

# DUPLICATE ORIGINAL

Contract No. 009E6B0123

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Frenchman Unit  
Frenchman-Cambridge Division, Nebraska  
Pick-Sloan Missouri River Basin Program

CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
AND THE FRENCHMAN VALLEY IRRIGATION DISTRICT

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Frenchman Unit  
Frenchman-Cambridge Division  
Pick-Sloan Missouri Basin Program, Nebraska

WATER SERVICE CONTRACT BETWEEN THE UNITED STATES  
AND THE FRENCHMAN VALLEY IRRIGATION DISTRICT  
PROVIDING FOR A PROJECT WATER SUPPLY

THIS CONTRACT, made this 25<sup>th</sup> day of July, 2000,  
between the UNITED STATES OF AMERICA, hereinafter called the "United States,"  
acting through the Secretary of the Interior, pursuant generally to the Act of June 17,  
1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly,  
but not limited to, Sec. 9(e) of the Act of August 4, 1939 (53 Stat. 1187), as amended  
and supplemented, the Act of December 22, 1944 (58 Stat. 887), and the Act of July 2,  
1956 (70 Stat. 483), all collectively known as the Federal Reclamation laws, and the  
FRENCHMAN VALLEY IRRIGATION DISTRICT, an irrigation district organized and  
existing pursuant to the laws of the State of Nebraska, with its principal place of  
business in Culbertson, Nebraska, hereafter called the "District."

WITNESSETH, THAT:

The following statements are made in explanation:

EXPLANATORY RECITALS

a. WHEREAS, the United States has constructed the Frenchman-Cambridge  
Division of the Pick-Sloan Missouri Basin Program pursuant to the Act of December 22,  
1944 (58 Stat. 887), as set forth in House Document 475 and Senate Document 191, as  
revised and coordinated by Senate Document 247, 78th Congress, Second Session, to  
provide benefits for irrigation, flood control, sediment control, fish and wildlife  
enhancement, and recreation; and

b. WHEREAS, the parties hereto have entered into Contract No. 7-07-70-W0044

(formerly No. 14-06-700-1241), dated November 7, 1956, as amended, hereinafter called the "1956 contract," for delivering the District's natural flow water and furnishing a supplemental supply from storage in Enders Reservoir; and

c. WHEREAS, the 1956 contract, which would have terminated on December 31, 1997, was extended through December 31, 2001, pursuant to P.L. 104-326, dated October 19, 1996 (110 Stat. 4000); and

d. WHEREAS, the District has requested renewal of the 1956 contract pursuant to the Federal Reclamation laws and the laws of the State of Nebraska, and has to date fulfilled its obligations under the 1956 contract; and

e. WHEREAS, the United States agrees to renewal of the 1956 contract pursuant to applicable Federal and state laws, rules and regulations.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

#### GENERAL DEFINITIONS

1. Where used in this contract, the terms:

a. "1956 contract" shall mean the specific contract the parties hereto entered into November 7, 1956, which is numbered contract no. 7-07-70-W0044 (formerly no. 14-06-700-1241), as amended and supplemented.

b. "Contract" shall mean and include articles 1 through 33 hereof.

c. "Contracting Officer," shall mean the Secretary of the United States Department of the Interior or his duly authorized representative.

d. "District lands" shall mean the irrigable lands of the District upon which the District water supply may be put to beneficial use, as contained in the official records of the Contracting Officer and the District, which lands may be modified through inclusions and exclusions as provided herein.

e. "District water supply" shall mean the District's portion of the total water supply of the Frenchman River available through the works constructed and acquired by the United States from the natural flow of the Frenchman River and from storage in

Enders Reservoir as appropriated under the laws of the State of Nebraska within the provisions of the Republican River Compact and any order issued by the United States Supreme Court in Kansas v. Nebraska, No. 126 Original, as may be beneficially used on District lands, or such portion thereof on which the District water supply may be beneficially applied in any irrigation season.

f. "District's water supply obligation" shall mean the portion of the remaining unpaid water supply costs of the Frenchman-Cambridge Division (which Division includes the District, the Frenchman-Cambridge Irrigation District, and the H&RW Irrigation District) allocated to irrigation (\$51,763,871 as of September 30, 1999) which the District shall repay in accordance with the terms of this Contract and future contracts.

g. "Federal Reclamation laws" shall mean the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof and supplementary thereto.

h. "Irrigation season" shall mean the period within any year May 1 through October 15, or such additional period from April 1 to May 1 of each year as may be agreed upon between the United States and the District.

