

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

NAVAJO-GALLUP WATER SUPPLY PROJECT
COLORADO RIVER STORAGE PROJECT

OPERATION, MAINTENANCE, AND REPLACEMENT TRANSFER CONTRACT

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6 UNITED STATES
7 DEPARTMENT OF THE INTERIOR
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10 NAVAJO-GALLUP WATER SUPPLY PROJECT
11 COLORADO RIVER STORAGE PROJECT
12

13 OPERATION, MAINTENANCE, AND REPLACEMENT TRANSFER CONTRACT
14

15
16 THIS CONTRACT, is entered into this _____ day of _____, 2013,
17 between the United States of America, hereinafter called the United States, acting through the
18 Secretary of the Interior, acting through the Bureau of Reclamation (Reclamation), pursuant to
19 the Act of Congress approved June 17, 1902 (32 Stat. 388), the Act of Congress approved April
20 11, 1956 (70 Stat. 105), as amended, and acts amendatory thereof or supplementary thereto, all
21 of which acts are commonly known and referred to as the Federal Reclamation Laws, and the
22 Navajo Tribal Utility Authority, hereinafter called the NTUA, with its principal place of business
23 and headquarters at Fort Defiance, Arizona.
24

25 EXPLANATORY RECITALS

26 WITNESSETH, That:

27 WHEREAS, The following statements are made in explanation:

28 The Act of Congress approved December 15, 1971 (85 Stat. 664), authorized the
29 planning and investigation of the Navajo-Gallup Water Supply Project (Project); subsequently,
30 the construction, operation, and maintenance of the Project was authorized by the Northwestern
31 New Mexico Rural Water Projects Act (Omnibus Public Land Management Act of 2009,
32 Title X, Part III) of March 30, 2009 (123 Stat. 1367) hereafter referred to as Public Law 111-
33 11. The United States has investigated, planned, and is constructing the said Project for the
34 diversion and distribution of the waters of the San Juan River, for which the Project has among
35 its authorized purposes, the furnishing of water for municipal, industrial, commercial, domestic,

1 and stock watering purposes. The water rights of the Project are set forth by the Navajo
2 Settlement Agreement, executed April 19, 2005; by the Navajo Settlement Contract, executed
3 December 17, 2010; and by the Jicarilla Apache Tribe (known as the Jicarilla Apache Nation)
4 Water Rights Settlement Act (Public Law 102–441; 106 Stat. 2237) as settled by the Contract
5 Between the United States and the Jicarilla Apache Tribe, executed December 8, 1992.

6 The NTUA, an enterprise of the Navajo Nation, is duly authorized by the Navajo Nation
7 Council, pursuant to 21 N.N.C §§ 1 – 27, with jurisdiction over all utility operation, to construct
8 and operate water supply distribution systems for water users within the Navajo Nation,
9 including portions of the service area of the Project, and shall be responsible to carry out the
10 OM&R activities and responsibilities of the Transferred Works of the Project.

11 The Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup, New Mexico
12 (City), through execution of a Memorandum of Understanding for the Operation of the Navajo-
13 Gallup Water Supply Project (Operation MOU), executed September 26, 2012, which is attached
14 as **Exhibit A** to this Contract, designates the utility divisions of the parties; Gallup Joint Utilities
15 (GJU) and NTUA, can act on behalf of the parties for the purposes of negotiating agreements
16 and contracts related to the Project.

17 The City, the Jicarilla Apache Nation, and the NTUA, through execution of the Operating
18 Agreement Among the Project Participants Designated Authorities, executed _____,
19 _____, 2013, which is attached as **Exhibit B** to this Contract, have designated the NTUA as the
20 operator of the Transferred Works.

21 The NTUA, the City, and the Jicarilla Apache Nation, through execution of the Water
22 Treatment and Conveyance Contract, executed _____, _____, 2013, which is
23 attached as **Exhibit C** to this Contract, establishes how OM&R costs will be allocated among the
24 parties, rates/fees, billing practices, delivery points, delivery quantities, points of metering, water
25 quality standards, OM&R activities and responsibilities by reaches and facilities, procedures for
26 service to non-party users, and dispute resolution procedures.

27 The Bureau of Indian Affairs, (BIA), Reclamation, the Navajo Agricultural Products
28 Industry (NAPI) and the (NTUA) entered into a Memorandum of Understanding Concerning the
29 Conveyance of NGWSP Water Through the Navajo Indian Irrigation Project (NIIP) facilities
30 (NIIP Connection MOU) on ____ 2013, which is attached as **Exhibit D** to this Contract.

1 Pursuant to the terms and conditions identified in the Reclamation Financial Assistance
2 Agreement No. R12AC40004, the Navajo Nation will design, construct, own, and perform
3 OM&R activities and responsibilities for Reach 24.1, Reach 25, and Reach 26, therefore these
4 Excluded Reaches are not subject to this Contract.

5 Pursuant to the terms and conditions identified in the Reclamation Financial Assistance
6 Agreement No. R11AC40002, the City will design, construct, own and perform OM&R
7 activities and responsibilities for Reach 13 and Reach 27, therefore these Excluded Reaches are
8 not subject to this Contract.

9 Pursuant to the terms and conditions identified in the Interagency Agreement No.
10 R13PF40021, the Indian Health Service will design, construct, own and the NTUA shall be
11 responsible to perform OM&R activities and responsibilities for Reach 14.1, Reach 14.2, and
12 any future sub-Reaches as mutually agreed upon, therefore these Excluded Reaches are not
13 subject to this Contract.

14 Phase 2 of the Eastern Navajo Water Pipeline Project from Nageezi, New Mexico to
15 Counselor, New Mexico, and Phase 3 of the Eastern Navajo Water Pipeline from Huerfano, New
16 Mexico, to Nageezi New Mexico, are Non-Project reaches and facilities constructed by the
17 Navajo Nation under a separate authority, which may convey a Project Participant's Delivery
18 Capacity Allocation. Upon completion of Phase 2 and Phase 3, the Navajo Nation will retain
19 ownership, and the NTUA shall be responsible to perform the OM&R activities and
20 responsibilities of these Non-Project, Excluded Reaches, which are not subject to this Contract.

21 Reclamation has no authorization or responsibility for delivery of water beyond any
22 turnout or facility beyond Transferred Works.

23
24 The parties enter into this Contract to provide for the necessary OM&R activities and
25 responsibilities of the Transferred Works.

26
27 NOW THEREFORE, in consideration of the terms and conditions of this Contract, the
28 parties agree as follows:

29
30

1 Navajo Nation.

2 (f) "Non-Project" means reaches and facilities constructed by others with non-
3 Reclamation funding using their own authorities, but that may convey a Project
4 Participant's Delivery Capacity Allocation or Non-Project Water.

5 (g) "Non-Project Water" means water not identified within Section 10603 (b) of
6 Public Law 111-11.

