

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

CONTRACT BETWEEN THE UNITED STATES AND
THE NAVAJO NATION

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12 THE NAVAJO NATION
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14
15 **PART I. SETTLEMENT**

16
17 1. **PREAMBLE**

18
19 This contract is entered into this ____ day of _____, 20__, between the
20 United States of America, acting through the Secretary of the Interior pursuant to the
21 Northwestern New Mexico Rural Water Projects Act of March 30, 2009 (123 Stat. 1367),
22 the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary
23 thereto, all of which acts are commonly known and referred to as the Federal
24 Reclamation Laws, the Act of June 13, 1962 (76 Stat. 96), the Act of April 11, 1956
25 (CRSP) (70 Stat. 105; 43 U.S.C. 620 et seq.), the Colorado Ute Settlement Act
26 Amendments of 2000 (114 Stat. 2763A-258), and the Act of August 1, 1914 (38 Stat.
27 583; 25 U.S.C. 385), and the Navajo Nation.

28
29 2. **EXPLANATORY RECITALS**

30
31 WHEREAS, the United States and the Navajo Nation have negotiated a resolution
32 of all water right claims of the Navajo Nation to waters of the San Juan River Basin in
33 New Mexico which are the subject of a general stream adjudication in New Mexico state
34 court and which claims, if unresolved, impair water resources development by the Navajo
35 Nation and the State of New Mexico; and

1 258; Public Law 106-554, Appendix D, Title III) including Ridges Basin Dam and Lake
2 Nighthorse, the Durango Pumping Plant, the Ridges Basin Inlet Conduit, the Navajo
3 Nation Municipal Pipeline and related facilities.

4 (b) “Contracting Officer” means the representative of the Secretary of the
5 Interior authorized to administer this contract.

6 (c) “Intergovernmental Agreement” or “IGA” means that agreement dated
7 March 4, 2009 and entered into by the Colorado Water Resource and Power
8 Development Authority, the La Plata Conservancy District, the Navajo Nation, the San
9 Juan Water Commission, the Southern Ute Indian Tribe, and the Ute Mountain Ute
10 Indian Tribe to establish the Animas-La Plata Operations, Maintenance, and Replacement
11 Association (Association) and provide for the terms, conditions, and concepts under
12 which OM&R of the transferred works of the ALP is to take place.

13 (d) “Lake Nighthorse”, formerly Ridges Basin Reservoir, means the reservoir
14 created by the impoundment on Basin Creek by Ridges Basin Dam, a facility of the ALP
15 as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat.
16 2763A-258).

17 (e) “Navajo Nation” means a body politic and federally-recognized Indian
18 nation as provided for in Section 101(2) of the Federally Recognized Indian Tribe List of
19 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the “Navajo
20 Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo Tribe of
21 Indians” and other similar names, and includes all bands of Navajo Indians and chapters
22 of the Navajo Nation, acting through its authorized representative.

23 (f) “Navajo-Gallup Water Supply Project”, or “NGWSP”, means the project of
24 the same name authorized by Section 10602 of the Northwestern New Mexico Rural
25 Water Projects Act (123 Stat. 1367).

26 (g) “Navajo Indian Irrigation Project”, or “NIIP”, means the project of the same
27 name authorized by the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), as
28 amended.

29 (h) “Navajo Lands” means lands set aside as reservation lands for the Navajo
30 People, whether by treaty, statute, executive order or public land order. Also included in
31 this definition are lands that are held in trust for the Navajo Nation by the United States,

1 held in trust for members of the Navajo Nation by the United States, or held in fee
2 ownership by the Navajo Nation.

3 (i) “Navajo Nation Municipal Pipeline”, or “NNMP”, means the pipeline to
4 convey the Navajo Nation’s ALP water from the City of Farmington, New Mexico, to
5 Navajo Nation communities along the San Juan River valley in New Mexico, including
6 the City of Shiprock, as a facility of the ALP authorized by the Colorado Ute Settlement
7 Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title
8 III).

9 (j) “Navajo Dam and Reservoir” means Navajo Dam and the reservoir created
10 by the impoundment of the San Juan River at Navajo Dam as authorized by the Act of
11 April 11, 1956, the Colorado River Storage Project Act (70 Stat. 105; Public Law 84-
12 485), as amended.

13 (k) “Northwestern New Mexico Rural Water Projects Act”, or “Navajo
14 Settlement Act”, means Subtitle B of Title X the Act of March 30, 2009 (123 Stat. 1367).

15 (l) “OM&R” means annual operation, maintenance and replacement.

16 (m) “Partial Final Decree” means a final and binding judgment and decree
17 entered by the court in the stream adjudication, setting forth the rights of the Navajo
18 Nation to use and administer waters of the San Juan River Basin in New Mexico, as set
19 forth in Appendix 1 of the Settlement Agreement.

20 (n) “Project Operator” means the entity that has been transferred the OM&R
21 responsibilities for a specific project covered under this contract.

22 (o) “Project Participants” means the Navajo Nation, the City of Gallup and,
23 should it choose to participate, the Jicarilla Apache Nation.

24 (p) “San Juan River” means that river which originates in the State of Colorado
25 and flows through or constitutes the boundary of the Navajo Indian Reservation in
26 northwestern New Mexico and southeastern Utah, where it flows into Lake Powell.

27 (q) “Secretary” means the Secretary of the United States Department of the
28 Interior or an authorized designee.

29 (r) “Settlement Agreement” means the agreement between the State of New
30 Mexico, the Navajo Nation and the United States setting forth a stipulated and binding
31 settlement agreement as to the rights of the Navajo Nation to use and administer waters

4 (s) "Statutory Water Allocation" means the municipal and industrial (M&I)
5 water allocation delivered to the Navajo Nation from the ALP pursuant to Section
6 6(a)(1)(A)(ii)(III) of the Colorado Ute Indians Water Rights Settlement Act of 1988
7 (Public Law 100-585) as amended.

8 (t) "Transferred Works" means facilities which are necessary to support the
9 operation and maintenance of a project, and for which the OM&R responsibility has been
10 transferred to the Navajo Nation by the United States.

11
12 4. CONDITIONS

13 This contract will give rise to rights and obligations on the part of the Navajo
14 Nation and the United States and the provisions of Part IV will become enforceable only
15 after the Partial Final Decree is entered by the District Court of San Juan County, New
16 Mexico, in the general stream adjudication of the San Juan River stream system, *New*
17 *Mexico v. United States*, No. 75-184, which Partial Final Decree adjudicates water rights
18 of the Navajo Nation in and from the San Juan River Basin in New Mexico per paragraph
19 3.0 of the Settlement Agreement and is of the form provided in Appendix 1 to the
20 Settlement Agreement. All other provisions of the Contract will be enforceable upon
21 execution of the Contract.

22
23 5. PRELIMINARY UNDERSTANDINGS

24 (a) The United States and the Navajo Nation will proceed in good faith to take
25 all steps necessary to assure the entry of the Partial Final Decree.

26 (b) The Navajo Nation may purchase, receive and use ALP water or NIIP water
27 in accordance with the relevant provisions of this contract prior to the entry of the Partial
28 Final Decree; except, that the obligation of the United States to deliver such water shall
29 become null and void if the Contract is terminated by court order pursuant to subsection
30 10701(e)(2)(A) of the Navajo Settlement Act. Neither party will have any obligation

1 under this contract to purchase NGWSP water from or deliver NGWSP water to the other
2 party for the NGWSP until the entry of the Partial Final Decree.

3 (c) The obligations of the parties under Contract No. 14-06-W-269 between the
4 United States and the Navajo Nation for delivery of water from Navajo Reservoir for the
5 principal purpose of furnishing irrigation water to the NIIP shall continue in force until
6 the entry of the Partial Final Decree after which Contract No. 14-06-W-269 shall be
7 superseded by this contract.

8 (d) Separate contracts for additional water, whether for temporary or permanent
9 use, as available, may be negotiated between the Navajo Nation and the United States in
10 the future, but they do not constitute any part of the consideration for this contract.
11

12 PART II. NIIP

13 6. WATER DELIVERY PROVISIONS

14 (a) The United States agrees to deliver, or make available for delivery, to the
15 Navajo Nation an average diversion of not more than 508,000 acre-feet per year, or the
16 quantity of water necessary to supply an average depletion of 270,000 acre-feet per year
17 from the San Juan River, whichever is less, during any period of ten consecutive years,
18 and not more than 584,200 acre-feet in any one year for delivery to the NIIP from:

19 (i) Navajo Reservoir from the following delivery points under State
20 Engineer File No. 2849:

21 (A) the intake to the NIIP main canal; or

22 (B) the Navajo Dam outlet works; or

23 (ii) inflows below Navajo Dam under State Engineer File No. 3215 at
24 Cutter Reservoir or at Gallegos Reservoir or suitable alternative; or

25 (iii) both (i) and (ii) in combination.

26 (b) Pursuant to the Act of June 13, 1962, as amended by Section 10402 of the
27 Navajo Settlement Act, water diverted by the NIIP may be used within the area served by
28 the NIIP facilities for the following purposes:

29 (i) Aquaculture purposes, including the rearing of fish in support of the
30 San Juan River Basin Recovery Implementation Program as authorized by
31 Public Law 106-392 (114 Stat. 1602).

1 (ii) Domestic, industrial, or commercial purposes relating to agricultural
2 production and processing.

3 (iii) The generation of hydroelectric power as an incident to the diversion
4 of water by the NIIP for authorized purposes.

5 (iv) The implementation of the alternate water source provisions described
6 in subparagraph 9.2 of the Settlement Agreement executed under Section
7 10701(a)(2) of the Navajo Settlement Act.

8 (c) The Navajo Nation shall be solely responsible for the construction,
9 operation, maintenance and replacement of all modifications and additions to NIIP
10 facilities that are necessary to use NIIP water for the purposes provided in Part II **Article**
11 6(b) above. Prior to the construction of any modification and addition to the NIIP
12 facilities, the Navajo Nation must obtain the review and approval of the United States of
13 the proposed construction and the proposed use of NIIP water.

14 (d) The Navajo Nation under this contract shall have no holdover storage rights
15 in Navajo Reservoir from year to year. Any water at Navajo Reservoir subject to
16 delivery hereunder not called for by the end of each calendar year shall become
17 integrated with the water supply for all purposes of the reservoir at that time.

18 (e) The Navajo Nation must notify the Contracting Officer or the appropriate
19 Project Operator of any changes to its scheduled locations, amounts and timings of
20 anticipated diversions at least 30 days prior to any requested change of delivery of water
21 from Navajo Dam and Reservoir under State Engineer File No. 2849.

