

EXCESS CAPACITY CONTRACT
BETWEEN THE UNITED STATES OF AMERICA
AND
KANSAS BOSTWICK IRRIGATION DISTRICT NO. 2
FOR THE USE OF EXCESS CAPACITY SERVICE
IN THE BOSTWICK DIVISION

THIS CONTRACT, made this _____ day of _____, 2013, pursuant generally to the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto, particularly, but not limited to the Act of February 21, 1911 (Pub. L. 61-406; 43 U.S.C. § 523), as amended and supplemented, and the Act of December 22, 1944 (58 Stat. 887), all collectively referred to as Federal Reclamation laws, between the UNITED STATES OF AMERICA, Bureau of Reclamation, hereinafter called “Reclamation,” acting through the Secretary of the Interior, represented by the “Contracting Officer” executing this Contract, and KANSAS BOSTWICK IRRIGATION DISTRICT NO. 2, hereinafter referred to as the “District” or “Contractor,” with its principal place of business in Courtland, Kansas. Reclamation and the District hereinafter are each sometimes individually called “Party,” and sometimes collectively called the “Parties.”

WITNESSETH:

- a. **WHEREAS**, the Nebraska Department of Natural Resources (NDNR) allowed the retention of Republican River Compact (Compact) water to be held in Reclamation and the United States Army Corps of Engineers (Corps) facilities to allow discussions between Reclamation and NDNR regarding the manner in which the District may make the most efficient use of this water; and
- b. **WHEREAS**, the Order dated April 1, 2013 by the NDNR has ordered release of water held in Reclamation facilities (13,216 acre-feet) above Harlan County Lake, including Harry Strunk Lake, Hugh Butler Lake, Enders Reservoir, and Swanson Lake in order for the State of Nebraska (Nebraska) to be in compliance with the Compact; and
- c. **WHEREAS**, the Order dated May 1, 2013 by the NDNR has ordered release of stored water held in Harlan County in order for Nebraska to be in compliance with the Compact; and
- d. **WHEREAS**, Reclamation has authority to enter into a 1-year temporary Excess Capacity Service contract under the authority stated above, to allow Excess Capacity Service. Since January 1, 2013, in Reclamation and the Corps facilities that are part of the Bostwick Division Pick-Sloan Missouri Basin Program (PSMBP)(Bostwick Division) have stored Compact water. The federal facilities, in Nebraska and Kansas and the federal distribution works for the District in Kansas are all part of the storage and conveyance facilities of the Bostwick Division that will assist Nebraska in meeting its Compact obligation to Kansas; and

e. **WHEREAS**, Reclamation would also like to assist Kansas in storing this Compact water so it may be put to beneficial use in the District; and

f. **WHEREAS**, any use of Excess Capacity Service in the Bostwick Division will be provided to the District for irrigation use during the 2013 irrigation season on an as-needed basis; and

g. **WHEREAS**, Kansas has provided confirmation that the District is an authorized user of Republican River water; and

h. **WHEREAS**, Reclamation, in cooperation with the Corps, is willing to assist the States of Nebraska and Kansas in this time of stress.

PURPOSE: Provide Excess Capacity Service in order to deliver Compact water exclusively to the District for irrigation purposes.

DEFINITIONS

1. **PROJECT:** Certain features of the Bostwick Division including Harlan County Lake, the Superior-Courtland Diversion Dam and features of the Courtland Unit.

2. **CONTRACTOR:** Kansas Bostwick Irrigation District No. 2

3. **EXCESS CAPACITY SERVICE:** This Excess Capacity Service, for the purpose of this Contract, shall mean Reclamation in cooperation with the Corps and the District, will account for and provide storage and conveyance to the District within the Bostwick Division in accordance with the terms and conditions outlined herein for 13,000 acre-feet with a maximum of up to 30,000 acre-feet of Excess Capacity water during the 2013 irrigation season. The Compact water will be accepted into the Bostwick Division until Nebraska lifts the Order and Reclamation can begin storing project water. The Excess Capacity water will remain in storage pursuant to the terms and conditions of this Contract. Reservoir inflows stored since January 1, 2013, along with other water sources, will be conveyed pursuant to this Contract, are subject to the availability of excess capacity in the Bostwick Division and in no event shall any liability accrue against Reclamation or any of its officers, agents or employees for any damage, direct or indirect, arising from shortage of this Excess Capacity Service on account of operation, lack of available excess capacity, drought, or any other causes.

4. **CONDITIONS:** The use of Excess Capacity Service in the Bostwick Division will not interrupt or change operations of any of the facilities that it may be stored or conveyed in and through, including any ongoing operation, maintenance and replacement (OM&R) activity. The use of Excess Capacity Service will not harm the Bostwick Division projects or facilities. Reclamation will coordinate with the District regarding releases of project water and this Compact water from the active conservation pool of Harlan County Lake, a feature of the Bostwick Division. Reclamation will make releases of this Excess Capacity water at the District's direction. In no event will the Excess Capacity Service negatively impact the Bostwick Division or Division storage water.