7 (h) "Project" means reaches and facilities of the Navajo-Gallup Water Supply
8 Project, as authorized by Public Law 111-11, constructed by and/or funded by the
9 United States.

10 (i) "Project Construction Committee" means the committee made up of
11 Reclamation, the Project Participants, and the State of New Mexico, pursuant to Section
12 10604(g) of Public Law 111-11.

13 (j) "Project Participants" means the Navajo Nation; the City of Gallup, New
14 Mexico; and the Jicarilla Apache Nation.

15 (k) "Public Law 111-11 means the Navajo Settlement Act, Subtitle B of Title X the
16 Act of March 30, 2009 (Omnibus Public Land Management Act of 2009, Title X,
17 Part III) (123 Stat. 1367).

18 (l) "Substantial Completion" means *"the date on which the Secretary declares a*
19 *section of the Project to be substantially complete, and delivery of water generated by,*
20 *and through that section of the Project can be made to a Project Participant"*, as stated
21 in 10603(g)(1) of Public Law 111-11.

22 (m) "Transferred Works" means a Project facility or reach constructed and owned
23 by the United States, in which the OM&R activities and responsibilities are carried out
24 by the NTUA, under the provisions of this Contract.

25 (n) "United States" or "Contracting Officer" or either term means the Secretary of
26 the United States Department of the Interior, acting through Reclamation, or any other
27 designee.

28 (o) "Variable OM&R Costs" means the costs including power, power consumption
29 and a proportional percentage of power demand, and costs associated with the
30 treatment and conveyance of water.

1 (1) San Juan Lateral, which includes: Reach 1 (Water Treatment Plant), Reaches
2 2-9, 10, 10.1, 10.2, 10.3, 11, 12A, 12B, 12.1, and 12.2.; and any future subdivisions
3 of these reaches, as established by Reclamation in consultation with the Project
4 Construction Committee.

5 (2) Cutter Lateral, which includes: Reach 21 (Water Treatment Plant), Reach 22a,
6 and Reach 22b.; and any future subdivisions of these reaches, as established by
7 Reclamation in consultation with the Project Construction Committee.

8 (3) Other Transferred Works which may include: lateral pipeline, pumping
9 plant(s), water regulation, diversion structure, storage or treatment facility, lands,
10 facility relocations, service connection to an existing public water supply system,
11 power substation, power distribution works, or other appurtenant works (including a
12 building or access road) that are related to the Project reaches and facilities authorized
13 by Public Law 111-11.

14 (4) In addition, the United States shall also transfer to the NTUA, equipment
15 essential for the OM&R of the Transferred Works. A detailed list of the tools,
16 supplies, movable property, and equipment will be mutually agreed to, and will be
17 included in the Transfer Inspection Report (as defined in **Article 5**).

18 (b) The NTUA shall not be responsible under this Contract for the OM&R activities
19 and responsibilities of Excluded Reaches, which may convey Delivery Capacity
20 Allocation and Non-Project water, and which may include; lands, facility relocations,
21 or appurtenant facilities.

22 (c) Consultation between, and approval of both the NTUA and the United States
23 will be required in any instance where a Contract duty of a party may be impacted by
24 any action or program undertaken by the other party.

25
26 5. OM&R TRANSFER PROCESS

27 The Transfer Process from Reclamation construction status to Reclamation OM&R status,
28 and then from Reclamation OM&R status to NTUA OM&R responsibility shall occur as set
29 forth in this article. Title to Transferred Works shall remain with the United States until
30 conveyance of title as authorized by Section 10602(f) of Public Law 111-11.

1 (a) Reclamation’s Western Colorado Area Office (WCAO) will initiate the transfer
2 process for any Transferred Work covered under Article 4 by requesting a Certification
3 of Substantial Completion from the Four Corners Construction Office Construction
4 Engineer (Construction Engineer). The WCAO shall notify the NTUA at least XXX
5 days prior to requesting a Notice of Substantial Completion.

6 (b) Upon the request stated in Article 5(a) by the WCAO, and pursuant to Section
7 10603(g) of Public Law 111-11, the Construction Engineer will declare a section of the
8 Project to be substantially complete when delivery of water generated by, and through,
9 that section of the Project can be made to a Project Participant. The Construction
10 Engineer will issue a written notice to the NTUA and Project Participants, referred to
11 herein as the “Notice of Substantial Completion”. The Notice of Substantial
12 Completion shall contain:

- 13 (1) A description of the Project facility or reach that has been determined to be
14 substantially complete and can generate water delivery;
- 15 (2) A list of the reaches and facilities which are completed;
- 16 (3) The proportionate share allocated among the Participants of the design
17 capacity for each of the Project features listed within the Notice of Substantial
18 Completion
- 19 (4) The effective date of that Substantial Completion declaration.

20 (c) The Notice of Substantial Completion will formally establish the date of the
21 transfer from construction status to OM&R status for the facilities and features included
22 in the list.

23 (d) Prior to transfer from Reclamation OM&R status to NTUA OM&R status, a
24 transfer inspection will be conducted in Consultation with the NTUA. The United
25 States will then prepare a report on the inspection (the “Transfer Inspection Report”),
26 which will contain:

- 27 (1) A detailed list of the facilities and of the movable property and equipment to
28 be transferred, together with: (A) a description of warranties to be provided and/or
29 transferred to the NTUA in connection with the Transferred Works and other
30 facilities and property to be transferred; (B) pertinent design, construction, and as-

1 built documents for the Transferred Works; and (C) maintenance protocols,
2 equipment manuals, and other like items relating to the OM&R of the Transferred
3 Works;

4 (2) A list of design and construction deficiencies, if any, identified by the
5 Transfer Inspection Report in the Transferred Works and other facilities, and property
6 to be transferred; and

7 (3) A plan for correcting any such deficiencies, setting forth: (A) the corrective
8 measures to be applied; (B) the entity or entities responsible for undertaking such
9 corrective measures, including when they will be undertaken and how they will be
10 funded; and (C) anticipated completion dates for the corrective measures.

11 (4) Any other matters required by Reclamation Directives and Standards.

12 (e) Upon approval of the Transfer Inspection Report by the Construction Engineer,
13 the Regional Director, and the WCAO Area Manager, a Notice of Transfer shall be
14 issued by Reclamation to NTUA accompanied by the Transfer Inspection Report and
15 will conclude the transfer process from Reclamation OM&R status to NTUA OM&R
16 status.

