MINE RECLAMATION AND
TRUST FUNDS AGREEMENT AMONG
THE SAN JUAN PROJECT PARTICIPANTS

___, 2012
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MINE RECLAMATION AND TRUST FUNDS AGREEMENT

AMONG

THE SAN JUAN PROJECT PARTICIPANTS

This MINE RECLAMATION AND TRUST FUNDS AGREEMENT AMONG THE SAN JUAN PROJECT PARTICIPANTS (“Agreement”), dated as of ___________, 2012, among PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (“PNM”); TUCSON ELECTRIC POWER COMPANY, an Arizona corporation (“TEP”); THE CITY OF FARMINGTON, NEW MEXICO, an incorporated municipality and a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico (“Farmington”); M-S-R PUBLIC POWER AGENCY, a joint exercise of powers agency organized under the laws of the State of California (“M-S-R”); THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO, a body politic and corporate, existing as a political subdivision under the constitution and laws of the State of New Mexico (“LAC”); SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint exercise of powers agency organized under the laws of the State of California (“SCPPA”); THE CITY OF ANAHEIM, a municipal corporation organized under the laws of the State of California (“Anaheim”); UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, a political subdivision of the State of Utah (“UAMPS”); and TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC., a Colorado cooperative corporation (“Tri-State”). These parties are the participants in the San Juan Project and are hereinafter sometimes referred to individually as a “Participant” and collectively as “Participants.”

RECITALS

This Agreement is made with reference to the following facts, among others:

A. The Participants’ rights and obligations in respect of the ownership and operation of the San Juan Project, including with respect to Reclamation Costs, are governed by the Amended and Restated San Juan Project Participation Agreement dated March 23, 2006, as may be amended from time-to-time, or any extension or replacement thereof (the “PPA”). The PPA provides that the Reclamation Costs are Fixed Fuel Expenses and the costs thereof are to be allocated to the Participants on the basis of “Common Participation Share” as that term is defined in Section 6.2.6 of the PPA. By its terms, the termination date of the PPA is July 1, 2022, unless extended by agreement of the Participants.

B. Coal for the operation of the San Juan Project is mined from the San Juan Mine, located adjacent to the San Juan Generating Station. The coal miner is San Juan Coal Company (“SJCC”).
C. PNM and TEP (sometimes referred to herein individually as a “Utility” or collectively as the “Utilities”) and SJCC are the parties to an Underground Coal Sales Agreement dated August 31, 2001, as amended (“UG-CSA”). The term of the UG-CSA extends until December 31, 2017, unless terminated earlier or extended by agreement of the parties thereto. Section 23.3 of the PPA provides that the Participants other than the Utilities (the “Non-Utility Participants”) “acknowledge and recognize the terms and conditions of the Underground Coal Sales Agreement which was entered into by PNM and TEP on behalf of the Participants.”

D. The Utilities are required by Section 7.3(A) of the UG-CSA to “compensate SJCC for all reclamation and related liabilities, obligations and costs associated with disturbance on the SJCC Site Area resulting in any way from the supply of coal for San Juan Station . . . .” This obligation survives the term of the UG-CSA and, with respect to post-December 31, 2017 Reclamation Costs, is referred to herein as the “Utilities’ Reimbursement Obligation.”

E. Under Section 7.3(B) of the UG-CSA, the Utilities are required to make arrangements for “post-term” reclamation obligations as follows:

Post Term Reclamation – At a time designated by the Joint Committee, which in any event shall be no later than ten (10) years prior to expiration of this Agreement, Utilities agree to make arrangements, acceptable to SJCC to assure that Utilities’ obligation to fully compensate SJCC for all reclamation obligations of SJCC for all of the SJCC Site Area will be satisfied. Unless otherwise agreed, such assurance shall include at least one or more of the following: bonding or other financial assurance, or funding of a secure reclamation account. SJCC’s acceptance of such assurance shall not be unreasonably withheld.

This obligation to assure SJCC that it will be fully compensated for Reclamation Costs is referred to herein as the “Utilities’ Assurance Obligation.”

F. The Participants desire, by this Agreement, to provide for the establishment of irrevocable trusts (individually a “Trust” and collectively the “Trusts”) to satisfy their respective responsibilities under the PPA to pay for Reclamation Costs, and the Utilities’ Assurance Obligation, for the reclamation scenario of using San Juan Project by-products (ash and gypsum) as the principal fill material for the mine pits until final surface contours are achieved. This reclamation scenario will hereafter be referred to as the “reclamation scenario of maximized by-products backfill.”
G. The Trusts must continue in effect past the current July 1, 2022, termination of the PPA due to SJCC’s coal mine reclamation activities at the San Juan Mine. It is estimated that such coal mine reclamation activities will continue until SJCC achieves Reclamation Bond Release, anticipated to be approximately 2050.

H. The PPA provides that the specific details and arrangements related to San Juan Project decommissioning and reclamation costs may be addressed in future amendments to that agreement or in separate contractual instruments.

I. This Agreement is intended to specify the manner in which those obligations arising from the PPA with respect to Reclamation Costs, under the reclamation scenario of maximized by-products backfill, are to be satisfied and does not amend, modify or waive those obligations as set forth in the PPA.

AGREEMENT

The Participants, for and in consideration of the mutual covenants to be by them kept and performed, agree as follows.

1.0 TERM AND TERMINATION

1.1 Effective Date. Except as otherwise provided in Section 1.3, this Agreement shall become effective upon the date upon which the Federal Energy Regulatory Commission (“FERC”) accepts for filing this Agreement; provided, that if the FERC orders a hearing to determine whether this Agreement is just and reasonable, this Agreement shall not become effective until the date when an order, no longer subject to judicial review, has been issued by the FERC determining this Agreement to be just and reasonable without changes or modifications unacceptable to the Participants.

1.2 FERC Filing. Following execution of this Agreement by all Participants, PNM shall file a copy of this Agreement with the FERC in a timely manner. In such filing, PNM shall request waiver of applicable FERC notice requirements in order to allow this Agreement to become effective as of the earliest feasible date.

1.3 Adverse Regulatory Action. Following an order by the FERC or any other regulatory agency having jurisdiction, the Participants shall each review such order, letter or communication to determine if the FERC or any agency having jurisdiction has changed or modified a condition or conditions, deleted a condition or conditions, or imposed a new condition or conditions with regard to this Agreement; or has conditioned its approval of this Agreement upon changes or modifications to a condition or conditions, deletion of a condition or conditions or imposition of a new condition or conditions. The Participant receiving such order, letter or communication shall promptly provide a copy of such order, letter or communication to the other
Participants. Within fifteen (15) business days after receipt by the other Participants of the copy of the order, letter or communication, the Participants shall indicate to each other in writing their acceptance or rejection of this Agreement based upon any changes, modifications, deletions or new conditions required by the FERC or any agency having jurisdiction. A failure to notify within said fifteen (15) business day period shall be equivalent to a notification of acceptance. If any Participant rejects this Agreement because the FERC or any agency having jurisdiction has changed or modified a condition, deleted a condition or imposed a new condition with respect to this Agreement, or has conditioned its approval on such a change, modification, deletion or new condition, the Participants will be deemed to have rejected this Agreement and they shall attempt, in good faith, to renegotiate the terms and conditions of this Agreement to resolve such changed, modified, deleted or new condition to the satisfaction of the Participants within one hundred twenty (120) days after the date of such order, letter or communication and thereafter to obtain requisite regulatory approval of such renegotiated agreement.

1.4 Termination. This Agreement shall continue in full force and effect until one hundred and eighty (180) days after Reclamation Bond Release; provided, that the Participants shall resolve, by good faith discussions, any issue that may arise thereafter.

2.0 DEFINITIONS

The following terms used in this Agreement, whether used in the singular or the plural, with initial capitalization, shall have the meanings set out below.

A&G Expenses – Administrative and General Expenses of the Trust Funds Operating Agent as provided for in Section 8.7

Adjustment Request – A request for a Reclamation Costs Review, made pursuant to Section 5.3

Affiliate – With respect to any Person, any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such first Person. As used in this definition, “control” (including with correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power (i) to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise); (ii) to vote fifty percent (50%) or more of the total combined voting power of such Person; or (iii) to direct the voting of sufficient securities to elect at least fifty percent (50%) of the board of directors or similar body of such Person.
Agreement – This Mine Reclamation and Trust Funds Agreement Among the San Juan Project Participants

Assigning Participant – A Participant making a transfer or assignment as described in Section 17

Coordination Committee – The Coordination Committee established in Section 18 of the PPA

Correcting Deposits – Deposits to a Participant’s Trust as required by Section 4.7.1

Correction Period – The time in which Correcting Deposits must be completed as provided for in Section 4.7.1.2

Default – A default in performance of a Participant’s obligations under this Agreement, as defined more particularly in Section 10.1

Default Declaration – A declaration of default as defined in Section 10.5

Default Notice – A notice of default as defined in Section 10.2

E&O Committee – The Engineering and Operating Committee established in Section 19 of the PPA

Effective Date – The date established in Section 1.1 for the effectiveness of this Agreement

FERC – The Federal Energy Regulatory Commission or its successor agencies

Final Reclamation Report – a report provided by the Trust Funds Operating Agent to the Reclamation Oversight Committee pursuant to Section 5.2

Fixed Fuel Expense – Those fixed fuel expenses itemized in Exhibit IX to the PPA

Fuels Committee – The Fuels Committee established in Section 20 of the PPA

Funding Curves – The Funding Floor Curve and the Funding Target Curve of Exhibit 1A (in the case of an Opt-in Participant) or Exhibit 1B or Exhibit 1C (in the case of an Opt-out Participant)
Funding Floor Amount – The respective annual dollar amounts in the Funding Floor Curves of Exhibit 1A, Exhibit 1B or Exhibit 1C, for any given year

Funding Floor Curve – The set of numbers in Exhibit 1A, Exhibit 1B or Exhibit 1C, labeled as such

Funding Target Amount – The respective annual dollar amounts in the Funding Target Curves of Exhibit 1A, Exhibit 1B or Exhibit 1C, for any given year

Funding Target Curve – The set of numbers in Exhibit 1A, Exhibit 1B or Exhibit 1C, labeled as such

Investment Committee – The committee established in Section 6

Make-up Funding Curve – The make-up funding curves established by the Investment Committee pursuant to Section 6.4

Make-up Trust Fund – A sub-account within a Participant’s Trust, as provided in Sections 4.1 and 4.8

Mandatory Provisions – Those provisions which must be included in each Participant’s Trust Agreement, as described in Exhibit 3

Negotiation Notice – A notice given pursuant to Section 13.1

Non-Utility Participants – Farmington, M-S-R, LAC, SCPPA, Anaheim, UAMPS and Tri-State

Notice – A notification given in accordance with Section 28

Notification of Intent – A notification of intent to declare a Participant in default, as defined in Section 10.5

Operating Agent – The Operating Agent for the San Juan Project, which is currently PNM

Opt-in Participant – A Participant that does not give a notice that it will become an Opt-out Participant

Opt-out Participant – A Non-Utility Participant electing to exercise the right set out in Section 9.3

Participant – Any one of PNM, TEP, Farmington, M-S-R, LAC, SCPPA, Anaheim, UAMPS or Tri-State
Participant Representatives – The representatives of Non-Utility Participants entitled under Section 9.1, and consistent with Section 20.4 of the PPA, to participate in negotiations and discussions with SJCC

Permitted Investments – Investments identified as permitted investments for Opt-out Participants and Opt-in Participants, as set out in Exhibit 2

Person – A natural person, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture association, company, trust, bank, trust company, business trust or other organizations, whether or not legal entities, and all governmental authorities

PPA – Amended and Restated San Juan Project Participation Agreement dated March 23, 2006, as may be amended from time-to-time

Prime Rate – The interest rate per annum (sometimes referred to as the base rate) for large commercial loans to creditworthy entities announced from time-to-time by Wells Fargo Bank, N.A. (New York) or its successor bank or, if such rate is not announced, the rate published in the Wall Street Journal as the “prime rate” from time-to-time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay arises

Principal Trust Fund – A sub-account within a Participant’s Trust

Protest – A protest made under Section 10.4

Reclamation Bond Release – The date as of which SJCC has achieved full reclamation bond release, as defined by the federal Office of Surface Mining (or its successor), of the SJCC site area at the San Juan Mine

Reclamation Costs – Any UG-CSA post-termination or post-expiration costs charged to the Utilities by SJCC through the provisions of the UG-CSA including, but not limited to, the reclamation costs set out in Section 7.3 of the UG-CSA

Reclamation Costs Review – a review of reclamation costs undertaken pursuant to Section 5.2

Reclamation Oversight Committee – The committee established in Section 7

Recovery Deposit – Deposits to a Participant’s Trust as required by Section 4.7.2
Recovery Period – The time in which Recovery Deposits must be completed as provided for in Section 4.7.2.2

San Juan Project – The four unit, coal-fired electric generating plant located in San Juan County, New Mexico, near Farmington, New Mexico; the San Juan Project includes all facilities, structures, transmission and distribution lines incident to the four-unit electric generating plant, but not including distribution lines, transmission lines, equipment in switchyard facilities or other facilities owned exclusively by a Participant

San Juan Project Committees – Any of the committees established under the PPA, including the Coordination Committee, the Engineering and Operating Committee, the Auditing Committee and the Fuels Committee

Share – A Participant’s proportionate funding and cost responsibility, as specified in Section 3.5, and applied for various purposes in this Agreement

SJCC – San Juan Coal Company, a Delaware corporation, or its successors or assigns

Status Report – A status report prepared and provided to Participants and to SJCC in accordance with Section 4.10

Trust – A trust maintained by a Participant with a Trustee pursuant to Section 4

Trust Agreement – A trust agreement entered into between a Participant and its Trustee for the purpose of satisfying the Participant’s responsibilities under the PPA, and under this Agreement, to pay for Reclamation Costs, the Utilities’ Reimbursement Obligation and the Utilities’ Assurance Obligation

Trustee – A financial institution selected by a Participant at which the Participant’s Trust is or will be held

Trust Funds Operating Agent – The agent of the Participants, selected in accordance with Section 8, undertaking to perform the Work of the Trust Funds Operating Agent

UG-CSA – Underground Coal Sales Agreement between SJCC and the Utilities, dated August 31, 2001, as amended from time-to-time
Uncontrollable Forces – A cause beyond the control of a Participant as defined in Section 19

Utilities – PNM and TEP when used collectively or “Utility” when used individually

Utilities’ Assurance Obligation – The obligation described in Recital E

Utilities’ Reimbursement Obligation – The obligation described in Recital D

Willful Action – Action taken or not taken by the Trust Funds Operating Agent at the direction of its directors, officers or employees having management or administrative responsibility affecting its performance under this Agreement which: (a) is knowingly or intentionally taken or not taken with conscious indifference to the consequences thereof or with intent that injury or damage would probably result therefrom; or (b) has been determined by final arbitration award or final judgment or judicial decree to be a material default under this Agreement and which action occurs or continues beyond the time specified in such arbitration award or final judgment or judicial decree for curing such default or, if no time to cure is specified therein, occurs or continues beyond a reasonable time to cure such default; or (c) is knowingly or intentionally taken or not taken with the knowledge that such action taken or not taken is a material default under this Agreement. Willful Action does not include any act or failure to act which is merely involuntary, accidental or negligent.

Work – The work undertaken by the Trust Funds Operating Agent pursuant to Section 8.3

3.0 RECOGNITION OF OBLIGATIONS

3.1 Terms of UG-CSA. Consistent with Section 23.3 of the PPA, the Non-Utility Participants acknowledge and recognize the terms and conditions of the UG-CSA that was entered into by the Utilities on behalf of the Participants.

3.2 SJCC as Third Party Beneficiary. The Participants acknowledge and recognize that this Agreement is entered into to satisfy their respective responsibilities under the PPA to pay for Reclamation Costs, and the Utilities’ Assurance Obligation, and that, as provided for in Section 16.2, SJCC is an intended third party beneficiary of this Agreement.

