

## **COST-SHARING AND SYSTEM INTEGRATION AGREEMENT**

This Cost-Sharing and System Integration Agreement is made and entered into by and among the United States, acting through the Secretary of the Interior, the State of New Mexico, acting through the State Engineer, the Pueblo of Nambé, the Pueblo of Pojoaque, the Pueblo of San Ildefonso, the Pueblo of Tesuque, the City of Santa Fe and the County of Santa Fe (“the Parties”). This agreement is the August 27, 2009 Cost Sharing and System Integration Agreement referenced in Section 602(5) of the Aamodt Litigation Settlement Act (Act) as amended to conform thereto pursuant to Section 621(a) and Section 621(b) of the Act.

**NOW, THEREFORE**, in consideration of mutual and dependent covenants and conditions contained herein, and in the Settlement Agreement, which each Party acknowledges inures to its respective benefit, the Parties agree as follows:

- 1. DEFINITIONS** The following terms shall have the following meanings when capitalized in this Cost Sharing Agreement:
  - 1.1 “Acre-Feet” or AFY” means acre-feet of water per year.
  - 1.2 “Act” or “Settlement Act” or “Aamodt Litigation Settlement Act” means the Indian Water Rights Settlement Act, Pub. L. No. 111-291, tit. VI, §§ 601 – 626, 124 Stat. 3064, 3134-56 (2010).
  - 1.3 “Cost Sharing Agreement” means this Cost-Sharing and System Integration Agreement.
  - 1.4 “County” means Santa Fe County, New Mexico.
  - 1.5 “County Distribution System” means the portion of the Regional Water System that serves water customers on non-Pueblo land in the Pojoaque Basin.
  - 1.6 County Water Utility or “CWU” means the water utility organized by the County to:
    - 1.6.1 receive water distributed by the Regional Water Authority;
    - 1.6.2 provide the water received under subparagraph (A) to customers on non-Pueblo land in the Pojoaque Basin; and
    - 1.6.3 carry out any other activities in accordance with the Act and other applicable law.

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- 1.7 “Engineering Report” means the report entitled “Pojoaque Regional Water System Engineering Report” and dated September 2008 and any amendments thereto including any amendments necessary to conform to the Act.
- 1.8 “Operating Agreement” means the agreement between the Pueblos and the County executed under Section 612(a) of the Act.
- 1.9 “Pojoaque Basin”
  - 1.9.1 IN GENERAL.—The term “Pojoaque Basin” means the geographic area limited by a surface water divide (which can be drawn on a topographic map), within which area rainfall and runoff flow into arroyos, drainages, and named tributaries that eventually drain to:
    - 1.9.1.1 the Rio Pojoaque; or
    - 1.9.1.2 the 2 unnamed arroyos immediately south; and
    - 1.9.1.3 2 arroyos (including the Arroyo Alamo) that are immediately north of the confluence of the Rio Pojoaque and the Rio Grande.
    - 1.9.1.4 INCLUSION.—The term “Pojoaque Basin” includes the San Ildefonso Eastern Reservation recognized by section 8 of Public Law 87–231 (75 Stat. 505).
  - 1.10 “Pueblo” means each of the Pueblos of Nambé, Pojoaque, San Ildefonso, or Tesuque.
  - 1.11 “Pueblos” means collectively the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque.
  - 1.12 "Pueblo land" means any real property that is:
    - 1.12.1 held by the United States in trust for a Pueblo within the Pojoaque Basin
      - 1.12.1.1 owned by a Pueblo within the Pojoaque Basin before the date on which a court approves the Settlement Agreement; or
      - 1.12.1.2 acquired by a Pueblo on or after the date on which a court approves the Settlement Agreement, if the real property is located:
        - 1.12.1.2.1 within the exterior boundaries of the Pueblo, as recognized and confirmed by a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or
        - 1.12.1.2.2 within the exterior boundaries of any territory set aside for the Pueblo by law, executive order, or court decree;
    - 1.12.2 owned by a Pueblo or held by the United States in trust for the benefit of a Pueblo outside the Pojoaque Basin that is located within the exterior boundaries of the Pueblo as recognized and confirmed by a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

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1.12.3 within the exterior boundaries of any real property located outside the Pojoaque Basin set aside for a Pueblo by law, executive order, or court decree, if the land is within or contiguous to land held by the United States in trust for the Pueblo as of January 1, 2005.

