

Contract No. 0-07-10-W0801

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Boise Project, Arrowrock Division

CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
AND THE NEW YORK IRRIGATION DISTRICT FOR  
REPAYMENT OF SAFETY OF DAMS COSTS

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REPAYMENT OF SAFETY OF DAMS COSTS

THIS REPAYMENT CONTRACT, made this 27th day of July, 1990, pursuant to Reclamation Laws, particularly the Act of August 28, 1984 (98 Stat. 1481), between the UNITED STATES OF AMERICA, hereinafter called the United States, acting through the Regional Director, Bureau of Reclamation, Pacific Northwest Region, the duly authorized representative of the Secretary of the Interior, hereinafter called the Contracting Officer, and the NEW YORK IRRIGATION DISTRICT, hereinafter called the District, organized and existing under and by virtue of the laws of the State of Idaho, having its principal place of business at Boise, Idaho.

WITNESSETH, THAT:

EXPLANATORY RECITALS

- A. WHEREAS, the United States has constructed Deer Flat Dam, also known as Lake Lowell, as part of the Arrowrock Division, Boise Project, Idaho; and
- B. WHEREAS, the District and the United States entered into contracts dated September 27, 1926, and August 7, 1941, as amended, whereby the District

Recitals A, B

assumed certain operation, maintenance, and repair obligations to the United States; and

C. WHEREAS, the District and four other irrigation districts, represented by the Boise Project Board of Control, hereinafter referred to as the Board of Control, as provided in contracts executed in 1926 between the United States and the districts have assumed the responsibility to operate and maintain Deer Flat Dam as part of the transferred works; and

D. WHEREAS, investigations and studies by the Bureau of Reclamation have identified certain safety deficiencies at the Upper and Lower Embankments at Deer Flat Dam; and

E. WHEREAS, failure of either the Upper or Lower Embankment, could lead to downstream hazards, potential loss of life, and loss of stored water and storage capacity; and

F. WHEREAS, the Bureau of Reclamation, in its "Modification Report, Deer Flat Safety of Dams Project, September 1989," proposes certain work to make the dam safe while providing full project benefits and protecting downstream property and lives; and

G. WHEREAS, the Act of August 28, 1984 (98 Stat. 1481), authorizes the Secretary of the Interior, through the Bureau of Reclamation, to perform the corrective work on the embankments, and provides that 15 percent of the costs incurred for safety modifications shall be allocated to authorized purposes of the structure, and thus are reimbursable by the irrigation function, being the authorized purpose of the structure, as represented by the five districts that constitute the Board of Control. Accordingly, the District as a member of the Board of Control, has an obligation to repay an appropriate share of the reimbursable cost of the corrective work:

H. WHEREAS, the qualified electors of the District have approved this contract pursuant to Idaho law subject to the appropriation of funds as set forth in Article 10;

NOW, THEREFORE, in consideration of the mutual covenants and stipulations herein contained, it is mutually agreed by and between the parties hereto as follows:

Definitions

1. The following terms, whenever used in this contract, shall have the following respective meanings:

"Safety of Dams Act" shall mean the Act of Congress dated August 28, 1984 (98 Stat. 1481), entitled the "Reclamation Safety Of Dams Act Amendments of 1984."

"Safety of dams work," shall mean any work necessary to strengthen the Deer Flat Embankments and ancillary facilities identified in the Modification Report, and as described in Article 3, below.

"District's loan obligation" shall mean the District's share of the total reimbursable cost for all five districts, represented by the Board of Control, to correct the deficiencies at Deer Flat Dam.

"Total reimbursable costs" shall mean 15 percent (.15) of the total project construction cost to correct the deficiencies at Deer Flat Dam, as provided in the Safety of Dams Act.

Contract Term and Scope

2. (a) This contract shall become effective upon the date of its execution on behalf of the United States, and its provisions shall remain

Recital H  
Articles 1, 2

in effect until the District has paid to the United States all amounts owed to the United States under this contract. This contract does not affect other contracts between the United States and the District unless the terms of those other contracts are contrary to the terms of this contract, in which case the terms of this contract shall prevail.

Work to be Performed

3. (a) The United States shall undertake the following work:

(1) Provide slope protection for the upstream face of the Lower Embankment and repair the existing parapet wall to provide adequate slope protection and freeboard.

(2) Construct a filter/drain system with counterbalancing fill along the downstream toe of the Lower and Upper Embankments to control internal erosion and piping, and reduce excessive uplift pressures.

