

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 EXTRAORDINARY MAINTENANCE COSTS

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

WITNESSETH, That:

EXPLANATORY RECITALS

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

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

27 [3<sup>rd</sup>] 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 extraordinary maintenance  
30 (XM) and to negotiate an appropriate contract for the return of reimbursable costs, with interest;  
31 and

32 [4<sup>th</sup>] WHEREAS, Reclamation, in consultation with the District, has determined the  
33 need to perform XM work on the C Flume and the District agrees to repay the reimbursable  
34 costs, with interest, of XM 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) "Fiscal Year" shall mean the period October 1 through September 30 of the  
49 following year.

50 (e) "Year" shall mean the period January 1 through December 31, both dates  
51 inclusive.

52 TERM OF THE CONTRACT

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

56 DESCRIPTION OF XM WORK

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

63 FUNDS TO BE PROVIDED

64 4. (a) The United States shall provide funds to the District for the XM work  
65 described in Article 3 herein in an amount that shall not exceed \$7,450,000; *Provided*, That the  
66 District may request additional funds in writing to complete the XM work and the United States  
67 may provide such additional funds subject to approval of the Contracting Officer in accordance  
68 with Federal Reclamation law and policy. If such additional funds are provided, Exhibit A shall  
69 be revised accordingly.

70 (b) Funds may be provided to the District in advance of the XM work provided  
71 that any such advance of funds shall be released in as many installments as the  
72 Contracting Officer deems necessary; *Provided further*, That the District may request an advance

73 of funds in particular installments; however, the District must provide the Contracting Officer  
74 justification for the immediate need for the funds requested and the Contracting Officer shall  
75 have the final determination in how and when installments are transmitted.

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

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

86 DISTRICT'S REPAYMENT OBLIGATION

87 5. (a) The District shall be obligated to repay the entire sum of the funds provided  
88 pursuant to Article 4 of this Contract, plus accrued interest, as determined by the Contracting  
89 Officer, which total is hereinafter referred to as the Repayment Obligation.

90 (b) The interest rate used for computing interest on XM work in progress and  
91 interest on the unpaid balance of the reimbursable costs of XM work in accordance with this  
92 Contract is the Department of the Treasury rate as of the beginning of the Fiscal Year in which  
93 XM work is commenced, on the basis of average market yields on outstanding marketable  
94 obligations of the United States with the remaining periods of maturity comparable to the  
95 applicable reimbursement period of the project, adjusted to the nearest 1/8 of 1 percent on the

96 unamortized balance of any portion of the Repayment Obligation. Interest accrual shall  
97 commence on each date funds are advanced by the United States to the District and be computed  
98 on an annual basis on the unpaid balance of the reimbursable costs of XM work, as determined  
99 by the Contracting Officer.

100 (c) The first installment shall be due and payable on or before January 1, 2019, or on  
101 January 1 of the Year following the date on which the Contracting Officer determines and  
102 notifies the District in writing that the XM work is substantially complete, whichever comes first.

103 (d) The District will repay the total repayment obligation over a period of 10 years from  
104 the date on which the Contracting Officer determines that the XM work is substantially  
105 complete; *Provided*, That the period may decreased or increased by the Contracting Officer  
106 pursuant to Article 5(f) herein; *Provided further*, That full repayment shall occur within 50 years  
107 from the first installment provided by the District pursuant to Article 5(c) herein. As soon as  
108 practicable following the determination that the XM work is substantially complete, the  
109 Contracting Officer shall provide the District with a repayment schedule requiring equal annual  
110 installments over a period of 10 years, which schedule(s) shall be incorporated into this Contract  
111 as Exhibit A, which may be updated by the Contracting Officer without further amendment  
112 hereof.

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

115 (f) The Contracting Officer, within one year of execution of this Contract, will perform a  
116 financial analysis to determine the District's minimum appropriate repayment period. If, in the  
117 opinion of the Contracting Officer, the financial analysis indicates that the District's minimum  
118 appropriate repayment period is less than or greater than 10 years, then the Contracting Officer

119 shall provide the District with a revised Exhibit A. At any time, the District may, at its sole  
120 expense, request the Contracting Officer perform an updated financial analysis.