17 (f) The transfer of OM&R responsibility from Reclamation to the NTUA shall be
18 complete upon the NTUA's receipt of the Transfer Notice and the Transfer Inspection
19 Report and any Supplemental Transfer Inspection Report, if any is required. The
20 NTUA may request a Supplemental Transfer Inspection Report to address any
21 outstanding measures or issues discovered preceding transfer to NTUA OM&R Status.
22

23 6. NTUA OM&R RESPONSIBILITY

24 After receiving the OM&R responsibility pursuant to Article 5, the NTUA shall, at its own
25 cost and expense except as provided in Article 7(c) below, carry out the OM&R of the
26 Transferred Works.
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1 7. OPERATION, MAINTENANCE, AND REPLACEMENT COSTS
2 UNDER NTUA RESPONSIBILITY

3
4 (a) Upon the transfer of a Project feature from Reclamation OM&R status to the NTUA
5 OM&R responsibility, the NTUA shall charge Project Participants for the OM&R costs of
6 those Transferred Works, and their charges shall consist of both Fixed and Variable OM&R
7 costs. The NTUA shall establish procedures for the assessment and collection of both
8 Fixed and Variable OM&R, consistent with the following provisions:

9 (1) Fixed OM&R costs shall be allocated among the Project Participants based
10 upon the proportionate share of the design capacity of each Project feature as listed
11 within the Notice of Substantial Completion that has been declared substantially
12 complete. Fixed OM&R costs shall include, but not be limited to:

13 a. The costs of labor, materials and equipment required to maintain all
14 Transferred Works which include but are not limited to: treatment plants, pumps,
15 storage tanks, waterway structures, piping, valves, accessory electrical equipment,
16 supervisory control communications, and security equipment.

17 b. The specific costs related to NGWSP of Project administration and overhead,
18 not including legal fees.

19 c. Payments to the emergency reserve fund, and replacement reserve fund, shall
20 be made pursuant to the provisions of Article 19 herein. The NTUA shall make
21 annual payments in the amount of \$XX,XXX, as appropriately adjusted for inflation,
22 to the replacement reserve fund to ensure adequate funds are available to replace
23 equipment that has met or exceeded its normal service life.

24 (2) Variable OM&R costs are costs in addition to the costs assessed under 7(a)(1),
25 consistent with the following:

26 a. The costs of power including energy consumption and that share of power
27 demand costs for the operation of the water treatment plants and pumping plants
28 based on the proportionate share of water treated and delivered.

29 b. The costs of water treatment chemical costs based on the proportionate share
30 of water treated and delivered.

1 c. Costs associated with the carriage of Project water through NIIP Facilities
2 specific to the Cutter Lateral.

3 (b) Fixed OM&R costs for the Project shall be paid on the basis of annual cost estimates
4 made by the NTUA based upon the proportionate share of the design capacity for those
5 Project reaches and facilities which have been declared substantially complete through
6 Article 5(b). An estimate from the NTUA will be sent to the Project Participant(s) on or
7 before May 1 for the next federal fiscal year, which begins October 1 of the same calendar
8 year and ends September 30 of the next calendar year. The Project Participant shall advance
9 its share of the OM&R costs for each federal fiscal year in quarterly payments which will be
10 due on September 30, December 31, March 31, and June 30 of the federal fiscal year of
11 applicability. The first such billing will be issued immediately following a Notice of
12 Substantial Completion as provided in Article 5(b) of this Contract. In the event the first
13 notice shall be for costs of service of less than a full year, such costs shall be prorated for the
14 period covered. An itemization of the estimated Fixed OM&R costs will accompany the
15 billing.

16 (c) Variable OM&R costs for the Project shall be paid on the basis of an annual notice
17 provided by the NTUA to the Project Participant(s), on or before May 1 for the next federal
18 fiscal year, which begins October 1 of the same calendar year and ends September 30 of the
19 next calendar year. The annual notice will provide an estimate of the Project Participant's
20 anticipated water delivery requirements on a quarterly basis. Based upon these anticipated
21 water delivery requirements, the NTUA will bill the Project Participant(s) quarterly on
22 September 30, December 31, March 31, and June 30 of the federal fiscal year of
23 applicability. An itemization of the estimated Variable OM&R costs will accompany the
24 billing.

25 (d) Pursuant to Section to Section 10604(f) of Public Law 111-11, the United States may
26 make payment to NTUA of the OM&R costs of a Transferred Work allocated to the Navajo
27 Nation that the Secretary has determined is in excess of the ability of the Navajo Nation to
28 pay, but for a period of not more than 10 years after Notice of Substantial Completion has
29 been given for the Transferred Work. This waiver authority shall terminate on the date on

1 which title to a facility is transferred to the Navajo Nation pursuant to 10604(f)(5) of Public
2 Law 111-11.

3 (e) If the Secretary has determined the OM&R Costs are in excess of the Navajo
4 Nation's ability to pay, the expenditure or advance of any money or the performance of any
5 obligation of Reclamation under this contract shall be contingent upon appropriation or
6 allotment of funds by the Congress of the United States. The United States shall Consult
7 with, and timely apprise the NTUA of the United States progress in securing funds to defray
8 the United States OM&R payment obligation as allowed by budgetary statutes and
9 regulations. In the event adequate funds are not appropriated or allotted by Congress, the
10 NTUA will add any unappropriated, unallotted, or non-reimbursed amount to the charge
11 notice(s) for which Reclamation is responsible, in the following water year.

12 (f) ONE YEAR WORK PLAN: Upon Reclamation's transfer of the OM&R
13 responsibility of any facilities or reach to the NTUA, the NTUA will develop a one year
14 detailed OM&R work plan. The NTUA will finalize the work plan by October 1 of each
15 year.

16 (g) THREE YEAR WORK PLAN: Upon Reclamation's transfer of the OM&R
17 responsibility of any facilities or reach pursuant to **Article** 5 herein, the NTUA will prepare
18 a three year OM&R work plan and submit it to Reclamation by July 1 of each year for
19 Reclamation's budget appropriation purposes.

20 (h) Review and Approval of work plans: During any period in which the United States
21 is a paying a portion of the Navajo Nation OM&R costs, and prior to finalizing the Three-
22 Year and One-Year Work Plans described herein, the NTUA shall submit such work plans
23 to Reclamation for review and approval.

24 (i) Reclamation shall Consult with the NTUA regarding its progress in securing the
25 funds needed for the United States to meet its obligations under this contract.

26
27 8. CONVEYANCE OF TITLE TO TRANSFERRED WORKS

28 (a) Title to Transferred Works shall remain in the name of the United States, until
29 conveyed pursuant to Section 10602(f) of Public Law 111-11.

1 (b) The Secretary is authorized by Section 10604 (f)(1)(B) of Public Law 111-11 to
2 enter into a Project operations agreement with the Navajo Nation and, upon entering
3 into the agreement, shall convey title to each Transferred Works or section of a
4 Transferred Works authorized.

5 (c) Upon conveyance of title under this Article, and pursuant to Section 10602(f) of
6 Public Law 111-11, the Transferred Works of which title has been conveyed, will no
7 longer be subject to this Contract.
8

9 9. RESPONSIBILITY FOR DELIVERY OF CAPACITY ALLOCATION

10 (a) The NTUA shall OM&R installed measuring, collection, transmission and
11 control devices and shall be responsible to install and OM&R any additional devices
12 necessary for water delivery.

