conveyance.

5 d) Pursuant to Section 10604(b)(6) of the Navajo Settlement Act and Article 7(l) of
6 this contract, the City recognizes that the retention of title or the conveyance of title for
7 any Project Facility will not reduce the City's obligation to repay all allocated
8 reimbursable costs, as established by the final cost allocation.

9
10 16. SEVERABILITY

11 If any provisions of the contract shall, for any reason be determined to be illegal
12 or unenforceable, the parties, nevertheless, intend that the remainder of the contract shall
13 remain in full force and effect. Furthermore, any adjustments or variations to this contract
14 necessitated by future negotiations with other Project Participants can be accomplished
15 by amending this contract.

16
17 **STANDARD ARTICLES**

18
19 17. CHARGES FOR DELINQUENT PAYMENTS

20
21 a) The City shall be subject to interest, administrative and penalty charges on
22 delinquent installments or payments. If a payment is not received by the due date, the
23 City shall pay an interest charge on the delinquent payment for each day the payment is
24 delinquent beyond the due date. If a payment becomes 60 days delinquent, the City shall
25 pay, in addition the interest charge, an administrative charge to cover additional costs of
26 billing and processing the delinquent payment. If a payment is delinquent 90 days or
27 more, the City shall pay, in addition to the interest and administrative charges, a penalty
28 charge for each day the payment is delinquent beyond the due date, based on the
29 remaining balance of the payment due at the rate of 6 percent per year. The City shall
30 also pay any fees incurred for debt collection services associated with a delinquent
31 payment.

32 b) The interest charge rate shall be the greater of either the rate prescribed quarterly
33 in the Federal Register by the Department of the Treasury for application to overdue
34 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
35 determined as of the due date and remain fixed for the duration of the delinquent period.

1 c) When a partial payment on a delinquent account is received, the amount
2 received shall be applied first to the penalty charges, second to the administrative
3 charges, third to the accrued interest, and finally to the overdue payment.
4

5 18. CITY OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT
6

7 a) The obligation of the City to pay the United States as provided in this contract is
8 an obligation of the City notwithstanding the manner in which the obligation may be
9 distributed among the City's water users and notwithstanding the default of individual
10 water users in their obligations to the City.

11 b) The payment of charges becoming due pursuant to this contract is a condition
12 precedent to receiving benefits under this contract. The United States shall not make
13 water available to the City through Project Facilities during any period in which the City
14 is in arrears in the advance payment of any operation and maintenance charges due the
15 United States or in arrears for more than 12 months in the payment of any construction
16 charges due the United States. The City shall not deliver water under the terms and
17 conditions of this contract for parties that are in arrears in the advance payment of water
18 rates or operation and maintenance charges as levied or established by the City.
19

20 19. CONFIRMATION OF CONTRACT
21

22 Promptly after the execution of this contract, the City shall provide evidence to the
23 Contracting Officer that, pursuant to the laws of the State of New Mexico, the City is a
24 legally constituted entity and the contract is lawful, valid, and binding on the City. This
25 contract shall not be binding on the United States until such evidence has been provided to
26 the Contracting Officer's satisfaction.
27

28 20. NOTICES
29

30 Any notice, demand, or request authorized or required by this contract shall be
31 deemed to have been given, on behalf of the City, when mailed, postage prepaid, or
32 delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125
33 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the
34 United States, when mailed, postage prepaid, or delivered to the City of Gallup, 110 West
35 Aztec, Gallup, New Mexico 87301. The designation of the addressee or the address may
36 be changed by notice given in the same manner as provided in this article for other
37 notices.
38

39 21. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS
40

41 The expenditure or advance of any money or the performance of any obligation of
42 the United States under this contract shall be contingent upon appropriation or allotment
43 of funds. Absence of appropriation or allotment of funds shall not relieve the City from
44 any obligations under this contract. No liability shall accrue to the United States in case
45 funds are not appropriated or allotted.
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22. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress, Resident Commissioner or official of the City shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

23. CHANGES IN CITY'S ORGANIZATION

While this contract is in effect, no change may be made in the City's organization which may affect the respective rights, obligations, privileges, and duties of either the United States or the City under this contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

24. ASSIGNMENTS LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

25. BOOKS, RECORDS AND REPORTS

The City shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the City's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

26. RULES, REGULATIONS, AND DETERMINATIONS

- a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law.
- b) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with its provisions, the laws of the United States and the State of New Mexico, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in Consultation with the City.

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27. PROTECTION OF WATER AND AIR QUALITY

a) Project Facilities used to make available and deliver water to the City shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: Provided, That the United States does not warrant the quality of the water delivered to the City and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the City.

b) The City shall comply with all applicable water and air pollution laws and regulations of the United States and the State of New Mexico; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the City; and shall 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 City facilities or project water provided by the City within the City's Project Water Service Area.

(c) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

28. WATER CONSERVATION

Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the City shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulation.

29. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the City agrees as follows:

a) The City will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The City 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, 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. The City 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.

b) The City will, in all solicitations or advertisements for employees placed by or on behalf of the City, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

c) The City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the City's commitments under Section 202 of Executive Order 11246 of

1 September 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous
2 places available to employees and applicants for employment.

3 d) The City will comply with all provisions of EO 11246, and of the rules,
4 regulations, and relevant orders of the Secretary of Labor.

5 e) The City will furnish all information and reports required by EO 11246, and by
6 the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will
7 permit access to its books, records, and accounts by the Contracting Officer and the
8 Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
9 regulations, and orders.

10 f) In the event of the City's noncompliance with the nondiscrimination clauses of
11 this contract or with any of the such rules, regulations, or orders, this contract may be
12 canceled, terminated, or suspended in whole or in part and the City may be declared
13 ineligible for further Government contracts in accordance with procedures authorized in
14 EO 11246, and such other sanctions may be imposed and remedies invoked as provided
15 in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise
16 provided by law.

17 g) The City will include the provisions of paragraphs (a) through (g) in every
18 subcontract or purchase order unless exempted by the rules, regulations, or orders of the
19 Secretary of Labor issued pursuant to Section 204 of EO 11246, so that such provisions
20 will be binding upon each subcontractor or vendor. The City will take such action with
21 respect to any subcontract or purchase order as may be directed by the Secretary of Labor
22 as a means of enforcing such provisions, including sanctions for noncompliance:
23 *Provided, however,* that in the event the City becomes involved in, or is threatened with,
24 litigation with a subcontractor or vendor as a result of such direction, the City may
25 request the United States to enter into such litigation to protect the interests of the United
26 States.

27
28 30. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

29
30 a) The City shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-
31 352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
32 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,
33 Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of
34 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.),] and any other applicable civil rights
35 laws, and with the applicable implementing regulations and any guidelines imposed by
36 the U. S. Department of the Interior and/or Bureau of Reclamation.

37 b) These statutes prohibit any person in the United States from being denied the
38 benefits of, or be otherwise subjected to discrimination under any program or activity
39 receiving financial assistance from the Bureau of Reclamation on the grounds of race,
40 floor, national origin, disability, or age. By executing this contract, the City agrees to
41 immediately take any measures necessary to implement this obligation, including
42 permitting officials of the United States to inspect premises, programs and documents.

