

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

NAVAJO-GALLUP WATER SUPPLY PROJECT
COLORADO RIVER STORAGE PROJECT

OPERATION, MAINTENANCE, AND REPLACEMENT TRANSFER CONTRACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

<u>EXPLANATORY RECITALS</u>	3
1. <u>DEFINITIONS</u>	5
2. <u>APPLICABLE LAW</u>	7
3. <u>TERM OF THE CONTRACT</u>	8
4. <u>TRANSFERRED WORKS</u>	8
5. <u>OM&R TRANSFER PROCESS</u>	9
6. <u>NTUA OM&R RESPONSIBILITY</u>	11
7. <u>OPERATION, MAINTENANCE, AND REPLACEMENT COSTS</u>	11
<u>UNDER NTUA RESPONSIBILITY</u>	11
8. <u>CONVEYANCE OF TITLE TO TRANSFERRED WORKS</u>	14
9. <u>RESPONSIBILITY FOR DELIVERY OF CAPACITY ALLOCATION</u>	14
10. <u>OM&R PAYMENT FOR TREATMENT AND CARRIAGE OF NON-PROJECT WATER & ADDITIONAL CAPACITY</u>	15
11. <u>DELIVERY CAPACITY ALLOCATION AND SHORTAGES</u>	16
12. <u>LIMIT OF LIABILITY</u>	16
13. <u>REMEDIES</u>	17
14. <u>COLLECTION OF INCIDENTAL REVENUES</u>	19
16. <u>CHARGES FOR DELINQUENT PAYMENTS</u>	19
17. <u>OPERATION AND MAINTENANCE OF TRANSFERRED WORKS</u>	20
18. <u>EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE</u>	21
19. <u>EMERGENCY RESERVE FUND</u>	22

1	20.	<u>NOTICES</u>	23
2	21.	<u>CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS</u>	23
3	22.	<u>OFFICIALS NOT TO BENEFIT</u>	24
4	23.	<u>CHANGES IN NTUA'S ORGANIZATION</u>	24
5	24.	<u>ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED</u>	24
6	25.	<u>BOOKS, RECORDS AND REPORTS</u>	24
7	26.	<u>ADMINISTRATION OF FEDERAL PROJECT LANDS</u>	24
8	27.	<u>PROTECTION OF WATER AND AIR QUALITY</u>	25
9	28.	<u>CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY</u>	25
10	29.	<u>CLEAN AIR AND WATER</u>	26
11	30.	<u>INDIAN EMPLOYMENT – EQUAL EMPLOYMENT OPPORTUNITY</u>	27
12	31.	<u>COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS</u>	28
13	32.	<u>CERTIFICATION OF NONSEGREGATED FACILITIES</u>	29
14	33.	<u>RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION</u>	30
15	34.	<u>PEST MANAGEMENT</u>	30
16	35.	<u>MEDIUM FOR TRANSMITTING PAYMENTS</u>	31
17	36.	<u>CONTRACT DRAFTING CONSIDERATIONS</u>	31

18
19

Contract No. _____

DRAFT

1
2
3
4
5
6 UNITED STATES
7 DEPARTMENT OF THE INTERIOR
8 BUREAU OF RECLAMATION
9

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 (NTUA), an enterprise of the Navajo Nation, with its principal
23 place of business 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 MOU to Appoint Project
18 Oversight Committee, on _____, _____, 2013, (attached as Exhibit B to this Contract),
19 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 by reaches and facilities, procedures for service to non-party users, and dispute
25 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 Cooperative Agreement No. R12AC40004, the Navajo Nation will design, construct, own, and
3 perform OM&R for Reach 24.1, Reach 25, and Reach 26, therefore these Excluded Reaches are
4 not subject to this Contract.

5 Pursuant to the terms and conditions identified in the Reclamation Financial Assistance
6 Cooperative Agreement No. R11AC40002, the City will design, construct, own and perform
7 OM&R for Reach 13 and Reach 27, therefore these Excluded Reaches are not subject to this
8 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, therefore these Excluded Reaches 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 Reclamation and NTUA enter into this Contract to establish the terms and conditions
24 under which OM&R of the Transferred Works is transferred to NTUA.

