Contract No.
14-06-100-6031

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Gooding Division, Minidoka Project, Idaho

COMPANY-DISTRICT CONTRACT AMONG THE UNITED STATES OF AMERICA, AMERICAN FALLS RESERVOIR DISTRICT NO. 2, AND BIG WOOD CANAL COMPANY

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Company-District Contract Among
THE UNITED STATES OF AMERICA,
AMERICAN FALLS RESERVOIR DISTRICT NO. 2
and
BIG WOOD CANAL COMPANY

THIS CONTRACT, made this 1st day of June 1962, among THE UNITED STATES OF AMERICA, hereinafter called the United States, acting through the Secretary of the Interior and pursuant to the Federal Reclamation Laws, AMERICAN FALLS RESERVOIR DISTRICT NO. 2, hereinafter called the District, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho and having its principal place of business at Gooding, Idaho, and the BIG WOOD CANAL COMPANY, hereinafter styled the Company, a corporation organized under the laws of the State of Idaho and having its principal place of business at Shoshone, Idaho,

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, the parties entered into a joint use and operating agreement dated May 1, 1928, which was supplemented by the contract of February 1, 1933; and

3. WHEREAS, the District and the United States have entered into an amendatory repayment contract dated October 14, 1954, which contemplates a revision of the agreement of May 1, 1928; and

4. WHEREAS, it is the desire of the parties to supersede the existing contract of May 1, 1928, as amended, by a new Company-District contract as contemplated by the arrangements embodied in the amendatory contract of October 14, 1954;

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

Definitions

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

(a) "Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

(b) "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof or supplementary thereto, including without limitation by this enumeration, the Reclamation Project Act of 1939 (53 Stat. 1187) and the act authorizing the execution of the amendatory contract.

(c) "Amendatory contract" shall mean the contract of October 14, 1954, contract No. 14-06-W-73, which is recorded in Lincoln County, Idaho in Book 5 of Agreements at page 485, in Jerome County, Idaho in Book 154 at page 361, and in Gooding County in Book 6 of Agreements at page 66.

(d) "Hunt area" shall mean those approximately 8,000 acres of new lands located below the main canal and south of the northerly boundary of township 8 south, ranges 19 and 20 east, Boise meridian.

(e) "Old lands" shall mean the 78,167.1 acres of irrigable lands within the District which, as of the date of the amendatory contract, have apportioned thereto a part of the obligation under the Government-District contract, as defined in the amendatory contract, under the District's then prevailing orders for the apportionment of benefits and costs, including those 4,263 acres of land designated as "river-right lands".

(f) "New lands" shall mean not to exceed 20,500 acres of irrigable lands as described in public notices Nos. 40, as corrected, 42, and 43, as new lands may be redefined pursuant to the provisions of article 30 of the amendatory contract.

(g) "Transferred works" shall mean the Milner-Gooding canal, all ditches and laterals, together with all works appurtenant or incidental to the foregoing facilities, which works were constructed by the United States to serve the lands within the District.

Scope and Term of Company-District Contract

6. This Company-District contract supersedes and takes the place of the contract of May 1, 1928, as amended and supplemented by the contract of February 1, 1933, becoming effective on the date of its execution by the Secretary, after approval by the Secretary, in accordance with provisions of article 29 of the amendatory contract. Except as to provisions of the contract of May 1, 1928, which have been fully executed prior to the date of this contract, which shall remain unaffected thereby, the contract of May 1, 1928 shall remain effective only to the extent expressly provided in this contract.

Responsibilities for Operation of Works

7. The relative responsibilities of the Company and the District for operation of works to serve the various categories of land within the jurisdiction of the District shall be as follows:

(1) That the District will operate and maintain (i) the entire main canal from its heading in Snake River to mile 72, and (ii) the distribution system required to serve the irrigable lands of the Hunt area, and to serve approximately 561.5 acres of new lands in township 5 south, range 14 east, through the so-called Carpenter lateral.

(2) The Company will operate and maintain the Company's storage, diversion, and distribution system including works and capacity added to that system under the contract of May 1, 1928, and works and capacity that may hereafter be provided.

Water Delivery

8. (a) The District will deliver water made available under the amendatory contract as follows: (i) to the Company for delivery as required, (ii) into the Big Wood and Little Wood rivers for diversion by river-right lands, and (iii) to new lands where delivery falls to the District's responsibility.