43 c) The City makes this agreement in consideration of and for the purpose of
44 obtaining any and all Federal grants, loans, contracts, property discounts or other Federal
45 financial assistance extended after the date hereof to the City by the Bureau of
46 Reclamation, including installment payments after such date on account of arrangements

1 for Federal financial assistance which were approved before such date. The City
2 recognizes and agrees that such Federal assistance will be extended in reliance on the
3 representations and agreements made in this article and that the United States reserves the
4 right to seek judicial enforcement thereof.

5 d) Complaints of discrimination against the Contractor shall be investigated by the
6 Contracting Officer's Office of Civil Rights.

7
8 31. MEDIUM FOR TRANSMITTING PAYMENTS

9
10 a) All payments from the City to the United States under this contract shall be by
11 the medium requested by the United States on or before the date payment is due. The
12 required method of payment may include checks, wire transfers, or other types of
13 payment specified by the United States.

14 b) Upon examination of the contract, the City shall furnish the Contracting Officer
15 with the City's taxpayer's identification number (TIN). The purpose for requiring the
16 City's TIN is for collecting and reporting any delinquent amounts arising out of the
17 City's relationship with the United States.

18
19 32. CONTRACT DRAFTING CONSIDERATIONS

20
21 This Contract has been, negotiated and reviewed by the parties hereto, each of whom
22 is sophisticated in the matters to which this Contract pertains. Articles 1 through 15 of this
23 Contract have been drafted, negotiated, and reviewed by the parties, and no one party
24 shall be considered to have drafted the stated articles.

25
26 33. CONSTRAINTS ON AVAILABILITY OF WATER

27
28 a) In its operation of the Project, the Contracting Officer will use all reasonable
29 means to guard against a condition of shortage in the quantity of water to be made
30 available to the City pursuant to this Contract. In the event the Contracting Officer
31 determines that a condition of shortage appears probable, the Contracting Officer will
32 notify the City of said determination as soon as practicable.

33 b) If there is a condition of shortage because of errors in physical operations of the
34 Project, drought, other physical causes beyond the control of the Contracting Officer or
35 actions taken by the Contracting Officer to meet current and future legal obligations, then
36 no liability shall accrue against the United States or any of its officers, agents, or
37 employees for any damage, direct or indirect, arising therefrom.

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

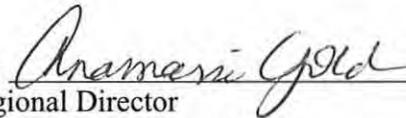
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Asto legal sufficiency



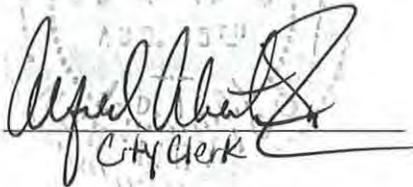
Solicitor's Office

THE UNITED STATES OF AMERICA

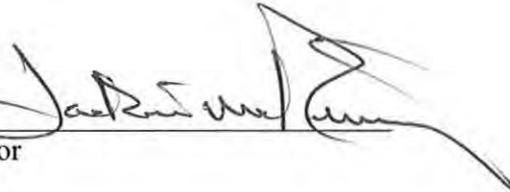
By: 

Regional Director
Upper Colorado Region
Bureau of Reclamation

Attest:


City Clerk

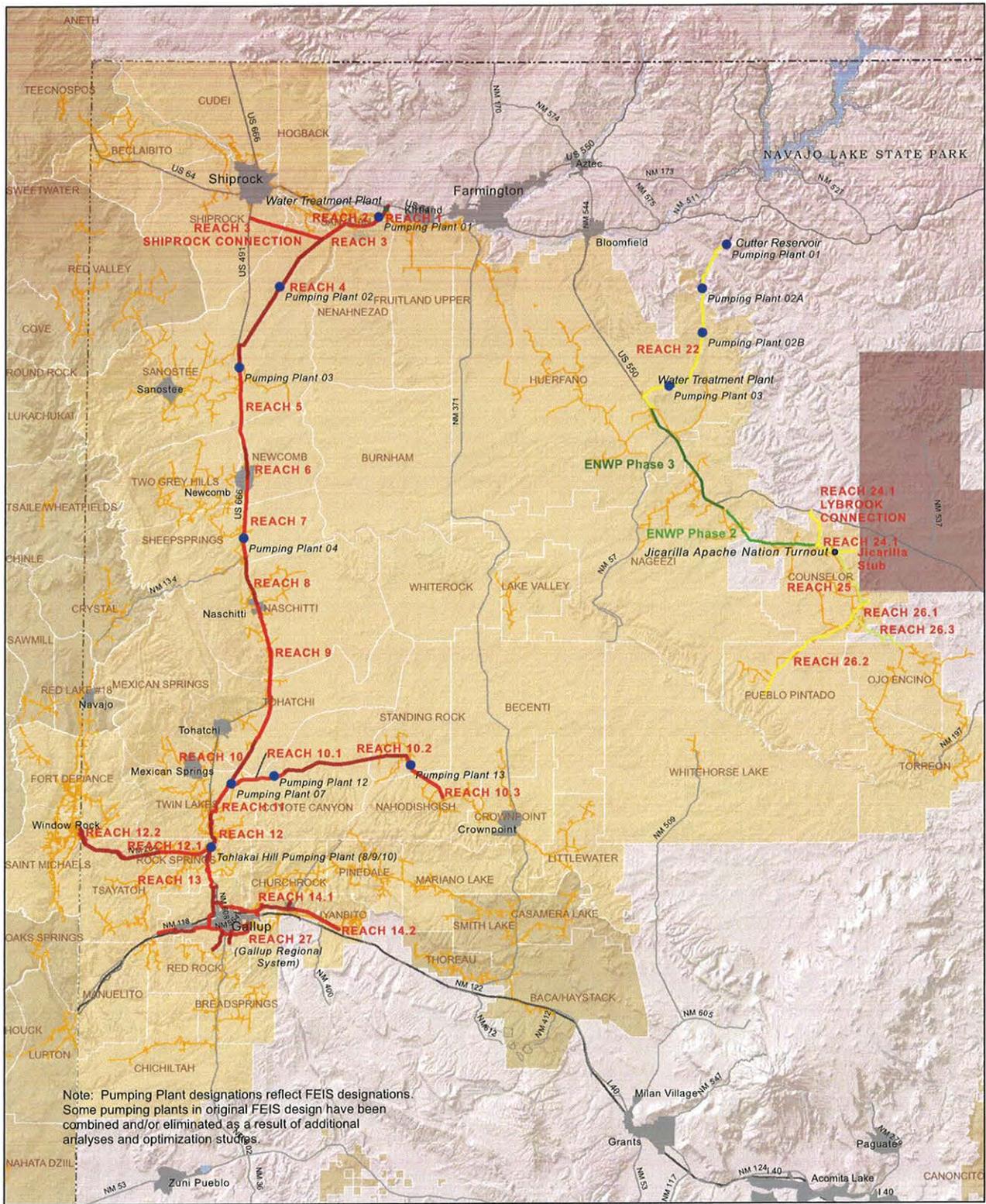
CITY OF GALLUP, NEW MEXICO

By: 

Mayor

- List of Attachments: Exhibit A: Project Map
Exhibit B: Environmental Commitments
Exhibit C: Agreement on Methodology Regarding Application of
New Mexico Cost-Share to Cost Allocation and Repayment
Exhibit D: Right of Capacity Agreement

EXHIBIT A
NAVAJO-GALLUP WATER SUPPLY PROJECT
PROJECT MAP

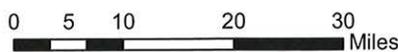


Note: Pumping Plant designations reflect FEIS designations. Some pumping plants in original FEIS design have been combined and/or eliminated as a result of additional analyses and optimization studies.