22 (f) Uses of water to make the diversions and depletions described in
23 subparagraphs 3(d), 3(e) and 3(f) of the Partial Final Decree that are supplied under this
24 Contract pursuant to the alternate water source provisions of subparagraph 9.2 of the
25 Settlement Agreement, and that are accounted under the contract rights for delivery of
26 water under the NIIP described in Part II herein, shall not be required to have 30 days
27 advance notice.

28 (g) Nothing in this section is intended to impose on the United States any
29 obligation to maintain Navajo Dam and Reservoir, or the NIIP beyond their useful lives
30 or to take extraordinary measures to keep these facilities operating.

1 (h) The points of delivery of water made available for use pursuant to this
2 section from Navajo Reservoir and the San Juan River shall be as specified in Part II
3 **Article** 6(a) unless changed consistent with the Partial Final Decree and pursuant to
4 agreement of the Contracting Officer and the Navajo Nation. Water made available at
5 Navajo Dam to make the diversions and depletions described in subparagraphs 3(d), 3(e)
6 and 3(f) of the Partial Final Decree that are supplied under this Contract pursuant to the
7 alternate water source provisions of subparagraph 9.2 of the Settlement Agreement shall
8 be accounted under the contract rights for delivery of water under the NIIP described in
9 Part II herein.

10 (i) To the extent that delivery of water is made through or from federal
11 facilities, the Navajo Nation will reimburse costs associated with this delivery in
12 accordance with the provisions of Part II **Article** 8 of this contract.

13
14 7. WATER SUPPLY AND SHORTAGE

15 (a) Notwithstanding any other provisions of this contract, in times of shortage in
16 the Navajo Reservoir water supply to meet demands under contracts for delivery of water
17 from said supply, taking into account water available from inflows below Navajo Dam to
18 help meet the demands, the Navajo Nation will share in the available water supply in the
19 manner set forth in Section 11 of the Act of June 13, 1962 (76 Stat. 96) as amended by
20 Section 10402(b) of the Navajo Settlement Act.

21 (b) On account of drought or other causes outside the control of the United
22 States, there may occur at times during any year a shortage in the quantity of water
23 available for use by the Navajo Nation pursuant to this contract. In no event shall any
24 liability accrue against the United States or any of its officers, agents, or employees, for
25 any damage, direct or indirect, arising out of any such shortage, and payments due the
26 United States provided for herein shall not be reduced because of such shortage.

27
28 8. COST PROVISIONS

29 Charges for water made available pursuant to Part II **Article** 6 will be as follows:

30 (a) The Navajo Nation's construction cost obligation for the NIIP within the
31 ability of the land to repay shall be allocated and payment deferred under the provisions

1 of the Leavitt Act (47 Stat. 564), as authorized in subsection 4(d) of the Colorado River
2 Storage Project Act (70 Stat. 105). The Navajo Nation's construction cost obligation for
3 the NIIP beyond the ability of the land to repay shall be non-reimbursable as authorized
4 in subsection (6) of the Colorado River Storage Project Act (70 Stat. 105).

5 (b) The Navajo Nation's OM&R obligation for water made available pursuant to
6 Part II **Article** 6(b) will be as follows:

7 (i) The Navajo Nation shall pay the United States, or its designee if some
8 organization other than the United States is operating Navajo Dam and
9 Reservoir, the Navajo Nation's proportionate share of the OM&R costs for
10 Navajo Dam and Reservoir assignable to the amount of water made available
11 under third-party agreements executed by the Nation, and approved by the
12 United States, for those purposes provided through Part II **Articles** 6(b)(i) and
13 6(b)(ii) of this contract.

14 (ii) The Navajo Nation shall pay to the United States, or the NIIP
15 Operator, all NIIP OM&R costs accrued as a result of NIIP water provided
16 during the historic off irrigation season, from November 1 through March 31,
17 for those purposes stated in Part II **Article** 6(b).

18 (iii) The Navajo Nation shall pay to the United States, or the NIIP
19 Operator, all incremental increases in the NIIP OM&R costs, as determined
20 by the United States or the NIIP Operator, resulting from any use of NIIP
21 water provided through Part II **Article** 6(b) during the historic irrigation
22 season from April 1 through October 31. The incremental increase in NIIP
23 OM&R costs shall be paid on the basis of annual estimates made by the
24 United States, or the NIIP Operator, based upon water use estimates provided
25 by the Navajo Nation pursuant to Part II **Article** 8(c)(iv).

26 (c) Billing and payment for the Navajo Nation's OM&R cost obligation shall be
27 conducted as follows:

28 (i) The Navajo Nation's obligation for Navajo Dam and Reservoir
29 OM&R costs shall be paid on the basis of annual cost estimates made by the
30 United States, or its designee, based upon the quantity of NIIP water that is
31 made available to the Navajo Nation under third-party agreements executed

1 by the Nation, and approved by the United States, for those purposes provided
2 through Part II **Articles** 6(b)(i) and 6(b)(ii) of this contract. The estimates will
3 be sent annually to the Navajo Nation on or before May 1 for the next Federal
4 fiscal year, which begins October 1 of the same calendar year and ends
5 September 30 of the next calendar year. The Navajo Nation shall advance its
6 annual share of the Navajo Dam and Reservoir OM&R costs for the next
7 Federal fiscal year on or before September 30. The first such billing will be
8 issued based upon the effective date NIIP water is provided under third-party
9 agreements and in the event this effective date shall be for costs of service of
10 less than a full year, such costs shall be prorated for the period covered.

11 (ii) The Navajo Nation's obligation for off irrigation season NIIP OM&R
12 costs, and incremental NIIP OM&R costs shall be paid on the basis of annual
13 cost estimates made by the United States, or the NIIP Operator, based upon
14 the delivery schedules and quantities of NIIP water provided by the Navajo
15 Nation for the purposes stated in Part II **Article** 6(b). The Navajo Nation will
16 provide on or before February 1 to the United States, or the NIIP Operator, an
17 annual estimate of the delivery schedules and quantities of NIIP water
18 provided for the purposes stated in Part II **Article** 6(b) for the next Federal
19 fiscal year. Off irrigation season and incremental NIIP OM&R cost estimates
20 from the United States, or the NIIP Operator, based upon the Navajo Nation's
21 estimated delivery schedules and quantities of NIIP water, will then be sent
22 annually to the Navajo Nation on or before May 1 for the next Federal fiscal
23 year, which begins October 1 of the same calendar year and ends September
24 30 of the next calendar year. The Navajo Nation shall advance its off
25 irrigation season and incremental NIIP OM&R costs for the next Federal
26 fiscal year on or before September 30.

27 (iii) In the event either the off irrigation season and incremental NIIP
28 OM&R cost estimates fall short of the actual costs in any period, or whenever
29 it is anticipated by the United States that a deficit will occur during the year,
30 supplemental notices may be issued by the United States requesting additional
31 funds. OM&R funds not spent during one fiscal year will be carried over for

1 use during the next fiscal year with funds required for that year being reduced
2 accordingly. An itemized statement of actual costs incurred during each year
3 shall be furnished to the Navajo Nation. Billing adjustments will be made to
4 correct for differences in the estimated and actual use of water, as well as, the
5 estimated and actual costs during the preceding year.

6 (iv) Billings from the Contracting Officer, or the Project Operator, and
7 payments by the Navajo Nation of the OM&R costs outlined under this
8 section shall be made on the basis of Part II **Article** 8(b). For project
9 operation purposes, the Navajo Nation will provide an annual notice to the
10 Contracting Officer, or the Project Operator identifying the amount of water
11 estimated to be used by the Navajo Nation, the estimated period and point of
12 diversion for each intended purpose and a listing of all executed subcontracts
13 with third parties, including those subcontracts anticipated to be executed
14 during the year of applicability. The Navajo Nation shall send this notice on
15 or before February 1 of the year preceding the year of use described in the
16 notice. Upon receipt of such notice, the Contracting Officer, or the Project
17 Operator will bill the Navajo Nation for payment of costs as prescribed herein.
18 Billing adjustments will be made to correct for differences in the estimated
19 and actual use of water, as well as, the estimated and actual costs during the
20 preceding year.

21
22 9. LIMITED RESPONSIBILITY FOR DISTRIBUTION

23 (a) Upon delivery, as specified under Part II **Article** 6(a) herein, the Navajo
24 Nation shall hold the United States, its officers, agents, employees, and successors or
25 assigns, harmless from every claim for damages to persons or property, direct or indirect,
26 and of whatever nature, arising out of or in any manner connected with the control,
27 carriage, handling, distribution or use of such water beyond the point of delivery; except
28 to the extent that such responsibilities are placed on the United States by Act of Congress.

29 (b) This section is not intended to waive any responsibility the United States
30 may have under treaty, statute or otherwise, to provide or operate water distribution
31 systems on Navajo Lands.

1
2 **PART III. ALP**

3 10. **WATER DELIVERY PROVISIONS**

4 (a) As provided for in the Colorado Ute Settlement Act Amendments of 2000,
5 the United States agrees to deliver, or make available for delivery an average annual
6 depletion not to exceed 2,340 acre-feet from the ALP water supply under New Mexico
7 State Engineer File No. 2883, subject to the provisions of the Navajo Settlement Act, the
8 Settlement Agreement, the Partial Final Decree and this Contract. Water delivered
9 pursuant to this article shall be measured utilizing measuring facilities installed by the
10 United States as a part of the ALP at the following points of delivery:

- 11 (i) The outlet works of Ridges Basin Dam; or
12 (ii) Bypassed at the Durango Pumping Plant; or
13 (iii) Both in combination.

14 (b) The Navajo Nation may divert or receive this water from the Animas River
15 at the points of diversion for supplying water to the NNMP for delivery to Navajo Nation
16 communities, recipients or subcontractors allotted water by the Navajo Nation under its
17 water rights for the ALP. The Navajo Nation's ALP water allocation diverted from the
18 Animas River will be either replaced with ALP water released from Lake Nighthorse or
19 natural river flows bypassed at the Durango Pumping Plant. Sufficient water will be
20 delivered from ALP storage or bypassed at the Durango Pumping Plant to ensure the
21 Navajo Nation annually receives its Statutory Water Allocation.

22 (c) If the IGA is in effect, the Navajo Nation shall have the right to utilize
23 storage space in Lake Nighthorse in accordance with the Joint Storage Pool as described
24 in the IGA.