13 (b) All Non-Project facilities and appurtenant structures required for taking water
14 furnished under this Contract from the points of delivery, and putting it to use by the
15 Project Participant(s) and/or their subcontractors will be acquired, constructed or
16 installed, and operated and maintained by the Project Participant(s) and/or their
17 subcontractors at their sole expense.

18 (c) The United States shall not be responsible for the control, carriage, handling,
19 use, disposal, or distribution of water furnished to the Project Participants or their
20 subcontractors. The NTUA will hold the United States harmless on account of damage
21 or claim of damage of any nature whatsoever arising out of or connected with the
22 control, carriage, handling, use, disposal, or distribution of water by the NTUA.

23 (d) Deliveries to the Cutter Lateral through the NIIP Facilities shall be pursuant to
24 the NIIP Connection MOU.
25

26 10. OM&R PAYMENT FOR TREATMENT AND CARRIAGE OF NON-PROJECT WATER
27 & ADDITIONAL CAPACITY

28 (a) Pursuant to Section 10602(h), during the period where title to Project facilities
29 is held by the United States, the Secretary may enter into contracts with Non-Project
30 entities for the treatment and carriage of Non-Project Water through the Project if, after

1 Consultation with the Project Participants, it is determined that capacity is available
2 without impairing deliveries to a Project Participant. Any contract for treatment and
3 carriage of Non-Project water shall include the following terms:

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

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

9 (3) The contract for treatment and carriage of Non-Project water shall terminate if
10 delivery to a Project Participant is impaired

11 (b) Pursuant to Section 10603(b)(3), during the period where title to Project
12 facilities is held by the United States, the Project Participant may request of the
13 Secretary the use of additional capacity in a Project reach or facility for treatment and
14 carriage of water if capacity is available without impairing delivery to a Project
15 Participant. The Secretary shall approve or disapprove the request within 180 days of
16 receipt of the request. Prior to use of any additional capacity, the Project Participant
17 must agree to the following terms:

18 (1) Pay the OM&R costs associated with the additional treatment and carriage;
19 and

20 (2) Pay any fee established by the Secretary to assist in recovering capital costs
21 relating to the additional treatment and carriage; and

22 (3) Additional treatment and carriage shall be terminated if deliver to a Project
23 Participant is impaired
24

25 11. DELIVERY CAPACITY ALLOCATION AND SHORTAGES

26 (a) Accounting for and delivery of a Project Participant's Delivery Capacity
27 Allocation shall be pursuant to the Water Treatment and Conveyance Contract.

28 (b) During periods of drought, there may be a time when insufficient water is
29 available to fulfill the Delivery Capacity Allocation of a Project Participant. In such

1 cases, shortages shall be administered pursuant to the Water Treatment and
2 Conveyance Contract.

3
4 12. LIMIT OF LIABILITY

5 (a) The United States or any of its officers, agents, or employees shall not be liable
6 in any manner for the failure of the Project, for any reason, for the Delivery Capacity
7 Allocation to which a Project Participant(s) or subcontractor(s) is entitled, except if
8 such failure of delivery is caused by direct action of the United States, its officers,
9 agents or employees. Nothing in this sub article shall protect the NTUA from any claim
10 that it negligently or intentionally operated the Project so as to injure anybody.

11 (b) There may occur at times during any year a shortage in the quantity of water
12 available for furnishing to the Project Participants or subcontractors through and by
13 means of the Project, but in no event shall any liability accrue against the United States
14 or any of its officers, agents, or employees for any damage, direct or indirect, arising
15 from a shortage on account of errors in operation, drought, or any other causes.

16
17 13. REMEDIES

18 (a) In the event the United States raises material concerns about the performance of
19 the OM&R of the operating entity, the Project Participants shall promptly Consult as to
20 the future best interests of the Project.

21 (b) In the event the NTUA is found to be operating the Transferred Works or any
22 part thereof in violation of this Contract, or the NTUA is found to be failing any
23 financial commitments or other commitments to the United States under the terms and
24 conditions of this Contract, then, upon the election of the Contracting Officer, the
25 United States may enforce the OM&R payment provisions in the Project Participants'
26 respective repayment or water settlement contract and/or take over from the NTUA the
27 OM&R responsibilities of the Transferred Works by giving written notice to the NTUA
28 of such election, and the effective date thereof. Thereafter, during the period of
29 operation by the United States, upon notification by the Contracting Officer, the NTUA
30 shall pay to the United States, annually in advance, the cost of OM&R of the works, as

1 determined by the Contracting Officer. During this period, the United States will
2 attempt to operate the Project in accordance with the principles contained in the Water
3 Treatment and Conveyance Contract. NTUA shall provide to the United States a
4 written plan outlining remedies to address violations or failing commitments. Upon
5 remedy of violations and failing commitments to the satisfaction of the United States,
6 the Contracting Officer will provide written notification to NTUA, transferring back the
7 OM&R responsibilities of the works, pursuant to the provisions of this Article. All
8 costs incurred by the United States in the resumption and OM&R responsibilities of the
9 facilities will be reimbursable.

10 (c) During any period in which the United States is operating the Transferred
11 Works, the United States shall not be responsible for the control, carriage, handling,
12 use, disposal, or distribution of water furnished to the Project Participants place of final
13 use. The NTUA and/or Project Participant(s) will hold the United States harmless on
14 account of damage or claim of damage of any nature whatsoever arising out of or
15 connected with the control, carriage, handling, use, disposal, or distribution of water.

16 (d) The Contracting Officer may terminate this Contract at any time before the
17 expiration of its term whenever the Contracting Officer determines that the NTUA is in
18 breach of the Contract.

19 (1) Prior to the effective date of any such termination, the Contracting Officer
20 shall notify the NTUA in writing of the reason for the proposed termination,
21 including with specificity, the purported deficiencies of the NTUA in carrying out the
22 terms and conditions of this Contract. Such notice of purported deficiency shall be
23 issued only after the designated representative of the NTUA has met with the
24 Contracting Officer or his designated representative to attempt in good faith, and with
25 the use of best efforts to resolve any dispute arising from the purported deficiency. It
26 is the intent of the parties that disputes be resolved pursuant to this article as
27 expeditiously as is reasonably possible, without the necessity of other relief at law or
28 in equity. The NTUA shall have at least ninety (90) days from receipt of the written
29 notice of said reasons for termination to correct all deficiencies referred to in said
30 written notice.

1 (2) The Contracting Officer may specify a period of less than ninety (90) days to
2 cure deficiencies, under those circumstances which the Contracting Officer finds a
3 ninety day period could impair the safety or integrity of the Transferred Works.

