

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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Draft

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

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

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

17 WITNESSETH, That:

18 EXPLANATORY RECITALS

19 [1st] WHEREAS, the United States has constructed and is operating the
20 Klamath Project in the States of Oregon and California for the purpose of furnishing water for
21 irrigation and other beneficial uses to lands within the Klamath Project's service area; and

22 [2nd] WHEREAS, pursuant to Contract No. 14-06-200-3784, dated November 29, 1954,
23 as amended and supplemented, the District accepted the obligation to operate and maintain, on
24 behalf of the United States, certain Klamath Project facilities, including the C Flume; and

25 [3rd] WHEREAS, pursuant to Section 9603 of Public Law 111-11, the Secretary of the
26 Interior, acting through the Bureau of Reclamation, hereinafter referred to as Reclamation, is

27 authorized to advance the costs incurred by the District in conducting Extraordinary
28 Maintenance (XM) and to negotiate an appropriate contract for the return of reimbursable costs,
29 with interest; and

30 [4th] WHEREAS, Reclamation, in consultation with the District, has determined the
31 need to perform XM work on the C Flume and the District agrees to repay the reimbursable
32 costs, with interest, of XM work performed on the C Flume;

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

35 DEFINITIONS

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

38 (a) “Contracting Officer” shall mean the Secretary of the Interior’s duly
39 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
40 or regulation;

41 (b) “Existing Contract” shall mean Contract No. 14-06-200-3784, dated
42 November 29, 1954, as amended and supplemented, between the United States and the District;

43 (c) “Extraordinary Maintenance” or “XM” shall mean major nonrecurring
44 maintenance on the C Flume that is intended to ensure the continued safe, dependable, reliable
45 delivery of authorized benefits of the Klamath Project;

46 (d) “Fiscal Year” shall mean the period October 1 through September 30 of the
47 following year; and

48 (e) “Year” shall mean the period January 1 through December 31, both dates
49 inclusive.

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TERM OF THE CONTRACT

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

DESCRIPTION OF XM WORK

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

FUNDS TO BE PROVIDED

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

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

72 for the immediate need for the funds requested and the Contracting Officer shall have the final
73 determination in how and when installments are transmitted.

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

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

84 DISTRICT'S REPAYMENT OBLIGATION

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

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

95 commence on each date funds are advanced by the United States to the District and be computed
96 on an annual basis on the unpaid balance of the reimbursable costs of XM work, as determined
97 by the Contracting Officer.

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

101 (d) The District will repay the total Repayment Obligation over a period of
102 10 years from the date on which the Contracting Officer determines that the XM work is
103 substantially complete; *Provided*, That the period may decreased or increased by the Contracting
104 Officer pursuant to Article 5(f) herein; *Provided further*, That full repayment shall occur within
105 50 years from the first installment provided by the District pursuant to Article 5(c) herein. As
106 soon as practicable following the determination that the XM work is substantially complete, the
107 Contracting Officer shall provide the District with a repayment schedule requiring equal annual
108 installments over a period of 10 years, which schedule(s) shall be incorporated into this Contract
109 as Exhibit "A", which may be updated by the Contracting Officer without further amendment hereof.

110 (e) The District may, at any time, prepay all or a portion of the unpaid Repayment
111 Obligation balance as provided herein without penalty, notwithstanding any interest accrued.