121 LIMITATIONS

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

124 SEVERABILITY

125 7. In the event that any one or more of the provisions contained herein shall, for any  
126 reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality,  
127 or unenforceability shall not affect any other provisions of this contract, but this contract shall be  
128 construed as if such invalid, illegal, or unenforceable provisions had never been contained  
129 herein, unless the deletion of such provisions would result in such a material change so as to  
130 cause the fundamental benefits afforded the parties to this contract to become unavailable or  
131 materially altered.

132 ENVIRONMENTAL COMPLIANCE

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

138 (b) The District will comply with all Federal, state, local, and tribal law, and  
139 requirements imposed for protection of the environment and Indian trust assets, including, but  
140 not limited to, the Native American Graves Protection and Repatriation Act (Pub. L. 101-601,



141 104 Stat. 3048, 25 U.S.C. §3001 et seq.) and the Archaeological Resources Protection Act of  
142 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. §470aa et seq.).

143 MEDIUM FOR TRANSMITTING PAYMENTS

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

148 (b) Upon execution of this Contract, the District shall furnish the Contracting Officer  
149 with the District’s taxpayer’s identification number (TIN). The purpose for requiring the  
150 District’s TIN is for collecting and reporting any delinquent amounts arising out of the District’s  
151 relationship with the United States.

152 CONTRACTS WITH THIRD PARTIES

153 10. (a) The District shall advertise each construction (as “construction” is defined in  
154 the Federal Acquisition Regulations (FAR) at 48 C.F.R. §2.101), equipment, or supply contract  
155 exceeding \$25,000 (twenty-five thousand dollars) for competitive bidding. Any action proposed  
156 by the District other than making the award to the lowest responsible bidder shall be subject to  
157 the Contracting Officer’s approval.

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

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

170 FAILURE TO COMPLETE WORK

171 11. (a) In the event that the District fails to complete the work to be performed  
172 pursuant to this contract for any reason other than the failure of the United States to appropriate  
173 and allocate funds, the District shall, upon receipt of written notice from the Contracting Officer,  
174 suspend payment on all current contracts and return to the United States any unexpended balance  
175 of funds advanced by the United States and contributed by the District in such amounts as  
176 determined to be equitable by the Contracting Officer. Following delivery of the notice, the

177 Contracting Officer may adopt either of the following two alternatives:

178 (1) Perform, or cause to be performed, all or any part of the work remaining under  
179 this contract and within the limits of the funds provided herein by the United States  
180 and by the District for the project, as well as operate and maintain the project  
181 concurrently. The District shall transfer to the United States custody and use of all  
182 equipment, materials, and supplies used or useful in the performance of the work;  
183 permit the United States, its contractors, and its agents ingress to and egress from  
184 lands, project works, and facilities of the District for the performance of such work;  
185 and assign to the United States the District’s interest in any contract for the  
186 performance of work or the supplying of equipment or material in connection with  
187 such work where requested by the United States and agreed to by the other  
188 contracting party; or

189 (2) Declare the project substantially complete within the provisions of this Contract  
190 by giving written notice to the District that (a) the construction work on a feature is  
191 substantially complete, or (b) the feature is providing benefits and services for the  
192 intended purpose(s), or (c) the feature is generating revenue, where applicable.  
193 Repayment of the loan obligation shall be carried out in accordance with the  
194 provisions of this Contract; *Provided*, That the first annual payment shall become due  
195 in the Year following the Year in which the District is notified of such declaration of  
196 completion.

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

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

206 CHARGES FOR DELINQUENT PAYMENTS

207 12. (a) The District shall be subject to interest, administrative, and penalty charges on  
208 delinquent payments. If a payment is not received by the due date, the District shall pay an  
209 interest charge on the delinquent payment for each day the payment is delinquent beyond the due  
210 date. If a payment becomes 60 days delinquent, the District shall pay, in addition to the interest  
211 charge, an administrative charge to cover additional costs of billing and processing the  
212 delinquent payment. If a payment is delinquent 90 days or more, the District shall pay, in  
213 addition to the interest and administrative charges, a penalty charge for each day the payment is  
214 delinquent beyond the due date, based on the remaining balance of the payment due at the rate of  
215 6 percent per year. The District shall also pay any fees incurred for debt collection services  
216 associated with a delinquent payment.