3.3 Trust Funding Obligations. Each Participant acknowledges and recognizes its respective obligation to have a balance in its Trust sufficient to fund its share (“Share”) of the Funding Target Curve in any given year during the term
hereof, subject to the provisions of Section 4. The initial Funding Curve for Opt-in Participants shall be as set out in Exhibit 1A, as adjusted from time-to-time in accordance with Section 5. The initial Funding Curve for Opt-out Participants shall be as set out in Exhibit 1C, as adjusted from time-to-time in accordance with Sections 5.3 and 6.3. An adjustment to a Funding Curve shall not be deemed an amendment to this Agreement but rather shall be considered an element of the administration and implementation of this Agreement; upon approval of a Funding Curve adjustment, as provided for herein, such adjusted Funding Curve shall replace the Funding Curve previously in effect.

3.4 Cost Obligations. Consistent with their respective responsibilities under the PPA, each Participant acknowledges and recognizes its obligation to pay its Share of Reclamation Costs and costs of Work (including A&G Expenses) as such costs are invoiced by the Trust Funds Operating Agent.

3.5 Definition of Shares. The Shares of the Participants for purposes of determining the proportionate funding and cost responsibilities hereunder of each Participant are the following:

<table>
<thead>
<tr>
<th>Share</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>PNM:</td>
<td>46.297%</td>
</tr>
<tr>
<td>TEP:</td>
<td>19.80%</td>
</tr>
<tr>
<td>M-S-R:</td>
<td>8.70%</td>
</tr>
<tr>
<td>Farmington:</td>
<td>2.559%</td>
</tr>
<tr>
<td>Tri-State:</td>
<td>2.49%</td>
</tr>
<tr>
<td>LAC:</td>
<td>2.175%</td>
</tr>
<tr>
<td>SCPPA:</td>
<td>12.71%</td>
</tr>
<tr>
<td>Anaheim:</td>
<td>3.10%</td>
</tr>
<tr>
<td>UAMPS:</td>
<td>2.169%</td>
</tr>
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4.0 FUNDING OF TRUSTS AND OF MAKE-UP ACCOUNTS

4.1 Establishment and Funding of Trusts. Within ninety (90) days after the execution of this Agreement by all of the Participants, each Participant shall execute a separate trust fund agreement (“Trust Agreement”) between that Participant and a financial institution selected by that Participant (“Trustee”) for the establishment of an irrevocable trust (“Trust”) to carry out the purposes of this Agreement. The Trustee shall not be an Affiliate of a Participant. A copy of each Trust Agreement shall upon execution be provided to each other Participant and to SJCC. Each Trust shall be funded as provided for in Sections 4.5, 4.6, 4.7 and 4.8. Each Trust shall be segregated into one or more sub-accounts: a Principal Trust Fund and, if necessary, a Make-up Trust Fund or Funds.

4.2 Investment Policies. Subject to compliance with the Permitted Investments standards set out in Exhibit 2, each Participant may implement its own policies in relation to the investment of funds in its Trust. Each Participant may, at
its discretion, appoint one or more investment managers to direct the investment of all or parts of funds held in trust.

4.3 Mandatory Provisions. Each Trust Agreement must contain certain mandatory provisions ("Mandatory Provisions"). The Mandatory Provisions are described in Exhibit 3. Proposed amendments to any Mandatory Provision in a Participant’s Trust Agreement are subject to review and approval by the Investment Committee, as provided for in Section 6.3.6. A Participant desiring to amend a Mandatory Provision must submit such proposed amendment to the Investment Committee for prior review in accordance with procedures established by the Investment Committee.

4.4 Only Purposes. Funds held in trust shall be utilized for the following and no other purposes: (a) to pay the costs and fees associated with the maintenance of the Trust, including the fees and expenses of the Trustee; and (b) to pay the Participant’s Share (as defined in Section 3.5) of Reclamation Costs, as provided for in this Agreement.

4.5 Initial Funding of Trusts. At the time of execution of its Trust Agreement, each Participant shall deposit into its Trust immediately available funds sufficient to satisfy its Share of the Funding Target Amount for calendar year 2011.

4.6 Subsequent Funding of Trusts. By December 31, 2012, and by December 31 of each subsequent year during the term hereof, each Participant shall have a balance in its Trust sufficient to comply with the provisions of Section 3.3 and of this Section 4.6. Except as provided in Sections 4.9, 11.2 and 12.1, during the term hereof, no Participant shall be permitted to withdraw funds in its Trust, including net earnings on accumulations in the Trust. No additional funding of a Trust shall be required of a Participant if the funds in its Trust are sufficient, by December 31, 2012 and by December 31 of each subsequent year during the term hereof, to satisfy the Participant’s Share of the Funding Target Amount for that year.

4.7 Recovery Deposits and Correcting Deposits.

4.7.1 In the event that, as of December 31 of any year during the term hereof, the value of funds in a Participant’s Trust is less than its Share of the Funding Target Amount, but greater than its Share of the Funding Floor Amount for such year, then the Participant shall make one or more Correcting Deposits. The amount and timing of such Correcting Deposits shall be made in conformance with policies established by the Investment Committee consistent with Section 6.3.4.

4.7.1.1 Correcting Deposits in the aggregate shall be sufficient to ensure that the value of funds in a Participant’s Trust is equal to or greater than its Share of the Funding Target Amount at the end of the applicable Correction Period determined as provided in Section 4.7.1.2.
4.7.1.2 The applicable Correction Period during which one or more Correcting Deposits must be made pursuant to Section 4.7.1.1 shall be two (2) years.

Example:

Assume the value of funds in Participant A’s Trust is less than the Funding Target Amount for Participant A but greater than or equal to the Funding Floor Amount for Participant A at the end of:

2012 – the Correction Period expires December 31, 2014

4.7.2 In the event that, as of December 31 of any year during the term hereof, the value of funds in a Participant’s Trust is less than its share of the Funding Floor Amount for such year, then the Participant shall make one or more Recovery Deposits. The amount and timing of such Recovery Deposits shall be made in conformance with policies established by the Investment Committee consistent with Section 6.3.4.

4.7.2.1 Recovery Deposits in the aggregate shall be sufficient to ensure that the value of funds in a Participant’s Trust is equal to or greater than its Share of the Funding Floor Amount at the end of the applicable Recovery Period determined as provided in Section 4.7.2.2.

4.7.2.2 The applicable Recovery Period during which one or more Recovery Deposits must be made pursuant to Section 4.7.2.1 shall be one (1) year.

Example:

Assume the value of funds in Participant A’s Trust is less than the Funding Floor Amount for Participant A at the end of:

2012 – the Recovery Period expires December 31, 2013; such Participant would then, however, be subject to the provisions of Section 4.7.1.

4.7.3 If any Participant fails to make any Correcting Deposit or Recovery Deposit when due, then, within ten (10) days after the applicable due date, the chairperson of the Investment Committee shall report such failure by the Participant to each representative on the Investment Committee, to the Reclamation Oversight Committee and to the Trust Funds Operating Agent.

4.8 Make-up Trust Funds. In the event of a Default Declaration, made pursuant to Section 10.5, that a Participant is in Default in regard to the funding of its
Trust, each of the non-defaulting Participants shall fund a Make-up Trust Fund within its Trust in the manner provided for, and subject to the various requirements and limitations set out in, Sections 6.4, 11 and 12.

4.9 Return of Funds in Trust. Any funds remaining in a Participant’s Trust after the Utilities’ Reimbursement Obligation has been satisfied shall be returned to the Participant pursuant to the Participant’s Trust Agreement. Any funds remaining in a Participant’s Make-up Trust Fund may, at the election of the Participant, and subject to the provisions of the Participant’s Trust Agreement, be returned to the Participant if a defaulting Participant has cured the Default the existence of which led to the creation and funding of the Make-up Trust Fund.

4.10 Status Reports. Each Participant shall prepare on an annual basis a funding status report regarding the funds in its Trust (in both the Principal Trust Fund and any Make-up Trust Fund), as of December 31 of each year during the term hereof and shall provide such annual funding status report to each of the other Participants, to the Investment Committee and to SJCC. To demonstrate compliance with Exhibit 2, the funding status report shall include a detailed summary of the investments made by the Participant in its Trust during the period covered by the status report. The funding status report shall be prepared and provided to the other Participants, to the Investment Committee and to SJCC no later than thirty (30) days following the end of a calendar year unless otherwise directed by the Investment Committee. In addition to such annual funding status reports, on the written request of any other Participant or of SJCC, for reasonable cause (e.g., changes in market conditions that could significantly affect the value of funds in a Trust), each Participant shall provide special funding status reports, in the same format and content as annual funding status reports, to the other Participants, to the Investment Committee and to SJCC; provided, that such special reports shall not be required of any Participant more frequently than once in any calendar quarter.

4.11 Compliance. A Participant whose funding of its Trust (Principal Trust Fund or any Make-up Trust Fund) has been determined by the Investment Committee, pursuant to Section 6.3.2, not to be in compliance with the requirements of this Agreement shall act promptly to bring itself into compliance therewith. A Participant, the Mandatory Provisions of whose Trust Agreement have been determined by the Investment Committee, pursuant to Section 6.3.6, not to be in compliance with the requirements of this Agreement shall act promptly to bring itself into compliance therewith and shall promptly inform the Investment Committee of actions taken to bring itself into compliance.

5.0 ADJUSTMENTS TO FUNDING CURVES

5.1 Adjustments to Funding Curves. The Participants acknowledge the appropriateness of adjusting, from time-to-time, the Funding Curves for both Opt-in Participants and Opt-out Participants.
5.2 **Reclamation Costs Review.** At the request of any Participant made at any time after the Effective Date, and thereafter no more frequently than every two (2) years, the Trust Funds Operating Agent shall be required to perform (or cause to be performed) a technical reassessment of reclamation methods, status and costs using the reclamation scenario of maximized by-products backfill or such other scenario as may be determined by the Reclamation Oversight Committee to be appropriate (a “Reclamation Costs Review”). The Reclamation Oversight Committee shall establish reasonable goals, timelines and procedures with respect to the manner in which the required Reclamation Costs Review is to be conducted.

5.2.1 In performing the Reclamation Costs Review, the Trust Funds Operating Agent (and its contractor or agent) shall consult with SJCC and shall utilize, as appropriate, information that may be provided by SJCC in reassessing reclamation methods, status and costs.

5.2.2 The Reclamation Costs Review shall evaluate SJCC’s anticipated annual reclamation expenditures that are subject to the Utilities’ Reimbursement Obligation and to the terms of the UG-CSA (if the UG-CSA has not yet terminated or expired as of the time of such review).

5.2.3 The study period for purposes of a Reclamation Costs Review shall be from January 1 of the year of the Reclamation Costs Review commences through Reclamation Bond Release.

5.2.4 The Trust Funds Operating Agent shall present a final report resulting from the Reclamation Costs Review (the “Final Reclamation Report”) to the Reclamation Oversight Committee.

5.2.5 The Reclamation Oversight Committee shall, consistent with the voting procedures set out in Section 7.4, promptly either (i) approve the Final Reclamation Report; or (ii) direct that further study or revisions be made to the Final Reclamation Report. In the event the Reclamation Oversight Committee directs further study or revisions, the Trust Funds Operating Agent shall submit a new Final Reclamation Report to the Reclamation Oversight Committee. Upon approval of the Final Reclamation Report by the Reclamation Oversight Committee, the Reclamation Oversight Committee shall forward a copy of the Final Reclamation Report to the members of the Investment Committee for the establishment by the Investment Committee of new Funding Curves for Opt-in Participants and Opt-out Participants.

5.3 **Adjustment Requests.** A Participant desiring to request a Reclamation Costs Review shall do so by serving a written request (the “Adjustment Request”) upon the Trust Funds Operating Agent and the members of the Reclamation Oversight Committee. A copy of the Adjustment Request shall also be
served on SJCC. An Adjustment Request shall set out in detail the facts relied on by the Participant making the request.

5.4 Costs of Reclamation Costs Review. The costs of a Reclamation Costs Review shall be paid by the Participants in accordance with their Shares as set out in Section 3.5. The Trust Funds Operating Agent shall issue appropriate invoices to the Participants for such costs.

6.0 INVESTMENT COMMITTEE

6.1 Establishment of Investment Committee. The Participants hereby establish an Investment Committee. The Investment Committee shall remain in existence during the term of this Agreement. The Investment Committee shall have no authority to modify any of the provisions of this Agreement.

6.2 Investment Committee Membership. The Investment Committee shall consist of one representative from each Participant who shall be an officer or other authorized representative of the Participant. Any of the Participants may designate an alternate or substitute to act as its representative on the Investment Committee in the absence of the regular representative on the Investment Committee or to act on specified occasions or with respect to specified matters. Each Participant shall notify the other Participants promptly, in writing, of the designation of its representative and alternate representative on the Investment Committee and of any subsequent changes in such designations. During the term of the PPA (or any extension or replacement thereof), the chairperson of the Investment Committee shall be a representative of the Operating Agent. Upon the termination of the PPA (or any extension or replacement thereof), the chairperson of the Investment Committee shall be a representative of the Trust Funds Operating Agent. Each Participant shall be responsible for the costs of its Investment Committee representative, including fees and travel reimbursement.

6.3 Functions and Responsibilities of Investment Committee. The Investment Committee shall have the following functions and responsibilities:

6.3.1 Within six (6) months of the Effective Date, establish the format and content to be used for each Participant’s annual funding status report;

6.3.2 Review each Participant’s annual and special funding status report(s) and determine and, as to each Participant, report to the Reclamation Oversight Committee and the Trust Funds Operating Agent: (i) whether the amount of funds in a Participant’s Trust (Principal Trust Fund and any Make-up Trust Funds) are in compliance with Sections 3.3, 4.5, 4.6, 4.7 and 4.8; and (ii) whether the investments in the Participant’s Trust have been made in a manner consistent with Exhibit 2. The Investment Committee representative representing a Participant whose funding status is under review by the Investment Committee shall not have a vote and the requisite majority
for actions and determinations as provided for in this Section 6.3.2 shall be adjusted in proportion to the number of Participants whose funding status is not under review;

6.3.3 Upon receipt from the Reclamation Oversight Committee of a copy of a Final Reclamation Report, as provided for in Section 5.2.5, establish and provide to each of the Participants new Funding Curves for Opt-in Participants and for Opt-out Participants. The new Funding Curves shall be incorporated in new Exhibits 1A, 1B and 1C which shall be substituted for the then-existing Exhibits 1A, 1B and 1C. The new Exhibits 1A, 1B and 1C shall utilize the same assumptions, procedures and principles, to the extent possible, as are reflected in Exhibits 1A, 1B and 1C attached hereto on the Effective Date. Such assumptions, procedures and principles are set out in Exhibit 4. In establishing a new Exhibit 1C, the Funding Target Curve values and Funding Floor Curve values in Exhibit 1B that occur during or after the year the PPA (or any extension or replacement thereof) expires shall be adjusted upward by a risk adjustment factor of three percent (3%).

6.3.4 Establish, consistent with Section 4.7, policies regarding the number and timing of Correcting Deposits and Recovery Deposits;

6.3.5 Audit, or cause to be audited, compliance of Participants in meeting their obligations under Sections 3.3, 4.5, 4.6, 4.7 and 4.8;

6.3.6 Under procedures to be established in a timely fashion by the Investment Committee, (i) promptly upon execution of each Participant’s Trust Agreement, review the Mandatory Provisions of each such Trust Agreement to assure that the Mandatory Provisions of each such Trust Agreement conform to the requirements of Section 4.3 and of Exhibit 3; and (ii) review any proposed amendment to a Mandatory Provision in a Participant’s Trust Agreement. If the Investment Committee representatives (other than the representative representing any Participant whose compliance is under review) conclude that a Participant’s initial Trust Agreement is inconsistent with Section 4.3 and Exhibit 3, or that a proposed amendment to a Mandatory Provision is inconsistent with the purposes of this Agreement, the Investment Committee shall inform the Participant of the reasons why, in the judgment of the Investment Committee, the Mandatory Provisions of its initial Trust Agreement are inconsistent with Section 4.3 and Exhibit 3 or why the proposed amendment to the Mandatory Provision is inconsistent with this Agreement. No Participant may amend a Mandatory Provision in its Trust Agreement in a manner contrary to a determination of the Investment Committee;

6.3.7 In the event of a Default Declaration against a Participant resulting from the Participant’s failure to fund its Trust as required by
Sections 3.3, 4.1, 4.5, 4.6 and 4.7, to establish funding curves for Make-up Trust Funds, consistent with Section 6.4;

6.3.8 Perform such other tasks as the Reclamation Oversight Committee shall from time-to-time assign to the Investment Committee; and

6.3.9 Perform such other tasks as may be delegated under this Agreement to the Investment Committee.

6.4 Make-up Funding Curves. In the event a Default Declaration is made against a Participant on the basis of the Participant’s failure to fund its Trust (including making required Recovery Deposits and Correcting Deposits) in the manner provided for in this Agreement, the Investment Committee shall act promptly to provide the non-defaulting Participants with appropriate funding curves for their Make-up Trust Funds (“Make-up Funding Curves”).