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

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LIMITATIONS

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

SEVERABILITY

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

ENVIRONMENTAL COMPLIANCE

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

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

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MEDIUM FOR TRANSMITTING PAYMENTS

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

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

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CONTRACTS WITH THIRD PARTIES

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

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

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

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FAILURE TO COMPLETE WORK

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

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(1) Perform, or cause to be performed, all or any part of the work remaining under this Contract and within the limits of the funds provided herein by the United States and by the District for the project, as well as operate and maintain

178 the project concurrently. The District shall transfer to the United States custody
179 and use of all equipment, materials, and supplies used or useful in the
180 performance of the work; permit the United States, its contractors, and its agents
181 ingress to and egress from lands, project works, and facilities of the District for
182 the performance of such work; and assign to the United States the District's
183 interest in any contract for the performance of work or the supplying of
184 equipment or material in connection with such work where requested by the
185 United States and agreed to by the other contracting party; or

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

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

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

203 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

221 GENERAL OBLIGATION – BENEFITS CONDITIONS UPON PAYMENT

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

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

233 OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

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

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

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

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

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

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

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

280 EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND
281 REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

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

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

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

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

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

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

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

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

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

EMERGENCY RESERVE FUND

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

333 (b) The District shall accumulate the reserve fund with annual deposits or
334 investments of not less than \$10,000 to a Federally insured, interest- or dividend-bearing account

335 or in securities guaranteed by the Federal Government: *Provided*, That money in the reserve
336 fund, including accrued interest, shall be available within a reasonable time to meet expenses for
337 such purposes as those identified in paragraph (d) herein. Such annual deposits and the
338 accumulation of interest to the reserve fund shall continue until the basic amount of \$100,000 is
339 accumulated. Following an emergency expenditure from the fund, the annual deposits shall
340 continue from the year following the emergency expenditure until the previous balance is
341 restored. After the initial amount is accumulated or after the previous balance is restored, the
342 annual deposits may be discontinued, and the interest earnings shall continue to accumulate and
343 be retained as part of the reserve fund.

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

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

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

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

CHANGES IN DISTRICT'S ORGANIZATION

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

373 RULES, REGULATIONS, AND DETERMINATIONS

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

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

382 ADMINISTRATION OF FEDERAL PROJECT LANDS

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

389 PROTECTION OF WATER AND AIR QUALITY

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

396 (b) The District shall comply with all applicable water and air pollution laws and
397 regulations of the United States and the State of Oregon; and shall obtain all required permits or
398 licenses from the appropriate Federal, state, or local authorities necessary for the delivery of
399 water by the District; and shall be responsible for compliance with all Federal, state, or local
400 water quality standards applicable to surface and subsurface drainage and/or discharges
401 generated through the use of Federal or District facilities or Project water provided by the
402 District within the District’s service area.

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

405 CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

406 22. (a) The District shall not allow contamination or pollution of Federal Project
407 lands, Project waters, or Project works of the United States or administered by the United States
408 and for which the District has the responsibility for care, operation, and maintenance by its

409 employees or agents. The District shall also take reasonable precautions to prevent such
410 contamination or pollution by third parties.

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

415 (c) "Hazardous material" means (1) any substance falling within the definition
416 of "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the
417 Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C.
418 §9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. §1321(a)) and
419 the Oil Pollution Act (33 U.S.C. §2701(23)); (3) thermal pollution, refuse, garbage, sewage
420 effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste,
421 and (4) any other substance regulated as hazardous or toxic under federal, state, local or tribal
422 law .

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

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

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

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

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

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CLEAN AIR AND WATER

23. (a) The District agrees as follows:

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

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

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

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

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

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

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

(3) The term “clean air standards” refers to all enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, and other requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 of the Clean Air Act (42 U.S.C. §7410), an approved implementation procedure or plan under subsection 111(c) or subsection 111(d) of the Clean Air Act (42 U.S.C. §7411(c) or (d)), or an approved implementation procedure under subsection 112(d) of the Clean Air Act (42 U.S.C. §7412(d)).