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

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

224 GENERAL OBLIGATION – BENEFITS CONDITIONS UPON PAYMENT

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

229 (b) The payment of charges becoming due pursuant to this contract is a condition  
230 precedent to receiving benefits under this contract. The United States shall not make water  
231 available to the District through Project facilities during any period in which the District is in  
232 arrears to the United States for any payment due under the terms of this Contract. The District  
233 shall not deliver water under the terms and conditions of this Contract for lands or parties that are  
234 in arrears more than 12 months in the payment of charges required for the District to repay its  
235 repayment obligation, as levied or established by the District.

236 OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

237 14. (a) Upon substantial completion of the XM work, or as otherwise determined by  
238 the Contracting Officer, and following written notification, the care, operation, and maintenance  
239 of any or all of Project works constructed pursuant to this Contract may be transferred to the  
240 District. Title to the transferred works will remain in the name of the United States, unless  
241 otherwise provided by the Congress of the United States.

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

246 (c) Necessary repairs of the transferred works shall be made promptly by the District. In  
247 case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the  
248 transferred works threatening or causing interruption of water service, the Contracting Officer  
249 may issue to the District a special written notice of those necessary repairs. Except in the case of  
250 an emergency, the District will be given 60 days to either make the necessary repairs or submit a  
251 plan for accomplishing the repairs acceptable to the Contracting Officer. In the case of an  
252 emergency, or if the District fails to either make the necessary repairs or submit a plan for  
253 accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the

254 notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs  
255 shall be paid by the District as directed by the Contracting Officer.

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

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

267 (f) In the event the District is found to be operating the transferred works or any part  
268 thereof in violation of this contract or the District is found to be failing any financial  
269 commitments or other commitments to the United States under the terms and conditions of this  
270 Contract, then upon the election of the Contracting Officer, the United States may take over from  
271 the District the care, operation, and maintenance of the transferred works by giving written  
272 notice to the District of such election and the effective date thereof. Thereafter, during the period  
273 of operation by the United States, upon notification by the Contracting Officer the District shall  
274 pay to the United States, annually in advance, the cost of operation and maintenance of the works  
275 as determined by the Contracting Officer. Following written notification from the  
276 Contracting Officer the care, operation, and maintenance of the works may be transferred back to  
277 the District.

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

282 EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND  
283 REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

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

292 (b) The Contracting Officer may, or the District may ask the Contracting Officer to,

293 conduct special inspections of any Project works being operated by the District and special audits  
294 of the District's books and records to ascertain the extent of any operation and maintenance  
295 deficiencies to determine the remedial measures required for their correction and to assist the  
296 District in solving specific problems. Except in an emergency, any special inspection or audit  
297 shall be made only after written notice thereof has been delivered to the District by the  
298 Contracting Officer.

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

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

303 (e) The costs incurred by the United States in conducting operation and maintenance  
304 examinations, inspections, and audits and preparing associated reports and recommendations  
305 related to high- and significant-hazard dams and associated facilities shall be nonreimbursable.  
306 Associated facilities include carriage, distribution, and drainage systems; pumping and pump-  
307 generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low-  
308 hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road;  
309 regulating reservoirs (low-hazard); fish passage and protective facilities, including hatcheries;  
310 river channelization features; rural/municipal water systems; desalting and other water treatment  
311 plants; maintenance buildings and service yards; facilities constructed under Federal loan  
312 programs (until paid out); and recreation facilities (reserved works only); and any other facilities  
313 as determined by the Contracting Officer.