Navajo Gallup Water Supply Project

- Legend**
- Pumping Plants
 - Water Treatment Plant
 - Cutter Lateral
 - San Juan Lateral
 - Interstate
 - State Highway
 - US Highway
 - NTUA Line
 - Navajo Nation Non-Served Chapters
 - Navajo Nation Served Chapters
 - Jicarilla Apache Nation

RECLAMATION
Managing Water for the West



1695-529-537
Date: 12/6/2011

EXHIBIT B

NAVAJO-GALLUP WATER SUPPLY PROJECT

ENVIRONMENTAL COMMITMENTS



Chapter VI

ENVIRONMENTAL COMMITMENTS AND MITIGATION MEASURES

Introduction
General Commitments

INTRODUCTION

This chapter discusses the environmental and related commitments that have been made by the Bureau of Reclamation (Reclamation) during the development of the San Juan River Public Service Company of New Mexico (SJRPNM) Alternative (Reclamation's preferred alternative). Reclamation would share responsibility of implementing measures that would avoid or reduce potential environmental impacts of the Navajo-Gallup Water Supply Project (proposed project). This responsibility would be shared with other Federal agencies, the Navajo and Jicarilla Apache Nations, and the city of Gallup, as well as third-party entities that could include New Mexico and Arizona State agencies and local governments.

This chapter summarizes the commitments made during the planning process and incorporated into the proposed project plan. Commitments are discussed in chapter IV, and mitigation measures are proposed in chapter V to reduce or avoid impacts that would otherwise occur as a result of the implementation of the preferred alternative.

As described below, the commitments would be implemented by Reclamation, or Reclamation would require their implementation by construction contractors or management authorities. Commitments for pre-construction activities would generally be completed by Reclamation or by the contractors during the final design process and prior to construction activities. Wildlife, wetland, cultural resource, and other mitigation would be completed by Reclamation as described in the following paragraphs. Some commitments, such as monitoring, would continue beyond completion of construction of structural facilities.

GENERAL COMMITMENTS

Throughout the planning process for the proposed project, efforts have been made to avoid impacts where practicable. If avoidance was not possible, then mitigation

measures have been developed to reduce the level of impact. The proposed mitigation measures for each resource, if appropriate, were discussed in chapter V, and key measures are summarized here. In addition to specific mitigation measures identified in chapter V, other management practices would be employed during construction activities to minimize environmental effects and would be included in construction specifications. Many of these measures are required in order to comply with Federal, State, or local laws and regulations, regardless of whether they are specifically identified in this document. Reclamation would comply with all relevant Federal, State, and local laws, ordinances, regulations, and standards during the implementation of the preferred alternative. Reclamation would prepare and implement an environmental commitments plan for the proposed project to document and track the completion of the environmental commitments.

Navajo Reservoir Operations

Reclamation would be able to issue water service contracts to meet project demands from Navajo Reservoir now that a successful hydrologic determination was signed. At full San Juan River Basin (Basin) development, depletions would increase by 5,270 acre-feet from the Basin over the baseline presented in chapter V, table V-3.

Releases would be similar to those described in the *Navajo Reservoir Operations Final Environmental Impact Statement, Navajo Unit – San Juan River, New Mexico, Colorado, Utah* (Reclamation, 2006) to meet the San Juan River Flow Recommendations; however, additional flows would be released from Navajo Reservoir downstream when needed to meet project demands at the SJRPNM intake structure. The demands for the Cutter Lateral portion of the proposed project would be delivered from Navajo Reservoir through the existing Navajo Indian Irrigation Project (NIIP) intake structure in Navajo Reservoir.

Water Uses and Resources Commitments

Until depletions in the Basin reach the baseline depletion in table V-3 plus the 5,270 acre-feet added to the baseline for this project, the San Juan River Basin Recovery Implementation Program (SJRBRIP) Flow Recommendations can be met or only missed less than 0.01 percent of the time for only one category. When the total depletions reached this new baseline depletion, the Navajo Nation would reduce an amount from one or more projects that are presently in the baseline to ensure that the total depletions in the Basin remain below the baseline depletions (Navajo Depletion Guarantee).

Navajo Depletion Guarantee

The Navajo Depletion Guarantee is a commitment by the Navajo Nation which ensures that depletions for its uses under the proposed project will be offset by unused Navajo Nation depletions included in the San Juan River Basin, including forbearance of Navajo Nation uses on NIIP and/or Hogback and Fruitland Irrigation Projects as necessary, if and when required to keep the total depletions in the Basin from exceeding the following threshold (referred to as the depletion threshold):

The sum of the actual annual depletions from all uses listed in the hydrologic baseline shown in table V-3 (excluding San Juan-Chama Project exportation) and all Navajo-Gallup Water Supply Project uses equals a total depletion amount of 752,127 acre-feet per year (AFY).¹

Full proposed project depletions of 35,893 AFY would be made without requiring any forbearance of uses in excess of the 6,740 acre-feet of change in use baseline depletions shown in tables V-5 and VI-1. The city of Gallup may subcontract with either the Jicarilla Apache Nation or the Navajo Nation, or both in combination, for the diversion of up to 7,500 acre-feet of water per year from the Navajo Reservoir supply for its proposed project uses (depicted in table VI-1 as scenario 1 and scenario 2).

Depletions by the San Juan-Chama Project and other projects that may be added to the hydrologic baseline (table V-3) after the U.S. Fish and Wildlife Service's (Service) issuance of the Final Biological Opinion for the Navajo-Gallup Water Supply Project (volume II, appendix C, part III) would not be used when comparing actual future depletions against the 752,127 AFY depletion threshold.

If the threshold depletion is reached in the future, the Navajo Nation would reduce its total depletion in the Basin so that its consumptive uses under the proposed project do not cause the total actual depletions in the Basin to exceed the threshold depletions. The Navajo Nation could accomplish the required reductions in use by changes in the operation of any of the Navajo Nation's projects that deplete water from the San Juan River. The maximum Navajo Depletion Guarantee requirement in any year is a reduction in Navajo Nation depletions of 20,782 acre-feet.

When the depletion threshold condition is reached and the Navajo Depletion Guarantee must be implemented, the quantification of the threshold depletion amount will be recalculated using the baseline uses identified in table V-3 that are estimated in the most recent San Juan Hydrology Model. Changes in the Flow Recommendations for the San Juan River or the status of listed species may result in reduction or removal of the

¹ The total includes 854,370 AFY for all depletions in the hydrologic baseline, less 107,514 AFY average depletion by the San Juan-Chama Project, plus 5,271 AFY of new depletions included in the proposed project.

