

SAN JUAN-CHAMA PROJECT
NEW MEXICO

SUBCONTRACT
Between the
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
and the
INCORPORATED COUNTY OF LOS ALAMOS

TO LEASE THE USE OF
SAN JUAN-CHAMA PROJECT WATER

THIS SUBCONTRACT (Subcontract), made this _____ day of _____, 2019, between the UNITED STATES OF AMERICA, hereafter styled the United States, acting through the Secretary of the Interior (Secretary), Bureau of Reclamation (Reclamation), acting pursuant to the Act of June 17, 1902 (ch. 1093, 32 Stat. 388) and Acts amendatory thereof or supplementary thereto, particularly the authority granted the Secretary under Section 14 of the Reclamation Project Act of August 4, 1939 (ch. 418, 53 Stat. 1197; 43 U.S.C. § 389), and the Act of June 13, 1962 (76 Stat. 96), and the Act of December 28, 1973 (87 Stat. 884), particularly Section 1536 (a) (1) (16 U.S.C. §§ 1531-1543), more commonly known as the Endangered Species Act, and the INCORPORATED COUNTY OF LOS ALAMOS, a municipal corporation in the State of New Mexico, herein styled "County."

WITNESSETH THAT:

EXPLANATORY RECITALS

WHEREAS, the Colorado River Storage Project was authorized by the Act of April 11, 1956 (70 Stat. 105), as amended and supplemented by, among other statutes, the Act of June 13, 1962 (76 Stat. 96), which authorized the San Juan-Chama Project ("SJCP") as a participating project in the Colorado River Storage Project as set out in 43 U.S.C. §615pp, and the Act of December 29, 1981 (PL. 97-140, 95 Stat. 1717); and

WHEREAS, on January 10, 1977, the Department of Energy entered into Contract No. 7-07-51-X0883 (also known as Department of Energy Contract No. EY-77-A-32-3856) with the United States Department of the Interior, as amended, for a permanent water supply from the SJCP, to be measured at the outlet of Heron Reservoir in the delivery of up to 1,200 acre-feet per year; and

WHEREAS, the Department of Energy has assigned that contract to the County and said assignment was approved by Reclamation on August 28, 1998; and

WHEREAS, the County, on September 27, 2006, entered into Contract No. 05-WC-40-560 (“Repayment Contract”) with the United States, Department of the Interior, which supersedes Contract No. 7-07-51-X0883 in its entirety; and

WHEREAS, the County has SJCP water available in Heron Reservoir in excess of its current needs which can be made available to Reclamation for beneficial use under terms and conditions further described herein, all consistent with applicable State and Federal law; and

WHEREAS, the Rio Grande silvery minnow (“Minnow”) has the status of a federally-listed endangered species and can be found in a reach of the Rio Grande between Cochiti Dam and San Marcial, New Mexico, which is prone to critically low flows during the irrigation season lasting from March 1 through October 31 each year; and

WHEREAS, until permanent strategies for managing the existing limited water supply to meet the needs of the Middle Rio Grande water users can be effectuated, minnow recovery efforts need to be made by meeting flow targets contained in the December 2, 2016 Biological Opinion; and

WHEREAS, it is Reclamation’s and the County’s understanding that the Middle Rio Grande Conservancy District (District) intends to operate its irrigation and drainage system to meet required flow targets with native Rio Grande water; and

WHEREAS, the District’s intended operation would likely result in a need for an additional water supply to meet the irrigation needs of its water users; and

WHEREAS, Reclamation desires to augment the District’s water supply by leasing up to 1,200 acre-feet of the County’s 2019 SJCP water allocation remaining in Heron Reservoir for the purpose of irrigation within the District.

WHEREAS, “CONTRACTING OFFICER” shall mean the Secretary of the United States Department of the Interior or their duly authorized representative, who is, as of the date of execution of this contract, the Regional Director, Upper Colorado Region, Bureau of Reclamation.

