

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
NEWLANDS PROJECT, NEVADA

**CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND  
THE TRUCKEE-CARSON IRRIGATION DISTRICT  
PROVIDING FOR  
THE OPERATION AND MAINTENANCE OF THE NEWLANDS PROJECT**

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1                   THIS CONTRACT, entered into on this 25<sup>th</sup> day of NOV., 1996,  
2                   pursuant to the Act of June 17, 1902 (32 Stat. 388), and the acts amendatory thereof and  
3                   supplementary thereto, including the Act of August 4, 1939 (53 Stat. 1187), the Act of October  
4                   12, 1982 (96 Stat. 1263), and the Act of November 16, 1990 (104 Stat. 3289), which acts are  
5                   commonly known and referred to as the Federal Reclamation Laws, by and between THE  
6                   UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting through  
7                   the Regional Director of the Mid-Pacific Region of the Bureau of Reclamation pursuant to  
8                   authority delegated by the Secretary of the Interior, and TRUCKEE-CARSON IRRIGATION  
9                   DISTRICT, hereinafter referred to as the District, a public corporation, created, organized and  
10                  existing under and by virtue of the laws of the State of Nevada, with its principal place of  
11                  business at Fallon, Churchill County, Nevada,

12                   WITNESSETH, That:  
13  
14

1 EXPLANATORY RECITALS

2 WHEREAS, the United States and the District executed Contract No. I1r-93 on  
3 December 18, 1926, which transferred the responsibility for Operation and Maintenance of the  
4 Project to the District and provided for the District to act as fiscal agent for the repayment of  
5 Project construction costs; and

6 WHEREAS, in 1973 the United States provided notice to the District of termination of  
7 the 1926 Contract No. I1r-93; and

8 WHEREAS, on February 14, 1984, a Temporary Operation and Maintenance Agreement,  
9 Contract No. 4-07-20-X0268, was entered into between the District and the United States; and

10 WHEREAS, the District has repaid the original Project construction costs and desires to  
11 continue to operate and maintain the Project; and

12 WHEREAS, the United States desires the District to continue such activities under the  
13 following provisions;

14 NOW THEREFORE, the parties agree as follows:

15 DEFINITIONS

16 1. When used herein, unless otherwise distinctly expressed or manifestly incompatible  
17 with the intent hereof, the term:

18 (a) "Commissioner" shall mean the Commissioner of the Bureau of Reclamation.

19 (b) "Contracting Officer" shall mean the Regional Director of the Mid-Pacific  
20 Region of the Bureau of Reclamation acting pursuant to authority delegated by the  
21 Secretary of the Interior and such direction as the Secretary may provide.

1 (c) "Federal Water Master" shall mean the Water Master appointed by the District  
2 Court of the United States in and for the District of Nevada to administer the adjudicated  
3 water entitlements under the Alpine and Orr Ditch decrees.

4 (d) "OCAP" shall mean specific Operating Criteria and Procedures for the  
5 Newlands Project promulgated by the Secretary of the Interior.

6 (e) "Operation and Maintenance" shall mean normal and reasonable care, control,  
7 operation, repair, replacement and maintenance.

8 (f) "Project" shall mean the Newlands Reclamation Project located in California  
9 and Nevada.

10 (g) "Project Works" shall mean all federally owned facilities used for Project  
11 purposes and includes Lahontan Reservoir Dam, reservoir, and lands; Lake Tahoe Dam,  
12 reservoir, and lands; the Derby Diversion Dam and lands; the Old Lahontan Power Plant  
13 (subject to existing leases), and all essential federally owned lands, easements, rights-of-  
14 way, dams, diversion works, buildings, canals, laterals, sublaterals, ditches, distribution  
15 and drainage systems, and stock water pipelines as delineated in Exhibit A attached  
16 to this agreement.

17 (h) "Secretary" shall mean the Secretary of the Interior or his duly authorized  
18 representative.

19

1 TERM OF CONTRACT

2 2. (a) This contract shall become effective on January 1, 1997, and shall supersede  
3 the Temporary Operation and Maintenance Agreement, Contract No. 4-07-20-X0268. The  
4 provisions currently contained in this contract shall remain in effect for a period of five (5) years.  
5 The initial five (5) year period shall be extended by the Contracting Officer for up to a maximum  
6 of four (4) additional five (5) year periods; Provided, that no vital dispute, as that term is defined  
7 in Article 16(b), is unresolved on the expiration of the five (5) year period then in effect or, the  
8 Commissioner determines that an extension is appropriate even though a vital dispute is  
9 unresolved on such date(s). This contract may be terminated during any of the five (5) year  
10 periods described above, in accordance with Article 17, Termination of Contract.

11 (b) Upon the expiration of the twenty-five (25) years described above, this  
12 contract may be renewed under terms and conditions mutually agreeable to the parties; Provided,  
13 that the District may request the initiation of the contract renewal process at any time after the  
14 completion of the initial five (5) year period described in Article 2(a) above, but no later than two  
15 (2) years prior to the end of the twenty-five years described in Article 2(a) above.

16 OPERATION AND MAINTENANCE OF PROJECT WORKS

17 3. (a) The District shall continue the care, operation, and maintenance of all the  
18 Project Works currently entrusted to it. Title to such Project Works shall remain in the name of  
19 the United States unless and until title is transferred pursuant to applicable legislation.

20 (b) The District, without expense to the United States, shall care for, operate, and  
21 maintain such Project Works in full compliance with the terms of this contract, and in such

1 manner that said Project Works will remain in good and efficient condition suitable for  
2 prolonged operation.

3 (c) Necessary repairs of the Project Works shall be made promptly by the District.  
4 In case of unusual conditions or serious deficiencies in the care and maintenance of the Project  
5 Works threatening or causing interruption of water delivery or posing a significant safety hazard,  
6 the Contracting Officer may issue to the District a special written notice specifying the requested  
7 repairs. Within 60 days of receipt of such notice, the District shall either make the requested  
8 repairs or submit a plan acceptable to the Contracting Officer for accomplishing said repairs. If  
9 the plan submitted by the District is not acceptable to the Contracting Officer the issue shall be  
10 resolved in accordance with Article 16, Resolution of Disputes.

11 (d) The District shall not make any substantial changes in the Project Works  
12 without first obtaining written consent of the Contracting Officer except when structures are  
13 constructed in accordance with standard designs and specifications approved in advance by the  
14 Contracting Officer. Examples of the types of changes requiring approval of the Contracting  
15 Officer include, but are not limited to, the following:

16 (1) Additions or alterations that have reasonable potential for causing damage  
17 to an existing system due to inadequate or erroneous design, construction or operation.

18 (2) Changes requiring new rights-of-way, i.e., relocation of structures or  
19 changes in alignment.

20 (3) Changes requiring construction or reconstruction within existing facility  
21 boundaries (i.e., excavation of canal bank for bridge footings) other than routine Operation and  
22 Maintenance activities.

1 (4) Additions or alterations involving increases or reductions in capacities,  
2 pressures, earth cover over pipelines, etc.

3 (5) Addition or alteration to a storage or diversion dam other than routine  
4 Operation and Maintenance.

5 (6) Changes which the Board of Directors are required by law to make.

6 (e) The District shall prepare and submit to the Contracting Officer a Project  
7 Improvement Plan which details actions and schedules for the improvement and rehabilitation of  
8 Project Works to assure long-term viability of the Project Works. This plan shall be a multi-year  
9 plan and must cover at least the initial term of this contract and shall be submitted to the  
10 Contracting Officer within one year of the effective date of the contract. The Project  
11 Improvement Plan may be combined with the plan for water measurement improvements  
12 required in Article 11, Water Management. The District shall submit a progress report on the  
13 Project Improvement Plan to the United States annually summarizing actions that have been  
14 completed which contributed to the rehabilitation and betterment of the Project.

15 (f) The District and the Contracting Officer shall designate appropriate technical  
16 personnel to form a technical working group which will meet on a periodic basis to review  
17 ongoing Operation and Maintenance activities for the purpose of assuring that such activities are  
18 completed in a manner satisfactory to both parties. The technical working group will review  
19 proposals for additions and alterations to Project Works for technical adequacy and compliance  
20 with Reclamation standards. This technical working group shall meet on a quarterly basis  
21 initially; however, the frequency of the meetings may be varied in the future based on experience  
22 and need.



1 (g) The District shall cooperate with the Contracting Officer in implementing  
2 Reclamation's Safety of Dam(s) Program. The United States agrees to provide the District and  
3 the appropriate agency of the State or States in which the Project Works are located with design  
4 data, designs, and an operating plan for the dam(s) and related facilities.

