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Includes comments provided in  
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[Negotiation Meetings](#)

Draft 08/10/2011  
Contract No. 11-WC-40-435

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

PREAMBLE ..... 3  
EXPLANATORY RECITALS ..... 3  
1. GENERAL DEFINITIONS ..... 4  
2. PROJECT FACILITIES CONSTRUCTED BY THE UNITED STATES ..... 7  
4. PROJECT COORDINATION COMMITTEES ..... 9  
5. MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF  
DELIVERY CAPACITY ALLOCATION ..... 10  
6. DELIVERY CAPACITY ALLOCATION ..... 10  
7. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS ..... 11  
8. REASSESSMENT OF ABILITY TO PAY ANALYSIS ..... 16  
9. NOTIFICATION OF SUBSTANTIAL COMPLETION ..... 17  
10. PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS ..... 18  
11. USE AND DISPOSAL OF WATER DURING CONSTRUCTION ..... 21  
12. WATER SHORTAGES ..... 21  
13. LEVY OF ASSESSMENTS, TOLLS AND CHARGES ..... 21  
14. COVENANT AGAINST CONTINGENT FEES ..... 22  
15. TITLE TO PROJECT FACILITIES ..... 22

1 16. SEVERABILITY ..... 23

2 17. CHARGES FOR DELINQUENT PAYMENTS ..... 23

3 18. CITY OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT ..... 24

4 20. NOTICES..... 24

5 21. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS ..... 24

6 22. OFFICIALS NOT TO BENEFIT ..... 24

7 23. CHANGES IN CITY'S ORGANIZATION..... 25

8 24. ASSIGNMENTS LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED..... 25

9 25. BOOKS, RECORDS AND REPORTS ..... 25

10 26. RULES, REGULATIONS, AND DETERMINATIONS ..... 25

11 27. PROTECTION OF WATER AND AIR QUALITY ..... 25

12 28. WATER CONSERVATION ..... 26

13 29. EQUAL EMPLOYMENT OPPORTUNITY ..... 26

14 30. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS ..... 27

15 31. MEDIUM FOR TRANSMITTING PAYMENTS..... 28

16 32. CONTRACT DRAFTING CONSIDERATIONS ..... 28

17 33. CONSTRAINTS ON AVAILABILITY OF WATER ..... 28

18

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

PREAMBLE

THIS REPAYMENT CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 settlement purposes of the Project were authorized by the Northwest New Mexico Rural

1 Water Projects Act of March 30, 2009 (hereafter referred to as the Navajo Settlement  
2 Act).

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

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

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

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

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

14

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

17

18 1. GENERAL DEFINITIONS

19 Where used in this contract:

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

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

25 Consultation shall be required of each party with respect to each section of the Contract  
26 regardless of whether the section itself sets forth a consultation requirement. The

27 Consultation required shall be reasonable under the circumstances, and except in exigent  
28 circumstances Consultation shall be undertaken in advance of decision making. In the

29 event that agreement cannot be reached and the United States makes a decision, appeals  
30 are available to the extent allowed under applicable laws.

1 c) “Cooperative Agreement” or “Financial Assistance Agreement” means  
2 agreement number R11AC40016, 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  
9 a) Subject to the terms and conditions of this Contract and Cooperative Agreement  
10 and the Right of Capacity Agreement, the City of Gallup will construct Reach 13 and  
11 Reach 27, and take full design and construction responsibility of all of Reach 13 and  
12 Reach 27 subject to Reclamation's oversight. The City will maintain ownership of Reach  
13 13 and Reach 27. The City will be solely responsible for OM&R of Reach 13 and Reach  
14 27 and for the transmission and distribution of water within Reach 13 and Reach 27 to  
15 Reach 14.

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

23  
24 **4. PROJECT COORDINATION COMMITTEES**

25 Consultation concerning, and coordination of, Project construction, and OM&R  
26 activities will be accomplished through the establishment of two committees: one to  
27 focus on those activities associated with the construction of the Project Facilities, the  
28 other to oversee the OM&R activities. The committees will be made up of  
29 representatives of the Project Participants and the Bureau of Reclamation. The State of  
30 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.

29  
30 6. DELIVERY CAPACITY ALLOCATION

1 a) The City's Delivery Capacity Allocation is based on the City's share of the  
2 design capacity of each Project feature that is used to deliver water to the City. Facilities  
3 are designed to meet the 7-day peak demand which is computed as 1.3 times the peak  
4 average monthly demand. The City's share of the design capacity of Project features  
5 changes as deliveries are made to Navajo communities from the Project Facilities. The  
6 City's share of the capacity of each reach of the Project Facilities is shown in Volume II  
7 – Technical Appendices for the Planning Report and Final Environmental Impact  
8 Statement, Appendix D, Part I, Allocation of Capital and OM&R Costs among Project  
9 Participants, Table B2. The City's Delivery Capacity Allocation of Reach 27 shall be as  
10 presented in Table C1 of Part I of Appendix D of Volume II of the July 2009 Planning  
11 Report, unless revised as provided in Article 7(b) below.