i. "Operation, maintenance, and replacement costs" shall mean those expenses incurred in connection with the water control, operation, maintenance, and replacement of the project works, including appropriate charges for associated indirect costs and administration as determined by the Contracting Officer, and shall include such additional costs as hereinafter provided. Such expenses shall include those required to remedy conditions brought about by ordinary use of the project works or to restore or replace components of the existing project water facilities and shall not include expenses to increase or enlarge such works beyond the purposes for which they were originally authorized and constructed.

j. "Project" shall mean the Frenchman Unit of the Frenchman-Cambridge Division of the Pick-Sloan Missouri Basin Program.

k. "Project division water supply" shall mean the total supply of water made available in any irrigation season for the Frenchman-Cambridge Division of the Pick-Sloan Missouri Basin Program by or through the United States under the Reclamation laws and as appropriated under the laws of the State of Nebraska and water rights issued thereunder as conclusively determined by the Contracting Officer.

l. "Transferred works" shall mean the Culbertson Diversion Dam, that part of the Culbertson Canal that serves the District's irrigable lands, and such further water supply works as may at any time be transferred to the District for its care, operation, and maintenance, as determined by the Contracting Officer.

m. "Water supply works" shall mean those works constructed and acquired by the United States as a part of the Pick-Sloan Missouri Basin Program for the storage, diversion and carriage of the water of the Frenchman River to the distribution works of the District and shall include Enders Dam and Reservoir, Culbertson Diversion Dam and Culbertson Canal, and all works appurtenant thereto.

n. "Year" shall mean the period January 1 through the following December 31.

#### EFFECTIVE DATE, TERMINATION OF 1956 CONTRACT, AND TERM

2. This Contract shall become effective January 1, 2001, and on that date shall supersede and replace the 1956 contract in its entirety. The term of this Contract shall extend for a period of 40 years from the effective date; Provided, However, That this Contract may be renewed upon written request by the District to the United States on or before two years prior to the date of termination hereof. Such renewal shall be based on applicable laws, rules and regulations in effect at the time. The charges to be paid by the District to the United States under such renewal shall be upon such terms and conditions as may be mutually agreeable, consideration being given to the cost of the water supply works assignable for ultimate repayment by the District after credit for all previous payments towards such costs, the cost of operation and maintenance of such works, and the District's repayment capacity, Provided, Further, That upon written request by the District to the United States on or before two (2) years prior to the termination of this Contract whenever, account being taken of the amount then credited to the costs of construction of the water supply works which is properly assignable for ultimate return by the District probably can be repaid to the United States within the term of a contract under Subsection (d), Section 9 of the 1939 Reclamation Project Act (53 Stat. 1187), this Contract may be converted to a contract under said Subsection (d) upon terms and conditions mutually agreeable to the United States and the District.

#### WATER SUPPLY WORKS -WATER TO BE FURNISHED TO THE DISTRICT - DISTRICT OPERATING PLAN

3. a. The United States has constructed and acquired the water supply works

to supply the District with the District water supply. For each irrigation season, the United States shall deliver to the District the District water supply and the District shall pay for such water supply pursuant to the provisions of Article 4 herein. Water deliveries shall be made at such times during the irrigation season and in such quantities, within the capacity of the system works, as provided herein.

b. The District 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, except as may be necessary to meet the terms of Article 27 of this Contract.

c. As part of the consideration for a 40 year contract term, the District hereby agrees to continue its ongoing water conservation program and to establish and fund a water conservation fund to finance ongoing and planned water conservation related activities. Water conservation and environmental related commitments by the District, including the establishment and funding of the above-referenced water conservation fund, and other reservoir operating provisions for the Water Supply Works shall be established by the parties annually in accordance with a document developed in a manner and form as the initial "District Operating Plan" which is attached hereto as Attachment A and by this reference made a part hereof. The parties shall annually, or as otherwise agreed, review the "District Operating Plan" and may, by mutual agreement of the parties, modify and amend the operating criteria of the initial plan necessary to achieve the District's commitments, Provided, That the District's commitments shall not be diminished or eliminated. The District agrees to honor these commitments, as further described in the "District Operating Plan."