1.13 “Pueblo Water Facility”

1.13.1 IN GENERAL.—The term “Pueblo Water Facility” means:

1.13.1.1 a portion of the Regional Water System that serves only water customers on Pueblo land; and

1.13.1.2 portions of a Pueblo water system in existence on the date of enactment of the Act that serve water customers on non-Pueblo land, also in existence on the date of enactment of the Act, or their successors, that are

1.13.1.2.1 depicted in the final project design, as modified by the drawings reflecting the completed Regional Water System; and

1.13.1.2.2 described in the Operating Agreement.

1.13.2 INCLUSIONS.—The term “Pueblo Water Facility” includes:

1.13.2.1 the barrier dam and infiltration project on the Rio Pojoaque described in the Engineering Report; and

1.13.2.2 the Tesuque Pueblo infiltration pond described in the Engineering Report.

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- 1.14 “Regional Water Authority” or “RWA” means the Pojoaque Basin Regional Water Authority described in Section 9.5 of the Settlement Agreement, to operate and maintain the diversion and treatment facilities, certain transmission pipelines and other facilities of the Regional Water System.
- 1.15 “Regional Water System”  
The term “Regional Water System” means the Regional Water System as defined in section 602(18) of the Act.
- 1.16 “Secretary” means the Secretary of the Interior.
- 1.17 “Settlement Agreement” means the agreement among the State, the Pueblos, the United States, the County, and the City dated January 19, 2006, and signed by all of the government parties to the Settlement Agreement (other than the United States) on May 3, 2006, as amended in conformity with the Act.

## **2. REGIONAL WATER SYSTEM**

### **2.1 Planning and Construction**

- 2.1.1 Subject to the other terms and conditions of this Cost Sharing Agreement and the Act, the Parties agree to fund and the United States agrees to plan, design and construct the Regional Water System.
- 2.1.2 The following shall be given the highest priority for construction: the portion of the Regional Water System consisting of the surface water diversion, treatment and transmission facilities at San Ildefonso Pueblo, the Pueblo Water Facilities at San Ildefonso Pueblo, including the barrier dam and infiltration project on the Rio Pojoaque, and that part of the Regional Water System providing 475 AFY of water to the Pueblo of Pojoaque.
- 2.1.3 The Regional Water System shall be designed and constructed in conformity with the requirements of Section 611(a) of the Act. The Parties shall not be required to expend construction funds if a record of decision, after compliance with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (“NEPA”), would require an alternative that does not conform to the Act.
- 2.1.4 The Parties agree to complete planning for, and obtain necessary approvals for, the Regional Water System.
- 2.1.5 After completion of construction of the Regional Water System by the United States, members of the Regional Water Authority may construct such further infrastructure at their own expense as may be necessary to fully utilize water delivered by the Regional Water System.
- 2.1.6 Nothing in this Cost Sharing Agreement affects the outcome of any analysis conducted by the Secretary or any other Federal official under NEPA.

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## 2.2 Well Locations

2.2.1 The Parties shall cooperate in locating any wells that are part of the Regional Water System.

2.2.2 The Bureau of Reclamation, or its contractor, shall conduct additional field testing, study, and modeling related to the locations of any wells prior to the preparation of an environmental impact statement or environmental assessment for the Regional Water System. Such testing, study and modeling shall address, among other things, the yield of potential wells and the suitability of the proposed re-injection process with the underlying localized aquifer and an analysis of the impacts of the proposed wells on Pueblo and non-Pueblo water uses.

2.2.3 Any environmental impact statement or environmental assessment addressing the locations of any wells required for the Regional Water System shall assess the impact of such locations on both Pueblo and non-Pueblo lands and water uses.