Table VI-1.—Summary depletions for full proposed project development

Water provider	Change in use of baseline depletion (changed used) (acre-feet)	New depletions (approved in excess of baseline) (acre-feet)	Met within total threshold depletion for Navajo Depletion Guarantee (acre-feet)	Total (acre-feet)
Scenario 1 – City of Gallup subcontract with the Jicarilla Apache Nation				
Jicarilla Apache Nation	¹ 6,740	² 1,960	0	8,700
Navajo Nation	0	6,411	20,782	27,193
Proposed project total	6,740	8,371	20,782	35,893
Total reduced for 3,100 acre-feet NIIP returns		³ 5,271		
Scenario 2 – City of Gallup subcontract with the Navajo Nation				
Jicarilla Apache Nation	⁴ 1,200	0	0	1,200
Navajo Nation	⁵ 5,540	8,371	20,782	34,693
Proposed project total	6,470	8,371	20,782	35,893
Total reduced for 3,100 acre-feet NIIP returns		³ 5,271		

¹ Includes forbearance by the Jicarilla Apache Nation of 6,750 AFY of consumptive use on the Jicarilla Apache Nation Navajo River Water Supply Project (JANNRWSP) and 170 acre-feet of consumptive use under Jicarilla water rights for historic uses.

² The Final Biological Opinion for the Navajo-Gallup Water Supply Project does not establish any right in the Jicarilla Apache Nation to retain approval for 1,960 AFY of new depletions in excess of the baseline depletions listed in table V-3 should this amount of Jicarilla water rights, over and above the change in use of 6,750 acre-feet of baseline depletion, not be required for the proposed project due to the city of Gallup subcontracting with the Navajo Nation, as shown in scenario 2.

³ By the time the Navajo Nation's water demands under the proposed project reach the full 27,193 acre-feet of depletion, the return flows from the NIIP to the San Juan River are anticipated to have increased by approximately 3,100 AFY, on average, over and above the current rate of return flow from the NIIP. This increase in return flows from the NIIP offsets an equivalent amount of new depletion by the proposed project and reduces the net new depletion from the river in the proposed project's biological opinion from 8,371 AFY to 5,271 AFY.

⁴ Includes a forbearance by the Jicarilla Apache Nation of 1,200 AFY of consumptive use on the JANNRWSP.

⁵ Includes forbearance by the Navajo Nation of 5,540 AFY of consumptive use on the NIIP or other Navajo projects for which depletions are in the baseline.

Navajo Depletion Guarantee based upon reconsultation. Additional information regarding the Navajo Depletion Guarantee is included in volume II, appendix C, part III (final biological opinion).

Monitoring Requirements.—No specific, detailed accounting of depletions will be required unless the sum of NIIP and Animas-La Plata Project (ALP) depletions reaches 290,000 acre-feet (table V-5). Since these projects are more easily tracked than depletions in the entire Basin, it will limit monitoring requirements. If this condition is met, all the depletions listed in the baseline for the proposed project will be monitored and reported on a 5-year cycle to coincide with the Reclamation Consumptive Use and Loss report. Depletions will be reported by the categories listed in the hydrologic baseline shown in table V-5 and the total computed. As discussed above, San Juan-Chama Project depletions will be removed for comparison to the Navajo Depletion Guarantee threshold depletion.

If the sum of these depletions reaches the depletion guarantee threshold, the elements of the Navajo Depletion Guarantee will be implemented. At that point, modeling will be completed for the limits the Navajo Nation proposes putting in place to meet flow conditions specified in the biological assessment.

Responsibilities.—

San Juan River Basin Recovery Implementation Program.—The SJRBRIP Hydrology Committee will be responsible for reviewing the accounting of depletions. The committee will also ensure that the San Juan River Basin Hydrology Model is implemented for compliance with the Flow Recommendations as specified in the proposed project's biological assessment. The biological assessment contains limits identified by the Navajo Nation at the time the Navajo Depletion Guarantee is implemented.

Reclamation.—Reclamation will identify the point at which ALP and NIIP annual depletions reach 290,000 acre-feet. If that target depletion is reached, Reclamation will initiate reporting of depletions for the categories listed in the hydrologic baseline for the proposed project (table V-5) on a 5-year cycle as a part of the consumptive use and loss reporting procedure. As a result of the monitoring, Reclamation will identify the point at which the sum of actual uses reaches the Navajo Depletion Guarantee threshold. If this level of depletion is reached, Reclamation will limit deliveries to Navajo projects, as directed by the Navajo Nation, to levels required by implementation of the Navajo Depletion Guarantee. In the event that the SJRBRIP terminates, Reclamation will assume the responsibilities listed above for the SJRBRIP.

Navajo Nation.—The Navajo Nation will limit uses as specified in the Navajo Depletion Guarantee if the conditions stated above are reached and provide to the SJRBRIP and Reclamation the projects it wishes limited.

Conditions.—None of the actions and conditions listed herein shall limit the ability of Reclamation to reinitiate consultation on the proposed project to increase its baseline depletion or alter the requirements of the Navajo Depletion Guarantee.

Reclamation will notify the SJRBRIP and the States of New Mexico and Colorado of any such requests to reinitiate consultation on the proposed project. Any reconsultations on the proposed project will be performed in conformance with the SJRBRIP’s Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin that is described in the SJRBRIP’s Program Document, Appendix C, dated September 7, 2006, as may be modified by the SJRBRIP and the Service.

The depletion levels discussed are conditioned upon current estimates of natural flow and baseline depletions for 1929–93 and are subject to change as hydrology or models are updated. If such updates occur, a newly computed Navajo Depletion Guarantee shall be computed and utilized based upon the same depletion categories as described herein.

Indian Trust Assets Commitments

There are no mitigation measures proposed for Indian Trust Assets. One of the goals of the SJRBRIP is to “. . . proceed with water development in the Basin in compliance with federal and state water law, interstate compacts, Supreme Court decrees, and federal trust responsibilities to the Southern Utes, Ute Mountain Utes, Jicarillas, and the Navajos.” (SJRBRIP, 1995).

Water Quality Commitments

Reclamation would develop and implement a program to reduce, minimize, or eliminate temporary, short-term increases in suspended sediment loading or other water quality constituents potentially caused by project construction through the incorporation of permits, Best Management Practices (BMPs), and sediment control structures as described under mitigation measures for water quality in chapter V.

Vegetation Commitments

Reclamation would:

- Ensure that construction contractors limit ground disturbance to the smallest feasible areas and that they implement BMPs along with the planting or reseeding of disturbed areas using native plants to assist in the re-establishment of native vegetation as described under mitigation measures for vegetation resources in chapter V.
- Use accepted erosion control measures during construction, supplement grass seeding with native shrub seed in upland areas where shrub cover is diminished due to pipeline disturbance, monitor planting to ensure establishment, and control noxious weeds in disturbed areas.
- Replace riparian and wetland habitat with the creation of acre-per-acre replacement or enhancement of 3 acres for each acre lost to mitigate for impacts to riparian and wetland habitat. This includes revegetation of 17 acres of non-native riparian (Russian olive and tamarisk) and 3.6 acres of wetland temporarily removed during pipeline construction. Approximately 0.9 acre of non-native riparian and 1.1 acres of wetlands would be permanently removed for project features.