25 (d) If the IGA is voided or otherwise terminated, the Navajo Nation under this
26 contract shall have 869 acre-feet of storage capacity space allocated for its exclusive use
27 in Lake Nighthorse to support use of the ALP water supply as described in **Part III Article**
28 **10(a)**. The United States, or the Project Operator, shall fill and refill the Navajo Nation's
29 storage capacity space as often as direct flow is available from the Animas River to fill
30 said space under the ALP diversion right issued in the State of Colorado and the Animas-
31 La Plata Project Compact (82 Stat. 898). The Navajo Nation shall have holdover storage

1 rights in Lake Nighthorse from year to year to the extent that water stored in the Navajo
2 Nation's storage capacity space may be held for exclusive delivery to the Navajo Nation
3 in future years as all or a portion of the Navajo Nation's Statutory Water Allocation as
4 necessary to meet the delivery demands of the Navajo Nation in accordance with Part III
5 **Article** 10(a) and 12(a). Nothing in this contract shall prohibit the Navajo Nation from
6 acquiring additional storage capacity space in Lake Nighthorse if additional space
7 becomes available.

8 (e) The Navajo Nation must notify the Contracting Officer or the Project
9 Operator of any changes in delivery of water from the ALP prior to requested change of
10 delivery of water from the ALP under State Engineer File No. 2883.

11 (f) Nothing in this section is intended to impose on the United States any
12 obligation to maintain Ridges Basin Dam and Lake Nighthorse and related facilities, or
13 the NNMP beyond their useful lives or to take extraordinary measures to keep these
14 facilities operating

15 (g) The points of delivery of water made available for use pursuant to this
16 section from the ALP shall be as specified in Part III **Article** 10(a) unless changed
17 consistent with the Partial Final Decree and pursuant to written agreement of the
18 Contracting Officer and the Navajo Nation.

19 (h) To the extent that delivery of water is made through or from federal
20 facilities, the Navajo Nation will reimburse costs associated with this delivery in
21 accordance with the provisions of Part III **Article** 15 of this contract.

22
23 11. ALP PROJECT WORKS

24 Subject to the terms and conditions of this and other applicable contracts related
25 to the ALP, the United States will construct the following ALP Project Works and
26 appurtenant facilities, acquire lands, and provide certain moveable property and
27 equipment to the Project Operator needed for ALP operation and maintenance as, in the
28 opinion of the United States in consultation with the Project Operations Committee, are
29 necessary for ALP purposes, without being limited by enumeration and within the limit
30 of funds made available by the Congress and the contracting parties.

31 (a) The Project Works are presently identified as the following:

1 (i) Ridges Basin Dam and Lake Nighthorse and appurtenant facilities, the
2 storage facility for the Project, are located on Basin Creek in Ridges Basin
3 approximately 3 miles southwest of Durango, Colorado. The reservoir will
4 have a capacity of approximately 120,000 acre-feet.

5 (ii) Durango Pumping Plant and appurtenant facilities are located adjacent
6 to the Animas River and will pump water from the Animas River for storage
7 in Lake Nighthorse.

8 (iii) Ridges Basin Inlet Conduit and appurtenant facilities extend from the
9 Durango Pumping Plant to Lake Nighthorse.

10 (iv) Operation and Maintenance Facilities will be constructed as
11 determined necessary by the United States, after consultation with the Project
12 Construction Coordinating Committee, for the required operation and
13 maintenance of ALP Project Works.

14 (b) In addition to the ALP Project Works identified in Part III **Article** 11(a)
15 above, the United States shall construct the Navajo Nation Municipal Pipeline to augment
16 the existing system that conveys the municipal water supplies, in an amount not less than
17 4,680 acre-feet per year, to the Navajo Indian Reservation at or near Shiprock, NM as a
18 facility of the ALP authorized under Section 15(b) of the Colorado Ute Settlement Act
19 Amendments of 2000.

20 (c) The United States, after consultation with the Navajo Nation, shall have the
21 right at any time to increase the capacity of the ALP Project Works or any unit or feature
22 thereof for other than currently authorized project purposes without additional capital or
23 operation and maintenance cost to the Navajo Nation; provided, that the Navajo Nation's
24 use of the Statutory Water Allocation shall not be impaired thereby. The right of use of
25 such increased capacity is reserved to the United States.

26 (d) Any additions, changes to, or operation of ALP Project Works or changes in
27 use of the water allocations pursuant to Sec. 6(a)(1)(A)(ii) of the Settlement Act, as
28 amended, from that stated in the Animas-La Plata Final Supplemental Environmental
29 Impact Statement (FSEIS) dated July 2000 and subsequent Record of Decision dated
30 September 25, 2000, will, as required by law, be subject to further compliance with

1 applicable environmental statutes, which shall include an analysis of potential impacts on
2 other project Sponsors.

3 (e) Construction and operation of the ALP will be in accordance with the
4 Environmental Commitments in Chapters 4 and 5 of the FSEIS, which are attached as
5 Exhibit XX to this Contract.

6
7 12. CONSTRUCTION AND OPERATION OF FACILITIES

8 (a) Nothing herein shall be construed to obligate the United States to construct,
9 install, operate or maintain dams, pumps, pipelines, storage tanks, distribution lines or
10 other facilities required to take, measure, convey or distribute water for use beyond
11 agreed upon points of delivery; except, that the United States shall have such obligations
12 as conferred upon the Secretary by the authorities to construct, maintain and operate the
13 ALP in accordance with the Colorado River Storage Project Act (70 Stat. 105), the Act of
14 June 13, 1962 (76 Stat. 96), and the Colorado Ute Settlement Act Amendments of 2000
15 (114 Stat. 2763A-258). Nor shall anything herein be construed to affect or alter
16 obligations that the United States may have under treaty, statute or otherwise to provide
17 or operate other water project facilities and water distribution systems on Navajo Lands.

18 (b) The ALP shall be operated in a manner consistent with applicable law.

19 (c) Coordination of construction, operation and maintenance of the ALP shall be
20 accomplished through the establishment of the following two committees, both of which
21 will consist of representatives of the Bureau of Reclamation and Project contractors,
22 including the Navajo Nation:

23 (i) The Project Construction Coordination Committee shall provide
24 coordination and consultation on the construction activities among all ALP
25 sponsors, seeking common understanding and consensus on decisions
26 associated with final plans, construction schedules and costs for ALP
27 facilities, and shall dissolve upon completion of ALP construction.

28 (ii) The Project Operations Committee will initially consist of
29 representatives of those entities which have been identified by the Colorado
30 Ute Settlement Act Amendments of 2000, as amended, to receive a water
31 allocation. Initially, this committee will determine the appropriate entity to

1 contract with Reclamation for the operation and maintenance of ALP
2 multipurpose facilities and the development, among the ALP contractors, of a
3 common understanding of the appropriate level of OM&R activities to be
4 performed on the ALP multipurpose facilities to assure the long-term
5 operational integrity of ALP and public safety. Ultimately, this committee
6 will oversee the ongoing OM&R activities of ALP, providing consultation and
7 coordination among the committee members on such items as annual OM&R
8 funding, maintenance schedules, and public safety issues.

9 (iii) Failure of the committees to reach common understandings or to
10 otherwise coordinate with the Bureau of Reclamation on construction,
11 operation and maintenance of the ALP shall in no way nullify or reduce the
12 obligation of the United States to construct, operate and maintain ALP
13 facilities, including the NNMP, or to deliver water to the Navajo Nation as
14 authorized by the Colorado Ute Settlement Act Amendments of 2000 (114
15 Stat. 2763A-258), the Navajo Settlement Act, the Settlement Agreement, and
16 this contract.

17
18 13. WATER SUPPLY AND SHORTAGE

19 (a) With respect to water made available from the ALP under the terms of this
20 contract, during periods when the Contracting Officer, or the ALP Operator finds that the
21 direct flow of the Animas River is insufficient to supply 100 percent of the water
22 deliveries under contracts for ALP water, the Navajo Nation shall share in the available
23 direct flow consistent with Article 1 of the Animas-La Plata Project Compact (82 Stat.
24 898).

25 (b) Pursuant to Part III **Article** 10 of this contract, the Navajo Nation may
26 request and require of the United States the release of any and all storage water available
27 to the Navajo Nation in Lake Nighthorse for delivery of ALP water as necessary to meet
28 the Statutory Water Allocation of the Navajo Nation. In any year in which there may
29 occur a shortage in the Statutory Water Allocation at the points of delivery from any
30 cause, the Contracting Officer or the ALP Operator reserves the right to make a
31 conclusive determination of shortage and to apportion the available ALP water allocation

1 among the ALP sponsors subject to the Colorado Ute Settlement Act Amendments of
2 2000, as amended, the IGA, and applicable laws, including the Animas-La Plata Project
3 Compact.

4 (c) On account of drought or other causes outside the control of the United
5 States, there may occur at times during any year a shortage in the quantity of water
6 available for delivery to the Navajo Nation pursuant to this contract. In no event shall
7 any liability accrue against the United States or any of its officers, agents, or employees,
8 for any damage, direct or indirect, arising out of any such shortage, and payments due the
9 United States provided for herein shall not be reduced because of such shortage.

10
11 14. BLOCK NOTICE FOR ALP WATER DELIVERY

12 (a) When the ALP Project Water becomes available for use by the Navajo
13 Nation, the United States shall, after consultation, give the Navajo Nation written notice,
14 referred to herein as the "block notice". The block notice shall contain: the quantity of
15 Project Water available to the Navajo Nation from the ALP, and the effective date that
16 water is available for delivery to the Navajo Nation.

17 (b) The block notice and any amendments thereto shall become a part of this
18 contract.

19
20 15. COST PROVISIONS

21 The Navajo Nation's cost obligations for the ALP will be as follows:

22 (a) Prior to water becoming available for use by the Navajo Nation, pursuant to
23 Part III **Article** 13(a) above, the OM&R costs allocated to the Navajo Nation's ALP
24 Project Water shall be paid by Reclamation. Upon water becoming available for use by
25 the Navajo Nation, pursuant to Part III **Article** 13(a) above, the Contracting Officer will
26 notify the Navajo Nation of the transfer of responsibility for the Navajo Nation's ALP
27 OM&R costs at least sixty (60) days prior to the effective date of the transfer.

28 (b) The OM&R costs allocated to the Navajo Nation's Statutory Water
29 Allocation will be comprised of:

30 (i) the Navajo Nation's share of fixed OM&R costs of the multipurpose
31 facilities as defined in the IGA. The Navajo Nation's share, as identified in

1 the IGA is 2.5% of the total fixed OM&R costs. If the IGA is voided or
2 otherwise terminated, the Navajo Nation's share of fixed OM&R will be
3 defined by the final cost allocation;

4 (ii) the Navajo Nation's share of variable OM&R costs of the
5 multipurpose facilities, which are actual costs of replacing water released
6 from storage in Lake Nighthorse by request of the Navajo Nation, as defined
7 in the IGA, provided that the IGA contains provisions for a variable OM&R
8 fund, designed to pay all or part of the ALP variable OM&R costs;

9 (iii) all OM&R costs associated with the NNMP during the period in which
10 title to the pipeline is held by the United States. In addition, the Navajo
11 Nation shall be responsible for providing OM&R of the NNMP and for
12 funding the OM&R costs of the pipeline if ownership of the pipeline is
13 transferred to the Navajo Nation.