2.2.4 Prior to final design of the Regional Water System, the Bureau of Reclamation shall consult with the Regional Water Authority, or the County and the Pueblos, if the Regional Water Authority is not yet formed, in determining whether the proposed well sites are adequate for their intended uses and purposes.

2.2.5 The location of any well on Pueblo lands shall be further subject to the provisions of Sections 2.2.5.1 through 2.2.5.3.

2.2.5.1 The Secretary shall conduct government to government consultation with the Pueblos throughout the well location process. Such consultation shall be initiated prior to the field testing, study and modeling described in section 2.2.2 and shall continue during the development of the required environmental compliance documents until a final record of decision is issued with regard to the location of the wells. Throughout the consultation process, the Secretary shall preserve confidentiality regarding potential sites that are integral to long-standing traditional cultural practices at a Pueblo, where the location of the well site itself possesses historic, cultural, or archeological value (“HCA site”) regardless of the value or existence of any formal structure at the location and would be culturally inappropriate to publicize.

2.2.5.2 No well may be located on Pueblo lands without the consent of the Pueblo. In addition to the requirements of Section 5.7 of the Settlement Agreement, the location and operation of the well fields shall not interfere with (1) HCA sites identified through government-to-government consultation between the Secretary and each Pueblo; (2) existing, or reasonably anticipated future uses of Pueblo land, including, among other things, uses for traditional

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cultural practices; or (3) uses of water by a Pueblo in accordance with the Settlement Agreement.

2.2.5.3 In the event a well is to be located on Pueblo lands, the Secretary shall negotiate and enter into an agreement with the affected Pueblo governing the construction of and access to said well field. The operation of the well field shall be addressed and governed by the Operating Agreement which shall also address access to the well field and jurisdictional issues.

2.3 Easements and Rights of Way Easements, including rights of way for the benefit and use of the Regional Water Authority, the CWU and the Pueblo Water Facilities, shall be acquired consistent with the Act. The Parties agree that:

2.3.1 The United States shall obtain easements and rights of way across non-Pueblo land for so long as required for construction, use, operation, maintenance, repair and replacement of the Regional Water System. The County shall acquire such rights of way for any subsequent CWU infrastructure construction across non-Pueblo land to deliver water to CWU customers. All easements and rights of way may be used for wastewater purposes, provided the right of way is not increased in width or changed in location due to the use for wastewater purposes.

2.3.2 The United States shall obtain easements and rights of way across Pueblo land as required for construction, use, operation, maintenance, repair and replacement of the Regional Water System. Each Pueblo agrees to consent to the grant of such easements and rights of way by the Secretary to the United States pursuant to the Act of February 5, 1948 (61 Stat. 17; 25 U.S.C. 323-328), and 25 C.F.R. Section 169. The term of each easement and right of way shall begin on the date the easement and right of way is granted by the Secretary and consented to by the Pueblo and shall continue as long as it is used for the purposes set forth in this Section 2.3.2. In consideration for the funding of the Aamodt Settlement Pueblos' Fund described in Section 617(c)(1)(B) of the Act, each Pueblo agrees to consent to the United States' grants of easements and rights of way for the System, at no cost. Each Pueblo also agrees that the grants of easements and rights of way for the System may be used for wastewater purposes at no additional cost, provided the easement or right of way is not increased in width or changed in location due to such use. For the purposes of determining the easements necessary for the well fields located on Pueblo lands, such easements shall be obtained in compliance with Section 2.2.

2.3.3 To the extent the United States, State or County owns the land or any interest therein that may be used for the Regional Water System, each agrees to grant easements or rights of way, at no cost, for so long as required for the construction, use, operation, maintenance, repair and replacement of the Regional Water System, and each agrees that the grants of easements or rights of way for the Regional Water System, at no cost, may be used for wastewater

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purposes, provided the right of way is not increased in width or changed in location due to the use for wastewater purposes.