5. **POINT OF DELIVERY:** Delivery will be made through the Bostwick Division to irrigate District project lands.
6. **PAYMENT FOR EXCESS CAPACITY SERVICE:**
- a. Excess Capacity Service rate: \$.30 per acre-foot.
 - b. OM&R Payment: Appropriate Bostwick Division OM&R will be charged for use of facilities associated with this Excess Capacity Service. The OM&R charge is \$3.00 per acre-foot for storage and conveyance through certain features of the Bostwick Division.
 - c. The District will make an upfront payment \$.30 per acre-foot for an estimated amount of 13,000 acre-feet and an upfront OM&R payment of \$3.00 per acre-foot for a total amount of \$42,900. If additional water accrues to Harlan County Lake the District will be obligated to pay \$.30 per acre-foot plus the OM&R charge of \$3.00 per acre-foot for any amount over and above the 13,000 acre-feet. Reclamation no later than December 1, 2013 will provide the District with a bill that is adjusted to actual use and associated OM&R for this Excess Capacity Service. The District will pay this amount within 30 calendar days. If a refund is owed to the District, reimbursement will be made within 30 calendar days.
7. **THE DISTRICT OM&R:** Utilization of Excess Capacity Service under this Contract will be delivered through District Bostwick Division facilities.
8. **TERM OF CONTRACT:** This Contract becomes effective on the execution date by the Contracting Officer, and will continue in force until December 31, 2013. It is agreed and understood that the furnishing of Excess Capacity Service under this Contract is temporary; and only for the term of this Contract; and shall not be considered as binding Reclamation to furnish Excess Capacity Service to the District after the expiration of this Contract. All remaining District Excess Capacity water at the end of the term will either be evacuated or become Bostwick Division water.
9. **ENVIRONMENTAL COMPLIANCE:** Reclamation conducted and documented National Environmental Policy Act (NEPA) compliance for temporary Excess Capacity Service pursuant to this Contract.
10. **STANDARD CONTRACT ARTICLES:** Standard contract provisions applicable to this Contract are attached as "Exhibit A" which by reference is made a part of this Contract.

The Parties have executed this Contract the day and year written above and agree to the terms, provisions, special conditions, exhibits, and standard contract articles expressed or referenced herein.

UNITED STATES OF AMERICA

Michael J. Ryan
Regional Director

CONTRACTOR

Kansas Bostwick Irrigation District No. 2

ATTEST:

Secretary

EXHIBIT A

A. CHARGES FOR DELINQUENT PAYMENTS

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

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

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

B. GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

1. The obligation of the Contractor to pay Reclamation as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.

2. The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. Reclamation shall not make water available to the Contractor through District facilities during any period in which the Contractor is in arrears in the advance payment of water rates any operation and maintenance charges due Reclamation or is in arrears for more than 12 months in the payment of any construction charges due Reclamation. The Contractor shall not deliver water under the terms and conditions of this Contract for lands or parties that are in arrears in the advance payment of operation and maintenance charges or is in arrears more than 12 months in the payment of construction charges as levied or established by the Contractor.

C. NOTICES

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
Great Plains Region
Bureau of Reclamation
PO Box 36900
Billings, MT 59107-6900

and on behalf of Reclamation, when mailed, postage prepaid, or delivered to the

Kansas Bostwick Irrigation District No. 2
P.O. Box 165
Courtland, KS 66939

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.

D. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any obligation of Reclamation under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to Reclamation in case funds are not appropriated or allotted.

E. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to the 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.

F. CHANGES IN CONTRACTOR'S ORGANIZATION

While this Contract is in effect, no change may be made in the Contractor'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 Reclamation or the Contractor under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

G. ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

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.

H. BOOKS, RECORDS, AND REPORTS

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; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports 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.

I. PROTECTION OF WATER AND AIR QUALITY

1. Project facilities used to make available and deliver water to the Contractor 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* Reclamation does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

2. The Contractor shall comply with all applicable water and air pollution laws and regulations of Reclamation and the State of Kansas; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.

3. This Article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

J. WATER CONSERVATION

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 a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

K. EQUAL EMPLOYMENT OPPORTUNITY

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, disability, 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, disability, 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 regard to race, color, religion, sex, disability, 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 labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965 (EO 11246), 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 EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency 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 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 EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 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 EO 11246, 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 that the Reclamation enter into such litigation to protect the interests of the Reclamation.

L. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

2. These statutes prohibit any person in Reclamation from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of Reclamation 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 Reclamation reserves the right to seek judicial enforcement thereof.

4. Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

M. CERTIFICATION OF NONSEGREGATED FACILITIES

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

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The

penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.

N. MEDIUM FOR TRANSMITTING PAYMENTS

1. All payments from the Contractor to Reclamation under this Contract shall be by the medium requested by Reclamation 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 Reclamation.

2. Upon execution of the Contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with Reclamation.