#### DISTRICT'S WATER SUPPLY OBLIGATIONS

4. a. The District shall pay the District's water supply obligation through payment of the charges in (b) and (c) below.

b. The District shall make a payment annually of \$4,648 from the effective date of this Contract through the year 2040. The parties agree that notwithstanding the future determinations regarding ability to pay, the payments set forth in (b) herein shall not be reduced.

c. The District shall also repay such additional sums against the water supply works costs as may be within the District's ability to pay as determined by the Contracting Officer in accordance with Reclamation policy; Provided, that such

additional payment shall not be assessed unless and until the District's ability to pay exceeds the payment called for in (b) above, at which time the District's annual water supply payment shall be the sum of the payment called for in (b) above plus an ability to pay payment which shall be the net amount by which the District's determined ability to pay exceeds the District's payment in (b) above. The parties agree that at the time of the execution of this Contract the District has no ability to pay.

d. Each annual installment of the District's water supply repayment obligation as provided in (b) and (c) above shall be paid one-half on or before May 1 and one-half on or before July 1 of the year in which it is due.

#### DISTRICT'S WATER SUPPLY RESERVE FUND OBLIGATIONS

5. a. Commencing with the effective date of this Contract, the District shall establish and maintain a water supply reserve fund, which the District shall keep available to meet costs incurred on the water supply works as identified in (e) below.

b. The District shall annually deposit into the water supply reserve fund the sum of \$1,859 from the effective date of this Contract through the year 2040.

c. The water supply reserve fund shall be deposited in accordance with the State laws governing the District and in a federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the fund shall be available within a reasonable time to meet expenses for such purposes as those identified in (e) below.

d. Such annual deposits into the water supply reserve fund and the accumulation of interest to the fund shall continue unless and until the funds which have been accumulated reach the ceiling amount of \$74,360. At such time the annual deposits may be discontinued upon mutual agreement of the Contracting Officer and the District; however, the interest earnings shall continue to accrue to the fund. Following any expenditure or transfer from the fund, the District shall resume annual deposits into the fund in the amount in (b) above from the year following the expenditure or transfer, unless and until the greater of the largest previous balance or the ceiling amount is accumulated, at which time the annual deposits may be discontinued upon mutual agreement of the Contracting Officer and the District; however the interest earnings shall continue to accrue to the fund.

e. The water supply reserve fund shall be available for the purposes of



meeting the District's share of costs incurred on the water supply works for: 1) extraordinary operation, maintenance and replacement; 2) ordinary operation, maintenance and replacement incurred during periods of special stress caused by damaging droughts, storms, earthquakes, flood, or other emergencies threatening or causing interruption of water supply to the District; and 3) additions and/or modernization, including, but not limited to, activities which improve the operation, reduce the need for future maintenance, and modify and improve the operating efficiencies of the water supply works. Water supply reserve funds may be used for previously planned activities involving these types of costs, or for these types of costs incurred during emergency actions necessitated by periods of special stress as described in (2) above. The parties agree that the fund shall be used to make extraordinary repairs, replace, and renew project facilities to assure that the project works remain in a state which will allow the Project as a whole to operate efficiently, appropriately, and in accordance with advancements in irrigation program technologies.

f. Expenditures of less than \$10,000 per emergency event from the fund for emergency actions on transferred works may be made by the District without prior consent of the Contracting Officer. This initial \$10,000 amount shall increase \$500 for each year this Contract has been in effect after the initial effective year. The Contracting Officer shall be given written notice within 48 hours of any emergency expenditure not initially authorized in writing. All other proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Except for emergencies, all expenditures shall be in accordance with: a plan of action developed by the District in cooperation with the Contracting Officer, State law, and sound and accepted accounting practice and procedure.

g. Any expenditures from the water supply reserve fund shall be limited to work associated with the existing water supply works, or components thereof, associated with the irrigation purpose of the Project and shall not result in expenditures to increase or enlarge such water supply works beyond the purposes for which they were originally authorized and constructed.

h. During any period in which any of the transferred works are operated and maintained by the United States, the water supply reserve fund shall be available for like uses by the United States, as defined in (e) above.

i. Upon written mutual agreement between the District and the Contracting Officer, the water supply reserve fund ceiling amount may be adjusted to account for

risk and uncertainty stemming from the size and complexity of the project, the size of the annual operation and maintenance budget, additions to, deletions from, or changes in water supply works, and addition and modernization costs not contemplated when this Contract was executed.

j. By July 1 of each year, the District shall provide an annual statement of the balance and composition (principal and accumulated interest) of the water supply reserve fund account to the Contracting Officer.

DISTRICT'S OBLIGATIONS FOR OPERATION, MAINTENANCE AND  
REPLACEMENT COSTS, ADMINISTRATIVE COSTS, AND  
RELATED FEDERAL COSTS

6. a. In addition to the charges and deposits set forth in Articles 4 and 5 of this Contract, the District shall also pay the costs outlined in (1) through (3) below. All such costs shall be paid annually, one-half due on or before January 1 and the remaining one-half due on or before July 1 of each year. Payment shall be based on an estimate of such costs with adjustments made on the July 1 bill to reflect the actual costs of the previous year; Provided, That in order to avoid incurring a deficit in the funding of such costs, the Contracting Officer may bill the District for any projected deficit and the District shall pay such amount within 30 days after receipt of such notice thereof.