2.4 Conveyance of Regional Water System In accordance with the Act, the United States shall convey the Regional Water System as follows:

2.4.1 That portion of the Pueblo Water Facilities that is located within each respective Pueblo's lands, including easements and rights of way therefor, to each Pueblo. No Pueblo shall transfer ownership of its part of the Pueblo Water Facilities unless a transfer is authorized by an act of Congress enacted after the date of enactment of the Act.

2.4.2 The County Distribution System, including easements and rights of way therefor, to the County Water Utility. The County shall not transfer ownership of the County Distribution System unless a transfer is authorized by an act of Congress enacted after the date of enactment of the Act.

2.4.3 All remaining portions of the Regional Water System, including easements and rights of way therefor, to the Regional Water Authority. The Regional Water Authority shall not transfer ownership of the Regional Water System unless a transfer is authorized by an act of Congress enacted after the date of enactment of the Act.

2.4.4 Prior to the conveyance of the Regional Water System, the Operating Agreement shall be executed and approved in accordance with the Act.

2.4.5 After conveyance of the Regional Water System, the United States shall have no further right, title, or interest in the Regional Water System.

2.4.6 Nothing in any transfer of ownership provided for in sections 2.4.1 through 2.4.3 or any conveyance pursuant thereto shall extinguish the right of any Pueblo, the CWU or the Regional Water Authority to the continued use and benefit of such easement for right of way for the use, operation, maintenance, repair and replacement of Pueblo Water Facilities, the County Distribution System or the Regional Water System, or for wastewater purposes as provided in the Settlement Agreement and Section 2.3 of this Agreement.

2.5 Operation, Maintenance, Repair and Replacement (OM&R), and Management

2.5.1 The CWU shall have authority over OM&R and management of the County Distribution System. Pursuant to County policies and procedures, the County shall establish a citizens' advisory board to provide local public input into the decisions on the operations of the CWU.

2.5.2 Each Pueblo shall retain its authority over OM&R and management of its portion of the Pueblo Water Facilities.

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2.5.3 The Regional Water Authority shall have authority over OM&R and management of the remaining portions of the Regional Water System, including the surface water diversion facilities on the Rio Grande at San Ildefonso Pueblo.

2.5.4 The County and the Pueblos hereby delegate to the Regional Water Authority responsibility for the OM&R and management under Sections 2.5.1 and 2.5.2. The Regional Water Authority shall have the right to contract for OM&R of all or part of the Regional Water System with the CWU, a Pueblo, or another entity.

2.5.5 Notwithstanding Section 2.5.4, the Operating Agreement shall include provisions pursuant to which the County may exercise the right to operate, maintain and manage the County Distribution System and each Pueblo may exercise the right to operate, maintain and manage its portion of the Pueblo Water Facilities.

2.5.6 If the County or any Pueblo determines to exercise its right under Section 2.5.5 to operate its portion of the distribution system, that entity may still contract with the Regional Water Authority pursuant to section 2.5.4 to operate all or part of the Regional Water System.

2.5.7 Nothing contained in sections 2.5.1 through 2.5.6 shall determine the allocation of cost or funding relating to the OM&R costs of the Regional Water System or to the allocation of cost or funding related to the County's or any Pueblo's exercise of its option to operate its portion of the distribution system. Such allocations of cost and funding shall be addressed in the Operating Agreement and in any additional or necessary agreement among the Pueblos relating to the allocation of OM&R funding.

2.6 City of Santa Fe and Santa Fe County

2.6.1 In order to reduce and mitigate the effects of groundwater pumping by the City of Santa Fe on the ground and surface water supplies of the Pojoaque Basin, the City shall develop and implement, in consultation with the Pueblos, a conjunctive management strategy with regard to its ground and surface water resources which (1) utilizes surface water supplies to the maximum extent feasible in a manner which minimizes effects on the ground and surface water supplies of the Pojoaque Basin; and (2) otherwise utilizes both surface and groundwater in a manner which minimizes effects on the ground and surface water supplies of the Pojoaque Basin. The location(s), timing, and amounts of water deliveries provided by the City of Santa Fe to offset surface depletion effects on the Rio Tesuque in accordance with Section 2.5 of the Settlement Agreement shall be addressed in a separate agreement between the City and the Pueblo of Tesuque.