#### 5 ANNUAL OPERATING PLANS

6 4. (a) On or before April 1, 1998, and April 1 of each calendar year thereafter, or as  
7 otherwise agreed, the District shall submit a written annual operating plan to the Contracting  
8 Officer. The District and Reclamation shall use the first year in which this contract is in effect to  
9 develop a mutually acceptable format and establish the required contents for such annual  
10 operating plans. Each annual operating plan shall be detailed enough to allow the Contracting  
11 Officer to determine that the District will be operating in accordance with applicable laws, rules,  
12 regulations and the provisions of this contract.

13 (b) On or before two (2) dates during each calendar year to be established by  
14 mutual agreement of the parties, the District shall submit to the Contracting Officer a progress  
15 report describing the activities which have been initiated and/or completed up to the date of that  
16 report to implement the then current annual operating plan and describing any past and  
17 anticipated future significant deviations from that plan.

#### 18 EXAMINATION AND INSPECTION OF PROJECT WORKS

19 5. (a) The Contracting Officer may upon written notice, from time to time, examine  
20 the District's books, records and reports, and the Project Works being operated by the District to  
21 assist the District in determining the condition of the Project Works, and the adequacy of the  
22 operation, maintenance, and safety of dams programs, the emergency reserve fund, and the water

1 management program. Project Works subject to examination include Project Works which were  
2 constructed by the United States and transferred to the District, and Project Works which were  
3 constructed by the District located on lands or rights-of-way of the United States, or acquired by  
4 the District for Project purposes. The Contracting Officer may, or the District may request the  
5 Contracting Officer to, conduct special inspections of any Project Works. Except in an  
6 emergency, any special inspection or audit initiated by the Contracting Officer shall be made  
7 only after written notice thereof has been delivered to the District by the Contracting Officer.

8 (b) The District shall provide access to the Project Works, operate any mechanical  
9 or electrical equipment, and be available to assist in the examinations, inspections and audits  
10 described in paragraph (a) of this Article.

11 (c) The Contracting Officer shall prepare reports based on the examinations,  
12 inspections and audits, and furnish copies of such reports and any recommendations to the  
13 District. Any deemed deficiency or remedial measures shall be handled as described in Article 3,  
14 Operation and Maintenance of Project Works.

15 (d) The costs incurred by the United States in making Operation and Maintenance  
16 examinations, inspections, and audits, and preparing associated reports and recommendations  
17 shall be recovered in accordance with Article 12, Administrative Costs.

18 (e) The Contracting Officer may invite the States of Nevada and California to  
19 observe and participate, at their own expense, in the examinations and inspections. The States  
20 may be provided copies of reports and any recommendations relating to such examinations and  
21 inspections.

1                                    **ADMINISTRATION OF FEDERAL PROJECT LANDS**

2                6.        (a) The lands and rights-of-way acquired and needed by the United States for the  
3 purposes of care, operation, and maintenance of Project Works may be used by the District for  
4 such purposes. The District shall ensure that no unauthorized encroachments occur on Federal  
5 Project lands and rights-of-way. The District shall not issue rights-of-way across Federal Project  
6 land, issue land rights to Federal Project lands, or issue leases, licenses, permits, or special use  
7 agreements involving Federal Project land, rights-of-way, or Project Works. All such land use  
8 instruments shall only be issued by the Contracting Officer.

9  
10                (b) The Contracting Officer shall consult with the District prior to issuing any  
11 land use instrument on Federal Project lands and rights-of-way and shall send a final copy to the  
12 District upon execution.

13                                    **SUBSECTION I REVENUES**

14                7.        (a) Pursuant to Subsection I of the Fact Finders' Act, 43 U.S.C. 501, the total  
15 accumulated net profits, as determined by the Secretary, derived from the operation of Project  
16 power plants, leasing of Project grazing and agricultural lands, and the sale or use of town sites  
17 shall first be credited toward the construction charges associated with the Project, if any.  
18 Thereafter, the net profits from such sources may be used by the water users for Project  
19 Operation and Maintenance charges, and any remaining funds may be spent as the water users  
20 may direct. Net profits shall be paid and credited in accordance with applicable law, rule,  
21 regulation, Reclamation policy, Reclamation directive, Reclamation guideline, or Reclamation  
22 revenue crediting criteria, a copy of which shall be provided to the District by the Contracting  
23 Officer. However, the provisions of this article shall not apply to the net profits derived from the  
24 operation of the Old Lahontan Power Plant until the time specified in Article 8(b), Operation of  
25 Project Power Plant. The term "net profits" means revenues after deduction of all reasonable and  
26 necessary expenses incurred by the District in operating Project lands and Project Works.

1 (b) The District shall provide to Reclamation annually, within ninety (90) days  
2 following the close of each District fiscal year, a detailed accounting of all revenues received by  
3 the District from the use of Project lands and Project Works and all related expenses.

4 Reclamation shall provide to the District annually within ninety (90) days following the end of  
5 the Federal Government's fiscal year, a detailed accounting of revenues received from the use of  
6 Project lands and Project Works, all related expenses, and the manner in which the net profits  
7 have been credited.

#### 8 OPERATION OF PROJECT POWER PLANT

9 8. (a) The District is responsible for the Operation and Maintenance of the Old  
10 Lahontan Power Plant. In 1968, the District entered into the Agreement and Lease Between  
11 Truckee-Carson Irrigation District and Sierra Pacific Power Company dated June 28, 1968,  
12 (Power Lease), leasing all electrical facilities under District control on that date, including the  
13 Old Lahontan Power Plant Project Works, to Sierra Pacific Power Co. (Company). The United  
14 States also entered into a Contract Between the United States of America and Sierra Pacific  
15 Power Company to Accompany a Lease Between Sierra Pacific Power Company and Truckee-  
16 Carson Irrigation District dated June 28, 1968, Contract No. 14-06-200-3948A, which ratified the  
17 agreement between the District and the Company. In addition, the United States and the District  
18 entered into a license agreement License for Erection and Maintenance of Facilities on  
19 Government-Owned Land dated August 5, 1968, Contract No. 14-06-200-3996A, which  
20 provided for the use of federal lands for the electrical distribution system. These agreements  
21 shall continue in full force and effect during the term of the Power Lease between the District  
22 and Company including any extension thereof as may be agreed to by Reclamation.

1 (b) Beginning on June 29, 1998, net profits from the Old Lahontan Power Plant  
2 shall be paid, credited, and accounted for in accordance with Article 7, Subsection I Revenues.

3 FALLON INDIAN RESERVATION

4 9. (a) The parties understand that the Fallon Paiute-Shoshone Tribes (Tribe), its  
5 members, and the Fallon Indian Reservation (Reservation) have unique historical characteristics  
6 and legal rights, including special trust responsibilities by the Secretary, with respect to the  
7 delivery and use of water on the Reservation. In recognition of these special characteristics,  
8 rights and responsibilities, the Tribe and the Secretary are currently engaged in, and may  
9 hereafter engage in, the negotiation of one or more agreements (Reservation Water Agreements)  
10 regarding the delivery and use of water on the Reservation, the Operation and Maintenance of  
11 Project Works involved in such delivery and use, and related matters (collectively Reservation  
12 Water Matters). To the extent that any provision of any Reservation Water Agreement  
13 consummated by the Tribe and the Secretary is inconsistent with any provision of this Contract  
14 affecting Reservation Water Matters, the Reservation Water Agreement shall be controlling,  
15 provided the following conditions are first satisfied or, if in dispute, are resolved as provided in  
16 paragraph (b) below:

17 (1) The District has been accorded an adequate opportunity to review and  
18 comment on any proposed Reservation Water Agreement.

19 (2) The Reservation Water Agreement complies with all applicable law,  
20 regulations, rules and agreements.

21 (3) If the Reservation Water Agreement will result in additional costs to the  
22 District over and above those incurred as part of the current annual operating plan, the

1 District and Contracting Officer, shall diligently and in good faith negotiate and agree on  
2 arrangements to compensate the District for such costs.

3 (b) If a dispute should arise with respect to compliance with paragraph (a)(1)-or  
4 (a)(2) above, or the parties are unable to agree upon compensation under paragraph (a)(3)  
5 above, all differences between the parties shall be resolved in accordance with Article 16,  
6 Resolution of Disputes. In resolving such differences pursuant to Article 16, Reclamation shall  
7 proceed in close consultation with the Tribe and neither party shall object to a request by the  
8 Tribe to participate in any formal administrative hearing on the matter held under Article 16(b).

9 (c) Upon receipt of a bill therefor by July 1 of each year, the United States shall  
10 pay to the District the established annual Operation and Maintenance charges for the District  
11 activities described in this Article 9. Copies of such bills shall simultaneously be provided to the  
12 Tribe. The District shall be entitled to interest on late payment of such charges, as determined  
13 under section 3 of the Prompt Payment Act of 1988, P.L. 100-496, 31 U.S.C. 3902, and the  
14 District shall not delay or withhold service under this Article 9 because payment is not timely.

