PUEBLO DE SAN ILDEFONSO
COUNCIL RESOLUTION NO. SI-R20-004

ACT AUTHORIZING SIGNATURE OF POJOAQUE BASIN REGIONAL WATER SYSTEM PROJECT CONSTRUCTION AGREEMENT WITH AMENDED EXHIBIT A

At a duly called meeting of the Council of San Ildefonso Pueblo on the 13th day of May, 2020, the following Resolution and law were adopted:

WHEREAS, the Pueblo de San Ildefonso ("Pueblo") is a party in the federal water adjudication case of State v. Aamodt, U.S. District Court of New Mexico, No. 66CV6639, and in 2010, the United States enacted the Aamodt Litigation Settlement Act, as part of the Claims Resolution Act of 2010, Pub. L. No. 11-291, Title VI, §§ 601-626, 124 Stat. 3064, 3134-56 (2010), which was signed into law by the President on December 8, 2010 ("Settlement Act" or "Act"); and,

WHEREAS, the Settlement Act requires the Secretary, acting through the Bureau of Reclamation ("Reclamation") to plan, design and construct a regional water system to divert and distribute water to four Pueblos and to Santa Fe County; and,

WHEREAS, Section 611(c) of the Act provides that the Pueblos, State and Santa Fe County shall consent to easements and rights-of-way necessary for the construction use, operation, maintenance, repair and replacement of the Regional Water System; and,

WHEREAS, the four Pueblos and Reclamation agreed that in lieu of the formal grant of easement or right-of-way, the parties will use a construction agreement that delineates construction corridors and other authorized activities within Pueblo lands; and,

WHEREAS, on Dec 20, 2019, the Council authorized signature of a form of the Pojoaque Basin Regional Water System Project Construction Agreement; and,

WHEREAS, the Pueblo had made recommendations on the construction corridors that are an exhibit to the Construction Agreement and was awaiting final response from Reclamation before signing the Construction Agreement; and,

WHEREAS, during that time and before the Construction Agreement had been signed, the COVID-19 pandemic hit and the Pueblo took actions to mitigate the spread of the virus and protect its tribal residents, including restrictions on entrance to the Pueblo’s lands by non-tribal visitors, non-essential contractors or vendors; and,

WHEREAS, a COVID-19 Response Plan was developed for all contractors and their employees that will be working on the portion of the Regional Water System within the Pueblo; and,
WHEREAS, the COVID-19 Response Plan is incorporated into Exhibit A of the Construction Agreement which contains specific terms and requirements for safe access to the Pueblo for construction activities and constitutes a substantive change to Exhibit A that requires Council authorization; and,

WHEREAS, the Council finds it in the best interest of the Pueblo to authorize signature of the Construction Agreement with the amended Exhibit A that contains the COVID-19 Response Plan.

NOW THEREFORE BE IT RESOLVED, that the Council hereby enacts the attached law entitled, "ACT AUTHORIZING SIGNATURE OF THE POJOAQUE BASIN REGIONAL WATER SYSTEM PROJECT CONSTRUCTION AGREEMENT WITH AMENDED EXHIBIT A."

CERTIFICATION

The foregoing resolution was duly voted upon by the Council on ___May 13___, 2020, at a meeting with a vote of ___10___ in favor, ___0___ opposed, ___0___ abstaining and ___0___ absent (Governor presiding and not voting) pursuant to the authority vested in the Council by the Agreement of the Pueblo de San Ildefonso.

[Signature]
William S. Christian, Council Secretary
COUNCIL RESOLUTION NO. SI-R20-004

COUNCIL REPRESENTATIVE SPONSOR(S): William S. Chrisitan

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DELIVERY OF THE RESOLUTION TO THE GOVERNOR:

Resolution No. SI-R20-004 was presented to the Governor of the Pueblo de San Ildefonso on the 13th day of May, 2020, pursuant to the Governing document of the Pueblo de San Ildefonso ("Agreement"), GOVERNOR, Sec. 4 (c), and will become effective after signature by the Governor or veto override by the Council.

William S. Christian, Council Secretary

GOVERNOR’S ACTION:

☑ APPROVED

☐ VETO - RETURNED TO COUNCIL WITH EXPLANATION:

On this 13th day of May, 2020.

Perry M. Martinez, Governor
COUNCIL RESOLUTION NO. SI-R20-004

Presented by the Governor to the Council on the ___ day of __________, 2020.

COUNCIL’S ACTION:

Override of Governor’s veto:

{ } YES
{ } NO

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CERTIFICATION

The foregoing resolution was duly voted upon by the Council on __________, 2020, at a meeting with a vote of _____ in favor, _____ opposed, _____ abstaining and _____ absent (Governor presiding and not voting) pursuant to the authority vested in the Council by the Agreement of the Pueblo de San Ildefonso.

__________________________
William S. Christian, Council Secretary
PUEBLO DE SAN ILDEFONSO

ACT AUTHORIZING SIGNATURE OF THE POJOAQUE BASIN REGIONAL WATER SYSTEM PROJECT CONSTRUCTION AGREEMENT WITH AMENDED EXHIBIT A
Section 1.1 Short Title

This enactment shall be known as the “ACT AUTHORIZING SIGNATURE OF THE POJOAQUE BASIN REGIONAL WATER SYSTEM PROJECT CONSTRUCTION AGREEMENT WITH THE AMENDED EXHIBIT A (“Act”).”

Section 1.2 Purpose

The purpose of this Act is to authorize the Governor to sign the document entitled “Pojoaque Basin Regional Water System Project Construction Agreement” (“Construction Agreement”) that delineates construction corridors and establishes other authorized activities within the Pueblo’s lands for the construction of the Pojoaque Basin Regional Water System, including the amended Exhibit A which includes a COVID-19 Response Plan applicable to all contractors and their employees working on construction sites within the Pueblo’s lands.

