

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Klamath Project, Oregon-California

CONTRACT BETWEEN THE UNITED STATES
AND
KLAMATH IRRIGATION DISTRICT
FOR REPAYMENT OF EMERGENCY EXTRAORDINARY MAINTENANCE COSTS

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2 UNITED STATES
3 DEPARTMENT OF THE INTERIOR
4 BUREAU OF RECLAMATION
5 Klamath Project, Oregon-California

6 CONTRACT BETWEEN THE UNITED STATES
7 AND
8 KLAMATH IRRIGATION DISTRICT
9 FOR REPAYMENT OF EMERGENCY EXTRAORDINARY MAINTENANCE COSTS

10 THIS CONTRACT made this _____ day of _____, 2016, is entered into
11 pursuant to the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or
12 supplementary thereto, including but not limited to Section 9603 of the Omnibus Public Land
13 Management Act of March 30, 2009 (Pub. L. 111-11, 123 Stat. 1348, 43 U.S.C. §510(b), all
14 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
15 OF AMERICA, hereinafter referred to as the United States, and KLAMATH IRRIGATION
16 DISTRICT, hereinafter referred to as the District, an irrigation district duly organized, existing,
17 and acting pursuant to the laws of the State of Oregon;

18 WITNESSETH, That:

19 EXPLANATORY RECITALS

20 [1st] WHEREAS, the United States has constructed and is operating the
21 Klamath Project in the States of Oregon and California for the purpose of furnishing water for
22 irrigation and other beneficial uses to lands within the Klamath Project’s service area; and

23 [2nd] WHEREAS, pursuant to Contract No. 14-06-200-3784, dated November 29,
24 1954, as amended and supplemented, the District accepted the obligation to operate and
25 maintain, on behalf of the United States, certain Klamath Project facilities, including the
26 C Flume; and

27 [3rd] WHEREAS, pursuant to Section 9603 of Public Law 111-11, the Secretary of the
28 Interior, acting through the Bureau of Reclamation, hereinafter referred to as Reclamation, is
29 authorized to advance the costs incurred by the District in conducting emergency extraordinary
30 maintenance (EXM) and to negotiate an appropriate contract for the return of reimbursable costs,
31 with interest; and

32 [4th] WHEREAS, Reclamation, in consultation with the District, has determined the
33 need to perform EXM work on the C Flume and the District agrees to repay the reimbursable
34 costs, with interest, of EXM work performed on the C Flume.

35 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
36 contained, the parties mutually agree as follows:

37 DEFINITIONS

38 1. When used herein, unless otherwise distinctly expressed or manifestly
39 incompatible with the intent hereof, the term:

40 (a) "Contracting Officer" shall mean the Secretary of the Interior's duly
41 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
42 or regulation;

43 (b) "Existing Contract" shall mean Contract No. 14-06-200-3784, dated
44 November 29, 1954, as amended and supplemented, between the United States and the District.

45 (c) "Extraordinary Maintenance" or "XM" shall mean major nonrecurring
46 maintenance on the C Flume that is intended to ensure the continued safe, dependable, reliable
47 delivery of authorized benefits of the Klamath Project.

48 | (d) "Emergency Extraordinary Maintenance" or "EXM" shall mean XM on the C
49 | Flume that is necessary to minimize the risk of imminent harm to public health or safety, or
50 | property.

51 | (ed) "Fiscal Year" shall mean the period October 1 through September 30 of the
52 | following year.

53 | (fe) "Year" shall mean the period January 1 through December 31, both dates
54 | inclusive.

55 | TERM OF THE CONTRACT

56 | 2. This Contract shall become effective on the date first written above and shall
57 | remain in effect until the District has fully repaid to the United States its repayment obligation to
58 | the United States as described in Article 5 herein.

59 | DESCRIPTION OF XM WORK

60 | 3. The EXM work to be performed by the District on the C Flume shall consist of
61 | demolition and removal of the original structure, construction of a replacement structure of
62 | approximately 4,100 feet of buried pipe, 200 feet of elevated pipe spanning the Lost River
63 | Diversion Channel, and other related activities. All EXM designs, specifications, and work
64 | performed in accordance with this Contract shall be approved in advance and in writing by the
65 | Contracting Officer.

66 | FUNDS TO BE PROVIDED

67 | 4. (a) -The United States shall provide funds to the District for the EXM work
68 | described in Article 3 herein in an amount that shall not exceed \$7,450,000; *Provided*, That the
69 | District may request additional funds in writing to complete the EXM work and the United States
70 | may provide such additional funds subject to approval of the Contracting Officer in accordance

71 with Federal Reclamation law and policy. If such additional funds are provided, Exhibit A shall
72 be revised accordingly.

73 (b) Funds may be provided to the District in advance of the EXM work provided
74 that any such advance of funds shall be released in as many installments as the
75 Contracting Officer deems necessary; *Provided further*, That the District may request an advance
76 of funds in particular installments; however, the District must provide the Contracting Officer
77 justification for the immediate need for the funds requested and the Contracting Officer shall
78 have the final determination in how and when installments are transmitted.

79 (c) All funds advanced to the District shall be deposited and maintained in an
80 insured account, until such time as the District applies the funds against the EXM work:
81 *Provided*, That the District shall use the funds solely to finance the EXM work; *Provided further*,
82 That the District shall return any and all unexpended, unobligated, or unencumbered funds
83 within 30 days after the date on which the Contracting Officer determines and notifies the
84 District in writing that the EXM work is substantially complete.