15 (d) Except to the extent otherwise provided in a Reservation Water Agreement  
16 which has become controlling as provided in paragraph (a) above, paragraphs (e) through (g) of  
17 this Article 9 shall apply to the delivery and use of water on the Reservation and the Operation  
18 and Maintenance of Project Works involved in such delivery and use.

19 (e) The District shall Operate and Maintain Project Works within the boundaries  
20 of the Reservation, as identified on Project Property and Structure (P&S) maps as described in  
21 Exhibit A, in the same manner and to the same extent as other Project Works; Provided, that the  
22 Project P&S maps shall be prepared by the parties, in close consultation with the Tribe, to assure

1 that they include all Project Works within the Reservation. If the District and Contracting  
2 Officer are unable to agree on whether particular on-Reservation facilities should be identified as  
3 Project Works on such maps, the matter shall be resolved in accordance with Article 16,  
4 Resolution of Disputes. In resolving such differences pursuant to Article 16, Reclamation shall  
5 proceed in close consultation with the Tribe and neither party shall object to a request by the  
6 Tribe to participate in any formal administrative hearing on the matter held under Article 16(b).  
7 The District shall have no obligation to pay for the development or construction of new or  
8 expanded Project Works on the Reservation.

9 (f) The District shall deliver all water necessary to satisfy water rights  
10 appurtenant to the Reservation in accordance with applicable law, regulations, rules, and  
11 agreements.

12 (g) Any request by the Tribe for delivery of water to the Reservation, for storage  
13 of such water in Project Works for subsequent delivery to the Reservation, or for Operation and  
14 Maintenance within the Reservation, that requires action at variance with the District's written  
15 rules and regulations addressing such matters outside the Reservation, shall be submitted to the  
16 Contracting Officer for approval. Immediately upon receipt of such a request the Contracting  
17 Officer shall notify and consult with the District. Such requests that are consistent with  
18 Reservation water rights shall be approved if in accordance with all applicable laws, rules,  
19 regulations, and agreements, including OCAP to the extent applicable. The District shall honor  
20 all such approved requests in a timely manner. If the District subsequently disputes an approved  
21 request on the grounds that it unlawfully impacts other Project water users, is otherwise  
22 inconsistent with applicable law, regulations, rules and agreements, or that the approved request

1 results in additional costs to the District, over and above those incurred as part of the current  
2 annual operating plan and compensation for any additional costs has not been satisfactorily  
3 agreed upon, the matter shall be resolved in accordance with Article 16, Resolution of Disputes.  
4 In resolving such disputes pursuant to Article 16, Reclamation shall proceed in close consultation  
5 with the Tribe and neither party shall object to a request by the Tribe to participate as a party in  
6 any formal administrative hearing on the matter held under Article 16(b).

7 (h) Disputes pursuant to this Article 9 shall not result in termination of this  
8 contract; Provided, that the District does not unlawfully interrupt the exercise of Reservation  
9 water rights.

#### 10 OTHER AGREEMENTS

11 10. (a) The District shall deliver water through Project Works to the Stillwater National  
12 Wildlife Refuge in accordance with the Cooperative Agreement for Delivery of Water and  
13 Payment of Operations and Maintenance Charges, Contract No. 14-48-0001-93564, between the  
14 U.S. Fish and Wildlife Service and the District; to the Carson Lake Marsh in accordance with the  
15 Cooperative Agreement for Delivery of Water and Payment of Operations and Maintenance  
16 Charges, dated June 8, 1994, between the State of Nevada, Department of Conservation and  
17 Natural Resources, Division of Wildlife and the District; to the Fallon Paiute-Shoshone Indian  
18 Reservation in accordance with Article 9, Fallon Indian Reservation.

19 (b) Any modification of existing agreements or any future agreements of the types  
20 listed in the Exhibit B which will affect Project Works or Project operations or delivery of water  
21 to Project water users shall be approved by the Contracting Officer prior to execution.



WATER MANAGEMENT

11. (a) (1) Within ten (10) months of the effective date of this contract, representatives for the District, in consultation with the representatives for the Contracting Officer, shall develop a Water Conservation Plan (Plan) that is expected to be mutually acceptable to the District and the Contracting Officer. Such Plan shall meet the Mid-Pacific Criteria for Evaluating Water Management Plans (Mid-Pacific Criteria), upgrade Project operation to reasonable levels of efficiency, providing as much assurance as reasonably possible in advance that the Efficiency Targets set forth in applicable OCAP will be met or exceeded, and be consistent with applicable federal and state law and rules and regulations; Provided, that if there are conflicts between any elements of such Mid-Pacific Criteria and any of the terms of this contract, the terms of this contract shall prevail. In the event the Plan prepared by the District is not acceptable to the Contracting Officer, the Contracting Officer shall advise the District in writing as to the changes which will make the Plan acceptable, and the District shall promptly make such changes as will make the Plan mutually acceptable. Neither party shall unreasonably withhold acceptance of the Plan. The District shall implement the Plan, to the extent of funds available under Article 11(f) and any additional funds the District chooses to expend commencing immediately after the District and the Contracting Officer exchange letters expressing their respective acceptances of such Plan. The District, in consultation with the representatives for the Contracting Officer, shall review and revise as appropriate the Plan at least once during every five year period, and each revision shall be subject to mutual acceptance by the Contracting Officer and the District in the same manner as the original plan.

1 (2) The Plan shall include: (i) the appointment and functions of a District  
2 water conservation coordinator; (ii) the implementation of water conservation education  
3 programs for Project water users; (iii) the water measurement and accounting system to be used  
4 by the District and a water measurement component as described in 11(b); (iv) the Operation and  
5 Maintenance charging structure(s) to be used by the District to obtain sufficient Operation and  
6 Maintenance revenues from Project users while encouraging water conservation; and (v) a  
7 prioritization of activities to be performed under the Plan, an estimate of their costs, and a  
8 schedule for implementing each activity.

9 (b) (1) The District shall continue to implement a water measurement program  
10 which will measure and account for water delivered to each Project water user. The water  
11 measurement program shall consist of the installation of water measurement devices of proven  
12 accuracy, shall be funded to the extent of funds available under Article 11(f) and any additional  
13 funds the District chooses to expend, and shall continue subject to the provisions of Article 11(e)  
14 and until deliveries to all water users are measured or until an alternative approach is approved as  
15 provided in Article 11(b)(2), whichever occurs first. The Program shall prioritize the installation  
16 of measurement devices in a manner which results in the expeditious measurement of the volume  
17 of water. The program shall be fully implemented by June 30, 2012.

18 (2) The water measurement component required in Article 11(a)(2)(iii) as part  
19 of the Plan shall provide for the use of water measurement devices as described in Article  
20 11(b)(1) and shall include a schedule for the installation of additional water measurement devices  
21 and/or the improvement of existing devices; Provided, that the Contracting Officer may approve  
22 an alternative approach to meet the requirements of 11(b)(1), if the Contracting Officer

1 determines that the alternative approach is at least as effective as the water measurement program  
2 in measuring the water deliveries to each Project water user. Implementation of the water  
3 measurement program pursuant to Article 11(b)(1) shall continue unless an alternative approach  
4 is approved by the Contracting Officer.

5 (3) The water measurement component of the Plan shall include the  
6 following: (i) a description of current measurement and accounting practices; (ii) a needs  
7 assessment and analysis; (iii) District water measurement goals; (iv) a list of proposed activities  
8 to meet those goals and time lines for implementation of activities; (v) a program for monitoring  
9 and evaluating implemented activities; and (vi) an annual reporting process. This portion of the  
10 Plan shall be developed by California Polytechnic State University, San Luis Obispo, or another  
11 technical expert mutually acceptable to the Contracting Officer and the District, and adopted and  
12 incorporated into the Plan by action of the District.

13 (c) In order to promote water conservation, within two years of the effective date  
14 of this contract, the District shall implement a charging structure based at least in part on the  
15 quantities of water delivered to each user, unless an alternative charging structure is contained in  
16 a mutually acceptable Plan. The District shall demonstrate that any alternative structure attains  
17 the same water conservation objectives as the charging structure described above. Such structure  
18 shall be supported by appropriate technical analysis to be conducted by the University of  
19 Nevada, Reno or another expert mutually acceptable to the Contracting Officer and the District,  
20 which takes into account the following: (i) the impacts of each alternative structure on the  
21 District's ability to meet its budgetary requirements; (ii) impacts of the structure on the various  
22 users and various uses of Project water; and (iii) the impacts of establishing different rate

1 structures for different types of Project water users. Any Operation and Maintenance charging  
2 structure implemented by the District shall be based on the following criteria: (i) the structure  
3 must maintain the economic viability of the District as the uses of water in the Project change;  
4 (ii) the structure must maintain the economic viability of the water users, especially the  
5 agricultural users, taking into account their ability to pay; (iii) the structure must provide an  
6 incentive that promotes conservation goals; (iv) the structure must minimize the administrative  
7 burden on the District for implementation and administration, especially the burden of proof for  
8 quantities of water delivered prior to the attainment of the water measurement goal described  
9 above in item (3); (v) the structure must encourage actions by water users which would improve  
10 Project efficiency; and (vi) the structure must comply with applicable law.