2.6.2 In order to reduce and mitigate the effects of groundwater pumping by Santa Fe County on the ground and surface water supplies of the Pojoaque Basin, the

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County shall develop and implement in consultation with the Pueblos, a conjunctive management strategy with regard to its ground and surface water resources which (1) utilizes surface water supplies to the maximum extent feasible in a manner which minimizes effects on the ground and surface water supplies of the Pojoaque Basin; and (2) otherwise utilizes both surface and groundwater in a manner which minimizes effects on the ground and surface water supplies of the Pojoaque Basin. To that end, the County adopted on January 13, 2009 the “Santa Fe County Conjunctive Management Plan for the Santa Fe Basin.” Consistent with that plan, 4.49 AFY consumptive use water rights owned by the County under subfile 20.10 shall be deemed existing County offset rights under Section 2.5 of the Settlement Agreement and are available, subject to State Engineer approval, to offset the effects on the Rio Tesuque, Rio Nambe and Rio Pojoaque of future County pumping in the Santa Fe Basin, provided no more than 1.82 AFY of the 4.49 AFY will be used to offset effects on the Rio Tesuque.

2.7 Return Flows and Water Rights Acquisition and Transfer Cooperation

- 2.7.1 The Pueblos, the County, or the Regional Water Authority may apply to the State Engineer for return flow credits for the Regional Water System based upon measured return flows to the stream system above the Otowi gage.
- 2.7.2 The Pueblos and the County shall agree in the Operating Agreement on a method to account for return flows or reuse of treated effluent, in an effort to increase the supply available to the Regional Water Authority.
- 2.7.3 Of the 1,752 AFY of consumptive-use water rights appurtenant to the Top of the World Farm owned by the County, the County shall convey to the United States 1,141 AFY at the price of \$5,400,000, and the County shall retain the remaining 611 AFY for the CWU.
- 2.7.4 The United States, the Pueblos and the County will cooperate to secure the transfer of the Top of the World Farm water rights to the Regional Water System on behalf of the four Pueblos and the County, including requesting the Interstate Stream Commission and the United States to serve as co-applicants.
- 2.7.5 The United States, the Pueblos and the County will cooperate to secure the transfer of the Nambe reserved water rights and the San Juan-Chama Project water, both described in Section 613(a) of the Act, to the Regional Water System point of diversion.
- 2.7.6 The Parties shall cooperate regarding the acquisition of a firm reliable supply of up to 4,000 AFY for the Regional Water System. The Operating Agreement shall provide for the joint and cooperative use of the water rights to maximize the supply from the Regional Water System to the Pueblos and the County.

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**3. COST SHARING.** The Parties agree to share the costs required to implement the Settlement Agreement as follows:

**3.1 Regional Water System Construction Cost Allocation**

3.1.1 Of the \$177,300,000 in estimated Regional Water System construction costs as of October 1, 2006, the United States shall pay an estimated \$106,400,000 and the State and County shall pay the non-Federal share estimated to be \$70,900,000. These cost share estimates are based upon the Engineering Report and subject to indexing in accordance with Section 617(a)(4) of the Act. Any cost increase above the indexed amounts estimated by the Engineering Report will be allocated based upon the incremental cost difference method used therein, and any such increase in the cost of the shared portion of the Regional Water System shall be allocated to the non-Federal share in substantially the same proportion(s) set forth in Tables 5-1 through 5-11 of the Engineering Report, as applicable, in order to avoid the necessity for multiple design efforts. In the event that revisions to the final project design incorporate substantially different assumptions than those underlying Tables 5-1 through 5-11, the parties agree to meet and consult in order to agree upon an appropriate cost allocation in accordance with the incremental cost difference method. No federal funds shall be available for the construction of the Regional Water System until the Court enters an order approving the Settlement Agreement; provided, that federal funds may be used for planning, design and environmental compliance prior to entry of an order approving the Settlement Agreement.