85 (d) Funds will no longer be provided once the Contracting Officer determines
86 that: (1) the work described in Article 3 herein is complete; (2) the District no longer requires
87 additional funds to complete said EXM work; or (3) the amount stated in Subarticle 4(a) of the
88 Contract has been expended.

89 (e) The United States shall make good faith efforts to procure for the District for
90 said EXM work up to 35 percent non-repayment financing of the amount stated in Subarticle
91 4(a) of the Contract, consistent with Reclamation's authority under Section 9603(c)(3) of the
92 Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111-11, 123 Stat. 1348-
93 1349, 43 U.S.C. §510(b)(c)(3); *Provided further*, the United States agrees that the parties shall

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94 | amend the Contract to reflect the non-reimbursable portion of the funds that shall not be subject
95 | to a repayment obligation.

96 | DISTRICT'S REPAYMENT OBLIGATION

97 | 5. (a) The District shall be obligated to repay that at portion e entire sum of the funds
98 | provided which have been designated as reimbursable pursuant to Article 4 of this Contract, plus
99 | accrued interest, as determined by the Contracting Officer, which total is hereinafter referred to
100 | as the Repayment Obligation.

101 | (b) The interest rate used for computing interest on EXM work in progress and
102 | interest on the unpaid balance of the reimbursable costs of EXM work in accordance with this
103 | Contract is the Department of the Treasury rate as of the beginning of the Fiscal Year in which
104 | EXM work is commenced, on the basis of average market yields on outstanding marketable
105 | obligations of the United States with the remaining periods of maturity comparable to the
106 | applicable reimbursement period of the project, adjusted to the nearest 1/8 of 1 percent on the
107 | unamortized balance of any portion of the Repayment Obligation. Interest accrual shall
108 | commence on each date funds are advanced by the United States to the District and be computed
109 | on an annual basis on the unpaid balance of the reimbursable costs of EXM work, as determined
110 | by the Contracting Officer.

111 | (c) The first installment shall be due and payable on or before January 1, 2019, or on
112 | January 1 of the Year following the date on which the Contracting Officer determines and
113 | notifies the District in writing that the EXM work is substantially complete, whichever comes
114 | first.

115 | (d) The District will repay the total repayment obligation over a period of 10 years from
116 | the date on which the Contracting Officer determines that the EXM work is substantially

117 complete; *Provided*, That the period may decreased or increased by the Contracting Officer
118 pursuant to Article 5(f) herein; *Provided further*, That full repayment shall occur within 50 years
119 from the first installment provided by the District pursuant to Article 5(c) herein. As soon as
120 practicable following the determination that the EXM work is substantially complete, the
121 Contracting Officer shall provide the District with a repayment schedule requiring equal annual
122 installments over a period of 10 years, which schedule(s) shall be incorporated into this Contract
123 as Exhibit A, which may be updated by the Contracting Officer without further amendment
124 hereof.

125 (e) The District may, at any time, prepay all or a portion of the unpaid repayment
126 obligation balance as provided herein without penalty, notwithstanding any interest accrued.

127 (f) The Contracting Officer, within one year of execution of this Contract, will perform a
128 financial analysis to determine the District's minimum appropriate repayment period. If, in the
129 opinion of the Contracting Officer, the financial analysis indicates that the District's minimum
130 appropriate repayment period is less than or greater than 10 years, then the Contracting Officer
131 shall provide the District with a revised Exhibit A. At any time, the District may, at its sole
132 expense, request the Contracting Officer perform an updated financial analysis.

133 LIMITATIONS

134 6. Except as specifically provided herein, the Existing Contract shall continue in full
135 force and effect as originally written and executed

136 SEVERABILITY

137 7. In the event that any one or more of the provisions contained herein shall, for any
138 reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality,
139 or unenforceability shall not affect any other provisions of this contract, but this contract shall be

140 construed as if such invalid, illegal, or unenforceable provisions had never been contained
141 herein, unless the deletion of such provisions would result in such a material change so as to
142 cause the fundamental benefits afforded the parties to this contract to become unavailable or
143 materially altered.

144 ENVIRONMENTAL COMPLIANCE

145 8. (a) The District will comply with (1) the applicable environmental measures
146 contained in the environmental document number 2015-EA-008 and (2) the memorandum of
147 agreement between the Bureau of Reclamation and the Oregon State Historic Preservation
148 Officer, dated December 12, 2015; all prepared in connection with the proposed EXM work on
149 the C Flume.

150 (b) The District will comply with all Federal, state, local, and tribal law, and
151 requirements imposed for protection of the environment and Indian trust assets, including, but
152 not limited to, the Native American Graves Protection and Repatriation Act (Pub. L. 101-601,
153 104 Stat. 3048, 25 U.S.C. §3001 et seq.) and the Archaeological Resources Protection Act of
154 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. §470aa et seq.).

155 MEDIUM FOR TRANSMITTING PAYMENTS

156 9. (a) All payments from the District to the United States under this Contract shall
157 be by the medium requested by the United States on or before the date payment is due. The
158 required method of payment may include checks, wire transfers, or other types of payment
159 specified by the United States.