NOW, THEREFORE, it is agreed as follows:

THE COUNTY’S DELIVERABLES

1. a) The County agrees to lease to Reclamation the use of up to 1,200 acre-feet of its 2019 SJCP water released from Heron Reservoir.

b) The County concurs with the terms of the Waiver described below in subarticle 5, that the carryover water is to be used to augment the total water supply to the Middle Rio Grande Valley and that the carryover water is expected to be released from Heron Reservoir by September 30, 2020.

c) The County agrees that no liability shall accrue to the United States should it become necessary for Reclamation to terminate the Waiver so that Reclamation can take prudent action to ensure that the Project's ability to store water is not impacted, as provided for under the terms and conditions of the Waiver.

d) The County agrees that Reclamation will call for the release of water from Heron Reservoir as necessary, and that it will cooperate with Reclamation as may be needed to facilitate such releases. The points of measurement for deliveries to Reclamation pursuant to this Subcontract will be at the outlet works of Heron Reservoir. The parties agree that the water leased pursuant to this Subcontract is not subject to evaporation losses until it is released from Heron Reservoir.

e) All previous contracts between the County and the United States shall remain in full force and effect during the term of this Subcontract.

RECLAMATION DELIVERABLES

2. a) Reclamation will pay the County \$61.00 per acre-foot up to a maximum of 1,200 acre-feet of water released from Heron Reservoir pursuant to this Subcontract. Reclamation will pay the County only for water it calls for and releases for beneficial use, under terms and conditions pursuant to this Subcontract.

b) As consideration for the water provided under the terms of this Subcontract, Reclamation will pay the County, upon execution of this Subcontract, advance payment of \$7,320.00, which is ten percent (10%) of the total payment described under subarticle 3(a). The advancement of funds is made in good faith to assist the County with any administrative and legal costs it may incur. Should Reclamation not call for the release of any water, under this Subcontract, advanced funds will not be recovered by Reclamation.

c) Within 30 days of the final release of water under the terms of this Subcontract, Reclamation will provide the County an accounting of the amount of leased water released under this Subcontract. Reclamation's accounting and Summary of Release provide both parties with the total quantity used in final calculation of payment as described below in subarticle 3(b).

d) Reclamation will not make any further payment for any leased water spilled from Heron Reservoir, or any water that may revert to the firm yield pool, should Reclamation find it necessary to take prudent action to ensure that the Project's ability to store water does not become impacted; as such, the Waiver and this Subcontract granted to the County will be terminated. The County agrees that no liability shall accrue to the United States as a result of such termination and that every effort will be made on Reclamation's behalf to notify the County prior to any action being taken.

e) National Environmental Policy Act (NEPA) compliance for this Subcontract action is by the 2016-2021 Supplement to the Rio Grande Supplemental Water Programmatic Final Environmental Assessment and Finding of No Significant Impact.

PAYMENT

3. a) Payment under this Subcontract shall not exceed \$73,200.00 for the term of this Subcontract. If Reclamation does not call for the release of any of the 1,200 acre-feet during the term of this Subcontract, the County shall not be entitled to any further payment from Reclamation beyond the \$7,320.00 non-refundable advance payment described under subarticle 2(b). In order to be issued timely payment according to the terms of this Subcontract, the County must register for and maintain an active sam.gov account.

b) Upon execution of the Subcontract and based upon Reclamation's accounting of all the water actually released from Heron Reservoir, Reclamation will make payment to the County via electronic funds transfer under the terms of this Subcontract at a cost of \$61.00 per acre-foot. Reclamation will not require an invoice from the County.

c) Correspondence related to this Subcontract should be submitted to Reclamation must be delivered to the following address:

Regional Director
Upper Colorado Region
Attention: UC-445
125 South State Street
Room 8100
Salt Lake City, UT 84138-1102
Facsimile number: (801) 524-3847

with a copy sent by electronic correspondence to bmendoza@usbr.gov or delivered to:

Bureau of Reclamation
Albuquerque Area Office
Attention: ALB-623
555 Broadway NE, Suite 100
Albuquerque, NM 87102

d) Any correspondence from Reclamation to the County must be directed to the following address:

Incorporated County of Los Alamos
Department of Public Utilities

1000 Central Ave., Suite 130
Los Alamos NM 87544

TERM OF SUBCONTRACT

4. This subcontract is subject to all governing provisions of Repayment Contract No. 05-WC-40-560. This Subcontract shall be effective from the date of execution and expire upon final payment by Reclamation, under terms and conditions described herein, pursuant to this Subcontract.