6.4.1 Investments in a Make-up Trust Fund shall be subject to the same Permitted Investment limitations as those applicable to each Participant’s respective Principle Trust Fund.

6.4.2 During the term of the PPA (or any extension or replacement thereof), the Investment Committee shall develop two sets of Make-up Funding Curves: the first, applicable to Opt-in Participants, shall assume the return and discount rates of Exhibit 1A; the second, applicable to Opt-out Participants, shall assume the return and discount rates of Exhibit 1B. However, after the term of the PPA (or any extension or replacement thereof), a set of Make-up Funding Curves for Opt-out Participants is not necessary.

6.4.3 The Make-up Funding Curves shall be based on the defaulting Participant’s projected reclamation liability remaining after all funds in the defaulting Participant’s Trust are exhausted when using the reclamation costs underlying Exhibit 1A and Exhibit 1B at the time of the Default Declaration.

6.4.4 The Make-up Funding Curves shall be revised when revisions and updates are made to Exhibit 1A and Exhibit 1B.

6.4.5 The same general financial analysis principles shall be applied to the calculation of the Make-up Funding Curves as were applied in developing the Funding Curves of Exhibit 1A and Exhibit 1B.

6.4.6 As to Make-up Funding Curves that are established before the expiration of the UG-CSA (as extended or replaced), the Make-up Funding Curves shall be calculated to reach full principal funding upon expiration of the UG-CSA (as extended or replaced); and such Make-up Funding Curves shall be developed by assuming equal annual payments for the period
between the Default Declaration and the expiration of the UG-CSA, with the exception that the first year’s Make-up funding target shall be modified to reflect the existing balance in the defaulting Participant’s Trust, i.e., any funding shortage should be made up in the year of the Default.

6.4.7 With respect to Make-up Funding Curves for Defaults that occur after the expiration of the UG-CSA (as extended or replaced), the Make-up Funding Curves shall be developed by assuming a single, lump sum contribution is made at the time the Make-up Accounts are established to fully fund the shortfall in the defaulting Participant’s Trust.

6.4.8 Annual funding requirements for Make-up Trust Funds will be analogous to the provisions of Sections 4.5 and 4.6. The Make-up Funding Floor Curve shall be one hundred percent (100%) of the Make-up Funding Target Curve by the expiration date of the PPA (or any extension or replacement thereof).

6.5 Decisions of Investment Committee. Any actions or determinations brought before the Investment Committee shall require the following vote: (a) more than a sixty-six and two thirds percent (66 2/3%) majority of the Shares of the Participants as set out in Section 3.5; and (b) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Participants. Matters approved by the requisite majority of the Investment Committee shall be binding on all Participants. If (i) a Participant’s right to vote has been suspended because of a Default, or (ii) a Participant’s funding of its Trust (either Principal Trust Fund and any Make-up Trust Fund) (including making required Recovery Deposits and Correcting Deposits) is under review, as provided for in Section 6.3.2, such Participant shall not have a right to vote, and the requisite majorities for actions or determinations of the Investment Committee shall be adjusted in proportion to the number of Investment Committee members whose right to vote has not been suspended or the funding of whose Principal Trust Fund or Make-up Trust Fund is not under review.

6.6 Meetings of Investment Committee. The Investment Committee shall meet no less frequently than annually. Special meetings shall be held promptly at the written request of any Participant, such request to be delivered to the chairperson of the Investment Committee. The Investment Committee shall keep written minutes and records of all meetings. Any action or determination made by the Investment Committee shall be reduced to writing and shall become effective when signed by the representatives of the Participants entitled to vote thereon, representing a voting majority of the members of the Investment Committee. Investment Committee representatives may, by prior arrangement with the chairperson of the Investment Committee, attend a meeting of the Investment Committee by conference call or video conferencing. An Investment Committee representative who is unable to attend a meeting of the Investment Committee may vote in absentia by delivering to the chairperson of the Investment Committee, at least twenty-four (24) hours prior to the
scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

6.7 Disputes Among Investment Committee Members. If the Investment Committee fails: (i) to reach agreement on any matter that such committee is authorized to determine, approve or otherwise act upon after a reasonable opportunity to do so; or (ii) to establish new Funding Curves as provided for in Sections 6.3.3. and 6.3.7; or (iii) to perform other tasks delegated to the Investment Committee by this Agreement or by the Reclamation Oversight Committee, the matter in question shall be subject to the dispute resolution provisions of Section 13.

7.0 RECLAMATION OVERSIGHT COMMITTEE

7.1 Establishment of Reclamation Oversight Committee.

7.1.1 The Participants hereby establish a Reclamation Oversight Committee. The Reclamation Oversight Committee shall remain in existence during the term of this Agreement. The Reclamation Oversight Committee shall have no authority to modify any of the provisions of this Agreement.

7.1.2 During the term of the PPA (or any extension or replacement thereof), the functions and responsibilities of the Reclamation Oversight Committee shall be performed by the Fuels Committee and all references herein to the Reclamation Oversight Committee shall, during the term of the PPA, be deemed to refer to the Fuels Committee.

7.2 Reclamation Oversight Committee Membership. The Reclamation Oversight Committee shall consist of one representative from each Participant who shall be an officer or other authorized representative of a Participant. Any of the Participants may designate an alternate or substitute to act as its representative on the Reclamation Oversight Committee in the absence of the regular representative on the Reclamation Oversight Committee or to act on specified occasions or with respect to specified matters. Each Participant shall notify the other Participants promptly, in writing, of the designation of its representative and alternate representative on the Reclamation Oversight Committee and of any subsequent changes in such designations. During the term of the PPA (or any extension or replacement thereof), the chairperson of the Reclamation Oversight Committee shall be a representative of the Operating Agent. Upon the termination of the PPA, the chairperson of the Reclamation Oversight Committee shall be a representative of the Trust Funds Operating Agent. Each Participant shall be responsible for the costs of its Reclamation Oversight Committee representative, including fees and travel reimbursement.

7.3 Functions and Responsibilities of Reclamation Oversight Committee. The Reclamation Oversight Committee shall have the following functions and responsibilities:
7.3.1 Oversee the Work of the Trust Funds Operating Agent;

7.3.2 Vote as to matters assigned to the Reclamation Oversight Committee by Section 9.2;

7.3.3 Establish goals, timelines and procedures with respect to Reclamation Costs Reviews and perform related functions, as provided for in Section 5.2;

7.3.4 Perform other tasks delegated to the Reclamation Oversight Committee by this Agreement; and

7.3.5 Such other tasks as the Participants shall from time-to-time assign to the Reclamation Oversight Committee.

7.4 Decisions of Reclamation Oversight Committee. Any actions or determinations brought before the Reclamation Oversight Committee shall, except as provided for in the next sentence, require the following vote: (a) more than a sixty-six and two thirds percent (66 2/3%) majority of the shares of the Participants as set out in Section 3.5; and (b) more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Participants. Any actions or determinations brought before the Reclamation Oversight Committee regarding an amendment of any provisions of the UG-CSA that survive the termination or expiration of the UG-CSA, require the following vote: (x) more than an eighty-two percent (82%) majority of the Shares as set out in Section 3.5; and (y) a minimum of sixty-six and two third percent (66 2/3%) majority of the number of individual Participants. Matters approved by the requisite majority of the Reclamation Oversight Committee shall be binding on all Participants. If (i) a Participant’s right to vote has been suspended because of a Default, or (ii) a Participant’s funding of its Trust (Principal Trust Fund or any Make-up Trust Fund) is under review, as provided for in Section 6.3.2, such Participant shall not have a right to vote, and the requisite majorities for actions or determinations of the Reclamation Oversight Committee shall be adjusted in proportion to the number of Reclamation Oversight Committee members whose right to vote has not been suspended or the funding of whose Trust (Principal Trust Fund or Make-up Trust Fund) is not under review.

7.5 Meetings of Reclamation Oversight Committee. The Reclamation Oversight Committee shall meet no less frequently than annually. Special meetings shall be held promptly at the written request of any Participant, such request to be delivered to the chairperson of the Reclamation Oversight Committee. The Reclamation Oversight Committee shall keep written minutes and records of all meetings. Any action or determination made by the Reclamation Oversight Committee shall be reduced to writing and shall become effective when signed by the representatives of the Participants entitled to vote thereon, representing a voting majority of the members of the Reclamation Oversight Committee. Reclamation
Oversight Committee representatives may, by prior arrangement with the chairperson of the Reclamation Oversight Committee, attend a meeting of the Reclamation Oversight Committee by conference call or video conferencing. A Reclamation Oversight Committee representative who is unable to attend a meeting of the Reclamation Oversight Committee may vote in absentia by delivering to the chairperson of the Reclamation Oversight Committee, at least twenty-four (24) hours prior to the scheduled commencement of the meeting, a written statement, including by e-mail or facsimile, identifying the matter to be voted on and how the representative desires to vote.

7.6 **Disputes Among Reclamation Oversight Committee Members.** If the Reclamation Oversight Committee fails: (i) to reach agreement on any matter that such committee is authorized to determine; or (ii) to establish goals, timelines and procedures with respect to Reclamation Costs Reviews or to perform related functions, as provided for in Section 5.2; or (iii) to perform other tasks delegated to the Reclamation Oversight Committee by this Agreement or by the Participants, the matter in question shall be subject to the dispute resolution provisions of Section 13.

8.0 **TRUST FUNDS OPERATING AGENT**

8.1 **Selection of Trust Funds Operating Agent.**

8.1.1 The Participants agree to the selection of a Trust Funds Operating Agent to carry out the responsibilities assigned to the Trust Funds Operating Agent hereunder. The Trust Funds Operating Agent shall be the agent of the Participants and shall exercise only such authority as is conferred upon it by this Agreement.

8.1.2 During the term of the PPA (or any extension or replacement thereof), the functions and responsibilities of the Trust Funds Operating Agent shall be performed by the Operating Agent; all references herein to the Trust Funds Operating Agent shall, during the term of the PPA (or any extension or replacement thereof), be deemed to refer to the Operating Agent and all costs and expenses provided hereunder to be incurred by the Trust Funds Operating Agent shall be billed under the PPA to the Participants as work of the Operating Agent.

8.2 **PNM as Initial Trust Funds Operating Agent.** The Participants hereby appoint PNM as the initial Trust Funds Operating Agent, and PNM agrees to undertake, as the agent of the Participants, and as principal on its own behalf, the performance of the responsibilities assigned herein to the Trust Funds Operating Agent.

8.3 **Responsibilities of the Trust Funds Operating Agent.** The Trust Funds Operating Agent shall have the following responsibilities (the “Work”):
8.3.1 Serve as liaison and focal point for the coordination of all interchanges and discussions among the Participants in connection with matters arising under this Agreement;

8.3.2 With the participation of the other Utility (and the attendance of any Participant Representatives), conduct negotiations and discussions with SJCC in connection with matters arising under the UG-CSA;

8.3.3 With the participation of the other Utility and the Participant Representatives, review all revised estimates of coal reclamation expenses provided by SJCC, and communicate with the Participants in relation thereto;

8.3.4 Upon the delivery of an Adjustment Request by a Participant pursuant to Section 5.3, perform (or cause to be performed) a Reclamation Costs Review and prepare a Final Reclamation Report for submission to the Reclamation Oversight Committee;

8.3.5 With the participation of the other Utility and the Participant Representatives, monitor the operations of SJCC;

8.3.6 After the termination or expiration of the UG-CSA, (i) receive invoices for Reclamation Costs associated with the Utilities’ Reimbursement Obligation from the Utilities as submitted to the Utilities by SJCC; and (ii) review the form and content of such invoices and approve such invoices for payment;

8.3.7 Issue approved invoices to each Participant for payment out of each Participant’s Trust pursuant to the terms of each Participant’s Trust Agreement; appropriate back-up information shall accompany each approved invoice and the Trust Funds Operating Agent shall provide any additional back-up information that a Participant may reasonably request;

8.3.8 Provide summaries and reports to the Participants and to SJCC by February 10 of each year during the term hereof concerning the total amount of funds in the Participants’ Trusts (Principal Trust Fund and any Make-up Trust Funds) as of December 31 of the previous calendar year;

8.3.9 Issue invoices to the Participants for their share of expenses incurred by the Trust Funds Operating Agent in the performance of the Work and for A&G Expenses;

8.3.10 Furnish from its own resources or contract for the procurement of goods or services necessary for the performance of the Work;

8.3.11 Administer, perform and enforce all contracts entered into by the Trust Funds Operating Agent;
8.3.12 Comply with all laws and regulations applicable to its performance of the Work;

8.3.13 Maintain in the name of the Participants and for the purposes of this Agreement an operating account for monies collected in connection with the Work;

8.3.14 Keep and maintain records of monies expended and received, obligations incurred, credits accrued and contracts entered into in the performance of Work hereunder, and provide an annual report of such records to the Participants;

8.3.15 Cooperate with the Investment Committee in the conduct of any audits of a Participant’s compliance with its funding of its Share of the Funding Curves (and, if applicable, Make-up Funding Curves), and to otherwise carry into effect policies established by the Investment Committee and the Reclamation Oversight Committee;

8.3.16 Prepare recommendations covering the matters that may be reviewed and acted upon by the Participants, the Investment Committee and the Reclamation Oversight Committee;

8.3.17 Keep the Participants fully and promptly advised of material changes in conditions or other material developments affecting the implementation of this Agreement and of any Defaults under this Agreement;

8.3.18 Provide the Investment Committee, the Reclamation Oversight Committee, and the San Juan Project Committees (during the term of the PPA and any renewal or replacement thereof), with all records, information and reports that may be relevant to such committees in the performance of their respective responsibilities under this Agreement and under the PPA;

8.3.19 As provided in Section 10, provide copies of any Default Notice, Notification of Intent or Default Declaration to the representatives on the Reclamation Oversight Committee, the persons identified in Section 28.1, and the Trustee of a defaulting Participant’s Trust;

8.3.20 Enforce, by litigation, arbitration, or other means, the obligations of each Participant to fund its Share of the Funding Curves, make Recovery Deposits or Correcting Deposits, fund any required Make-up Trust Fund, or to pay invoices submitted hereunder to the Participants or to their Trustees;
8.3.21 Perform all other obligations and duties that the Participants or the Reclamation Oversight Committee may from time-to-time delegate to the Trust Funds Operating Agent; and

8.3.22 Perform all other obligations and duties that are assigned herein to the Trust Funds Operating Agent or that are reasonably necessary in connection with the performance of its obligations and duties hereunder.

8.4 Annual Budget. Not less than ninety (90) days prior to the beginning of each calendar year, the Trust Funds Operating Agent shall prepare and submit a budget for review and approval for Work to be performed by the Trust Funds Operating Agent for the following calendar year. During the term of the PPA (and any extension or replacement thereof), such submission shall be to the E&O Committee. After the term of the PPA, such submission shall be to the Reclamation Oversight Committee. The E&O Committee or the Reclamation Oversight Committee, as applicable, shall approve the budget not less than thirty (30) days prior to the proposed effective date. In the event such a budget is not so approved, the Trust Funds Operating Agent shall nevertheless continue to perform Work in a diligent manner until a budget has been approved. The E&O Committee or the Reclamation Oversight Committee, as applicable, may at any time during the year approve revisions to a previously approved budget.

