

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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Contract No. _____
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6 UNITED STATES
7 DEPARTMENT OF THE INTERIOR
8 BUREAU OF RECLAMATION
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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 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 (Public Law 92-199)(85 Stat. 664),
29 authorized the Secretary of the Interior to engage in the feasibility planning, and investigation of
30 the Navajo-Gallup Water Supply Project (Project). Subsequently, the construction, operation,
31 and maintenance of the Project was authorized by the Northwestern New Mexico Rural Water
32 Projects Act (Omnibus Public Land Management Act of 2009, Title X, Part III) of March
33 30, 2009 (123 Stat. 1367) hereafter referred to as Public Law 111-11. The United States has
34 investigated, planned, and is constructing the Project for the diversion and distribution of the
35 waters of the San Juan River. The Project has among its authorized purposes, the furnishing of

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

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

12 The Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup, New Mexico
13 (City), collectively referred to as the Project Participants, executed a Memorandum of
14 Understanding for the Operation of the Navajo-Gallup Water Supply Project (Operation MOU),
15 on September 26, 2012, (attached as Exhibit A to this Contract), designating that the Gallup
16 Joint Utilities (GJU) and NTUA, can negotiate agreements and contracts related to the Project.

17 The City, the Jicarilla Apache Nation, and NTUA, executed the Operating Agreement
18 Among the Project Participants Designated Authorities, on _____, _____, 2013, (attached
19 as Exhibit B to this Contract), designating NTUA as the operator of the Transferred Works.

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

26 The Bureau of Indian Affairs (BIA), Reclamation, the Navajo Agricultural Products
27 Industry (NAPI) and NTUA executed a Memorandum of Understanding Concerning the
28 Conveyance of NGWSP Water Through the Navajo Indian Irrigation Project (NIIP) facilities
29 (NIIP Connection MOU) on _____ 2013 (attached as Exhibit D to this Contract),
30 establishing the terms and conditions for conveying NGWSP water through NIIP facilities.

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 for Reach 24.1, Reach 25, and Reach 26, these Excluded Reaches are not subject to this
4 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 NTUA shall be
11 responsible to perform OM&R for Reach 14.1, Reach 14.2, and any future sub-Reaches as
12 mutually agreed upon, therefore these Excluded Reaches are not subject to this Contract.

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

20 Reclamation has no authority or responsibility for delivery of water beyond any turnout
21 or facility beyond the Transferred Works.

22
23 The signatory parties enter into this Contract to establish the terms and conditions for the
24 transfer of the provide for the necessary OM&R of the Transferred Works.

25
26 NOW THEREFORE, in consideration of the terms and conditions of this Contract, the
27 signatory parties agree as follows:

28
29

30 1. DEFINITIONS

1 Where used in this Contract:

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

5 Consultation shall be required of each party with respect to each section of this
6 Contract regardless of whether the section itself sets forth a consultation requirement.
7 Such duty of consultation shall be reasonable under the circumstances, and except in
8 exigent circumstances, shall be undertaken in advance of decision making. In the event
9 that consensus cannot be reached, and the United States makes a decision, appeals are
10 available to the extent allowed under applicable laws.

11 (b) "Delivery Capacity Allocation" means the capacity of the Project's municipal
12 and industrial (M&I) water, allocated to a Project Participant pursuant to Section
13 10603(b) of Public Law 111-11.

14 (c) "Excluded Reaches" means a Project or Non-Project reach or facility which
15 Reclamation does not or will not hold title, and therefore will not have OM&R
16 authority under this Contract. OM&R of Excluded Reaches will be covered in separate
17 agreements.

18 (d) "Fixed OM&R costs" includes but is not limited to: costs of administration,
19 overhead, labor, materials, and equipment required to maintain all pumps, storage
20 tanks, pipelines, diversion facilities, water treatment plants, electrical transmission
21 facilities, and appurtenant facilities, as may be appropriate. Fixed OM&R costs shall
22 include annual payments to an emergency reserve fund to meet costs incurred during
23 periods of special stress caused by damaging droughts, storms, fires, floods, or other
24 emergencies threatening or causing interruption of water service. Fixed OM&R costs
25 shall also include annual payments to a replacement reserve fund to ensure adequate
26 funds are available to replace equipment when needed.

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

30 (f) "Non-Project Water" means water not identified within Section 10603 (b) of

Comment [BG1]: CB to review the definition of Fixed and Variable funds

1 Public Law 111-11.

2 (g) "Project" means reaches and facilities of the Navajo-Gallup Water Supply
3 Project, as authorized by Public Law 111-11, constructed by and/or funded by the
4 United States.

5 (h) "Project Construction Committee" means the committee made up of
6 Reclamation, the Project Participants, and the State of New Mexico, pursuant to Section
7 10604(g) of Public Law 111-11.