12 b) Any use of the Delivery Capacity Allocation other than that contemplated in the  
13 July 2009 Final Environmental Impact Statement and subsequent Record of Decision  
14 dated October 1, 2009 for the Project shall be subject to compliance with applicable  
15 environmental statutes.

16 c) The City's Delivery Capacity Allocation shall be used for delivery of Project  
17 Water, which the City has secured through the subcontract dated [REDACTED] with the  
18 Jicarilla Apache Nation, excess Project Water as allowed by Section 10603(b)(3), and  
19 Non-Project Water pursuant to Section 10602(h) of the Navajo Settlement Act. The  
20 subcontract shall be for delivery of Project Water at the point of diversion of not more  
21 than 7500 acre-feet in any one year.

22 d) As provided in the Right of Capacity Agreement the City shall assure  
23 continuation of the intended benefit by allowing the United States the right of capacity  
24 for the life of the system for water delivery to Reach 14.

25 e) In order to assure continuation of the intended benefit to the City and the City's  
26 right of capacity for the life of the system for water delivery to Reach 13 and Reach 27, it  
27 shall be necessary to execute a separate agreement between the Project Participants and  
28 the Project Operator and to execute the OM&R Contract.

29  
30 7. METHOD OF PAYMENT FOR PROJECT CONSTRUCTION COSTS

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

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

25 c) Using January 2007 price levels, the July 2009 Planning Report estimated the  
26 total Project construction costs to be \$865,000,000 and estimated the construction costs  
27 allocable to the City's Delivery Capacity Allocation to be \$154,600,000. This amount  
28 included an estimated \$7,300,000 of cultural resources and fish and wildlife mitigation  
29 costs allocated to the City, which were later deemed non-reimbursable pursuant to  
30 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 2011  
16 of 4.125 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 \$21,113,000, rounded to the nearest thousand dollars, for a total Estimated Repayment  
19 Obligation of \$74,300,000. 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 9, 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 9.

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 9. 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.

29  
30 9. NOTIFICATION OF SUBSTANTIAL COMPLETION

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

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

17 **10. PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS**

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

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

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

1 (iii) 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  
17 conducted as follows:

18 (i) 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  
22 to Article 9(a) of this contract. An estimate from the Contracting Officer, or  
23 the 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  
25 ends September 30 of the next calendar year. The City shall advance its share  
26 of the OM&R costs for each Federal fiscal year in quarterly payments which  
27 will be due on September 30, December 31, March 31, and June 30 of the  
28 Federal fiscal year of applicability. The first such billing will be issued  
29 immediately following a Notice of Substantial Completion as provided in  
30 Article 9(a) of this contract. In the event the first notice shall be for costs of  
31 service of less than a full year, such costs shall be prorated for the period

1 covered. An itemization of the estimated Fixed OM&R costs will accompany  
2 the billing.

3 (ii) 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  
7 calendar year. The annual notice will provide an estimate of the City's  
8 anticipated water delivery requirements on a quarterly basis. Based upon these  
9 anticipated water delivery requirements, the Contracting Officer, or the  
10 Project Operator, will bill the City quarterly on September 30, December 31,  
11 March 31, and June 30 of the Federal fiscal year of applicability. An  
12 itemization of the estimated Variable OM&R costs will accompany the  
13 billing.

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

27 d) OM&R responsibilities and the City's share of OM&R costs associated with  
28 the Project shall be further identified and provisions for payment made in the Project  
29 Operations Agreement identified in Section 10602(f) of the Navajo Settlement Act. If  
30 title is not conveyed on a feature or reach, the OM&R responsibilities and the City's  
31 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  
28 constructed, modified, or rehabilitated with funds being provided by the United States  
29 under provisions of this contract, accepts all responsibility for the structural integrity  
30 and safety of Reach 13 and Reach 27 and related facilities being constructed,  
31 modified, or rehabilitated. The City hereby releases the United States and its officers

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

5 d) Pursuant to Section 10604(b)(6) of the Navajo Settlement Act and Article 7(l)  
6 of this contract, the City recognizes that the retention of title or the conveyance of title  
7 for 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 87305. 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.  
46

47 22. OFFICIALS NOT TO BENEFIT

1  
2 No Member of or Delegate to Congress, Resident Commissioner or official of the  
3 City shall benefit from this contract other than as a water user or landowner in the same  
4 manner as other water users or landowners.  
5

6 23. CHANGES IN CITY'S ORGANIZATION  
7

8 While this contract is in effect, no change may be made in the City's organization  
9 which may affect the respective rights, obligations, privileges, and duties of either the  
10 United States or the City under this contract including, but not limited to, dissolution,  
11 consolidation, or merger, except upon the Contracting Officer's written consent.  
12

13 24. ASSIGNMENTS LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED  
14

15 The provisions of this contract shall apply to and bind the successors and assigns  
16 of the parties hereto, but no assignment or transfer of this contract or any right or interest  
17 therein by either party shall be valid until approved in writing by the other party.  
18

19 25. BOOKS, RECORDS AND REPORTS  
20

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

32 26. RULES, REGULATIONS, AND DETERMINATIONS  
33

34 a) The parties agree that the delivery of water or the use of Federal facilities  
35 pursuant to this contract is subject to Reclamation law, as amended and supplemented,  
36 and the rules and regulations promulgated by the Secretary of the Interior under  
37 Reclamation law.