25
26 NOW THEREFORE, in consideration of the terms and conditions of this Contract,
27 Reclamation and NTUA 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 nor 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 also
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 also include annual payments to a replacement reserve fund to ensure adequate funds
26 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]: DOI Solicitor 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: power, power
23 consumption and a proportional percentage of power demand, and costs associated with
24 the treatment and conveyance of water.

Comment [BG2]: DOI Solicitor 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 OM&R is
28 authorized pursuant to Section 6 of the Reclamation Act (Act of June 17, 1902, 32 Stat.
29 388); Section 5 of the Reclamation Extension Act (Act of August 13, 1914, 38 Stat.
30 686); and Subsection G of the Second Deficiency Appropriation Act for 1924 (Act

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

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

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

15
16 3. TERM OF THE CONTRACT

17 This Contract will 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. The actual transfer of OM&R for the Transferred Works to
21 NTUA will occur as set forth in Article 5.

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 special tools, supplies,
10 movable property, and specific equipment will be mutually agreed to, and will be
11 included in the Transfer Inspection Report as defined in Article 5.

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

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

18
19 5. OM&R TRANSFER PROCESS

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

24 (a) Reclamation's Western Colorado Area Office (WCAO) will initiate the transfer
25 process for any Transferred Work covered under Article 4 by requesting a Notice of
26 Substantial Completion from the Four Corners Construction Office Construction
27 Engineer (Construction Engineer). The WCAO shall notify NTUA at least 90 days
28 prior to requesting a Notice of Substantial Completion.

29 (b) Upon the request stated in Article 5(a) by the WCAO, and pursuant to Section
30 10603(g) of Public Law 111-11, the Construction Engineer will declare a section of the

Comment [BG3]: 081513 Verify process of OM&R transfer is clear and consistent.

Comment [BG4]: 081513 Delete? This is addressed in Article 8

1 Project to be substantially complete when delivery of water generated by, and through,
2 that section of the Project can be made to a Project Participant. The Construction
3 Engineer will issue a written Notice of Substantial Completion to NTUA and Project
4 Participants. The Notice of Substantial Completion shall contain:

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

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

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

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

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

15 (d) Prior to transfer from Reclamation OM&R status to NTUA OM&R status, a
16 transfer inspection will be conducted in Consultation with NTUA. The United States
17 will then prepare a Transfer Inspection Report, which will contain:

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

24 (2) A list of design and construction deficiencies, if any, identified by the
25 Transfer Inspection Report for the Transferred Works and other facilities, and
26 property to be transferred; and

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

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

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

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

13 6. NTUA OM&R RESPONSIBILITY

14 After receiving the OM&R responsibility pursuant to **Article 5**, NTUA shall, at its own cost
15 and expense except as provided in **Article 7(c)**, carry out the OM&R of the Transferred Works.
16

17 7. OPERATION, MAINTENANCE, AND REPLACEMENT COSTS
18 UNDER NTUA RESPONSIBILITY

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

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

28 a. The costs of labor, materials and equipment required to maintain all
29 Transferred Works which include but are not limited to: treatment plants, pumps,

1 storage tanks, waterway structures, piping, valves, accessory electrical equipment,
2 supervisory control communications, and security equipment.

3 b. The specific costs related to administration and overhead, not including legal
4 fees.

Comment [BG5]: 081513 End of Negotiation Meeting

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

10 (2) Variable OM&R Costs are costs in addition to the costs assessed under
11 7(a)(1), consistent with the following:

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

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

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

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

1 billing.

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

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

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

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

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

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

9 (i) Reclamation shall Consult with NTUA regarding its progress in securing the funds
10 needed for the United States to meet its obligations under this contract.
11

12 8. CONVEYANCE OF TITLE TO TRANSFERRED WORKS

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

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

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

23 9. RESPONSIBILITY FOR DELIVERY OF CAPACITY ALLOCATION

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

27 (b) All Non-Project facilities and appurtenant structures required for taking water
28 furnished under this Contract from the points of delivery, and putting it to use by the
29 Project Participant(s) and/or their subcontractors will be acquired, constructed or
30 installed, and operated and maintained by the Project Participant(s) and/or their

1 subcontractors at their sole expense.

