

Draft 07/06/2012 **CLEAN VERSION**  
Negotiation Meetings - 05/30/2012,  
and 06/29/2012.  
Contract No. \_\_\_\_\_

**Comment [BG1]:** The following edits, as discussed in the June 29, 2010 negotiation meeting, have been implemented into this "CLEAN VERSION" draft.

1. Additional descriptions for Contracts for Water Delivery article.
2. Corrected sub article numbering.
3. Provided language under 4.3 C. 7&8
4. Not Discussed in Neg Meeting – Recommend "NTUA" instead of "the Navajo Nation" in section 3.2
5. Added language - 4.3 A. 4.

UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

ANIMAS-LA PLATA PROJECT  
NAVAJO NATION MUNICIPAL PIPELINE  
COLORADO RIVER STORAGE PROJECT

OPERATIONS AGREEMENT BETWEEN THE UNITED STATES,  
THE NAVAJO NATION,  
AND  
THE CITY OF FARMINGTON, NEW MEXICO

THIS OPERATIONS AGREEMENT, hereinafter referred to as the Operations Agreement, entered this \_\_\_\_\_ day of \_\_\_\_\_, 2012, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, and particularly pursuant to the Colorado River Storage Project Act of April 11, 1956 (70 Stat. 105), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 896), the Colorado Ute Indian Water Rights Settlement Act of 1988 (P.L. 100-585), as amended by the Colorado Ute Settlement Act Amendment of 2000 (P.L. 106-554), which authorized the construction of the Animas-La Plata (A-LP) Project (A-LP Project), and Section 10605(b)(1) of Public Law 111-11 (Omnibus Public Land Management Act of 2009); among the UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting through the Secretary of the Department of the Interior (Secretary), Bureau of Reclamation (Reclamation), and the NAVAJO NATION, a Federally recognized Indian Tribe; and the CITY OF FARMINGTON, New Mexico, hereinafter called the City; (collectively, "the Parties" to this Operations Agreement) acting through their representatives.

WITNESSETH, That:

WHEREAS, Reclamation has constructed the Navajo Nation Municipal Pipeline (NNMP), a feature of the A-LP Project; and

WHEREAS, the City has the right and authority to manage, construct, alter, and perform Operations, Maintenance, and Replacement (OM&R) of the facilities and properties of the City's water supply distribution system; and

1           WHEREAS, The Navajo Nation has established the Navajo Tribal Utility Authority  
2 (NTUA) as an enterprise of the Navajo Nation, with authority to acquire and perform OM&R of  
3 utility systems throughout the Navajo Nation, including the performance of OM&R of a water  
4 supply distribution system for water users within, and in the vicinity of, the community of  
5 Shiprock, New Mexico, and to accomplish this purpose, NTUA requires a supply of treated  
6 water; and  
7

8           WHEREAS, the City owns and operates the Farmington water supply distribution system  
9 with a capacity currently capable of serving the present customers of the City's system, and those  
10 reasonably expected to become customers of the City in the future, and with sufficient capacity  
11 to furnish NTUA with treated potable water; and  
12

13           WHEREAS, by approval from the Farmington City Council and signature by the mayor,  
14 the City has granted to NTUA a utility easement for access to Tract 1 for the purpose of OM&R  
15 of the Crossing Section; and  
16

17           WHEREAS, by letter dated June 13, 2008, NTUA agrees to OM&R the NNMP in  
18 accordance with conditions stated within the letter; and  
19

20           WHEREAS, by Public Law 111-11, Section 10605(b), states that on completion of the  
21 NNMP, the Secretary may enter into separate agreements with the City and the Navajo Nation to  
22 convey title to each portion of the NNMP facility or section of the NNMP to the City and the  
23 Navajo Nation after execution of a A-LP Project operations agreement approved by the  
24 Secretary, the City, and the Navajo Nation that sets forth any terms and conditions that the  
25 Secretary determines are necessary; and  
26

