



# United States Department of the Interior

BUREAU OF RECLAMATION  
NEBRASKA-KANSAS PROJECTS OFFICE  
P.O. BOX 1607  
GRAND ISLAND, NEBRASKA 68802

4-29-85

APR 26 1985

IN REPLY  
REFER TO: G-400

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Mrs Norma Sitzman  
Office Manager H&RW Irrigation  
District  
Culbertson NE 69024

Dear Mrs. Sitzman:

Enclosed for your files are an original and 2 copies of Amendatory Contract No. 5-07-70-W0738 which has been executed on behalf of the United States. Please take the necessary action to have the contract confirmed in court as provided by Article 32.

Court confirmation procedures appear to be a formality, therefore, we will implement the contract immediately and send a revised Bill for Collection in the near future. Deliveries since January 1, 1982, will be used and charges computed accordingly. In the event court confirmation is not accomplished, corrected billings would be made.

Please send copies of the court confirmation judgment as soon as it is received.

Sincerely yours,

Robert D. Kutz  
Project Manager

Enclosures

bc: Regional Director, Denver, Colorado  
Attention: LM-360 and LM-440.  
G-410 (w/enclosure)

No. 126, Orig.  
Ex. K90

KS001271

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Pick-Sloan Missouri Basin Program

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND  
THE H&RW IRRIGATION DISTRICT FOR WATER SERVICE AND FOR  
THE OPERATION AND MAINTENANCE OF CERTAIN IRRIGATION WORKS

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Signature

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THE H&RW IRRIGATION DISTRICT FOR WATER SERVICE AND FOR  
THE OPERATION AND MAINTENANCE OF CERTAIN IRRIGATION WORKS

THIS CONTRACT AMENDMENT, made this 12<sup>th</sup> day of April, 1985, pursuant to the Act of June 17, 1902 (32 Stat. 388), and all acts amendatory thereof or supplementary thereto, particularly section 17(b) of the Reclamation Project Act of 1939 (53 Stat. 1187), as amended by the Act of September 21, 1959 (73 Stat. 584), hereinafter collectively called the Federal Reclamation laws, between the United States of America, hereinafter referred to as the United States, acting through the Secretary of the Interior, and the H&RW Irrigation District, hereinafter referred to as the District, or Contractor, an irrigation district organized and existing pursuant to the laws of the State of Nebraska, with its office and principal place of business at Culbertson, Nebraska.

WITNESSETH:

WHEREAS, the following preliminary statements are made by way of explanation:

EXPLANATORY RECITALS

1. a. Pursuant to the Flood Control Act of December 22, 1944 (58 Stat. 887), and July 24, 1946 (60 Stat. 641), the United States has constructed the Frenchman Unit, Frenchman-Cambridge Division, Pick-Sloan Missouri Basin Program, Nebraska; for the storage and delivery of waters of the Frenchman River for irrigation of District lands.

b. The United States and the District entered into a contract, (Contract No. 7-07-70-W0045, formerly Contract No. 14-06-700-1242) dated November 7, 1956, which has been amended August 12, 1958, October 19, 1967, and October 13, 1970, hereinafter referred to as the previous contract which provides, among other things, for the construction of water supply, distribution, and drainage works; for the payment of water service charges; repayment of construction charge obligations; and payment of OM&R (operation, maintenance, and replacement) charges.

c. The contract of November 7, 1956, as amended, provided for water service and for repayment of expenditures of \$1,500,000 for the

construction of distribution works. As of September 30, 1982, the District had repaid a total of \$299,909, leaving an unpaid repayment obligation of \$1,200,091. ~~The contract also entitled the District to the available water supply for an annual payment of \$12,000 of which \$8,000 is for repayment and \$4,000 for OM&R.~~

d. Due to extensive ground-water use upstream of Enders Reservoir, the inflow from the Frenchman Creek to Enders Reservoir is irreversibly declining. The inflow is expected to be nearly nonexistent by the year 1992 under continued ground-water development conditions. Consequently, the water supply is declining and thereby reducing the District's ability to meet its repayment, water service, and operation, maintenance and replacement obligations to the United States under the previous contract.

e. The District and the United States will cooperatively seek to obtain and develop other sources which will augment the depleting water supply from Enders Reservoir.