14 (c) The Navajo Nation agrees to pay, in advance, its share of the ALP OM&R
15 costs. Payment of the Navajo Nation's, or its assignee's, allocated OM&R costs shall be
16 made annually in advance, within 60 days of receipt of the annual charge notice issued by
17 the Project Operator based on the Association's annual estimate of ALP OM&R costs.
18 If the Navajo Nation's allocated OM&R costs exceed the sum paid in advance, then a
19 supplemental charge notice will be issued and the Navajo Nation will pay the sum
20 required within 60 days of receipt. If the Navajo Nation's allocated OM&R costs are less
21 than the sum advanced, then the Navajo Nation shall receive a credit for the overpayment
22 upon its next charge notice.

23 (d) In the event either the ALP OM&R cost estimate falls short of the actual
24 costs in any period, or whenever it is anticipated by the Contracting Officer that a deficit
25 will occur during the year, supplemental notices may be issued by the Contracting Officer
26 requesting additional funds. OM&R funds not spent during one calendar year will be
27 carried over for use during the next calendar year with funds required for that year being
28 reduced accordingly. An itemized statement of actual costs incurred during each year
29 shall be furnished to the Navajo Nation.

30 (e) Billings from the Contracting Officer or the Project Operator, and payments
31 by the Navajo Nation of the OM&R costs outlined under this section shall be made on the



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TITLE TRANSFER

16. Title to NNMP facilities shall remain in the name of the United States, unless transferred to the Navajo Nation pursuant to Section 10605(b) of the Navajo Settlement Act.

LIMITED RESPONSIBILITY FOR DISTRIBUTION

(a) Upon delivery, as specified under Part III **Article** 10(a) herein, the Nation shall hold the United States, its officers, agents, employees, and successors or assigns, harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, carriage, handling, distribution or use of such water beyond the point of delivery; except to the extent that provisions of Section 10605(b) of the Navajo Settlement Act placed upon the City of Farmington certain responsibilities for the diversion, treatment and conveyance of water made available under this contract.

(b) This section is not intended to waive any responsibility the United States may have under treaty, statute or otherwise, to provide or operate water distribution systems on Navajo Lands.

PART IV. NGWSP

1 18. WATER DELIVERY PROVISIONS

2 (a) The United States agrees to deliver, or make available for delivery, to the
3 Navajo Nation a diversion of not more than 22,650 acre-feet, or the quantity of water
4 necessary to supply a depletion of 20,780 acre-feet from the San Juan River, whichever is
5 less in any one year for delivery to communities, recipients or subcontractors allotted
6 water by the Navajo Nation under its water rights for the NGWSP uses in New Mexico
7 from Navajo Reservoir or the points of diversion from the San Juan River as authorized
8 by Section 10603 of the Navajo Settlement Act, under State Engineer File Nos. 2849 and
9 3215 or as modified pursuant to applicable law.

10 (b) Nothing in this section is intended to impose on the United States any
11 obligation to maintain the NGWSP beyond its useful life or to take extraordinary
12 measures to keep the facilities operating.

13 (c) The points of delivery of water made available for use pursuant to this
14 section from Navajo Reservoir and the San Juan River shall be as specified in Part IV
15 **Article** 16(a) unless changed as allowed by the Partial Final Decree and pursuant to
16 written agreement of the Contracting Officer and the Navajo Nation.

17 (d) To the extent that delivery of water is made through or from federal
18 facilities, the Navajo Nation will reimburse costs associated with this delivery in
19 accordance with the provisions of Part IV **Article** 20 of this contract.

20

21 19. NGWSP FACILITIES

22 Subject to the terms and conditions of this and other applicable contracts related
23 to the NGWSP, the United States will construct the following NGWSP Facilities and
24 appurtenant facilities without being limited by enumeration and within the limit of funds
25 made available pursuant to the Navajo Settlement Act.

26 (a) The NGWSP Facilities consist of two laterals which are presently identified
27 to include the following:

28 (i) San Juan Lateral

29 (A) A pumping plant on the San Juan River in the vicinity of Kirtland,
30 New Mexico.

1 (B) A main pipeline from the San Juan River near Kirtland, New
2 Mexico to Shiprock, New Mexico and Gallup, New Mexico which follows
3 United States Highway 491.

4 (C) Additional pumping plants as may be necessary for operation of
5 the lateral.

6 (D) Lateral pipelines from the main pipeline to Navajo communities in
7 the States of New Mexico and Arizona.

8 (E) Water treatment facilities as may be necessary for operation of the
9 lateral.

10 (F) Appurtenant facilities which may include water regulation or
11 storage facilities, service connections to existing public water supply
12 systems, power substations, or power distribution works that are related to
13 the NGWSP Facilities for the lateral.

14 (ii) Cutter Lateral

15 (A) A main pipeline from the Cutter Reservoir to Ojo Encino, New
16 Mexico and Gallup, New Mexico which follows United States Highway
17 550.

18 (B) Pumping plants as may be necessary for operation of the lateral.

19 (C) Lateral pipelines from the main pipeline to Navajo communities in
20 the State of New Mexico.

21 (D) Water treatment facilities as may be necessary for operation of the
22 lateral.

23 (E) Appurtenant facilities which may include water regulation or
24 storage facilities, service connections to existing public water supply
25 systems, power substations, or power distribution works that are related to
26 the NGWSP Facilities for the lateral.

27 (b) Operation and Maintenance facilities will be constructed as determined
28 necessary by the United States, after Consultation with the Project Construction
29 Committee, for the required operation and maintenance of NGWSP Facilities.

30 (c) As a condition of construction of the facilities authorized under Section
31 10602 (b) of the Navajo Settlement Act, the Project Participants shall provide all land or

1 interest in land, as appropriate, that the United States identifies as necessary for
2 acquisition under Section 10602 (c) of the Navajo Settlement Act at no cost to the United
3 States.

4 (d) The United States, after Consultation with the Navajo Nation, shall have the
5 right at any time to increase the capacity of the NGWSP Facilities or any unit or feature
6 thereof for other than currently authorized project purposes without additional capital or
7 operation and maintenance cost to the Navajo Nation; provided, that the Navajo Nation's
8 use of the Delivery Capacity Allocation shall not be impaired thereby. The right of use of
9 such increased capacity is reserved to the United States.

10 (e) Any additions, changes to, or operation of NGWSP Facilities or changes in
11 use of the water allocations pursuant to Section 10603(b)(1)(B) of the Settlement Act
12 from that stated in the Navajo-Gallup Water Supply Project Final Environmental Impact
13 Statement (FEIS) dated July 2009 and subsequent Record of Decision dated October 1,
14 2009, will, as required by law, be subject to further compliance with applicable
15 environmental statutes, which shall include an analysis of potential impacts on other
16 Project Participants.

17 (f) Construction and operation of the NGWSP will be in accordance with the
18 Environmental Commitments in Chapters XX and XX of the FEIS, which are attached as
19 Exhibit XX to this contract.

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21 20. CONSTRUCTION AND OPERATION OF FACILITIES

22 (a) Nothing herein shall be construed to obligate the United States to construct,
23 install, operate or maintain dams, pumps, pipelines, storage tanks, distribution lines or
24 other facilities required to take, measure, convey or distribute water for use beyond
25 agreed upon points of delivery; except, that the United States shall have such obligations
26 as conferred upon the Secretary by the authorities to construct, maintain and operate
27 Navajo Dam and Reservoir, the NIIP and the NGWSP in accordance with the Colorado
28 River Storage Project Act (70 Stat. 105), the Act of June 13, 1962 (76 Stat. 96), and the
29 Navajo Settlement Act. Nor shall anything herein be construed to affect or alter
30 obligations that the United States may have under treaty, statute or otherwise to provide
31 or operate other water project facilities and water distribution systems on Navajo Lands.

1 (b) Coordination of construction, operation and maintenance of the NGWSP
2 shall be accomplished through the establishment of a Project Construction Committee
3 which will consist of representatives of the Bureau of Reclamation and the Project
4 Participants, and may include the State of New Mexico.

5 (i) The Project Construction Committee shall:

6 (A) review cost factors and budgets for construction and operation and
7 maintenance activities; and

8 (B) improve construction management through enhanced communication;
9 and

10 (C) seek additional ways to reduce overall NGWSP costs.

11 (ii) Failure of the committee to reach common understandings or to
12 otherwise coordinate with the Bureau of Reclamation on construction,
13 operation and maintenance of the NGWSP shall in no way nullify or reduce
14 the obligation of the United States to construct, operate and maintain NGWSP
15 facilities or to deliver water to the Navajo Nation as authorized by the Navajo
16 Settlement Act, the Settlement Agreement, and this contract.

17
18 21. WATER SUPPLY AND SHORTAGE

19 (a) Notwithstanding any other provisions of this contract, during times of
20 shortage in the Navajo Reservoir water supply to meet demands under contracts for
21 delivery of water from said supply, taking into account water available from inflows
22 below Navajo Dam to help meet the demands, the Navajo Nation will share in the
23 available water supply in the manner set forth in Section 11 of the Act of June 13, 1962
24 (76 Stat. 96), and Section 10402 (b) of the Navajo Settlement Act.

25 (b) On account of drought or other causes outside the control of the United
26 States, there may occur at times during any year a shortage in the quantity of water
27 available for use by the Navajo Nation pursuant to this contract. In no event shall any
28 liability accrue against the United States or any of its officers, agents, or employees, for
29 any damage, direct or indirect, arising out of any such shortage, and payments due the
30 United States provided for herein shall not be reduced because of such shortage.

31

1 22. NOTIFICATION OF SUBSTANTIAL COMPLETION

2 When features or reaches of the NGWSP have been declared to be substantially
3 complete and water can be made available to the Navajo Nation, the United States shall,
4 after consultation, give the Navajo Nation written notice, referred to herein as the “Notice
5 of Substantial Completion”. The Notice of Substantial Completion shall contain: (1) the
6 NGWSP facilities that have been determined to be substantially complete for water
7 delivery, (2) a list of the feature(s) or reach(es) which are completed, (3) the effective date
8 of that substantial completion declaration, and (4) the proportionate share of the completed
9 NGWSP facilities allocated to the Navajo Nation.