27           WHEREAS, by Public Law 111-11, Section 10605(b)(2)(A), the Secretary shall convey  
28 to the City, the facilities and any land or interest in land acquired by the United States for the  
29 construction, operation, and maintenance of the NNMP that are located within the corporate  
30 boundaries of the City; and  
31

32           WHEREAS, by Public Law 111-11, Section 10605(b)(2)(B), the Secretary shall convey  
33 to the Navajo Nation, the facilities and any land or interests in land acquired by the United States  
34 for the construction, operation, and maintenance of the NNMP that are located outside the  
35 corporate boundaries of the City; and  
36

37           WHEREAS, the Parties hereto desire to enter into this Operations Agreement in order to  
38 secure operations protocol for this Municipal and Industrial (M&I) water supply, pursuant to the  
39 terms and conditions of Public Law 111-11, for the use of such water in and for the benefit of the  
40 Navajo Nation as hereinafter provided; and  
41

42           WHEREAS, the United States will deliver to the Navajo Nation, an M&I water allocation  
43 with an average annual depletion not to exceed 2,340 acre feet per year from the A-LP Project  
44 water supply under New Mexico State Engineer file number 2883, pursuant to the Navajo  
45 Settlement Contract (number 10-WC-40-384), dated December 18, 2010, parts I, III, V & VI.

1            THEREFORE, the Parties recognize the following terms and conditions herein to  
2 constitute an Operations Agreement for the NNMP and the Parties agree as follows:  
3  
4

5            **1. DEFINITIONS**  
6

7            When used in this Operations Agreement, unless otherwise distinctly expressed or  
8 manifestly incompatible with the intent hereof, the following definitions shall apply:  
9

10          **1C Water Zone** – The area served by gravity flow from the Farmington 1C water tank.  
11

12          **2000 Amendments** – Title III of Public Law 106-554 referred to as Colorado Ute  
13 Settlement Act Amendments of 2000.  
14

15          **City-Nation Boundary Point** – The point where the centerline of the NNMP crosses the  
16 boundary between the City and the Navajo Nation in the approximate vicinity of 36° 43'  
17 56.2" N, 108° 15' 8.58" W, (San Juan County, New Mexico).  
18

**Comment [WCAO2]:** City to look further into coordinate

19          **Conveyance Contract** – The City of Farmington and Navajo Tribal Utility Authority  
20 Water Treatment and Conveyance Contract entered December 18, 2007, ~~provided herein~~  
21 ~~incorporated~~ as Exhibit A.  
22

23          **Crossing Section**– The pipeline section of the Farmington Reach, constructed by the  
24 United States, located within the corporate boundaries of the City, straddling the San  
25 Juan River, from the Delivery Point to the City-Nation Boundary Point.  
26

27          **Delivery Point** – the point at the meter/valve vault on the Farmington Reach, located on  
28 the northeast side of the San Juan River in the approximate vicinity of  
29 36°44'05.61493"N, 108°14'55.30147"W, (San Juan County, New Mexico).  
30

**Comment [PW3]:** City of Farmington to field verify location at valve vault – and possible language to further define

31          **Farmington Reach** – The portion of the NNMP extending approximately 2.8 miles from  
32 the City's 1C water tank and appurtenances to the City-Nation Boundary Point.  
33

34          **MOU** – Memorandum of Understanding, dated November 27, 2006 among the Navajo  
35 Nation, City, and Reclamation for the design, construction, and ownership of the  
36 Farmington Reach of the NNMP, ~~provided herein incorporated~~ as Exhibit B.  
37

38          **NNMP** – The Navajo Nation Municipal Pipeline means the pipeline used to convey the  
39 water of the Animas-La Plata Project of the Navajo Nation from the City of Farmington,  
40 New Mexico, to communities of the Navajo Nation located in close proximity to the San  
41 Juan River Valley in the State of New Mexico, as authorized by Section 15(b) of the  
42 2000 Amendments.  
43