(1) The District's share, as determined by the Contracting Officer, of the annual operation, maintenance and replacement (OM&R) costs incurred by the United States on the Project works. For the first year of this Contract, this charge shall also include the District's share of any OM&R costs incurred under the 1956 contract which remain unpaid.

(2) Such costs which are not included under (1) above that the United States incurs for administration of this Contract which are properly chargeable to the District plus an appropriate share of the costs for administration, supervision, general expense and indirect costs as are properly chargeable to the District as determined by the Contracting Officer.

(3) Such costs for inspections, investigations, reviews and repairs of transferred works, as provided for in Subarticles 8 (c) and 15 (e), as determined by the Contracting Officer to be reimbursable by the District.

b. The Contracting Officer shall, to the extent practicable and foreseeable, inform the District of the estimate of the costs to be paid by the District in accordance with this Article in advance for the District's use in its budgeting process.

POINTS OF DELIVERY, MEASUREMENT, AND  
RESPONSIBILITY FOR DELIVERY OF WATER

7. a. Water to be delivered to the District pursuant to this Contract shall be made at the Culbertson Diversion Dam to the Culbertson Canal. For the purpose of computing the amount of such water delivered to the District, measurements shall be made at the Culbertson Diversion Dam with equipment owned, installed, operated and maintained by the United States.

b. The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water furnished to the District hereunder beyond the point of furnishing as provided in (a) above, and the District shall hold the United States harmless on account of damage or claim of any nature whatsoever, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water beyond said point of furnishing.

c. The United States reserves the right to claim all of the waste, seepage, or return flow derived from the water furnished pursuant to this Contract, and the same is hereby reserved and retained by the United States for use in a manner consistent with the provisions of State law and the Republican River Compact.

OPERATION AND MAINTENANCE TRANSFER OF CERTAIN WORKS

8. a. The United States has transferred to the District and the District has assumed and undertaken the care, operation and maintenance of certain of the Project works to be utilized in the carriage of water to lands within the District's boundaries together with facilities appurtenant to such works. At the time of execution of this Contract, these transferred works are as defined herein. Following written notification, the Contracting Officer may transfer other reserved water supply works to the District, with the understanding that arrangements to compensate the District for any operation and maintenance expenses allocated to purposes of any such transferred water supply works that were not payable by the District previously shall be made for any such transfers. Except as otherwise provided herein, the District shall care for, operate and maintain all transferred works at its own expense, and without expense to the United

States, in full compliance with the Federal Reclamation laws, applicable rules and regulations, and the terms of this Contract, and in such a manner that the transferred works shall remain in as good and efficient condition and of at least equal capacity for the carriage and distribution of irrigation water as at the date such works were turned over to the District. No substantial physical or operational changes shall be made by the District in any of such transferred works without first obtaining written consent of the Contracting Officer.

b. In the event the United States should at any time resume the operation and maintenance of any part of the transferred works, the District's operation and maintenance equipment shall be made available for use by the United States.

c. The District shall make promptly any and all repairs to the transferred works which the Contracting Officer may determine to be reasonable and necessary. If the Contracting Officer determines that any part of such transferred works is for any cause unfit for service, he may order the water shut off and turned out of such transferred works until he determines that such transferred works are put in proper condition for service. In case of neglect or failure of the District to make such repairs the Contracting Officer may cause the repairs to be made and the cost thereof, as determined by the Contracting Officer, shall be paid by the District to the United States as provided in Article 6 hereof.

d. In the event the District is at any time in default of any of its obligations to the United States under this Contract, or is found by the Contracting Officer to be operating the transferred works or any part thereof in violation of the provisions of this Contract, then at the election of the Contracting Officer, the United States shall take over from the District the care, operation and maintenance of the transferred works by giving written notice to the District of such election and of the effective date thereof. Thereafter, during the period of government operation, the District shall pay to the United States annually in advance of the use of such transferred works the cost of the operation and maintenance of said works as fixed in notices from the Contracting Officer to the District.

e. Any excess of payments by the District to the United States over the actual cost of such operation and maintenance as determined by the Contracting Officer shall be applied to advances next required of the District or shall be refunded to the District upon retransfer of such works to the District. Such works may be retransferred to the District at the election of the Contracting Officer in the manner as originally transferred to the District. The District shall surrender possession and accept the

retransfer on being given the notice provided for herein.

f. The District agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of the District or the United States required under this Contract on any of the transferred works, regardless of who performs those duties.