10

11 23. WATER AVAILABILITY BLOCK NOTICE FOR NGWSP

12 (a) When NGWSP water can be made available to the Navajo Nation, the
13 United States shall, after consultation, give the Navajo Nation written notice, referred to
14 herein as the “Block Notice”. The Block Notice shall contain: (1) the effective date that
15 NGWSP water is made available, (2) the quantity of NGWSP water available to the
16 Navajo Nation from the block, (3) the feature(s) or reach(es) which can receive NGWSP
17 water.

18 (b) The block notice and any amendments thereto shall become a part of this
19 contract.

20

21 24. COST PROVISIONS

22 (a) The Navajo Nation shall pay the United States or its designee if some
23 organization other than the United States is operating Navajo Dam and Reservoir, the
24 Navajo Nation’s proportionate share of the OM&R costs for Navajo Dam and Reservoir
25 assignable to the amount of water made available to the Navajo Nation through Part IV
26 **Article** 23 of this contract.

27 (b) The Navajo Nation shall pay the United States or its designee if some
28 organization other than the United States is operating the NIIP, an assignable share of
29 OM&R costs for the NIIP facilities that are used to convey NGWSP water made
30 available to the Navajo Nation through Part IV **Article** 23 of this contract.

1 (c) The Navajo Nation’s construction cost obligation for the NGWSP shall be
2 allocated, waived and declared non-reimbursable by the Secretary.

3 (d) The Navajo Nation’s OM&R cost obligation for the NGWSP shall be paid to
4 the United States, or its designee if some organization other than the United States is
5 operating the NGWSP facilities, as follows:

6 (i) For any feature or reach of the NGWSP, declared substantially complete
7 under Part IV Article 22, through or by which water can only be delivered to
8 the Navajo Nation, the Navajo Nation shall pay all OM&R costs associated
9 with water delivery, until such time water can be delivered through or by that
10 feature or reach to other Project Participants, at which time Part IV Article
11 24(d)(ii) below shall apply.

12 (ii) For any feature or reach of the NGWSP through or by which water
13 delivery is a benefit to the Navajo Nation and other Project Participants, the
14 Navajo Nation’s OM&R cost obligation will be comprised of:

15 (A) the Navajo Nation’s share of “Fixed OM&R costs” based upon its
16 proportionate share of the design capacity for all NGWSP facilities, or
17 reaches of those facilities, which have been declared substantially
18 complete through Part IV Article 22 of this contract, “Fixed OM&R costs”
19 include costs of labor, materials, equipment and replacements required to
20 maintain all NGWSP facilities, as well as, the administration and overhead
21 costs of the NGWSP.

22 (B) the Navajo Nation’s share of “Variable OM&R costs” based on
23 actual costs of power including energy consumption and that share of
24 power demand costs for operation of the water treatment plants and
25 pumping plants based on the proportionate share of water treated and
26 delivered, as well as water treatment chemical costs.

27 (e) Billing and payment for the Navajo Nation’s OM&R cost obligations shall
28 be conducted as follows:

29 (i) The Navajo Nation’s obligation for Navajo Dam and Reservoir
30 OM&R shall be paid on the basis of annual cost estimates made by the
31 Contracting Officer, or its designee, based upon the quantity of NGWSP water

1 that is made available to the Navajo Nation through the block notice. An
2 estimate from the Contracting Officer will be sent annually to the Navajo
3 Nation on or before May 1 for the next Federal fiscal year, which begins
4 October 1 of the same calendar year and ends September 30 of the next
5 calendar year. The Navajo Nation shall advance its annual share of the
6 Navajo Dam and Reservoir OM&R costs for the succeeding Federal fiscal
7 year on or before September 30. The first such billing will be issued based
8 upon the effective date stated in the block notice and in the event this effective
9 date shall be for costs of service of less than a full year, such costs shall be
10 prorated for the period covered.

11 (ii) The Navajo Nation's obligation for the assignable OM&R of the NIIP
12 facilities used to convey NGWSP water to the Navajo Nation shall be paid on
13 the basis of annual cost estimates made by the United States, or the NIIP
14 Operator, based upon the quantity of NGWSP water that is made available to
15 the Navajo Nation through the block notice and conveyed through the NIIP
16 facilities. The Navajo Nation will provide on or before February 1 an annual
17 estimate to the United States, or the NIIP Operator, of the amount of NGWSP
18 water to be conveyed through NIIP facilities for the next Federal fiscal year.
19 An OM&R cost estimate from the United States, or the NIIP Operator, based
20 upon the Navajo Nation's estimated conveyance, will then be sent annually to
21 the Navajo Nation on or before May 1 for the next Federal fiscal year, which
22 begins October 1 of the same calendar year and ends September 30 of the next
23 calendar year. The Navajo Nation shall advance its assignable share of the
24 NIIP OM&R costs for the next Federal fiscal year on or before September 30.
25 In the event NGWSP water is made available through block notice and the
26 Navajo Nation requires conveyance through NIIP facilities for a period less
27 than a full year, the assignable OM&R cost of conveyance shall be prorated for
28 the period covered.

29 (iii) Fixed OM&R costs for the NGWSP shall be paid on the basis of
30 annual cost estimates made by the Contracting Officer, or the NGWSP
31 Operator, based upon the proportionate share of the design capacity for those

1 NGWSP facilities which have been declared substantially complete through
2 Part IV **Article** 22 of this contract. An estimate from the Contracting Officer,
3 or the NGWSP Operator, will be sent to the Navajo Nation on or before May
4 1 for the next Federal fiscal year, which begins October 1 of the same
5 calendar year and ends September 30 of the next calendar year. The Navajo
6 Nation shall advance its share of the OM&R costs for each Federal fiscal year
7 in quarterly payments which will be due on September 30, December 31,
8 March 31, and June 30 of the Federal fiscal year of applicability. The first
9 such billing will be issued immediately following a notice of substantial
10 completion as provided in Part IV **Article** 22 of this contract. In the event the
11 first notice shall be for costs of service of less than a full year, such costs shall
12 be prorated for the period covered. An itemization of the estimated Fixed
13 OM&R costs will accompany the billing.

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

27 (f) In the event either the OM&R cost estimates fall short of the actual costs in
28 any period, or whenever it is anticipated by the Contracting Officer that a deficit will
29 occur during the fiscal year, supplemental notices may be issued by the Contracting
30 Officer requesting additional funds. OM&R funds not spent during one fiscal year will
31 be carried over for use during the next fiscal year with funds required for that year being

1 reduced accordingly. An itemized statement of actual costs incurred during each year
2 shall be furnished to the Nation. Billing adjustments will be made to correct for
3 differences in the estimated and actual costs at the beginning of the next fiscal year, and
4 in the case of Variable OM&R costs, for differences in the Navajo Nation's estimated
5 water delivery requirements and the actual metered flow.

6 (g) The Fixed OM&R costs of the NGWSP allocated to the Navajo Nation for
7 the NGWSP facilities that have been determined to be substantially complete for water
8 delivery through Part IV **Article** 22 of this contract, that the Secretary determines are in
9 excess of the ability of the Navajo Nation to pay may be waived and declared non-
10 reimbursable by the Secretary for not more than ten (10) years from the effective date
11 established by the block notice, pursuant to the Navajo Settlement. This waiver shall
12 terminate on the date on which title of a facility is transferred to the Navajo Nation.

13
14 25. TITLE TRANSFER

15 Title to NGWSP facilities shall remain in the name of the United States, unless
16 transferred to the Navajo Nation pursuant to Section 10602(f) of the Navajo Settlement
17 Act.

18
19 26. LIMITED RESPONSIBILITY FOR DISTRIBUTION

20 (a) Upon delivery, as specified under Part IV **Article** 16(a) herein, the Navajo
21 Nation shall hold the United States, its officers, agents, employees, and successors or
22 assigns, harmless from every claim for damages to persons or property, direct or indirect,
23 and of whatever nature, arising out of or in any manner connected with the control,
24 carriage, handling, distribution or use of such water beyond the point of delivery; except
25 to the extent that provisions of Section 10602(f) of the Navajo Settlement Act placed
26 upon the City of Gallup certain responsibilities for the conveyance and distribution of
27 water made available under this contract for the NGWSP.

28 (b) This section is not intended to waive any responsibility the United States
29 may have under treaty, statute or otherwise, to provide or operate water distribution
30 systems on Navajo Lands.

31

1 **PART V. GENERAL**

2 27. **TERM OF CONTRACT**

3 The water delivery rights recognized by this contract shall be perpetual unless
4 limited by a term of years, canceled, terminated, or rescinded by an Act of Congress.

5
6 28. **TRANSPORTATION LOSSES**

7 (a) No conveyance losses beyond the points of delivery as specified in Part II
8 **Article** 6(a), Part III **Article** 10(a), and Part IV **Article** 16 shall be borne by the United
9 States. In the event that points of delivery are changed as allowed by the Partial Final
10 Decree and pursuant to agreement of the Contracting Officer and the Navajo Nation,
11 transportation of water from the original points of delivery to other points of delivery
12 shall be the sole responsibility of the Navajo Nation, so that no conveyance losses,
13 including channel losses, shall be borne by the United States.

14
15 29. **UNCONTROLLABLE FORCES**

16 Neither party shall be considered to be in default in respect to any obligation
17 hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces.
18 The term uncontrollable forces shall mean, for the purposes of this contract, any cause
19 beyond the control of the party affected, including but not limited to, drought, failure of
20 facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance,
21 labor disturbance, sabotage, and restraint by court or public authority, which by exercise
22 of due diligence and foresight, such party could not reasonably have been expected to
23 avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable
24 forces shall exercise due diligence to remove expeditiously such inability.

25
26 30. **SUBCONTRACTING**

27 (a) The Nation may subcontract with third parties, subject to the provisions of
28 the Navajo Settlement Act, the Settlement Agreement, the Partial Final Decree, and
29 approval of the Contracting Officer in accordance with this section, to supply water for
30 beneficial use in the State of New Mexico, subject to and consistent with the same
31 requirements and conditions of State law, and any applicable Federal law, interstate

1 compact, and international treaty as apply to the exercise of water rights held by non-
2 federal, non-Indian entities. Nothing in this Contract shall be construed to establish,
3 address, or prejudice whether, or to prevent any party from litigating whether, or to the
4 extent to which, any of the aforementioned laws do or do not permit, govern, or apply to
5 the use of the Navajo Nation's water outside the State.