11 (d) Reclamation intends to provide technical and financial assistance to the  
12 District for developing, reviewing and implementing the Plan as funding and staff availability  
13 permits. The District shall utilize the appropriate assistance to make improvements in the Water  
14 Conservation Plan and the Project Works. The District shall use appropriate materials provided  
15 by Reclamation to train the District staff and assist in improving the water management and  
16 conservation programs in the District, including projects identified in the OCAP or in the April,  
17 1994 Newlands Project Efficiency Study.

18 (e) The District shall establish a Water Conservation Fund (Fund) for District  
19 fiscal year 1997-98 and each District fiscal year thereafter dedicated to the implementation of the  
20 water management program as required pursuant to Article 11(b)(1). Once measurement  
21 devices are installed which accurately measure 75% of the total volume of Project water  
22 delivered each year, the Contracting Officer and the District may mutually agree that the District

1 may use the Fund for Operation and Maintenance of installed water measurement devices and for  
2 other water conservation measures such as those identified in applicable OCAP or in the April,  
3 1994 Newlands Project Efficiency Study. Notwithstanding any other provision of this subarticle,  
4 upon mutual acceptance of the Plan, the monies in the Fund shall be disbursed only in  
5 accordance with the Plan.

6 (f) The District shall pay into the Fund either: (i) monies equal to the total net  
7 profits derived from Subsection I Revenues paid to the District pursuant to Article 7, or (ii) 10%  
8 of the total revenues received by the District from Operation and Maintenance charges to water  
9 users, whichever is greater. Any unexpended balance at the end of any year shall be carried  
10 forward as additional Funds available in following years. The District shall maintain an  
11 accounting of said Fund and provide a report to the Contracting Officer on an annual basis  
12 detailing revenues which accrue to the Fund and expenditures from the Fund. Contributions to  
13 the Fund shall continue on an annual basis during the term of this contract as long as necessary to  
14 fund the actions contained in the Plan.

15 (g) (1) The District shall keep records in order to assure proper accounting and  
16 disbursement of Federal Funds credited to the District. These records shall include a full  
17 disclosure of the recipient, and the amount and disposition of each transaction wherein funds are  
18 disbursed for the purchase, installation or other transaction pertaining to conservation measures,  
19 particularly water measuring devices. The Contracting Officer shall have access for the purpose  
20 of audit and examination to any books, documents, papers, and records of the District that are  
21 pertinent to funds credited to the District by the United States.

1 (2) The District shall prepare a report documenting its progress in  
2 implementing the Plan described in this Article. The report shall be submitted annually by  
3 September 30, to account for the previous District's fiscal year's operations. The report shall  
4 account for funds spent to implement the Plan. The report shall evaluate the effectiveness of the  
5 water measuring devices installed to date of the report. The report shall also examine the  
6 District's progress in improving Project efficiency levels and make recommendations for  
7 strategies that will achieve additional progress toward meeting efficiency goals. Based on the  
8 results of the report, the Contracting Officer and the District may mutually agree to changes to  
9 the Plan.

#### 10 ADMINISTRATIVE COSTS

11 12. (a) Each year, starting in 1998, and each year thereafter during the term of this  
12 contract, the District shall advance funds in the amount of \$18,000 to cover administrative costs  
13 incurred by the United States to perform activities necessary to implement the provisions of this  
14 contract. Such administrative costs include, but are not limited to, the following practices as they  
15 relate to administering the provisions of this contract: (i) performance reviews and audits for  
16 contract renewal; (ii) review of operating plans; (iii) review of water conservation plans; (iv)  
17 review of water measurement plans; (v) review of Project improvement plans; (vi) costs incurred  
18 in resolving minor disputes pursuant to Article 16, Resolution of Disputes; (vii) meeting  
19 attendance; (viii) general contract administration; (ix) National Environmental Policy Act  
20 (NEPA) compliance consultation; (x) Review of Operation and Maintenance inspections; and  
21 (xi) Operation and Maintenance of Lake Tahoe Dam upon transfer of said facility to the United  
22 States. When the Operation and Maintenance of the Lake Tahoe Dam is transferred to the United

1 States, the District shall have no further obligation beyond the amount specified in this paragraph  
2 for the O&M costs of Lake Tahoe Dam.

3 (b) The first payment shall be due on January 31, 1998. Thereafter the District  
4 shall advance such funds no later than December 30, of each year to cover the subsequent  
5 calendar year administrative costs. The amount of the advance of funds in subsequent calendar  
6 years shall be equal to the then current calendar year advance of funds adjusted by the rate of  
7 change of the Consumer Price Index, Pacific Cities and United States City Average, all urban  
8 consumers for the West cities of 50,000 to 330,000 population, as prepared by the United States  
9 Bureau of Labor Statistics for the twelve (12) month period ending on October 1, of the year in  
10 which the advance of funds is due.

11 (c) In addition to the funds advanced in 12(a) above, the District shall reimburse  
12 to the United States by September 30, of each calendar year the amount of additional  
13 administrative costs incurred by the United States in the preceding year which were caused by  
14 the District's failure or refusal to employ accepted accounting and management practices  
15 associated with implementing the provisions of this contract in regard to those items described in  
16 subarticle 12(a). Prior to incurring such additional administrative costs the Contracting Officer  
17 shall inform the District of the reason why such additional costs are to be incurred, an estimate of  
18 the costs to be incurred, and a breakdown of the accounting categories to which the costs will be  
19 applied. The District shall first be afforded an opportunity to avoid such additional costs.  
20 Should the District disagree with the reason or the amount of the additional administrative costs,  
21 then said disagreement shall be resolved as a minor dispute in accordance with Article 16,  
22 Resolution of Disputes.

1 CHARGES FOR DELINQUENT PAYMENTS

2 13. (a) The District shall be subject to interest, administrative and penalty charges on  
3 delinquent installments or payments. When a payment is not received by the due date, the  
4 District shall pay an interest charge for each day the payment is delinquent beyond the due date.  
5 When a payment becomes sixty (60) days delinquent, the District shall pay an administrative  
6 charge to cover additional costs of billing and processing the delinquent payment. When a  
7 payment is delinquent ninety (90) days or more, the District shall pay an additional penalty  
8 charge of 6 percent per year for each day the payment is delinquent beyond the due date.  
9 Further, the District shall pay any fees incurred for debt collection services associated with a  
10 delinquent payment.  
11

12 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
13 the Federal Register by the Department of the Treasury for application to overdue payments, or  
14 the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act  
15 of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and  
16 remain fixed for the duration of the delinquent period.  
17

18 (c) When a partial payment on a delinquent account is received, the amount  
19 received shall be applied, first to the penalty, second to the administrative charges, third to the  
20 accrued interest, and finally to the overdue payment.  
21

22 (d) Payments due to the District shall be made by the United States within thirty  
23 (30) days of receipt of an invoice by the Contracting Officer. The District shall be entitled to  
24 collect interest as determined by Section 3 of the Prompt Payment Act of 1988, P.L. 100-496, 31  
25 U.S.C. 3902, on any invoice not paid within thirty (30) days of receipt. Payment shall be  
26 considered as being made on the day a check is dated or an electronic funds transfer is made.  
27 When a partial payment is made to the District on a delinquent account, the amount received  
28 shall be applied, first to the accrued interest and then to the overdue payment. Invoices  
29 submitted to the Contracting Officer shall contain adequate detail to allow verification of  
30 charges.  
31  
32



1 EMERGENCY RESERVE FUND

2 14. (a) Commencing with the execution of this contract, the District shall accumulate  
3 and maintain an emergency reserve fund, which the District shall keep available to pay costs  
4 incurred during periods of special stress caused by droughts, storms, earthquakes, floods, or other  
5 unanticipated emergencies which threaten or cause physical damage to Project Works and/or  
6 interruption of water delivery, or pose significant threats to public safety and/or property.