f. The District, in cooperation with other irrigation districts in the Frenchman-Cambridge Division, has made application to the State of Nebraska for a right to divert up to 45,000 acre-feet annually from the South Platte River to the Frenchman River for storage and regulation in Enders Reservoir as a source of a replacement and/or supplemental supply for irrigation purposes. Additional contractual arrangements will be required with the District in the event that a water supply is provided by such a transbasin diversion.

g. Due to the irreversible depletion of the District's water supply and financial resources, it is the desire of the United States and the District to eliminate the District's obligations under the previous contract and enter into a water service contract providing for the District to pay a water service charge annually based on the amount of water delivered to the District from the Frenchman Unit.

NOW, THEREFORE, in consideration of the covenants herein contained, it is agreed as follows:

#### DEFINITIONS

2. When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the terms:

a. "Secretary" or "Contracting Officer" shall mean the Secretary of the Department of the Interior of the United States or his duly authorized representative; unless deemed otherwise, the Contracting Officer representing the United States will be the Regional Director, Lower Missouri Region.

b. "Year" shall mean the calendar year.

c. "Irrigation season" shall mean the period within any year May 1 through October 30 or such additional period from April 1 through May 1 of each year as may be determined between the Contracting Officer and the District.

d. "Irrigation works" shall mean those facilities constructed by the United States as a part of the Frenchman Unit for the storage, diversion, carriage, distribution, and drainage of the water of the Frenchman River to the District, which includes Enders Dam and Reservoir, Culbertson Diversion Dam, Culbertson Canal, Culbertson Extension Canal and laterals, and all works, improvements, and equipment defined as either water supply or distribution and drainage works in the District's previous contracts.

e. "Reserved works" shall mean those irrigation works of the Frenchman Unit for which the United States has the responsibility to perform the care, operation, maintenance, and replacement which include Enders Dam, Reservoir, and the works necessary to convey water to the Culbertson Diversion Dam.

f. "Transferred works" shall mean those irrigation works of the Frenchman Unit which have been transferred to the District and the Frenchman Valley Irrigation District for care, operation, and maintenance.

g. "Culbertson Canal Extension" shall mean that part of the Culbertson Canal downstream of station 1126+00.

h. "District water supply" expressed in acre-feet, shall mean that portion of the total water supply of the Frenchman River available through the irrigation works of the Frenchman Unit from the natural flow of the Frenchman River or from storage in Enders Reservoir for irrigation purposes as appropriated under the laws of the State of Nebraska for use on District lands, not to exceed, however, the amount of water that may be used beneficially on up to 11,490 acres of irrigable lands of the District.

i. "Net water supply," expressed in acre-feet, shall equal the water delivered to the District directly from the Culbertson Canal plus an appropriate share of losses from the Culbertson Canal and plus an appropriate share of the waste at the Blackwood Creek Wasteway less any deliveries made to the Frenchman Valley Irrigation District from the Culbertson Canal Extension. Culbertson Canal losses will be determined by subtracting the sum of Frenchman Valley Irrigation District's and the District's diversions from the total diversions from the Frenchman Creek at the Culbertson Diversion Dam. Such losses and waste will be apportioned between the Frenchman Valley Irrigation District and the District based on their respective diversions.

j. "Irrigable lands" shall mean those lands of the District which now or hereafter are classified by the Contracting Officer to be

susceptible of continuing long-term benefits from the application of irrigation water and to which water may be furnished through the distribution works.

k. "OM&R" shall mean the annual operation, maintenance, and replacement costs of either the transferred works or the reserved works of the Frenchman Unit.

#### SCOPE AND TERM

3. a. This amendatory contract No. 5-07-70-W00738 replaces and supersedes in its entirety the previous Contract No. 7-07-70-W0045 dated November 7, 1956, as amended, between the United States and the District, pursuant to Public Law 98-470 dated September 17, 1984, and shall become effective as of January 1, 1982.

b. The term of this amendatory contract shall be for a period of 40 years. The District's right to receive water service as set forth in articles 4, 5, and 6 shall be limited to a period of 10 years beginning January 1, 1982; Provided, following the initial 10-year period, the water service as set forth in articles 4, 5, and 6 may be extended by the Contracting Officer after consultation with the District for successive periods not to exceed 10 years each. The Contracting Officer's decision whether or not to extend water service shall be provided to the District in writing not later than 1 year prior to the expiration of each period of water service and, in the event water service is extended for a successive period, the District shall accept such service. Notwithstanding the Contracting Officer's decision to extend water service for a successive period, all other provisions of this amendatory contract shall remain in full force and effect. In the event the District's right to water service is not extended, the provisions of this amendatory contract for water service may be further amended in a manner mutually acceptable to the parties hereto.