6 (b) Subcontracts made by the Navajo Nation with third parties shall be subject
7 to the provisions of the Navajo Settlement Act, the Settlement Agreement, the Partial
8 Final Decree, and this Contract, and must include terms of use, purchase, measurement,
9 operations and default. A copy of each proposed subcontract shall be filed with the
10 Contracting Officer and the New Mexico Interstate Stream Commission at least 30 days
11 prior to being executed by the Navajo Nation; provided, that proposed emergency
12 subcontracts may be filed with less than 30 days notice. Two copies of each executed
13 subcontract shall be filed with the Contracting Officer and one copy with the New
14 Mexico Interstate Stream Commission.

15 (c) Prior to approving any subcontract, the Contracting Officer shall comply
16 with subsection 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42
17 U.S.C. § 4332(2)(C). The Navajo Nation will furnish any data and information as may
18 be required by the Contracting Officer for NEPA compliance documentation. The
19 Contracting Officer has the authority under the Contributed Funds Act of 1921 (43 USC
20 §395) to charge any subcontractor for the costs associated with this compliance
21 documentation. The Contracting Officer will coordinate with the Nation and the
22 subcontractor throughout the NEPA process, including furnishing copies of all related
23 documentation.

24 (d) The Contracting Officer shall approve any subcontract submitted by the
25 Navajo Nation if the Contracting Officer determines that:

- 26 (i) the diversion and use of water under the subcontract would comply
27 with the Settlement Agreement, the Partial Final Decree, and other applicable
28 law, including any applicable permitting requirements and permit conditions
29 of the New Mexico State Engineer, and the provisions of this contract;
30 (ii) the sum of the term of the subcontract plus all renewals is no more
31 than 99 years;

1 (iii) the use of water under the subcontract is not inconsistent with the
2 provisions of the Endangered Species Act or other provisions of federal law
3 designed to protect the environment;

4 (iv) the subcontract is sufficiently specific as to the amount of water and
5 points of diversion to enable the Contracting Officer to account for the water
6 as it is diverted; or, in the alternative, that the subcontract reserves the
7 Contracting Officer's right to review and approve future diversions sought
8 under the subcontract, such review and approval to be consistent with this
9 contract;

10 (v) the delivery obligations under the subcontract are not inconsistent with
11 other obligations of the Contracting Officer to deliver water under preexisting
12 contracts.

13 (e) The Navajo Nation agrees to include the equal opportunity language as
14 specified in Part VI **Article** 42 of this contract in any subcontract for use of water off
15 Navajo Lands.

16 (f) The annual OM&R assessments specified in Part II **Article** 8, Part III **Article**
17 14, and Part IV **Article** 20 above shall be charged to the Navajo Nation for all water
18 subcontracted to third parties.

19
20 31. SEVERABILITY

21 If any provisions of this contract shall be held, by a court of competent
22 jurisdiction, to be invalid, illegal, unenforceable or in conflict with the law of any
23 jurisdiction, the parties intend that the validity, legality and enforceability of the
24 remaining provisions shall not in any way be affected or impaired thereby. In the event
25 that the Contract is terminated pursuant to Section 10701(e)(2)(B) of the Navajo
26 Settlement Act, the parties agree to reinstate and continue in full force and effect those
27 portions of the Contract for which separate authority is made other than pursuant to the
28 Navajo Settlement Act.

29
30 32. CONTRACT AMENDMENTS

1 Any modifications to this contract necessitated by future negotiations between the
2 parties can be accomplished by amending this contract to the extent such amendments are
3 consistent with the provisions of the Partial Final Decree and the Navajo Settlement Act,
4 including any future amendments.

5
6 33. SAVINGS CLAUSES

7 (a) Prior to the entry of the Partial Final Decree, nothing in this contract shall be
8 construed as an admission, or be used by any party as evidence, that the Navajo Nation is
9 or is not legally entitled to reserved water rights in the San Juan River stream system.

10 (b) Nothing contained in this contract shall be construed to alter, amend, repeal,
11 construe, interpret, modify, or be in conflict with the provisions of: the Boulder Canyon
12 Project Act (45 Stat. 1057); the Boulder Canyon Project Adjustment Act (54 Stat. 774);
13 the Colorado River Compact, proclaimed on June 25, 1929 (46 Stat. 3000); the Upper
14 Colorado River Basin Compact (63 Stat. 31); the 1944 Treaty with the United Mexican
15 States, Treaty Series 994 (59 Stat. 1219); the Act of June 13, 1962 (76 Stat. 96); the
16 Colorado River Basin Project Act (82 Stat. 885); the Colorado River Storage Project Act
17 (70 Stat. 105); the Animas-La Plata Project Compact (82 Stat. 898); the Jicarilla Apache
18 Tribe Water Rights Settlement Act (106 Stat. 2237); the Colorado Ute Settlement Act
19 Amendments of 2000 (114 Stat. 2763A-258); or the Navajo Settlement Act.

20 (c) The uses of water in the State of New Mexico through works constructed
21 under the authority of the Colorado River Storage Project Act (70 Stat. 105), the Act of
22 June 13, 1962 (76 Stat. 96), the Colorado Ute Settlement Act Amendments of 2000 (114
23 Stat. 2763A-258) and the Navajo Settlement Act shall be subject to and controlled by the
24 Colorado River Compact, the Upper Colorado River Basin Compact, the Animas-La
25 Plata Project Compact, the Boulder Canyon Project Act, the Boulder Canyon Project
26 Adjustment Act, the Colorado River Storage Project Act, the Colorado River Basin
27 Project Act, the Mexican Water Treaty (Treaty Series 994), the Colorado Ute Settlement
28 Act Amendments of 2000 and the Navajo Settlement Act, and shall be included within
29 and shall in no way increase the total quantity of water to the use of which the State of
30 New Mexico is entitled under said compacts, statutes, and treaty.

1 (d) Nothing in this contract shall be construed in any way to quantify or
2 otherwise adversely affect the land and water rights, claims or entitlements to water of
3 any Indian tribe or community other than those of the Navajo Nation in, to and from the
4 San Juan River Basin in New Mexico; except, that the right of the Navajo Nation to use
5 water under water rights it may have in other river basins in New Mexico shall be
6 forborne only so long as and to the extent that the Navajo Nation supplies the uses for
7 which said water rights may exist by diversions of water from the San Juan River Basin
8 under this contract consistent with subparagraph 9.13 of the Settlement Agreement.
9

10 34. ENVIRONMENTAL COMPLIANCE AND COORDINATION

11 (a) The Navajo Nation, the United States Fish and Wildlife Service, the Bureau
12 of Reclamation and the Bureau of Indian Affairs agree to cooperate and coordinate in the
13 planning and construction of projects, diversions and changes in water management
14 associated with the water made available to the Navajo Nation under the terms of this
15 agreement as required by federal law, including, but not limited to, the Bald and Golden
16 Eagle Protection Act, the Fish and Wildlife Coordination Act, the Endangered Species
17 Act, the Clean Water Act, and the National Environmental Policy Act.

18 (b) The Navajo Nation and the Department of the Interior agree to work with the
19 State of New Mexico and affected water users to assure that Navajo Dam and Reservoir,
20 the NIIP, the ALP and the NGWSP are operated in compliance with applicable laws
21 while meeting water delivery obligations.

22 (c) Any additions, changes to, or operation of works or changes in use of the
23 water allocations from that stated in the respective NEPA documents, as well as the Final
24 Environmental Impact Statement for Navajo Reservoir Operations dated April, 2006
25 may, as required by law, be subject to further compliance with applicable environmental
26 statutes which shall include an analysis of potential impacts and must be approved by the
27 United States. Additional environmental compliance may be required for additional uses
28 of water identified for diversion to the NIIP, as identified in Title X of the Navajo
29 Settlement Act.
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PART VI. STANDARD ARTICLES

35. AIR AND WATER POLLUTION CONTROL

The Navajo Nation agrees that in taking delivery of water under this contract, it will comply with federal air and water pollution control laws, now or hereafter in force, that may be applicable or relevant to the use being made of the water. Also, the Navajo Nation agrees that any subcontract it may enter into for the furnishing of water pursuant to this contract will contain similar air and water pollution control provisions including state and local requirements, where applicable. The Navajo Nation further agrees that any such subcontract it may enter into will require that its designs and plans for air and water pollution control facilities or equipment which are necessary parts of any design, facility, plant or process which utilizes water delivered pursuant to this contract will be submitted to the Secretary for his review and written comments prior to contracting for said facilities, their installation or major modification thereof.

**36. OPERATION AND MAINTENANCE OF TRANSFERRED WORKS--
PAYMENT OF MISCELLANEOUS COSTS**

(a) Should the care, operation, and maintenance of any Federal project works be transferred to the Navajo Nation in accordance with this contract, title to the Transferred Works will remain in the name of the United States, unless title is transferred as provided by the Congress of the United States.

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

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

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

(e) The Navajo Nation agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from

1 suits, actions, or claims of any character brought on account of any injury to any person
2 or property arising out of any act, omission, neglect, or misconduct in the manner or
3 method of performing any construction, care, operation, maintenance, supervision,
4 examination, inspection, or other duties of the Navajo Nation or the United States on
5 Transferred Works required under this contract, regardless of who performs those duties.
6 The Navajo Nation does not agree to indemnify the United States for any damages arising
7 from intentional torts or malicious actions committed by employees of the United States.

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

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

28 (h) In addition to all other payments to be made by the Navajo Nation under this
29 contract, the Navajo Nation shall reimburse to the United States, following the receipt of
30 a statement from the Contracting Officer, all miscellaneous costs incurred by the United
31 States for any work involved in the administration and supervision of this contract.

32
33 37. EMERGENCY RESERVE FUND
34

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

42 (b) The Navajo Nation shall accumulate the reserve fund with annual deposits or
43 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*
45 money in the reserve fund, including accrued interest, shall be available within a
46 reasonable time to meet expenses for such purposes as those identified in paragraph (d)

1 herein. Such annual deposits and the accumulation of interest to the Emergency Reserve
2 Fund shall continue until the basic amount of \$ _____ is accumulated. The above
3 amounts will be adjusted (adjusted balance) as may be justified by reason of ordinary
4 fluctuations in the construction, operation and maintenance costs as indicated by
5 engineering cost indices applicable to the types of construction, operation and
6 maintenance for which this Emergency Reserve Fund is established. Following an
7 emergency expenditure from the fund, the annual deposits shall continue from the year
8 following the emergency expenditure until the previous balance (or adjusted balance if an
9 adjustment pursuant to this paragraph or paragraph (c) is made) is restored. After the
10 initial amount is accumulated or after the previous balance is restored, the annual deposits
11 may be discontinued, and the interest earnings shall continue to accumulate and be
12 retained as part of the Emergency Reserve Fund.