8 (i) "Project Participants" means the Navajo Nation; the City of Gallup, New
9 Mexico; and the Jicarilla Apache Nation.

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

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

17 (l) "Transferred Works" means a Project facility or reach constructed and owned
18 by the United States, for which the OM&R is transferred to NTUA under the provisions
19 of this Contract.

20 (m) "United States" or "Contracting Officer" means the Secretary of the United
21 States Department of the Interior, acting through Reclamation, or any other designee.

22 (n) "Variable OM&R Costs" includes but is not limited to costs including: power,
23 power consumption and a proportional percentage of power demand, and costs
24 associated with the treatment and conveyance of water.

Comment [BG2]: CB to review the definition of
Fixed and Variable funds

25
26 2. APPLICABLE LAW

27 (a) In addition to the Project authorizations cited earlier, the transfer of operation
28 and maintenance herein is authorized pursuant to Section 6 of the Reclamation Act (Act
29 of June 17, 1902, 32 Stat. 388); Section 5 of the Reclamation Extension Act (Act of
30 August 13, 1914, 38 Stat. 686); and Subsection G of the Second Deficiency

1 Appropriation Act for 1924 (Fact Finders' Act, Act of December 5, 1924, 43 Stat. 672);
2 the Transfer Title to Movable Property to Irrigation Districts Act (Act of July 29, 1954,
3 68 Stat. 580), and the Amend Movable Property Title Transfer Act (Act of June 24,
4 1965, 79 Stat. 172).

5 (b) OM&R of the Transferred Works shall be in accordance with the Record of
6 Decision dated October 1, 2009, and in accordance with the Environmental
7 Commitments in Chapter 6 of the Navajo-Gallup Final Environmental Impact
8 Statement (FEIS); the parties acknowledge that the Water Treatment and Conveyance
9 Contract, which is attached as Exhibit C to this Contract, provides for OM&R of the
10 Transferred Works in accordance with the Record of Decision.

11 (c) Any additions, changes to, or OM&R of Transferred Works different from that
12 stated in the FEIS dated July 2009 and subsequent Record of Decision dated October 1,
13 2009, may be subject to further compliance with applicable environmental statutes and
14 must be approved by the United States.

15
16 3. TERM OF THE CONTRACT

17 This Contract shall become effective upon the date of execution by the Contracting
18 Officer, and shall remain in full force and effect until conveyance of title of all Transferred
19 Works, or terminated by mutual written agreement of the United States and NTUA, unless
20 terminated pursuant to Article 13 herein. The actual transfer of OM&R for the Transferred
21 Works to NTUA will occur as set forth in Article 5.

Comment [BG3]: End of June 25, 2013 meeting.

22
23 4. TRANSFERRED WORKS

24 (a) The Transferred Works covered under this Contract are as follows:

25 (1) San Juan Lateral, which includes: Reach 1 (Water Treatment Plant), Reaches
26 2-9, 10, 10.1, 10.2, 10.3, 11, 12A, 12B, 12.1, and 12.2.; and any future subdivisions
27 of these reaches, as established by Reclamation in consultation with the Project
28 Construction Committee.

29 (2) Cutter Lateral, which includes: Reach 21 (Water Treatment Plant), Reach 22a,
30 and Reach 22b.; and any future subdivisions of these reaches, as established by

1 Reclamation in consultation with the Project Construction Committee.

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

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

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

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

19
20 5. OM&R TRANSFER PROCESS

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

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

30 (b) Upon the request stated in Article 5(a) by the WCAO, and pursuant to Section

1 10603(g) of Public Law 111-11, the Construction Engineer will declare a section of the
2 Project to be substantially complete when delivery of water generated by, and through,
3 that section of the Project can be made to a Project Participant. The Construction
4 Engineer will issue a written notice to NTUA and Project Participants, referred to
5 herein as the “Notice of Substantial Completion”. The Notice of Substantial
6 Completion shall contain:

7 (1) A description of the Project facility or reach that has been determined to be
8 substantially complete and can generate water delivery;

9 (2) A list of the reaches and facilities which are completed;

10 (3) The proportionate share allocated among the Participants of the design
11 capacity for each of the Project features listed within the Notice of Substantial
12 Completion

13 (4) The effective date of that Substantial Completion declaration.

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

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

21 (1) A detailed list of the facilities and of the movable property and equipment to
22 be transferred, together with: (A) a description of warranties to be provided and/or
23 transferred to NTUA in connection with the Transferred Works and other facilities
24 and property to be transferred; (B) pertinent design, construction, and as-built
25 documents for the Transferred Works; and (C) maintenance protocols, equipment
26 manuals, and other like items relating to the OM&R of the Transferred Works;

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

30 (3) A plan for correcting any such deficiencies, setting forth: (A) the corrective

1 measures to be applied; (B) the entity or entities responsible for undertaking such
2 corrective measures, including when they will be undertaken and how they will be
3 funded; and (C) anticipated completion dates for the corrective measures.