#### WATER TO BE DELIVERED TO THE DISTRICT

4. a. For each irrigation season during the term of this contract, the District shall pay for the water supply delivered to the District as determined by the United States, pursuant to the provisions of this article and ~~articles 5 and 6~~. Water deliveries shall be made at the Culbertson Diversion Dam to the Culbertson Canal at such times during the irrigation season and in such quantities as requested by the District and within the capacity of the system. Water measurements, as necessary, will be made at the headgate of the Culbertson Canal and at such other point or points along the Culbertson Canal and the Culbertson Canal Extension as may be necessary to determine the appropriate division of water between the District and the Frenchman Valley Irrigation District. ~~The Contracting Officer shall notify the District of the actual water delivered to the District by December 1.~~

b. The District shall determine the extent to which the available water supply will be delivered to the District. However, in

any year in which the Contracting Officer determines the District can deliver from its net water supply, 5,200 acre-feet or more to its users, then the District shall be required to take delivery of the amount available up to the quantity necessary to deliver 10,400 acre-feet to its users.

~~The District may elect not to take delivery of the amount so determined but in that event, the District shall be obligated to pay the United States the water service charges determined pursuant to articles 5 and 6 as though delivery of the amount available was made. The District shall not be required to take delivery or to pay water service charges in lieu of delivery in any year when the Contracting Officer determines that the District can deliver less than 5,200 acre-feet to its users from its net water supply.~~

c. The Contracting Officer will advise the District of its estimated water supply available for the forthcoming irrigation season concurrently with the District's annual water charge as provided in article 6. This estimate may be revised as conditions warrant.

d. In the event the water supply delivered to the District during the irrigation season is not delivered by the District to its water users, the District shall make payment to the United States for the water delivered to the District, pursuant to the provisions of articles 5 and 6.

e. The District, in conjunction with the Frenchman Valley Irrigation District, provides, operates, and maintains a pump at Enders Reservoir for the purpose of pumping seepage waters downstream from Enders Dam into storage at Enders Reservoir. For the purpose of administering the provisions of this amendatory contract, the waters so pumped shall be considered a part of the District's water supply, and the District's share of the costs of operating and maintaining said pump shall be considered an allowable OM&R cost of the transferred works.

#### DETERMINATION OF THE DISTRICT'S ANNUAL PAYMENT CAPACITY

5. a. The Contracting Officer shall determine the payment capacity for water delivered by the District to its users for irrigation purposes under this contract utilizing established Reclamation procedures. The District's payment capacity per acre-foot of water so delivered will be equal to the payment capacity per acre divided by the average annual delivery requirement of 1.81 acre-feet per acre. This determination for the initial 3-year period of this contract is:

$$\frac{\$32.11 \text{ (payment capacity per acre)}}{1.81 \text{ (acre-feet per acre)}} = \$17.75 \text{ (payment capacity per acre-foot)}$$

b. The District's annual payment capacity shall be based on the payment capacity per acre-foot, and the quantity of water in acre-feet delivered by the District to the users. The quantity of water delivered

to the water users by the District shall be determined by multiplying the District's net water supply by a delivery factor to account for seepage and evapotranspiration losses and operational waste. The District's annual payment capacity will be calculated by the following formula:

$$\text{District's annual payment capacity} = \$17.75 \times (\text{net water supply} \times \text{delivery factor})$$

Delivery factor is determined as follows:

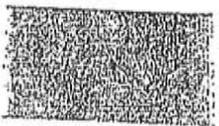
<u>District's Net Water Supply (Acre-feet)</u>	<u>Delivery Factor</u>
12,500 or less	0.25
12,501 through 29,999	0.25 + [0.00002 (total delivery - 12,500)]
30,000 or more	0.60