4 (3) The Contracting Officer may order immediate repairs or replacements as are
5 required when the Contracting Officer determines that the health and safety of the
6 general public is threatened. Such costs shall be charged to the NTUA.

7 (e) Upon any termination of this Contract, the NTUA shall transfer to the United
8 States:

9 (1) Title to all essential equipment transferred under Article 4 to the extent still
10 available) or purchased by the NTUA for the purposes of this Contract;

11 (2) Any unexpended funds in its possession which were collected for, or allocated
12 to the OM&R of the Transferred Works for the then-current Fiscal Year;

13 (3) Upon appropriate credit to the Project Participants, and assurances that it will
14 be used and maintained in accordance with Article 19 below, the emergency reserve
15 fund;

16 (4) Upon appropriate credit to the Project Participants, and assurances that it will
17 be used and maintained solely for replacement purposes as set forth in Article 7, the
18 replacement reserve fund; and

19 (5) Provided that costs are allocated as provided in Article 7 and Delivery
20 Capacity Allocation is allocated as provided in Article 12, the income from the
21 Variable O&R Fund shall be made available to the United States for the purposes set
22 forth in the Water Treatment and Conveyance Contract. Nothing in this Contract
23 shall be deemed to require the NTUA to convey the Variable OM&R Fund to the
24 United States.

25 (f) Nothing in this Contract shall diminish the rights of either party to pursue
26 claims or appeals otherwise recognized under applicable law.

27
28 14. COLLECTION OF INCIDENTAL REVENUES

29 All revenues derived from the rental or sale of land, interests in land, or other real property
30 acquired and retained by the United States for Project purposes shall belong to the United States

1 and not be credited to the NTUA.

2
3 15. SEVERABILITY

4 If any provisions of this contract shall be held, by a court of competent jurisdiction, to be
5 invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the parties
6 intend that the validity, legality and enforceability of the remaining provisions shall not in
7 any way be affected or impaired thereby.

8
9 16. CHARGES FOR DELINQUENT PAYMENTS

10 (a) The NTUA shall be subject to interest, administrative, and penalty charges on
11 delinquent payments. If a payment is not received by the due date, the NTUA shall pay
12 an interest charge on the delinquent payment for each day the payment is delinquent
13 beyond the due date. If a payment becomes 60 days delinquent, the NTUA shall pay, in
14 addition to the interest charge, an administrative charge to cover additional costs of
15 billing and processing the delinquent payment. If a payment is delinquent 90 days or
16 more, the NTUA shall pay, in addition to the interest and administrative charges, a
17 penalty charge for each day the payment is delinquent beyond the due date, based on
18 the remaining balance of the payment due at the rate of 6 percent per year. The NTUA
19 shall also pay any fees incurred for debt collection services associated with a delinquent
20 payment.

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

26 (c) When a partial payment on a delinquent account is received, the amount
27 received shall be applied first to the penalty charges, second to the administrative
28 charges, third to the accrued interest, and finally to the overdue payment.

29
30 17. OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

31 (a) Upon Substantial Completion of the project works, or as otherwise determined
32 by the Contracting Officer, and following written notification, the care, operation, and
33 maintenance of any or all of the project works may be transferred to the NTUA. Title
34 to the Transferred Works will remain in the name of the United States, unless otherwise
35 provided by the Congress of the United States.

36 (b) The NTUA, without expense to the United States, shall care for, operate, and
37 maintain the Transferred Works in full compliance with the terms of this contract and
38 in such a manner that the Transferred Works remain in good and efficient condition.

39 (c) Necessary repairs of the Transferred Works shall be made promptly by the
40 NTUA. In case of unusual conditions or serious deficiencies in the care, operation,

1 and maintenance of the Transferred Works threatening or causing interruption of water
2 service, the Contracting Officer may issue to the NTUA a special written notice of
3 those necessary repairs. Except in the case of an emergency, the NTUA will be given
4 60 days to either make the necessary repairs or submit a plan for accomplishing the
5 repairs acceptable to the Contracting Officer. In the case of an emergency, or if the
6 NTUA fails to either make the necessary repairs or submit a plan for accomplishing the
7 repairs acceptable to the Contracting Officer within 60 days of receipt of the notice, the
8 Contracting Officer may cause the repairs to be made, and the cost of those repairs shall
9 be paid by the NTUA as directed by the Contracting Officer.

10 (d) The NTUA shall not make any substantial changes in the Transferred Works
11 without first obtaining written consent of the Contracting Officer. The NTUA shall
12 ensure that no unauthorized encroachment occurs on project land and rights-of-way.

13 (e) The NTUA agrees to indemnify the United States for, and hold the United
14 States and all of its representatives harmless from, all damages resulting from suits,
15 actions, or claims of any character brought on account of any injury to any person or
16 property arising out of any act, omission, neglect, or misconduct in the manner or
17 method of performing any construction, care, operation, maintenance, supervision,
18 examination, inspection, or other duties of the NTUA or the United States on
19 Transferred Works required under this contract, regardless of who performs those
20 duties. The NTUA does not agree to indemnify the United States for any damages
21 arising from intentional torts or malicious actions committed by employees of the
22 United States.

23 (f) The NTUA shall cooperate with the Contracting Officer in implementing an
24 effective dam safety program. The United States agrees to provide the NTUA and the
25 appropriate agency of the State or States in which the project facilities are located with
26 design data, designs, and an operating plan for the dam(s) and related facilities
27 consistent with the current memorandum of understanding between the United States
28 and the State(s) of New Mexico relating to the coordination of planning, design,
29 construction, operation, and maintenance processes for dams and related facilities.

30 (g) In the event the NTUA is found to be operating the Transferred Works or any
31 part thereof in violation of this contract or the NTUA is found to be failing any
32 financial commitments or other commitments to the United States under the terms and
33 conditions of this contract, then upon the election of the Contracting Officer, the United
34 States may take over from the NTUA the care, operation, and maintenance of the
35 Transferred Works by giving written notice to the NTUA of such election and the
36 effective date thereof. Thereafter, during the period of operation by the United States,
37 upon notification by the Contracting Officer the NTUA shall pay to the United States,
38 annually in advance, the cost of operation and maintenance of the works as determined
39 by the Contracting Officer. Following written notification from the Contracting Officer
40 the care, operation, and maintenance of the works may be transferred back to the
41 NTUA.

42 (h) In addition to all other payments to be made by the NTUA under this contract,
43 the NTUA shall reimburse to the United States, following the receipt of a statement
44 from the Contracting Officer, all miscellaneous costs incurred by the United States for

1 any work involved in the administration and supervision of this contract.
2

3 18. EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND
4 REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

5 (a) The Contracting Officer may, from time to time, examine the following: the
6 NTUA's books, records, and reports; the project works being operated by the NTUA;
7 the adequacy of the operation and maintenance [and safety of dams] program[s]; the
8 reserve fund; and the water conservation program including the water conservation
9 fund, if applicable. Notwithstanding title ownership, where the United States retains a
10 financial, physical, or liability interest in facilities either constructed by the United
11 States or with funds provided by the United States, the Contracting Officer may
12 examine any or all of the project works providing such interest to the United States.