Wildlife Commitments

Reclamation would:

- Ensure that construction contractors limit ground disturbance to the smallest feasible areas and that they implement BMPs along with the planning or reseeding of disturbed areas using native plant species to assist in the re-establishment of native vegetation as described under mitigation measures for vegetation resources in chapter V.
- To minimize disturbance to raptors, major construction activities along the Nutria and Defiance Monoclines, Cutter Canyon, Blanco Canyon, and the corridor from Cutter to Largo Canyons should be restricted during the nesting season (January 15 to August 15). If that is not possible, extensive nest searches should be made up to three-quarters of a mile of proposed activities immediately prior to construction and active nests avoided.

- Conduct extensive nest searches within one-quarter mile of proposed activities immediately prior to construction and avoid active nests if construction activities could not be scheduled outside the January 15 to July 15 timeframe.
- Incorporate raptor perch guards or raptor safe configurations on all new transmission structures.
- Avoid removal of riparian and wetland vegetation between March 15 and August 15 to avoid potential impacts to migratory bird nesting.
- Trench and bury pipeline concurrently to minimize trapping of small wildlife as possible. Reclamation would construct escape ramps for trenches left open overnight.

Aquatic Resources Commitments

The SJRBRIP would monitor and report total depletions in the Basin as described previously in the “Water Uses and Resources Commitments” section. The Navajo Nation would implement a Navajo Depletion Guarantee when needed to keep the Navajo Nation’s depletions within the Endangered Species Act depletion baseline. Reclamation would also incorporate BMPs, as previously described in the “Water Quality Commitments” section, to avoid or minimize project impacts to aquatic resources.

Special Status Species Commitments

Reclamation would:

- Implement conservation measures found in the final biological opinion on the proposed project (see appendix C, part III). These measures address the Colorado pikeminnow, razorback sucker, Southwestern willow flycatcher, and Mesa Verde cactus.
- Implement conservation measures for Navajo Nation listed species as described under “Special Status Species – Mitigation Measures” in chapter V.
- Conduct surveys for ferruginous hawk and bald eagle in proposed construction areas 1 year in advance of construction for pipeline routes and construction sites not adjacent to highways, well-traveled roads, or areas of regular human activity.

- Implement appropriate protective measures to avoid or minimize nest disturbance if active nests were found.
- Conduct surveys for Southwestern willow flycatcher in riparian and wetland habitat prior to construction within one-quarter mile of disturbed areas and avoid construction activities during the nesting season (March 15 to August 15) if active nesting is found.
- Delineate and avoid beautiful gila plants where possible.
- Refine the pipeline alignment to avoid individual Mesa Verde cactus and suitable habitat where possible.

Reasonable and prudent measures (RPMs) for Colorado pikeminnow and razorback sucker included in the final biological opinion are not included as environmental commitments. RPMs are measures to reduce incidental take of threatened or endangered species and are described as terms and conditions. The terms and conditions are nondiscretionary actions required by the action agency and are not included as mitigation measures.

Recreation Commitments

No environmental commitments are made for recreation resources.

Land Use Commitments

Reclamation would:

- Ensure that construction contractors limited ground disturbance to the smallest feasible area and that they implemented BMPs along with the planting or reseeded of disturbed areas to minimize impacts to existing land uses as previously described in the “Vegetation Commitments” section.
- Ensure that construction contractors fenced revegetated areas to prevent grazing activities until disturbed areas became re-established.
- Work with the Navajo Nation to provide temporary relocation assistance to affected livestock owners along the pipeline corridor.
- Provide relocation assistance to affected residences displaced by construction of the San Juan River water treatment facility.

Hazardous Materials Commitments

Reclamation would contact pipeline and gas well companies prior to construction activities to identify and avoid existing hazards. Pipeline alignments would be adjusted, as needed, to avoid impacts to pipelines and wells.

Soils Commitments

Reclamation would mandate that construction contractors use and implement measures contained in erosion control guidelines and BMPs to control soil erosion from construction areas as described under mitigation measures for soils in chapter V.

Geology Commitments

No environmental commitments are made for geologic resources.

Paleontologic Commitments

During construction activities, Reclamation would monitor areas with exposure of geological units or settings that indicated a high likelihood of yielding vertebrate fossils or noteworthy occurrences of invertebrate or plant fossils. In the event of discovery, Reclamation would evaluate the significance before construction could continue.

Reclamation would manage, on a case-by-case basis, construction activities adjacent to the Lynbrook and Betonnie Tsosie Fossil Areas. Reclamation would conduct paleontologic clearances prior to any surface-disturbing activities along the pipeline corridor in the Lynbrook and Betonnie Tsosie Fossil Areas.

Air Quality and Noise Commitments

Reclamation would require that construction contractors implement measures to control fugitive dust during construction as described under mitigation measures for air quality and noise in chapter V. No environmental commitments are made for noise abatement.

Socioeconomics Commitments

No environmental commitments are made for socioeconomic resources.

Environmental Justice Commitments

No environmental commitments are made for environmental justice.

Cultural Resources Commitments

Reclamation would:

- Implement a program to compensate for losses of archaeological sites that would occur as a result of construction and operation of the proposed project and the construction of conveyances as defined in the mitigation measures for cultural resources in chapter V.
- Coordinate the program with the New Mexico State Historic Preservation Officer, Navajo Nation Tribal Historic Preservation Officer, Bureau of Land Management, Bureau of Indian Affairs, city of Gallup, and the Advisory Council on Historic Preservation.
- Ensure compliance with mitigation measures developed in accordance with the Native American Graves Protection and Repatriation Act and Executive Order 13007 as described under “Cultural Resources – Mitigation Measures” in chapter V.

EXHIBIT C

NAVAJO-GALLUP WATER SUPPLY PROJECT

**AGREEMENT ON METHODOLOGY REGARDING
APPLICATION OF NEW MEXICO COST-SHARE TO COST
ALLOCATION AND REPAYMENT**



United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Region
Four Corners Construction Office
2200 Bloomfield Highway
Farmington, NM 87401-8110

IN REPLY REFER TO:

FCCO-110
WTR-4.00

DEC 01 2011

Honorable Jackie McKinney
Mayor of Gallup
P.O. Box 1270
Gallup, NM 87305

Subject: Agreement on Methodology Regarding Application of New Mexico Cost-Share to Cost Allocation and Repayment, Navajo-Gallup Water Supply Project

Dear Mayor McKinney:

Enclosed for your records is a copy of the final signed subject agreement. The agreement acknowledges consultation occurred and allows the Bureau of Reclamation to begin implementation of the methodology described in the agreement for applying and allocating costs associated with the State of New Mexico's cost-share requirement.

To further memorialize this agreement, this letter, along with the enclosed signed agreement, will be included in your repayment contract as an exhibit.

We appreciate all of your efforts in approving this agreement.

If you have any questions, please contact Pat Page at 505-324-5027.