DETERMINATION AND PAYMENT OF WATER SERVICE CHARGE

6. a. Each year on or before December 1, the Contracting Officer shall notify the District of the estimated water service charge for the next irrigation season. When the District's annual payment capacity equals or exceeds the sum of the District's share of OM&R cost of the reserved works and the allowable OM&R cost of the transferred works, the annual water service charge shall be the District's annual payment capacity minus the annual allowable District OM&R cost for the transferred works. For explanatory purposes, the above is represented by the following formula:

$$\text{Annual water service charge} = \text{District's annual payment capacity} - \text{District's annual allowable OM\&R cost for transferred works}$$

b. When the District's annual payment capacity is less than the sum of the District's share of the OM&R cost for the reserved works and the allowable OM&R cost for the transferred works, the annual water service charge shall be determined on the basis of the ratio of the District's share of the reserved works OM&R cost to the sum of the District's share of reserved works OM&R cost and the District's allowable OM&R cost for the transferred works as set forth in subarticle (d) herein.



For explanatory purposes, the above is represented by the following formula:

$$\text{Annual water service charge} = \frac{\text{District's Annual Payment Capacity} \times \left( \frac{\text{District's share of reserved works OM\&R cost}}{\text{District's annual (of reserved works OM\&R cost + allowable OM\&R cost for transferred works)}} \right)}{\text{Capacity}}$$

c. Each year on or before May 15 or in advance of water delivery, the District shall pay one-half of the estimated water service charge for the current irrigation season as determined above. The remaining one-half of the estimated water service charge shall be paid on or before July 15. Each year following the irrigation season, an adjustment of the water service charge will be made based on the Districts actual net water supply. Any overpayment by the District shall be credited against its water service charge for the following year(s); Provided, That a refund shall be made, when requested by the District, for year(s) during which no water delivery is anticipated. In the event the District's water service payments are less than that determined, the Contracting Officer shall notify the District of such additional charges and the basis thereof, and the District shall make payment within 30 days of receipt of such billing for the additional charges.

d. For the purpose of administering the provisions of article 6 for the first 3-year term of this contract commencing January 1, 1982, the District's share of the reserved works OM&R cost is established as \$17,100 and the District's annual allowable OM&R cost for the transferred works is established as \$103,300.

e. Any payments due from the District after January 1, 1982, under the previous contract for water service or repayment or for OM&R cost incurred after that date shall be adjusted to conform with the terms and conditions of this amendatory contract.

RESERVED WORKS OM&R COST ALLOCATION

7. The method of allocating the annual OM&R cost of the reserved works shall recognize the diminishing water supply and the declining use of Enders Dam and Reservoir for the irrigation purpose of the Frenchman Unit. ~~The total annual OM&R cost of the reserved works shall be allocated between the flood control and irrigation purposes based on the capacity of Enders Reservoir dedicated to flood control and that portion of the capacity used for the irrigation purpose each year. The District's share of the cost allocated to the irrigation purpose of the Frenchman Unit shall be proportioned between the District and the Frenchman Valley Irrigation District on the basis of the irrigable acreage for each.~~

## REVIEW AND ADJUSTMENT OF PAYMENT CAPACITY AND WATER SERVICE CHARGES

8. ~~At intervals of not less than 3 years from the effective date of this contract, the District's annual payment capacity and annual water service charges as described in articles 4, 5, and 6 may be redetermined and adjusted as determined by the Contracting Officer. The factors used for determining the District's annual payment capacity and annual water service charge shall be, but not limited to, the payment capacity per acre foot of water delivered by the District to its users, net water supply, delivery factor, District annual allowable OM&R cost for the transferred works, the District's share of the reserved works OM&R cost, and other pertinent factors.~~

## CREDITING OF WATER SERVICE REVENUES

9. a. ~~Revenues from water service charges shall be first credited to the payment of the annual OM&R cost of the reserved works. All revenues in excess of these costs shall be credited as repayment of the capitalized costs of the irrigation works of the Frenchman Unit in accordance with the financial procedures for the Pick-Sloan Missouri Basin Program.~~

b. ~~In the event the annual OM&R cost of the reserved works exceeds the annual water service charge revenues, the deficit shall become a capitalized cost of the irrigation works of the Frenchman Unit.~~