WAIVER OF CARRYOVER PROVISIONS

5. a) It is agreed by both parties that all water released under this Subcontract will be in accordance with all applicable State and Federal laws.

b) All provisions of Repayment Contract, except as provided below, between the County and Reclamation, shall remain in full force and effect, and the agreements entered herein shall not be interpreted in any manner to amend, modify, or affect that contract, or relieve either the County or Reclamation from any obligations or requirements agreed to therein.

c) Reclamation has determined it would benefit the Minnow to temporarily waive the annual water carryover prohibition in subarticle 6(c) of the Repayment Contract ("Waiver"). Waiver of this provision allows the County to keep any of its remaining 2019 allocation of SJCP water in Heron Reservoir until September 30, 2020, contingent upon the Project's ability to store such water.

d) Should natural events occur that could potentially impact the Project's ability to store spring runoff, the release of water carried over pursuant to the Waiver from Heron Reservoir according to subarticle 5(c) may need to occur prior to September 30, 2020, and would be released in a manner consistent with State and Federal law. As such, Reclamation will make every effort to notify the County in advance prior to the release of any carryover water. The County agrees to assume all risk of any lost water under said Waiver if Reclamation is not able to make beneficial use of the leased water under the terms of this Subcontract.. Any losses incurred will be charged to the County after releases are made from Heron Reservoir.

e) This extension of storage time is applicable to the 2019 water year allocation only and should not be construed in any way to affect any future allotments, nor shall it be considered to be a permanent change to the above Repayment Contract.

WATER QUALITY

6. The County makes no warranty or representation regarding, and Reclamation assumes all responsibility for, the quality of water released by the County to Reclamation hereunder.

WATER RIGHTS PROTECTION

7. No party hereto shall assert that any activity under this Subcontract shall affect the validity of any existing water rights or rights to water held by any other party.

WAIVER OF THIS SUBCONTRACT

8. Waiver of enforcement of any provision of this Subcontract by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Subcontract.

ASSIGNMENT LIMITED-- SUCCESSORS AND ASSIGNS OBLIGATED

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

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

10. The expenditure or advance of any money or the performance of any obligation of the United States under this Subcontract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the County from any obligations under this Subcontract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

11. No Member or Delegate to Congress, Resident Commissioner, or Federal or State Official, shall be admitted to any share or part of this Subcontract, or to any benefit that may arise therefrom.

PROTECTION OF WATER AND AIR QUALITY

12. (a) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the County and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the County.

(b) The County will comply with all applicable water and air pollution laws and regulations of the United States and the State of New Mexico; and will obtain all required permits or licenses from the

appropriate Federal, State, or local authorities necessary for the delivery of water by the County; and will be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or the County facilities or project water provided by the County within its Project Water Service Area.

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

WATER CONSERVATION

13. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the County shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

EQUAL EMPLOYMENT OPPORTUNITY

14. During the performance of this contract, the County agrees as follows:

(a) The County will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The County will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The County agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The County will, in all solicitations or advancements for employees placed by or on behalf of the County, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The County will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the County's legal duty to furnish information.

(d) The County will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the County's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The County will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The County will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by Reclamation and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the County's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the County may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The County will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subCounty or vendor. The County will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the County becomes involved in, or is threatened with, litigation with a subCounty or vendor as a result of such direction, the County may request the United States to enter into such litigation to protect the interests of the United States.

CERTIFICATION OF NONSEGREGATED FACILITIES

15. The County hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The County agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains,

recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. The County further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontracts (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

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

CONSTRAINTS ON THE AVAILABILITY OF WATER

17. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the County pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the County of said determination as soon as practicable.

(b) If there is a condition of shortage because of inaccurate runoff forecasting or other similar operational errors affecting the Project; drought and other physical or natural causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

NOTICES

18. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the County, when mailed, postage prepaid, or delivered to Reclamation according to subarticle 3(c), and on behalf of the United States, when mailed, postage prepaid, or delivered to the County according to subarticle 3(d). The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

CONTRACT DRAFTING CONSIDERATIONS

19. This Contract has been, negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 5 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their names, the date and year first above written.

APPROVED:

UNITED STATES OF AMERICA

Office of the Regional Solicitor

Regional Director
Upper Colorado Region
Bureau of Reclamation

ATTEST:

INCORPORATED COUNTY OF LOS ALAMOS

LOS ALAMOS COUNTY CLERK

Utilities Manager

APPROVED AS TO FORM:

Office of the The County Attorney