44          **Statutory Water Allocation** – The M&I water allocated to the Navajo Nation through  
45 the use of NNMP components, pursuant to Sec. 6(a)(1)(ii)(VII) of the 2000 Amendments.  
46

1       **Tract 1** – The tract of land designated as Tract 1 in the Utility Easement and Temporary  
2       Construction Easement, and recorded with the San Juan County Clerk at Book 1478 Page  
3       904, on July 16, 2008, ~~provided herein incorporated~~ as Exhibit C.  
4

## 5       **2. CONTRACTS FOR WATER DELIVERY**

- 6
- 7       **2.1** The Navajo Nation, City, and Reclamation entered into; Memorandum of  
8       Understanding, executed November 27, 2006. This understanding is for the design,  
9       construction, and ownership of the Farmington Reach of the NNMP, ~~herein~~  
10      ~~incorporated as Exhibit B.~~
- 11      **2.2** The City and NTUA entered into; Water Treatment and Conveyance Contract,  
12      executed December 18, 2007. This contract is a 40-year term with a 10-year  
13      termination notice on the 30<sup>th</sup> year of the contract, ~~herein incorporated as Exhibit A.~~  
14      This ~~Conveyance e~~Contract supersedes the December 22, 1998 dated contract, ~~herein~~  
15      ~~incorporated as Exhibit A.~~
- 16      **2.3** The United States and the City entered into Contract Number 07-WC-40-270;  
17      Contract between the United States and the City of Farmington, New Mexico for  
18      Right of Capacity in Farmington Reach, ~~herein incorporated as Exhibit D.~~ This  
19      contract obligates sufficient capacity in the Farmington Reach to make available  
20      4,680 acre-feet of water per year for the beneficial use of the Navajo Nation.
- 21      **2.4** The United States and the Navajo Nation entered into Contract Number 10-WC-40-  
22      384, Navajo Settlement Contract, executed December 17, 2010. This contract  
23      provides terms and conditions for the Statutory Water Allocation including, but not  
24      limited to, the Navajo Nation’s OM&R responsibilities and water delivery provisions  
25      associated with the NNMP.

## 26      **3. GENERAL PROVISIONS**

### 27      **3.1 Compliance with Federal Law**

28      The terms of this Operations Agreement are subject to and governed by applicable  
29      federal law.

### 30      **3.2 Other Agreements**

31      This Operations Agreement is not intended to conflict with terms of any prior  
32      agreements or contracts between the City and NTUA, or the City and the United  
33      States, or ~~NTUA-the Navajo Nation~~ and the United States, or among all of the  
34      Parties; however, this Operations Agreement represents the current conditions and  
35      present understanding that future OM&R shall be as provided for herein unless  
36      further modified upon having reached unanimous consent of the Parties.

### 37      **3.3 Appropriations**

38      Nothing contained in this Operations Agreement shall be construed as binding the  
39      United States to expend in any one fiscal year any sum in excess of appropriations  
40      made by Congress for the purposes of this Operations Agreement for that fiscal year  
41      or as involving the United States in any contract or other obligation for the further  
42      expenditures of money in excess of such appropriations.

### 43      **3.4 Modification of Agreement**

1 The Parties may modify any provisions of this Operations Agreement upon having  
2 reached unanimous written consent.

3 **3.5 Assignment Limited – Successors and Assigns Obligated**

4 The provisions of this Operations Agreement shall apply to and bind the successors  
5 and assigns of the Parties hereto. No assignment of any right of obligation shall be  
6 made by any Party without first obtaining written approval by the other Parties.

7 **3.6 Notices**

8 Any notice, demand, or request authorized or required by this Operations Agreement  
9 shall be deemed to have been given, on behalf of any Party when mailed, certified  
10 postage prepaid, or delivered to the respective authorized representatives of the  
11 Parties to this Operations Agreement. The designation of the addressee or the  
12 address may be changed by notice given in the same manner as provide in this article  
13 for other notices.