## REPAYMENT ASSISTANCE FROM POWER REVENUES

10. Section 9 of the Flood Control Act of 1944 authorizes the use of revenues from the sale of electric power and energy generation by facilities of the Pick-Sloan Missouri Basin Program to repay the capital cost of project features allocated to the irrigation purpose, which are in excess of the water users' ability to pay. The Frenchman Unit is an authorized feature of the Pick-Sloan Missouri Basin Program. Therefore, the Secretary is authorized to utilize such power revenues to repay the cost of the irrigation works of the Frenchman Unit which is not repaid from water service charges or repayment revenues by the water users of the Unit pursuant to this contract or other contracts.

## RIGHT OF BENEFICIAL USE OF WATER

11. The right to the beneficial use of the District water supply shall be governed by the Federal Reclamation laws and the laws of the State of Nebraska, as the same may at any time apply to this contract; but any such right 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. The right to beneficial use of the District water supply shall not be disturbed so long as the District is not in default under any of the provisions of this contract.

WATER SHORTAGES, RIGHT TO APPORTION,  
WASTE, SEEPAGE, AND RETURN FLOWS

12. a. On account of drought or other causes, 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 this shortage.

b. In any year in which water shortages may occur, the United States has the right to apportion the water supply, available from the Republican River and its tributaries through works constructed by the United States as a part of the Frenchman Unit, among those irrigation districts whose water users are the beneficiaries of such water supply who will, in contract with the United States, agree to such apportionments. As among such contracting beneficiaries in Nebraska, it is the intention that they shall be considered to have equal water right priorities under the laws of the State of Nebraska. The apportionment as herein provided shall be made only after consultation with the governing bodies of such contracting irrigation districts.

c. The United States claims all of the waste, seepage, and return-flow water derived from water delivered pursuant to this contract, and the same is hereby reserved and retained by the United States for beneficial use on the Frenchman Unit or on any unit or division of the Pick-Sloan Missouri Basin Program, which employs the water of the Republican River or its tributaries for irrigation purposes.

JOINT USE OF CULBERTSON DIVERSION DAM AND CULBERTSON CANAL

13. a. Culbertson Diversion Dam and Culbertson Canal serve District lands and the lands of the Frenchman Valley Irrigation District. Either the United States or the Frenchman Valley Irrigation District will operate and maintain Culbertson Diversion Dam and Culbertson Canal to station 1126+00, the beginning of the Culbertson Canal Extension. During the term of this contract, the District shall pay to either the United States or the Frenchman Valley Irrigation District, whichever is operating the Culbertson Diversion Dam and Culbertson Canal, a proportionate part of the costs of such operation and maintenance. Such costs shall be apportioned as between the District and the Frenchman Valley Irrigation District on the basis of the amount of water delivered to the District and the Frenchman Valley Irrigation District during the irrigation season on the basis of an estimate of such costs, and adjustments shall be made at the close of each year on the basis of actual costs; Provided, That if the estimate of such costs shall be insufficient, additional payments shall be made within 30 days upon receipt of billing for the adjusted estimates. In the delivery of water to station 1126+00, transportation losses will be equitably adjusted between the District and the Frenchman Valley Irrigation District.

b. The Contracting Officer shall determine any dispute between the District and the Frenchman Valley Irrigation District as to costs of operation and maintenance of the Culbertson Diversion Dam and Culbertson Canal to station 1126+00, the proration thereof, and the distribution of water transportation losses.

#### CHARGE FOR LATE PAYMENTS

14. The Contractor shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; Provided, That the late payment charge percentage rate will not be less than 0.5 percent per month nor exceed the maximum rate set forth by Nebraska statutes. The late payment charge percentage rate applied on an overdue payment will remain in effect until payment is received. The late payment rate for a 30-day period will be determined on the day immediately following the due date and will be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received will first be applied to the late charge on the overdue payment and then to the overdue payment.