Section 1.3 Findings

The Council hereby declares that:

(a) The Pueblo de San Ildefonso (“Pueblo”) is a party in the federal water adjudication case of State v. Aamodt, U.S. District Court of New Mexico, No. 66CV6639, and in 2010, the United States enacted the Aamodt Litigation Settlement Act, as part of the Claims Resolution Act of 2010, Pub. L. No. 11-291, Title VI, §§ 601-626, 124 Stat. 3064, 3134-56 (2010), which was signed into law by the President on December 8, 2010 (“Settlement Act” or “Act”); and,

(b) The Settlement Act requires the Secretary, acting through the Bureau of Reclamation (“Reclamation”) to plan, design and construct a regional water system to divert and distribute water to four Pueblos and to Santa Fe County; and

(c) Section 611(c) of the Act provides that the Pueblos, State and Santa Fe County shall consent to easements and rights-of-way necessary for the construction use, operation, maintenance, repair and replacement of the Regional Water System; and

(d) The four Pueblos and Reclamation agreed that in lieu of the formal grant of easement or right-of-way, the parties will use a construction agreement that delineates construction corridors and other authorized activities within Pueblo lands; and

(e) On Dec 20, 2019, the Council authorized signature of a form of the Pojoaque Basin Regional Water System Project Construction Agreement; and
(f) The Pueblo had made recommendations on the construction corridors that are an exhibit to the Construction Agreement and was awaiting final response from Reclamation before signing the Construction Agreement; and

(g) During that time and before the Construction Agreement had been signed, the COVID-19 pandemic hit and the Pueblo took actions to mitigate the spread of the virus and protect its tribal residents, including restrictions on entrance to the Pueblo’s lands by non-tribal visitors, non-essential contractors or vendors; and

(h) A COVID-19 Response Plan was developed for all contractors and their employees that will be working on the portion of the Regional Water System within the Pueblo; and

(i) The COVID-19 Response Plan is incorporated into Exhibit A of the Construction Agreement which contains specific terms and requirements for safe access to the Pueblo for construction activities and constitutes a substantive amendment to Exhibit A that requires Council approval and authorization; and

(j) The Council, having reviewed a form of the Construction Agreement and the exhibits thereto, including the amended Exhibit A, finds authorization of the Construction Agreement is in the best interest of this Pueblo.

Section 1.4 Authorizations

(a) The Governor is hereby authorized to sign a form of the Construction Agreement with the Amended Exhibit A.

(b) The Governor is authorized make any minor technical non-substantive amendments to the Construction Agreement document and exhibits thereto as may be necessary, provided that the Council is informed of such amendments.
EXHIBIT A TO CONSTRUCTION AGREEMENT

PUEBLO DE SAN ILDEFONSO SPECIAL TERMS, SUPPLEMENTARY CONDITIONS, AND STIPULATIONS

INTRODUCTION

1. This Exhibit incorporates by reference all of the provisions of the Construction Agreement ("Agreement").

2. The purpose of this Exhibit is to establish the Pueblo de San Ildefonso ("Pueblo") special terms, supplementary conditions, and stipulations required for Reclamation’s access to Pueblo lands for the construction of the PBRWS including, but not limited to, access descriptions, access permits, employee badging, and project coordination.

SCHEDULE COORDINATION

3. The overall project schedule will be updated monthly and distributed to the Pueblo electronically in addition to being maintained on the project’s GIS site. (Contract R17PC00023, Section 01 32 10)

4. The prime contractor for the pertinent phase and stage of construction, as defined by Reclamation (hereinafter "Prime Contractor") will conduct a weekly construction coordination meeting with Reclamation, other contractors, and the Pueblo at the main construction office at the water treatment plant site (for Phase 1). When other phases of construction begin, the meeting may be moved to a different location in consultation with the Pueblo and other Pueblos involved in the construction. At this meeting, a focused “2-Month Look-Ahead Schedule” will be reviewed to provide greater detail into the specific activities that will occur each day at each work site. (Contract R17PC00023, Section 01 31 19)

   a) An authorized representative from the Pueblo will be able to provide feedback regarding any possible conflicts with the proposed construction activities and communicate the schedule to tribal law enforcement, tribal agencies and departments, tribal monitors, Pueblo Officials, and any other Pueblo personnel or entities as determined by the Pueblo.

   b) Once presented, every effort will be made to keep changes to the schedule to a minimum; however, changes will periodically be necessary. These changes will be communicated to the Pueblo and the project team as soon as possible.

CONSTRUCTION CORRIDORS

5. The Pueblo has identified specific restricted construction corridors described in Exhibit B to preserve and protect cultural resources, reduce construction activity impacts on residential, commercial, and transportation activities, and to provide the Reclamation, its agents and contractors with clear guidelines for this Project.

6. Reclamation, its agents and contractors must limit their activities to the construction corridors described and identified in the Agreement and Exhibit B.
7. No changes shall be made to the described construction corridors except in compliance with Section IX of the 2018 PBRWS Programmatic Agreement ("Programmatic Agreement") and with prior written approval by the Pueblo and direction to the Prime Contractor from Reclamation; electronic communication will be acceptable.

8. If there is any question about how the plans or description should be interpreted, the contractor should contact the Reclamation and Pueblo Realty Office immediately to seek clarification before proceeding with construction activities.

CONSTRUCTION ACCESS

9. Reclamation, its agents and contractors have access in accordance with the terms of the Agreement, this Exhibit, and approved Traffic Control Plans for construction purposes to Pueblo land within the construction corridors provided that: (1) they do not inhibit traffic flow or block access to businesses, buildings, or residences (other than as necessary for construction purposes), and (2) they agree to move vehicles and equipment at the request of Pueblo representatives within the time period requested.