14 For The Navajo Nation:

15  
16 President  
17 The Navajo Nation  
18 P.O. Box 9000  
19 Window Rock, AZ 86515  
20 (928) 871-6000  
21

22  
23 Director  
24 Navajo Department of Water Resources  
25 P.O. Box 678  
26 Ft. Defiance, AZ 86504  
27 (928) 729-4003  
28

29 For The Navajo Tribal Utility Authority:

30  
31 Deputy General Manager  
32 P.O. Box 170  
33 Ft. Defiance, AZ 86504  
34 (928) 729-5721  
35

36 For The City of Farmington, New Mexico:

37  
38 Mayor and Director of Public Works  
39 City of Farmington  
40 800 Municipal Dr.  
41 Farmington, NM 87401  
42 (505) 327-7701  
43

44 For Reclamation:

45  
46 Area Manager

1 Western Colorado Area Office  
2 2764 Compass Drive Suite 106  
3 Grand Junction, CO 81506  
4 (970) 248-0600  
5  
6

7 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein  
8 contained, the Parties hereto agree as follows:  
9

#### 10 4. TERMS AND CONDITIONS

##### 11 4.1 Terms and conditions the Secretary determines necessary include:

- 12 A. The Navajo Nation and the City, ~~at their own expense, without expense to the~~  
13 ~~United States~~ shall own and be responsible for the OM&R of their respective  
14 portions of the NNMP in full compliance with the terms of this Operations  
15 Agreement.  
16
- 17 B. The Navajo Nation will receive 4,680 AFY (2,340 AFY depletion) and will  
18 use it in accordance with Parts I, III, V and VI of the Navajo Settlement  
19 Contract.  
20
- 21 C. Any additions, changes to, or operation of ALP Project works or changes in  
22 use of the water allocations pursuant to Sec. 6(a)(1)(A)(ii) of the Colorado Ute  
23 Settlement Act Amendments of 2000, as amended, from that stated in the  
24 Animas-La Plata Final Supplemental Environmental Impact Statement  
25 (FSEIS) dated July 2000 and subsequent Record of Decision dated September  
26 25, 2000, shall, as required by law, be subject to further compliance with  
27 applicable environmental statutes, which shall include an analysis of potential  
28 impacts on ALP Project Sponsors.  
29
- 30 D. To ensure the continuation of the intended benefits of the NNMP.

##### 31 4.2 Operation, Maintenance, and Replacement:

- 32 A. The accounting and management of water conveyance and NNMP finances,  
33 as necessary to administer and fulfill the conditions required for the  
34 conveyance of water
- 35 B. The allocation and payment of annual OM&R costs of the NNMP or section  
36 of a NNMP facility based on the proportionate uses of NNMP facilities.
- 37 C. The City and NTUA would conduct ground inspection of the pipelines,  
38 pumping plants, water treatment plants, and water storage facilities on a  
39 regular basis for evidence of excavation activity on or near the right-of-way  
40 by landowners or other parties, erosion and wash-out areas, areas of sparse  
41 vegetation, damage to permanent erosion control devices, exposed pipe, and  
42 other potential problems that might affect the safety and operation of the  
43 pipeline and all associated facilities from the 1C water tank to the Delivery  
44 Point.

##### 45 4.3 Responsibilities:

46

Comment [BG4]: From PART III (11) (d) of Navajo Settlement Contract.

Comment [BOR5]: NN - Is this an expansion of 5.1A? Is there some reason why the U.S. feels the need to tell these utilities how to conduct OM&R activities?

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- A. The Navajo Nation agrees to the following:
  1. The Navajo Nation and/or their representative enterprise will work diligently to enter into future mutually beneficial water delivery contract(s) with the City.
  2. The Navajo Nation and/or their representative enterprise will work diligently to enter into an ownership transfer agreement with the City for the Crossing Section.
  3. The Navajo Nation has entered into the Conveyance Contract and hereby agrees to comply with the terms and conditions within.
  - ~~3-4.~~ The NTUA shall be responsible for OM&R of all portions of the NNMP downstream from the Delivery Point.