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

(5) The term “comply” refers to compliance with clean air or water standards. It also refers to compliance with a schedule or plan ordered or approved by a

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

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

492 EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

519 (f) In the event of the District’s noncompliance with the nondiscrimination
520 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be

521 canceled, terminated or suspended in whole or in part and the District may be declared ineligible
522 for further Government contracts in accordance with procedures authorized in EO 11246, and
523 such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule,
524 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

534 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

535 25. (a) The District shall comply with Title VI of the Civil Rights Act of 1964 (Pub.
536 L. 88-352; 42 U.S.C. §2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
537 amended; 29 U.S.C. §§791 et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III;
538 42 U.S.C. §§6101 et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336;
539 42 U.S.C. §§12181 et seq.), and any other applicable civil rights laws, and with the applicable
540 implementing regulations and any guidelines imposed by the U.S. Department of the Interior
541 and/or Bureau of Reclamation.

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

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

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

557 CERTIFICATION OF NONSEGREGATED FACILITIES

558 26. The District hereby certifies that it does not maintain or provide for its employees
559 any segregated facilities at any of its establishments and that it does not permit its employees to

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

578 **NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR**
579 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

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

585 **PEST MANAGEMENT**

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

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

598 (c) Where decontamination is required prior to entering Federal Project land, it
599 shall be performed at the point of prior use, or at an approved offsite facility able to process
600 generated cleaning wastes. Upon the completion of work, the District will perform any required

601 decontamination within the work area before moving the vehicles and equipment from Federal
602 Project lands.

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

613 BOOKS, RECORDS, AND REPORTS

614 28. The District shall establish and maintain accounts and other books and records
615 pertaining to administration of the terms and conditions of this Contract, including the District’s
616 financial transactions; water supply data; Project operation, maintenance, and replacement logs;
617 Project land and rights-of-way use agreements; land-leasing, and water-use data; and other
618 matters that the Contracting Officer may require. Reports shall be furnished to the Contracting
619 Officer in such form and on such date or dates as the Contracting Officer may require. Subject
620 to applicable Federal laws and regulations, each party to this Contract shall have the right during
621 office hours to examine and make copies of the other party’s books and records relating to
622 matters covered by this Contract.

623 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

624 29. The expenditure or advance of any money or the performance of any obligation of
625 the United States under this Contract shall be contingent upon appropriation or allotment of
626 funds. Absence of appropriation or allotment of funds shall not relieve the District from any
627 obligations under this Contract. No liability shall accrue to the United States in case funds are
628 not appropriated or allotted.

629 OFFICIALS NOT TO BENEFIT

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

633 NOTICES

634 31. Any notice, demand, or request authorized or required by this Contract shall be
635 deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered
636 to the Area Manager, Klamath Basin Area Office, 6600 Washburn Way, Klamath Falls, Oregon
637 97603, and on behalf of the United States, when mailed, postage prepaid, or delivered to office
638 of the District, 6640 KID Lane, Klamath Falls, Oregon, 97603. The designation of the addressee

639 or the address may be changed by notice given in the same manner as provided in this Article for
640 other notices.

641 CONTRACT DRAFTING CONSIDERATIONS

642 32. This Contract has been negotiated and reviewed by the parties hereto, each of
643 whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 8 of this
644 Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be
645 considered to have drafted the stated articles.

646 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
647 the day and year first above written

648 UNITED STATES OF AMERICA

649 By: _____
650 Regional Director, Mid-Pacific Region
651 Bureau of Reclamation

652 KLAMATH IRRIGATION DISTRICT

653 By: _____
President, Board of Directors

EXHIBIT A

DRAFT - Annual Payment Schedule* - DRAFT

January 1, 2019	\$823,968*
January 1, 2020	\$823,968*
January 1, 2021	\$823,968*
January 1, 2022	\$823,968*
January 1, 2023	\$823,968*
January 1, 2024	\$823,968*
January 1, 2025	\$823,968*
January 1, 2026	\$823,968*
January 1, 2027	\$823,968*
January 1, 2028	\$823,968*

* DRAFT Estimated Annual Payment Schedule assumes: \$7,450,000; 10 year repayment period; XM work completed in same Fiscal Year funds are provided; and, Treasury Rate of 1.875%. DRAFT Annual Payment Schedule shall be revised pursuant to the Contract.

Draft