10. When it is necessary to block access to a residence, business, or other building, the Prime Contractor shall facilitate access if requested and it is possible (e.g., briefly pause construction or move equipment), work to minimize the length of time a resident is restricted, and to the extent possible, construction personnel shall not block access to Pueblo residences before 7:00 a.m. or after 5:00 p.m. Any access blockage that cannot be avoided shall be made in such a manner that the blockage can be removed quickly in the event of an emergency requiring entry into or exit from the blocked residence, business, or other building. Coordination and other requirements related to the use of roads and access ways within the Pueblo is further addressed in the Agreement, Paragraph 2.(p) and in approved Traffic Control Plans.

11. Access to Areas Outside of Construction Corridors

   a) Paved roads, parking areas, other vehicle access areas – Paragraph 2.(e) of the Agreement governs use of roads outside of the construction corridors, as defined in Exhibit B, in certain limited circumstances. In addition to the terms of the Agreement, Reclamation, its agents and contractors have access to all paved surface areas on Pueblo land outside of the construction corridors as long as they do not inhibit traffic flow or block access to businesses, buildings, or residences, and as long as they agree to move vehicles and equipment at the request of Pueblo representatives. (Contract R17PC00023, Section 01 26 00 Traffic Management)

   b) Existing non-paved roads and parking areas – As further set forth in Paragraph 2. (e) of the Agreement, Reclamation, its agents and contractors have limited permission to use existing non-paved roads and parking areas that are adjacent to or used for access to the construction corridors delineated in Exhibit B. Use of any other non-paved roads or areas is prohibited without express permission of the Pueblo. All construction personnel are required to drive slowly on unpaved surfaces to reduce dust pollution and prevent erosion or damage to the roads. (Contract R17PC00023, Section 01 26 00 Traffic Management, Section 01 55 00 Vehicular Access and Parking)

   c) Construction vehicle and equipment parking and portable toilets – Reclamation, its agents and contractors are limited to existing roads as addressed in Paragraphs a) and b) above or designated staging and parking areas for parking construction vehicles and equipment, as well
as placement of portable toilets. There are certain staging and parking areas designated in Exhibit B; others may be established by the Pueblo in consultation with Reclamation and its contractors as the construction project progresses. All staging for construction equipment and parking will be addressed in the scheduled coordination meetings set forth in this Exhibit before construction begins and as construction proceeds. (Contract R17PC00023, Section 01 14 10 Use of Site, Section 01 26 00 Traffic Management, Section 01 35 20 Safety and Health, Section 01 55 00 Vehicular Access and Parking) All equipment shall be high-pressured washed and inspected by Reclamation prior to mobilizing onto the Pueblo. Spill prevention plans shall be exercised at all designated staging and project sites. Designated staging areas shall be fenced for the safety of the public and protection of items within.

d) **Unrestricted Areas** – Reclamation, its agents and contractors have unrestricted access to areas that are normally open to the general public on Pueblo lands such as businesses, commercial districts, and museums. (Contract R17PC00023, Section 01 14 10 Use of Site, Section 01 26 00 Traffic Management, Section 01 35 20 Safety and Health, Section 01 55 00 Vehicular Access and Parking)

12. **Tribal, Holiday, and Road Closures** – The Pueblo may close certain portions of Pueblo land to access during the construction period. The Pueblo will notify Reclamation and its contractors as far in advance as possible of any planned closures. To the extent possible, the closures will not affect construction activities. If a planned closure will affect constructions activities, Pueblo representatives will meet with Reclamation and its contractors to discuss minimizing impacts on construction activities.

   a) **Unplanned Closure** – Pueblo representatives will notify Reclamation and the Prime contractor immediately when an unplanned closure is scheduled or occurs. To the extent possible, the Pueblo will make accommodations for continued construction during closures.

   b) **Significant restrictions, limitations, and key dates as related to construction durations and activities** – In addition to the U.S. national holidays, the following known events are in the current contract with CDM Smith.

**Pueblo events with potential impacts to construction schedule**

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<th>Month</th>
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<th>Cultural Event</th>
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<tr>
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<td>6</td>
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<td>• San Ildefonso Pueblo Feast Eve</td>
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<td>April</td>
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ACCESS PERMITS

13. Access Permits – Reclamation, its employees, agents, or contractors must follow the below protocol established by the Pueblo de San Ildefonso for individual employees to gain access to any site within the Pueblo at any time. The permit process is established to provide the Pueblo with advanced notice of all construction personnel working at a certain construction site so each Pueblo can determine how to share any necessary information and assign monitors for project activities as the Pueblo determines necessary. (Contract R17PC00023 Section 01 72 00 Permits, Approvals, and Realty requirements)

14. Access Permit Process and Procedures – Reclamation, its employees, agents or contractors will collect the following information from each individual seeking to gain access to any site within the Pueblo prior to issuance of an access badge or other form of identification. The below information shall be submitted at least two (2) weeks prior to the individual needing access to the Pueblo, unless the emergency situation requirements set forth below apply. All information collected will be kept in a Reclamation’s application for the construction project and database, and an electronic copy will be provided to the Pueblo including any updates thereafter.

a) Information Required for Access –

i) Name

ii) Title

iii) Company and Company Address

iv) Supervisor

v) Phone number

vi) Self-reporting of sex offender status

vii) Dates and Locations working on the Pueblo

viii) Daily hours of work on the Pueblo

ix) Purpose of work

x) Vehicle’s description and license plate number

b) Sex Offender Reporting – The burden for reporting to the Pueblo as a sex offender lies with the individual employee who is a convicted sex offender that is required to register in the jurisdiction where they are working.

i) Registered sex offenders who are contractors or employees of contractors doing business within Pueblo lands on jobs or projects that exceed five (5) days must notify the Pueblo Tribal Court of their presence within Pueblo lands. The notification is not a full registration as a sex offender within the Pueblo but is a means to notify the Pueblo of the individual’s presence within the community.

ii) The Pueblo reserves the right to require full registration for those sex offenders who are contractors or an employee of the contractor that will be present within Pueblo lands for more than fifteen (15) days.

iii) The five (5) and fifteen (15) days referenced herein do not have to be consecutive days.