Sincerely,

ACTING FOR


Barry Longwell
Construction Engineer

In Duplicate

Enclosure

Identical Letter Sent To:

Honorable Mr. Levi Pesata
President, Jicarilla Apache Nation
P.O. Box 507
Dulce, NM 87528-0507

cc: See Next Page

cc: Mr. Lance Allgood
Executive Director
Gallup Joint Utilities
P.O. Box 1270
Gallup, NM 87305-1270

Mr. Herb Becker, Jicarilla Apache Nation
JA Associates of NM, LLC
2309 Renard Place, SE, Suite 200
Albuquerque, NM 87106
(w/encl to ea)



United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Region
Four Corners Construction Office
2200 Bloomfield Highway
Farmington, New Mexico 87401-8110

IN REPLY REFER TO:

FCCO-110
~~WTR-4-00~~
FIN-6.20

SEP 27 2011

FIN-6-20 (WSP)
Nm Cost Share

OFFICIAL FILE COPY		
DATE	SURNAME	CODE
		100
9/27	SP	110
9/27/11	Butte	101
CONTROL No.: 11074368		
FOLDER ID: 1155871-0		

*1509292011-01
Restoration Development Project

Honorable Jackie McKinney
Mayor of Gallup
P.O. Box 1270
Gallup, NM 87305

Subject: Methodology Regarding Application of New Mexico Cost-Share to Cost Allocation and Repayment, Navajo-Gallup Water Supply Project (NGWSP), New Mexico

Dear Mayor McKinney:

Public Law 111-11 authorized the Secretary of the Interior to design, construct, operate, and maintain the Navajo-Gallup Water Supply Project (NGWSP). In addition, the legislation (Section 10602 (d)(1)(D)) requires that the Secretary of the Interior and the State of New Mexico enter into an agreement "... under which the State of New Mexico will provide a share of the Project construction costs of not less than \$50,000,000, except that the State of New Mexico shall receive credit for funds the State has contributed to construct water conveyance facilities to the Project Participants to the extent that the facilities reduce the cost of the Project as estimated in the Draft Impact Statement."

The purpose of this document is to record and acknowledge the decision made by the Bureau of Reclamation, after consultation with the Jicarilla Apache Nation and the City of Gallup, regarding the application of the State's cost-share contribution of not less than \$50,000,000 towards NGWSP costs and how the State's cost-share would be applied towards the repayment obligations of those NGWSP Participants who have a repayment obligation.

Application Methodology

- A. Cost-Share Obligated Amount (a.k.a. credit) which refers to monies provided directly to NGWSP Participants - Navajo Nation, Jicarilla Apache Nation, and City of Gallup)
- The determination of allowable credit shall be made pursuant to Paragraph 2 of the Cost-Share Agreement between the United States and the State of New Mexico, dated June 27, 2011 (CostShare Agreement). Once the determination of allowable credit has been made, the credit shall be applied to those reaches or features that were constructed and the corresponding costs of those applicable reaches or features in the NGWSP Construction Cost Estimate (CCE) shall be reduced by the amount of the approved credit. The remaining NGWSP costs (if any) of those reaches or features shall then be allocated to each NGWSP Participant following the Use of Facilities Methodology, and the repayment obligations on those allocated costs will take into account the repayment Participants' Ability to Pay percentage. If there are no remaining costs, then no costs would be allocated to the NGWSP Participants.

B. Cost-Share Balance (monies provided directly to Reclamation)

The balance of the cost-share obligation of the State of New Mexico (i.e., the total amount of cost-share provided by New Mexico minus the amount of credit allowed) shall be provided by the State pursuant to Paragraph 3 of the Cost-Share Agreement. The cost-share balance shall be applied to the remaining NGWSP costs (as is stated in Part A above) and be allocated to each NGWSP Participant following the Use of Facilities Methodology, and taking into account the repayment Participants' Ability to Pay percentage.

The Fiscal Year 2012 Interim Cost Allocation (October 2011 price level) incorporated the methodology described above using estimated New Mexico Cost-Share obligations. The Cost and Repayment Summary page from the Fiscal Year 2012 Interim Cost Allocation is enclosed.

Conclusion and Signature

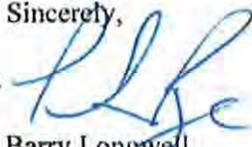
The repayment Participants' signatures on the enclosed signature sheets acknowledge that: 1) Reclamation has consulted with them regarding the substance of this memorandum, 2) Reclamation will implement the methodologies for applying the New Mexico Cost-Share contributions to the NGWSP CCE identified in this memorandum, and 3) without waiving any of their rights under statute or their repayment contracts, they will not object to Reclamation implementing the methodologies identified in this memorandum. Finally, the repaying Participants acknowledge that, pursuant to Section 10604 of Public Law 111-11, each entity's repayment obligation shall be subject to the final cost allocation.

If you concur, please sign the appropriate signature sheet and transmit the signed original to this office, Attention: Pat Page, Deputy Construction Engineer.

If you have any questions, please contact Pat Page at 505-324-5027.

Sincerely,

ACTING FOR



Barry Longwell
Construction Engineer

In Duplicate

Enclosure

Identical Letter Sent To:

Honorable Mr. Levi Pesata
President, Jicarilla Apache Nation
P.O. Box 507
Dulce, NM 87528-0507

cc: Mr. Lance Allgood
Executive Director
Gallup Joint Utilities
P.O. Box 1270
Gallup, NM 87305-1270

cc: See Next Page

cc: Continue From Previous Page

Mr. Herb Becker, Jicarilla Apache Nation
JA Associates of NM, LLC
2309 Renard Place, SE, Suite 200
Albuquerque, NM 87106
(w/encl to ea)

bc: UC-446, FCCD-5000 (Ehat), WCD-RChristianson
(w/encl to ea)

WBR:PPage:bfox:09/14/2011

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to Sponsors - NM CostShare Methodolgy_rvsd 6-6-2011.docx

**Navajo-Gallup Water Supply Project
Cost and Repayment Summary**

October 2011 Price Level (FY2012)

<u>Construction Cost Summary</u>	<u>Cultural Resources</u>	<u>Mitigation</u>	<u>San Juan Lateral</u>	<u>Cutter Lateral</u>	<u>Reach 27</u>	<u>Total</u>	<u>Allocation to Navajo Nation</u>	<u>Allocation to City of Gallup</u>	<u>Allocation to Jicarilla Nation</u>
Total Cost	35,766,032	6,202,202	723,159,538	172,005,955	57,723,831	994,857,558			
Less NM Cost Share - Obligated Amount 1/			3,981,569	18,423,494	8,387,518	30,792,581			
Remaining Federal Cost			719,177,969	153,582,461	49,336,313	922,096,743	736,904,338	155,202,322	29,990,083
Less NM Cost Share - Remaining Balance			14,980,589	3,199,147	1,027,683	19,207,419	15,341,684	3,241,037	624,698
Federal Cost			704,197,380	150,383,315	48,308,630	902,889,325	721,562,655	151,961,285	29,365,385
New Mexico Cost Share Totals			18,962,158	21,622,641	9,415,201	50,000,000			
Repayment Summary									
Allocation of Remaining Federal Cost			719,177,969	153,582,461	49,336,313	922,096,743	736,904,338	155,202,322	29,990,083
Allocated Cost to United States						857,279,401	736,904,338	100,881,509	19,493,554
Less NM Cost Share - Remaining Balance - US Allocation						17,854,412	15,341,684	2,106,674	406,054
Responsibility to the United States						839,424,990	721,562,655	98,774,835	19,087,500
Allocated Cost to be Repaid by Participant (35%) 2/								54,320,813	10,496,529
Less NM Cost Share - Remaining Balance - Participant Allocation								1,134,363	218,644
Participant Construction Cost Obligation								\$53,186,452	\$10,277,885
								+	+
Interest During Construction (IDC) 3/ 4/								\$21,113,482	\$6,997,176
Participant Investment Cost Obligation								\$74,299,934	\$17,275,061

1/ Based upon estimations from preliminary submittals from State; final amount dependent upon Reclamation approval.