(b) The Company will deliver, in accordance with entitlements, water made available under the amendatory contract (including released water as hereinafter defined) to all old lands (excluding river-right lands) and all new lands other than those to be served by the District. "Released water" shall be defined to mean, in the case of old lands above the main canal, water from the Big Wood and Little Wood rivers and Magic Reservoir which becomes available to such lands by reason of the releases and exchanges effected pursuant to article 28 of the amendatory contract; and in the case of old lands below the main canal, water in addition to that required to replace that released under article 28 to old lands above the main canal.

Modification of Company's System

9. The District, or the United States while it may be operating the transferred works, shall have the right to enlarge or improve any part of the Company's water distribution system where required for the carrying out of the amendatory contract between the United States and the District.

Joint Operation and Maintenance Cost Determinations and Adjustment of Levies

10. (a) There shall be determined for each year the total estimated cost of operation and maintenance of all the storage, diversion, and distribution works chargeable to both the Company and the District, exclusive of such costs which are allocable to making stored water available to river-right lands and of the costs allocable to those 610.7 acres of Company land not within the jurisdiction of the District; and the average per irrigable acre cost shall be derived therefrom by dividing such total annual cost by the total area of the District's new and old lands, excluding river-right lands. In determining total annual costs as herein provided, all costs of operation and maintenance that are properly chargeable against either the Company's or the District's system shall be included, regardless of whether chargeable initially to the Company or the District.

(b) The respective levies by the Company and the District for operation and maintenance costs shall be adjusted so that the combined annual operation and maintenance levies of the Company and the District against each irrigable acre of old land (excluding river-right lands) and the District's annual operation and maintenance levy against each acre of irrigable new land shall be the same.

(c) In connection with the requirements of (a) and (b) above, adequate working arrangements for budgeting and accounting for anticipated and actual operation and maintenance costs of the systems involved shall be provided by the Company and the District.

Refusal to Deliver Water in Case of Default

11. The Company shall not deliver water from any source to lands within the District that are delinquent in the payment of operation and maintenance charges to the Company, the District, or the United States, or more than twelve (12) months delinquent in the payment of any construction charge obligation installment due to the Company, the District, or the United States; if the Company should be unable so to withhold delivery or should fail to do so, it shall pay to the District or to the United States, as the case may be, the charges plus accrued penalties owing to the District or the United States which the Company was unable or failed to collect as herein required; and the District or the United States shall be entitled to withhold delivery of water made available under this contract to the Company in the event the Company is in default on any of its obligations under this provision.

Company to Observe Limitations on Areas Entitled to Receive Water

12. The Company, in so far as it has the responsibility for the delivery of any water made available under the amendatory contract, including "released water" for old lands, shall make deliveries only to those lands entitled to receive such water, having regard for limitations provided in articles 42 and 43 of the amendatory contract, and any other controlling provisions of the Federal Reclamation Laws.

Company to Be Agent of District

13. For the purpose of delivery of water made available under this amendatory contract, including "released water", the Company shall be deemed to be the agent of the District and be subject to the same limitations as is the District by reason of the Federal Reclamation Laws and the amendatory contract.

Pertinent Amendatory Contract Provisions Binding

14. The Company hereby accepts and agrees to be bound by all the provisions of the amendatory contract that are pertinent to the entitlement of lands to water made available under the amendatory contract, including "released water".

Amendment of Contract

15. This Company-District contract may be revised from time to time but only with the approval of the Secretary.

Discrimination Against Employees or Applicants for Employment Prohibited

16. In connection with the performance of work under this contract, the Company, in this article termed the contractor, agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, 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, creed, color, 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 regard to race, creed, color, or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, 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. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, ani orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting

agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The contractor will include the provisions of the foregoing subarticles (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, 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 the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; 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 by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contingent on Appropriations or Allotment of Funds

17. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by the Congress or the allotment of Federal funds, shall be contingent on such appropriations or allotments being made. The failure of the Congress to appropriate funds, or the failure of any allotment of funds, shall not, however, relieve the District or the Company from any obligations theretofore accrued under this contract, nor give the District or the Company the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Assignments Prohibited;
Successors and Assigns Obligated

18. 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 thereof, or interest therein, shall be valid until approved by the Secretary.

Officials Not to Benefit

19. 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 therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

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

THE UNITED STATES OF AMERICA

By /s/ Norman H. Moore
Acting Regional Director, Region 1
Bureau of Reclamation
P. O. Box 8008, Boise, Idaho

(SEAL)

Attest:

/s/ Lurlene Eastabrooks
Secretary

AMERICAN FALLS RESERVOIR DISTRICT NO. 2

By /s/ Orvil Nielson
President of its Board of Directors

(SEAL)

Attest:

/s/ Dorothy Silva
Secretary

BIG WOOD CANAL COMPANY

By /s/ Willard Nelson
President of its Board of Directors