8.5 Payment of Reclamation Cost Invoices. To assure timely payment of Reclamation Costs by Participants’ Trustees, the Trust Funds Operating Agent shall bill the Participants, in writing, for Reclamation Costs invoiced by SJCC at least ten (10) business days prior to the date that payment is due SJCC.

8.6 Reimbursement of Costs and Expenses. The Participants shall reimburse the Trust Funds Operating Agent for all costs and expenses incurred by the Trust Funds Operating Agent in its performance of the Work. The Trust Funds Operating Agent shall invoice the Participants for such costs and expenses, including A&G Expenses, by the end of the month following the month in which such costs and expenses were incurred and the Participants shall pay such invoices within ten (10) business days of receipt of the invoice.

8.7 Administrative and General Expenses. During the term of the PPA (including any extension or replacement thereof) A&G Expenses shall be determined in accord with Section 22 of the PPA and Exhibit VI of the PPA, as such section and exhibit may be amended from time-to-time. After the term of the PPA, A&G Expenses shall be determined in a fair and reasonable manner, as agreed by the Participants. A&G Expenses shall be apportioned to the Participants in accordance with the Shares set out in Section 3.5.

8.8 No Fee. The Trust Funds Operating Agent shall receive no fee or profit hereunder, unless otherwise agreed unanimously by the Participants.
8.9 **Liability of Trust Funds Operating Agent.**

8.9.1 The provisions of this Section 8.9 are intended to address limitations on the liability of the Trust Funds Operating Agent acting solely in the capacity of Trust Funds Operating Agent after the termination or expiration of the PPA; to the extent the actions of the Trust Funds Operating Agent are carried out in its capacity as a Utility or a Participant, the limitation of liability provisions in this Section 8.9 are not applicable.

8.9.2 Except for any judgment debt for damage resulting from Willful Action, each Participant hereby extends to the Trust Funds Operating Agent, its employees, officers, directors and agents, its covenant not to execute, levy or otherwise enforce a judgment obtained against the Trust Funds Operating Agent, including recording or effecting a judgment lien, for any direct, indirect or consequential, damage, claim, cost, charge or expense, whether or not resulting from the negligence of the Trust Funds Operating Agent, its employees, officers, directors or agents, or any person or entity whose negligence would be imputed to the Trust Funds Operating Agent arising out of its performance or non-performance hereunder. With respect to the Trust Funds Operating Agent’s liability for Willful Action, such liability shall in no event exceed a total of ten million dollars ($10,000,000) per occurrence; the Participants extend to the Trust Funds Operating Agent, its employees, officers, directors and agents, their covenant not to execute, levy or otherwise enforce a judgment against any of them for any such liability for Willful Action in excess of ten million dollars ($10,000,000) per occurrence. In the event that Participants’ claims made or judgments obtained against the Trust Funds Operating Agent or its employees, officers, directors and agents exceed ten million dollars ($10,000,000) per occurrence, such claims or judgments shall be prorated among the successful Participants consistent with the limitation on Willful Action liability established herein.

8.10 **Resignation of Trust Funds Operating Agent.** The Trust Funds Operating Agent shall serve during the term of this Agreement unless it resigns as Trust Funds Operating Agent by giving notice to the Participants at least one (1) year in advance of the effective date of the resignation. Upon the effective date of such resignation, the other Utility shall become the Trust Funds Operating Agent and shall perform the obligations of the Trust Funds Operating Agent under this Agreement. If the other Utility declines to become the Trust Funds Operating Agent under this Agreement, the Reclamation Oversight Committee shall convene promptly to address the selection of a replacement Trust Funds Operating Agent which may, but need not, be a Participant.

8.11 **Removal of Trust Funds Operating Agent.** The Trust Funds Operating Agent may be removed by the Participants, if, in the judgment of the Participants, their best interests require such removal. Any Participant seeking the removal of the Trust Funds Operating Agent shall serve a notice on each of the
Participants, detailing the reasons why, in the judgment of the initiating Participant, the Trust Funds Operating Agent should be removed. Within thirty (30) days after receipt by the Trust Funds Operating Agent of this written statement, the Trust Funds Operating Agent shall prepare and serve upon the Participants its response, which shall contain a detailed rebuttal of the allegations made in the initiating statement. Within the same thirty (30) day period, any other Participant may also serve upon the Trust Funds Operating Agent and the Participants a statement responding to the allegations in the initiating statement. Within twenty (20) days after service of all such response statements, the Participants shall meet to consider what actions, if any, to take in regard to the removal of the Trust Funds Operating Agent. The Trust Funds Operating Agent may be removed by the vote of more than a sixty-six and two thirds percent (66 2/3%) majority of the Shares of the Participants and more than a sixty-six and two thirds percent (66 2/3%) majority of the number of individual Participants; provided, however, that the Utility that is the Trust Funds Operating Agent shall not be entitled to vote on the issue of its own removal and the requisite voting percentages shall be adjusted in proportion to the number of Participants having a vote on this issue. If the Trust Funds Operating Agent is removed by vote of the Participants, the other Utility shall become the Trust Funds Operating Agent. If the other Utility declines to become the Trust Funds Operating Agent upon such removal, the Reclamation Oversight Committee shall convene promptly to address the selection of a replacement Trust Funds Operating Agent which may, but need not, be a Participant.

9.0 CERTAIN RIGHTS OF NON-UTILITY PARTICIPANTS

9.1 Participant Representatives. Under Section 20.4.1 of the PPA, Participants not signatories to the UG-CSA are granted the collective right to have two (2) representatives present at negotiations and discussions with SJCC. Upon the termination or expiration of the PPA, the Non-Utility Participants shall have the right under this Agreement to collectively designate two (2) representatives (the “Participant Representatives”) who shall have the right to be present at negotiations and discussions with SJCC, including but not limited to negotiations and discussions concerning revised estimates for coal reclamation expenses and revisions to Funding Curves. Any dispute among the Non-Utility Participants regarding the designation of the Participant Representatives shall be subject to the dispute resolution provisions of Section 13. Participant Representatives shall be designated in writing to the Utilities. Participant Representatives may be changed by the giving of written notice to the Utilities. Participant Representatives shall agree in writing to: (i) avoid any conflict of interest that would be detrimental to SJCC reclamation activities; and (ii) maintain all proprietary information obtained through such discussions and negotiations in confidence pursuant to the terms of a confidentiality agreement to be prepared by the Utilities.

9.2 Voting Rights. Any proposed action or determination of the Utilities regarding an amendment of any provisions of the UG-CSA that survive the termination or expiration of the UG-CSA, shall be submitted to the vote of the
representatives on the Reclamation Oversight Committee. Any such action or determination shall require the vote of the Reclamation Oversight Committee representatives as provided for in Section 7.4. The representatives of the Non-Utility Participants on the Reclamation Oversight Committee shall not unreasonably withhold or delay consent to any such amendment to the UG-CSA. The Utilities will not execute any such amendment to the UG-CSA until the requisite vote has been obtained from the Reclamation Oversight Committee; provided, however, that in the event the representatives on the Reclamation Oversight Committee are unable to reach agreement, the Utilities, as signatories to the UG-CSA, shall have the obligation and the responsibility to take such actions as are necessary to allow the coal mine reclamation process to proceed in an orderly fashion. Any disagreements related to actions of either the Utilities or the Non-Utility Participants under this Section 9.2 shall be subject to the dispute resolution provisions of Section 13.

9.3 Opt-out Right. For Defaults occurring after the term of the PPA (or any extension or replacement thereof), a Non-Utility Participant not wishing to pay for a defaulting Participant’s obligations hereunder (other than those obligations described in Section 12.4) may elect to “opt out” of such payment (each such Participant, an “Opt-out Participant”). Opt-out Participants shall have no obligation for a defaulting Participant’s Trust shortfall or for the failure of a Participant’s Trustee to pay an invoice for Reclamation Costs for Defaults occurring after the term of the PPA (or any extension or replacement thereof). To become an Opt-out Participant, the Non-Utility Participant must deliver written notice of its election to become an Opt-out Participant, to the Trust Funds Operating Agent and to the other Participants, by no later than seventy-five (75) days after the Effective Date of this Agreement.

10.0 DECLARATION OF DEFAULT

10.1 Definition of Default. Each Participant shall: (a) fund its Trust under the terms of this Agreement (including making only Permitted Investments in its Trust) and consistent with its Trust Agreement; (b) make any required Recovery Deposits or Correcting Deposits; (c) establish and fund any Make-up Trust Fund(s) required by this Agreement to be established and funded; (d) cause the payment of its Share of the Utilities’ Reimbursement Obligation pursuant to invoices for Reclamation Costs rendered to the Participant; (e) pay for its Share of the Work; and (f) carry out all other performances, duties and obligations agreed to be paid or performed by it pursuant to this Agreement. A failure of such performance hereunder is a Default under this Agreement and, during the term of the PPA (or any extension or replacement thereof), is also a default under the PPA with all of the consequences for a default set out in the PPA.

10.2 Default Notice. If the Trust Funds Operating Agent (either on its own motion or at the suggestion of a Participant or SJCC) deems a Participant to be in Default, the Trust Funds Operating Agent shall serve upon the defaulting Participant a written notice of default (the “Default Notice”). The Trust Funds Operating Agent shall
also serve a copy of the Default Notice on: (i) the representatives on the Reclamation Oversight Committee; (ii) all persons entitled to receive notices under Section 28.1; and (iii) the Trustee of the defaulting Participant’s Trust. The Default Notice shall specify the existence, nature and extent of the Default.

10.3 Cure of Default. Upon receipt of the Default Notice, the defaulting Participant shall: (a) pay any monies due under this Agreement (including funding of its Trust (Principal Trust Fund and any Make-up Trust Fund(s) and making any required Recovery Deposits or Correcting Deposits) within fifteen (15) days; or (b) commence within fifteen (15) days the performance of any non-monetary obligation and continue thereafter the diligent completion of such non-monetary obligation.

10.4 Protest of Default. If the defaulting Participant disputes a Default Notice, such Participant shall nonetheless pay the disputed payment or commence performance of the disputed obligation, but may do so under protest (the “Protest”). The Protest shall be in writing, shall accompany the disputed payment or precede the commencement of performance of the disputed obligation(s), and shall specify the reason upon which the Protest is based. Copies of the Protest shall be served by the defaulting Participant on the Trust Funds Operating Agent and also on: (i) the representatives on the Reclamation Oversight Committee; (ii) all persons entitled to receive notices under Section 28.1; and (iii) the Trustee of the defaulting Participant’s Trust. Within seven (7) days after the service of the Protest, authorized representatives of the Participants shall meet, in person or by conference call or video conference, to address the Protest and to determine what actions, if any, to take as a result of the Protest.

10.5 Declaration of Default. If the defaulting Participant fails to cure the Default pursuant to Section 10.3, or protests the Default Notice pursuant to Section 10.4 but fails to timely pay the disputed payment or commence performance of the disputed obligation, the Trust Funds Operating Agent shall notify the defaulting Participant in writing of the Trust Funds Operating Agent’s intent to declare the defaulting Participant in Default unless there is a prompt cure of the Default (“Notification of Intent”). The Notification of Intent shall afford the defaulting Participant a minimum of fifteen (15) additional days after the giving of the Notification of Intent to cure the Default. The pendency of a Protest shall not prevent the Trust Funds Operating Agent from issuing a Notification of Intent. If the Default has not been cured within the period of time identified in the Notification of Intent, the Trust Funds Operating Agent may give written notice to the defaulting Participant declaring that the defaulting Participant is in Default (the “Default Declaration”). The Trust Funds Operating Agent shall serve a copy of the Notification of Intent and of the Default Declaration on: (i) the representatives on the Reclamation Oversight Committee; (ii) all persons entitled to receive notices under Section 28.1; and (iii) the Trustee of the defaulting Participant’s Trust. The pendency of a Protest shall not prevent the Trust Funds Operating Agent from making a Default Declaration.
10.6 Defaulting Participant’s Loss of Rights. Upon delivery of the Default Declaration, all rights of the defaulting Participant to vote on the Investment Committee and the Reclamation Oversight Committee shall be suspended for the duration of the Default.

10.7 No Stay for Arbitration. A demand for arbitration or other dispute resolution procedure shall not stay: (i) the right of the Trust Funds Operating Agent to issue a Default Notice, a Notification of Intent or a Default Declaration; or (ii) the suspension of the rights of a defaulting Participant.

10.8 Termination of Default. The Default shall be terminated, and the full rights of the defaulting Participant restored when: (i) the Default has been cured and all costs incurred by the non-defaulting Participants resulting from the Default of the defaulting Participant, including monies placed by non-defaulting Participants into Make-up Trust Funds and expended by the Trustee, have been reimbursed in full by the defaulting Participant, with interest thereon at the Prime Rate plus two percent (2%) per annum or the maximum legal rate of interest, whichever is less, from the date of payment to the date of reimbursement; (ii) other arrangements acceptable to the non-defaulting Participants have been made; or (iii) the defaulting Participant prevails in an arbitration or other legal proceeding in which the default status of the defaulting Participant is at issue.

10.9 Other Rights. The rights and remedies provided in this Agreement shall be in addition to any rights and remedies the Trust Funds Operating Agent and the non-defaulting Participants have in law or equity.

10.10 No Waiver. No waiver by the Trust Funds Operating Agent or by a non-defaulting Participant of its rights with respect to a Default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall be effective unless the Trust Funds Operating Agent or the non-defaulting Participant waives in writing its rights and no such waiver shall be deemed to be a waiver with respect to any subsequent default or matter. No delay short of the statutory period of limitations in asserting or enforcing any right hereunder shall be deemed a waiver of such right. The Trust Funds Operating Agent shall not waive any of its rights with respect to a Default under this Agreement without the approval of the Fuels Committee or the Reclamation Oversight Committee, as applicable.

10.11 Effects of Default on Non-Defaulting Participants. The effects of Defaults on non-defaulting Opt-in Participants and Opt-out Participants are addressed in Section 11 with respect to Defaults occurring during the term of the PPA (or any extension or replacement thereof) and in Section 12 with respect to Defaults occurring after the term of the PPA (or any extension or replacement thereof).
11.0 EFFECTS OF DEFAULTS DURING TERM OF PPA

11.1 Shortfall in Trust Funds. If a Default Declaration for a Default occurring during the term of the PPA (or any extension or renewal thereof) arises from the defaulting Participant’s failure to fund its Trust as required herein, including its failure to make any required Recovery Deposits or Correcting Deposits, then each non-defaulting Participant shall, with respect to such Defaults occurring during the term of the PPA (or any extension or replacement thereof), fund a pro-rata share of the defaulting Participant’s shortfall in a make-up fund within the non-defaulting Participant’s Trust (“Make-up Trust Fund”). The Make-up Trust Fund shall be funded by each non-defaulting Participant as provided in Sections 4.1, 4.8 and 11.2.

11.2 Make-up Trust Funds. Make-up Trust Funds are segregated sub-accounts to be funded in a non-defaulting Participant’s Trust in a manner consistent with each Participant’s Trust Agreement. When a Default has resulted in a shortfall in the defaulting Participant’s Trust, the Investment Committee shall act promptly to develop and provide to the non-defaulting Participants appropriate Make-up Funding Curves for the Make-up Trust Funds, as provided in Section 6.4. Within thirty (30) days of receipt of a Make-up Funding Curve from the Investment Committee, each non-defaulting Participant shall fund its Make-up Trust Fund to its share of the Make-up Funding Curve target amount for the calendar year in which the Default Declaration was issued. If a defaulting Participant cures its Default, monies in a non-defaulting Participant’s Make-up Trust Fund may be returned to the non-defaulting Participant under Section 4.9 and the terms of that Participant’s Trust Agreement.

11.3 Payment of Defaulting Participant’s Invoices for Reclamation Costs. Reclamation Costs which are the responsibility of a defaulting Participant shall be paid by such Participant’s Trustee until the defaulting Participant’s Trust has been exhausted. Once the defaulting Participant’s Trust has been exhausted, the non-defaulting Participants’ Trustees shall pay a pro-rata share of the defaulting Participant’s Reclamation Cost responsibilities from Make-up Trust Funds. However, after the term of the PPA (or any extension or replacement thereof), upon the exhaustion of any Opt-out Participant’s Make-up Trust Fund, the Opt-out Participant’s share of the defaulting Participant’s unpaid Reclamation Cost responsibilities shall be allocated pro-rata to the Opt-in Participants.