160 (b) Upon execution of this Contract, the District shall furnish the Contracting Officer
161 with the District's taxpayer's identification number (TIN). The purpose for requiring the
162 District's TIN is for collecting and reporting any delinquent amounts arising out of the District's
163 relationship with the United States.

164 CONTRACTS WITH THIRD PARTIES

165 10. (a) The District shall advertise each construction (as "construction" is defined in
166 the Federal Acquisition Regulations (FAR) at 48 C.F.R. §2.101), equipment, or supply contract

167 exceeding \$25,000 (twenty-five thousand dollars) for competitive bidding. Any action proposed
168 by the District other than making the award to the lowest responsible bidder shall be subject to
169 the Contracting Officer's approval.

170 (b) For all construction contracts exceeding \$100,000 (one hundred thousand dollars),
171 the District shall require construction contractors to furnish performance and payment bonds,
172 each in amounts equal to at least 100 percent of the contract price. For construction contracts
173 exceeding \$30,000 (thirty thousand dollars), but not exceeding \$100,000 (one hundred thousand
174 dollars), the Contracting Officer shall select at least two of the payment protections set forth in
175 the FAR at 48 C.F.R. §28.102-1(b)(1), and the District shall require the construction contractor
176 to secure one of the selected protections. Supply and equipment contractors may be required to
177 furnish performance bonds on supply or equipment contracts exceeding \$100,000 (one hundred
178 thousand dollars) when the contract calls for substantial progress payments before delivery of
179 end items.

180 (c) The United States shall not be a party to or obligated in any manner by contracts
181 entered into between the District and other parties pursuant to this Contract.

182 FAILURE TO COMPLETE WORK

183 11. (a) In the event that the District fails to complete the work to be performed
184 pursuant to this contract for any reason other than the failure of the United States to appropriate
185 and allocate funds, the District shall, upon receipt of written notice from the Contracting Officer,
186 suspend payment on all current contracts and return to the United States any unexpended balance
187 of funds advanced by the United States and contributed by the District in such amounts as
188 determined to be equitable by the Contracting Officer. Following delivery of the notice, the
189 Contracting Officer may adopt either of the following two alternatives:

190 (1) Perform, or cause to be performed, all or any part of the work remaining under
191 this contract and within the limits of the funds provided herein by the United States
192 and by the District for the project, as well as operate and maintain the project
193 concurrently. The District shall transfer to the United States custody and use of all
194 equipment, materials, and supplies used or useful in the performance of the work;
195 permit the United States, its contractors, and its agents ingress to and egress from
196 lands, project works, and facilities of the District for the performance of such work;
197 and assign to the United States the District's interest in any contract for the
198 performance of work or the supplying of equipment or material in connection with
199 such work where requested by the United States and agreed to by the other
200 contracting party; or

201 (2) Declare the project substantially complete within the provisions of this Contract
202 by giving written notice to the District that (a) the construction work on a feature is
203 substantially complete, or (b) the feature is providing benefits and services for the
204 intended purpose(s), or (c) the feature is generating revenue, where applicable.
205 Repayment of the loan obligation shall be carried out in accordance with the
206 provisions of this Contract; *Provided*, That the first annual payment shall become due

207 in the Year following the Year in which the District is notified of such declaration of
208 completion.

209 (b) In the event the United States shall proceed as provided in (a)(1) of this Article, the
210 United States may, at any time and regardless of the progress of work performed thereunder,
211 declare the EXM work substantially complete by giving written notice thereof to the District, in
212 which event the provisions of (a)(2) of this article shall apply; *Provided*, That the loan obligation
213 shall not exceed the limitation specified in this Contract, including all expenditures made
214 pursuant to provisions of (a)(1) of this Article.

215 (c) Upon giving written notice of substantial completion to the District as provided
216 above, the United States shall have the right, without further notice, to take over the care,
217 operation, and maintenance of the EXM work.

218 CHARGES FOR DELINQUENT PAYMENTS

219 12. (a) The District shall be subject to interest, administrative, and penalty charges on
220 delinquent payments. If a payment is not received by the due date, the District shall pay an
221 interest charge on the delinquent payment for each day the payment is delinquent beyond the due
222 date. If a payment becomes 60 days delinquent, the District shall pay, in addition to the interest
223 charge, an administrative charge to cover additional costs of billing and processing the
224 delinquent payment. If a payment is delinquent 90 days or more, the District shall pay, in
225 addition to the interest and administrative charges, a penalty charge for each day the payment is
226 delinquent beyond the due date, based on the remaining balance of the payment due at the rate of
227 6 percent per year. The District shall also pay any fees incurred for debt collection services
228 associated with a delinquent payment.

229 (b) The interest rate charged shall be the greater of either the rate prescribed quarterly in
230 the Federal Register by the Department of the Treasury for application to overdue payments, or
231 the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the
232 due date and remain fixed for the duration of the delinquent period.

233 (c) When a partial payment on a delinquent account is received, the amount received
234 shall be applied first to the penalty charges, second to the administrative charges, third to the
235 accrued interest, and finally to the overdue payment.

236 GENERAL OBLIGATION – BENEFITS CONDITIONS UPON PAYMENT

237 13. (a) The obligation of the District to pay the United States as provided in this
238 Contract is a general obligation of the District notwithstanding the manner in which the
239 obligation may be distributed among the District’s water users and notwithstanding the default of
240 individual water users in their obligations to the District.