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

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

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

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

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EMERGENCY RESERVE FUND

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

336 (b) The District shall accumulate the reserve fund with annual deposits or investments of  
337 not less than \$10,000 to a Federally insured, interest- or dividend-bearing account or in securities  
338 guaranteed by the Federal Government: *Provided*, That money in the reserve fund, including  
339 accrued interest, shall be available within a reasonable time to meet expenses for such purposes  
340 as those identified in paragraph (d) herein. Such annual deposits and the accumulation of interest  
341 to the reserve fund shall continue until the basic amount of \$100,000 is accumulated. Following  
342 an emergency expenditure from the fund, the annual deposits shall continue from the year  
343 following the emergency expenditure until the previous balance is restored. After the initial  
344 amount is accumulated or after the previous balance is restored, the annual deposits may be  
345 discontinued, and the interest earnings shall continue to accumulate and be retained as part of the  
346 reserve fund.

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

352 (d) The District may make expenditures from the reserve fund only for meeting routine  
353 or recurring operation and maintenance costs incurred during periods of special stress, as  
354 described in paragraph (a) herein; or for meeting unforeseen extraordinary operation and  
355 maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or for  
356 meeting betterment costs (in situations where recurrence of severe problems can be eliminated)  
357 during periods of special stress. Proposed expenditures from the fund shall be submitted to the  
358 Contracting Officer in writing for review and written approval prior to disbursement. Whenever  
359 the reserve fund is reduced below the current balance by expenditures therefrom, the District  
360 shall restore that balance by the accumulation of annual deposits as specified in paragraph (b)  
361 herein.

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

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

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CHANGES IN DISTRICT’S ORGANIZATION

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

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ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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RULES, REGULATIONS, AND DETERMINATIONS

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

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

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ADMINISTRATION OF FEDERAL PROJECT LANDS

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

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PROTECTION OF WATER AND AIR QUALITY

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

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(b) The District shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Oregon; and shall obtain all required permits or

402 licenses from the appropriate Federal, state, or local authorities necessary for the delivery of  
403 water by the District; and shall be responsible for compliance with all federal, state, or local  
404 water quality standards applicable to surface and subsurface drainage and/or discharges  
405 generated through the use of federal or District facilities or Project water provided by the District  
406 within the District’s service area.

407  
408 (c) This Article shall not affect or alter any legal obligations of the Secretary to provide  
409 drainage or other discharge services.

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411 CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

412 22. (a) The District shall not allow contamination or pollution of Federal Project  
413 lands, Project waters, or Project works of the United States or administered by the United States  
414 and for which the District has the responsibility for care, operation, and maintenance by its  
415 employees or agents. The District shall also take reasonable precautions to prevent such  
416 contamination or pollution by third parties.

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

421 (c) “Hazardous material” means (1) any substance falling within the definition of  
422 “hazardous substance,” “pollutant or contaminant,” or “hazardous waste” under the  
423 Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C.  
424 §9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. §1321(a)) and  
425 the Oil Pollution Act (33 U.S.C. §2701(23)); (3) thermal pollution, refuse, garbage, sewage  
426 effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste,  
427 and (4) any other substance regulated as hazardous or toxic under federal, state, local or tribal  
428 law .

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

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

440 (f) The District shall be liable for any response action or corrective measure necessary to  
441 protect public health and the environment or to restore Federal Project lands, Project waters, or



442 Project works that are adversely affected as a result of such violation, and for all costs, penalties  
443 or other sanctions that are imposed for violation of any Federal, state, local or tribal laws and  
444 regulations concerning hazardous material. At the discretion of the Contracting Officer, the  
445 United States may also terminate this Contract as a result of such violation.

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

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

451 CLEAN AIR AND WATER

452 23. (a) The District agrees as follows:

453 (1) To comply with all the requirements of section 114 of the Clean Air Act, as  
454 amended (42 U.S.C. §7414), and section 308 of the Clean Water Act (33 U.S.C.  
455 §1318), relating to inspection, monitoring, entry, reports, and information, as well as  
456 other requirements specified in those sections, and all applicable regulations and  
457 guidelines issued thereunder.

458 (2) That no portion of the work required by this Contract will be performed in a  
459 facility listed on the Environmental Protection Agency List of Violating Facilities on  
460 the date when this contract was executed unless and until the Environmental  
461 Protection Agency eliminates the name of such facility or facilities from such listing.