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

5 (e) Upon approval of the Transfer Inspection Report by the Construction Engineer,
6 the Regional Director, and the WCAO Area Manager, a Notice of Transfer shall be
7 issued by Reclamation to NTUA accompanied by the Transfer Inspection Report and
8 will conclude the transfer process from Reclamation OM&R status to NTUA OM&R
9 status.

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

15
16 6. NTUA OM&R RESPONSIBILITY

17 After receiving the OM&R responsibility pursuant to **Article 5**, NTUA shall, at its own cost
18 and expense except as provided in **Article 7(c)** below, carry out the OM&R of the Transferred
19 Works.

20
21 7. OPERATION, MAINTENANCE, AND REPLACEMENT COSTS

22 UNDER NTUA RESPONSIBILITY

23 (a) Upon the transfer of a Project feature from Reclamation OM&R status to NTUA
24 OM&R responsibility, NTUA shall charge Project Participants for the OM&R costs of those
25 Transferred Works, and their charges shall consist of both Fixed and Variable OM&R costs.
26 NTUA shall establish procedures for the assessment and collection of both Fixed and
27 Variable OM&R, consistent with the following provisions:

28 (1) Fixed OM&R costs shall be allocated among the Project Participants based
29 upon the proportionate share of the design capacity of each Project feature as listed

1 within the Notice of Substantial Completion that has been declared substantially
2 complete. Fixed OM&R costs shall include, but not be limited to:

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

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

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

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

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

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

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

23 (b) Fixed OM&R costs for the Project shall be paid on the basis of annual cost estimates
24 made by NTUA based upon the proportionate share of the design capacity for those Project
25 reaches and facilities which have been declared substantially complete through Article 5(b).
26 An estimate from NTUA will be sent to the Project Participant(s) on or before May 1 for the
27 next federal fiscal year, which begins October 1 of the same calendar year and ends
28 September 30 of the next calendar year. The Project Participant shall advance its share of
29 the OM&R costs for each federal fiscal year in quarterly payments which will be due on
30 September 30, December 31, March 31, and June 30 of the federal fiscal year of

1 applicability. The first such billing will be issued immediately following a Notice of
2 Substantial Completion as provided in Article 5(b) of this Contract. In the event the first
3 notice shall be for costs of service of less than a full year, such costs shall be prorated for the
4 period covered. An itemization of the estimated Fixed OM&R costs will accompany the
5 billing.

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

15 (d) Pursuant to Section to Section 10604(f) of Public Law 111-11, the United States may
16 make payment to NTUA of the OM&R costs of a Transferred Work allocated to the Navajo
17 Nation that the Secretary has determined is in excess of the ability of the Navajo Nation to
18 pay, but for a period of not more than 10 years after Notice of Substantial Completion has
19 been given for the Transferred Work. This waiver authority shall terminate on the date on
20 which title to a facility is transferred to the Navajo Nation pursuant to 10604(f)(5) of Public
21 Law 111-11.

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

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

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

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

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

14
15 8. CONVEYANCE OF TITLE TO TRANSFERRED WORKS

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

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

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

25
26 9. RESPONSIBILITY FOR DELIVERY OF CAPACITY ALLOCATION

27 (a) NTUA shall OM&R installed measuring, collection, transmission and control
28 devices and shall be responsible to install and OM&R any additional devices necessary
29 for water delivery.

30 (b) All Non-Project facilities and appurtenant structures required for taking water

1 furnished under this Contract from the points of delivery, and putting it to use by the
2 Project Participant(s) and/or their subcontractors will be acquired, constructed or
3 installed, and operated and maintained by the Project Participant(s) and/or their
4 subcontractors at their sole expense.

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

10 (d) Deliveries to the Cutter Lateral through the NIIP Facilities shall be pursuant to
11 the NIIP Connection MOU.