241 (b) The payment of charges becoming due pursuant to this contract is a condition
242 precedent to receiving benefits under this contract. The United States reserves the right (in
243 addition to the rights elsewhere herein reserved to the United States) to refuse to deliver water to

244 | ~~the District in the event of the default of the District for a period of more than twelve (12)~~
245 | ~~months in any payment due the United States under this contract. The United States shall not~~
246 | ~~make water available to the District through Project facilities during any period in which the~~
247 | ~~District is in arrears to the United States for any payment due under the terms of this Contract.~~

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248 | The District shall not deliver water under the terms and conditions of this Contract for lands or
249 | parties that are in arrears more than 12 months in the payment of charges required for the District
250 | to repay its repayment obligation, as levied or established by the District.

251 | OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

252 | 14. (a) Upon substantial completion of the EXM work, or as otherwise determined by
253 | the Contracting Officer, and following written notification, the care, operation, and maintenance
254 | of any or all of Project works constructed pursuant to this Contract may be transferred to the
255 | District. Title to the transferred works will remain in the name of the United States, unless
256 | otherwise provided by the Congress of the United States.

257 | (b) The District, without expense to the United States, shall care for, operate, and
258 | maintain the transferred works in full compliance with the terms of this Contract and the
259 | Existing Contract and in such a manner that the transferred works remain in good and efficient
260 | condition.

261 | (c) Necessary repairs of the transferred works shall be made promptly by the District. In
262 | case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the
263 | transferred works threatening or causing interruption of water service, the Contracting Officer
264 | may issue to the District a special written notice of those necessary repairs. Except in the case of
265 | an emergency, the District will be given 60 days to either make the necessary repairs or submit a
266 | plan for accomplishing the repairs acceptable to the Contracting Officer. In the case of an
267 | emergency, or if the District fails to either make the necessary repairs or submit a plan for
268 | accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the
269 | notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs
270 | shall be paid by the District as directed by the Contracting Officer.

271 | (d) The District shall not make any substantial changes in the transferred works without
272 | first obtaining written consent of the Contracting Officer. The District shall ensure that no
273 | unauthorized encroachment occurs on project land and rights-of-way.

274 | (e) The District agrees to indemnify the United States for, and hold the United States and
275 | all of its representatives harmless from, all damages resulting from suits, actions, or claims of
276 | any character brought on account of any injury to any person or property arising out of any act,
277 | omission, neglect, or misconduct in the manner or method of performing any construction, care,
278 | operation, maintenance, supervision, examination, inspection, or other duties of the District or
279 | the United States on transferred works required under this contract, regardless of who performs
280 | those duties. The District does not agree to indemnify the United States for any damages arising
281 | from intentional torts or malicious actions committed by employees of the United States.

282 | (f) In the event ~~of default by~~ the District ~~for a period of one (1) year on any payment to~~

283 ~~the United States provided by this contract, or failure of the district to perform necessary repairs~~
284 ~~to the transferred works as provided in Article 14(c) for a period of one (1) year, or of any other~~
285 ~~is found to be operating the transferred works or any part thereof in violation by the District of~~
286 ~~this contract or the District is found to be failing any financial commitments or other~~
287 ~~commitments to the United States under~~ the terms and conditions of this Contract, then upon the
288 election of the Contracting Officer, the United States may take over from the District the care,
289 operation, and maintenance of the transferred works, or any part thereof, by giving written notice
290 to the District of such election and the effective date thereof. Thereafter, during the period of
291 operation by the United States, upon notification by the Contracting Officer the District shall pay
292 to the United States, annually in advance, the cost of operation and maintenance of the works as
293 determined by the Contracting Officer. Following written notification from the
294 Contracting Officer the care, operation, and maintenance of the works may be transferred back to
295 the District.

296 (g) In addition to all other payments to be made by the District under this Contract, the
297 District shall reimburse to the United States, following the receipt of a statement from the
298 Contracting Officer, all miscellaneous costs incurred by the United States for any work involved
299 in the administration and supervision of this Contract.

300 EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND
301 REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

302 15. (a) The Contracting Officer may, from time to time, examine the following: the
303 District's books, records, and reports; the Project works being operated by the District; the
304 adequacy of the operation and maintenance; the reserve fund; and the water conservation
305 program including the water conservation fund, if applicable. Notwithstanding title ownership,
306 where the United States retains a financial, physical, or liability interest in facilities either
307 constructed by the United States or with funds provided by the United States, the
308 Contracting Officer may examine any or all of the Project works providing such interest to the
309 United States.

310 (b) The Contracting Officer may, or the District may ask the Contracting Officer to,
311 conduct special inspections of any Project works being operated by the District and special audits
312 of the District's books and records to ascertain the extent of any operation and maintenance
313 deficiencies to determine the remedial measures required for their correction and to assist the
314 District in solving specific problems. Except in an emergency, any special inspection or audit
315 shall be made only after written notice thereof has been delivered to the District by the
316 Contracting Officer.

317 (c) The District shall provide access to the Project works, operate any mechanical or
318 electrical equipment, and be available to assist in the examination, inspection, or audit.

319 (d) The Contracting Officer shall prepare reports based on the examinations, inspections,
320 or audits and furnish copies of such reports and any recommendations to the District.