13 (c) Upon mutual agreement between the Navajo Nation and the Contracting
14 Officer, the Emergency Reserve Fund may be adjusted to account for risk and uncertainty
15 stemming from the size and complexity of the project; the size of the annual operation
16 and maintenance budget; additions to, deletions from, or changes in project works; and
17 operation and maintenance costs not contemplated when this contract was executed.

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

29 (e) During any period in which any of the project works are operated and
30 maintained by the United States, the Navajo Nation agrees the Emergency Reserve Fund
31 shall be available for like use by the United States.

32 (f) On or before _____ of each year, the Navajo Nation shall provide a
33 current statement of the principal and accumulated interest of the Emergency Reserve
34 Fund account to the Contracting Officer.

35
36 38. ADMINISTRATION OF FEDERAL PROJECT LANDS

37
38 The lands and interests in lands acquired, withdrawn, or reserved and needed by
39 the United States for the purposes of care, operation, and maintenance of Federal project
40 works may be used by the Navajo Nation for such purposes. The Navajo Nation does not
41 have the authority to issue any land-use agreement or grant that conveys an interest in
42 Federal real property, nor to lease or dispose of any interest of the United States. The
43 Navajo Nation shall report unauthorized encroachments on Federal project lands and
44 rights-of-way to the appropriate Federal agency.
45

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

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

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

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

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

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

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

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

1 (h) Site visit special inspections that are beyond the regularly scheduled
2 operation and maintenance examinations conducted to evaluate a particular concern(s) or
3 problem(s) and provide assistance relative to any corrective action (either as a follow up
4 to an operation and maintenance examination or when requested by the Navajo Nation)
5 shall be nonreimbursable.

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

10
11 40. BOOKS, ACCOUNTS AND RECORDS
12

13 The Navajo Nation shall furnish to the Contracting Officer, as requested,
14 information pertaining to land use and crop census, water supply, water use, changes in
15 project works, and to other matters relating to the NIIP, the ALP, the NGWSP, and other
16 projects that may utilize the Navajo Nation's water rights supplied under this contract for
17 miscellaneous municipal, industrial, commercial and domestic uses. The Secretary and
18 the Navajo Nation shall jointly establish and maintain accounts and other books and
19 records such as are necessary to enable the Secretary to operate the subject facilities.
20 Reports thereon shall be furnished to the Contracting Officer in such form and on such
21 date or dates as the Contracting Officer may require. Subject to applicable Federal laws
22 and regulations, each party shall have the right during office hours to examine and make
23 copies of the other party's books and records relating to matters covered by this contract.
24 Records of diversions of water for use by the Navajo Nation pursuant to this contract
25 shall be supplied to the New Mexico State Engineer.
26

27 41. CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY
28

29 (a) The Navajo Nation shall not allow contamination or pollution of Federal
30 project lands, project waters, or project works of the United States or administered by the
31 United States and for which the Navajo Nation has the responsibility for care, operation,
32 and maintenance by its employees or agents. The Navajo Nation shall also take
33 reasonable precautions to prevent such contamination or pollution by third parties.

34 (b) The Navajo Nation shall comply with all applicable Federal laws and
35 regulations and Reclamation policies and instructions existing, or hereafter enacted or
36 promulgated, concerning any hazardous material that will be used, produced, transported,
37 stored, released, or disposed of on or in Federal project lands, project waters, or project
38 works.

39 (c) "Hazardous material" means (1) any substance defined as hazardous, a
40 pollutant, or a contaminant under the Comprehensive Environmental Response,
41 Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 (14) and (33); (2) oil as
42 defined by the Clean Water Act, 33 U.S.C. § 1321 (a) and the Oil Pollution Act, 33
43 U.S.C. § 2701 (23); (3) thermal pollution, refuse, garbage, sewage effluent, industrial
44 waste, mine or mill tailings, mineral salts, pesticides, and other solid waste, and (4) any
45 other substance regulated as hazardous or toxic under Federal or Navajo Nation law.

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

9 (e) If violation of the provisions of this Article occurs and the Navajo Nation
10 does not take immediate corrective action as determined by the Contracting Officer, the
11 Navajo Nation may be subject to remedies imposed by the Contracting Officer, which
12 may include termination of this contract.

13 (f) The Navajo Nation shall be liable for any response action or corrective
14 measure necessary to protect public health and the environment or to restore Federal
15 project lands, project waters, or project works that are adversely affected as a result of
16 such violation, and for all costs, penalties or other sanctions that are imposed for violation
17 of any Federal or Tribal laws and regulations concerning hazardous material. At the
18 discretion of the Contracting Officer, the United States may also terminate this Contract
19 as a result of such violation.

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

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

25
26 42. CLEAN AIR AND WATER

27
28 (a) The Navajo Nation agrees as follows:

29 (i) To comply with all the requirements of Section 114 of the Clean Air
30 Act, as amended (42 U.S.C. 7414), and Section 308 of the Federal Water
31 Pollution Control Act, as amended by Public Law 92-500 (33 U.S.C. 1318),
32 respectively, relating to inspection, monitoring, entry, reports, and
33 information, as well as other requirements specified in Section 114 of the Air
34 Act and Section 308 of the Water Act, respectively, and all regulations and
35 guidelines issued thereunder before the execution of this contract.

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

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

43 (iv) To insert the substance of the provisions of this article into any
44 nonexempt subcontract, including this paragraph (a)(4).

45 (b) The terms used in this article have the following meanings:

- 1 (i) The term “Air Act” means the Clean Air Act, as amended
2 (42 U.S.C. 7401 *et seq.*).
- 3 (ii) The term “Water Act” means the Federal Water Pollution Control Act,
4 as amended (33 U.S.C. 1251 *et seq.*).
- 5 (iii) The term “clean air standards” means any enforceable rules,
6 regulations, guidelines, standards, limitations, orders, controls, prohibitions, or
7 other requirements which are contained in, issued under, or otherwise adopted
8 pursuant to the Air Act or Executive Order 11738, an applicable
9 implementation plan as described in Section 110 of the Air Act (42 U.S.C.
10 7410), an approved implementation procedure or plan under Section 111(c) or
11 Section 111(d), respectively, of the Air Act (42 U.S.C. 7411(c) or (d)), or an
12 approved implementation procedure under Section 112(d) of the Air Act (42
13 U.S.C. 7412(d)).
- 14 (iv) The term “clean water standards” means any enforceable limitation,
15 control, condition, prohibition, standard, or other requirement which is
16 promulgated pursuant to the Water Act or contained in a permit issued to a
17 discharger by the Environmental Protection Agency or by a state under an
18 approved program, as authorized by Section 402 of the Water Act
19 (33 U.S.C. 1342), or by local government to ensure compliance with
20 pretreatment regulations as required by Section 307 of the Water Act
21 (33 U.S.C. 1317).
- 22 (v) The term “comply” means compliance with clean air or water
23 standards. Comply shall also mean compliance with a schedule or plan
24 ordered or approved by a court of competent jurisdiction, the Environmental
25 Protection Agency, or an air or water pollution control agency in accordance
26 with the requirements of the Air Act or Water Act and regulations issued
27 pursuant thereto.
- 28 (vi) The term “facility” means any building, plant, installation, structure,
29 mine, vessel or other floating craft, location, or site of operations owned,
30 leased, or supervised by a contractor or subcontractor to be utilized in the
31 performance of a contract or subcontract. Where a location or site of
32 operations contains or includes more than one building, plant, installation, or
33 structure, the entire location or site shall be deemed to be a facility except
34 where the Director, Office of Federal Activities, Environmental Protection
35 Agency, determines that independent facilities are collocated in one
36 geographical area.

37
38 43. PEST MANAGEMENT

39
40 The Navajo Nation shall take appropriate steps to prevent the introduction and
41 spread of, and to otherwise control undesirable plants and animals, as defined by the
42 Contracting Officer, on Federal project lands, project waters, and project works for which
43 the Navajo Nation has operation and maintenance responsibility. The Navajo Nation is
44 responsible for inspecting its vehicles and equipment for reproductive and vegetative
45 parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive
46 species and other pests, and for removing such materials before moving its vehicles and

1 equipment onto any Federal land or out of any area on Federal project land where work is
2 performed. Where decontamination is required prior to entering Federal project land, it
3 shall be performed at the point of prior use, or at an approved offsite facility able to
4 process generated cleaning wastes. Upon the completion of work, decontamination shall
5 be performed within the work area before the vehicles and equipment are removed from
6 Federal project lands. Programs for the control of these undesirable plants and animals
7 on Federal project lands, project waters, and project works for which the Navajo Nation
8 has operation and maintenance responsibility will incorporate Integrated Pest
9 Management (IPM) concepts and practices. IPM refers to a systematic and
10 environmentally compatible program to maintain pest populations within economically
11 and environmentally tolerable levels. In implementing an IPM program, the Navajo
12 Nation will adhere to applicable Federal and State laws and regulations and Department
13 of the Interior and Bureau of Reclamation polices, directives, guidelines, and manuals.
14
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17 44. INDIAN EMPLOYMENT - EQUAL EMPLOYMENT OPPORTUNITY 18

19 (a) In accordance with the provisions of Title 42 U.S.C. 2000-e-2(i), the Navajo
20 Nation shall, during the performance of this contract, give preference in employment to
21 Indian members of the Navajo Nation Indian Reservation. The Bureau of Indian Affairs
22 Office of Employment Assistance shall be notified of employment opportunities 48 hours
23 before any positions are advertised to the general public. Nothing in this section shall be
24 read as prohibiting the Navajo Nation from giving preferential employment to members
25 of the Navajo Nation.

26 (b) Except as provided above, during the performance of this contract the
27 Navajo Nation agrees as follows:

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

40 (ii) The Navajo Nation will, in all solicitations or advertisements for
41 employees placed by or on behalf of the Navajo Nation, state that all qualified
42 applicants will receive consideration for employment without regard to race,
43 color, religion, sex, disability, or national origin.

44 (iii) The Navajo Nation will send to each labor union or representative of
45 workers with which it has a collective bargaining agreement or other contract
46 or understanding, a notice, to be provided by the Contracting Officer, advising

1 the labor union or workers' representative of the Navajo Nation's
2 commitments under Section 202 of Executive Order 11246 of September 24,
3 1965, and shall post copies of the notice in conspicuous places available to
4 employees and applicants for employment.

5 (iv) The Navajo Nation will comply with all provisions of Executive Order
6 No. 11246 of September 24, 1965, and of the rules, regulations, and relevant
7 orders of the Secretary of Labor.