7 (b) The District shall accumulate the emergency reserve fund with annual deposits  
8 or investments of not less than \$20,000 to the State of Nevada Investment Fund in accordance  
9 with District budget and investment policy; Nevada Revised Statutes; and rules and procedures  
10 adopted pursuant thereto. Such funds may also be invested in a federally insured interest or  
11 dividend bearing account, or in securities guaranteed by the Federal Government; Provided, that  
12 money in the emergency reserve fund shall be available within a reasonable time to meet  
13 expenses for such purposes as those identified in paragraph (d). Such annual deposits to the  
14 emergency reserve fund shall continue until the minimum amount of \$300,000 has been  
15 accumulated. Following an emergency expenditure from the fund, the annual deposits shall  
16 continue from the year following the emergency expenditure until the previous minimum balance  
17 is restored. After the initial amount is accumulated or after the previous balance is restored, the  
18 annual deposits may be discontinued.

19 (c) Upon mutual agreement between the District and the United States, the  
20 minimum emergency reserve fund may be adjusted to account for risk and uncertainty stemming  
21 from the size and complexity of the project; the size of the annual Operation and Maintenance

1 budget; additions to, deletions from, or changes in Project Works; and Operation and  
2 Maintenance costs not contemplated when this contract was executed.

3 (d) The District may make expenditures from the emergency reserve fund only for  
4 meeting unusual Operation and Maintenance costs incurred during those periods of special stress  
5 described in paragraph (a), and any unforeseen extraordinary Operation and Maintenance costs,  
6 unusual or extraordinary repair or replacement costs, and betterment costs (in situations where  
7 recurrence of severe problems can be eliminated) during such periods of special stress. The  
8 District shall notify the United States prior to each expenditure from the emergency reserve fund.  
9 Whenever the emergency reserve fund is reduced below the current balance by expenditures  
10 therefrom, the District shall restore that balance by the accumulation of annual deposits, as  
11 specified in paragraph (b).

12 (e) On or before September 15 of each year, the District shall provide an annual  
13 statement of the emergency reserve fund account to the United States.

#### 14 WORK REQUESTED BY THE DISTRICT

15 15. In addition to all other payments to be made by the District pursuant to this contract,  
16 the District shall pay the United States an agreed upon advance payment based on anticipated  
17 costs for specific items of direct cost to be incurred by the United States pursuant to a request by  
18 the District for work to be performed by the Bureau of Reclamation and evidenced by a  
19 statement of work and work order prepared by the District and agreed to by the United States.  
20 Such direct costs shall include a percentage for administrative and general overhead in  
21 accordance with written Bureau of Reclamation policy and procedures. Work shall be completed  
22 at the agreed upon cost as provided in the work order promptly upon payment of the agreed

1 amount. Any change in the scope of work or the statement of work that would require additional  
2 costs shall be handled as a separate request.

### 3 RESOLUTION OF DISPUTES

4 16. The Contracting Officer shall make determinations necessary to administer this  
5 contract consistent with the provisions of this contract and the applicable laws, rules, and  
6 regulations of the United States and the State of Nevada. Such determinations shall be made in  
7 consultation with the District to the extent reasonably practicable. The parties to this contract  
8 recognize that from time to time disputes may arise over the administration and interpretation of  
9 various provisions of this contract and the parties agree to attempt to resolve these disputes as  
10 expeditiously as reasonably possible. The procedures set forth below in this Article shall not  
11 apply to disputes regarding the interpretation and/or implementation of the OCAP. Where the  
12 terms of this contract provide for actions to be based upon the opinion or determination of either  
13 party to this contract, said terms shall not be construed as permitting such action to be predicated  
14 upon arbitrary, capricious, or unreasonable opinions or determinations. Disputes which arise  
15 under this contract shall be characterized as either minor disputes or vital disputes. A minor  
16 dispute is a dispute which is not identified by either party as being serious enough to justify the  
17 termination of the contract if resolution cannot be achieved in a reasonably short time period. A  
18 vital dispute is a dispute which is identified by either party as being serious enough to justify  
19 termination of this contract if resolution cannot be achieved in a reasonably short time period.  
20 The complaining party shall identify the dispute as either a minor dispute or a vital dispute in the  
21 initial notification provided pursuant to paragraph (a) or (b) of this Article. If the complaining

1 party identifies a dispute as a minor dispute the responding party shall have ten (10) days to  
2 identify the dispute as a vital dispute.

3 (a) Minor disputes shall be resolved in the following manner: (i) the complaining  
4 party shall notify the other party in writing, of the particulars of the dispute, in accordance with  
5 paragraph (a)(1) of this Article; (ii) representatives of Reclamation and the District shall meet  
6 and attempt to resolve the dispute within thirty (30) days of the receipt of the notice; (iii) if the  
7 dispute is not resolved within said thirty (30) days, an alternative dispute resolution process  
8 described in paragraph (a)(2) of this Article shall be applied; and (iv) if resolution is not achieved  
9 in the alternative dispute resolution process the dispute shall be resolved by the decision of the  
10 Commissioner based on all existing documentation regarding the dispute.

11 (1) Notice shall be by certified mail, return receipt requested or equivalent  
12 method, and shall state with specificity: (i) the provision(s) of this contract believed to be  
13 violated; (ii) the action(s) which the complainant believes constitute a breach of this contract;  
14 (iii) the reason(s) that the complaining party believes that a cure is warranted; and (iv) the  
15 action(s) that the complainant believes are necessary to cure the violation.

16 (2) The alternative dispute resolution process to be used shall be agreed to by  
17 the parties and may include: establishment of a review committee made up of representatives of  
18 other entities which have an interest in the Project to hear the dispute, securing the services of an  
19 impartial facilitator to facilitate discussions between the parties, or other methods as shall be  
20 agreed to by the parties based on the specific dispute.

21 (b) Vital disputes shall be resolved in the following manner: (i) the complaining  
22 party shall notify the other party, in writing, of the particulars of the dispute in accordance with

1 paragraph (b)(1) of this Article; (ii) the recipient of such notice shall have ten (10) working days  
2 to respond in writing; (iii) if the recipient does not agree to the cure provided in the notice, an  
3 independent Reclamation employee, qualified by education and/or experience, shall be selected  
4 within forty-five (45) calendar days of issuance of the notice in accordance with paragraph (b)(2)  
5 of this Article to serve as hearing officer at a formal administrative hearing; (iv) the hearing  
6 officer shall present a recommended decision to the Commissioner; and (v) the Commissioner  
7 shall make the final decision and notify the parties in writing. Where appropriate, such decision  
8 shall describe the method and manner of cure and specify the time frame in which the cure shall  
9 be completed. Such decision may also provide that the contract shall be terminated as provided  
10 in Article 17, Termination of Contract, if the cure is not completed within the time frame  
11 specified. At any time during this dispute resolution process prior to the submittal of the  
12 recommendation of the hearing officer to the Commissioner a designated representative of the  
13 District may meet with a designated representative of Reclamation to resolve the vital dispute.  
14 Prior to the submittal of the decision of the hearing officer to the Commissioner the District may  
15 also request that the Contracting Officer meet with representatives of the United States Fish and  
16 Wildlife Service, Nevada Division of Wildlife, Churchill County, Town of Fernley, City of  
17 Fallon, Fallon Paiute Shoshone Indian Tribes, Newlands Water Protective Association, Lahontan  
18 Valley Environmental Alliance, and/or any other entity with an interest in the dispute in an  
19 attempt to resolve the vital dispute. It is the intent of the parties to this contract, that vital  
20 disputes be resolved pursuant to this subarticle as expeditiously as is reasonably possible to avoid  
21 the necessity of terminating this contract.

1                   (1) Notice shall be by certified mail, return receipt requested or equivalent  
2 method, and shall state with specificity: (i) the provision(s) of this contract believed to be  
3 violated; (ii) the action(s) which the complainant believes constitute a breach of this contract;  
4 (iii) the reason(s) that the complaining party believes that a cure is warranted; and (iv) the  
5 action(s) that the complainant believes are necessary to cure the violation including the time  
6 period in which the cure is to be effected.

7                   (2) The hearing officer shall be selected from within Reclamation by mutual  
8 agreement of the parties. In the event agreement on a specific hearing officer cannot be reached  
9 by the parties, each party shall nominate one such person and the nominated persons shall select  
10 a third person to act as hearing officer. The rules and procedures for appeals governing matters  
11 heard by the Office of Hearings and Appeals of the Department of the Interior shall be applicable  
12 to the hearing and recommended determination of the hearing officer designated pursuant to this  
13 paragraph.

14                   (3) The decision of the Commissioner shall be final for the purposes of  
15 judicial review upon the date of receipt of written notice by the parties hereto. In the event that  
16 receipt is not simultaneous, the date of latest receipt shall govern.

17                   (c) If the Contracting Officer determines, in connection with the resolution of any  
18 vital dispute, that the continued operation of the Project or any specified Project Works thereof,  
19 in accordance with the disputed practice poses an imminent threat to life, threatens major  
20 property damage, or will result in an irretrievable loss of natural resources, the Contracting  
21 Officer will so notify the District, in writing. Unless the District agrees, in writing, within the  
22 time frame specified in that notice to operate the Project or the specific Project Works in question

1 in the manner specified in the written notice from the Contracting Officer during the time period  
2 specified in such notice, the United States shall take over the Operation and Maintenance of the  
3 Project or the Project Works specified in said notice pending the resolution of the vital dispute.