13 (b) The Contracting Officer may, or the NTUA may ask the Contracting Officer to,
14 conduct special inspections of any project works being operated by the NTUA and
15 special audits of the NTUA's books and records to ascertain the extent of any operation
16 and maintenance deficiencies to determine the remedial measures required for their
17 correction and to assist the NTUA in solving specific problems. Except in an
18 emergency, any special inspection or audit shall be made only after written notice
19 thereof has been delivered to the NTUA by the Contracting Officer.

20 (c) The NTUA shall provide access to the project works, operate any mechanical or
21 electrical equipment, and be available to assist in the examination, inspection, or audit.

22 (d) The Contracting Officer shall prepare reports based on the examinations,
23 inspections, or audits and furnish copies of such reports and any recommendations to
24 the NTUA.

25 (e) The costs incurred by the United States in conducting operation and
26 maintenance examinations, inspections, and audits and preparing associated reports and
27 recommendations related to high- and significant-hazard dams and associated facilities
28 shall be nonreimbursable. Associated facilities include carriage, distribution, and
29 drainage systems; pumping and pump-generating plants; powerplant structures;
30 tunnels/pipelines; diversion and storage dams (low-hazard); Type 2 bridges which are
31 Reclamation-owned bridges not located on a public road; regulating reservoirs (low-
32 hazard); fish passage and protective facilities, including hatcheries; river channelization
33 features; rural/municipal water systems; desalting and other water treatment plants;
34 maintenance buildings and service yards; facilities constructed under Federal loan
35 programs (until paid out); and recreation facilities (reserved works only); and any other
36 facilities as determined by the Contracting Officer.

37 (f) Expenses incurred by the NTUA, as applicable, in participating in the operation
38 and maintenance site examination will be borne by the NTUA.

39 (g) Requests by the NTUA for consultations, design services, or modification
40 reviews, and the completion of any operation and maintenance activities identified in
41 the formal recommendations resulting from the examination (unless otherwise noted)
42 are to be funded as project operation and maintenance and are reimbursable by the
43 NTUA to the extent of current project operation and maintenance allocations.

44 (h) Site visit special inspections that are beyond the regularly scheduled operation

1 and maintenance examinations conducted to evaluate particular concerns or problems
2 and provide assistance relative to any corrective action (either as a follow up to an
3 operation and maintenance examination or when requested by the NTUA) shall be
4 nonreimbursable.

5 (i) The Contracting Officer may provide the State(s) an opportunity to observe and
6 participate in, at its (their) own expense, the examinations and inspections. The State(s)
7 may be provided copies of reports and any recommendations relating to such
8 examinations and inspections.
9

10 19. EMERGENCY RESERVE FUND

11 (a) Commencing on [date], the NTUA shall accumulate and maintain an
12 emergency reserve fund or demonstrate to the satisfaction of the Contracting Officer
13 that other funds are available for use as an emergency reserve fund. The NTUA shall
14 establish and maintain that emergency reserve fund to meet costs incurred during
15 periods of special stress caused by damaging droughts, storms, earthquakes, floods, or
16 other emergencies threatening or causing interruption of water service.

17 (b) The NTUA shall accumulate the emergency reserve fund with annual deposits
18 or investments of not less than \$ _____ to a Federally insured, interest- or dividend-
19 bearing account or in securities guaranteed by the Federal Government: *Provided, That*
20 money in the emergency reserve fund, including accrued interest, shall be available
21 within a reasonable time to meet expenses for such purposes as those identified in
22 paragraph (d) herein. Such annual deposits and the accumulation of interest to the
23 reserve fund shall continue until the basic amount of \$ _____ (date, price levels)
24 during the initial stages of the Project and \$ _____ (date, price levels) once the Project is
25 under full operation is accumulated. The above amounts will be adjusted (adjusted
26 amounts) as may be justified by reason of ordinary fluctuations in the operation and
27 maintenance costs as indicated by the Reclamation O&M cost index. Following an
28 emergency expenditure from the fund, the annual deposits shall continue from the year
29 following the emergency expenditure until the previous balance (or adjusted balance if
30 an adjustment pursuant to paragraph (c) is made) is restored. After the initial amount is
31 accumulated or after the previous balance is restored, the annual deposits may be
32 discontinued, and the interest earnings shall continue to accumulate and be retained as
33 part of the reserve fund.

34 (c) Upon mutual written agreement between the NTUA and the Contracting
35 Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to
36 account for risk and uncertainty stemming from the size and complexity of the project;
37 the size of the annual operation and maintenance budget; additions to, deletions from,
38 or changes in Transferred Works; cost index, and operation and maintenance costs not
39 contemplated when this contract was executed.

40 (d) The NTUA may make expenditures from the reserve fund only for meeting
41 routine or recurring operation and maintenance costs incurred during periods of special
42 stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary
43 operation and maintenance costs; or for meeting unusual or extraordinary repair or
44 replacement costs; or for meeting betterment costs (in situations where recurrence of

1 severe problems can be eliminated) during periods of special stress. Proposed
2 expenditures from the fund shall be submitted to the Contracting Officer in writing for
3 review and written approval prior to disbursement. Whenever the reserve fund is
4 reduced below the current balance or adjusted balance pursuant to paragraph (c) by
5 expenditures therefrom, the NTUA shall restore that balance by the accumulation of
6 annual deposits as specified in paragraph (b) herein.

7 (e) During any period in which any of the project works are operated and
8 maintained by the United States, the NTUA agrees the reserve fund shall be available
9 for like use by the United States.

10 (f) On or before _____ of each year, the NTUA shall provide a current
11 statement of the principal and accumulated interest of the reserve fund account to the
12 Contracting Officer.
13

14 20. NOTICES

15 Any notice, demand, or request authorized or required by this contract shall be deemed to
16 have been given, on behalf of the NTUA, when mailed, postage prepaid, or delivered to the
17 Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street,
18 Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed,
19 postage prepaid, or delivered to the General Manager of the Navajo Tribal Utility Authority,
20 Route 12, P.O. Box 170, Fort Defiance, AZ 86504. The designation of the addressee or the
21 address may be changed by notice given in the same manner as provided in this article for other
22 notices.
23

24 21. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

25 The expenditure or advance of any money or the performance of any obligation of the United
26 States under this contract shall be contingent upon appropriation or allotment of funds. Absence
27 of appropriation or allotment of funds shall not relieve the NTUA from any obligations under
28 this contract. No liability shall accrue to the United States in case funds are not appropriated or
29 allotted.
30

31 22. OFFICIALS NOT TO BENEFIT

32 No Member of or Delegate to the Congress, Resident Commissioner, or official of the NTUA
33 shall benefit from this contract other than as a water user or landowner in the same manner as
34 other water users or landowners.
35

36 23. CHANGES IN NTUA'S ORGANIZATION

37 While this contract is in effect, no change may be made in the NTUA's organization, by
38 inclusion or exclusion of lands or by any other changes which may affect the respective rights,
39 obligations, privileges, and duties of either the United States or the NTUA under this contract
40 including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting
41 Officer's written consent.