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

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

9
10 **10. OM&R PAYMENT FOR TREATMENT AND CARRIAGE OF NON-PROJECT WATER**
11 **& ADDITIONAL CAPACITY**

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

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

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

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

25 (b) Pursuant to Section 10603(b)(3), during the period where title to Project
26 facilities is held by the United States, the Project Participant may request of the
27 Secretary the use of additional capacity in a Project reach or facility for treatment and
28 carriage of water if capacity is available without impairing delivery to a Project
29 Participant. The Secretary shall approve or disapprove the request within 180 days of
30 receipt of the request. Prior to use of any additional capacity, the Project Participant

1 must agree to the following terms:

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

9 11. DELIVERY CAPACITY ALLOCATION AND SHORTAGES

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

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

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

17 ~~(b)~~(d) Shortage Language.....
18

19 12. LIMIT OF LIABILITY

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

13.

REMEDIES

- (a) In the event the United States raises material concerns about the performance of the OM&R of the operating entity, the Project Participants shall promptly Consult as to the future best interests of the Project.
- (b) In the event NTUA is found to be operating the Transferred Works or any part thereof in violation of this Contract, or NTUA is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this Contract, then, upon the election of the Contracting Officer, the United States may enforce the OM&R payment provisions in the Project Participants’ respective repayment or water settlement contract and/or take over from NTUA the OM&R responsibilities of the Transferred Works by giving written notice to NTUA of such election, and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer, NTUA shall pay to the United States, annually in advance, the cost of OM&R of the works, as determined by the Contracting Officer. During this period, the United States will attempt to operate the Project in accordance with the principles contained in the Water Treatment and Conveyance Contract. NTUA shall provide to the United States a written plan outlining remedies to address violations or failing commitments. Upon remedy of violations and failing commitments to the satisfaction of the United States, the Contracting Officer will provide written notification to NTUA, transferring back the OM&R responsibilities of the works, pursuant to the provisions of this Article. All costs incurred by the United States in the resumption and OM&R responsibilities of the facilities will be reimbursable.
- (c) During any period in which the United States is operating the Transferred Works, the United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water furnished to the Project Participants place of final use. NTUA and/or Project Participant(s) will hold the United States harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water.

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

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

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

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

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

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

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

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

29 (4) Upon appropriate credit to the Project Participants, and assurances that it will
30 be used and maintained solely for replacement purposes as set forth in **Article** 7, the

1 replacement reserve fund; and

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

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

10
11 14. COLLECTION OF INCIDENTAL REVENUES

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

15
16 15. SEVERABILITY

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

21
22 16. CHARGES FOR DELINQUENT PAYMENTS

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

34 (b) The interest rate charged shall be the greater of either the rate prescribed

1 quarterly in the Federal Register by the Department of the Treasury for application to
2 overdue payments, or the interest rate of 0.5 percent per month. The interest rate
3 charged will be determined as of the due date and remain fixed for the duration of the
4 delinquent period.

5 (c) When a partial payment on a delinquent account is received, the amount
6 received shall be applied first to the penalty charges, second to the administrative
7 charges, third to the accrued interest, and finally to the overdue payment.
8

9 17. OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

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

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

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

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

32 (e) NTUA agrees to indemnify the United States for, and hold the United States and
33 all of its representatives harmless from, all damages resulting from suits, actions, or
34 claims of any character brought on account of any injury to any person or property
35 arising out of any act, omission, neglect, or misconduct in the manner or method of
36 performing any construction, care, operation, maintenance, supervision, examination,
37 inspection, or other duties of NTUA or the United States on Transferred Works
38 required under this contract, regardless of who performs those duties. NTUA does not
39 agree to indemnify the United States for any damages arising from intentional torts or
40 malicious actions committed by employees of the United States.

41 (f) NTUA shall cooperate with the Contracting Officer in implementing an
42 effective dam safety program. The United States agrees to provide -NTUA and the
43 appropriate agency of the State or States in which the project facilities are located with
44 design data, designs, and an operating plan for the dam(s) and related facilities

1 consistent with the current memorandum of understanding between the United States
2 and the State(s) of New Mexico relating to the coordination of planning, design,
3 construction, operation, and maintenance processes for dams and related facilities.