iv) The Pueblo retains the right to use the information supplied by Reclamation to check for reported sex offenders. The Pueblo will determine how to address any individual
found to be on a sex offender registry who has not notified or registered with the Pueblo and will
discuss the issue with Reclamation staff.

c) Orientation, Signed Acknowledgment, Access Badges and Check-In, and Termination of Access Procedures –

i) Orientation – On the first day of employment at the project site, each employee will be required to complete an orientation given by the Prime Contractor covering health and safety, environmental and cultural awareness, and applicable Pueblo rules. Pueblo staff, including any cultural monitors hired by the Pueblo, will participate in these orientations as much as possible. Reclamation staff will also participate in the orientation.

ii) Signed Acknowledgement – In addition to the access information, after completion of orientation, each employee shall submit a signed acknowledgment, electronic signatures will be acceptable, noting completion of the orientation and acknowledgment of the following:

(A) Photography on Pueblo land is prohibited without a permit issued by the Pueblo. All photography for personal use is prohibited. Reclamation will work with the Pueblo to acquire a permit for photography needed for construction and related activities and only personnel authorized under the permit will be allowed to take photographs.

(B) The Pueblo has the right as a government to protect its Pueblo from conduct and activities that threaten or directly affect the Pueblo’s political integrity, economic security, health, and/or welfare.

(C) The provisions of the Archeological Resources Protection Act (“ARPA”) apply to all Reclamation employees and contractors in the conduct of their activities on the Pueblo. Any unlawful damage, destruction, disturbance, or defacement of any archeological resource located on the Pueblo will be considered a violation of the ARPA, 16 U.S.C. § 1470, and may result in prosecution by the United States Department of Justice, fines up to $20,000, and up to 2 years in prison.

(D) The Pueblo’s sex offender reporting requirements as well as any other rules or regulations applying to sex offenders on Pueblo lands. This will include each employee supplying consent for additional background checks by the Pueblo if the Pueblo determines the need to conduct such checks.

(E) Receipt and review of CDM Smith’s Corona Virus (COVID-19) Response Plan. Each employee must strictly abide by the terms of the Plan and consents to submitting the COVID-19 Screening Questionnaire prior to beginning work on Pueblo land.

iii) Access Badges or Other Form of Identification – After each employee has submitted the above required information, completed orientation, and signed the above described acknowledgement, Reclamation, its agent or contractor can issue an access badge or other form
of identification. Reclamation, its agents or contractors will ensure that contractor personnel keep their access badge with them at all times they are on Pueblo land. If an employee badge is forgotten, a new badge must be made and given to the employee prior to the employee working on Pueblo land. Each access badge will include the following:

(A) Employee's photograph
(B) Employee's name
(C) Employee's employer
(D) Date of issuance
(E) Expiration date
(F) Approved project sites

iv) Check-in – Personnel issued access badges must check in and check out with the Prime contractor daily. The Prime contractor will keep a record of the personnel on site daily for field reports. These reports will be submitted to Reclamation and the Pueblo weekly.

v) Emergency Access – Emergency access to Pueblo lands will be granted to personnel not listed in the database, who have not signed the above-described acknowledgment, and who have not attended the above-described orientation, only in demonstrated emergency situations. Personnel granted emergency access to Pueblo lands shall be given a temporary badge by the contractor that shall include the employee's name, employee's company name, and expiration date. Personnel granted emergency access must be accompanied at all times by a fully badged employee from their respective employer while on Pueblo land. Reclamation and the Prime Contractor shall monitor and report to the Pueblo any employee on Pueblo lands granted an emergency access badge. An emergency access badge is only valid for up to five (5) business days; after such time, if the employee continues to need access, they must go through the orientation and other requirements of this section to receive a non-emergency access badge.

vi) Delivery Personnel – Delivery personnel, who will be on the project site only long enough to deliver equipment and materials, are exempt from these badging requirements.

vii) Termination of Access – At the end of employment on the project or if employment is terminated, employees will turn in their access badges to be destroyed by the Prime Contractor or Reclamation. The database will be updated indicating the employee is no longer approved to be on the project sites.

viii) Employee Access Concerns - If the Pueblo has a concern about a particular employee and whether the employee should be allowed access onto Pueblo lands or whether the employee's access should be limited or terminated, the Pueblo will discuss the concern with Reclamation staff to determine how to address the employee's access.

ARCHEOLOGICAL DISCOVERIES AND CULTURAL MONITORS

15. Archeological discoveries by Reclamation or its contractors shall be governed by the Programmatic Agreement and Paragraph 2.(s) of the Agreement. Reclamation will have assigned cultural monitors during construction as more fully set forth in the Programmatic Agreement. Reclamation and its contractors acknowledge that the Pueblo may want to assign its own cultural monitors and the Pueblo monitors shall have access to any and all construction activities and areas at all times (provided the construction supervisor and safety officer deems the area safe for
access). Reclamation and its contractors shall not instruct the Pueblo’s cultural monitors while on-site except to notify of safety issues. All cultural monitors will wear all required personal protective equipment. In regard to unanticipated archeological discoveries, Reclamation will follow the reporting procedures set forth in the Programmatic Agreement, paragraph XII.

16. **Cultural Matters** – In the event that Reclamation, its employees, agents or contractors have a non-emergent question or concern regarding cultural matters that do not require construction to stop, the initial contact should be to the Governor or to the Natural Resources Director. Contact information is found in the Program Contacts section of this Exhibit. The Governor or Natural Resources Director may then contact the THPO or appropriate Cultural Resources Representative as necessary. For cultural resource emergencies, contact Joseph Aguilar at the Tribal Historic Preservation Office. Contact information is found in the Program Contacts section of this Exhibit.