3.1.2 The Secretary pursuant to Section 611(g) will consult with the Parties, at the following milestones:

- 3.1.2.1 Completion of feasibility level design and cost estimates;
- 3.1.2.2 Prior to selection of the preferred alternative during the NEPA/EIS process.
- 3.1.2.3 Prior to issuance of a Record of Decision pursuant to the NEPA process;
- 3.1.2.4 Completion of Final Design and Cost Estimates; and
- 3.1.2.5 Upon any major unforeseen change during construction that would significantly affect cost allocation.

The purpose of the milestone consultation will be to inform and allow review by the Parties of the potential designs and cost estimates. Upon each milestone, the County may elect to continue funding its non-Federal share of the project costs, or reduce the County's portion of the Regional Water System through modifications of either extent, size or capacity, pursuant to Section 611(d)(2) of the Act.

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3.1.3 County and State construction cost allocations for the Regional Water System, exclusive of service connection costs described in Section 3.1.4, shall be as follows:

\$ 45,500,000 State  
\$ 7,400,000 County

Any reductions in these County and State construction costs resulting from modifications, as authorized by Section 611(d)(2) of the Act, to the extent, size, or capacity of the County Distribution System, including its diversion, treatment and transmission facilities, shall be allocated based on the proportion of County and State construction costs, so that 86 (eighty-six) percent of the reductions shall be credited to the State and 14 (fourteen) percent of the reductions shall be credited to the County.

3.1.4 Non-Pueblo service connections costs of \$18,000,000 over the projected life of the Regional Water System shall be paid as follows:

3.1.4.1 The State shall contribute to the service connection costs of all those well owners who elect pursuant to Section 3.1.7.2.1 of the Settlement Agreement to connect to the Regional Water System as soon as service is available to them. The State shall appropriate \$4,000,000 to the Pojoaque Valley Water Utility Connection Fund to be established pursuant to Section 9.4.1.3 of the Settlement Agreement for this purpose. In the event that this sum exceeds that needed to pay for service connections for such well owners, the remaining funds shall be made available to the County first for construction of the County Distribution System, and then for any additional non-Pueblo service connection costs. In the event that service connection costs for such well owners exceed this sum, the County shall pay the excess.

3.1.4.2 The County shall provide all other service connection costs for CWU customers over the life of the RWS, pursuant to the CWU's then-applicable policies and procedures.

3.1.5 Regional Water System construction costs, and the cost shares of the United States and State and County set forth in Section 3.1.1, are estimates and shall be indexed and adjusted in accordance with Section 617(a)(4) of the Act; provided, however, that the State appropriation of \$4,000,000 referred to in Section 3.1.4.1 shall not be subject to indexing or adjustment. To anticipate and provide for these indexed costs, the State and County shall endeavor to appropriate and reserve their expected cost shares in interest-bearing accounts. In the event that actual construction costs exceed these indexed and adjusted costs, the State shall not be responsible to pay any of such excess. In accordance with Section 611(g)(2) of the Act, in the event construction cost estimates allocated to the non-Federal share are above the estimates set forth in Paragraph 3.1.1, the County may elect to reduce its portion of the Regional Water System through modifications of either the extent, size or capacity, pursuant to Section 611(d)(2)

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of the Act in order to reduce the non-Federal share to an amount consistent with the estimates of non-Federal cost share set forth in Paragraph 3.1.1.

3.1.6 Within two years after the execution of this agreement, the State and County shall each enter into an agreement with the Secretary to contribute the non-Federal share of the costs of the construction pursuant to Section 611(d)(1)(B) of the Act. Execution by the State and the Secretary of such an agreement shall satisfy the condition that the State provide funding as described in Section 623(a)(2)(F) of the Act.

### 3.2 Aamodt Settlement Pueblos Fund

3.2.1 Prior to the entry of the Final Decree, the United States shall deposit in the Aamodt Settlement Pueblos Fund \$15,000,000, as adjusted according to the CPI Urban Index beginning on October 1, 2006, which, together with any post-deposit interest thereon, shall be allocated for the rehabilitation, improvement, operation, maintenance and replacement of the agricultural delivery facilities, waste water systems, and other water-related infrastructure of the Pueblos, in accordance with Section 617(c)(1)(A)(i) of the Act.