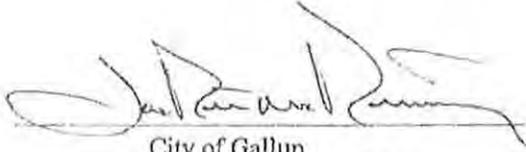
2/ The actual percentage will be no less than 25% and no more than 35%, based upon ability to pay.

3/ All IDC estimates are based upon total project completion in the year 2025.

4/ IDC rate based on FY2010 Planning Rate.

**Methodology Regarding Application of New Mexico Cost-Share to Cost Allocation and
Repayment, Navajo-Gallup Water Supply Project**

Signature Sheet



City of Gallup
Jackie McKinney, Mayor

11/28/11

Date

**Methodology Regarding Application of New Mexico Cost-Share to Cost Allocation and
Repayment, Navajo-Gallup Water Supply Project**

Signature Sheet



Jicarilla Apache Nation

10/14/11

Date

EXHIBIT D

NAVAJO-GALLUP WATER SUPPLY PROJECT

RIGHT OF CAPACITY AGREEMENT



United States Department of the Interior

BUREAU OF RECLAMATION
Upper Colorado Regional Office
125 South State Street, Room 6107
Salt Lake City, UT 84138-1102

IN REPLY REFER TO:
UC-430
WTR-4.00

SEP 27 2011

Mr. Lance Allgood
Executive Director
City of Gallup
P.O. Box 1270
Gallup, NM 87305-1270

Subject: Contract No. 11-WC-40-437 Between the United States and the City of Gallup for
Right of Capacity in Reaches 13 and 27, Contract, Navajo-Gallup Water Supply
Project, New Mexico

Dear Mr. Allgood:

We received two signed originals of the subject contract you sent with your letter of September 8, 2011. After review by my staff and the Office of the Solicitor, the contract has been signed and is therefore in full force and effect.

We are transmitting one signed original of this contract to you for your use and one signed original is being sent to the official documentary files by copy of this memorandum.

If you have any questions, please contact Mr. Pat Page in the Four Corners Construction Office at 505-324-5027.

Sincerely,

for **ANAMARIE GOLD**

Larry Walkoviak
Regional Director

Enclosure

bc: FCCD-110 (w/encl)
Documentary File (w/original)
Indispensable File (w/encl)

WBR:MWilson:abaker;jjacobson:9/27/2011:801-524-3709
T:\WRG\Malcolm\Contract City of Gallup 9-8-11.docx

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

NAVAJO GALLUP WATER SUPPLY PROJECT, NEW MEXICO-ARIZONA

CONTRACT BETWEEN THE UNITED STATES AND
THE CITY OF GALLUP, NEW MEXICO
FOR RIGHT OF CAPACITY IN REACHES 13 AND 27

THIS RIGHT OF CAPACITY AGREEMENT hereinafter referred to as the Agreement, is made this 27th day of September, 2011, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplemental thereto, and particularly pursuant to the Act of Congress approved December 15, 1971 (85 Stat. 664) between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the Regional Director, Upper Colorado Region, Bureau of Reclamation; hereinafter referred to as Reclamation, and the CITY OF GALLUP; hereinafter referred to as the City. The Act of Congress approved December 15, 1971 authorized the planning and investigation of the Navajo-Gallup Water Supply Project (Project). Subsequently, the construction, operation, and maintenance of the Project was authorized by the Northwestern New Mexico Rural Water Projects Act of March 30, 2009 (123 Stat. 1367), and the United States has investigated, planned, and is preparing to construct said Project for the diversion and distribution of the waters of the San Juan River, which Project has among its authorized purposes the furnishing of water for municipal, industrial, commercial, domestic, and stock watering purposes. The water rights settlement purposes of the Project were authorized by the Northwest New Mexico Rural Water Projects Act of March 30, 2009 (hereafter referred to as the Navajo Settlement Act).

The Navajo Settlement Act authorizes the design and construction of the Navajo Gallup Water Supply Project, hereinafter referred to as the Project. Project facilities pertaining to this agreement include those for Reaches 13 and 27 extending from near Yah-ta-hey Junction throughout the City and ending at various Navajo Nation storage locations (known as Reach 14).

WITNESSETH:

WHEREAS, Reclamation has been authorized by Congress to construct and operate the Navajo Gallup Water Supply Project pursuant to the Navajo Settlement Act.

- a) The Gallup Regional System, also known as Reach 27 for Project identification purposes, means all Project facilities starting at the end of Reach 13 and ending at the beginning of Reach 14. The term Reach 27 will be used to describe the Gallup Regional System in this document.
- b) Reach 13 means all Project facilities starting at the end of Reach 12 and ending at the beginning of Reach 27. The final determination of the actual facilities that are included in Reach 13 will be made during the final design process for that reach.
- c) Reach 13 and Reach 27 when referred to together mean all Project Facilities conveying water from the end of Reach 12, located near the north line of Section 17, T16N, R18W, to the beginning of Reach 14. The City will have construction responsibility and ownership of Reach 13 and Reach 27.
- d) Reach 13 and Reach 27 shall have the capacity to deliver 7,500 acre-feet/year (AF/yr) to the City of Gallup and 4,647 AF/yr to the Navajo communities in Reach 14 with a 13.47 cubic feet per second (cfs) peak demand for the City of Gallup and an 8.34 cfs peak demand for the Navajo communities in Reach 14.

- e) Reach 14 means all Project facilities beginning at the end of Reach 27 which serve the following Navajo communities: Church Rock/Iyanbito, Mariano Lake/Pinedale, Red Rock/Chichiltah/Bréadsprings, and Manuelito. Reach 14 will be constructed by others and is not the subject of this agreement.

WHEREAS, the Navajo Settlement Act, authorized Reclamation to construct facilities and a water line known as Reaches 13 and 27.

WHEREAS, the overall pipeline authorized under the Navajo Settlement Act is known as the Navajo Gallup Water Supply Project (Project);

WHEREAS, "Delivery Capacity Allocation" means the portion of the Project capacity reserved for use by the City to deliver the City's Project Water, pursuant to Sec. 10603(b)(2)(B) of the Navajo Settlement Act and pursuant to the Repayment Contract between the United States and the City of Gallup, New Mexico.

WHEREAS, Reclamation and the City of Gallup have been engaged in ongoing discussions on how to augment the capacity of that portion of the existing Project facilities that lies within the City of Gallup so that the intent of the Navajo Settlement Act may be met while also recognizing and acknowledging the City of Gallup's sovereign ownership of that portion of the existing facilities which run inside the City boundary;

WHEREAS, Reclamation has authority to augment the existing facilities, and the City of Gallup desires to help meet the needs of Reclamation and its neighbors the Navajo Nation, while also meeting its current and potential future needs. . . ;

WHEREAS, the requirements of federal law mandate that in return for providing appropriated funds for augmenting the existing facilities that lies at or near the boundary of the City of Gallup, Reclamation must receive a perpetual right to utilize Reaches 13 and 27, for the life of these Reaches and not subject to alienation, such that the intent of Congress to provide the allocated capacity of water per year for the beneficial use of the Navajo Nation can always be met.