(3) Provide mitigation for recreation and fish and wildlife resources associated with the construction of the project substantially in accordance with the Cooperative Agreement between the Department of the Interior, Bureau of Reclamation, and the Idaho Department of Fish and Game dated February 12, 1990, the cost of which is part of the total project construction cost.

(4) Make any other necessary modifications as generally described in the Modification Report, Deer Flat Safety of Dams Project, September 1989. Should it appear necessary or desirable to the Contracting Officer either before or during construction, these works may be modified in design or location, works may be eliminated, or other works may be added thereto, in keeping with the objectives of this contract.

(b) The Contracting Officer shall determine and notify the District in writing when the work is completed within the meaning of the contract.

Cost of Work: District's Obligation

4. (a) The total estimated cost of the Safety of Dams Work is twenty-nine million dollars (\$29,000,000). The Total Reimbursable Cost to all 5 districts, constituting the Board of Control, shall be 15 percent (.15) of the total project cost, and is estimated at four million three hundred fifty thousand dollars ( $\$29,000,000 \times .15 = \$4,350,000$ ). The District's Loan Obligation is the District's share of the Total Reimbursable Cost, and shall be 10.79 percent (.1079) of the Total Reimbursable Cost. The District's Loan Obligation is estimated to be \$469,365 ( $\$4,350,000 \times .1079 = \$469,365$ ). This obligation may be adjusted under the provisions of Article 7 of this contract.

Repayment Obligation of District

5. The District's Loan Obligation shall be repaid to the United States in successive annual installments in the amount of ninety thousand four hundred thirty-one dollars (\$90,431) until the obligation is repaid. A lesser repayment of the actual amount needed to retire the obligation will be allowed in the final year. The District's annual installments payable to the United States will begin with June 30 of the year following the year that the Contracting Officer announces that the work is substantially completed as provided in Article 3, and on or before June 30 of each succeeding year thereafter until repaid in full: Provided, that the District may, at any time, prepay all or a portion of the unpaid portion of the District's Loan Obligation.

General Obligation--Benefits Conditioned Upon Repayment

6. (a) The obligation of the District to pay the United States as provided in this contract is a general obligation of the District notwithstanding the manner in which the obligation may be distributed among the District's water users and notwithstanding the default of individual water users in their obligation to the District.

(b) The repayment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. The United States shall not make water available to the District through project facilities during any period in which the District may be in arrears in the advance payment of any operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The District shall not furnish water to lands or parties which are in arrears in the advance payment of operation and maintenance charges or in arrears more than 12 months in the payment of construction charges as levied or established by the District.

Statement of Costs

7. (a) Upon the completion of the work provided for in Article 3 or the termination of the work thereon as determined by the Contracting Officer for any reason, the Contracting Officer shall furnish the District with a written statement of the actual total construction cost incurred by the United States, and the District's share of the Total Reimbursable Costs which are payable to the United States, and such amount shall be referred to as the District's Loan Obligation.

(b) The costs which make up the various obligations to be paid by the District to the United States under this contract shall embrace all expenditures of whatsoever nature or kind in discharge of the obligations undertaken pursuant to Article 3(a), including, but without limitation by reason of this enumeration, cost of surveys and investigations, labor, property, material and equipment, engineering, legal work, superintendence, administration, overhead, general inspection services, and claims of all kinds, whether or not involving the negligence of officers, agents, or employees of the United States. The Contracting Officer's determinations as to what costs are properly chargeable under this contract, and as to the classification of those charges for repayment purposes, shall be conclusive.

Charges for Delinquent Payments

8. (a) The District shall be subject to interest, administrative and penalty charges on delinquent installments or payments, pursuant to section 11 of the Debt Collection Act of 1982 (Public Law 97-365). When a payment is not received within 30 days of the due date, the District shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the District shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the District shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the District shall pay any fees incurred for debt collection services associated with a delinquent payment.



(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of .5 percent per month prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

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

No Liability for Water Shortage or Interruptions

9. No liability shall accrue against the United States or any of its officers, agents, or employees for damage, direct or indirect, arising by reason of shortages in the quantity of water available from or through Deer Flat Reservoir, or interruptions in water releases resulting from drought, inaccuracy in distribution, hostile diversion, prior or superior claims, accident or failure of Deer Flat Dam whether or not attributable to negligence of officers, agents or employees of the United States, or other causes of whatsoever kind; nor shall the obligations of the District to the United States under this contract be reduced by reason of such shortages or interruptions.

Contingent on Appropriation or Allotment of Funds

10. The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the District from any obligations under this

contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

Title

11. Title to the works and facilities constructed, repaired, or replaced pursuant to this contract shall be, and remain in the United States.