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24. ASSIGNMENT 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 NTUA shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the NTUA's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), 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. ADMINISTRATION OF FEDERAL PROJECT LANDS

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

27. PROTECTION OF WATER AND AIR QUALITY

(a) Project facilities **governed by this Contract** used to make available and deliver water to the NTUA 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 NTUA and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the NTUA.

(b) The NTUA shall comply with all applicable water and air pollution laws and regulations of the United States, and shall obtain all required permits or licenses from the appropriate Federal authorities necessary for the delivery of water by the NTUA; and shall be responsible for compliance with all Federal water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or NTUA facilities or project water provided by the NTUA within the NTUA's Project Water Service Area.

1 (c) This article shall not affect or alter any legal obligations of the Secretary to
2 provide drainage or other discharge services.
3

4 28. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

5 The NTUA shall not allow contamination or pollution of Federal project lands,

6 (a) Project waters or project works of the United States or administered by the
7 United States and for which the NTUA has the responsibility for care, operation, and
8 maintenance by its employees or agents. The NTUA shall also take reasonable
9 precautions to prevent such contamination or pollution by third parties.

10 (b) The NTUA shall comply with all applicable Federal [, State, and local] laws and
11 regulations and Reclamation policies and instructions existing, or hereafter enacted or
12 promulgated, concerning any hazardous material that will be used, produced,
13 transported, stored, released, or disposed of on or in Federal project lands, project
14 waters, or project works, and for which the NTUA has the responsibility for care,
15 operation, and maintenance.

16 (c) "Hazardous material" means (1) any substance falling within the definition of
17 "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the
18 Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §
19 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. §
20 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution,
21 refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts,
22 pesticides, and other solid waste, and (4) any other substance regulated as hazardous or
23 toxic under Federal [, State, local] or Tribal law.

24 (d) Upon discovery of any event which may or does result in contamination or
25 pollution of Federal project lands, project water, or project works, for which the NTUA
26 has the responsibility for care, operation, and maintenance, the NTUA shall
27 immediately undertake all measures necessary to protect public health and the
28 environment, including measures necessary to contain or abate any such contamination
29 or pollution, and shall report such discovery with full details of the actions taken to the
30 Contracting Officer. Reporting shall be within a reasonable time period but shall not
31 exceed 24 hours from the time of discovery if it is an emergency and the first working
32 day following discovery in the event of a non-emergency.

33
34 ~~(d)~~(e) If violation of the provisions of this Article occurs and the NTUA does not take
35 immediate corrective action, as determined by the Contracting Officer, the NTUA may
36 be subject to remedies imposed by the Contracting Officer, which may include
37 termination of this contract

38 ~~(e)~~(f) The NTUA shall be liable for any response action or corrective measure
39 necessary to protect public health and the environment or to restore Federal project
40 lands, project waters, or project works for which the NTUA has the responsibility for
41 care, operation, and maintenance that are adversely affected as a result of such
42 violation, and for all costs, penalties or other sanctions that are imposed for violation of
43 any Federal [, State, local] or Tribal laws and regulations concerning hazardous

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

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

6 ~~(g)~~(h) Reclamation agrees to provide information necessary for the NTUA, using
7 reasonable diligence, to comply with the provisions of this Article.
8

9 29.

CLEAN AIR AND WATER

10 (a) The NTUA agrees as follows:

11 (1) To comply with all the requirements of section 114 of the Clean Air Act, as
12 amended (42 U.S.C. § 7414), and section 308 of the Clean Water Act (33 U.S.C. §
13 1318), relating to inspection, monitoring, entry, reports, and information, as well as
14 other requirements specified in those sections, and all applicable regulations and
15 guidelines issued thereunder.

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

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

22 (4) To insert the substance of the provisions of this article into any nonexempt
23 subcontract, including this subparagraph (a)(4).

24 (b) The following definitions apply for purposes of this article:

25 (1) The term "Clean Air Act" means the Act enacted by Pub. L. 88-206 of Dec.
26 17, 1963, and amendments thereto, as codified at 42 U.S.C. § 7401, et seq.

27 (2) The term "Clean Water Act" means the Act enacted by Pub. L. 92- 500 of
28 Oct. 18, 1972, and amendments thereto, as codified at 33 U.S.C. § 1251, et seq.

29 (3) The term "clean air standards" refers to all enforceable rules, regulations,
30 guidelines, standards, limitations, orders, controls, prohibitions, and other
31 requirements which are contained in, issued under, or otherwise adopted pursuant to
32 the Clean Air Act or Executive Order 11738, an applicable implementation plan as
33 described in section 110 of the Clean Air Act (42 U.S.C. § 7410), an approved
34 implementation procedure or plan under subsection 111(c) or subsection 111(d) of the
35 Clean Air Act (42 U.S.C. § 7411(c) or (d)), or an approved implementation procedure
36 under subsection 112(d) of the Clean Air Act (42 U.S.C. § 7412(d)).

37 (4) The term "clean water standards" refers to all enforceable limitations,
38 controls, conditions, prohibitions, standards, and other requirements which are
39 promulgated pursuant to the Clean Water Act or contained in a permit issued to a
40 discharger by the Environmental Protection Agency or by a state under an approved
41 program, as authorized by section 402 of the Clean Water Act (33 U.S.C. § 1342), or
42 by local government to ensure compliance with pretreatment regulations as required
43 by section 307 of the Clean Water Act (33 U.S.C. § 1317).

1 (5) The term “comply” refers to compliance with clean air or water standards. It
2 also refers to compliance with a schedule or plan ordered or approved by a court of
3 competent jurisdiction, the Environmental Protection Agency, or an air or water
4 pollution control agency in accordance with the requirements of the Clean Air Act or
5 Clean Water Act and regulations issued pursuant thereto.

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

15 30. INDIAN EMPLOYMENT – EQUAL EMPLOYMENT OPPORTUNITY

16 During the performance of this contract, the NTUA agrees as follows:

17 (a) In accordance with 42 U.S.C. § 2000e-2(i), the NTUA shall give preference in
18 employment to Indian residents of the Navajo Indian Reservation. The Bureau of
19 Indian Affairs Office of Employment Assistance shall be notified of employment
20 opportunities 48 hours before any positions are advertised to the general public.