4 (d) A dispute may be changed from a vital dispute to a minor dispute by mutual  
5 agreement of the parties at any time during the dispute resolution process. In the event of such a  
6 change, the dispute shall thereafter be processed pursuant to paragraph (a) of this Article.

7 (e) The cost incurred by Reclamation in resolving minor disputes shall be  
8 considered administrative costs under Article 12, Administrative Costs. The final decision in all  
9 vital dispute resolution processes shall include a determination of the respective costs or portions  
10 of the cost of the dispute resolution process to be borne by each party.

#### 11 TERMINATION OF CONTRACT

12 17. (a) This contract may be terminated, in whole or in part, at any time prior to its  
13 expiration either pursuant to Article 16(b), Resolution of Disputes, or alternatively as set forth in  
14 Article 17(b).

15 (b) The Commissioner may terminate the contract in whole or in part upon a  
16 determination that the District is operating the Project in substantial violation of one or more  
17 provisions in the applicable OCAP, applicable Federal law, or a written directive or  
18 determination of the Federal Water Master. Before the Commissioner takes such action, the  
19 Contracting Officer shall notify the District in writing of the intent to terminate the contract and  
20 the grounds for the proposed termination. The District shall have ten (10) working days  
21 following receipt of notification from the Contracting Officer to respond in writing to the  
22 notification. If the Contracting Officer determines that the District's response does not

1 sufficiently justify its contested operation of the Project or that the District has not agreed to cure  
2 the contested operation in a timely manner, if such cure is available, the Contracting Officer may  
3 request that the Commissioner issue a written notice of contract termination to the District, in  
4 accordance with this subarticle.

5 (c) If the Commissioner issues a written determination described in subarticle  
6 17(b), such determination shall specify the effective date of the termination; Provided, that such  
7 effective date shall not be less than forty-five (45) days after the date of the written determination  
8 and; Provided further, that the effective date of the termination may be extended by mutual  
9 agreement of the parties.

10 (d) During the period between the date of the Commissioner's written  
11 determination described in subarticle 17(b) and the effective date of the termination described in  
12 subarticle 17(c), if the District files an action in the United States District Court for the District  
13 of Nevada contesting the Commissioner's determination and seeking an order staying the  
14 effective date of the termination, and/or requesting temporary and/or permanent injunctive relief,  
15 absent a Court order staying the termination of this contract or a final Court order temporarily or  
16 permanently restraining such termination, the Contracting Officer and the District shall cooperate  
17 in developing a procedure and schedule for the transfer of the Project Works back to the United  
18 States in such a manner so as to reduce insofar as possible the detrimental impacts of the contract  
19 termination on the Project water users.

## 20 LIABILITY

21 18. (a) The District shall hold harmless the United States, its officers, agents and  
22 employees from legal liability for damages of any nature whatsoever arising out of any actions or



1 omissions by the District, its officers, agents and employees related to the care, Operation and  
2 Maintenance of the Project Works since December 18, 1926, where such liability is caused by an  
3 error or omission of the District, its officers, agents or employees.

4 (b) Within thirty (30) days of receipt by either party of any claim for liability  
5 arising from actions within the scope of this contract, the party receiving the claim shall notify  
6 the other party of such claim and provide a copy of the claim to the other party, if it is in written  
7 form. Nothing in this article shall be construed to limit the right of either party to assert such  
8 affirmative defenses and file such cross complaints as may be appropriate in relation to any claim  
9 affecting the liability of such party.

#### 10 WATER SHORTAGES

11 19. (a) If there is a reduction in the quantity of Project water available to the District  
12 for distribution to Project water users resulting from drought, errors in operation or any other  
13 cause whatsoever, including compliance with legal mandates, no liability for money damages or  
14 monetary compensation shall accrue in favor of the District against the United States or any of its  
15 officers, agents or employees for any damage, direct or indirect, arising therefrom. Nothing in  
16 this subarticle shall create, expand, diminish, abolish or otherwise alter any rights the District  
17 may have to seek equitable relief from a court of competent jurisdiction against the United  
18 States. Nothing in this subarticle shall create, expand, diminish, abolish or otherwise alter the  
19 rights of any Project water user to pursue any legal remedy such water user may have against the  
20 United States.

21 (b) The District shall include in any future Project water right applications and/or  
22 certificates approved and/or issued by the District for new Project water rights as a condition for

1 the use or entitlement to the use of such water, that the user of such water commits in writing not  
2 to assert in any claim or in any lawsuit relating to the Project water which is the subject of such  
3 water right applications and/or certificates that the United States is liable for money damages or  
4 monetary compensation for any failure to deliver water resulting from drought, errors in  
5 operation, or any other cause whatsoever, including compliance with legal mandates.

#### 6 TRANSFER OF PROJECT WORKS

7 20. Nothing in this contract is intended or shall be construed to restrict the District's right  
8 to pursue transfer of all rights, title, and interest in and to the Project contracts, water rights, land,  
9 and easements for all canals, drains, and regulating reservoirs which are not required for the  
10 protection of Lahontan Dam and Reservoir, Derby Diversion Dam or Lake Tahoe Dam.

#### 11 OPERATION AND MAINTENANCE OF LAKE TAHOE DAM

12 21. Either party may provide notice to the other party that responsibility for the Operation  
13 and Maintenance of Lake Tahoe Dam shall be transferred from the District to the United States at  
14 the end of 120 days from the date of said notice, and such responsibility shall be transferred at  
15 the end of the 120 day period. During the period between the date of the notice and the effective  
16 date of the transfer the parties shall cooperate to arrange for the orderly transition of the  
17 Operation and Maintenance responsibility. In the event that such transfer of the Operation and  
18 Maintenance responsibilities for Lake Tahoe Dam occurs, the Dam and its associated works will  
19 be operated and maintained and water is to be released from the Dam in accordance with the Orr  
20 Ditch Decree, which includes the Truckee River Agreement, and the Truckee River General  
21 Electric Decree or in accordance with any modifications of said decrees in the future, as  
22 approved by a court of competent jurisdiction.

1 COMPLIANCE WITH APPLICABLE REQUIREMENTS

2  
3 22. (a) The parties agree that the delivery of irrigation water or the use of Federal  
4 facilities pursuant to this contract is subject to applicable provisions of Reclamation law, as  
5 amended and supplemented, including, but not limited to, the Reclamation Reform Act of 1982  
6 (Public Law 97-293).

7  
8 (b) Unless a court of competent jurisdiction orders otherwise:

9 (1) The District shall operate the Project in accordance with all  
10 applicable statutes, rules and regulations and with the OCAP.

11 (2) The District shall administer Project lands and Project Works in  
12 accordance with all applicable statutes, rules and regulations.

13 (3) The District shall comply with determinations made by the  
14 Contracting Officer to administer this contract that the Contracting Officer determines are  
15 consistent with the terms of this contract, the applicable laws and related rules and regulations of  
16 the United States and applicable water right decrees, as such laws, rules, regulations and decrees  
17 currently exist and are hereafter modified. The Contracting Officer shall consult with the District  
18 to the extent reasonably practicable prior to making such determinations. The Contracting  
19 Officer's determinations are subject to Article 16, Resolution of Disputes or judicial challenge.

20 (c) (1) Nothing in this contract shall constitute a waiver by the District of any  
21 right available to it under law: (i) to seek administrative or judicial review of any of the terms or  
22 conditions contained in the current OCAP or any OCAP issued during the term of this  
23 agreement; or (ii) to challenge the applicability of any law, rule, regulation, determination or  
24 modification of a water right decree.

1 (2) The provisions of Article 11, Water Management, are not intended and  
2 shall not be construed as an acknowledgment by the District of the validity or reasonableness of  
3 the Efficiency Targets set forth in any applicable OCAP.

4 NONWAIVER OF RIGHTS

5 23. The parties hereto agree that nothing herein shall be construed as a waiver of any right  
6 or remedy at law or in equity or of any right to pursue administrative or judicial remedies  
7 provided for in any statute or regulation or at law. The parties hereto further agree that no  
8 provision herein shall be deemed to affect any litigation or matter between or among any of the  
9 parties hereto pending before any court or administrative body at the time of execution of this  
10 contract, to be a waiver of any position in any litigation or proceeding, or to be an admission  
11 regarding any position of any party in said litigation or proceeding. Any final judgement by a  
12 court of competent jurisdiction or any uncontested determination by an administrative body in  
13 any litigation or proceeding pending at the time of execution of this contract pertaining to any  
14 matter herein shall govern the application, interpretation, and enforcement of said matter through  
15 this contract.