12
13 10. OM&R PAYMENT FOR TREATMENT AND CARRIAGE OF NON-PROJECT WATER
14 & ADDITIONAL CAPACITY

15 (a) Pursuant to Section 10602(h), during the period where title to Project facilities
16 is held by the United States, the Secretary may enter into contracts with Non-Project
17 entities for the treatment and carriage of Non-Project Water through the Project if, after
18 Consultation with the Project Participants, it is determined that capacity is available
19 without impairing deliveries to a Project Participant. Any contract for treatment and
20 carriage of Non-Project water shall include the following terms:

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

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

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

28 (b) Pursuant to Section 10603(b)(3), during the period where title to Project
29 facilities is held by the United States, the Project Participant may request of the
30 Secretary the use of additional capacity in a Project reach or facility for treatment and

1 carriage of water if capacity is available without impairing delivery to a Project
2 Participant. The Secretary shall approve or disapprove the request within 180 days of
3 receipt of the request. Prior to use of any additional capacity, the Project Participant
4 must agree to the following terms:

- 5 (1) Pay the OM&R costs associated with the additional treatment and carriage;
- 6 and
- 7 (2) Pay any fee established by the Secretary to assist in recovering capital costs
- 8 relating to the additional treatment and carriage; and
- 9 (3) Additional treatment and carriage shall be terminated if deliver to a Project
- 10 Participant is impaired

11
12 11. DELIVERY CAPACITY ALLOCATION AND SHORTAGES

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

15 (b) During periods of drought, there may be a time when insufficient water is
16 available to fulfill the Delivery Capacity Allocation of a Project Participant. In such
17 cases, shortages shall be administered pursuant to the Water Treatment and
18 Conveyance Contract.

19 (c) The Project Participants have their own sources for water and will be

20 (b)(d) Shortage Language.....

21
22 12. LIMIT OF LIABILITY

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

29 (b) There may occur at times during any year a shortage in the quantity of water
30 available for furnishing to the Project Participants or subcontractors through and by

1 means of the Project, but in no event shall any liability accrue against the United States
2 or any of its officers, agents, or employees for any damage, direct or indirect, arising
3 from a shortage on account of errors in operation, drought, or any other causes.
4

5 13. REMEDIES

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

9 (b) In the event NTUA is found to be operating the Transferred Works or any part
10 thereof in violation of this Contract, or NTUA is found to be failing any financial
11 commitments or other commitments to the United States under the terms and conditions
12 of this Contract, then, upon the election of the Contracting Officer, the United States
13 may enforce the OM&R payment provisions in the Project Participants' respective
14 repayment or water settlement contract and/or take over from NTUA the OM&R
15 responsibilities of the Transferred Works by giving written notice to NTUA of such
16 election, and the effective date thereof. Thereafter, during the period of operation by
17 the United States, upon notification by the Contracting Officer, NTUA shall pay to the
18 United States, annually in advance, the cost of OM&R of the works, as determined by
19 the Contracting Officer. During this period, the United States will attempt to operate
20 the Project in accordance with the principles contained in the Water Treatment and
21 Conveyance Contract. NTUA shall provide to the United States a written plan
22 outlining remedies to address violations or failing commitments. Upon remedy of
23 violations and failing commitments to the satisfaction of the United States, the
24 Contracting Officer will provide written notification to NTUA, transferring back the
25 OM&R responsibilities of the works, pursuant to the provisions of this Article. All
26 costs incurred by the United States in the resumption and OM&R responsibilities of the
27 facilities will be reimbursable.

28 (c) During any period in which the United States is operating the Transferred
29 Works, the United States shall not be responsible for the control, carriage, handling,
30 use, disposal, or distribution of water furnished to the Project Participants place of final

1 use. NTUA and/or Project Participant(s) will hold the United States harmless on
2 account of damage or claim of damage of any nature whatsoever arising out of or
3 connected with the control, carriage, handling, use, disposal, or distribution of water.

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

7 (1) Prior to the effective date of any such termination, the Contracting Officer
8 shall notify NTUA in writing of the reason for the proposed termination, including
9 with specificity, the purported deficiencies of NTUA in carrying out the terms and
10 conditions of this Contract. Such notice of purported deficiency shall be issued only
11 after the designated representative of NTUA has met with the Contracting Officer or
12 his designated representative to attempt in good faith, and with the use of best efforts
13 to resolve any dispute arising from the purported deficiency. It is the intent of the
14 parties that disputes be resolved pursuant to this article as expeditiously as is
15 reasonably possible, without the necessity of other relief at law or in equity. NTUA
16 shall have at least ninety (90) days from receipt of the written notice of said reasons
17 for termination to correct all deficiencies referred to in said written notice.