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

15 (h) In addition to all other payments to be made by NTUA under this contract,
16 NTUA shall reimburse to the United States, following the receipt of a statement from
17 the Contracting Officer, all miscellaneous costs incurred by the United States for any
18 work involved in the administration and supervision of this contract.
19

20 **18. EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND**
21 **REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE**

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

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

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

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

42 (e) The costs incurred by the United States in conducting operation and
43 maintenance examinations, inspections, and audits and preparing associated reports and
44 recommendations related to high- and significant-hazard dams and associated facilities

1 shall be nonreimbursable. Associated facilities include carriage, distribution, and
2 drainage systems; pumping and pump-generating plants; powerplant structures;
3 tunnels/pipelines; diversion and storage dams (low-hazard); Type 2 bridges which are
4 Reclamation-owned bridges not located on a public road; regulating reservoirs (low-
5 hazard); fish passage and protective facilities, including hatcheries; river channelization
6 features; rural/municipal water systems; desalting and other water treatment plants;
7 maintenance buildings and service yards; facilities constructed under Federal loan
8 programs (until paid out); and recreation facilities (reserved works only); and any other
9 facilities as determined by the Contracting Officer.

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

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

17 (h) Site visit special inspections that are beyond the regularly scheduled operation
18 and maintenance examinations conducted to evaluate particular concerns or problems
19 and provide assistance relative to any corrective action (either as a follow up to an
20 operation and maintenance examination or when requested by NTUA) shall be
21 nonreimbursable.

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

26
27 19. EMERGENCY RESERVE FUND

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

34 (b) NTUA shall accumulate the emergency reserve fund with annual deposits or
35 investments of not less than \$ _____ to a Federally insured, interest- or dividend-
36 bearing account or in securities guaranteed by the Federal Government: *Provided, That*
37 money in the emergency reserve fund, including accrued interest, shall be available
38 within a reasonable time to meet expenses for such purposes as those identified in
39 paragraph (d) herein. Such annual deposits and the accumulation of interest to the
40 reserve fund shall continue until the basic amount of \$ _____ (date, price levels)
41 during the initial stages of the Project and \$ _____ (date, price levels) once the Project is
42 under full operation is accumulated. The above amounts will be adjusted (adjusted
43 amounts) as may be justified by reason of ordinary fluctuations in the operation and
44 maintenance costs as indicated by the Reclamation O&M cost index. Following an

1 emergency expenditure from the fund, the annual deposits shall continue from the year
2 following the emergency expenditure until the previous balance (or adjusted balance if
3 an adjustment pursuant to paragraph (c) is made) is restored. After the initial amount is
4 accumulated or after the previous balance is restored, the annual deposits may be
5 discontinued, and the interest earnings shall continue to accumulate and be retained as
6 part of the reserve fund.

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

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

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

27 (f) On or before _____ of each year, NTUA shall provide a current statement
28 of the principal and accumulated interest of the reserve fund account to the Contracting
29 Officer.
30

31 20. NOTICES

32 Any notice, demand, or request authorized or required by this contract shall be deemed to
33 have been given, on behalf of -NTUA, when mailed, postage prepaid, or delivered to the
34 Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street,
35 Room 6107, Salt Lake City, Utah 84138-1102, and on behalf of the United States, when mailed,
36 postage prepaid, or delivered to the General Manager of the Navajo Tribal Utility Authority,
37 Route 12, P.O. Box 170, Fort Defiance, AZ 86504. The designation of the addressee or the
38 address may be changed by notice given in the same manner as provided in this article for other
39 notices.
40

41 21. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

42 The expenditure or advance of any money or the performance of any obligation of the United
43 States under this contract shall be contingent upon appropriation or allotment of funds. Absence

1 of appropriation or allotment of funds shall not relieve NTUA from any obligations under this
2 contract. No liability shall accrue to the United States in case funds are not appropriated or
3 allotted.
4

5 22. OFFICIALS NOT TO BENEFIT

6 No Member of or Delegate to the Congress, Resident Commissioner, or official of NTUA
7 shall benefit from this contract other than as a water user or landowner in the same manner as
8 other water users or landowners.
9

10 23. CHANGES IN NTUA'S ORGANIZATION

11 While this contract is in effect, no change may be made in NTUA's organization, by
12 inclusion or exclusion of lands or by any other changes which may affect the respective rights,
13 obligations, privileges, and duties of either the United States or NTUA under this contract
14 including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting
15 Officer's written consent.
16