16 DUTY OF REASONABLENESS

17 24. There is imposed on the parties hereto a duty of good faith and reasonableness and  
18 where this agreement provides for action(s) to be taken in the discretion of a party hereto, that  
19 discretion shall be exercised reasonably and in good faith.

20 WATER AND AIR POLLUTION CONTROL

21 25. The District, in carrying out this contract, shall comply with all applicable water and  
22 air pollution laws and regulations of the United States and the States of California and Nevada,

1 and shall obtain all required permits or licenses from the appropriate Federal, State, or local  
2 authorities.

3  
4 QUALITY OF WATER

5  
6 26. The United States does not warrant the quality of water and is under no obligation to  
7 construct or furnish water treatment facilities to maintain or better the quality of water.

8  
9 CLEAN AIR AND WATER

10  
11 27. (a) The District shall comply with applicable provisions as follows:

12  
13 (1) To comply with all the requirements of Section 114 of the Clean Air Act,  
14 as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604) and Section 308 of the  
15 Federal Water Pollution Control Act (33 U.S.C. 1251 et seq., as amended by Public Law 92-  
16 500), respectively, relating to inspection, monitoring, entity, reports, and information, as well as  
17 other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act,  
18 respectively, and all regulations and guidelines issued thereunder before the execution of this  
19 contract.

20  
21 (2) That no portion of the work required by this contract will be performed in  
22 a facility listed on the Environmental Protection Agency List of Violating Facilities on the date  
23 when this contract was executed unless and until the EPA eliminates the name of such facility or  
24 facilities from such listing.

25  
26 (3) To use its best efforts to comply with clean air standards and clean water  
27 standards at the facility where the contract work is being performed.

28  
29 (4) To insert the substance of the provisions of this article into any nonexempt  
30 subcontract, including this paragraph (a)(4).

31  
32 (b) The terms used in this article have the following meanings:

33  
34 (1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857  
35 et seq., as amended by Public Law 91-604).

36  
37 (2) The term "Water Act" means Federal Water Pollution Control Act, as  
38 amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

39  
40 (3) The term "clean air standards" means any enforceable rules, regulations,  
41 guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are  
42 contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order  
43 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act

1 [42 U.S.C. 1857c-5(d)], an approved implementation procedure or plan under Section 111(c) or  
2 Section 111(d), respectively, of the Air Act [42 U.S.C. 1857 c-6(c) or (d)], or an approved  
3 implementation procedure under Section 112(d) of the Air Act [42 U.S.C. 1857c-7(d)].  
4

5 (4) The term "clean water standards" means any enforceable limitation, ..  
6 control, condition, prohibition, standard, or other requirement which is promulgated pursuant to  
7 the Water Act or contained in a permit issued to a discharger by the Environmental Protection  
8 Agency or by a State under an approved program, as authorized by Section 402 of the Water Act  
9 (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as  
10 required by Section 307 of the Water Act (33 U.S.C. 1317).  
11

12 (5) The term "comply" means compliance with clean air or water standards.  
13 Comply shall also mean compliance with a schedule or plan ordered or approved by a court of  
14 competent jurisdiction, the Environmental Protection Agency or an air or water pollution control  
15 agency in accordance with the requirements of the Air Act or Water Act and regulations issued  
16 pursuant thereto.  
17

18 (6) The term "facility" means any building, plant, installation, structure, mine,  
19 vessel or other floating craft, location or site of operations, owned, leased, or supervised by a  
20 contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where  
21 a location or site of operations contains or includes more than one building, plant, installation, or  
22 structure, the entire location or site shall be deemed to be a facility except where the Director,  
23 Office of Federal Activities, Environmental Protection Agency, determines that independent  
24 facilities are collocated in one geographical area.  
25

## 26 HAZARDOUS MATERIALS

27

28 28. (a) The District shall comply with all applicable Federal, State, and local laws and  
29 regulations, and Reclamation policies and instructions, existing or hereafter enacted or  
30 promulgated, concerning any hazardous material that will be used, produced, transported, stored  
31 or disposed of on or in lands, waters or facilities owned by the United States or administered by  
32 Reclamation.  
33

34 (b) "Hazardous material" means any substance, pollutant or contaminant listed as  
35 hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act  
36 of 1980, as amended, 42 U.S.C. § 1901, et seq., and the regulations promulgated pursuant to that  
37 Act.  
38

39 (c) The District may not knowingly allow contamination of lands, waters or  
40 facilities owned by the United States or administered by Reclamation by hazardous materials,  
41 thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine  
42 tailings, mineral salts, pesticides (including, but not limited to, the misuse of pesticides),  
43 pesticide containers or any other pollutants.

1 (d) The District shall report to Reclamation, within 24 hours of becoming aware  
2 of its occurrence, any event which may or does result in pollution or contamination adversely  
3 affecting lands, water or facilities owned by the United States or administered by Reclamation.  
4

5 (e) Any intentional violation of any of the provisions of this Article shall  
6 constitute grounds for initiation of the procedure for immediate termination of this contract and  
7 shall make the District liable for the cost of full and complete remediation and/or restoration of  
8 any Federal resources or facilities that are adversely affected as a result of the violation.  
9

10 (f) The District agrees to include the provision contained in paragraphs (a)  
11 through (e) of this Article in any subcontract or third party contract it may enter into pursuant to  
12 this contract.  
13

14 (g) Reclamation agrees to provide information necessary for the District, using  
15 reasonable diligence, to comply with the provision of this Article.  
16

#### 17 PRIVACY ACT COMPLIANCE

18

19 29. (a) The District shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act)  
20 and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in  
21 maintaining landholder acreage certification and reporting records, required to be submitted to  
22 the District for compliance with sections 206 and 228 of the Reclamation Reform Act of 1982  
23 (96 Stat. 1266), and pursuant to 43 CFR 426.10.  
24

25 (b) With respect to the application and administration of the criminal penalty  
26 provisions of the Act (5 U.S.C. 552a(l)), the District and the District's employees responsible  
27 for maintaining the certification and reporting records referenced in (a) above are considered to  
28 be employees of the Department of the Interior. See 5 U.S.C. 552a(m).  
29

30 (c) The Contracting Officer or a designated representative shall provide the  
31 District with current copies of the Interior Department Privacy Act regulations and the Bureau of  
32 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--  
33 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of  
34 information contained in the landholders' certification and reporting records.  
35

36 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
37 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
38 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The District is  
39 authorized to grant requests by individuals for access to their own records.  
40

41 (e) The District shall forward promptly to the System Manager each proposed  
42 denial of access under 43 CFR 2.64, and each request for amendment of records filed under 43  
43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager

1 with information and records necessary to prepare an appropriate response to the requester.  
2 These requirements do not apply to individuals seeking access to their own certification and  
3 reporting forms filed with the District pursuant to 43 CFR 426.10, unless the requester elects to  
4 cite the Privacy Act as authority for the request.

5  
6 **EQUAL OPPORTUNITY**  
7

8 30. During the performance of this contract, the District agrees as follows:  
9

10 (1) The District will not discriminate against any employee or applicant for  
11 employment because of race, color, religion, sex, or national origin. The District will  
12 take affirmative action to ensure that applicants are employed, and that employees are  
13 treated during employment, without regard to their race, color, religion, sex, or national  
14 origin. Such action shall include, but not be limited to, the following: Employment,  
15 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or  
16 termination; rates of pay or other forms of compensation; and selection for training,  
17 including apprenticeship. The District agrees to post in conspicuous places, available to  
18 employees and applicants for employment, notices to be provided by the Contracting  
19 Officer setting forth the provisions of this nondiscrimination clause.  
20

21 (2) The District will, in all solicitations or advertisements for employees  
22 placed by or on behalf of the District, state that all qualified applicants will receive  
23 consideration for employment without discrimination because of race, color, religion, sex,  
24 or national origin.  
25

26 (3) The District will send to each labor union or representative of workers  
27 with which it has a collective bargaining agreement or other contract or understanding, a  
28 notice, to be provided by the Contracting Officer, advising the said labor union or  
29 workers' representative of the District's commitments under Section 202 of Executive  
30 Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous  
31 places available to employees and applicants for employment.  
32

33 (4) The District will comply with all provisions of Executive Order No. 11246  
34 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of  
35 the Secretary of Labor.  
36

37 (5) The District will furnish all information and reports required by said  
38 amended Executive Order and by the rules, regulations, and orders of the Secretary of  
39 Labor, or pursuant thereto, and will permit access to its books, records, and accounts by  
40 the Contracting Officer and the Secretary of Labor for purposes of investigation to  
41 ascertain compliance with such rules, regulations, and orders.  
42