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

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

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

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

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

30 (3) Upon appropriate credit to the Project Participants, and assurances that it will

1 be used and maintained in accordance with Article 19 below, the emergency reserve
2 fund;

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

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

12 (f) Nothing in this Contract shall diminish the rights of either party to pursue
13 claims or appeals otherwise recognized under applicable law.
14

15 14. COLLECTION OF INCIDENTAL REVENUES

16 All revenues derived from the rental or sale of land, interests in land, or other real property
17 acquired and retained by the United States for Project purposes shall belong to the United States
18 and not be credited to NTUA.
19

20 15. SEVERABILITY

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

26 16. CHARGES FOR DELINQUENT PAYMENTS

27 (a) ~~The~~ NTUA shall be subject to interest, administrative, and penalty charges on
28 delinquent payments. If a payment is not received by the due date, ~~the~~ NTUA shall pay
29 an interest charge on the delinquent payment for each day the payment is delinquent
30 beyond the due date. If a payment becomes 60 days delinquent, ~~the~~ NTUA shall pay, in
31 addition to the interest charge, an administrative charge to cover additional costs of
32 billing and processing the delinquent payment. If a payment is delinquent 90 days or

1 | more, ~~the~~NTUA shall pay, in addition to the interest and administrative charges, a
2 | penalty charge for each day the payment is delinquent beyond the due date, based on
3 | the remaining balance of the payment due at the rate of 6 percent per year. ~~The~~NTUA
4 | shall also pay any fees incurred for debt collection services associated with a delinquent
5 | payment.

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

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

14 |
15 | 17. OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

16 | (a) Upon Substantial Completion of the project works, or as otherwise determined
17 | by the Contracting Officer, and following written notification, the care, operation, and
18 | maintenance of any or all of the project works may be transferred to ~~the~~NTUA. Title
19 | to the Transferred Works will remain in the name of the United States, unless otherwise
20 | provided by the Congress of the United States.

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

24 | (c) Necessary repairs of the Transferred Works shall be made promptly by ~~the~~
25 | NTUA. In case of unusual conditions or serious deficiencies in the care, operation,
26 | and maintenance of the Transferred Works threatening or causing interruption of water
27 | service, the Contracting Officer may issue to ~~the~~NTUA a special written notice of
28 | those necessary repairs. Except in the case of an emergency, ~~the~~NTUA will be given
29 | 60 days to either make the necessary repairs or submit a plan for accomplishing the
30 | repairs acceptable to the Contracting Officer. In the case of an emergency, or if ~~the~~
31 | NTUA fails to either make the necessary repairs or submit a plan for accomplishing the
32 | repairs acceptable to the Contracting Officer within 60 days of receipt of the notice, the
33 | Contracting Officer may cause the repairs to be made, and the cost of those repairs shall
34 | be paid by ~~the~~NTUA as directed by the Contracting Officer.

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

38 | (e) ~~The~~NTUA agrees to indemnify the United States for, and hold the United
39 | States and all of its representatives harmless from, all damages resulting from suits,
40 | actions, or claims of any character brought on account of any injury to any person or
41 | property arising out of any act, omission, neglect, or misconduct in the manner or
42 | method of performing any construction, care, operation, maintenance, supervision,
43 | examination, inspection, or other duties of ~~the~~NTUA or the United States on
44 | Transferred Works required under this contract, regardless of who performs those

1 duties. ~~The~~NTUA does not agree to indemnify the United States for any damages
2 arising from intentional torts or malicious actions committed by employees of the
3 United States.

4 (f) ~~The~~NTUA shall cooperate with the Contracting Officer in implementing an
5 effective dam safety program. The United States agrees to provide ~~the~~NTUA and the
6 appropriate agency of the State or States in which the project facilities are located with
7 design data, designs, and an operating plan for the dam(s) and related facilities
8 consistent with the current memorandum of understanding between the United States
9 and the State(s) of New Mexico relating to the coordination of planning, design,
10 construction, operation, and maintenance processes for dams and related facilities.

11 (g) In the event ~~the~~NTUA is found to be operating the Transferred Works or any
12 part thereof in violation of this contract or ~~the~~NTUA is found to be failing any
13 financial commitments or other commitments to the United States under the terms and
14 conditions of this contract, then upon the election of the Contracting Officer, the United
15 States may take over from ~~the~~NTUA the care, operation, and maintenance of the
16 Transferred Works by giving written notice to ~~the~~NTUA of such election and the
17 effective date thereof. Thereafter, during the period of operation by the United States,
18 upon notification by the Contracting Officer ~~the~~NTUA shall pay to the United States,
19 annually in advance, the cost of operation and maintenance of the works as determined
20 by the Contracting Officer. Following written notification from the Contracting Officer
21 the care, operation, and maintenance of the works may be transferred back to ~~the~~
22 NTUA.

23 (h) In addition to all other payments to be made by ~~the~~NTUA under this contract,
24 ~~the~~NTUA shall reimburse to the United States, following the receipt of a statement
25 from the Contracting Officer, all miscellaneous costs incurred by the United States for
26 any work involved in the administration and supervision of this contract.

27
28 **18. EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND**
29 **REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE**

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

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

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

3 | (d) The Contracting Officer shall prepare reports based on the examinations,
4 | inspections, or audits and furnish copies of such reports and any recommendations to
5 | ~~the~~ NTUA.