3.2.2 Within a reasonable time after execution of this agreement the United States shall deposit in the Aamodt Settlement Pueblos Fund \$5,000,000, as adjusted according to the CPI Urban Index beginning on January 1, 2011, and any post-deposit interest on that amount, which shall be allocated to the Pueblo of Nambé for the Nambé reserved water rights in accordance with Section 613(a)(1)(A) and section 617 (c)(1)(A)(ii) of the Act. The Secretary and the Pueblo shall execute an agreement providing for the remaining terms for the acquisition of the Nambé reserved water rights, including the application of Sections 9 and 10 of the Settlement Agreement. These funds may be used by the Pueblo of Nambé only for the acquisition of land, other real property interests, or economic development.

3.2.3 Prior to the entry of the Final Decree, the United States shall deposit in the Aamodt Settlement Pueblos Fund \$37,500,000 which, together with any interest thereon, shall be allocated to assist the Pueblos in paying the Pueblos' share of the cost of operating, maintaining and replacing the Pueblo Water Facility and the Regional Water System.

3.3 Water Acquisition The United States shall pay to the County \$5,400,000 for the acquisition of 1,141 AFY of consumptive-use water rights appurtenant to the Top of the World Farm pursuant to Sections 2.8.1.2 and 9.7 of the Settlement Agreement and in accordance with Sections 613(a)(1)(B) and 617(b) of the Act. Federal funds may be used under this section prior to entry of an order approving the Settlement Agreement.

3.4 Pueblo de San Ildefonso Considerations In consideration for the unique contribution that the Pueblo de San Ildefonso provides to the Settlement, and the

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related water project, the following special considerations are provided to that Pueblo: (a) to the extent authorized by law, employment preference and training to qualified members of the San Ildefonso Pueblo community and second priority to members of other Pueblos for construction, operation and maintenance of facilities located within San Ildefonso Pueblo; (b) the diversion and connected facilities shall be located as specified by Pueblo de San Ildefonso, consistent with the Engineering Report, or other suitable alternative; (c) design and construction of a community waste water system using money from the Pueblo de San Ildefonso's portion of the Aamodt Settlement Pueblos Fund described in Section 617(c)(1)(A)(i) of the Act and shall be done in conjunction with San Ildefonso's portion of the Pueblo Water Facilities; and (d) unless otherwise agreed by San Ildefonso Pueblo, that Pueblo will have one board member more than each of the other Pueblos on the Regional Water Authority.

- 3.5 Impairment Fund Prior to the entry of the Final Decree, the State shall appropriate \$500,000 to the Impairment Fund to be established pursuant to Section 9.4.1.4 of the Settlement Agreement.
- 3.6 City Offset Water The City of Santa Fe shall provide offset water deliveries on the Rio Tesuque pursuant to Section 3.5 of the Settlement Agreement, either through its own facilities or, at its discretion, through the facilities of others.
- 3.7 Operation and Maintenance, Repair and Replacement Costs The County Water Utility and each of the Pueblos shall pay its share of the operations, maintenance, repair and replacement costs as specified in the Operating Agreement.
- 3.8 State Administration The State of New Mexico shall be responsible for the costs of administration required of it by the Settlement Agreement.
- 3.9 Delivery of Certain Water to Tesuque Pueblo

The County shall deliver, or shall pay for the delivery of 20 AFY to Tesuque Pueblo from the CWU water supply for ten years beginning in the year after the Regional Water System begins making deliveries to the Pueblo. The time(s) and location(s) for delivery of the water shall be set forth in the Operating Agreement. This delivery obligation to Tesuque Pueblo shall continue for ten years, regardless of the number of non-Pueblo connections made to that portion of the Regional Water System serving Tesuque Village, Upper Tesuque Village, and Lower Bishop's Lodge and shall not be reduced as a result of any non-Pueblo connections to that portion. Any quantity of water delivered by the County to offset effects on the Rio Tesuque of future pumping by the County in the Santa Fe Basin (pursuant to Section 3.5 of the Settlement Agreement and Section 2.6.2 of this Cost Sharing Agreement) shall be in addition to the quantity of water required to be delivered by Section 3.9.