**OTHER CONDITIONS**

17. **Corona Virus (COVID-19) Response Plan** – Reclamation or its contractor will have in place at all times during construction a COVID-19 Response Plan to address the ongoing outbreak of COVID-19 and how to mitigate the possible spread of the virus. The Response Plan must be approved by the Pueblo and will be provided to the Pueblo and may be disseminated by the Pueblo to area residents. Reclamation will immediately notify the Pueblo if any Reclamation employee or contractor who has been on Pueblo land or in contact with Pueblo residents tests positive or has been exposed to a person testing positive for COVID-19.

18. **Safety Plans** - Reclamation will provide the Pueblo Realty Office with copies of any safety plans associated with the construction activities on Pueblo land. The Pueblo will keep the safety plan for internal uses only and will not disseminate copies.

19. **Traffic Control Plan** - Reclamation shall provide Traffic Control Plans to the Pueblo Realty Office.

20. **Storm Water Pollution Prevention Plan (SWPPP)** - Reclamation shall provide a copy to the Pueblo Realty Office.

21. **Dust Mitigation** - Dust mitigation will be implemented per the SWPPP to control fugitive dust to the greatest extent possible.

22. **Noise Mitigation** - Noise mitigation will be implemented per Best Management Practices. Additional noise mitigation measures may be necessary for residential areas during certain times of day. The Pueblo will contact Reclamation if additional noise mitigation measures need to be implemented.

23. **Construction Debris and Waste Removal** – Reclamation will ensure that the Contractor’s construction debris and waste are removed from Pueblo lands on a regular basis. No construction related waste or debris may be deposited on Pueblo land without written permission. The Reclamation, its agents and contractors will be responsible for disposal of any waste, trash, or any other materials related to the project.
24. **Impacts to Pueblo Land**
   
a) Roads - Reclamation, its agents and contractors will be responsible for all repairs to any road damage caused by construction activities during the Project. Reclamation, its agents and contractors will implement measures to prevent or minimize road damage, including maintenance, shoulder repair, fencing to prevent run-off, and markers to prevent off-road uses. Damage repairs within Bureau of Indian Affairs rights-of-way shall be in accordance with their requirements.

b) Fences - Reclamation, its agents and contractors will be responsible for all repairs to fences damaged, removed, or altered during the construction project. Fence repair due to damage during construction will be incidental to the project.

25. **Utilities** - Reclamation, its agents and contractors shall contact the Pueblo Realty Office should any utility need to be moved, altered, or changed in alignment. If the utility cannot be avoided, the issue will be reviewed and the utility owner will be contacted if the utility is not owned by the Pueblo. If the utility is a non-Pueblo owned utility, the Pueblo will work with the utility owner to address any conflicts, and the costs of relocation of utilities will be incurred by the Project.

26. **Taxes and Business Registration** - Contractor(s) performing services within the Pueblo de San Ildefonso are required to pay the Pueblo Gross Receipts Tax to the State of New Mexico, using the CRS-1 Form and the Location Code 01-976. Per the Pueblo’s Tax Act, contractor(s) shall register with the Pueblo by completing a Business Registration Application prior to commencing any work on Pueblo land. Business Registration Application forms will be made available to Reclamation for distribution to Contractors.

**PROGRAM CONTACTS**

27. The following are the primary points of contact for construction related activities for the Pueblo de San Ildefonso. The Pueblo will update the contact information as necessary:

   a) **Primary Point of Contact** - for all construction related activities on Pueblo land – Project Manager, (505) 455-2273.

   b) **Realty Office** - Stephen Martinez, Natural Resource Director, stmartinez@sanipueblo.org, (505) 455-4138 or (505) 670-2606.

   c) **Transportation Office** - Lillian Garcia, Transportation Planning Manager, lgarcia@sanipueblo.org, (505) 455-4110.

   d) **Tribal Historic Preservation Officer** – (505) 455-2273. For emergencies: Joseph Aguilar, THPOffice, (505) 470-9919.

   e) **Environment Department** - Raymond Martinez, Director, rmartinez@sanipueblo.org, (505) 455-4127.

   f) **Facilities Office** - Facilities Manager, (505) 455-2273.

   g) **Governor’s Office** – Governor Perry Martinez, governor@sanipueblo.org, (505) 455-2273 or (505) 670-2261.
28. Emergency Contacts
   a) Pojoaque Police Department - 911 or (505) 455-2295
   b) Pojoaque Fire Department - 911 or (505) 455-2446
   c) Santa Fe County Sheriff - 911 or (505) 986-2455

29. Non-Pueblo Utility Contacts
   a) Jemez Mountains Electric Coop - 505-753-2105
   b) New Mexico Gas Company - (505) 753-2366; Emergencies (888) 664-2726
   c) CenturyLink – (505) 675-4602
   d) Windstream – (505) 747-6200

30. Pueblo Utilities - Reclamation and Contractor(s) will contact the Facilities and Realty Office prior to making any changes to water or sewer lines.
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION,
BUREAU OF INDIAN AFFAIRS,
AND
THE PUEBLO DE SAN ILDEFONSO

POJOAQUE BASIN REGIONAL WATER SYSTEM PROJECT

CONSTRUCTION AGREEMENT
UNIVERSAL STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION,
BUREAU OF INDIAN AFFAIRS,
AND
THE PUEBLO DE SAN ILDEFONSO

POJOAQUE BASIN REGIONAL WATER SYSTEM PROJECT

CONSTRUCTION AGREEMENT

This Agreement, effective as of the date of the last signature below, is entered into pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388)(32 Stat. 389)(32 Stat. 390), including specifically Section 10 of that act, and acts amendatory thereof or supplementary thereto; all of which acts are commonly known and referred to as the "Federal Reclamation Laws," and particularly pursuant to the Claims Resolution Act of 2010, Public Law 111-291, Title VI (124 Stat. 3065) ("Act"), between the Pueblo de San Ildefonso hereinafter referred to as “Pueblo,” represented by the officer signatory to this Agreement, and the United States of America, acting through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as the “United States” or “Reclamation,” and the Bureau of Indian Affairs, hereinafter referred to as the “BIA,” and represented by the officers signatory to this Agreement, each of which is sometimes individually referred to as “Party,” and sometimes collectively referred to as “Parties”;