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

18 | (f) Expenses incurred by ~~the~~ NTUA, as applicable, in participating in the operation
19 | and maintenance site examination will be borne by ~~the~~ NTUA.

20 | (g) Requests by ~~the~~ NTUA for consultations, design services, or modification
21 | reviews, and the completion of any operation and maintenance activities identified in
22 | the formal recommendations resulting from the examination (unless otherwise noted)
23 | are to be funded as project operation and maintenance and are reimbursable by the
24 | NTUA to the extent of current project operation and maintenance allocations.

25 | (h) Site visit special inspections that are beyond the regularly scheduled operation
26 | and maintenance examinations conducted to evaluate particular concerns or problems
27 | and provide assistance relative to any corrective action (either as a follow up to an
28 | operation and maintenance examination or when requested by ~~the~~ NTUA) shall be
29 | nonreimbursable.

30 | (i) The Contracting Officer may provide the State(s) an opportunity to observe and
31 | participate in, at its (their) own expense, the examinations and inspections. The State(s)
32 | may be provided copies of reports and any recommendations relating to such
33 | examinations and inspections.

34 |
35 | 19. EMERGENCY RESERVE FUND

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

42 | (b) ~~The~~ NTUA shall accumulate the emergency reserve fund with annual deposits
43 | or investments of not less than \$ _____ to a Federally insured, interest- or dividend-
44 | bearing account or in securities guaranteed by the Federal Government: Provided, That

1 money in the emergency reserve fund, including accrued interest, shall be available
2 within a reasonable time to meet expenses for such purposes as those identified in
3 paragraph (d) herein. Such annual deposits and the accumulation of interest to the
4 reserve fund shall continue until the basic amount of \$ _____ (date, price levels)
5 during the initial stages of the Project and \$ _____ (date, price levels) once the Project is
6 under full operation is accumulated. The above amounts will be adjusted (adjusted
7 amounts) as may be justified by reason of ordinary fluctuations in the operation and
8 maintenance costs as indicated by the Reclamation O&M cost index. Following an
9 emergency expenditure from the fund, the annual deposits shall continue from the year
10 following the emergency expenditure until the previous balance (or adjusted balance if
11 an adjustment pursuant to paragraph (c) is made) is restored. After the initial amount is
12 accumulated or after the previous balance is restored, the annual deposits may be
13 discontinued, and the interest earnings shall continue to accumulate and be retained as
14 part of the reserve fund.

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

21 (d) ~~The~~ NTUA may make expenditures from the reserve fund only for meeting
22 routine or recurring operation and maintenance costs incurred during periods of special
23 stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary
24 operation and maintenance costs; or for meeting unusual or extraordinary repair or
25 replacement costs; or for meeting betterment costs (in situations where recurrence of
26 severe problems can be eliminated) during periods of special stress. Proposed
27 expenditures from the fund shall be submitted to the Contracting Officer in writing for
28 review and written approval prior to disbursement. Whenever the reserve fund is
29 reduced below the current balance or adjusted balance pursuant to paragraph (c) by
30 expenditures therefrom, ~~the~~ NTUA shall restore that balance by the accumulation of
31 annual deposits as specified in paragraph (b) herein.

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

35 (f) On or before _____ of each year, ~~the~~ NTUA shall provide a current
36 statement of the principal and accumulated interest of the reserve fund account to the
37 Contracting Officer.

39 20. NOTICES

40 Any notice, demand, or request authorized or required by this contract shall be deemed to
41 have been given, on behalf of ~~the~~ NTUA, when mailed, postage prepaid, or delivered to the
42 Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street,
43 Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed,

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

5
6 21. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

7 The expenditure or advance of any money or the performance of any obligation of the United
8 States under this contract shall be contingent upon appropriation or allotment of funds. Absence
9 of appropriation or allotment of funds shall not relieve ~~the~~NTUA from any obligations under
10 this contract. No liability shall accrue to the United States in case funds are not appropriated or
11 allotted.
12

13 22. OFFICIALS NOT TO BENEFIT

14 No Member of or Delegate to the Congress, Resident Commissioner, or official of ~~the~~NTUA
15 shall benefit from this contract other than as a water user or landowner in the same manner as
16 other water users or landowners.
17

18 23. CHANGES IN NTUA'S ORGANIZATION

19 While this contract is in effect, no change may be made in ~~the~~NTUA's organization, by
20 inclusion or exclusion of lands or by any other changes which may affect the respective rights,
21 obligations, privileges, and duties of either the United States or ~~the~~NTUA under this contract
22 including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting
23 Officer's written consent.
24