The Parties Agree as follows:

1. The City of Gallup will augment its existing facilities in order to provide for the capacity sufficient to meet the needs of Reclamation under the Navajo Settlement Act.
2. Reclamation will provide financial assistance to the City of Gallup in an amount sufficient to meet the costs of that portion of the facilities necessary to convey water to the Nation under the Navajo Settlement Act and permit the City of Gallup to connect Reaches 13 and 27 to other Project facilities.
3. For the life of Reaches 13 and 27, Reclamation shall have access to sufficient capacity to provide 7,500 AF/yr to the City of Gallup in Reach 27 and 4,647 AF/yr to the Navajo communities in Reach 14 for the beneficial use of the Nation. This right of capacity shall run for the life of the pipeline, estimated to be fifty (50) years or until the conditions of the Term of Agreement result in expiration. This right of capacity shall not be alienable or otherwise subject to diminishment and shall be an obligation upon all assignees, successors in interest or agents of the City of Gallup except as provided in section 10603(b)(3) of the Navajo Settlement Act. Prior to the end of fifty (50) years of delivery, Reclamation will determine the status of the Reaches. If Reclamation finds that Reaches 13 and 27 are no longer necessary to meet the requirements of the Navajo Settlement Act, Reclamation will execute the process for transfer of the federally held capacity rights to the City, in accordance with Reclamation and federal policies.

4. The parties further agree that the remedy for failure by the City of Gallup to provide sufficient capacity in Reaches 13 and 27 to allow Reclamation to provide 4,647 AF/year of water to the Navajo Nation is either: (1) specific performance, or (2) the City shall transfer to Reclamation or, at Reclamation's sole discretion, to Reclamation's designee, full use, control and possession of the water project infrastructure in Reaches 13 and 27 with appurtenant land rights, subject to all applicable U.S. Department of Justice standards and procedures governing the acquisition of real property by Federal agencies.
5. In the event Reclamation assumes operations per the latter remedy described in paragraph 4, the following procedures, terms, and conditions set forth in this paragraph shall apply. The assumption of operations shall not include conveyance of title for these project facilities or any real property. Reclamation agrees to provide the City with a reasonable period, determined at its sole discretion, to correct the situation. Reclamation will not assume operations without consultation with the City. The City shall be responsible for all costs associated with Reclamation or its designee's use and operation of Reaches 13 and 27 water project infrastructure including all operation, maintenance and replacement (OM&R) costs. Reclamation shall take all reasonable steps to perform the OM&R in an efficient and cost effective manner. Reclamation will make all reasonable efforts, at no additional cost to Reclamation, to provide adequate service to City customers while providing service to Reach 14. Assumption of operations by Reclamation or its designee shall continue only so long as the City is unwilling or unable to perform its obligations hereunder.
6. Reclamation hereby grants the City of Gallup permission to connect Reaches 13 and 27 to the federally owned and constructed portion of the Project where they connect with Reach 12b and Reach 14.
7. The City of Gallup indemnifies and holds harmless Reclamation for any and all claims made by the Navajo Nation for failure to meet the requirements of the Navajo Settlement Act due to the failure of the City, or its assigns and successors, to perform in accordance with the terms and conditions of this document.
8. Officials Not to Benefit: No Member of or Delegate to the Congress, Resident Commissioner shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.
9. The terms of this agreement are subject to the Project operations being capable of delivery to Reach 13 the necessary capacity, up to the authorized capacity, to meet uninterrupted needs for Reach 27 and Reach 14. Assurance of delivery of sufficient Project water to Reach 13 and Reach 27 shall be set forth in a separate agreement between the Project Participants and the Project operator.
10. Notices: Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84148-1192; or to the City Manager, City of Gallup, PO Box 1270, Gallup, NM 87305. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.
11. Assignment Limited—Successors and Assigns Obligated: The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto. All parties must provide written notification, pursuant to Article 10 above, of any assignment or transfer of this Contract or any right or interest therein.

12. Contingent Upon Appropriation or Allotment of Funds: The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds, subject to the completion of Reaches 13 and 27. Absence of appropriation or allotment of funds shall not relieve the City from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

13. Books, Records, and Reports: The City shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the financial transactions; water supply data; operation, maintenance, and replacement logs and other matters that Reclamation may require. Reports shall be furnished to Reclamation no later than 45 days after such a request is made by Reclamation, with a provision for extending the time with reasonable justification. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract upon reasonable notice to the other party.

14. Term of Agreement: This agreement shall become effective upon the date of execution listed above, and shall remain in full force and effect until the execution of the Project Operations Agreement as described in Navajo Settlement Act, Section 10602(f)(1)(B) at which time this agreement shall expire.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

<p>CITY OF GALLUP</p> <p>By _____ Mayor</p>	<p>ATTEST:</p> <p>By _____ City Clerk</p>
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<p>BUREAU OF RECLAMATION</p> <p>By _____ Regional Director Upper Colorado Region</p>	<p>APPROVAL:</p> <p>By _____ Office of the Solicitor Department of the Interior</p>
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RESOLUTION NO. R2011-39

A RESOLUTION AFFIRMING GOVERNING BODY APPROVAL OF THE REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND CITY OF GALLUP, NEW MEXICO THROUGH RESOLUTION R2011-25 ON AUGUST 17, 2011 ESTABLISHING TERMS AND CONDITIONS FOR THE REPAYMENT OF CAPITAL COSTS RELATED TO THE CONSTRUCTION OF THE NAVAJO-GALLUP WATER SUPPLY PROJECT, AND APPROVING THE REPAYMENT CONTRACT IN ITS FINAL FORM

WHEREAS, the governing body of the City of Gallup, New Mexico approved the Repayment Contract (Contract) between the United States and the City of Gallup, New Mexico on August 17, 2011, and

WHEREAS, its approval of the Contract on August 17, 2011 was conditioned upon minor technical edits to the Contract, and

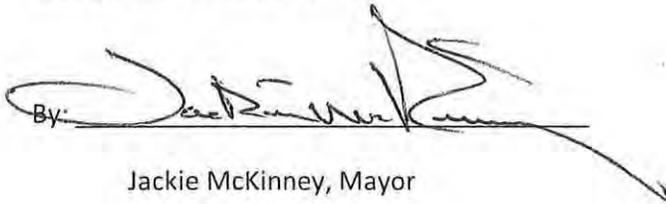
WHEREAS, the Contract is now in final form, and

WHEREAS, it is necessary that the Governing Body acknowledge the minor technical edits and approve the Contract in its final form; and

NOW THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NEW MEXICO that the Repayment Contract between the United States and City of Gallup, New Mexico as attached hereto in its final form is hereby approved, and that the Mayor is hereby authorized to execute the Contract.

PASSED ADOPTED AND APPROVED THIS 13th DAY OF DECEMBER, 2011.

CITY OF GALLUP, NEW MEXICO

By: 

Jackie McKinney, Mayor

ATTEST:



Alfred Abeita, City Clerk