462 (3) To use its best efforts to comply with clean air standards and clean water  
463 standards at the facility where the contract work is being performed.

464 (4) To insert the substance of the provisions of this article into any nonexempt  
465 subcontract, including this subparagraph (a)(4).

466 (b) The following definitions apply for purposes of this article:

467 (1) The term "Clean Air Act" means the Act enacted by Pub. L. 88-206 of Dec. 17,  
468 1963, and amendments thereto, as codified at 42 U.S.C. §7401 et seq.

469 (2) The term "Clean Water Act" means the Act enacted by Pub. L. 92- 500 of Oct.  
470 18, 1972, and amendments thereto, as codified at 33 U.S.C. §1251 et seq.

471 (3) The term "clean air standards" refers to all enforceable rules, regulations,  
472 guidelines, standards, limitations, orders, controls, prohibitions, and other  
473 requirements which are contained in, issued under, or otherwise adopted pursuant to  
474 the Clean Air Act or Executive Order 11738, an applicable implementation plan as  
475 described in section 110 of the Clean Air Act (42 U.S.C. §7410), an approved

476 implementation procedure or plan under subsection 111(c) or subsection 111(d) of the  
477 Clean Air Act (42 U.S.C. §7411(c) or (d)), or an approved implementation procedure  
478 under subsection 112(d) of the Clean Air Act (42 U.S.C. §7412(d)).

479 (4) The term “clean water standards” refers to all enforceable limitations, controls,  
480 conditions, prohibitions, standards, and other requirements which are promulgated  
481 pursuant to the Clean Water Act or contained in a permit issued to a discharger by the  
482 Environmental Protection Agency or by a state under an approved program, as  
483 authorized by section 402 of the Clean Water Act (33 U.S.C. §1342), or by local  
484 government to ensure compliance with pretreatment regulations as required by  
485 section 307 of the Clean Water Act (33 U.S.C. §1317).

486 (5) The term “comply” refers to compliance with clean air or water standards. It  
487 also refers to compliance with a schedule or plan ordered or approved by a court of  
488 competent jurisdiction, the Environmental Protection Agency, or an air or water  
489 pollution control agency in accordance with the requirements of the Clean Air Act or  
490 Clean Water Act and regulations issued pursuant thereto.

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

499 EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

513 (c) The District will send to each labor union or representative of workers with which it  
514 has a collective bargaining agreement or other contract or understanding, a notice, to be provided  
515 by the Contracting Officer, advising the labor union or workers' representative of the District's  
516 commitments under Section 202 of Executive Order 11246 of September 24, 1965 ("EO  
517 11246"), and shall post copies of the notice in conspicuous places available to employees and  
518 applicants for employment.

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

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

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

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

540 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

541 25. (a) The District shall comply with Title VI of the Civil Rights Act of 1964 (Pub.  
542 L. 88-352; 42 U.S.C. §2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
543 amended; 29 U.S.C. §§791 et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
544 III; 42 U.S.C. §§6101 et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L.  
545 101-336; 42 U.S.C. §§12181 et seq.), and any other applicable civil rights laws, and with the  
546 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
547 Interior and/or Bureau of Reclamation.

548 (b) These statutes prohibit any person in the United States from being excluded from  
549 participation in, being denied the benefits of, or being otherwise subjected to discrimination  
550 under any program or activity receiving financial assistance from the Bureau of Reclamation on  
551 the grounds of race, color, national origin, disability, or age. By executing this contract, the

552 District agrees to immediately take any measures necessary to implement this obligation,  
553 including permitting officials of the United States to inspect premises, programs, and documents.

