

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Meeker-Driftwood, Red Willow, and Cambridge Units,
Frenchman-Cambridge Division,
Pick-Sloan Missouri River Basin Program, Nebraska

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE FRENCHMAN-CAMBRIDGE IRRIGATION DISTRICT
FOR REPAYMENT EQUALIZATION AND RESERVE FUNDS CONTRIBUTION
EXTENSION

THIS AMENDATORY CONTRACT, made this _____ day of _____, 2007, 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(d) 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-CAMBRIDGE IRRIGATION DISTRICT, an irrigation district organized and existing pursuant to the laws of the State of Nebraska, with its principal place of business in Cambridge, Nebraska, hereafter called the “District”.

WITNESSETH, THAT:

The following statements are made in explanation:

EXPLANATORY RECITALS

WHEREAS, by Contract No. 009D6B0122 dated July 25, 2000, the District contracted with the United States for the use of and repayment for the water supply and distribution works, in accordance with Reclamation Law; and

WHEREAS, Public Law 109-386 (P.L. 109-386) provides that the Secretary of the Interior may equalize the annual total repayment obligation under the Contract for the distribution works construction charge and the water supply repayment obligation for the remaining water supply repayment period. The base for equalization of the total payments is the current annual water supply repayment obligation. P.L. 109-386 also allows the Secretary to delay the scheduled increase to the annual reserve fund deposits for ten years; and

WHEREAS, the District has requested that the Contract be amended to implement the provisions of P.L. 109-386; and

WHEREAS, in order to implement the provisions of Public Law 109-386, the United States agrees to amend the existing Contract.

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

1. Article 5b is deleted in its entirety and replaced with the following:

“ b. The District made annual water supply payments of \$22,586 in 2001, 2002, and 2003. The 2004 annual payment was deferred. The District made an annual water supply payment of \$23,214 in 2005. The District shall make water supply payments of \$23,214 beginning in 2006 and continuing through 2010, \$68,384 for 2011 and continuing through 2039, with a final installment of \$68,362 in 2040. The parties agree that any base payments that are in excess of the calculated ability to pay of the District are made in part in consideration of the conversion of Part A of the 1951 contract to a repayment contract pursuant to Subsection 9(d) of the Reclamation Project Act of 1939. The parties agree that notwithstanding the future determinations regarding ability to pay, the payments set forth in (b) herein shall not be reduced.”

2. Article 5c is deleted in its entirety and replaced with the following:

“ c. The District shall also repay such additional sums against the water supply works cost 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 base payment called for in (b) above, at which time the District’s annual water supply payment shall be the sum of the base 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 base payment in (b) above. This additional sum against the water supply works cost does not affect the annual obligation or total obligation due for the distribution works construction obligation provided for in Article (6) of this Contract.”

3. Article 6a is deleted in its entirety and replaced with the following:

“ a. The United States has made reimbursable expenditures of \$5,471,138 for construction of distribution works. The District, under the 1951 contract, has repaid \$4,221,572.61 of this amount. In addition, the District made scheduled annual distribution works payments of \$136,804 in 2001, 2002, and 2003. The 2004 annual payment was deferred. The District made an annual distribution works payment of \$159,605 in 2005 and \$29,066.50 in May 2006. The District shall repay to the United States the remaining unpaid balance of \$650,481.89 in accordance with the payment schedule in Attachment A, which is attached hereto and made a part hereof. The November 2006 billing will be revised to show a balance due of \$29,066.50 and payable within 30 days of execution of this amendment.”

4. Article 7b is deleted in its entirety and replaced with the following:

“ b. The District shall make annual deposits into the water supply reserve fund of \$9,034 in 2006 and continuing through 2020. Beginning in the year 2021, annual deposits to the fund shall be \$42,912.”

5. Article 7d is deleted in part and replaced with the following:

“ d. ... the ceiling amount of \$1,377,700.” is deleted from the first sentence and replaced with the following.

“ d. ... the ceiling amount of \$1,038,920.”

6. Article 8b is deleted in its entirety and replaced with the following:

“ b. The District shall make annual deposits into the distribution works reserve fund of \$4,517 in 2006 and continuing through 2020. Beginning in the year 2021, annual deposits to the fund shall be \$38,395.”

7. Article 8d is deleted in part and replaced with the following:

“ d. ... the ceiling amount of \$1,297,020.” is deleted from the first sentence and replaced with the following.

“ d. ... the ceiling amount of \$958,240.”

8. Article 14f is deleted in its entirety and replaced with the following:

“ 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 on transferred works required under this Contract, regardless of who performs those duties. The District does not agree to indemnify the United States for any damages arising from intentional torts or malicious actions committed by employees of the United States.”

9. Article 17 is deleted in its entirety and replaced with the following:

“EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE”

17. a. The Contracting Officer may from time to time, examine the following: the District's books, records, and reports; the project works being operated by the District; the adequacy of the operation and maintenance program, the reserve fund, and the water conservation program including the water conservation fund, if applicable. Notwithstanding title

ownership, where the United States retains a financial, physical, or liability interest in facilities either constructed by the United States or with funds provided by the United States, the Contracting Officer may examine any or all of the project works providing such interest to 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 costs incurred by the United States in conducting operation and maintenance examinations, inspections, and audits and preparing associated reports and recommendations related to high and significant hazard dams and associated facilities shall be nonreimbursable. Associated facilities include carriage, distribution, and drainage systems; pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road; regulating reservoirs (low hazard); fish passage and protective facilities, including hatcheries; river channelization features; rural/municipal water systems; desalting and other water treatment plants; maintenance buildings and service yards; facilities constructed under Federal loan programs (until paid out); and recreation facilities (reserved works only); and any other facilities as determined by the Contracting Officer.

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

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

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

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

10. All terms and conditions of the existing Contract between the parties hereto shall remain in full force and effect except as they are specifically modified by this amendatory contract.

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

THE UNITED STATES OF AMERICA

By _____
Regional Director

FRENCHMAN-CAMBRIDGE
IRRIGATION DISTRICT

By _____
President

ATTEST:

Secretary

ATTACHMENT A

**ANNUAL DISTRIBUTION WORKS CONSTRUCTION CHARGE
OBLIGATION PAYMENTS**

<u>YEAR</u>	<u>AMOUNT</u>	<u>YEAR</u>	<u>AMOUNT</u>
2006	\$58,133	2024	\$12,963
2007	\$58,133	2025	\$12,963
2008	\$58,133	2026	\$12,963
2009	\$58,133	2027	\$12,963
2010	\$58,133	2028	\$12,963
2011	\$12,963	2029	\$12,963
2012	\$12,963	2030	\$12,963
2013	\$12,963	2031	\$12,963
2014	\$12,963	2032	\$12,963
2015	\$12,963	2033	\$12,963
2016	\$12,963	2034	\$12,963
2017	\$12,963	2035	\$12,963
2018	\$12,963	2036	\$12,963
2019	\$12,963	2037	\$12,963
2020	\$12,963	2038	\$12,963
2021	\$12,963	2039	\$12,963
2022	\$12,963	2040	\$12,956.39 (final payment)
2023	\$12,963		