17 24. ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED

18 The provisions of this contract shall apply to and bind the successors and assigns of the
19 parties hereto, but no assignment or transfer of this contract or any right or interest therein by
20 either party shall be valid until approved in writing by the other party.
21

22 25. BOOKS, RECORDS AND REPORTS

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

33 26. ADMINISTRATION OF FEDERAL PROJECT LANDS

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

27. PROTECTION OF WATER AND AIR QUALITY

- (a) Project facilities governed by this Contract used to make available and deliver water to 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 NTUA and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to NTUA.
- (b) 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 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 NTUA within NTUA’s Project Water Service Area.
- (c) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

28. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

- NTUA shall not allow contamination or pollution of Federal project lands,
- (a) Project waters or project works of the United States or administered by the United States and for which NTUA has the responsibility for care, operation, and maintenance by its employees or agents. NTUA shall also take reasonable precautions to prevent such contamination or pollution by third parties.
 - (b) NTUA shall comply with all applicable Federal [, State, and local] laws and regulations and Reclamation policies and instructions existing, or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, released, or disposed of on or in Federal project lands, project waters, or project works, and for which NTUA has the responsibility for care, operation, and maintenance.
 - (c) “Hazardous material” means (1) any substance falling within the definition of “hazardous substance,” “pollutant or contaminant,” or “hazardous waste” under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution, refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal [, State, local] or Tribal law.
 - (d) Upon discovery of any event which may or does result in contamination or pollution of Federal project lands, project water, or project works, for which NTUA has the responsibility for care, operation, and maintenance. NTUA shall immediately undertake all measures necessary to protect public health and the environment,

1 including measures necessary to contain or abate any such contamination or pollution,
2 and shall report such discovery with full details of the actions taken to the Contracting
3 Officer. Reporting shall be within a reasonable time period but shall not exceed 24
4 hours from the time of discovery if it is an emergency and the first working day
5 following discovery in the event of a non-emergency.

6
7 ~~(d)~~(e) If violation of the provisions of this Article occurs and NTUA does not take
8 immediate corrective action, as determined by the Contracting Officer, NTUA may be
9 subject to remedies imposed by the Contracting Officer, which may include termination
10 of this contract

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

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

22 ~~(g)~~(h) Reclamation agrees to provide information necessary for NTUA, using
23 reasonable diligence, to comply with the provisions of this Article.
24

25 29. CLEAN AIR AND WATER

26 (a) NTUA agrees as follows:

27 (1) To comply with all the requirements of section 114 of the Clean Air Act, as
28 amended (42 U.S.C. § 7414), and section 308 of the Clean Water Act (33 U.S.C. §
29 1318), relating to inspection, monitoring, entry, reports, and information, as well as
30 other requirements specified in those sections, and all applicable regulations and
31 guidelines issued thereunder.

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

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

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

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

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

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

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

11 (4) The term “clean water standards” refers to all enforceable limitations,
12 controls, conditions, prohibitions, standards, and other requirements which are
13 promulgated pursuant to the Clean Water Act or contained in a permit issued to a
14 discharger by the Environmental Protection Agency or by a state under an approved
15 program, as authorized by section 402 of the Clean Water Act (33 U.S.C. § 1342), or
16 by local government to ensure compliance with pretreatment regulations as required
17 by section 307 of the Clean Water Act (33 U.S.C. § 1317).

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

23 (6) The term “facility” means any building, plant, installation, structure, mine,
24 vessel or other floating craft, location, or site of operations owned, leased, or
25 supervised by a NTUA or subcontract to be utilized in the performance of a contract
26 or subcontract. Where a location or site of operations contains or includes more than
27 one building, plant, installation, or structure, the entire location or site shall be
28 deemed to be a facility except where the Director, Office of Federal Activities,
29 Environmental Protection Agency, determines that independent facilities are
30 collocated in one geographical area.
31

32 30. INDIAN EMPLOYMENT – EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

40 (1) NTUA will not discriminate against any employee or applicant for
41 employment because of race, color, religion, sex, disability, or national origin.
42 NTUA will take affirmative action to ensure that applicants are employed, and that
43 employees are treated during employment, without regard to their race, color,

1 religion, sex, disability, or national origin. Such action shall include, but not be
2 limited to the following: employment, upgrading, demotion, or transfer; recruitment
3 or recruitment advertising; layoff or termination; rates of pay or other forms of
4 compensation; and selection for training, including apprenticeship. NTUA agrees to
5 post in conspicuous places, available to employees and applicants for employment,
6 notices to be provided by the Contracting Officer setting forth the provisions of this
7 nondiscrimination clause.