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

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

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CERTIFICATION OF NONSEGREGATED FACILITIES

565 26. The District hereby certifies that it does not maintain or provide for its employees  
566 any segregated facilities at any of its establishments and that it does not permit its employees to  
567 perform their services at any location under its control where segregated facilities are  
568 maintained. It certifies further that it will not maintain or provide for its employees any  
569 segregated facilities at any of its establishments and that it will not permit its employees to  
570 perform their services at any location under its control where segregated facilities are  
571 maintained. The District agrees that a breach of this certification is a violation of the Equal  
572 Employment Opportunity clause in this contract. As used in this certification, the term  
573 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,  
574 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
575 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
576 facilities provided for employees which are segregated by explicit directive or are in fact  
577 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
578 disability, or otherwise. The District further agrees that (except where it has obtained identical  
579 certifications from proposed subcontractors for specific time periods) it will obtain identical  
580 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000  
581 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it  
582 will retain such certifications in its files; and that it will forward the following notice to such  
583 proposed subcontractors (except where the proposed subcontractors have submitted identical  
584 certifications for specific time periods):

585

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR

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CERTIFICATIONS OF NONSEGREGATED FACILITIES

587 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract

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exceeding \$10,000 which is not exempt from the provisions of the Equal Employment

589

Opportunity clause. The certification may be submitted either for each subcontract or for all

590 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for  
591 making false statements in offers is prescribed in 18 U.S.C. §1001.

592 PEST MANAGEMENT

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

596 (b) The District is responsible for effectively avoiding the introduction and spread of,  
597 and for otherwise controlling, undesirable plants and animals, as defined by the  
598 Contracting Officer, on or in Federal Project lands, Federal Project waters, and Federal Project  
599 works for which and to the extent that the District has operation and maintenance responsibility.  
600 The District is responsible for exercising the level of precaution necessary in meeting this  
601 responsibility, including inspecting its vehicles and equipment for reproductive and vegetative  
602 parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive species and  
603 other pests, and removing such materials before moving its vehicles and equipment onto any  
604 Federal land or out of any area on Federal Project land where work is performed.

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

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

620 BOOKS, RECORDS, AND REPORTS

621 28. The District shall establish and maintain accounts and other books and records  
622 pertaining to administration of the terms and conditions of this Contract, including the District's  
623 financial transactions; water supply data; Project operation, maintenance, and replacement logs;  
624 Project land and rights-of-way use agreements; land-leasing, and water-use data; and other  
625 matters that the Contracting Officer may require. Reports shall be furnished to the Contracting  
626 Officer in such form and on such date or dates as the Contracting Officer may require. Subject  
627 to applicable Federal laws and regulations, each party to this Contract shall have the right during

628 office hours to examine and make copies of the other party’s books and records relating to  
629 matters covered by this Contract.

630 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

631 29. The expenditure or advance of any money or the performance of any obligation of  
632 the United States under this Contract shall be contingent upon appropriation or allotment of  
633 funds. Absence of appropriation or allotment of funds shall not relieve the District from any  
634 obligations under this Contract. No liability shall accrue to the United States in case funds are  
635 not appropriated or allotted.

636 OFFICIALS NOT TO BENEFIT

637 30. No Member of or Delegate to the Congress, Resident Commissioner, or official of  
638 the District shall benefit from this Contract other than as a water user or landowner in the same  
639 manner as other water users or landowners.

640 NOTICES

641 31. Any notice, demand, or request authorized or required by this Contract shall be  
642 deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered  
643 to the Area Manager, Klamath Basin Area Office, 6600 Washburn Way, Klamath Falls, Oregon  
644 97603, and on behalf of the United States, when mailed, postage prepaid, or delivered to office  
645 of the District, 6640 KID Lane, Klamath Falls, Oregon, 97603. The designation of the addressee  
646 or the address may be changed by notice given in the same manner as provided in this Article for  
647 other notices.

648 CONTRACT DRAFTING CONSIDERATIONS

649 32. This Contract has been negotiated and reviewed by the parties hereto, each of  
650 whom is sophisticated in the matters to which this contract pertains. Articles 1 through 8 of this  
651 contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be  
652 considered to have drafted the stated articles.  
653

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

656 UNITED STATES OF AMERICA

657 By: \_\_\_\_\_

658 David Murillo, Regional Director  
659 Mid-Pacific Region  
660 Bureau of Reclamation

661 DISTRICT

662 By: \_\_\_\_\_

663 Brent Cheyne, President  
664 Klamath Irrigation District  
665 6640 KID Lane  
666 Klamath Falls, OR 97603