- B. The City agrees to the following:
  1. The City ~~shall own~~s, and shall be responsible for OM&R of the portion of the Farmington Reach from the City's 1C Water Tank to the Delivery Point.
  2. The City shall abide by the terms and conditions of the Right of Capacity Agreement.
  3. The City will work diligently to enter into future mutually beneficial water delivery contract(s) with the Navajo Nation and/or their representative enterprise.
  4. The City will work diligently to enter into an ownership transfer agreement for the Crossing Section with the NTUA.
  5. The City has entered into the Conveyance Contract and hereby agrees to comply with the terms and conditions within.
  6. The City has designed, ~~and~~ constructed, and ~~after title transfer will own, and OM&R~~ the portion of the Farmington Reach from the City's 1C Water Zone ~~through the meter/valve vault~~ to the ~~Point of~~ Delivery Point. The City ~~also has with~~ OM&R ~~responsibilities for the~~ metering equipment, which includes an adequately sized meter, a meter ~~house~~vault, and required standard devices for properly measuring the quantity of water delivered to NTUA. The City will calibrate this metering equipment, within two (2) percent of the test result, at least once every twelve (12) months

Comment [BG6]: Moved from NN agrees section.

- C. Both the Navajo Nation and City agree to the following:
  1. The United States has constructed and after conveyance of title, the City will own the Crossing Section. During the life of the Farmington Reach, Reclamation will own a capacity right to furnish NTUA with the quantities of water agreed to in the Right of Capacity Agreement. Upon its completion, the City shall OM&R the pipeline and equipment upstream of, and through, the meter/valve to the Delivery Point. And, after title transfer by the Secretary, the City will own, and NTUA will OM&R the Crossing Section pipeline and all equipment downstream from the meter/valve at the Delivery Point.

Comment [PW7]: See comments above

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2. Reclamation will have a right of capacity in the Farmington Reach such that the capacity of water for delivery to NTUA discussed in Section 15b of the 2000 Amendments is protected. At such time in the future, if the Navajo Nation and the City determine that it is no longer necessary to utilize the Farmington Reach in order to obtain its water supply, Reclamation and the City will enter negotiations over the potential transfer of the right of capacity, subject to applicable state and federal law and potential approval by Congress, if required. The City may not transfer ownership of any portion of the necessary facilities constructed pursuant to the MOU, or this Operations Agreement, nor alienate or encumber such facilities in any manner without the express written consent of Reclamation or its assignee.
3. After title transfer, outlined in Article 54.4 herein, of the Crossing Section from the Secretary to the City, the City will own, and NTUA will OM&R the Crossing Section downstream from the Delivery Point. After title transfer from the Secretary to the City, the City may transfer ownership of the Crossing Section pipeline to the Navajo Nation. During such time, NTUA shall perform OM&R of the Crossing Section pipeline.
4. The City and Navajo Nation both agree to conform to the Operation and Maintenance Procedures and Impacts within the A-LP FSEIS, Volume 1, Chapter 2.
5. The City and Navajo Nation both agree OM&R of the NNMP will be in accordance with the Environmental Commitments in Chapters 4 and 5 of the FSEIS.
6. In the event of an Act of God or Force Majeure event that impacts the City's water treatment or conveyance capacity, the supply of water to NTUA will be reduced in the same ratio or proportion that the supply of water to the City's other users is reduced.
7. Effective on the date of the conveyance of title authorized by Public Law 111-11, Section 10605, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the facilities conveyed, other than damages caused by acts of negligence committed by the United States or by employees or agents of the United States prior to the date of conveyance.
8. Upon execution of this Operation Agreement, United States shall not be further responsible for OM&R of any portion of the NNMP. OM&R shall be performed by the City or the NTUA for their respective responsibility.