25 24. ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED

26 The provisions of this contract shall apply to and bind the successors and assigns of the
27 parties hereto, but no assignment or transfer of this contract or any right or interest therein by
28 either party shall be valid until approved in writing by the other party.
29

30 25. BOOKS, RECORDS AND REPORTS

31 ~~The~~NTUA shall establish and maintain accounts and other books and records pertaining to
32 administration of the terms and conditions of this contract, including ~~the~~NTUA's financial
33 transactions; water supply data; project operation, maintenance, and replacement logs; project
34 land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership,
35 land-leasing, and water-use data; and other matters that the Contracting Officer may require.
36 Reports shall be furnished to the Contracting Officer in such form and on such date or dates as
37 the Contracting Officer may require. Subject to applicable Federal laws and regulations, each
38 party to this contract shall have the right during office hours to examine and make copies of the
39 other party's books and records relating to matters covered by this contract.
40

1 26. ADMINISTRATION OF FEDERAL PROJECT LANDS

2 The lands and interests in lands acquired, withdrawn, or reserved and needed by the United
3 States for the purposes of care, operation, and maintenance of the NGWSP works may be
4 used by ~~the~~NTUA for such purposes. ~~The~~NTUA shall ensure that no unauthorized
5 encroachment occurs on Federal project lands and rights-of-way. ~~The~~NTUA does not have
6 the authority to issue any land-use agreement or grant that conveys an interest in Federal real
7 property, nor to lease or dispose of any interest of the United States.
8

9 27. PROTECTION OF WATER AND AIR QUALITY

10 (a) Project facilities governed by this Contract used to make available and deliver
11 water to ~~the~~NTUA shall be operated and maintained in the most practical manner to
12 maintain the quality of the water at the highest level possible as determined by the
13 Contracting Officer: *Provided, That* the United States does not warrant the quality of
14 the water delivered to ~~the~~NTUA and is under no obligation to furnish or construct
15 water treatment facilities to maintain or improve the quality of water delivered to ~~the~~
16 NTUA.

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

24 (c) This article shall not affect or alter any legal obligations of the Secretary to
25 provide drainage or other discharge services.
26

27 28. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

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

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

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

39 (c) "Hazardous material" means (1) any substance falling within the definition of
40 "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the
41 Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §
42 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. §

1 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution,
2 refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts,
3 pesticides, and other solid waste, and (4) any other substance regulated as hazardous or
4 toxic under Federal [, State, local] or Tribal law.

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

14
15 ~~(d)~~(e) If violation of the provisions of this Article occurs and the-NTUA does not take
16 immediate corrective action, as determined by the Contracting Officer, the-NTUA may
17 be subject to remedies imposed by the Contracting Officer, which may include
18 termination of this contract

19 ~~(e)~~(f) The-NTUA shall be liable for any response action or corrective measure
20 necessary to protect public health and the environment or to restore Federal project
21 lands, project waters, or project works for which the-NTUA has the responsibility for
22 care, operation, and maintenance that are adversely affected as a result of such
23 violation, and for all costs, penalties or other sanctions that are imposed for violation of
24 any Federal [, State, local] or Tribal laws and regulations concerning hazardous
25 material. At the discretion of the Contracting Officer, the United States may also
26 terminate this Contract as a result of such violation.

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

30 ~~(g)~~(h) Reclamation agrees to provide information necessary for the-NTUA, using
31 reasonable diligence, to comply with the provisions of this Article.
32

33 29. CLEAN AIR AND WATER

34 (a) The-NTUA agrees as follows:

35 (1) To comply with all the requirements of section 114 of the Clean Air Act, as
36 amended (42 U.S.C. § 7414), and section 308 of the Clean Water Act (33 U.S.C. §
37 1318), relating to inspection, monitoring, entry, reports, and information, as well as
38 other requirements specified in those sections, and all applicable regulations and
39 guidelines issued thereunder.

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

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

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

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

6 (1) The term "Clean Air Act" means the Act enacted by Pub. L. 88-206 of Dec.
7 17, 1963, and amendments thereto, as codified at 42 U.S.C. § 7401, et seq.

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

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

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

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

30 (6) The term "facility" means any building, plant, installation, structure, mine,
31 vessel or other floating craft, location, or site of operations owned, leased, or
32 supervised by a NTUA or subcontract to be utilized in the performance of a contract
33 or subcontract. Where a location or site of operations contains or includes more than
34 one building, plant, installation, or structure, the entire location or site shall be
35 deemed to be a facility except where the Director, Office of Federal Activities,
36 Environmental Protection Agency, determines that independent facilities are
37 collocated in one geographical area.
38

39 30. INDIAN EMPLOYMENT – EQUAL EMPLOYMENT OPPORTUNITY

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

41 (a) In accordance with 42 U.S.C. § 2000e-2(i), ~~the~~ NTUA shall give preference in
42 employment to Indian residents of the Navajo Indian Reservation. The Bureau of

1 Indian Affairs Office of Employment Assistance shall be notified of employment
2 opportunities 48 hours before any positions are advertised to the general public.