38 b) The Contracting Officer shall have the right to make determinations necessary to  
39 administer this contract that are consistent with its provisions, the laws of the United  
40 States and the State of New Mexico, and the rules and regulations promulgated by the  
41 Secretary of the Interior. Such determinations shall be made in Consultation with the  
42 City.  
43

44 27. PROTECTION OF WATER AND AIR QUALITY  
45

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

7 b) The City shall comply with all applicable water and air pollution laws and  
8 regulations of the United States and the State of New Mexico; and shall obtain all  
9 required permits or licenses from the appropriate Federal, State, or local authorities  
10 necessary for the delivery of water by the City; and shall be responsible for compliance  
11 with all Federal, State, and local water quality standards applicable to surface and  
12 subsurface drainage and/or discharges generated through the use of Federal or City  
13 facilities or project water provided by the City within the City's Project Water Service  
14 Area.

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

17  
18 28. WATER CONSERVATION

19  
20 Prior to the delivery of water provided from or conveyed through federally  
21 constructed or federally financed facilities pursuant to this contract, the City shall  
22 develop a water conservation plan, as required by subsection 210(b) of the Reclamation  
23 Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulation.  
24

25 29. EQUAL EMPLOYMENT OPPORTUNITY

26  
27 During the performance of this contract, the City agrees as follows:

28 a) The City will not discriminate against any employee or applicant for  
29 employment because of race, color, religion, sex, or national origin. The City will take  
30 affirmative action to ensure that applicants are employed, and that employees are treated  
31 during employment, without regard to their race, color, religion, sex, or national origin.  
32 Such action shall include, but not be limited to the following: employment, upgrading,  
33 demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates  
34 of pay or other forms of compensation; and selection for training, including  
35 apprenticeship. The City agrees to post in conspicuous places, available to employees and  
36 applicants for employment, notices to be provided by the Contracting Officer setting  
37 forth the provisions of this nondiscrimination clause.

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

41 c) The City will send to each labor union or representative of workers with which it  
42 has a collective bargaining agreement or other contract or understanding, a notice, to be  
43 provided by the Contracting Officer, advising the said labor union or workers'  
44 representative of the City's commitments under Section 202 of Executive Order 11246 of  
45 September 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous  
46 places available to employees and applicants for employment.

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

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

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

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

25  
26 30. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

27  
28 a) The City shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-  
29 352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
30 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,  
31 Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of  
32 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.),] and any other applicable civil rights  
33 laws, and with the applicable implementing regulations and any guidelines imposed by  
34 the U. S. Department of the Interior and/or Bureau of Reclamation.

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

41 c) The City makes this agreement in consideration of and for the purpose of  
42 obtaining any and all Federal grants, loans, contracts, property discounts or other Federal  
43 financial assistance extended after the date hereof to the City by the Bureau of  
44 Reclamation, including installment payments after such date on account of arrangements  
45 for Federal financial assistance which were approved before such date. The City  
46 recognizes and agrees that such Federal assistance will be extended in reliance on the

1 representations and agreements made in this article and that the United States reserves the  
2 right to seek judicial enforcement thereof.

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

5  
6 31. MEDIUM FOR TRANSMITTING PAYMENTS

7  
8 a) All payments from the City to the United States under this contract shall be by  
9 the medium requested by the United States on or before the date payment is due. The  
10 required method of payment may include checks, wire transfers, or other types of  
11 payment specified by the United States.

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

16  
17 32. CONTRACT DRAFTING CONSIDERATIONS

18  
19 This Contract has been, negotiated and reviewed by the parties hereto, each of whom  
20 is sophisticated in the matters to which this Contract pertains. Articles 1 through 15 of this  
21 Contract have been drafted, negotiated, and reviewed by the parties, and no one party  
22 shall be considered to have drafted the stated articles.

23  
24 33. CONSTRAINTS ON AVAILABILITY OF WATER

25  
26 a) In its operation of the Project, the Contracting Officer will use all reasonable  
27 means to guard against a condition of shortage in the quantity of water to be made  
28 available to the City pursuant to this Contract. In the event the Contracting Officer  
29 determines that a condition of shortage appears probable, the Contracting Officer will  
30 notify the City of said determination as soon as practicable.

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

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39  
40 IN WITNESS WHEREOF, the parties hereto have  
41 caused this contract to be duly executed as of the day and year first above written.

42  
43  
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45 Approved:

THE UNITED STATES OF AMERICA

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\_\_\_\_\_  
Solicitor's Office

By: \_\_\_\_\_  
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

Attest:

CITY OF GALLUP, NEW MEXICO

By: \_\_\_\_\_  
Mayor

- List of Attachments: **Exhibit A:** Project Map  
**Exhibit B:** Environmental Commitments  
**Exhibit C:** XXXX, 2011 Memorandum on Methodology Regarding  
Application of New Mexico Cost-Share to Cost Allocation and  
Repayment, Navajo-Gallup Water Supply Project  
**Exhibit D:** Right of Capacity Agreement