JOINT USE OF THE CULBERTSON CANAL  
AND PRORATION OF OPERATION AND MAINTENANCE COSTS

9. a. The Culbertson Diversion Dam and Culbertson Canal shall serve District lands and lands of the H&RW Irrigation District. As long as the District is operating and maintaining the Culbertson Diversion Dam and that part of the Culbertson Canal serving lands in both districts, the costs thereof shall be prorated between the District and the H&RW Irrigation District. The proration of such costs shall be on the basis of the amount of water delivered to District lands and to lands in the H&RW Irrigation District during each irrigation season with payments being made each year in advance of the irrigation season on an estimate of such costs and adjusted on the basis of actual costs. The District shall make collections from the H&RW Irrigation District for its proportionate share of the operation and maintenance costs of the Culbertson Diversion Dam and Canal. Transportation losses occurring in that portion of the Culbertson Canal serving the District lands shall be equitably apportioned between the District and the H&RW Irrigation District.

b. The Contracting Officer shall resolve any dispute between the District and the H&RW Irrigation District as to the cost of operation and maintenance of the transferred works and the proration of such costs and as to the determination and distribution of transportation losses.

RIGHTS TO BENEFICIAL USE OF WATER

10. a. Rights to the beneficial use of the District water supply shall be governed by the Federal Reclamation laws, other applicable Federal laws, and the laws of the State of Nebraska, as the same may at any time apply to this Contract. Any such rights to beneficial use shall in no way extend or enlarge the rights of the District to the

delivery of water through the water supply works involved herein other than as provided in this Contract; Provided, That the right to delivery of water under this Contract shall not be abrogated so long as the District is not in violation of any of the provisions of this Contract, or in violation of applicable Federal or state laws, rules or regulations.

b. Rights to the beneficial use of the water provided hereunder shall be subject to the provisions and requirements of the Republican River Compact, including any changes, revisions or additions thereto, as well as any order issued by the United States Supreme Court in Kansas v. Nebraska, No. 126, Original.

c. No rights or interests in or to the District water supply other than to receive water annually pursuant to the terms and limitations of this Contract shall accrue to the District or to anyone claiming by, through, or under the District, by reason of any provision(s) of this Contract.

d. Rights to the beneficial use of the water provided hereunder shall not be diminished because of conservation activities, reductions in annual deliveries, or other water management practices to provide for carryover storage in accordance with Attachment A of this Contract.

#### UNITED STATES NOT LIABLE FOR WATER SHORTAGES

11. a. On account of drought, hostile diversion, or any other causes beyond the control of the parties hereto, there may occur at times during any year a shortage in the quantity of water available for delivery to the District by the United States pursuant to this Contract. In no event shall any liability accrue against the United States or against any of its officers, agents, or employees, acting within the scope of their employment, for any damage, direct or indirect, arising out of such shortage. In any year in which there may occur a shortage, as described herein, the United States reserves the right to apportion the storage water available among those entitled to receive water from that water supply. The apportionment as herein provided shall be made only after consultation with the District.

b. In making such apportionment, the shortages shall be equalized among all such beneficiaries of the water supply from the Frenchman River; PROVIDED, However, That water available to the District pursuant to its direct flow appropriation shall not be subject to the apportionment herein provided but the amount of such direct flow water shall be considered in determining the apportionment of storage water available.

## EXISTING WATER RIGHTS

12. a. The District has existing rights to water of natural flow hereinafter called "natural flow water." All other water furnished to the District pursuant to this Contract is hereinafter called "project water." The natural flow water and project water must of necessity be transported through the same project diversion and conveyance facilities to reach District lands. Notwithstanding such mingling of water, the provisions of this Contract shall apply to the quantity of project water furnished to the District pursuant to this Contract, and such mingling of water shall not subject the District's natural flow water to the provisions of this Contract.

b. The District shall construct, operate and maintain separate outlets from its distribution system for nonexcess and excess lands. The District shall install, operate and maintain water measuring equipment at delivery points to excess lands. Measuring devices installed and maintained by the United States in works constructed by the United States shall be used to measure both the District's natural flow water and project water delivered to the District pursuant to this Contract.

c. The quantity of project water delivered to the District during each twenty-four hour period shall be delivered only to nonexcess lands. The District shall be deemed in violation of this Contract if at any time there is delivered to all excess lands a quantity of water which is greater than that which would have been available to the District for furnishing to all lands within the District in absence of project water furnished by the United States.