#### OPERATION AND MAINTENANCE OF TRANSFERRED WORKS - PAYMENT OF MISCELLANEOUS COSTS

15. a. Upon substantial completion of the project works, or as otherwise determined by the Contracting Officer, and following written notification, the care, operation, and maintenance of any or all of the project works shall be transferred to the Contractor. Title of such transferred works will remain in the name of the United States.

b. The Contractor, without expense to the United States, shall care for, operate, and maintain such transferred works in full compliance with the terms of this contract, and in such manner that said transferred works will remain in good and efficient condition.

c. Necessary repairs of the transferred works shall be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the transferred works threatening or causing interruption of service, the Contracting Officer may issue to the Contractor a special written notice of the necessary repairs. Within 60 days of receipt of such notice, the Contractor shall either make the repairs or submit an acceptable plan for accomplishing the work. If the Contractor fails to meet the conditions stated above, the Contracting Officer may cause the repairs to be made and the cost thereof shall be paid by the Contractor as directed by the Contracting Officer.

d. No substantial change shall be made or encroachment allowed by the Contractor to any of the major transferred works or on

rights-of-way for such works, without first obtaining the written consent of the Contracting Officer.

e. The Contractor shall hold the United States, its officers, agents, and employees harmless as to any and all damages which may, in any manner, result from the care, operation, and maintenance of any of the project works transferred to the Contractor.

f. In the event the Contractor is found to be operating the transferred works or any part thereof in violation of this contract, then, upon the election of the Contracting Officer, the United States may take over from the Contractor the care, operation, and maintenance of the transferred works by giving written notice to the Contractor of such election and of the effective date thereof. Thereafter, during the period of operation by the United States, upon notification, the Contractor shall pay to the United States, annually in advance, the cost of operation and maintenance of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer, the care, operation, and maintenance of the works may be retransferred to the Contractor.

g. In addition to all other payments to be made by the Contractor under this contract, the Contractor shall, during the period of time any portion or all of the project works are being operated, pay the United States, following the receipt of a detailed statement, miscellaneous costs incurred by the United States for unusual work involved in the administration and supervision of this contract.

EXAMINATION AND INSPECTION OF PROJECT WORKS FOR DETERMINING ADEQUACY OF OPERATION, MAINTENANCE, AND SAFETY OF DAMS PROGRAMS

16. a. The Contracting Officer may, from time to time, make examinations and evaluations of project works being operated by the Contractor with a view to assisting the Contractor in determining the condition of the works and the adequacy of the operation and maintenance program. The examinations and evaluations may include any or all of the project works which were constructed by the United States and transferred to the Contractor or project works which were constructed by the Contractor with funds advanced or reimbursed by the United States. Reports of the examinations and evaluations, including recommendations, will be prepared and copies will be furnished to the Contractor. The examinations and evaluations will be without cost to the Contractor, except for such costs incurred by the Contractor and/or its agents to provide access, to operate any mechanical or electrical equipment, or to answer questions.

b. If deemed necessary by the Contracting Officer or requested by the Contractor, special inspections of any project works being operated by the Contractor and of the Contractor's books and records may be made to ascertain the extent of any operation and maintenance deficiencies, to determine the remedial measures required for their

correction, and to assist the Contractor in solving specific problems. Any special inspection or audit, except in a case of emergency, shall be made after written notice to the Contractor and the actual cost incurred by the United States shall be reimbursed by the Contractor to the United States.

c. The State shall be provided an opportunity to observe and participate, at its own expense, in the examinations and inspections. The Contractor and the State will be provided copies of reports and recommendations relating to such examinations and inspections.

#### RESERVE FUND

17. a. Commencing with execution of this contract, the Contractor shall maintain a reserve fund of not less than \$35,000 that will be available to cover extraordinary operation and maintenance costs for repairs and replacement items. Such reserve fund shall be maintained by the Contractor in a federally insured interest- or dividend-bearing account, or in securities guaranteed by the Federal Government; Provided, That money in the reserve fund may be made available within a reasonable time to meet the expense for the purpose for which it was accumulated. Whenever said reserve fund is reduced below \$35,000 by expenditures therefrom, it shall be restored by the accumulation of annual deposits of \$3,500. Such annual deposits and accumulation of interest to the reserve fund shall continue until the base amount of \$35,000 is restored. Thereafter, the annual deposits may be discontinued and the interest earnings shall continue to accumulate and be retained as part of an expanding reserve fund. Annual deposits required to restore the reserve fund shall be considered as annual operation, maintenance, and replacement costs of the Contractor when determining annual water service charges pursuant to articles 4, 5, 6, and 8.