1. RECITALS

(a) WHEREAS, Section 611 of the Act authorizes and directs Reclamation to plan and construct the Pojoaque Basin Regional Water System ("Regional Water System" or "Project") in accordance with the Aamodt Settlement Agreement ("Settlement Agreement") dated January 19,
2006, to divert and distribute water to the Pueblo de San Ildefonso, the Pueblo of Pojoaque, the Pueblo of Nambé, and the Pueblo of Tesuque, hereinafter referred to as “Pueblos”, and to the County of Santa Fe; and,

(b) WHEREAS, the Pueblos are sovereign governments with authority to approve agreements and other instruments; and,

(c) WHEREAS, the Act defines “Pueblo Lands” in Section 602(16) as real property that is held in trust by the United States for the Pueblos, owned by the Pueblos, or acquired by the Pueblos after the Settlement Agreement date, both within and outside of the exterior boundaries of a Pueblo and the Pojoaque Basin; and,

(d) WHEREAS, the Act at Section 611(c) provides that the Pueblos shall consent to easements and rights-of-way necessary for the construction of the Regional Water System at no cost to the United States, and the State of New Mexico and Santa Fe County, to the extent that they own such, shall provide land or interest in land as necessary for construction of the Regional Water System at no cost to the United States, and the Cost-Sharing and System Integration Agreement, as amended (“CSSI”), states that the Parties will consent to easements and rights-of-way to the United States for the construction, use, operation, maintenance, repair and replacement of the Regional Water System; and,

(e) WHEREAS, the Pueblo understands and agrees that it will allow its lands to accommodate all facilities associated with the Project constructed within its boundaries as delineated in the Exhibits to this Agreement and the project design documents; and,

(f) WHEREAS, the Parties have determined that the grant of a formal easement or right-of-way to Reclamation for the planning, design, construction, and initial operation and maintenance phases of the Regional Water System is not necessary, and will substitute the formal grant of easement or right-of-way with this Construction Agreement that delineates construction corridors and other authorized activities within the exterior boundaries of the Pueblo as shown in Exhibit “B” of this document; and,
(g) WHEREAS, the Pueblo and the United States, as sovereign governments, are committed to working with one another so that lands and resources of the Pueblo are used wisely and interests of the Pueblo are protected throughout the planning, design, construction, and operation, maintenance, and repair of the Project; and,

(h) WHEREAS, Reclamation recognizes the primary authority of the Pueblo in allowing for the use of Pueblo lands for the Project; and,

(i) WHEREAS, Reclamation has consulted with the Parties, and all have agreed on the basic design, location, alignment, and specifications of the Project, subject to changes, additions, and corrections as the Parties mutually agree; and,

(j) WHEREAS, the Project facilities will be located as agreed upon by the Parties, and upon substantial completion of construction, pursuant to the Act at Section 611(h) or as amended, Reclamation will provide to the Parties final as-built survey(s) of all of the facilities located on Tribal lands within the boundaries of the Pueblo, to be used in the development of grants of right-of-way or easement for long-term operation and maintenance of the Project as appropriate and consistent with the Act and the CSSI; and

(k) WHEREAS, the Pueblo maintains title to all Pueblo lands underlying the Project facilities and rights-of-way, and the Pueblo retains and reserves ultimate dominion and control over Pueblo lands as well as the authority to approve any subsequent long-term right-of-way authorizations or documents as may be necessary and prudent for continued operation and maintenance of the Project by the entity transferred ownership of the Project pursuant to Section 611(h) of the Act; and,

(l) WHEREAS, the Pueblo and the United States agree to work together in good faith to facilitate the successful completion of construction of the Project, to work together along with other Project entities, beneficiaries, and agencies of jurisdiction to assist and facilitate development and execution of additional and subsequent agreements, rights-of-way, grants of easement, contracts, or other such instruments and formal arrangements as may be needed and appropriate to provide for the
long-term continued operation, maintenance, and repair of the Project by the Pueblo and any other Project participants, operators, and beneficiaries.

2. NOW, THEREFORE, BE IT RESOLVED THAT, in consideration of the Recitals above, and of the terms, conditions, covenants, and warranties contained herein, including those Special Terms, Conditions, and Stipulations of the Pueblo included in Exhibit A, and subject to the Act and other agreements and stipulations governing construction of the Regional Water System, as set forth in Paragraph 2(ce) of this Agreement, the Parties agree to honor and perform under the terms of this Agreement as stated below:

(a) **Agreement Purpose and Intent:** The Agreement shall serve in lieu of the BIA Southwest Region Division of Transportation Permit to Install Utility Facilities within the Bureau of Indian Affairs Right-of-Way, and in lieu of the BIA Grant of Easement for Right-of-Way on Indian Lands. The Agreement allows Reclamation, its employees, agents, contractors, successors, and assigns, access to the Pueblo lands to survey, plan, design, access, construct, modify, maintain, repair, and operate the Regional Water System, during construction and until conveyance of the Regional Water System, subject to:

1) The special terms, supplementary conditions, and stipulations prescribed by the Pueblo and enumerated in Exhibit A, attached hereto and made a part hereof;

2) The stipulations and practices identified in the Record of Decision for the Environmental Impact Statement prepared for the Project, as well as terms, conditions, and stipulations enumerated in the documents listed in Paragraph 2(ce); and

3) The construction corridors specifically depicted in the maps, attached hereto and made a part hereof, contained in Exhibit B.

(b) **Rights of the Pueblo to Use Pueblo Lands:** The Pueblo reserves the right under this Agreement to Pueblo lands used to accommodate and support the Project, for any other purposes consistent and compatible with safe, efficient, and unfettered construction, operation, and maintenance of the Project by the United States, its employees, agents, contractors, successors, and
assigns until formal conveyance or transfer of the Project by the United States. Entry into, and the use of, lands within the construction corridors by the Pueblo for other than construction-related activities will be coordinated with Reclamation or its agents. Title to and jurisdiction over the affected lands now held by the Pueblo or the United States on behalf of the Pueblo is not and will not be alienated or extinguished by execution of this Agreement.