## STANDARD CONTRACT ARTICLES

### CHARGES FOR DELINQUENT PAYMENTS

13. a. The District shall be subject to interest, administrative, and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the District shall pay an interest charge for each day the payment is delinquent beyond the due date; Provided, that no interest shall be charged the District unless such delinquency continues for more than 30 days, in which event interest shall accrue from the initial 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 0.5 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, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

#### GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

14. 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 payment 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 water rates and/or 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 made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates and/or operation and maintenance charges or in arrears more than 12 months in the payment of construction charges levied or established by the District.

#### EXAMINATION AND INSPECTION OF PROJECT WORKS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

15. a. The Contracting Officer may, from time to time, examine the District's books, records, and reports; the project works being operated by the District to assist the District in determining the condition of the project works; and the adequacy of the operation and maintenance program, the reserve fund, and the water conservation program. The Contracting Officer may examine any or all of the project works which



were constructed and acquired by the United States and transferred to the District, or project works which were constructed by the District with funds advanced or reimbursed by the United States.

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

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

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

e. The District shall reimburse the actual cost incurred by the United States in making operation and maintenance examinations, inspections, audits, and preparing associated reports and recommendations.

f. The Contracting Officer may provide the State an opportunity to observe and participate in, at its own expense, the examinations and inspections. The State may be provided copies of reports and any recommendations relating to such examinations and inspections.

#### CONFIRMATION OF CONTRACT

16. The District, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of Nebraska confirming the execution of this Contract. The District shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract and decreeing and adjudging to be lawful, valid, and binding on the District. This Contract shall not be binding on the United States until such final decree has been secured.

## NOTICES

17. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered to the Regional Director, Great Plains Region, Bureau of Reclamation, P.O. Box 36900, Billings, MT 59107-6900, and on behalf of the United States, when mailed, postage prepaid, or delivered to the President, Frenchman Valley Irrigation District, 501 Kleven, P.O. Box 297, Culbertson, NE 69024. 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.

## CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

18. 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.

## OFFICIALS NOT TO BENEFIT

19. No Member of or Delegate to Congress, Resident Commissioner, or official of the District 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 DISTRICT'S ORGANIZATION

20. While this Contract is in effect, no change may be made in the District'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

21. 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

22. The District shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the District's financial transactions, water supply data, project operation, maintenance and replacement logs, and 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 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.

### COMPLIANCE WITH RECLAMATION LAWS

23. The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this Contract is subject to Federal reclamation law, including, but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

### MEDIUM FOR TRANSMITTING PAYMENTS

24. All payments from the District to the United States under this Contract shall be made 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.

### ADMINISTRATION OF PROJECT LANDS

25. The lands and rights-of-way acquired and needed by the United States for the purposes of care, operation, and maintenance of project works may be used by the District for such purposes. The District shall ensure that no unauthorized encroachment occurs on project lands and rights-of-way. The District shall not issue rights-of-way across project land, issue land rights to project lands, or issue leases, licenses, permits, or special use agreements involving project land, rights-of-way, or transferred works. All such land-use instruments shall only be issued by the Contracting Officer.

### QUALITY OF WATER

26. The operation and maintenance of project facilities shall be performed in such a 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

27. The District, 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 Nebraska, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

### WATER CONSERVATION

28. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Contract, the District shall develop an effective water conservation program consistent with the current "Guidelines for the Development of Irrigation Water Conservation Plans" and 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 3-year intervals, the District 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 District shall consult and agree to continue or to revise the existing water conservation program.

### EQUAL OPPORTUNITY

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

a. The District will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The District 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 District 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.

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

c. The District 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 worker's representative of the District'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.

d. The District 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.

e. The District 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.

f. In the event of the District'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 District 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.

g. The District will include the provisions of paragraphs (a) through (g) hereof 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 subdistrict or vendor. The District 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 District becomes involved in, or is threatened with, litigation with a subdistrict or vendor as a result of such direction, the District 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

30. a. The District 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.

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

c. The District 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 District by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The District 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.

#### PRIVACY ACT COMPLIANCE

31. a. The District shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining landholder acreage certification and reporting records,

required to be submitted to the District for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

b. With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the District and the District's employees responsible for maintaining the certification and reporting records referenced in (a) above are considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

c. The Contracting Officer or a designated representative shall provide the District with current copies of the Interior Department Privacy Act regulations and the Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the landholders' certification and reporting records.

d. The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64, and amendment requests pursuant to 43 CFR 2.72. The District is authorized to grant requests by individuals for access to their own records.

e. The District shall forward promptly to the System Manager each proposed denial of access under 43 CFR 2.64, and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the District pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as authority for the request.

#### CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

32. a. The District may not allow contamination or pollution of Federal project lands, waters or project works of the United States administered by the Contracting Officer for which the District has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination by third parties.

b. The District shall comply with all applicable Federal, State, and local laws

and regulations, and Reclamation policies and instructions, existing or hereinafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in lands, waters or facilities of the project.

c. "Hazardous Material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 1901, et seq., and the regulations promulgated pursuant to that Act. In addition it shall include thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers or any other pollutants.

d. Upon discovery of any event which may or does result in pollution or contamination of Federal project lands, water or project works the District shall initiate emergency measures to protect health and safety and the environment if necessary and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time of discovery if it is an emergency and the first working day thereafter if it is a nonemergency.

e. Violation of any provisions of this Article, upon which the District does not take immediate corrective action, may, as determined by the Contracting Officer, constitute grounds for termination of this contract and shall make the District liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

f. The District agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or third party contract it may enter into pursuant to this Contract.

g. The Contracting Officer agrees to provide information necessary for the District, using reasonable diligence, to comply with the provisions of this Article.

#### ENTIRE AGREEMENT

33. This Contract, including the Preamble, the Explanatory Recitals, and the Attachment thereto, constitute the entire agreement between the parties concerning the delivery of water to the District and the repayment the District shall make for the water supply works of the Project, and on January 1, 2001, supersedes all prior agreements, whether written or verbal, between the parties regarding this subject.



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

THE UNITED STATES OF AMERICA

By Maryanne Gach  
Regional Director

FRENCHMAN VALLEY IRRIGATION DISTRICT

By Clarence Jankovits Jr  
President

ATTEST:

Kenneth Albert  
Secretary

## **ATTACHMENT A**

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Frenchman Valley Irrigation District  
Frenchman Unit  
Frenchman-Cambridge Division  
Pick-Sloan Missouri Basin Program, Nebraska**

### **“DISTRICT OPERATING PLAN”**

This “District Operating Plan” hereinafter referred to as “Plan” is made for the purpose of providing a means to implement the contractual commitment made by the District to the United States concerning the operation of the District and the performance of certain water conservation and environmental activities which are part of the consideration for a 40 year contract term. The District hereby agrees to honor the commitments in this Plan. The parties shall annually, or as otherwise agreed, review the Plan and may, by mutual agreement of the parties, modify and amend the operating criteria of the initial Plan necessary to achieve the District’s commitments, Provided, That the District’s commitments shall not be diminished or eliminated.

#### **BACKGROUND:**

The Frenchman Unit is located along the valley of Frenchman River in southwestern Nebraska. The unit consists of Enders Dam and Reservoir, Culbertson Diversion Dam, and a system of canals, laterals, and drains that currently serves 9,295 acres of project lands. In addition to storing water for irrigation of District lands, the unit provides irrigation water for use by the H&RW Irrigation District to serve 11,695 acres; protects the downstream area from floods, and offers opportunities for recreation and for conservation and development of fish and wildlife resources.

Due to persistent water supply shortages, the District is willing to undertake water conservation measures to improve the efficiency of the project delivery system and on-farm efficiencies.

## **IRRIGATION DELIVERIES:**

It is understood that from time to time the United States shall accomplish sediment re-surveys of the reservoir which shall change the area-capacity data and the elevation-capacity relationship. It is further understood that this revised data shall be used when the data is officially revised and placed into use. In the event the re-survey necessitates changes in reservoir elevations for flood control and irrigation this Plan shall be revised to incorporate those changes.

The available water supply to the District shall be flows of the Frenchman River and storage waters available for release above the established reservoir shutoff elevation.

The amount of irrigation water released during any one irrigation season shall be determined by the Contracting Officer, in consultation with the District and the H&RW Irrigation District, based on the following:

1. By January 15 of each year, the United States shall provide the District an estimate of the releases available for the irrigation season.
2. The space available for irrigation use in Enders Reservoir is established as the space available between elevations 3112.3 and 3082.4. The current contents are 42,910 acre-feet (El. 3112.3) and 8,948 acre-feet (El. 3082.4) which established the current irrigation space as 33,962 acre-feet.
3. The annual shutoff elevation is established as El. 3082.4.
4. The United States reserves the right to make any releases necessary to protect the project facilities and the public in accordance with appropriate safety procedures.