11.4 Failure to Pay Other Costs. If the Default Declaration arises from the defaulting Participant’s failure to pay costs hereunder other than Reclamation Costs, such as the costs of the Trust Funds Operating Agent’s performance of the Work, including applicable A&G Expenses of the Trust Funds Operating Agent, such costs shall be borne by the non-defaulting Participants based on their pro-rata shares.

12.0 EFFECTS OF DEFAULTS OCCURRING AFTER TERM OF PPA

12.1 Opt-in Participants. Opt-in Participants are those Participants that have not elected to become Opt-out Participants. The Utilities may not become Opt-
out Participants. If a Default Declaration for a Default occurring after the term of the PPA (or any extension or replacement thereof) arises from the defaulting Participant’s failure to fund its Trust as required herein, including its failure to make any required Recovery Deposits or Correcting Deposits, then each Opt-in Participant shall, with respect to such Defaults, fund a pro-rata share of the defaulting Participant’s shortfall in a Make-up Trust Fund. The Investment Committee shall act promptly to develop and provide to the Opt-in Participants appropriate Make-up Funding Curves for the Make-up Trust Funds, as provided for in Section 6.4. Upon receipt of a Make-up Funding Curve from the Investment Committee, each Opt-in Participant shall promptly fund its Make-up Trust Fund to its share of the Make-up Funding Curve target amount for the calendar year in which the Default Declaration was issued. If a defaulting Participant cures its Default, monies in an Opt-in Participant’s Make-up Trust Fund may be returned to the Opt-in Participant under Section 4.9 and the terms of that Participant’s Trust Agreement. The pro-rata share of the Opt-in Participants will increase to the extent Non-Utility Participants may have elected to become Opt-out Participants or with the Default of an Opt-in Participant.

12.2 Payment of Defaulting Participant’s Invoices for Reclamation Costs. Reclamation Costs which are the responsibility of a defaulting Participant shall be paid first by such Participant’s Trustee until the defaulting Participant’s Trust has been exhausted; once the defaulting Participant’s Trust has been exhausted, the Opt-in Participants shall pay a pro-rata share of the defaulting Participant’s Reclamation Cost responsibilities either from their (i) Make-up Trust Funds; or (ii) any other source of funds.

12.3 Opt-out Participants. For Defaults occurring after the term of the PPA (or any extension or replacement thereof), Opt-out Participants shall have no obligation for a defaulting Participant’s failure to fund its Trust as required herein, including the defaulting Participant’s failure to make any required Make-up Trust Fund payments, Recovery Deposits or Correcting Deposits or for any unpaid Reclamation Cost responsibilities of a defaulting Participant.

12.4 Failure to Pay Other Costs. If the Default Declaration arises from the defaulting Participant’s failure to pay costs hereunder other than Reclamation Costs, such as the costs of the Trust Funds Operating Agent’s performance of the Work, including applicable A&G Expenses of the Trust Funds Operating Agent, such costs shall be borne by the non-defaulting Participants based on their pro-rata shares.

13.0 DISPUTE RESOLUTION

13.1 Amicable Resolution. If a dispute between or among any of the Participants should arise under or in relation to this Agreement, or to the rights or obligations of the Participants under this Agreement, executive representatives of the Participants with authority to resolve the dispute shall attempt to negotiate a timely and amicable resolution of the dispute. Any Participant may initiate the negotiation process
by written notice ("Negotiation Notice") to the other Participants, which Negotiation Notice shall describe the initiating Participant’s position regarding the dispute. The executive representatives of the Participants shall meet at a mutually acceptable time and place within fifteen (15) days after the date of the Negotiation Notice (or such other period as they may agree to). If an executive of a Participant intends to be accompanied by counsel, the other Participants shall be given at least three (3) business days’ written notice of such intent and may also be accompanied by counsel. All negotiations are confidential and shall be treated as compromise and settlement negotiations under New Mexico law. The Participants may agree to mediation. If the executive representatives of the Participants are unable to resolve the dispute within sixty (60) days (or such other period as they may agree to) after the date of the Negotiation Notice, any Participant(s) may call for submission of the dispute to arbitration, which call shall be binding upon all of the other affected Participant(s) except as provided in Section 13.8.

13.2 Call for Arbitration. The Participant(s) calling for arbitration shall give written notice to all other Participants, setting forth in such notice in adequate detail the entity(ies) against whom relief is sought, the nature of the dispute, the amount or amounts, if any, involved in such dispute, and the remedy sought by such arbitration proceedings. Within twenty (20) days after receipt of such notice, any other Participant(s) involved may, by written response to the first Participant(s), as well as the other Participant(s), submit its or their own statement of the matter at issue and set forth in adequate detail additional related matters or issues to be arbitrated. Thereafter, the Participant(s) first submitting its or their notice of the matter at issue shall have ten (10) days in which to submit a written rebuttal statement, copies of which shall be provided to all other Participants.

13.3 Selection of Arbitrators. The Participants involved in the arbitration shall request a panel of seven (7) arbitrators with names and biographical sketches and specific qualifications relating to the case to be heard from the American Arbitration Association ("AAA") (or similar organization if the AAA should not exist at that time). The Participants involved in the arbitration shall each advise the AAA of its order of preference by numbering from one (1) to seven (7) each name on the panel and submitting the numbered lists in writing to the AAA. The three (3) names with the lowest combined numbers shall be appointed as the arbitrators to hear the case. In the event more than one name of the list has the same lowest combined score, the tie shall be broken by lot. Should the Parties agree that one panel is insufficient to obtain an arbitration panel with the required qualifications, an additional panel of arbitrators may be requested from the AAA. All arbitrators shall be persons skilled and experienced in the field that gives rise to the dispute, and no person shall be eligible for appointment as an arbitrator who is an officer or employee of any of the Participants to the dispute or is otherwise interested in the matter to be arbitrated.

13.4 Arbitration Procedures. Except as otherwise provided in this Section 13 or otherwise agreed by the Participants to the dispute, the arbitration shall be governed by the rules and practices of the AAA (or rules and practices of a similar
organization if the AAA should not exist at that time) from time-to-time in force, except that if such rules and practices, as modified herein, shall conflict with New Mexico Rules of Civil Procedure or any other provisions of New Mexico law then in force which are specifically applicable to arbitration proceedings, such New Mexico laws shall govern.

13.5 **Decision of Arbitrators.** The arbitrators shall hear evidence submitted by the respective Participants or group or groups of Participants and may call for additional information, which additional information shall be furnished by the Participant(s) having such information. The decision of a majority of the arbitrators shall be rendered no later than twenty (20) days after the conclusion of the arbitration hearing and shall be binding upon all the Participants and shall be based on the provisions of this Agreement and New Mexico law.

13.6 **Enforcement of Award.** This agreement to arbitrate shall be specifically enforceable and the award of the arbitrators shall be final and binding upon the Participants to the extent provided by the laws of the State of New Mexico. Any award may be filed with the clerk of any court having jurisdiction over the Participants or any of them against whom the award is rendered, and, upon such filing, such award, to the extent permitted by the laws of the jurisdiction in which said award is filed, shall be specifically enforceable or shall form the basis of a declaratory judgment or other similar relief.

13.7 **Fees and Expenses.** Each Participant or group of Participants shall be responsible for the fees and expenses of the arbitrator selected by that Participant or group of Participants, unless the decision of the arbitrators shall specify some other apportionment of such fees and expenses. The fees and expenses of the neutral arbitrator(s) shall be shared among the affected Participants equally, unless the decision of the arbitrators shall specify some other apportionment of such fees and expenses. All other expenses and costs of the arbitration, including attorney fees and expert witness fees, shall be borne by the Participant(s) incurring the same.

13.8 **Legal Remedies.** In the event that any Participant(s) shall attempt to institute or to carry out the provisions herein set forth in regard to arbitration, and such Participant(s) shall not be able to obtain a valid and enforceable arbitration decree, such Participant(s) shall be entitled to seek legal remedies in a court having jurisdiction in the premises, and the provisions in this Section 13 referring to arbitration decisions shall then be deemed applicable to final decisions of such court. If for any reason a Participant is prohibited by law from participating in binding arbitration, the disputing Participants shall resolve the matter by mediation or by litigation in a court of competent jurisdiction.

13.9 **Rights of SJCC.** No arbitration as between the Participants or the Trust Funds Operating Agent shall affect the rights of SJCC, or the Utilities’ obligations, under the UG-CSA.
13.10 **Prompt Resolution.** The Participants acknowledge the importance of prompt dispute resolution. Accordingly, it is agreed that any arbitration proceeding hereunder shall be scheduled and conducted in such a manner that the decision of the arbitrators is rendered no later than one hundred and eighty (180) days after a call for arbitration is served pursuant to Section 13.2.

### 14.0 **POWER AND AUTHORITY**

14.1 **Requisite Power and Authority.** Each Participant represents and warrants to the other Participants that it has the requisite power and authority to execute this Agreement and to perform the obligations set out in this Agreement. The execution and delivery of this Agreement and the performance of the obligations set out herein have been duly authorized by all necessary action on the part of each Participant. The obligations set out herein will, upon execution hereof by each Participant, be valid and binding obligations of such Participant, enforceable against such Participant in accordance with the terms and conditions hereof, except to the extent that enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors’ rights and by equitable principles, regardless of whether enforcement is sought in equity or at law.

14.2 **No Violation.** Each Participant represents and warrants to the other Participants that the execution and delivery of this Agreement by such Participant, and the performance by such Participant of its obligations hereunder, will not violate any applicable law or regulation by which the Participant is bound, any applicable court or administrative order or decree, or any agreement or contract to which it is a party.

### 15.0 **NO JOINT VENTURE OR PARTNERSHIP**

The covenants, obligations and liabilities of the Participants are, except as otherwise specifically provided herein, intended to be several and not joint or collective, and nothing herein contained shall ever be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any one or more of the Participants. Each Participant shall be individually responsible for its own covenants, obligations and liabilities as herein provided. No Participant or group of Participants shall be under the control of or shall be deemed to control any other Participant or the Participants as a group. No Participant shall be the agent of or have a right or power to bind any other Participant without its express written consent, except as expressly provided herein.

### 16.0 **SUCCESSORS AND ASSIGNS**

16.1 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Participants and their respective authorized successors and assigns.
16.2 Third Party Beneficiaries. In recognition of the fact that this Agreement is entered into to satisfy the Utilities’ Assurance Obligation, SJCC is an intended third party beneficiary under this Agreement; provided, however, that if SJCC and the Utilities enter into a contractual arrangement under which another party assumes the reclamation liability that is the subject of the Utilities’ Reimbursement Obligation, then SJCC will cease to be a third party beneficiary hereunder. Except as provided in the previous sentence, nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person not a party to this Agreement.

16.3 No Right to Mortgage. No Participant shall have the right to mortgage, create or provide for a security interest in or convey in trust its rights, titles and interests in a Trust created pursuant to this Agreement, or in funds held in a Trust created pursuant to this Agreement, to a trustee or trustees under deeds of trust, mortgages or indentures, or to secured parties under a security agreement, as security for their present or future bonds or other obligations or securities, and to any successors or assigns thereof.

16.4 Prior Written Consent. No Participant may assign its rights, or delegate its obligations, under this Agreement, including as provided for in Section 17, without the prior written consent of the other Participants, which consent shall not be unreasonably delayed or denied. Such prior consent of the other Participants shall not be required in the event of the transfer or assignment by a Participant of its interest in the San Juan Project to a duly authorized successor; provided, however, that such successor shall first have agreed in writing with the remaining Participants to fully perform and discharge all of the obligations hereunder of the assigning Participant and the remaining Participants shall have agreed in writing to the substitution of the successor, in place of the assigning Participant, which consent shall not be unreasonably delayed or denied.

17.0 OPT-IN/OPT-OUT ELECTION OF SUCCESSORS AND Assigns

17.1 Protection of Participants’ Rights. The Participants acknowledge that an assigning Participant’s (“Assigning Participant”) assignee may not wish to elect the same status, of an Opt-in Participant or an Opt-out Participant, as the Assigning Participant. The assignee of an Opt-in Participant (other than a Utility) may elect to become an Opt-out Participant; or the assignee of an Opt-out Participant may elect to become an Opt-in Participant. The Participants desire to accommodate such assignee elections in a manner that will: (i) not unduly restrict or interfere with an Assigning Participant’s ability to transfer or assign its rights, titles and interests in the San Juan Project and under this Agreement; and (ii) assure that the rights and expectations of the non-assigning Participants, as well as SJCC and the Utilities, are fully protected by providing for appropriate levels of funding of a Trust established by the assignee of the Assigning Participant.
17.2 **Assignee’s Right of Election.** An assignee of an Assigning Participant shall have the right to elect to become an Opt-in Participant or an Opt-out Participant, irrespective of the Assigning Participant’s status as an Opt-in Participant or an Opt-out Participant, subject to compliance with the provisions of Sections 17.3, 17.4 and 17.5; provided, however, that the assignee of an assigning Utility must be an Opt-in Participant. As a condition of the consummation of any transaction in which the Assigning Participant assigns its rights, titles and interests in the San Juan Project and under this Agreement to an assignee (a “Purchase Transaction”), the assignee shall have executed all legal instruments necessary to become, and to assume the rights, obligations and responsibilities of, an Opt-in Participant or an Opt-out Participant, as applicable. Among the contracts that the assignee must have executed in connection with a Purchase Transaction is a Trust Agreement with a financial institution, consistent with the requirements of this Agreement. Pursuant to such Trust Agreement, the assignee shall establish and fund a Trust with a Principal Trust Fund and one or more Make-up Trust Funds, as applicable.

17.3 **Assignee’s Funding of Principal Trust Fund.** The assignee shall, effective as of the date of the consummation of the Purchase Transaction, fully fund its Principal Trust Fund to the appropriate Funding Target Amount. If the assignee elects to become an Opt-in Participant, it shall satisfy its Share of the Funding Target Amount set out in Exhibit 1A for December 31 of the year in which the consummation of the Purchase Transaction takes place. If the assignee elects to become an Opt-out Participant, it shall satisfy its Share of the Funding Target Amount set out in Exhibit 1C for December 31 of the year in which the consummation of the Purchase Transaction takes place. After the consummation of the Purchase Transaction, the assignee shall maintain such Principal Trust Fund in the same manner as would have been required of the Assigning Participant if the Assigning Participant had originally held the same status as an Opt-in Participant or an Opt-out Participant that the assignee has elected.

17.4 **Assignee’s Funding of Make-up Trust Fund(s).** The assignee shall establish the same number of Make-up Trust Fund(s) as held by the Assigning Participant and shall fund and maintain such Make-up Trust Fund(s) as follows:

17.4.1 For any assignment by an Assigning Participant to an assignee that elects to change from the Assigning Participant’s status as an Opt-in Participant or an Opt-out Participant, consummated at any time, the assignee shall, effective as of the date of the consummation of the Purchase Transaction, fully fund its Make-up Trust Fund(s) to the Target Amount of the Make-up Funding Curve that would have been applicable to the Assigning Participant under the status of an Opt-in Participant or an Opt-out Participant elected by the assignee for December 31 of the year in which the consummation of the Purchase Transaction takes place; and shall maintain such Make-up Trust Fund(s) in the same manner as would have been required of the Assigning Participant if the Assigning Participant had originally held...
the same status as an Opt-in Participant or an Opt-out Participant that the assignee has elected.

17.4.2 For any assignment (i) by an Assigning Participant that is an Opt-in Participant to an assignee that elects to become an Opt-in Participant, consummated at any time, or (ii) for any assignment by an Assigning Participant that is an Opt-out Participant to an assignee that elects to become an Opt-out Participant, consummated before the expiration of the PPA (or any extension or replacement thereof), the assignee shall, effective as of the date of the consummation of the Purchase Transaction, fund its Make-up Trust Fund(s) to the Assigning Participant’s Make-up Funding Target for December 31 of the year in which the consummation of the Purchase Transaction takes place; and shall maintain such Make-up Trust Fund(s) in the same manner that the Assigning Participant was required to maintain.