321 (e) The costs incurred by the United States in conducting operation and maintenance

322 examinations, inspections, and audits and preparing associated reports and recommendations
323 related to high- and significant-hazard dams and associated facilities shall be nonreimbursable.
324 Associated facilities include carriage, distribution, and drainage systems; pumping and pump-
325 generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low-
326 hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road;
327 regulating reservoirs (low-hazard); fish passage and protective facilities, including hatcheries;
328 river channelization features; rural/municipal water systems; desalting and other water treatment
329 plants; maintenance buildings and service yards; facilities constructed under Federal loan
330 programs (until paid out); and recreation facilities (reserved works only); and any other facilities
331 as determined by the Contracting Officer.

332 (f) Expenses incurred by the District, as applicable, in participating in the operation and
333 maintenance site examination will be borne by the District.

334 (g) Requests by the District for consultations, design services, or modification reviews,
335 and the completion of any operation and maintenance activities identified in the formal
336 recommendations resulting from the examination (unless otherwise noted) are to be funded as
337 Project operation and maintenance and are reimbursable by the District to the extent of current
338 Project operation and maintenance allocations.

339 (h) Site visit special inspections that are beyond the regularly scheduled operation and
340 maintenance examinations conducted to evaluate particular concerns or problems and provide
341 assistance relative to any corrective action (either as a follow up to an operation and maintenance
342 examination or when requested by the District) shall be nonreimbursable.

343 (i) The Contracting Officer may provide the state(s) an opportunity to observe and
344 participate in, at its (their) own expense, the examinations and inspections. The state(s) may be
345 provided copies of reports and any recommendations relating to such examinations and
346 inspections.
347

348 EMERGENCY RESERVE FUND

349 16. (a) Commencing on execution of this Contract, the District shall accumulate and
350 maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other
351 funds are available for use as an emergency reserve fund. The Contractor shall establish and
352 maintain that emergency reserve fund to meet costs incurred during periods of special stress
353 caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or
354 causing interruption of water service.

355 (b) The District shall accumulate the reserve fund with annual deposits or investments of
356 not less than \$10,000 to a Federally insured, interest- or dividend-bearing account or in securities
357 guaranteed by the Federal Government: *Provided*, That money in the reserve fund, including
358 accrued interest, shall be available within a reasonable time to meet expenses for such purposes

359 as those identified in paragraph (d) herein. Such annual deposits and the accumulation of interest
360 to the reserve fund shall continue until the basic amount of \$100,000 is accumulated. Following
361 an emergency expenditure from the fund, the annual deposits shall continue from the year
362 following the emergency expenditure until the previous balance is restored. After the initial
363 amount is accumulated or after the previous balance is restored, the annual deposits may be
364 discontinued, and the interest earnings shall continue to accumulate and be retained as part of the
365 reserve fund.

366 (c) Upon mutual written agreement between the District and the Contracting Officer, the
367 basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and
368 uncertainty stemming from the size and complexity of the project; the size of the annual
369 operation and maintenance budget; additions to, deletions from, or changes in project works; and
370 operation and maintenance costs not contemplated when this Contract was executed.

371 (d) The District may make expenditures from the reserve fund only for meeting routine
372 or recurring operation and maintenance costs incurred during periods of special stress, as
373 described in paragraph (a) herein; or for meeting unforeseen extraordinary operation and
374 maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or for
375 meeting betterment costs (in situations where recurrence of severe problems can be eliminated)
376 during periods of special stress. Proposed expenditures from the fund shall be submitted to the
377 Contracting Officer in writing for review and written approval prior to disbursement. Whenever
378 the reserve fund is reduced below the current balance by expenditures therefrom, the District
379 shall restore that balance by the accumulation of annual deposits as specified in paragraph (b)
380 herein.

381 (e) During any period in which any of the Project works are operated and maintained by
382 the United States, the District agrees the reserve fund shall be available for like use by the
383 United States.

384 (f) On or before March 15 of each Year, the District shall provide a current statement of
385 the principal and accumulated interest of the reserve fund account to the Contracting Officer.

386 CHANGES IN DISTRICT'S ORGANIZATION

387 17. While this Contract is in effect, no change may be made in the District's
388 organization, by inclusion or exclusion of lands or by any other changes which may affect the
389 respective rights, obligations, privileges, and duties of either the United States or the District
390 under this contract including, but not limited to, dissolution, consolidation, or merger, except
391 upon the Contracting Officer's written consent.

392 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

396 RULES, REGULATIONS, AND DETERMINATIONS

397 19. (a) The parties agree that the delivery of water or the use of Federal facilities
398 pursuant to this Contract is subject to Federal reclamation law, as amended and supplemented,
399 and the rules and regulations promulgated by the Secretary of the Interior under Federal
400 reclamation law.

401 (b) The Contracting Officer shall have the right to make determinations necessary to
402 administer this Contract that are consistent with its provisions, the laws of the United States, and
403 the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall
404 be made in consultation with the District.

405 ADMINISTRATION OF FEDERAL PROJECT LANDS

406 20. The lands and interests in lands acquired, withdrawn, or reserved and needed by
407 the United States for the purposes of care, operation, and maintenance of Project works may be
408 used by the District for such purposes. The District shall ensure that no unauthorized
409 encroachment occurs on Federal Project lands and rights-of-way. The District does not have the
410 authority to issue any land-use agreement or grant that conveys an interest in Federal real
411 property, nor to lease or dispose of any interest of the United States.