   (c) Consent to Survey: The Pueblo consents and gives permission to Reclamation to inspect Pueblo lands proposed for Project use, and to survey land boundaries as needed for Project facilities, pipeline alignments, staging, spoil, and borrow areas, defined as construction corridors in Exhibit B. Access to lands outside construction corridors will require a separate Pueblo access permit, except in cases of emergency (see Section 2.(e): “Use of Roads and Access Ways for Emergency Use or Outside the Designated Construction Corridor).

   (d) Term: The term of the Agreement is for the period required for the planning, design, construction, and initial operation and maintenance, until the transfer or conveyance of the Project by the Reclamation delegated officer to the appropriate entities for long-term operation and management, after substantial completion of construction, as pursuant to the Act or as otherwise provided. The term of the Agreement may be changed by the mutual agreement of the Parties.

   (e) Use of Roads and Access Ways for Emergency Use or Outside the Designated Construction Corridor: In addition to the processes set forth in Exhibit A for emergency access issues, the Pueblo consents and agrees to the limited and controlled use of Pueblo roads, access ways, and disturbed lands outside of the construction corridors of the Project for emergencies. Reclamation or its agents will notify the Pueblo of the emergency situation and location as soon as possible, along with the estimated emergency cure time. The Pueblo also agrees to issue access permits for the limited and controlled use of roads, as necessary, to access Project-related sites and facilities outside the construction corridors for unanticipated survey, construction, operation and maintenance, repair, and safety issues. Such non-emergency uses will be coordinated in advance with the Pueblo and will not commence until an access permit is granted. These uses shall be
without charge to Reclamation, its employees, agents, or contractors. Provided: The Pueblos will not agree to grant access to undisturbed lands or lands identified by the Pueblo as being restricted, sensitive, or closed.

(f) **Mapping of the Project Alignment:** Maps of the planned locations and alignments of the Project facilities will be submitted prior to construction for approval by the Pueblo. Following substantial completion of construction, Reclamation will provide final as-built survey(s) of the Project facilities. The surveys will meet the standards and guidelines established by the U.S. Department of Interior Bureau of Land Management. The final survey will depict the accurate location and alignment of all facilities, identifying the nature of all facilities as being either for joint-use of the larger Project, or solely for use by the Pueblo. Final reproducible survey maps or digital format map files of the definite locations and alignments of facilities located on Pueblo lands shall be provided by Reclamation to the Parties to prepare grants of right-of-way, operations agreements, and other documents.

(g) **Initial Operation, Maintenance, and Repair by Reclamation:** In addition to planning, design, and construction, Reclamation agrees to operate, maintain, and repair the facilities of the Project on Pueblo lands in a workmanlike manner, and to minimize impacts to the Pueblo lands to the greatest extent practical, until formal notice of substantial completion of construction is given and the Project facilities are functional and available for transfer or conveyance to the appropriate entity pursuant to the Act at Section 611(h), or as amended.

(h) **Liability:** The Pueblo is liable for claims arising under this Agreement for the acts and omissions of its officers, agents, employees, contractors, and assigns to the extent provided by applicable waivers of sovereign immunity under Federal and Tribal law as described in subparagraph (j). The United States is liable for claims arising under this Agreement for the acts and omissions of its officers, agents, employees, contractors, and assigns to the extent provided by, and subject to the processes established pursuant to, the Federal Tort Claims Act (28 U.S.C. § 171).
(i) **Inspection**: The Pueblo and Reclamation or their authorized agents shall have the right, at all reasonable times and places, following reasonable notice to the other Party, and subject to appropriate health, safety, and other considerations, to enter the construction corridors to inspect any activities or improvements thereon.

(j) **Sovereign Immunity**: Except as authorized in a Tribal resolution or law enacted by the Pueblo for a limited waiver of sovereign immunity, nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the Pueblo, Pueblo Governor, or Pueblo Tribal Council. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the United States and its officers, employees, or agents acting within the scope of their official duties and authorities.

(k) **Dispute Resolution**: In the event of a dispute arising under this Agreement, the Parties shall work in good faith to attempt to resolve the dispute expeditiously and equitably. In case of the failure to arrive at a mutually acceptable resolution between the Parties, resolution will be subject to the ruling of a Federal court. In the event of dispute, each Party will be solely responsible for its own administrative, legal, and other costs.

(l) **Non-performance under this Agreement**: The Parties accept their responsibilities to perform and comply with the provisions and intent of this Agreement in good faith, in a timely manner, and to the best of their ability. If a Party alleges that another Party is failing or has failed to perform in the above manner, the alleging Party must inform the other (responding) Party in writing, with specific information detailing the alleged non-performance. The responding Party shall respond to each notice of non-performance in writing no later than 24 hours from receipt of the notice for urgent matters, and no later than 5 business days for other matters, to ensure that problems are resolved in a timely manner. In addition to the response period, the responding Party will be allowed 48 hours, or longer as agreed to by the Parties in writing, to cure the alleged non-performance. Failure of the responding Party to respond, cure, or failure of the Parties to negotiate
(p) **Use of Roads and Access Ways within the Pueblo Boundaries:** Use and construction involving roads within Pueblo boundaries will be coordinated with and pursuant to the direction of the Pueblo. Special care and consideration will be taken involving the use of roads under the jurisdiction of the Pueblo and the BIA to ensure Project activities in, on, over, or under those roads are well coordinated, that coordination occurs well in advance of construction work, that BIA input and requirements to mitigate impacts to roads are considered, that the Pueblo and BIA Division of Transportation permission needed is secured, and that impacts to road users are minimized. Reclamation or its agents will create and maintain a record of individuals entering the construction corridor area for authorized Project activities, for inspection by the Pueblo and Reclamation or their authorized agents, as outlined in Exhibit A.