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#### **4. GENERAL PROVISIONS**

- 4.1 Condition of Appropriations The requirements of Section 4.0 of this Cost Sharing Agreement are contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Commission, the Santa Fe City Council, the Legislature of the State of New Mexico and the United States Congress. Each Party is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure.
- 4.2 Amendments This Cost Sharing Agreement shall not be altered, changed or amended except by an instrument in writing executed by the Parties.
- 4.3 Neutral Construction In construing or interpreting any ambiguity in this Cost Sharing Agreement, no presumption shall be made in favor of, or against, any Party or Parties.
- 4.4 Term and Effective Date This Cost Sharing Agreement shall be effective upon the date of execution by the last of the Parties. This Cost Sharing Agreement shall continue in effect so long as the Final Decree remains a binding final order settling all claims in State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66cv6639 (D.N.M.). In the event the Final Decree is not entered in accordance with the Settlement Agreement and the Act, or is determined to be void, this Cost Sharing Agreement shall automatically terminate and be of no further effect.
- 4.5 Settlement Agreement Controls In the event of any conflict between this Cost Sharing Agreement and the Settlement Agreement, the Settlement Agreement shall control.

**IN WITNESS WHEREOF**, the Parties have executed this Cost Sharing Agreement as of the dates written below.

**FOR THE UNITED STATES OF AMERICA**

UNITED STATES DEPARTMENT OF THE INTERIOR

\_\_\_\_\_  
SECRETARY OF THE INTERIOR

DATE: \_\_\_\_\_

UNITED STATES DEPARTMENT OF JUSTICE

March 29, 2012

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\_\_\_\_\_  
DATE: \_\_\_\_\_

**FOR THE STATE OF NEW MEXICO:**

\_\_\_\_\_  
Unknown, STATE ENGINEER  
DATE: \_\_\_\_\_

\_\_\_\_\_  
GARY KING, ATTORNEY GENERAL  
DATE: \_\_\_\_\_

\_\_\_\_\_  
DL SANDERS, CHIEF COUNSEL  
JOHN STROUD  
EDWARD C. BAGLEY  
OFFICE OF THE STATE ENGINEER  
DATE: \_\_\_\_\_

**FOR THE PUEBLO OF NAMBÉ:**

\_\_\_\_\_  
GOVERNOR OF THE PUEBLO OF NAMBÉ  
DATE: \_\_\_\_\_

**FOR THE PUEBLO OF TESUQUE:**

\_\_\_\_\_  
GOVERNOR OF THE PUEBLO OF TESUQUE  
DATE: \_\_\_\_\_

**FOR THE PUEBLO OF POJOAQUE**

\_\_\_\_\_  
GOVERNOR OF THE PUEBLO OF POJOAQUE  
DATE: \_\_\_\_\_

**FOR THE PUEBLO DE SAN ILDEFONSO**

\_\_\_\_\_  
GOVERNOR OF THE PUEBLO DE SAN ILDEFONSO  
DATE: \_\_\_\_\_

March 29, 2012

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**FOR THE COUNTY OF SANTA FE:**

\_\_\_\_\_  
CHAIRMAN, BOARD OF COUNTY COMMISSIONERS      DATE: \_\_\_\_\_

Approved:

\_\_\_\_\_  
SANTA FE COUNTY ATTORNEY      DATE: \_\_\_\_\_

Attest:

\_\_\_\_\_  
SANTA FE COUNTY CLERK      DATE: \_\_\_\_\_

**FOR THE CITY OF SANTA FE**

\_\_\_\_\_  
CITY OF SANTA FE, MAYOR      DATE: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
CITY OF SANTA FE, CITY ATTORNEY      DATE: \_\_\_\_\_

Attest:

\_\_\_\_\_  
CITY OF SANTA FE, CLERK      DATE: \_\_\_\_\_