17.4.3 For any assignment by an Assigning Participant that is an Opt-out Participant to an assignee that elects to become an Opt-out Participant, consummated after the expiration of the PPA (or any extension or replacement thereof) the assignee shall, effective as of the date of the consummation of the Purchase Transaction, fund its Make-up Trust Fund(s) to the level of the Assigning Participant’s Make-up Trust Fund(s) on the date of the consummation of the Purchase Transaction and then maintain such Make-up Trust Fund(s) in the same manner that the Assigning Participant was required to maintain.

17.5 Assigning Participant’s Right of Refund. Upon an assignee’s having: (i) executed all legal instruments necessary to become an Opt-in Participant or an Opt-out Participant, as applicable, as provided for in Section 17.2; (ii) fully funded its Principal Trust Fund to its Share of the applicable Funding Target Amount consistent with Section 17.4; and (iii) fully funded its Share of any applicable Make-up Trust Fund(s) consistent with Section 17.4, the Assigning Participant shall be: (x) released from further obligations under this Agreement; and (y) entitled to a return of all monies remaining in its Principal Trust Fund and Make-up Trust Fund(s).

18.0 AUDIT RIGHTS

Each Participant shall have the right to audit any billings to such Participant or to the Participant’s Trustee by the Trust Funds Operating Agent within three (3) years of the billing giving rise to the audit request. The Trust Funds Operating Agent shall maintain records supporting any billings hereunder for such audit period. The Participant desiring to make such an audit shall provide reasonable advance notice thereof to the Trust Funds Operating Agent and the Trust Funds Operating Agent shall permit such audit to take place during reasonable business hours. If as the result of an audit it is determined that there has been an under- or over-billing, the owing party shall make a refund to the owed party within twenty (20) business days, with interest at the rate specified in Section 10.8.
19.0 UNCONTROLABLE FORCES

No Participant shall be considered to be in default in the performance of any of its obligations hereunder (other than obligations of a Participant to pay costs and expenses and to fully fund its Trust (Principal Trust Fund and any Make-up Trust Fund)) if failure of performance shall be due to uncontrollable forces. The term “uncontrollable forces” shall mean any cause beyond the control of the Participant affected, including but not limited to failure of facilities, flood, earthquake, storm, fire, lightning, epidemic or pandemic, war, riot, civil disturbance, labor dispute, sabotage or act of terrorism, restraint by court order or public authority, or failure to obtain approval from a necessary governmental authority which by exercise of due diligence and foresight such Participant could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a Participant to settle any strike or labor dispute in which it may be involved. Any Participant rendered unable to fulfill any obligation by reason of uncontrollable forces shall promptly notify the other Participants and shall exercise due diligence to remove such inability with all reasonable dispatch.

20.0 INVALIDITY

In the event that any of the terms and conditions of this Agreement, or the application of any such term or condition to any person or circumstance, shall be held invalid by any court or other governmental authority having jurisdiction in the premises, the remainder of this Agreement, and the application of such terms or conditions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

21.0 APPLICABLE LAW

21.1 Compliance with Law. The Participants shall comply with all applicable federal, state and local laws and regulations in the performance of their respective obligations hereunder.

21.2 New Mexico Law. This Agreement is made under and shall be governed by the laws of the State of New Mexico, without regard to any conflicts of law or choice of law principles that would require the application of the law of any other jurisdiction.

22.0 REGULATORY FILINGS

This Agreement shall be subject to filing with, and to such changes or modifications as may from time-to-time be directed by, competent regulatory authority, if any, in the exercise of its discretion.
23.0 ENTIRE AGREEMENT

23.1 Entire Agreement. This Agreement (including all schedules and exhibits hereto), the PPA and the Trust Agreements, constitute the entire agreement and understanding of the Participants with respect to the relevant subject matter. These agreements supersede all other written or oral communications between the Participants concerning the relevant subject matter.

23.2 Modifications. No modification of this Agreement shall be binding unless such modification is in writing and is duly executed by authorized representatives of the Participants.

23.3 PPA Unaffected. Nothing in this Agreement shall be construed to amend or modify any provision of the PPA. The PPA shall continue in full force and effect through the end of its term, including any extension or renewal thereof.

24.0 WAIVER

Any term or condition of this Agreement may be waived at any time by the Participant that is entitled to the benefit thereof, but no such waiver shall be effective unless set out in a written instrument duly executed and delivered by or on behalf of the Participant waiving such term or condition. No waiver by a Participant of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed to be a waiver of the same or of any other term or condition hereof on any future occasion. No delay short of the statutory period of limitations in asserting or enforcing any right hereunder shall be deemed a waiver of such right.

25.0 CONSTRUCTION

This Agreement was negotiated by all Participants, each of which was represented by legal counsel, and this Agreement shall not be construed against any Participant or Participants on the ground that such Participant(s) was the author of this Agreement or of any provision thereof.

26.0 INDEPENDENT COVENANTS

The covenants and obligations set forth in this Agreement are independent covenants, not dependent covenants, and the obligation of a Participant to perform all of the obligations and covenants to be by it kept and performed is not conditioned on the performance by another Participant of all of the covenants and obligations to be kept and performed by it.
27.0 OTHER DOCUMENTS

Each Participant agrees, upon request by another Participant, to make, execute and deliver any and all documents reasonably required to implement the terms of this Agreement.

28.0 NOTICES

28.1 Manner of Giving of Notice. Any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be deemed properly served, given or made (i) when delivered personally or by prepaid overnight courier, with a record of receipt; (ii) on the fourth day if mailed by certified mail, return receipt requested; or (iii) on the day of transmission, if sent by facsimile during regular business hours or the day after transmission, if sent after regular business hours (provided, however, that such facsimile shall be followed on the same day or next business day with the sending of a duplicate notice, demand or request by a nationally recognized prepaid overnight courier with record of receipt), to the persons specified below:

28.1.1 Public Service Company of New Mexico
   c/o Secretary
   Alvarado Square
   Albuquerque, NM  87158

28.1.2 Tucson Electric Power Company
   88 E. Broadway Blvd.
   MS HQE901
   Tucson, AZ  85701
   Attn:  Corporate Secretary

28.1.3 City of Farmington
   c/o City Clerk
   800 Municipal Drive
   Farmington, NM  87401

   With a copy to:

   Farmington Electric Utility System
   Electric Utility Director
   101 North Browning Parkway
   Farmington, NM  87401

28.1.4 M-S-R Public Power Agency
   c/o General Manager
   P. O. Box 4060
   Modesto, CA  95352
28.1.5 Southern California Public Power Authority  
c/o Executive Director  
225 South Lake Ave, Suite 1250  
Pasadena, CA  91101

28.1.6 City of Anaheim  
c/o City Clerk  
200 South Anaheim Boulevard  
Anaheim, CA  92805

with a copy to:

Public Utilities General Manager  
201 South Anaheim Boulevard  
Suite 1101  
Anaheim, CA  92805

28.1.7 Incorporated County of  
Los Alamos, New Mexico  
c/o Utilities Manager  
P.O. Drawer 1030  
170 Central Park Square  
Los Alamos, NM  87544

28.1.8 Utah Associated Municipal Power Systems  
c/o General Manager  
155 North 400 West  
Suite 480  
Salt Lake City, UT  84103

28.1.9 Tri-State Generation and Transmission  
Association, Inc.  
c/o Executive Vice President and General Manager  
1100 West 116th Avenue  
Westminster, CO  80234  
Or P. O. Box 33695  
Denver, CO  80233

For purposes of overnight courier service, Tri-State’s address shall be:

Tri-State Generation and Transmission Association, Inc.  
c/o Executive Vice President and General Manager  
3761 Eureka Way  
Frederick, CO  80516
28.2 Notices to SJCC. Any notices provided hereunder to be delivered or given to SJCC shall be provided to the persons specified below:

28.2.1 San Juan Coal Company
300 West Arrington, Suite 200
Farmington, NM  87401
Attn: President

With a copy addressed as follows:

San Juan Coal Company
P.O. Box 155
Fruitland, NM  87416
Attn: San Juan Mine Manager

28.3 Changes in Designation. A Participant or SJCC may, at any time or from time-to-time, by written notice to the other Participants and SJCC, change the designation or address of the person so specified as the one to receive notices pursuant to this Agreement.

29.0 CAPTIONS AND HEADINGS

The captions and headings appearing in this Agreement are inserted merely to facilitate reference and shall have no bearing upon the interpretation of the provisions hereof.

30.0 EFFECT OF MUNICIPAL LAW

30.1 Farmington and LAC. Farmington (and the Farmington Electric Utility System) and LAC are governmental entities whose liability is limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, and any liability or indemnity assumed by Farmington or the Farmington Electric Utility System or LAC in this Agreement shall be limited by the provisions of the New Mexico Tort Claims Act. Nothing in this Agreement is intended to create or shall be construed or applied to create any obligation, agreement, covenant or promise to indemnify, hold harmless or defend declared by law, including without limitation, NMSA 1978, §§ 56-7-1 and 56-7-2, as amended, to be against public policy, void and unenforceable. Notwithstanding any other provision of this Agreement, the payment for all purchases, fees or charges made by Farmington and LAC under this Agreement shall be made from the revenues of Farmington’s and/or LAC’s Electric Utility System. In no event shall the obligation to pay under this Agreement be considered an obligation against the general faith and credit or general taxing power of Farmington or LAC.

30.2 Anaheim and M-S-R. The City of Anaheim (which includes its Public Utilities Department) and M-S-R are governmental entities whose liability is limited
by the California Government Claims Act (Government Code §§ 810 – 998.3) and any liability or indemnity assumed by Anaheim or M-S-R in this Agreement shall be limited by the provisions of the California Government Claims Act. Nothing in this Agreement is intended to create or shall be construed or applied to create any obligation, agreement, covenant or promise to indemnify, hold harmless or defend which is against public policy, void and unenforceable. Notwithstanding any other provision of this Agreement, the payment for all purchases, fees or charges made by Anaheim or M-S-R under this Agreement shall be made from the revenues of M-S-R or the City of Anaheim Electric System surplus revenues collected for this purpose. In no event shall the obligation to pay under this Agreement be considered an obligation against the general faith and credit or general taxing power of Anaheim or of M-S-R or any of the members of M-S-R.

31.0 COUNTERPARTS

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the Participants to the aggregated counterparts had signed the same instrument. Without limiting the manner in which this Agreement may be executed and delivered, a Participant shall be considered to have fully executed and delivered this Agreement by executing a counterpart of this Agreement and sending the execution page by facsimile or other electronic means to the other Participants.

IN WITNESS WHEREOF, the Participants, by their duly authorized representatives, have caused this Agreement to be made as of the date first set forth above.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: ___________________________
Its: ___________________________
Dated: ________________________

TUCCSON ELECTRIC POWER COMPANY

By: ___________________________
Its: ___________________________
Dated: ________________________

THE CITY OF FARMINGTON, NEW MEXICO

By: ___________________________
Its: ___________________________
Dated: ________________________
M-S-R PUBLIC POWER AGENCY
By: __________________________
Its: __________________________
Dated: _______________________

THE INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO
By: __________________________
Its: __________________________
Dated: _______________________

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
By: __________________________
Its: __________________________
Dated: _______________________

THE CITY OF ANAHEIM
By: __________________________
Its: __________________________
Dated: _______________________

UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS
By: __________________________
Its: __________________________
Dated: _______________________

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.
By: __________________________
Its: __________________________
Dated: _______________________
STATE OF NEW MEXICO )
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this _____ day of _______ 2012, by ______________________________ of Public Service Company of New Mexico, a New Mexico corporation, on behalf of the corporation.

Notary Public

My commission expires:

________________________

STATE OF ARIZONA )
COUNTY OF PIMA )

This instrument was acknowledged before me on __________, 2012, by ______________________________ as ______________________ of Tucson Electric Power Company, an Arizona corporation, on behalf of the corporation.

Notary Public

My commission expires:

________________________
STATE OF NEW MEXICO  
COUNTY OF SAN JUAN  

This instrument was acknowledged before me on _________, 2012, by ______________________, as ______________________ of The City of Farmington, New Mexico, a New Mexico municipal corporation, on behalf of the municipal corporation.

Notary Public

My commission expires:

________________________

---

STATE OF CALIFORNIA  
COUNTY OF STANISLAUS  

This instrument was acknowledged before me on _________, 2012, by ______________________, as ______________________ of M-S-R Public Power Agency, a California joint powers agency, on behalf of said joint powers agency.

Notary Public

My commission expires:

________________________
STATE OF NEW MEXICO )
 )ss.
COUNTY OF LOS ALAMOS )

This instrument was acknowledged before me on __________, 2012, by
____________________, as ______________________ of The Incorporated County
of Los Alamos, New Mexico, a New Mexico Class H County, on behalf of said
county.

____________________
Notary Public

My commission expires:

____________________

STATE OF CALIFORNIA )
 )ss.
COUNTY OF LOS ANGELES )

This instrument was acknowledged before me on __________, 2012, by
____________________, as ______________________ of Southern California
Public Power Authority, a California joint powers agency, on behalf of said joint
powers agency.

____________________
Notary Public

My commission expires:

____________________
STATE OF CALIFORNIA )
 )ss.
COUNTY OF ORANGE )

This instrument was acknowledged before me on __________, 2012, by 
____________________, as ______________________ of the City of Anaheim, a 
California municipal corporation, on behalf of the said municipal corporation.

________________________
Notary Public

My commission expires:

________________________

STATE OF UTAH )
 )ss.
COUNTY OF SALT LAKE )

This instrument was acknowledged before me on __________, 2012, by 
____________________, as ______________________ of Utah Associated 
Municipal Power Systems, a political subdivision of the State of Utah, on behalf of 
said entity.

________________________
Notary Public

My commission expires:

________________________
STATE OF COLORADO  

COUNTY OF ADAMS  

This instrument was acknowledged before me on ________, 2012, by ______________________, as ______________________ of Tri-State Generation and Transmission Association, Inc., a Colorado cooperative corporation, on behalf of the said cooperative corporation.

________________________________________
Notary Public

My commission expires:

________________________________________
EXHIBIT 1A: FUNDING CURVES FOR 70%/30% EQUITY/FIXED INCOME PORTFOLIO

Note: Exhibit 1A is subject to adjustment as provided for in this Agreement.

<table>
<thead>
<tr>
<th>Year (Year End)</th>
<th>Funding Target Curve (Year End)</th>
<th>Funding Floor Curve (Year End)</th>
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</thead>
<tbody>
<tr>
<td>2008</td>
<td>$1,232,486</td>
<td>$985,989</td>
</tr>
<tr>
<td>2009</td>
<td>$2,569,134</td>
<td>$2,055,307</td>
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<tr>
<td>2010</td>
<td>$4,018,747</td>
<td>$3,214,998</td>
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<tr>
<td>2011</td>
<td>$5,590,873</td>
<td>$4,472,698</td>
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<tr>
<td>2012</td>
<td>$7,295,865</td>
<td>$5,836,692</td>
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<td>2013</td>
<td>$9,144,954</td>
<td>$7,315,963</td>
</tr>
<tr>
<td>2014</td>
<td>$11,150,315</td>
<td>$8,920,252</td>
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<tr>
<td>2015</td>
<td>$13,325,158</td>
<td>$10,660,127</td>
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<tr>
<td>2016</td>
<td>$15,683,806</td>
<td>$12,547,045</td>
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<tr>
<td>2017</td>
<td>$18,241,792</td>
<td>$14,593,434</td>
</tr>
<tr>
<td>2018</td>
<td>$19,287,970</td>
<td>$15,430,376</td>
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<tr>
<td>2019</td>
<td>$20,405,221</td>
<td>$16,324,177</td>
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<tr>
<td>2020</td>
<td>$21,598,947</td>
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<td>2021</td>
<td>$23,202,593</td>
<td>$18,562,074</td>
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<td>2022</td>
<td>$24,934,006</td>
<td>$19,947,205</td>
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<td>2023</td>
<td>$26,803,715</td>
<td>$21,442,972</td>
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<td>2024</td>
<td>$28,823,126</td>
<td>$23,058,501</td>
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<td>2025</td>
<td>$31,004,599</td>
<td>$24,803,679</td>
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<td>2026</td>
<td>$33,361,531</td>
<td>$26,689,224</td>
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<td>2027</td>
<td>$36,181,046</td>
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<td>2028</td>
<td>$37,858,052</td>
<td>$22,286,442</td>
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<td>2029</td>
<td>$30,212,447</td>
<td>$24,169,957</td>
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<td>2030</td>
<td>$32,765,820</td>
<td>$26,212,656</td>
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<td>2031</td>
<td>$35,534,990</td>
<td>$28,427,992</td>
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<td>2032</td>
<td>$38,538,192</td>
<td>$30,830,554</td>
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<td>2033</td>
<td>$41,795,207</td>
<td>$35,107,974</td>
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<td>$45,327,486</td>
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<td>2035</td>
<td>$49,158,291</td>
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<td>2036</td>
<td>$53,312,853</td>
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<td>2037</td>
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<td>2044</td>
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Exhibit 1B: Funding Curves for Fixed Income Portfolio

Note: Exhibit 1B is subject to adjustment as provided in this Agreement.