1 (6) In the event of the District's noncompliance with the nondiscrimination  
2 clauses of this contract or with any of the said rules, regulations, or orders, this contract  
3 may be canceled, terminated, or suspended, in whole or in part, and the District may be  
4 declared ineligible for further Government contracts in accordance with procedures  
5 authorized in said amended Executive Order, and such other sanctions may be imposed  
6 and remedies invoked as provided in said Executive Order, or by rule, regulation, or order  
7 of the Secretary of Labor, or as otherwise provided by law.  
8

9 (7) The District will include the provisions of paragraphs (1) through (7) in  
10 every subcontract or purchase order unless exempted by the rules, regulations, or orders  
11 of the Secretary of Labor issued pursuant to Section 204 of said amended Executive  
12 Order, so that such provisions will be binding upon each subcontractor or vendor. The  
13 District will take such action with respect to any subcontract or purchase order as may be  
14 directed by the Secretary of Labor as a means of enforcing such provisions, including  
15 sanctions for noncompliance: Provided, however, That in the event the District becomes  
16 involved in, or is threatened with, litigation with a subcontractor or vendor as a result of  
17 such direction, the District may request the United States to enter into such litigation to  
18 protect the interests of the United States.  
19

#### 20 BOOKS, RECORDS AND REPORTS

21  
22 31. The District shall establish and maintain accounts and other books and records  
23 pertaining to administration of the terms and conditions of this contract, including: the District's  
24 financial transactions, water supply data, Project operation, maintenance and replacement logs,  
25 and Project land and right-of-way use agreements; the water users' land-use (crop census),  
26 landownership, land-leasing and water-use data; and other matters that the Contracting Officer  
27 may require. Reports thereon shall be furnished to the Contracting Officer in such form and on  
28 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and  
29 regulations, each party to this contract shall have the right during office hours to examine and  
30 make copies of the other party's books and records relating to matters covered by this contract.  
31

#### 32 CONFIRMATION OF CONTRACT

33  
34 32. The District, after the execution of this contract, shall promptly seek to secure a  
35 decree of a court of competent jurisdiction of the State of Nevada, confirming the execution of  
36 this contract. The District shall furnish the United States a certified copy of the final decree, the  
37 validation proceedings, and all pertinent supporting records of the court approving and  
38 confirming this contract, and decreeing and adjudging it to be lawful, valid, and binding on the  
39 District. This contract shall not be binding on the United States until such final decree has been  
40 secured.  
41  
42  
43



1                                    ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

2  
3                    35. The provisions of this contract shall apply to and bind the successors and assigns of  
4 the parties hereto, but no assignment or transfer of this contract or any right or interest therein  
5 shall be valid until approved in writing by the Contracting Officer.  
6

7                                    OFFICIALS NOT TO BENEFIT

8  
9                    36. No Member of, or Delegate to Congress, Resident Commissioner or official of the  
10 District shall benefit from this contract other than as a water user or landowner in the same  
11 manner as other water users or landowners.  
12

13                                    COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

14  
15                    37. (a) The District shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C.  
16 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
17 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,  
18 as well as with their respective implementing regulations and guidelines imposed by the U.S.  
19 Department of the Interior and/or Bureau of Reclamation.  
20

21                    (b) These statutes require that no person in the United States shall, on the grounds  
22 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the  
23 benefits of, or be otherwise subjected to discrimination under any program or activity receiving  
24 financial assistance from the Bureau of Reclamation. By executing this contract, the District  
25 agrees to immediately take any measures necessary to implement this obligation, including  
26 permitting officials of the United States to inspect premises, programs, and documents.  
27

28                    (c) The District makes this agreement in consideration of and for the purpose of  
29 obtaining any and all Federal grants, loans, contracts, property discounts or other Federal  
30 financial assistance extended after the date hereof to the District by the Bureau of Reclamation,  
31 including installment payments after such date on account of arrangements for Federal financial  
32 assistance which were approved before such date. The District recognizes and agrees that such  
33 Federal assistance will be extended in reliance on the representations and agreements made in  
34 this article, and that the United States reserves the right to seek judicial enforcement thereof.  
35  
36

37                                    SEVERABILITY

38                    38. In the event that a final judicial decision is entered by a court of competent  
39 jurisdiction holding that a provision in this contract is legally invalid or unenforceable, the  
parties to this contract shall use their best efforts to (i) within thirty (30) days of the date of such

1 final court decision identify by mutual agreement the provisions in this contract which are  
2 affected by the court decision, and (ii) within three (3) months thereafter promptly agree on the  
3 appropriate revision(s) to the contract. The time periods specified above may be extended by  
4 mutual agreement of the parties. Pending the completion of the actions designated above, to the  
5 extent they can do so without violating any applicable provisions of law, the parties shall  
6 continue to perform pursuant to the provisions of this contract which were not found to be legally  
7 invalid or unenforceable in the final court decision. If the parties do not agree on the appropriate  
8 revisions within the time period specified in item (ii) above, or any extension thereof, this  
9 contract shall terminate sixty (60) days following the expiration of such time period, unless the  
10 District and the Commissioner, within such sixty (60) day period, mutually agree in writing that  
11 the contract shall not terminate. The parties shall have the opportunity during the sixty (60) day  
12 period to exchange views on whether the contract should terminate, and the views of the District  
13 shall be considered by the Commissioner.

14 NOTICES

15 39. Any notice, demand, or request authorized or required by this contract shall be  
16 deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered  
17 to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way,  
18 Sacramento, California 95825-1898, and on behalf of the United States, when mailed, postage  
19 prepaid, or delivered to the Board of Directors of the Truckee-Carson Irrigation District, P.O.  
20 Box 1356, Fallon, Nevada 89407-1356. The designation of the addressee or the address may be  
21 changed by notice given in the same manner as provided in this article for other notices.

1 IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year  
2 first above written.

3  
4 DEPARTMENT OF THE INTERIOR  
5 OFFICE OF REGIONAL SOLICITOR  
6 *James E. Turner*  
7 APPROVED AS TO LEGAL  
8 FORM AND SUFFICIENCY

THE UNITED STATES OF AMERICA

By *Robert K. [Signature]*  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

TRUCKEE-CARSON IRRIGATION DISTRICT

9  
10  
11  
12  
13  
14  
15  
16 (SEAL)

By *Ted deBraga*  
Ted deBraga, President, Board of Directors

17  
18  
19  
20  
21  
22 Attest:

23 *Ann J. Harding*  
24 Secretary-Treasurer  
25  
26

**\* \* RESOLUTION \* \***

WHEREAS, the Truckee-Carson Irrigation District (District) is a quasi-municipal political subdivision of the State of Nevada which distributes water for the irrigation of lands in the Newlands Project, and

WHEREAS, the District Board of Directors has negotiated the "CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE TRUCKEE-CARSON IRRIGATION DISTRICT PROVIDING FOR THE OPERATION AND MAINTENANCE OF THE NEWLANDS PROJECT" with the Bureau of Reclamation; and

WHEREAS, the Board of Directors of the District at the meeting of October 7, 1996, authorized an election by qualified water users to approve such contract on November 5, 1996; and

WHEREAS, the water users approved such contract by a majority vote of 1730 yes and 506 no; and

WHEREAS, the Bureau of Reclamation has confirmed that the Department of Interior did approve the contract for signature by the United States by its November 1, 1996 letter. (attached)

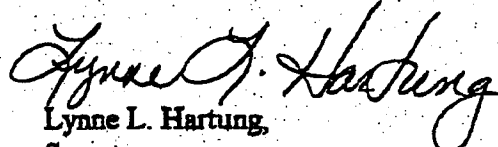
NOW THEREFORE BE IT RESOLVED: that the Board of Directors of the Truckee-Carson Irrigation District hereby approves the "CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE TRUCKEE-CARSON IRRIGATION DISTRICT PROVIDING FOR THE OPERATION AND MAINTENANCE OF THE NEWLANDS PROJECT", and

BE IT FURTHER RESOLVED: that the Board of Directors of the Truckee-Carson Irrigation District hereby authorizes Ted deBraga, President of said Board of Directors, to execute said contract in its behalf.

I, Lynne L. Hartung, Secretary of the Truckee-Carson Irrigation District, do hereby certify that the foregoing is a full, true and correct copy of a Resolution of the Board of Directors of the Truckee-Carson Irrigation District passed at a regular meeting of the said Directors held on November 18, 1996, at which meeting all of the Directors of said District were present and all seven of said Directors voted in favor of said Resolution.

I further certify that the number of Directors of the Truckee-Carson Irrigation District is seven.

IN WITNESS WHEREOF I have hereunto set my hand and the official seal of the Truckee-Carson Irrigation District of Fallon, Nevada, this 18th day of November, 1996.

  
Lynne L. Hartung,  
Secretary