412 PROTECTION OF WATER AND AIR QUALITY

413 21. (a) Project facilities used to make available and deliver water to the District shall
414 be operated and maintained in the most practical manner to maintain the quality of the water at
415 the highest level possible as determined by the Contracting Officer: *Provided*, That the
416 United States does not warrant the quality of the water delivered to the District and is under no
417 obligation to furnish or construct water treatment facilities to maintain or improve the quality of
418 water delivered to the District.

419 (b) The District shall comply with all applicable water and air pollution laws and
420 regulations of the United States and the State of Oregon; and shall obtain all required permits or
421 licenses from the appropriate Federal, state, or local authorities necessary for the delivery of
422 water by the District; and shall be responsible for compliance with all federal, state, or local
423 water quality standards applicable to surface and subsurface drainage and/or discharges
424 generated through the use of federal or District facilities or Project water provided by the District
425 within the District's service area.

426 (c) This Article shall not affect or alter any legal obligations of the Secretary to provide
427 drainage or other discharge services.
428

429 CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY
430

431 22. (a) The District shall not allow contamination or pollution of Federal Project
432 lands, Project waters, or Project works of the United States or administered by the United States

433 and for which the District has the responsibility for care, operation, and maintenance by its
434 employees or agents. The District shall also take reasonable precautions to prevent such
435 contamination or pollution by third parties.

436 (b) The District shall comply with all applicable Federal, state, and local laws and
437 regulations and Reclamation policies and instructions existing, or hereafter enacted or
438 promulgated, concerning any hazardous material that will be used, produced, transported, stored,
439 released, or disposed of on or in Federal Project lands, Project waters, or Project works.

440 (c) "Hazardous material" means (1) any substance falling within the definition of
441 "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the
442 Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C.
443 §9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. §1321(a)) and
444 the Oil Pollution Act (33 U.S.C. §2701(23)); (3) thermal pollution, refuse, garbage, sewage
445 effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste,
446 and (4) any other substance regulated as hazardous or toxic under federal, state, local or tribal
447 law .

448 (d) Upon discovery of any event which may or does result in contamination or pollution
449 of Federal Project lands, Project water, or Project works, the District shall immediately undertake
450 all measures necessary to protect public health and the environment, including measures
451 necessary to contain or abate any such contamination or pollution, and shall report such
452 discovery with full details of the actions taken to the Contracting Officer. Reporting shall be
453 within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is
454 an emergency and the first working day following discovery in the event of a non-emergency.

455 (e) If violation of the provisions of this Article occurs and the District does not take
456 immediate corrective action, as determined by the Contracting Officer, the District may be
457 subject to remedies imposed by the Contracting Officer, which may include termination of this
458 Contract.

459 (f) The District shall be liable for any response action or corrective measure necessary to
460 protect public health and the environment or to restore Federal Project lands, Project waters, or
461 Project works that are adversely affected as a result of such violation, and for all costs, penalties
462 or other sanctions that are imposed for violation of any Federal, state, local or tribal laws and
463 regulations concerning hazardous material. At the discretion of the Contracting Officer, the
464 United States may also terminate this Contract as a result of such violation.

465 (g) The District shall defend, indemnify, protect and save the United States harmless
466 from and against any costs, expenses, claims, damages, demands, or other liability arising from
467 or relating to District's violation of this Article.

468 (h) The Contracting Officer agrees to provide information necessary for the District,
469 using reasonable diligence, to comply with the provisions of this Article.

470 CLEAN AIR AND WATER

- 471 23. (a) The District agrees as follows:
- 472 (1) To comply with all the requirements of section 114 of the Clean Air Act, as
473 amended (42 U.S.C. §7414), and section 308 of the Clean Water Act (33 U.S.C.
474 §1318), relating to inspection, monitoring, entry, reports, and information, as well as
475 other requirements specified in those sections, and all applicable regulations and
476 guidelines issued thereunder.
- 477 (2) That no portion of the work required by this Contract will be performed in a
478 facility listed on the Environmental Protection Agency List of Violating Facilities on
479 the date when this contract was executed unless and until the Environmental
480 Protection Agency eliminates the name of such facility or facilities from such listing.
- 481 (3) To use its best efforts to comply with clean air standards and clean water
482 standards at the facility where the contract work is being performed.
- 483 (4) To insert the substance of the provisions of this article into any nonexempt
484 subcontract, including this subparagraph (a)(4).
- 485 (b) The following definitions apply for purposes of this article:
- 486 (1) The term “Clean Air Act” means the Act enacted by Pub. L. 88-206 of Dec. 17,
487 1963, and amendments thereto, as codified at 42 U.S.C. §7401 et seq.
- 488 (2) The term “Clean Water Act” means the Act enacted by Pub. L. 92- 500 of Oct.
489 18, 1972, and amendments thereto, as codified at 33 U.S.C. §1251 et seq.
- 490 (3) The term “clean air standards” refers to all enforceable rules, regulations,
491 guidelines, standards, limitations, orders, controls, prohibitions, and other
492 requirements which are contained in, issued under, or otherwise adopted pursuant to
493 the Clean Air Act or Executive Order 11738, an applicable implementation plan as
494 described in section 110 of the Clean Air Act (42 U.S.C. §7410), an approved
495 implementation procedure or plan under subsection 111(c) or subsection 111(d) of the
496 Clean Air Act (42 U.S.C. §7411(c) or (d)), or an approved implementation procedure
497 under subsection 112(d) of the Clean Air Act (42 U.S.C. §7412(d)).
- 498 (4) The term “clean water standards” refers to all enforceable limitations, controls,
499 conditions, prohibitions, standards, and other requirements which are promulgated
500 pursuant to the Clean Water Act or contained in a permit issued to a discharger by the
501 Environmental Protection Agency or by a state under an approved program, as
502 authorized by section 402 of the Clean Water Act (33 U.S.C. §1342), or by local
503 government to ensure compliance with pretreatment regulations as required by
504 section 307 of the Clean Water Act (33 U.S.C. §1317).
- 505 (5) The term “comply” refers to compliance with clean air or water standards. It
506 also refers to compliance with a schedule or plan ordered or approved by a court of