Operation and Maintenance of Project Works

12. All irrigation facilities repaired or modified pursuant to this contract shall remain a part of the Boise Project, Arrowrock Division, and shall be operated by the Board of Control as set forth in the respective contracts executed in 1926, as amended and supplemented, between each of the five districts comprising the Board of Control and the United States providing for the transfer of operation and maintenance of certain facilities of the Arrowrock Division to the water users.

Compliance with Reclamation Laws

13. The parties agree that the delivery of irrigation water or the use of Federal facilities pursuant to this contract are subject to Reclamation Law, as amended and supplemented, provided, however, that the Reclamation Safety of Dams Act Amendments of 1984 (98 Stat. 1481 to 1482) under which this contract is written, provide that a contract entered into pursuant to that Act shall not be deemed a new or amended contract for the purposes of section 203(a) of the Reclamation Reform Act of 1982 (96 Stat. 1263 to 1274).

General Provisions

14. The General Provisions applicable to this contract are listed below. The full text of these articles is attached as Exhibit A and is hereby made a part of the contract.

- (a) Notices
- (b) Officials Not To Benefit
- (c) Changes In Contractors Organization
- (d) Assignment Limited--Successors and Assigns Obligated
- (e) Books, Records, and Reports
- (f) Quality Of Water
- (g) Water and Air Pollution Control
- (h) Water Conservation
- (i) Equal Opportunity
- (j) Compliance With Civil Rights Laws and Regulations

IN WITNESS WHEREOF, the parties hereto have signed their names as  
of the day and year first above written.

THE UNITED STATES OF AMERICA

By John W. Keay, III  
Regional Director, PN Region  
Bureau of Reclamation  
Box 043 - 550 West Fort Street  
Boise, Idaho 83724-0043

(SEAL)

ATTEST:

Charles Lee Orr  
Secretary, New York Irrigation  
District

NEW YORK IRRIGATION DISTRICT

By [Signature]  
President

STATE OF IDAHO )  
 : ss  
County of Ada )

On this 27<sup>th</sup> day of July, 1990, personally appeared before me John W. Keys, III, to me known to be the official of the United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.

Diana L. Jacobs  
Notary Public in and for the  
State of Idaho  
Residing at Boise

(SEAL)

My commission expires: 5-23-94

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STATE OF IDAHO )  
 : ss  
County of Ada )

On this 13 day of July, 1990, before me, James B. Brooks, a Notary Public, personally appeared John Cannon and Charlene Orr, known to me to be, respectively, the President and Secretary, of the NEW YORK IRRIGATION DISTRICT, and the persons who executed the within instrument and acknowledged to me that the NEW YORK IRRIGATION DISTRICT executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.

James B. Brooks  
Notary Public in and for the  
State of Idaho  
Residing at Boise, ID.

(SEAL)

My commission expires: Sept. 8, 1993

STANDARD PROVISIONS

The Contractor, as referred to in the following Standard Provisions, shall be the New York Irrigation District

NOTICES

A. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, PN Region, Bureau of Reclamation, Box 043, 550 West Fort Street, Boise, Idaho 83724-0043, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Secretary-Treasurer, New York Irrigation District, 214 Broadway Ave., Boise, Idaho 83702-7297. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

OFFICIALS NOT TO BENEFIT

B. No Member of or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S ORGANIZATION

C. While this contract is in effect, no change may be made in the Contractor's organization, by inclusion or exclusion of lands, dissolution, consolidation, merger or otherwise, except upon the Contracting Officer's written consent.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

D. 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 shall be valid until approved in writing by the Contracting Officer.

BOOKS, RECORDS AND REPORTS

E. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including: the Contractor's financial transactions, water supply data, project operation, maintenance and replacement logs, and project land and right-of-way use agreements; the water users' land-use (crop census), landownership, land-leasing and water-use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

QUALITY OF WATER

F. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable, as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

WATER AND AIR POLLUTION CONTROL

G. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Idaho, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

#### WATER CONSERVATION

H. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Contractor shall develop an effective water conservation program acceptable to the Contracting Officer. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent 5-year intervals, the Contractor shall submit a report on the results of the program to the Contracting Officer for review. Based on the conclusions of the review, the Contracting Officer and the Contractor shall consult and agree to continue or to revise the existing water conservation program.

#### EQUAL OPPORTUNITY

I. During the performance of this contract, the Contractor agrees as follows:

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

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

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

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

J. (1) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(2) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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