3 (b) Except as provided above, during the performance of this contract ~~the~~NTUA
4 agrees as follows

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

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

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

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

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

33 (6) In the event of ~~the~~NTUA's noncompliance with the nondiscrimination
34 clauses of this contract or with any of such rules, regulations, or orders, this contract
35 may be canceled, terminated or suspended in whole or in part and ~~the~~NTUA may be
36 declared ineligible for further Government contracts in accordance with procedures
37 authorized in EO 11246, and such other sanctions may be imposed and remedies
38 invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of
39 Labor, or as otherwise provided by law.

40 (7) ~~The~~NTUA will include the provisions of paragraphs (1) through (7) in every
41 subcontract or purchase order unless exempted by the rules, regulations, or orders of
42 the Secretary of Labor issued pursuant to section 204 of EO 11246, so that such
43 provisions will be binding upon each subcontract or vendor. ~~The~~NTUA will take
44 such action with respect to any subcontract or purchase order as may be directed by

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

7 31. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

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

35 32. CERTIFICATION OF NONSEGREGATED FACILITIES

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

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

13 NOTICE TO PROSPECTIVE SUBNTUAS OF REQUIREMENT FOR
14 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

20
21 33. RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

22 When acquiring land or an interest in land and relocating persons or personal property in
23 connection with the construction, operation, and maintenance of project facilities, ~~the~~NTUA
24 shall comply with the provisions of the Uniform Relocation Assistance and Real Property
25 Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894; 42 U.S.C. § 4601, et seq.) and
26 Department of Transportation regulations at 49 C.F.R. part 24.

27
28 34. PEST MANAGEMENT

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

32 (b) ~~The~~NTUA is responsible for effectively avoiding the introduction and spread
33 of, and for otherwise controlling, undesirable plants and animals, as defined by the
34 Contracting Officer, on or in Federal project lands, Federal project waters, and Federal
35 project works for which and to the extent that ~~the~~NTUA has operation and
36 maintenance responsibility. ~~The~~NTUA is responsible for exercising the level of
37 precaution necessary in meeting this responsibility, including inspecting its vehicles
38 and equipment for reproductive and vegetative parts, foreign soil, mud or other debris
39 that may cause the spread of weeds, invasive species and other pests, and removing
40 such materials before moving its vehicles and equipment onto any Federal land or out
41 of any area on Federal project land where work is performed.

42 (c) Where decontamination is required prior to entering Federal project land, it
43 shall be performed at the point of prior use, or at an approved offsite facility able to
44 process generated cleaning wastes. Upon the completion of work, ~~the~~NTUA will

1 perform any required decontamination within the work area before moving the vehicles
2 and equipment from Federal project lands.

3 (d) Programs for the control of undesirable plants and animals on Federal project
4 lands, and in Federal project waters and Federal project works for which ~~the~~-NTUA has
5 operation and maintenance responsibility will incorporate Integrated Pest Management
6 (IPM) concepts and practices. IPM refers to a systematic and environmentally
7 compatible program to maintain pest populations within economically and
8 environmentally tolerable levels. In implementing an IPM program, ~~the~~-NTUA will
9 adhere to applicable Federal and State laws and regulations and Department of the
10 Interior and Bureau of Reclamation policies, directives, guidelines, and manuals,
11 including but not limited to, the Department of the Interior Manual, Part 609 Weed
12 Control Program, the Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and
13 Executive Order 13112 of February 3, 1999.
14

15 35. MEDIUM FOR TRANSMITTING PAYMENTS

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

20 (b) Upon execution of the contract, ~~the~~-NTUA shall furnish the Contracting Officer
21 with ~~the~~-NTUA's taxpayer's identification number (TIN). The purpose for requiring
22 ~~the~~-NTUA's TIN is for collecting and reporting any delinquent amounts arising out of
23 ~~the~~-NTUA's relationship with the United States.
24

25 36. CONTRACT DRAFTING CONSIDERATIONS

26 This Contract has been, negotiated and reviewed by the parties hereto, each of whom is
27 sophisticated in the matters to which this Contract pertains. **Articles 1 through 35 of this**
28 **Contract** have been drafted, negotiated, and reviewed by the parties, and no one party shall be
29 considered to have drafted the stated articles.
30
31

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 ATTEST: NAVAJO TRIBAL UTILITY AUTHORITY
15
16
17 _____ By: _____
18
19

- 20
21
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