(q) **Changes or Amendments to this Agreement:** Changes or amendments to this Agreement may be made at any time by mutual consent of the Parties. All changes and amendments will be in writing, will be identified in writing in numerical sequence in the order of adoption, beginning with “Amendment No. 1,” will be signed by an authorized officer of each Party, and affixed to the original copies of this Agreement held by each Party. Signatures may be affixed to amendments through counterparts.

(r) **Changes to Project Alignment or Features:** Prior to completion of construction, changes to alignments or features may be requested by either Party, and may be approved by Reclamation subject to safety, design, and availability of funds considerations.

While minor changes to alignments during construction may occur, these minor changes should not exceed the construction corridors delineated in the Pueblo’s attached Exhibit B. If an alignment change will exceed the construction corridor boundary, then an alignment change should be requested and reviewed by the Parties. If approved by the Parties, the revised construction corridor will be added to Exhibit B.

(s) **Archaeological, Historical, and Cultural Resources Protection:** The protection of archaeological, historical, and cultural resources is of critical importance to the Pueblos and a
commitment and legal responsibility of Reclamation. Protection will be in compliance with the
Programmatic Agreement developed pursuant to Section 106 of the National Historic Preservation
Act, prepared and adopted as part of the Environmental Impact Statement process as documented in
the Record of Decision.

(i) Entirety of Agreement and Integration: The terms of this Agreement are intended and
assumed to be lawful and to constitute the final and entire agreement between the Parties in this
matter. This Agreement is intended as a complete and exclusive statement of the terms and
conditions of the Parties’ mutual agreement and understanding in this matter unless amended as
provided above with the written consent of the Parties.

(u) Applicable Law: This Agreement shall be subject to and under the jurisdiction of all
applicable laws and authorities of the Pueblo and of the United States.

(v) Incorporation by Reference of Other Documents: All documents referenced herein, or
attached or exhibited hereto, are hereby incorporated by reference as binding upon, or part of, this
Agreement.

(w) Severability: Each provision of this Agreement shall be interpreted in such a manner
as to be valid under applicable law, but if any provision of this Agreement shall be deemed or
determined by competent authority to be invalid or prohibited hereunder, such provision shall be
ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed
ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of
the Agreement as a whole.

(x) Force Majeure: In the instance of non-performance of the provisions of this
Agreement due to a force majeure causation, the non-performing Party will notify the other Party of
the nature and timing of the force majeure. The term “force majeure” as used herein shall be
verified or mutually accepted Acts of God and Nature, strikes, lockouts, or other industrial
disturbances, criminal acts, wars, acts of war, terrorism, blockades, riots, civil disobedience or
unrest, epidemics, accidents, failures of machinery or pipes, delays of vendors or common carriers,
inability to obtain materials or rights-of-way on reasonable terms, actions of public authorities, or any other causes, whether or not of the same kind as enumerated herein, that are not within the control of the Parties, and which by the exercise of due diligence the Party was unable to foresee, avoid, or overcome. The non-performing Party will be responsible for coordination with the other Parties and other affected entities to address needed actions based on the force majeure.

(y) Expenditures Contingent on Availability of Funds: The expenditure of any funds by the United States or the performance of any work by the United States shall be contingent upon appropriations of money by Congress or adequate allotments of available funds. Liability of the United States under this Agreement shall continue in such cases only as pursuant to the applicable laws and statutes of the United States.

(z) Officials not to Benefit: No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom; but this restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

(aa) Headings and Organization: The headings, organization, and format of this Agreement are intended only to assist in reading, are provided for convenience only, and shall not be construed or interpreted to expand, limit, or otherwise affect the meaning hereof.

(bb) Covenant Against Contingent Fees: The Parties warrant that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a contract, brokerage, or contingent fee, excepting bona fide employees or bona fide established agencies maintained by the Parties for the purpose of conducting business.

(cc) No Commitment of Federal Funds: This Agreement does not commit or obligate any expenditure of Federal funds, and creates no debt or obligation of the United States.

(dd) Notices: All notices authorized, appropriate, or required to be given under this Agreement shall be given in writing and either personally served, served by delivery by the United
States Postal Service by Certified Mail, or delivered by electronic mail, return and read receipt requested, at the following addresses:

Governor
Pueblo de San Ildefonso
02 Tunyo Po
Santa Fe, NM 87506

Regional Director
Bureau of Indian Affairs
BIA Southwest Regional Office
1001 Indian School Rd NW
Albuquerque, NM 87104

Area Manager
Bureau of Reclamation
Albuquerque Area Office
555 Broadway NE, Suite 100
Albuquerque, New Mexico 87102

(cc) **Other Governing Agreements and Documents:** The other documents governing construction of the Regional Water System include the Act, Settlement Agreement, Record of Decision, Final Environmental Impact Statement, Environmental Assessment, Programmatic Agreement, Cost-Sharing and System Integration Agreement, and 611(g) Agreement. All agreements and documents can be found on https://sites.google.com/site/pbwatereis/links-and-resources and https://sites.google.com/site/pbwatereis/documents/project-reports.

(ff) **Exhibits:**

   Exhibit A. Special Terms, Conditions, and Stipulations of the Pueblo

   Exhibit B. Construction Corridors and Maps

(gg) **Counterparts:** This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement.

3. **IN WITNESS WHEREOF,** the Parties hereto have caused this Agreement to be executed as of the date of the last signature below.
For the Pueblo de San Ildefonso

By ____________________________ Date 5-13-2020
Perry Martinez
Governor

For the U.S. Bureau of Indian Affairs

By ____________________________ Date __________
Patricia Mattingly
Regional Director, Southwest Region

For the U.S. Bureau of Reclamation

By ____________________________ Date __________
Jennifer Faler
Area Manager, Albuquerque Area Office