## **WATER CONSERVATION MEASURES:**

The District agrees to:

1. Establish a revolving water conservation fund to be utilized for annual costs associated with the water conservation program activities. The funding shall be provided by an annual assessment on all project lands collected by the District as part of their annual operation and maintenance

charge. It is provided that these funds may be fully utilized on an annual basis or accumulated to allow the District to perform water conservation projects that would not otherwise be within the District's financial capability should such projects have to be funded through collections or charges during any one year period. It is specifically provided that these funds may be utilized for Reclamation or other cost-share assistance that may be available to the District for water conservation activities.

2. Continue, when permitted, the practice of seasoning canals with stream flows or flood waters prior to the irrigation season to reduce canal losses and control the growth of vegetation.
3. Continue the established practice of providing assistance to irrigators who upgrade on-farm irrigation facilities by improving turnout locations, installing meters, assisting with buried pipe projects to allow the use of gated pipe or center pivots, and implementation of other new technology.
4. Continue to work with Reclamation on evaluating computer software and other new technology that shall improve water scheduling and accounting.

The District also agrees to: continue and/or improve its existing policies and practices that further the goals of water conservation; provide educational opportunities for District employees, such as canal operations training, water scheduling, water use seminars, etc.; and work with irrigators through educational type demonstrations or projects that measure on-farm efficiencies and crop water requirements in terms of the type of irrigation methods employed by individual irrigators.

The District further agrees to provide for proper accounting for all water deliveries and operational waste within five years of the date of this Plan. Water delivery and operational waste accounting records shall be provided to the United States on or before November 1 of each year. Prior to March 1 of each year, the District and the Contracting Officer's representative shall meet to assess the past year's water supply and delivery records and accounting, and to evaluate the upcoming irrigation season. Through the use of these records and other available data, the Contracting Officer shall assess the delivery efficiencies and on-farm efficiency improvements resulting from the District's implementation of water conservation commitments. The improvements shall be measured against pre-Plan water use data. On that basis, it is the general goal of the District to increase the delivery efficiency of the District by a total of 2 percent and on-farm efficiencies by a total of 5 percent. If the "improvements" are not expected to

result in the individual or cumulative increase in efficiencies during the first ten year period of this Plan as determined by the Contracting Officer, additional water conservation measures shall be identified, by mutual agreement of the parties, to be undertaken to ensure the increased efficiencies are realized during the succeeding five year period.

Prior to July 1 of each year, the District shall provide the Contracting Officer an annual report of water conservation activities/accomplishments for the prior year, and a statement of water conservation funds collected, expended, and water conservation fund balance as of the end of the prior calendar year.

#### **ENVIRONMENTAL MEASURES:**

The District agrees to:

1. Install or create better screening devices to prevent the passage of fish, crayfish, etc., into turnouts and lateral systems.
2. Establish policies to preserve lake levels.

In addition to accepting the changes in operation the District is willing to cooperate with Reclamation and others in improving fish and wildlife habitat and recreational access at Enders Reservoir. If requested, the District shall annually furnish 10 man-days of labor at Enders Reservoir provided the work is coordinated through Reclamation and scheduled during the non-irrigation season at least one month in advance. In lieu of the man-days of labor, the district shall furnish a district-owned machine and operator for 3 days. It is further provided that the District, if requested, may agree to perform more man-days and/or more machine and operator days during one calendar year than the annual commitment, and that any man-days and/or machine and operator days furnished in excess of the annual commitment shall apply as a credit to the succeeding years' commitment(s).

Reclamation is committed to determine the significance of selenium concentration levels for fish and wildlife resources in the Republican River Basin. This commitment by Reclamation shall be implemented through an adaptive management process as outlined in the Record of Decision for the Final Environmental Impact Statement, Long-Term Water Supply Contract Renewals, Republican River Basin, Kansas and Nebraska dated July 22, 2000. The adaptive management process includes, but is not limited to: identification and selection of objectives, implementation and monitoring of response, and assessment of accomplishment that can conclude or refine management actions.

The District agrees to cooperate with the United States in implementation of the adaptive management plan.

Prior to July 1 of each year, the District shall provide the United States an annual report of environmental activities/accomplishments for the prior year.

THE UNITED STATES OF AMERICA

By *Dale D. One*  
Area Manager

Date *July 25-2000*

FRENCHMAN VALLEY IRRIGATION DISTRICT

By *Clarence Jankeovits Jr*  
President

Date *7-25-2000*

ATTEST:

*Kenneth Albert*  
Secretary