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

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

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

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

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

31 (7) NTUA will include the provisions of paragraphs (1) through (7) in every
32 subcontract or purchase order unless exempted by the rules, regulations, or orders of
33 the Secretary of Labor issued pursuant to section 204 of EO 11246, so that such
34 provisions will be binding upon each subcontract or vendor. NTUA will take such
35 action with respect to any subcontract or purchase order as may be directed by the
36 Secretary of Labor as a means of enforcing such provisions, including sanctions for
37 noncompliance: *Provided, however*, that in the event NTUA becomes involved in, or
38 is threatened with, litigation with a subcontract or vendor as a result of such direction,
39 NTUA may request that the United States enter into such litigation to protect the
40 interests of the United States.

41
42 31. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1 (a) NTUA shall comply with Title VI of the Civil Rights Act of 1964 (Pub.
2 L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V,
3 as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-
4 135, Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities
5 Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.),] [Title III of the Americans
6 with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.),] and
7 any other applicable civil rights laws, and with the applicable implementing regulations
8 and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of
9 Reclamation.

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

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

25 (d) Complaints of discrimination against NTUA shall be investigated by the
26 Contracting Officer's Office of Civil Rights.
27

28 32. CERTIFICATION OF NONSEGREGATED FACILITIES

29 NTUA hereby certifies that it does not maintain or provide for its employees any segregated
30 facilities at any of its establishments and that it does not permit its employees to perform their
31 services at any location under its control where segregated facilities are maintained. It certifies
32 further that it will not maintain or provide for its employees any segregated facilities at any of its
33 establishments and that it will not permit its employees to perform their services at any location
34 under its control where segregated facilities are maintained. NTUA agrees that a breach of this
35 certification is a violation of the Equal Employment Opportunity clause in this contract. As used
36 in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest
37 rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other
38 storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas,
39 transportation, and housing facilities provided for employees which are segregated by explicit
40 directive or are in fact segregated on the basis of race, creed, color, or national origin, because of
41 habit, local custom, disability, or otherwise. NTUA further agrees that (except where it has
42 obtained identical certifications from proposed subcontractors for specific time periods) it will
43 obtain identical certifications from proposed subcontractors prior to the award of subcontracts
44 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment

1 Opportunity clause; that it will retain such certifications in its files; and that it will forward the
2 following notice to such proposed subcontractors (except where the proposed subcontractors
3 have submitted identical certifications for specific time periods):

4 **NOTICE TO PROSPECTIVE SUBNTUAS OF REQUIREMENT FOR**
5 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

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

11
12 33. **RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION**

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

18
19 34. **PEST MANAGEMENT**

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

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

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

38 (d) Programs for the control of undesirable plants and animals on Federal project
39 lands, and in Federal project waters and Federal project works for which NTUA has
40 operation and maintenance responsibility will incorporate Integrated Pest Management
41 (IPM) concepts and practices. IPM refers to a systematic and environmentally
42 compatible program to maintain pest populations within economically and
43 environmentally tolerable levels. In implementing an IPM program, NTUA will adhere
44 to applicable Federal and State laws and regulations and Department of the Interior and

1 Bureau of Reclamation policies, directives, guidelines, and manuals, including but not
2 limited to, the Department of the Interior Manual, Part 609 Weed Control Program, the
3 Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of
4 February 3, 1999.
5

6 35. MEDIUM FOR TRANSMITTING PAYMENTS

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

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

16 36. CONTRACT DRAFTING CONSIDERATIONS

17 This Contract has been, negotiated and reviewed by the parties hereto, each of whom is
18 sophisticated in the matters to which this Contract pertains. **Articles 1 through 35 of this**
19 **Contract** have been drafted, negotiated, and reviewed by the parties, and no one party shall be
20 considered to have drafted the stated articles.
21
22

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