D. The United States agrees to the following

1. \_\_\_\_\_

**4.4 Conveyance of Title:**

Comment [BG8]: Moved from NN section.

Comment [BG9]: Moved from NN section.

Comment [BG10]: Proposed language being drafted.



1 | A. Conveyance of titles shall occur after execution of this Operations Agreement  
2 | in separate title transfer agreements with the City and the Navajo Nation.

3 |  
4 | **5. DISTRIBUTION OF WATER**

**Comment [BG11]:** End of June 29, 2012 Negotiation Meeting.

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6 |  
7 | **5.1** The Parties to this Operations Agreement agree that any unforeseen restriction in the  
8 | capacity for the augmentation of water in NNMP will be shared by such Parties on a  
9 | pro-rata basis.

**Comment [BOR12]:** NN – What does this mean?

10 | **5.2** If there is a shortage in capacity and/or delivery because of errors in physical  
11 | operations of the Project, drought, other physical causes beyond the control of  
12 | Reclamation or actions taken by Reclamation to meet current and future legal  
13 | obligations, then no liability shall accrue against the United States or any of its  
14 | officers, agents, or employees for any damage, direct or indirect, arising therefrom.

**Comment [WCA013]:** . Should have been covered in NN Settlement Contract.

15 |  
16 | **5.6 TERM OF THIS OPERATIONS AGREEMENT**

17 | This Operations Agreement shall become effective upon the date of execution and  
18 | shall remain in effect for a period of 25 years from the date of execution. Prior to  
19 | expiration, this Operations Agreement may be renewed for an additional term of  
20 | 25 years upon mutual agreement of the Parties hereto. Any such renewal shall be  
21 | subject to federal and state law in existence at the time of renewal. Upon transfer  
22 | of title to the City and the Navajo Nation in accordance with Section 10605(b)(1)  
23 | of P.L. 111-11 and the MOU, this Operations Agreement shall either be assumed,  
24 | or terminated as provided. In either event, all rights of Reclamation hereunder,  
25 | and all duties and obligations owed by the City and Navajo Nation to Reclamation  
26 | hereunder, shall cease and terminate, and Reclamation shall no longer be  
27 | considered a “Party” hereunder, effective upon such title transfer.  
28 |  
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**Comment [BG14]:** Reclamation believes all of Article 5 can “go away”.

**Comment [BOR15]:** NN – Is there a required timeframe between the execution of the operations agreement and the transfer of title?

**Comment [WCA016]:** This Operations Agreement may go “hand in hand” with the Title Transfer Agreement(s). Other documents will also be required for the Title Transfer.

1 IN WITNESS WHEREOF, the Parties hereto have caused this Operations Agreement to be duly  
2 executed on the date first above written.  
3  
4  
5

6  
7 ATTEST: THE NAVAJO NATION  
8  
9

10  
11 By: \_\_\_\_\_ By: \_\_\_\_\_  
12 Ben Shelly  
13 President  
14 Navajo Nation  
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17  
18 ATTEST: CITY OF FARMINGTON, NEW MEXICO  
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21  
22 By: \_\_\_\_\_ By: \_\_\_\_\_  
23 Dianne Fuhrman Tommy Roberts  
24 City Clerk Mayor  
25 City of Farmington, NM City of Farmington, NM  
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28  
29 ATTEST: UNITED STATES OF AMERICA, BUREAU OF RECLAMATION  
30  
31

32  
33 Approved: \_\_\_\_\_ By: \_\_\_\_\_  
34 Office of the Solicitor Larry Walkoviak  
35 Regional Director, Upper Colorado Region  
36  
37

38  
39 List of Attachments: Exhibit A – City of Farmington and Navajo Tribal Utility Authority Water  
40 Treatment and Conveyance Contract  
41 Exhibit B – Memorandum of Understanding  
42 Exhibit C – Letter from City of Farmington containing Tract 1 recording  
43 Exhibit D – Right of Capacity in Farmington Reach Contract  
44  
45