<table>
<thead>
<tr>
<th>Year</th>
<th>Funding Target Curve (Year End)</th>
<th>Funding Floor Curve (Year End)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008 $2,766,420</td>
<td>$2,213,136</td>
<td></td>
</tr>
<tr>
<td>2009 $5,661,559</td>
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</tr>
<tr>
<td>2010 $8,691,406</td>
<td>$6,953,125</td>
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<tr>
<td>2011 $11,862,229</td>
<td>$9,489,783</td>
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<tr>
<td>2012 $15,180,587</td>
<td>$12,144,470</td>
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<tr>
<td>2013 $18,653,345</td>
<td>$14,922,676</td>
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<tr>
<td>2014 $22,287,687</td>
<td>$17,830,149</td>
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<tr>
<td>2015 $26,091,131</td>
<td>$20,872,905</td>
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<td>2016 $30,071,545</td>
<td>$24,057,236</td>
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<td>2017 $34,237,165</td>
<td>$27,389,732</td>
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<td>2018 $35,343,432</td>
<td>$28,274,746</td>
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<td>2019 $36,484,137</td>
<td>$29,187,309</td>
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<tr>
<td>2020 $37,660,285</td>
<td>$30,128,228</td>
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<td>2021 $39,194,732</td>
<td>$31,355,785</td>
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<td>2022 $40,792,950</td>
<td>$32,634,360</td>
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<td>2023 $42,457,639</td>
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<td>2024 $44,191,618</td>
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<td>2025 $45,997,823</td>
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<td>2026 $47,879,319</td>
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<td>2027 $50,107,096</td>
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<td>2028 $41,258,814</td>
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<td>2029 $43,178,546</td>
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<td>2030 $45,187,600</td>
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<td>2031 $47,290,134</td>
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<td>2035 $56,725,145</td>
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<td>2044 $2,911,687</td>
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<td>2049 $592,440</td>
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Exhibit 1C: Fixed Income Portfolio Funding Curve with 3% Risk Adjustment

Note: Exhibit 1C is subject to adjustment as provided in this Agreement.

<table>
<thead>
<tr>
<th>Year</th>
<th>Funding Target Curve with 3% Risk Adj. Post 2021</th>
<th>Funding Floor Curve with 3% Risk Adj. Post 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
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EXHIBIT 2

PERMITTED INVESTMENTS

Consistent with Section 4.2 of the Agreement, the following Permitted Investments standards are established for investments in the Participants’ Trusts. These standards shall apply until such time as they may be amended as provided for in the Agreement.

Each Participant shall invest the funds in its Trust pursuant to its investment objectives, risk tolerance and policies, if any. To the extent the Participant exercises discretion in the investment of such funds, the investments shall be prudent, reasonably diversified, and shall be demonstrably capable of liquidation to provide funds for the payment of Reclamation Costs hereunder. Trust funds shall be maintained and invested only in Permitted Investments. Permitted Investments include any of the following:

A. Opt-out Participants’ Fund Investments Criteria and Permitted Investments

1. Cash and Cash Equivalents. Cash and cash equivalents shall include (i) legal tender of the United States of America and (ii) deposits in federally insured national or state banks that are payable on demand.

2. Acceptable Debt Securities. Acceptable debt securities include:

   a. Obligations of the United States of America, which are taken into consideration for purposes of determining the public debt limit of the United States of America;

   b. Obligations issued or guaranteed by a person controlled or supervised by and acting as an instrumentality of the United States of America pursuant to authority granted by the Congress of the United States of America, including, without limitation, obligations of the Federal National Mortgage Association, Federal Intermediate Credit Bank, Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation and Government National Mortgage Association;

   c. Commercial paper maturing within two hundred seventy (270) days of the highest ranking or of the highest letter and number rating as provided for by at least two Nationally Recognized Statistical Rating Organizations (“NRSRO”);

   d. Deposit accounts (which may be represented by certificates of deposit) payable on demand or maturing within three hundred ninety-seven (397) days, in federally insured national or state banks; provided, however, if the aggregate amount of such deposit accounts in a bank is one million dollars ($1,000,000) or more,
such bank shall have combined capital and surplus, as of its last report of condition, exceeding two hundred and fifty million dollars ($250,000,000) and a senior unsecured debt rating of investment grade;

e. Repurchase agreements, fully secured [and delivery accepted] by any of the foregoing obligations or securities, maturing within ninety-two (92) days with any federally insured national or state bank or any other financial institution that is a nationally recognized dealer that reports to the Market Reports Division of the Federal Reserve Bank of New York; provided, however, if the aggregate face amount of such repurchase agreements with an issuer is one million dollars ($1,000,000) or more, the issuer shall have combined capital and surplus exceeding two hundred and fifty million dollars ($250,000,000) and a senior unsecured debt rating of investment grade;

f. Bonds issued by any state, any possession of the United States of America, the District of Columbia, or any political subdivision thereof, any state agency or any municipal corporation that are rated A2/A/A or better by Moody’s Investor Service (“Moody’s”), Standard & Poor’s Corporation (“S&P”), Fitch Ratings (“Fitch”) or other NRSRO or, if not rated by any such service, are given a rating comparable to or better than the aforementioned ratings by the investment manager engaged by a Participant to manage the investments of its Trust; and

g. Bankers acceptances with a maximum maturity of one hundred eighty (180) days issued by qualified banks which have a long term debt rating of A2/A/A or higher by Moody’s, S&P or Fitch.

3. Pooled Funds. Acceptable pooled funds are funds that are invested in what are otherwise considered Permitted Investments listed above for an Opt-out Participant and that are Securities and Exchange Commission (“SEC”)-registered mutual funds, bank commingled funds, or pooled funds of registered investment advisors whose portfolio is designed to track a fixed income market index.

4. Interests in Property. Acceptable interests in property are those debt securities issued by any governmental agency secured by real and/or personal property pledged as collateral.

5. Other Permitted Investments. Other Permitted Investments are those investments not included in the foregoing paragraphs 1 through 4, above, that the Investment Committee shall have approved.
B. Opt-in Participants’ Fund Investments Criteria and Permitted Investments

In addition to the Permitted Investments in Section A, above, for Opt-out Participants, Opt-in Participants may also be invested in the following:

1. **Equity Securities.** Equity securities are high-quality equity securities (i.e., common, preferred or preference stock) listed on a major domestic or international stock exchange or traded on a nationally recognized trading network.

2. **Corporate Debt Securities.** Bonds issued by a private corporation rated A2/A/A or better by Moody’s, S&P, Fitch or other NRSRO or, if not rated by any such service, are given a rating comparable to or better than the aforementioned ratings by the investment manager engaged by a Participant to manage the investments in its Trust.

3. **Derivatives.** Derivative instruments, defined as financial instruments whose value is derived, in whole or in part, from the value of any one or more underlying securities or assets, an index of securities or assets, or a risk factor.
   a. Derivatives include futures contracts, forward contracts, swaps and all forms of options, but shall not include a broader range of securities including mortgage backed securities, structured notes, convertible bonds, and exchange traded funds (“ETFs”).
   b. The management of the derivatives instrument(s) must be outside the administrative control of the Participant.
   c. Any counterparty in an “over-the-counter” derivative transaction with the Trust must have a credit rating no lower than A2/A/A from Moody’s, S&P or Fitch, respectively. Should the credit rating of a counterparty be downgraded below the aforementioned ratings, the total effective exposure of a derivative position shall be excluded from the Trust’s liquidation value.
   d. The use of derivatives shall not be used for speculation but with the intent to hedge risk in portfolios or to implement investment strategies more effectively and at a lower cost than would be possible in the cash markets.
   e. Derivative transactions, which result in the creation of economic leverage, are prohibited. Economic leverage is defined as a net dollar exposure to assets in excess of the dollar amount of invested capital as measured by current market value.

4. **Private Real Estate Investments.** Trusts may invest in real estate assets, either directly or through a fund-of-funds, limited partnership, joint venture or other pooled investment funds.
5. **Commodities.** Trusts are prohibited from investing directly in commodity assets. Trusts may invest in commodity assets through a common or collective fund, ETF, or with the use of derivatives.

6. **Pooled Funds.** Pooled Funds are funds that are invested in what are otherwise considered permitted investments and that are SEC-registered mutual funds, bank commingled funds, or pooled funds of registered investment advisors whose portfolio is designed to track an equity or fixed income market index and which may include the use of derivatives.

C. **Exclusions from Permitted Investments.** Investments in the following securities are not permitted by either Opt-out Participants or Opt-in Participants:

1. Securities of any nature issued by any Participant or any parent or affiliated company of any Participant;

2. Securities of any nature issued by any governmental agency or public or private corporation which is in default on the payment of the principal or interest of any outstanding debt or has discontinued the payment of dividends on any of its outstanding equity securities; and

3. Securities of any nature issued by any governmental agency or public or private corporation which has been declared bankrupt or which is the subject of a petition for bankruptcy pending in any court.

D. **Restrictions and Prohibitions.** Subject to the foregoing, Participants shall adhere to the following restrictions and prohibitions in their Trust investments:

1. Transactions with current or prospective related parties ("self dealing"), including but not limited to individuals employed by a Participant, and a parent or affiliated company of a Participant, are prohibited. Securities lending shall not be considered a "self dealing" transaction.

2. The average credit quality of a Trust’s fixed income securities shall be rated an equivalent “A2/A/A” or higher by Moody’s, S&P, or Fitch respectively. If all three rating agencies rate a security, the middle rating shall be used. When two agencies rate a security, the lower rating shall be used. If the security is not rated by one of the three rating agencies listed above, the investment manager’s internal rating shall be used. The market value of unrated securities cannot exceed 5% of the aggregate market value of a Trust’s fixed income allocation. Cash and cash equivalent securities shall be rated an
equivalent “Aaa/AAA/AAA” or “P-1, A-1, F1” by Moody’s, S&P, or Fitch respectively.

3. Securities lending is permitted, provided that the program’s collateral investment vehicle complies with the standards for Permitted Investments contained herein.
EXHIBIT 3
MANDATORY PROVISIONS

Trust provisions substantially as shown below are considered to be the “Mandatory Provisions” for the individual Participant Trust Agreements as required by Section 4.2 of the Mine Reclamation and Trust Funds Agreement Among the San Juan Project Participants (for purposes of this Exhibit 3, the “Funding Agreement”). This language (and the utilized defined terms and section numbers and references) is excerpted from a generic form of Trust Agreement approved by the Participants. For purposes of this Exhibit 3, “Participant A” refers to the Participant that is a party to a Trust Agreement entered into pursuant to the terms of the Funding Agreement.

1.2 Purpose. The purpose of this Agreement is to provide funding for the payment to SJCC of certain coal mine reclamation costs, in accordance with Participant A’s obligations as set out in the Funding Agreement.

2.1 Identification of Beneficiary. The beneficiary of this Trust (“Beneficiary”) is SJCC.

2.2 Settlor’s Relinquishment of Beneficial Interest. Participant A, as settlor of the Trust, retains no beneficial interest in the funds held in trust, except: (i) the right to a return of any funds that may remain in the Principal Trust Fund after the purposes of the Trust have been accomplished; and (ii) the right to a return of any funds remaining in a Make-up Trust Fund after the purposes of the Make-up Trust Fund have been accomplished.

3.1 Principal Trust Fund. Participant A hereby establishes and is funding herewith the Principal Trust Fund in accordance with the Funding Agreement. Funds may be disbursed from the Principal Trust Fund for the following and no other purposes: (a) to pay the costs and fees associated with the maintenance of the Trust Account, including the fees and expenses of the Trustee; and (b) to pay Participant A’s Share (as defined in Section 3.5 of the Funding Agreement) of reclamation costs pursuant to invoices rendered to Participant A by the Trust Funds Operating Agent (as that term is defined in the Funding Agreement) and approved for payment by Participant A. The Trustee shall pay funds out of the Principal Trust Fund in accordance with the following procedures. The Trust Funds Operating Agent shall bill Participant A, in writing, for reclamation costs invoiced by SJCC at least ten (10) business days prior to the date that payment is due SJCC. Participant A shall promptly review such invoice and, upon Participant A’s review and approval of such invoice from the Trust Funds Operating Agent, shall direct the Trustee to pay such invoice by making payment out of the assets of the Principal Trust Fund, in immediately available funds, to SJCC. Upon the making of such payment, the Trustee shall provide notice of such payment to Participant A and to the Trust Funds Operating Agent. Participant A shall provide the Trustee with appropriate wiring.
instructions for the making of payments in immediately available funds to SJCC. Participant A shall notify the Trustee of the identity of the Trust Funds Operating Agent and of any changes in the Trust Fund Operating Agent. Subject to and in accordance with the terms and conditions hereof, the Trustee agrees that it shall receive, hold in trust, invest, reinvest, and release, disburse or distribute the funds in the Trust Account (“Trust Funds”). All interest and other earnings on the Trust Funds shall become a part of the Trust Account and the Trust Funds for all purposes, and all losses resulting from the investment or reinvestment thereof from time to time, and all amounts charged thereto to compensate or reimburse the Trustee for amounts owing to it hereunder from time to time, shall be set off against the Trust Funds, from the time of such loss or charge, and thereafter no longer will constitute part of the Trust Funds.

3.2 Make-up Trust Fund(s). In the event of certain defaults by another SJGS Participant under the Funding Agreement, Participant A is required by the Funding Agreement to establish a separate segregated portion of the Trust Account (which will be unique for each defaulting Participant) under this Agreement, to be denominated the “Make-up Trust Fund”, to provide funding for Participant A’s share of the shortfall created by such default in the defaulting SJGS Participant’s trust account. Except as herein otherwise provided, the funds in the Make-up Trust Fund shall be treated identically with funds in the Principal Trust Fund and shall be available for payment of reclamation costs by the Trustee to the extent insufficient funds are available in Participant A’s Principal Trust Fund; provided, however, if the defaulting SJGS Participant cures its default, and notice thereof is provided to the Trustee and Participant A by the Trust Funds Operating Agent, then the funds in Participant A’s Make-up Trust Fund shall be returned by the Trustee to Participant A upon written request to the Trustee from Participant A.

3.3 Funding Provisions. Participant A shall fund the Trust Account (including the Principal Trust Fund and any Make-up Trust Fund(s)) according to the terms set forth in the Funding Agreement. The Trustee shall have no obligation to take any action whatsoever in connection with Participant A’s funding of the Trust, or to enforce any obligations that Participant A has, or may have, under the Funding Agreement with respect to the funding of the Trust.

4.1 Modifications. A Trust created pursuant to this Agreement is irrevocable and shall not be modified by Participant A in a manner that (i) is inconsistent with the Funding Agreement; or (ii) will adversely affect the interests of the Beneficiary. It shall be a condition to any modification of this Agreement that Participant A shall have certified to the Trustee that such modification is not inconsistent with the Funding Agreement and will not adversely affect the interests of the Beneficiary. In no circumstance shall this Agreement be modified in a way that impacts the Trustee’s rights or duties, without the Trustee’s prior written consent.
5.1 Good Faith Duties of Administration. The Trustee shall exercise reasonable care, skill and caution in the administration of the Trust and shall administer the Trust in good faith, in accordance with the terms of this Agreement. The Trustee shall take reasonable steps to protect the Trust property.