b. Upon mutual agreement between the Contractor and the Contracting Officer, the reserve fund and the annual installments may be adjusted to reflect adequacy or inadequacy of the accumulated fund with respect to risk and uncertainty stemming from the size and complexity of the project, size of the annual operation and maintenance budget, addition, deletion, or changes in project works and operation and maintenance costs not contemplated when this contract was executed. If the total accumulated fund and/or annual installments are adjusted downward, the excess increment of the fund shall be available for the Contractor's use and shall be a factor in the redetermination and adjustment of the Contractor's annual payment capacity and water service charges as provided by articles 4, 5, 6, and 8.

c. Expenditures shall be made from such reserve fund only for meeting unforeseen extraordinary costs of operation and maintenance, repair or replacement, betterment in situations where recurrence of severe problems can be eliminated, and usual operation and maintenance costs during periods of special stress such as may be caused by drought,

hurricane storms, or other like emergencies. Proposed expenditures from the said fund shall have the prior review and approval of the Contracting Officer. Whenever said reserve fund is reduced below the current balance by expenditures therefrom, the current balance shall be restored by the accumulation of annual deposits, as specified above, commencing with the next year following that in which the fund is reduced.

d. During any period in which any of the project works are operated and maintained by the United States, the reserve fund shall be available for like use by the United States.

e. On or before January 1 of each year, the Contractor shall provide an annual statement of the balance and composition (principal and accumulated interest) of the reserve fund account to the Contracting Officer.

#### QUALITY OF WATER

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

#### WATER AND AIR POLLUTION CONTROL

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

#### WATER CONSERVATION PROGRAM

20. a. While the contents and standards of a given water conservation program are primarily matters of State and local determination, there is a strong Federal interest in developing an effective water conservation program because of this contract. The Contractor shall develop and implement an effective water conservation program for all users of water which is provided from, or conveyed through, federally constructed or federally financed facilities. That water conservation program shall contain definite goals, appropriate water conservation measures, and time schedules for meeting the water conservation objectives.

b. A water conservation program, acceptable to the Contracting Officer, shall be in existence prior to one or all of the following: (1) service of federally stored/conveyed water; (2) transfer of opera-

tion and maintenance of the project facilities to the Contractor; or (3) transfer of the project to an operation and maintenance status. The distribution and use of federally stored/conveyed water and/or the operation of project facilities transferred to the Contractor shall be consistent with the adopted water conservation program. Following execution of this contract, and at subsequent 5-year intervals, the Contractor shall resubmit the water conservation plan to the Contracting Officer for review and approval. After review of the results of the previous 5 years and after consultation with the Contractor, the Contracting Officer may require modifications in the water conservation program to better achieve program goals.

#### RULES, REGULATIONS, AND DETERMINATIONS

21. a. The Contractor agrees that the delivery of irrigation water pursuant to this contract is subject to the acreage and ownership limitations and pricing provisions of Reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (Public Law 97-293).

b. The Contractor further agrees to abide by final rules and regulations promulgated by the Secretary of the Interior covering the enforcement and administration of said limitations and provisions of Reclamation law as amended and supplemented by the Reclamation Reform Act of 1982, including the payment of full costs as provided therein.

c. The Contracting Officer shall have the right to make, after an opportunity has been offered to the Contractor for consultation, rules and regulations consistent with the provisions of this contract, the laws of the United States and the State of Nebraska, to add or to modify them as may be deemed proper and necessary to carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor shall observe such rules and regulations.

d. Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties.

#### BOOKS, RECORDS, AND REPORTS

22. The Contractor shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use and crop census, water supply, water use, changes of project works, and to other matters as the Contracting Officer may require. Reports thereon

shall be furnished to the Contracting Officer in such form and on such date or dates as he may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this contract.

#### ADMINISTRATION OF PROJECT LANDS

23. 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 Contractor for such purposes. The Contractor shall not, except with prior written permission from the Contracting Officer, 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. Unless otherwise provided, all such land use instruments shall only be issued by the Contracting Officer. Lands and rights-of-way withdrawn or acquired primarily for, or later determined to be used for, recreation, fish and wildlife enhancement or mitigation, or other special purposes, shall be reserved primarily for those purposes; and other land or rights-of-way use shall be secondary in nature and compatible with said recreation, fish and wildlife, or special purpose uses.

#### ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

24. 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 part or interest therein shall be valid until approved by the Contracting Officer.

#### CHANGES IN CONTRACTOR'S ORGANIZATION

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

#### CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

26. The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

TITLE VI, CIVIL RIGHTS ACT OF 1964

27. a. The Contractor agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964, (78 Stat. 241) and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

b. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by the United States, this assurance obligates the Contractor, or in the case of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Contractor for the period during which the Federal financial assistance is extended to it by the United States.

c. This assurance is given 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 United States, 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 financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees.

EQUAL OPPORTUNITY

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

28. a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other

forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

g. The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in,

or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### CERTIFICATION OF NONSEGREGATED FACILITIES

29. 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 Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms 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, 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 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 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.

#### GENERAL OBLIGATION - BENEFITS CONDITIONED UPON PAYMENT

30. a. The obligation of the Contractor to pay the United States 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.

b. The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this contract. No water will be made available to the Contractor through project facilities during any period in which the Contractor may be in arrears in the advance payment of any operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The Contractor shall not furnish water made available pursuant to this contract for lands or parties which are in arrears in the advance payment of operation and maintenance or toll charges or in arrears more than 12 months in the payment of construction charges as levied or established by the Contractor.

#### OFFICIALS NOT TO BENEFIT

31. a. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefits.

b. No official of the Contractor shall receive any benefit that may arise by reason of this contract other than as a landowner within the project and in the same manner as other landowners within the project.

#### CONFIRMATION OF CONTRACT

32. The execution of this contract shall be authorized or ratified by the qualified electors of the Contractor at an election held for that purpose. The Contractor, after the election and upon the execution of this contract, shall promptly secure a final decree of the proper court of the State of Nebraska approving and confirming the contract and decreeing and adjudging it and the apportionment of the benefits made thereunder to be lawful, valid, and binding on the Contractor. The Contractor shall furnish to the United States a certified copy of such decree and of all pertinent supporting records.

#### NOTICES

33. 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, Lower Missouri Region, Bureau of Reclamation, P.O. Box 25247,

Denver, Colorado 80225, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Secretary of the H&RW Irrigation District, Culbertson, Nebraska 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.

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

H&RW IRRIGATION DISTRICT

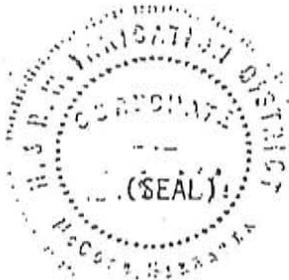
By *C. K. Johnson*  
Title *Pres.*

ATTEST:

*David S. Legel*  
Secretary

THE UNITED STATES OF AMERICA

By *B. E. Martin*  
Regional Director  
Lower Missouri Region  
Bureau of Reclamation



RESOLUTION

A Resolution Approving a Water Service  
Contract between the United States and  
the H & RW Irrigation District

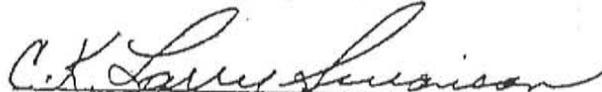
WHEREAS, the Bureau of Reclamation has submitted to the Board of Directors representing the H & RW Irrigation District a proposed amendatory contract RO Draft 5-11-82 to provide for water service and for the operation and maintenance of certain irrigation works, and

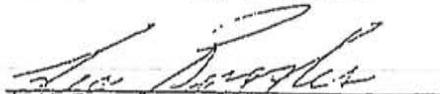
WHEREAS, this Board has reviewed the proposed contract and find it acceptable and in the best interest of the District,

NOW THEREFORE, the Board of Directors of the H & RW Irrigation District in Nebraska hereby resolves that,

- (1) The Proposed amendatory contract, identified above, is approved as to form, and
- (2) The President of the District is authorized to execute the contract in behalf of the District in a form substantially the same as RO Draft 5-11-82, when the contract is presented for that purpose.

  
Willard Schlegel, Director

  
Larry Swanson, Director

  
Les Ruggles, Director