507 competent jurisdiction, the Environmental Protection Agency, or an air or water
508 pollution control agency in accordance with the requirements of the Clean Air Act or
509 Clean Water Act and regulations issued pursuant thereto.

510 (6) The term “facility” means any building, plant, installation, structure, mine, vessel
511 or other floating craft, location, or site of operations owned, leased, or supervised by a
512 contractor or subcontractor to be utilized in the performance of a contract or
513 subcontract. Where a location or site of operations contains or includes more than
514 one building, plant, installation, or structure, the entire location or site shall be
515 deemed to be a facility except where the Director, Office of Federal Activities,
516 Environmental Protection Agency, determines that independent facilities are
517 collocated in one geographical area.

518 EQUAL EMPLOYMENT OPPORTUNITY

519 24. During the performance of this Contract, the District agrees as follows:

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

529 (b) The District will, in all solicitations or advertisements for employees placed by or on
530 behalf of the District, state that all qualified applicants will receive consideration for employment
531 without regard to race, color, religion, sex, disability, or national origin.

532 (c) The District will send to each labor union or representative of workers with which it
533 has a collective bargaining agreement or other contract or understanding, a notice, to be provided
534 by the Contracting Officer, advising the labor union or workers’ representative of the District’s
535 commitments under Section 202 of Executive Order 11246 of September 24, 1965 (“EO
536 11246”), and shall post copies of the notice in conspicuous places available to employees and
537 applicants for employment.

538 (d) The District will comply with all provisions of EO 11246, and of the rules,
539 regulations, and relevant orders of the Secretary of Labor.

540 (e) The District will furnish all information and reports required by EO 11246, and by
541 the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit
542 access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor
543 for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

544 (f) In the event of the District's noncompliance with the nondiscrimination clauses of
545 this contract or with any of such rules, regulations, or orders, this contract may be canceled,
546 terminated or suspended in whole or in part and the District may be declared ineligible for
547 further Government contracts in accordance with procedures authorized in EO 11246, and such
548 other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule,
549 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

550 (g) The District will include the provisions of paragraphs (a) through (g) in every
551 subcontract or purchase order unless exempted by the rules, regulations, or orders of the
552 Secretary of Labor issued pursuant to Section 204 of EO 11246, so that such provisions will be
553 binding upon each subcontractor or vendor. The District will take such action with respect to
554 any subcontract or purchase order as may be directed by the Secretary of Labor as a means of
555 enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in
556 the event the District becomes involved in, or is threatened with, litigation with a subcontractor
557 or vendor as a result of such direction, the District may request the United States to enter into
558 such litigation to protect the interests of the United States.

559 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

560 25. (a) The District shall comply with Title VI of the Civil Rights Act of 1964 (Pub.
561 L. 88-352; 42 U.S.C. §2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
562 amended; 29 U.S.C. §§791 et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
563 III; 42 U.S.C. §§6101 et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L.
564 101-336; 42 U.S.C. §§12181 et seq.), and any other applicable civil rights laws, and with the
565 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
566 Interior and/or Bureau of Reclamation.

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

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

580 (d) Complaints of discrimination against the District shall be investigated by the
581 Contracting Officer's Office of Civil Rights.
582

583

CERTIFICATION OF NONSEGREGATED FACILITIES

584 26. The District hereby certifies that it does not maintain or provide for its employees
585 any segregated facilities at any of its establishments and that it does not permit its employees to
586 perform their services at any location under its control where segregated facilities are
587 maintained. It certifies further that it will not maintain or provide for its employees any
588 segregated facilities at any of its establishments and that it will not permit its employees to
589 perform their services at any location under its control where segregated facilities are
590 maintained. The District agrees that a breach of this certification is a violation of the Equal
591 Employment Opportunity clause in this contract. As used in this certification, the term
592 “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms,
593 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
594 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
595 facilities provided for employees which are segregated by explicit directive or are in fact
596 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
597 disability, or otherwise. The District further agrees that (except where it has obtained identical
598 certifications from proposed subcontractors for specific time periods) it will obtain identical
599 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
600 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
601 will retain such certifications in its files; and that it will forward the following notice to such
602 proposed subcontractors (except where the proposed subcontractors have submitted identical
603 certifications for specific time periods):

604

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR

605

CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

611

PEST MANAGEMENT

612 27. (a) The District is responsible for complying with applicable Federal, state, and
613 local laws, rules, and regulations related to pest management in performing its responsibilities
614 under this Contract.