5.2 No Conflicts of Interest. The Trust shall be administered solely in the interests of the Beneficiary. The Trustee shall not permit to exist a conflict of interest between its duties under this Agreement and its personal interests and shall keep the Trust property separate from the Trustee’s own property.

6.1(k) Trustee Records and Reports. The Trustee shall keep or cause to be kept and maintained accurate books and records reflecting all income, principal and expense transactions, which books and records shall be open at all reasonable times for inspection by Participant A or its duly authorized representatives, upon at least two (2) Business Days prior written notice to the Trustee. The Trustee shall furnish statements to Participant A and the Utilities at least as often as annually, as directed by Participant A. The Trustee shall promptly respond to requests for information related to the administration of the Trust from Participant A. When applicable and required by applicable regulations, the Trustee shall issue annual IRS Form 1099.

6.1(l) Scope of Undertaking. The Trustee [as a fiduciary] [Participant A and the Trustee may insert this language or omit it] shall be subject to and shall perform all duties in accordance with [this Agreement] [all rules of law relating to fiduciaries and trustees] [Participant A and the Trustee may insert either of the bracketed phrases.]. The Trustee shall perform such duties and only such duties as are specifically set forth in this Agreement, and no implied covenants, agreements or duties shall be read into this Agreement against the Trustee. The Trustee shall have no duty to perform, cause the performance of, manage, monitor, evaluate or approve the reclamation work. The Trustee is not a principal, participant, or beneficiary in any transaction underlying this Agreement and shall have no duty to inquire beyond the terms and provisions of this Agreement except as specifically provided herein. The Trustee shall not be required to deliver the Trust Funds or any part thereof, or take any action with respect to any matters that might arise in connection therewith, other than to receive, hold in trust, invest, reinvest, and release, disburse or distribute the Trust Funds as herein provided. The Trustee shall not be required to notify or obtain the consent, approval, authorization or order of any court or governmental body to perform its obligations under this Agreement, except as expressly provided herein. Without limiting the generality of the foregoing, it is hereby expressly agreed and stipulated by the Parties that, unless otherwise provided herein, the Trustee shall not be required to exercise any discretion hereunder and shall have no investment or management responsibility and, accordingly, shall have no duty to, or liability for its failure to, provide investment recommendations or investment advice to Participant A. The Trustee shall not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything it may do or refrain from doing in connection herewith, subject, however, to Section 6.1(m) (if applicable), and its own willful misconduct or [negligence] [gross negligence] [Participant A and the
Trustee may agree upon either standard]. It is the intention of the Parties that the Trustee shall not be required to use, advance or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

7.1 Termination of Trust and of this Agreement. The Trust and this Agreement shall terminate upon satisfaction of Utilities’ Reimbursement Obligation; provided, however, that in the event all fees, expenses, costs and other amounts required to be paid to the Trustee hereunder are not fully and finally paid prior to termination, the provisions of Section 9.1 shall survive the termination hereof, and provided further, that the provisions of Section 6.1(n) and Section 6.1(p) if applicable) shall, in any event, survive the termination hereof. Notice of termination of the Trust and of this Agreement shall be provided to the Trustee in the following manner: the Utilities shall give written notice to Participant A and to each of the other Participants that SJCC has confirmed the satisfaction of the Utilities’ Reimbursement Obligation, and Participant A shall, in turn, give written notice to the Trustee of the satisfaction of the Utilities’ Reimbursement Obligation.

7.2 Distribution of Assets. Until satisfaction of the Utilities’ Reimbursement Obligation, Participant A shall have no right of return of any of the Trust Assets; provided, however, that consistent with the provisions and requirements of Section 3.2, the Trustee shall, after payment of the fees and expenses of the Trustee, return funds in Participant A’s Make-up Trust Account upon written request of Participant A if the SJGS Participant’s default that led to the creation of the Make-up Trust Account has been cured. Upon the termination of this Agreement, the Trustee shall distribute any remaining assets in the Trust Account to Participant A.

11.2 Spendthrift Clause. The interest of the Beneficiary is held subject to a spendthrift trust. No interest in the Trust Funds established pursuant to this Agreement shall be transferable or assignable, voluntarily or involuntarily, or be subject to the claims of Participant A or its creditors, the Utilities or their creditors or SJCC or its creditors other than as provided in the Funding Agreement.

11.3 Tax Matters. Participant A shall provide the Trustee with its taxpayer identification number documented by an appropriate Form W8 or W9 (or other appropriate identification information for tax purposes) upon execution of this Agreement. Failure to provide such form may prevent or delay disbursements from the Trust Funds and may also result in the assessment of a penalty and the requirement that the Trustee withhold tax on any interest or other income earned on the Trust Funds. The Parties agree that, for all tax purposes, all interest or other income, gain, or loss from investment of the Trust Funds, as of the end of each calendar year and to the extent required by the Internal Revenue Service or other taxing authority, shall be reported as having been earned or lost, as the case may be, by Participant A. Any payments of income shall be subject to applicable
withholding regulations then in force in the United States or any other jurisdiction, as applicable.

11.15 Third Party Beneficiaries. Nothing in this Agreement shall entitle any person other than the Parties and SJCC to any claim, cause of action, remedy, or right of any kind, except the rights expressly provided to the persons described in Section 6.1(p) (if applicable).
To provide guidance to the Investment Committee in developing revised versions of Exhibits 1A, 1B and 1C, the following description is provided of how the initial version of Exhibit 1A was derived. The Investment Committee shall use the same assumptions, procedures and principles to the extent possible in any revisions of Exhibits 1A, 1B and 1C, with the exception that the discount rate and growth rate used for calculating Exhibit 1B shall be for a long term fixed income portfolio (4.6% in the original Exhibit 1B). The original Exhibit 1A was developed as follows:

i) General Assumptions: No withdrawals from the Trusts are assumed to take place prior to the expiration of the UG-CSA (or any extension thereof) (“Contract Expiration Date”) since all reclamation costs up to that point will be paid under the UG-CSA. Any taxes on Trust earnings are assumed to be paid by the respective Trust owners with funds from outside the Trusts. A mid-year assumption for principal contributions and expenditure withdrawals is used in the calculations. For discounting of cash flows and applying a return in Exhibit 1A, the rate used is 8.28% pretax. This rate was based on long term average returns of a 70%/30% equity/fixed income portfolio mix.

ii) Return Rate Assumptions
Return rate assumptions for funding curve revisions are to be based on return rate studies provided by an objective third party who is nationally recognized as having knowledge in that field. An example of a return rate study is provided in Exhibit 5.

iii) Discounting Reclamation Cash Flows
(1) If a Revised Funding Start Year (defined as the calendar year immediately before release of a Reclamation Costs Review) is before or the same as the year of the Contract Expiration Date, then discount the Reclamation Cash Flows to the Contract Expiration Date (for the initial Exhibit 1A, December 31, 2017) to determine a Net Present Value (“NPV”). This calculation yields a Contract Expiration Target Amount of $18,241,792 for the initial Exhibit 1A ($34,237,165 for Exhibit 1B). Analytically, and assuming continued growth at the discount rate, there will be adequate funds to cover reclamation expenses every year with nothing left over upon reclamation project completion.

(2) If a Revised Funding Start Year is after the year of the Contract Expiration Date, then discount the Reclamation Cash Flows to the end
of the Revised Funding Start Year to determine an NPV. This yields a value for the Funding Target Curve for the Revised Funding Start Year. By definition, and assuming continued growth at the discount rate used, there will be adequate funds to cover reclamation expenses every year with a zero balance remaining upon reclamation project completion.

iv) NPV Reclamation Cash Flows: The column titled “NPV Reclamation Cash Flows” in Exhibit 1A is the year-end NPV of the remaining Reclamation Cash Flows for a given year when discounted at the return rate. These annual values and those in the Funding Target Curve after the year of the Contract Expiration Date should be identical.

v) Calculation of the Funding Target Curve

(1) If a Revised Funding Start Year is before or the same as the year of the Contract Expiration Date, then once the Contract Expiration Target Amount is calculated, the levelized annual principal contribution needed to yield the Contract Expiration Target Amount at the Contract Expiration Date can be determined. For the initial Exhibit 1A the principal funding period is ten (10) years and the discount rate used is as described in the above general assumptions. Using the assumptions described and a mid-year convention for principal contributions and reclamation cash flows, the required annual principal contribution for Exhibit 1A was calculated at $1,183,489 ($2,704,223 for Exhibit 1B). Future updates to Exhibit 1A shall use a principal funding period that begins with the Revised Funding Start Year and ends on the then current Contract Expiration Date (12/31/2017 for the initial Exhibit 1A). The starting balance for the principal calculation shall be the Funding Target Curve value of the Exhibit 1A being revised one year earlier than the Revised Funding Start Year. After the necessary principal contribution is calculated, the projected annual balances of the Trusts up through the year of the Contract Expiration Date can be determined by taking the previous year’s balance, adding the annual principal contribution, and adding the growth component. The resulting schedule of annual balances for this period is the Funding Target Curve.

The values in the “NPV Reclamation Cash Flows” and “Funding Target Curve” columns in Exhibit 1A converge at the Contract Expiration Date. This convergence represents a solution that achieves full principal funding by the Contract Expiration Date, assuming continued growth of the Trust Funds at the discount rate used. There are no additional post Contract Expiration Date principal contributions assumed in development of the Target Funding Curve. The changes in balance thereafter are calculated by netting the growth of the Trust
Funds against the reclamation expenditures (withdrawals) from the Trusts.

(2) If a Revised Funding Start Year is after the year of the Contract Expiration Date, then the Funding Target Curve Value for the Revised Funding Start Year is the NPV of the revised Reclamation Cash Flows. The changes in balance thereafter are due to netting the growth of the Trust Funds against the reclamation expenditures (withdrawals) from the Trust Funds.

vi) Calculation of the Funding Floor Curve
The Funding Floor Curve is calculated by multiplying each value of the Funding Target Curve by the Funding Floor Curve Percentage for each respective year. The Funding Floor Curve Percentage rises to 100% over the five (5) years immediately prior to the time when the major reclamation expenditures are anticipated. In the “Reclamation Cash Flows” column of the initial Exhibit 1A, the major expenditures take place beginning in 2038. Thus, the Funding Floor Curve Percentage begins to increase in 2033. The beginning of this step-up to 100% of the Funding Target Curve may change with future revisions to Exhibit 1A. The principle for establishing this timing is five years before major expenditures.
EXHIBIT 5

EXAMPLE OF RETURN RATE STUDY
Asset classes are described by their returns, volatility, and correlation with other asset classes.

Expectations for individual asset classes were developed by the Watson Wyatt Investment Consulting Global Asset Model as of January 2010.

Return assumptions are net of fees assuming passive management (or minimum risk).

Return distributions incorporate fat tails.

Correlations between return-seeking asset classes increase when fat-tail events occur.

Simulated government yield curves and simulated corporate spreads are used in developing liability discount rates and returns on fixed income.

Summary assumptions for January 1, 2010 Watson Wyatt Investment Consulting Asset Model

<table>
<thead>
<tr>
<th>Equity Investments</th>
<th>1st Year Returns</th>
<th>10th Year Returns</th>
<th>10 Year Returns</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Arithmetic Mean</td>
<td>Standard Deviation</td>
<td>Arithmetic Mean</td>
</tr>
<tr>
<td>Global (unhedged)</td>
<td>9.6%</td>
<td>23.6%</td>
<td>8.9%</td>
</tr>
<tr>
<td>Global (hedged)</td>
<td>9.2%</td>
<td>23.0%</td>
<td>8.7%</td>
</tr>
<tr>
<td>US Equity</td>
<td>9.2%</td>
<td>24.6%</td>
<td>8.6%</td>
</tr>
<tr>
<td>US Large Cap</td>
<td>9.0%</td>
<td>24.8%</td>
<td>8.5%</td>
</tr>
<tr>
<td>US Small Cap</td>
<td>10.1%</td>
<td>30.0%</td>
<td>9.2%</td>
</tr>
<tr>
<td>International (unhedged)</td>
<td>9.9%</td>
<td>27.8%</td>
<td>9.2%</td>
</tr>
<tr>
<td>International (hedged)</td>
<td>9.2%</td>
<td>24.6%</td>
<td>8.7%</td>
</tr>
<tr>
<td>International Developed</td>
<td>9.7%</td>
<td>27.4%</td>
<td>9.0%</td>
</tr>
<tr>
<td>International Developed (hedged)</td>
<td>8.8%</td>
<td>24.2%</td>
<td>8.4%</td>
</tr>
<tr>
<td>Emerging Market Equity</td>
<td>12.3%</td>
<td>40.3%</td>
<td>11.0%</td>
</tr>
<tr>
<td>Private Equity</td>
<td>10.8%</td>
<td>37.0%</td>
<td>9.6%</td>
</tr>
<tr>
<td>REITs</td>
<td>8.0%</td>
<td>23.0%</td>
<td>7.7%</td>
</tr>
<tr>
<td>Fixed Income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>US Investment Grade</td>
<td>2.7%</td>
<td>5.6%</td>
<td>5.3%</td>
</tr>
<tr>
<td>International Developed</td>
<td>4.0%</td>
<td>11.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>International Developed (hedged)</td>
<td>3.5%</td>
<td>6.5%</td>
<td>4.5%</td>
</tr>
<tr>
<td>High Yield</td>
<td>5.4%</td>
<td>12.1%</td>
<td>7.2%</td>
</tr>
<tr>
<td>Inflation-Indexed</td>
<td>3.2%</td>
<td>5.9%</td>
<td>4.7%</td>
</tr>
<tr>
<td>Long Government</td>
<td>5.6%</td>
<td>11.0%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Long Credit</td>
<td>7.8%</td>
<td>17.3%</td>
<td>6.5%</td>
</tr>
<tr>
<td>Long Government/Credit</td>
<td>6.7%</td>
<td>13.4%</td>
<td>5.8%</td>
</tr>
<tr>
<td>Bank Loans</td>
<td>4.0%</td>
<td>7.8%</td>
<td>6.2%</td>
</tr>
<tr>
<td>Emerging Market Debt</td>
<td>4.8%</td>
<td>12.0%</td>
<td>6.0%</td>
</tr>
<tr>
<td>Cash</td>
<td>1.6%</td>
<td>1.3%</td>
<td>4.0%</td>
</tr>
<tr>
<td>Alternatives</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate</td>
<td>6.3%</td>
<td>11.5%</td>
<td>7.2%</td>
</tr>
<tr>
<td>Hedge Fund-of-Funds</td>
<td>6.1%</td>
<td>8.4%</td>
<td>6.5%</td>
</tr>
<tr>
<td>Inflation</td>
<td>1.5%</td>
<td>1.5%</td>
<td>2.5%</td>
</tr>
</tbody>
</table>
Economic conditions are highly uncertain over the near-term and do not in our view reflect equilibrium conditions.

- Our capital market assumptions reflect this instability and as a result are highly time-sensitive.
- Advice that is dependent on this set of investment beliefs is thus also time-sensitive.
- Alternative beliefs might well lead to different conclusions; thus it is important that PNM Resources, Inc. consider whether their beliefs and ours are aligned.

**Highlight of key changes in our capital market assumptions:**

- Our inflation assumption is 1.5% for the 12 months following January 1, 2010, trending up over 3 years to a 2.5% ultimate rate.
- Our bond assumptions reflect rising short term nominal yields.
- Our short-term equity volatility assumption is 25% for US equities and the short-term volatility period is three years. Our long-term volatility assumption is also maintained at 16%.

The result of these assumptions is to make certain strategies more or less attractive over the short-to mid-term.

- Dollar-duration matching strategies based on a LIBOR underpin will look less attractive than usual.

- A natural outcome of our assumptions is to increase the time-dependency of our advice; we suggest that more frequent revisiting of the investment strategy will be necessary.