21 (b) Except as provided above, during the performance of this contract the NTUA
22 agrees as follows

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

34 (2) The NTUA will, in all solicitations or advertisements for employees placed by
35 or on behalf of the NTUA, state that all qualified applicants will receive consideration
36 for employment without regard to race, color, religion, sex, disability, or national
37 origin.

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

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

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

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

15 (7) The NTUA will include the provisions of paragraphs (1) through (7) in every
16 subcontract or purchase order unless exempted by the rules, regulations, or orders of
17 the Secretary of Labor issued pursuant to section 204 of EO 11246, so that such
18 provisions will be binding upon each subcontract or vendor. The NTUA will take
19 such action with respect to any subcontract or purchase order as may be directed by
20 the Secretary of Labor as a means of enforcing such provisions, including sanctions
21 for noncompliance: *Provided, however*, that in the event the NTUA becomes
22 involved in, or is threatened with, litigation with a subcontract or vendor as a result of
23 such direction, the NTUA may request that the United States enter into such litigation
24 to protect the interests of the United States.
25

26 31. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

1 (c) The NTUA makes this agreement in consideration of and for the purpose of
2 obtaining any and all Federal grants, loans, contracts, property discounts, or other
3 Federal financial assistance extended after the date hereof to the NTUA by the Bureau
4 of Reclamation, including installment payments after such date on account of
5 arrangements for Federal financial assistance which were approved before such date.
6 The NTUA recognizes and agrees that such Federal assistance will be extended in
7 reliance on the representations and agreements made in this article and that the
8 United States reserves the right to seek judicial enforcement thereof.

9 (d) Complaints of discrimination against the NTUA shall be investigated by the
10 Contracting Officer's Office of Civil Rights.
11

12 32. CERTIFICATION OF NONSEGREGATED FACILITIES

13 The NTUA hereby certifies that it does not maintain or provide for its employees any
14 segregated facilities at any of its establishments and that it does not permit its employees to
15 perform their services at any location under its control where segregated facilities are
16 maintained. It certifies further that it will not maintain or provide for its employees any
17 segregated facilities at any of its establishments and that it will not permit its employees to
18 perform their services at any location under its control where segregated facilities are
19 maintained. The NTUA agrees that a breach of this certification is a violation of the Equal
20 Employment Opportunity clause in this contract. As used in this certification, the term
21 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
22 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
23 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
24 facilities provided for employees which are segregated by explicit directive or are in fact
25 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
26 disability, or otherwise. The NTUA further agrees that (except where it has obtained identical
27 certifications from proposed subcontractors for specific time periods) it will obtain identical
28 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
29 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
30 will retain such certifications in its files; and that it will forward the following notice to such
31 proposed subcontractors (except where the proposed subcontractors have submitted identical
32 certifications for specific time periods):

33 NOTICE TO PROSPECTIVE SUBNTUAS OF REQUIREMENT FOR
34 CERTIFICATIONS OF NONSEGREGATED FACILITIES

35 A Certification of Nonsegregated Facilities must be submitted prior to the award of a
36 subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal
37 Employment Opportunity clause. The certification may be submitted either for each subcontract
38 or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The
39 penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.
40

41 33. RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

42 When acquiring land or an interest in land and relocating persons or personal property in
43 connection with the construction, operation, and maintenance of project facilities, the NTUA
44 shall comply with the provisions of the Uniform Relocation Assistance and Real Property

1 Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894; 42 U.S.C. § 4601, et seq.) and
2 Department of Transportation regulations at 49 C.F.R. part 24.

3
4 34. PEST MANAGEMENT

5 (a) The NTUA is responsible for complying with applicable Federal, State, and
6 local laws, rules, and regulations related to pest management in performing its
7 responsibilities under this contract.

8 (b) The NTUA is responsible for effectively avoiding the introduction and spread
9 of, and for otherwise controlling, undesirable plants and animals, as defined by the
10 Contracting Officer, on or in Federal project lands, Federal project waters, and Federal
11 project works for which and to the extent that the NTUA has operation and
12 maintenance responsibility. The NTUA is responsible for exercising the level of
13 precaution necessary in meeting this responsibility, including inspecting its vehicles
14 and equipment for reproductive and vegetative parts, foreign soil, mud or other debris
15 that may cause the spread of weeds, invasive species and other pests, and removing
16 such materials before moving its vehicles and equipment onto any Federal land or out
17 of any area on Federal project land where work is performed.

18 (c) Where decontamination is required prior to entering Federal project land, it
19 shall be performed at the point of prior use, or at an approved offsite facility able to
20 process generated cleaning wastes. Upon the completion of work, the NTUA will
21 perform any required decontamination within the work area before moving the vehicles
22 and equipment from Federal project lands.

23 (d) Programs for the control of undesirable plants and animals on Federal project
24 lands, and in Federal project waters and Federal project works for which the NTUA has
25 operation and maintenance responsibility will incorporate Integrated Pest Management
26 (IPM) concepts and practices. IPM refers to a systematic and environmentally
27 compatible program to maintain pest populations within economically and
28 environmentally tolerable levels. In implementing an IPM program, the NTUA will
29 adhere to applicable Federal and State laws and regulations and Department of the
30 Interior and Bureau of Reclamation policies, directives, guidelines, and manuals,
31 including but not limited to, the Department of the Interior Manual, Part 609 Weed
32 Control Program, the Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and
33 Executive Order 13112 of February 3, 1999.

34
35 35. MEDIUM FOR TRANSMITTING PAYMENTS

36 (a) All payments from the NTUA to the United States under this contract shall be
37 by the medium requested by the United States on or before the date payment is due.
38 The required method of payment may include checks, wire transfers, or other types of
39 payment specified by the United States.

40 (b) Upon execution of the contract, the NTUA shall furnish the Contracting Officer
41 with the NTUA's taxpayer's identification number (TIN). The purpose for requiring
42 the NTUA's TIN is for collecting and reporting any delinquent amounts arising out of
43 the NTUA's relationship with the United States.

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36. CONTRACT DRAFTING CONSIDERATIONS

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

DRAFT

1 IN WITNESS WHEREOF, the parties hereto have signed their names this day and year
2 first written above.

3
4 UNITED STATES OF AMERICA
5 Approved for legal sufficiency: DEPARTMENT OF THE INTERIOR

6
7
8 _____ By: _____
9 Office of the Solicitor Regional Director
10 Upper Colorado Region
11 Bureau of Reclamation

12
13
14
15 ATTEST: NAVAJO TRIBAL UTILITY AUTHORITY
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17
18 _____ By: _____
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- 20
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22
23 List of Attachments: Exhibit A – Operation MOU
24 Exhibit B – Operating Agreement Among the Project Participants
25 Designated Authorities
26 Exhibit C – Water Treatment and Conveyance Contract
27 Exhibit D – NIIP Connection MOU
28 Exhibit E – NGWSP Map