8 (v) The Navajo Nation will furnish all information and reports required by
9 Executive Order 11246 of September 24, 1965, and by the rules, regulations,
10 and orders of the Secretary of Labor, or pursuant thereto, and will permit
11 access to his books, records, and accounts by the Contracting Agency and the
12 Secretary of Labor for purposes of investigation to ascertain compliance with
13 such rules, regulations, and orders.

14 (vi) In the event of the Navajo Nation's noncompliance with the
15 nondiscrimination clauses of this contract or with any of such rules,
16 regulations, or orders, this contract may be canceled, terminated or suspended
17 in whole or in part and the Navajo Nation may be declared ineligible for
18 further Government contracts in accordance with procedures authorized in
19 Executive Order 11246 of September 24, 1965, and such other sanctions may
20 be imposed and remedies invoked as provided in Executive Order 11246 of
21 September 24, 1965 or by rule, regulation, or order of the Secretary of Labor,
22 or as otherwise provided by law.

23 (vii) The Navajo Nation will include the provisions of paragraphs (1)
24 through (7), modified to refer to the party to be bound, in every subcontract or
25 purchase order unless exempted by the rules, regulations, or orders of the
26 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246
27 of September 24, 1965, so that such provisions will be binding upon each
28 subcontractor or vendor. The Navajo Nation will take such action with
29 respect to any subcontract or purchase order as may be directed by the
30 Secretary of Labor as a means of enforcing such provisions, including
31 sanctions for noncompliance: *Provided, however*, that in the event the Navajo
32 Nation becomes involved in, or is threatened with, litigation with a
33 subcontractor or vendor as a result of such direction, the Navajo Nation may
34 request the United States to enter into such litigation to protect the interests of
35 the United States.

36 37 45. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

38
39 (a) The Navajo Nation shall comply with Title VI of the Civil Rights Act of
40 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as
41 amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Americans with
42 Disabilities Act of 1990, as applicable, and any other applicable civil rights laws, as well
43 as with its respective implementing regulations and guidelines imposed by the U.S.
44 Department of the Interior and/or Bureau of Reclamation.

45 (b) These statutes require that no person in the United States shall be excluded
46 from participation in, be denied the benefits of, or be otherwise subjected to

1 discrimination under any program or activity receiving financial assistance from the
2 Bureau of Reclamation on the grounds of race, color, national origin, disability, or age.
3 By executing this contract, the Navajo Nation agrees to immediately take any measures
4 necessary to implement this obligation, including permitting officials of the United States
5 to inspect premises, programs, and documents.

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

14 (d) Complaints of discrimination against the Navajo Nation shall be investigated
15 by the Contracting Officer's Office of Civil Rights.

16
17
18
19
20 46. CERTIFICATION OF NONSEGREGATED FACILITIES

21
22 The Navajo Nation hereby certifies that it does not maintain or provide for its
23 employees any segregated facilities at any of its establishments and that it does not permit
24 its employees to perform their services at any location under its control where segregated
25 facilities are maintained. It certifies further that it will not maintain or provide for its
26 employees any segregated facilities at any of its establishments and that it will not permit
27 its employees to perform their services at any location under its control where segregated
28 facilities are maintained. The Navajo Nation agrees that a breach of this certification is a
29 violation of the Equal Employment Opportunity clause in this contract. As used in this
30 certification, the term "segregated facilities" means any waiting rooms, work areas, rest
31 rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and
32 other storage or dressing areas, parking lots, drinking fountains, recreation or
33 entertainment areas, transportation, and housing facilities provided for employees which
34 are segregated by explicit directive or are in fact segregated on the basis of race, creed,
35 color, or national origin, because of habit, local custom, disability, or otherwise. The
36 Navajo Nation further agrees that (except where it has obtained identical certifications
37 from proposed subcontractors for specific time periods) it will obtain identical
38 certifications from proposed subcontractors prior to the award of subcontracts exceeding
39 \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity
40 clause; that it will retain such certifications in its files; and that it will forward the
41 following notice to such proposed subcontractors (except where the proposed
42 subcontractors have submitted identical certifications for specific time periods):
43

44 47. NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
45 CERTIFICATIONS OF NONSEGREGATED FACILITIES
46

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

7
8 48. COMPLIANCE WITH RECLAMATION LAWS
9

10 The parties agree that the delivery of irrigation water or the use of federal
11 facilities pursuant to this contract is governed by applicable Reclamation law, except that
12 this delivery or use is not subject to the Reclamation Reform Act of 1982, as amended.
13

14 49. RULES, REGULATIONS, AND DETERMINATIONS
15

16 (a) The United States or its assigns shall take all prudent and ordinary measures
17 to operate and maintain all existing facilities necessary to this contract, but nothing in this
18 section shall be construed to require the United States to operate such facilities beyond
19 the useful life of the existing facilities. These facilities will be operated for multiple
20 benefits of the project in accordance with project authorization and contracts, including
21 this contract. The Contracting Officer, in consultation with the Navajo Nation, shall have
22 the right to make determinations necessary to administer this contract that are consistent
23 with the express and implicit conditions of this contract, the laws of the United States and
24 rules and regulations promulgated by the Secretary of the Interior.

25 (b) Where the terms of this contract provide for action to be based upon the
26 opinion or determination of either party to this contract, whether or not stated to be
27 conclusive, said terms shall not be construed as permitting such action to be predicted
28 upon arbitrary, capricious, or unreasonable opinions or determinations.
29

30 50. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT
31

32 (a) The obligation of the Navajo Nation to pay the United States as provided in
33 this contract is a general obligation of the Navajo Nation notwithstanding the manner in
34 which the obligation may be distributed among the Navajo Nation’s water users and
35 notwithstanding the default of individual water users in their obligation to the Navajo
36 Nation.

37 (b) The payment of charges becoming due hereunder is a condition precedent to
38 receiving benefits under this contract. The Navajo Nation shall not have the right to the
39 use of water supplied from any project facilities during any period in which the Navajo
40 Nation may be in arrears in the payment of any operation, maintenance, and replacement
41 charges due the United States or in arrears for more than 12 months in the payment of
42 any construction and interest installments due the United States. The Navajo Nation shall
43 not deliver water under the terms and conditions of this contract for lands or parties that
44 are in arrears in the advance payment of water rates or OM&R charges or in arrears more
45 than 12 months in the payment of construction charges as levied or established by the
46 Navajo Nation.

1
2 51. MEDIUM FOR TRANSMITTING PAYMENTS
3

4 All payments from the Navajo Nation to the United States under this contract
5 shall be by the medium requested by the United States on or before the date payment is
6 due. The required method of payment may include checks, wire transfers, or other types
7 of payment specified by the United States.
8

9 52. CHARGES FOR DELINQUENT PAYMENTS
10

11 (a) The Navajo Nation shall pay penalty charges on delinquent installments or
12 payments. When payment is not received by the due date, the Navajo Nation shall pay an
13 interest charge for each day the payment is delinquent beyond the due date. When a
14 payment becomes 60 days delinquent, the Navajo Nation shall pay an administrative
15 charge to cover additional costs of billings and processing the delinquent payment. When
16 a payment is delinquent 90 days or more, the Navajo Nation shall pay an additional
17 penalty charge of 6.0 percent per year for each day the payment is delinquent beyond the
18 due date. Further, the Navajo Nation shall pay any fees incurred for debt collection
19 services associated with the delinquent payment.

20 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in
21 the Federal Register by the Department of the Treasury for application to overdue
22 payments or the interest rate of 0.5 percent per month prescribed by section 6 of the
23 Reclamation Project Act of 1939, 53 Stat. 1191. The interest charge rate shall be
24 determined as of the due date and remain fixed for the duration of the delinquent period.

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

29 53. WATER QUALITY
30

31 The operation and maintenance of project facilities shall be performed in such
32 manner as is practicable to maintain the quality of raw water made available through such
33 facilities at the highest level reasonably attainable, as determined by the United States.
34 The United States does not warrant the quality of water and is under no obligation to
35 construct or furnish water treatment facilities to maintain or better the quality of water;
36 except, that the Secretary shall construct, operate and maintain treatment facilities for the
37 NGWSP as authorized by Section 10602 of the Navajo Settlement Act.
38

39
40 54. WATER CONSERVATION
41

42 Prior to the delivery of water to the Navajo Nation provided from or conveyed
43 through federally constructed or federally financed facilities pursuant to this contract, the
44 Navajo Nation shall develop an effective water conservation program which shall contain
45 definite water conservation objectives, appropriate economically feasible water
46 conservation measures, and time schedules for meeting those objectives. At subsequent

1 three-year intervals, the Navajo Nation shall submit a report on the results of the program
2 to the Contracting Officer for review. Based on the conclusions of the review, the
3 Contracting Officer and the Navajo Nation shall consult and agree to continue or to revise
4 the existing water conservation program. This paragraph shall be included in all
5 subcontracts, and such measures shall be required for all water purchasers.
6

7 55. CONTINGENT UPON APPROPRIATIONS OR ALLOTMENTS OF FUNDS
8

9 The expenditure of any money or the performance of any obligation by the United
10 States under this contract shall be contingent upon appropriations or allotments of funds.
11 Absence of appropriation or allotment of funds shall not relieve the Navajo Nation from
12 any obligations under this contract. No liability shall accrue against the United States in
13 case funds are not appropriated or allotted.
14

15 56. NOTICES
16

17 Any notice, demand, or request authorized or required by this contract shall be
18 deemed to have been given on behalf of the Navajo Nation when mailed, postage prepaid,
19 or delivered to the Regional Director, Upper Colorado Region, Bureau of Reclamation,
20 125 South State Street, P.O. Box 11568, Salt Lake City, Utah 84111, and on behalf of the
21 United States when mailed, postage prepaid, or delivered to the President, Navajo Nation,
22 Post Office Box 9000, Window Rock, Navajo Nation (Arizona) 86515. The designation
23 of the addressee or the address may be changed by notice given in the same manner as
24 provided in this section for other notices.
25

26 57. OFFICIALS NOT TO BENEFIT
27

28 No Member of or Delegate to Congress or Resident Commissioner or official of
29 the Navajo Nation shall benefit from this contract or any subcontract other than as a
30 water user or landowner in the same manner as other water users or landowners.
31

32
33
34 In witness whereof, the parties hereto have duly executed this contract the day and
35 year first above written.
36

37
38
39 THE UNITED STATES OF AMERICA

40 Department of the Interior
41

42 By: _____

43 Secretary of the Interior
44

1
2
3
4
5

THE NAVAJO NATION

By: _____

President

DRAFT