615 (b) The District is responsible for effectively avoiding the introduction and spread of,
616 and for otherwise controlling, undesirable plants and animals, as defined by the
617 Contracting Officer, on or in Federal Project lands, Federal Project waters, and Federal Project

618 works for which and to the extent that the District has operation and maintenance responsibility.
619 The District is responsible for exercising the level of precaution necessary in meeting this
620 responsibility, including inspecting its vehicles and equipment for reproductive and vegetative
621 parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive species and
622 other pests, and removing such materials before moving its vehicles and equipment onto any
623 Federal land or out of any area on Federal Project land where work is performed.

624 (c) Where decontamination is required prior to entering Federal Project land, it shall be
625 performed at the point of prior use, or at an approved offsite facility able to process generated
626 cleaning wastes. Upon the completion of work, the District will perform any required
627 decontamination within the work area before moving the vehicles and equipment from Federal
628 Project lands.

629 (d) Programs for the control of undesirable plants and animals on Federal project lands,
630 and in Federal Project waters and Federal Project works for which the District has operation and
631 maintenance responsibility will incorporate Integrated Pest Management (IPM) concepts and
632 practices. IPM refers to a systematic and environmentally compatible program to maintain pest
633 populations within economically and environmentally tolerable levels. In implementing an IPM
634 program, the District will adhere to applicable federal and state laws and regulations and
635 Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and
636 manuals, including but not limited to, the Department of the Interior Manual, Part 609 Weed
637 Control Program, the Plant Protection Act of June 20, 2000 (Pub. L. 106 224), and Executive
638 Order 13112 of February 3, 1999.

639 BOOKS, RECORDS, ~~AND~~ REPORTS AND STATEMENTS

640 28. The District shall establish and maintain accounts and other books and records
641 pertaining to administration of the terms and conditions of this Contract, including the District's
642 financial transactions; water supply data; Project operation, maintenance, and replacement logs;
643 Project land and rights-of-way use agreements; land-leasing, and water-use data; and other
644 matters that the Contracting Officer may require. Reports shall be furnished to the Contracting
645 Officer in such form and on such date or dates as the Contracting Officer may require. Subject
646 to applicable Federal laws and regulations, each party to this Contract shall have the right during
647 office hours to examine and make copies of the other party's books and records relating to
648 matters covered by this Contract.

649 29. The United States shall provide annually to the District, commencing on the
650 execution of this Contract and for each year during which the Contract remains in full force and
651 effect, a Statement of Project Construction Cost and Repayment (SPCCR) for the Klamath
652 Project setting forth the portion of the District's accumulated repayment obligations therefor,
653 consistent with the Reclamation Act of 1902 (June 17, 1902; ch. 1093, 32 Stat. 388; 43 USC
654 391), and acts amendatory and supplementary thereto; Water Conservation and Utilization Act
655 (August 11, 1939; Pub. L. 76-398; ch. 717, 53 Stat. 1418). Consistent with Reclamation's
656 Manual on Standards and Directives, the statements shall *inter alia* include data on the total
657 construction costs for the Klamath Project and those costs allocable to the District: the
658 construction costs allocated to each project purpose, including irrigation; repayment information
659 for costs allocated to each project purpose, including the amount irrigation districts have repaid

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660 | as of the end of the fiscal year; and any financial assistance granted to irrigation districts. The
661 | statements also shall clearly identify whether Klamath Project costs are reimbursable or non-
662 | reimbursable.

663 | CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

664 | 3029. The expenditure or advance of any money or the performance of any obligation of
665 | the United States under this Contract shall be contingent upon appropriation or allotment of
666 | funds. Absence of appropriation or allotment of funds shall not relieve the District from any
667 | obligations under this Contract. No liability shall accrue to the United States in case funds are
668 | not appropriated or allotted.

669 | OFFICIALS NOT TO BENEFIT

670 | 310. No Member of or Delegate to the Congress, Resident Commissioner, or official of
671 | the District shall benefit from this Contract other than as a water user or landowner in the same
672 | manner as other water users or landowners.

673 | NOTICES

674 | 321. Any notice, demand, or request authorized or required by this Contract shall be
675 | deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered
676 | to the Area Manager, Klamath Basin Area Office, 6600 Washburn Way, Klamath Falls, Oregon
677 | 97603, and on behalf of the United States, when mailed, postage prepaid, or delivered to office
678 | of the District, 6640 KID Lane, Klamath Falls, Oregon, 97603. The designation of the addressee
679 | or the address may be changed by notice given in the same manner as provided in this Article for
680 | other notices.

AMENDMENTS

33. This Contract may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Contract shall be binding unless it is in writing and signed by all parties.

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681 | CONTRACT DRAFTING CONSIDERATIONS

682 | 342. This Contract has been negotiated and reviewed by the parties hereto, each of
683 | whom is sophisticated in the matters to which this contract pertains. Articles 1 through 8 of this
684 | contract have been drafted, negotiated, and reviewed by the parties, and the United States, no one
685 | party shall be considered to have drafted the stated articles.

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687 IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year
688 first above written.

689 UNITED STATES OF AMERICA

690 By: _____

691 David Murillo, Regional Director
692 Mid-Pacific Region
693 Bureau of Reclamation

694 DISTRICT

695 By: _____

696 Brent Cheyne, President
697 Klamath Irrigation District
698 6640 KID Lane
699 Klamath Falls, OR 97603