

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
East Bench Unit
Helena Great Falls Division
Pick-Sloan Missouri Basin Program, Montana

REPAYMENT CONTRACT BETWEEN THE UNITED STATES AND
THE CLARK CANYON WATER SUPPLY COMPANY PROVIDING FOR A
CONTRACT WATER SUPPLY AND FOR REPAYMENT OF THE PROJECT WATER
SUPPLY WORKS

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THIS CONTRACT, made this ____ day of _____, 2006, 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, Section 9(c)(2) and Section 9(d) of the Act of August 4, 1939 (53 Stat. 1187), the Act of December 22, 1944 (58 Stat. 887), the Act of July 2, 1956 (70 Stat. 483) and the Act of June 21, 1963, all collectively known as the Federal Reclamation laws, and the CLARK CANYON WATER SUPPLY COMPANY, an irrigation Company organized and existing pursuant to the laws of the State of Montana, with its principal place of business in Dillon, Montana, hereinafter called the "Company" or "Contractor". The United States and the Company hereinafter are referred to collectively as the "Parties".

WITNESSETH, THAT:

EXPLANATORY RECITALS

WHEREAS, the following statements are made in explanation:

- a. The United States has constructed the East Bench Unit of the Pick-Sloan

Missouri Basin Program, Montana, pursuant to the Act of December 22, 1944 (58 Stat. 887), as set forth in House Document 475 and Senate Document 191, as revised and coordinated by Senate Document 247, 78th Congress, Second Session, for the use of the waters of the Beaverhead River from storage in Clark Canyon Reservoir for irrigation, municipal and industrial uses, flood control and fish and wildlife purposes; and

b. The Parties hereto have entered into water service Contract No. 14-06-600-3592, dated October 8, 1958, as amended and supplemented, hereinafter called the "1958 contract," for the regulation of existing water rights and providing a supplemental Contract water supply; and

c. The 1958 contract will expire December 31, 2006; and

d. The Company has requested conversion of the 1958 contract to a repayment contract pursuant to the Federal Reclamation laws and the laws of the State of Montana, and has fulfilled its obligations to date under the 1958 contract; and

e. The United States agrees to conversion of the 1958 contract to a repayment contract pursuant to applicable Federal laws, rules and regulations, and state laws, particularly Section 9(d) of the Reclamation Project Act of 1939 (53 Stat. 1187) and the Administration of Contracts under Section 9, Reclamation Project Act of 1939, Act of July 2, 1956 (70 Stat. 483); and

f. The 1958 contract provided, among other things, for the United States to construct water supply facilities, and provided for the Company to repay portions of the costs of constructing, operating and maintaining these facilities, and the United States and the Company desire to continue this relationship and provide for a finality of the capital payments toward these facilities.

g. Some of the water deliveries to the Company are not for irrigation purposes and the Parties desire to accommodate such uses pursuant to applicable Federal laws, rules and regulations, and state laws, particularly Section 9 (c)(2) of the Reclamation Project Act of 1939

(53 Stat. 1187), to the extent that such uses will not impair the efficiency of the Project for irrigation purposes.

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

GENERAL DEFINITIONS

1. Where used in this Contract, the terms:
 - a. "Conservation storage" shall mean that portion of the total amount of water impounded in Clark Canyon Reservoir below elevation 5546.1 ft m.s.l. that is available for beneficial use.
 - b. "Contract" shall mean and include Articles 1 through 33 hereof.
 - c. "Contracting Officer" shall mean the Secretary of the United States Department of the Interior or a duly authorized representative. For the purposes of this Contract, the United States shall be represented by the Regional Director, Great Plains Region, Bureau of Reclamation unless otherwise provided.
 - d. "Company water supply" shall mean the amount of water available for distribution in satisfaction of the shareholders' underlying water rights and the supplemental water from Clark Canyon Reservoir as delivered under the terms of this Contract, not to exceed the amount of water that may be beneficially used on the irrigable Shareholder lands of the Company.
 - e. "Company's repayment obligation" shall mean the portion of the remaining unpaid water supply costs of the East Bench Unit allocated to irrigation (\$6,557,362 as of September 30, 2005) a portion of which the Company shall repay under the terms of Article 7 of this Contract.

f. "District" shall mean the East Bench Irrigation District to whom the Operation and Maintenance of the Project has been transferred.

g. "District lands" shall mean the irrigable lands of the District water users within the District upon which the District water supply may be put to beneficial use, identified in Exhibit C attached hereto, as such lands may be further modified through inclusions and exclusions as provided in the District's contract.

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

i. "Flood storage" shall mean any water in the Clark Canyon Reservoir above elevation 5546.1 ft m.s.l. and the portion of the joint use pool between 5546.1 ft m.s.l. and 5535.7 ft m.s.l. that may be evacuated for flood control and flood storage purposes only, as directed by the Corps of Engineers through the Contracting Officer.

j. "Irrigation season" shall mean the time period beginning the earlier of either (a) the first release of storage water for irrigation from Clark Canyon Reservoir or (b) May 15, and ending September 10 of each year.

k. "Irrigation water" shall mean water which is used in the production of commercial agricultural crops or livestock, including domestic use incidental thereto, and watering of livestock on Shareholder lands and District lands. This definition is for the purpose of rate setting pursuant to this Contract.

l. "Municipal and industrial (M&I) water" shall mean Contract water made available from the Project other than Irrigation Water as described in Subarticle 1k. Included in this definition shall be losses, including evaporation, from uses not necessary for the distribution of Contract irrigation water. This definition is for the purpose of rate setting pursuant to this Contract. The Parties wish to accommodate such uses only to the extent that such uses will not impair the efficiency of the Project for irrigation purposes.

m. "Operation, maintenance and replacement (OM&R) costs" shall mean those expenses incurred in connection with the water control, and OM&R of the Project works, including appropriate charges for associated indirect costs and administration as determined by the Contracting Officer, and shall include such additional costs as hereinafter provided. Examples of associated indirect costs include but are not limited to, fringe benefits of employees, travel, equipment depreciation and materials and supplies. Such expenses shall include those required to remedy conditions brought about by ordinary use of the Water supply works or to restore or replace components of the existing Project works and shall not include expenses to increase or enlarge such works beyond the purposes for which they were originally authorized and constructed.

n. "Project " shall mean the East Bench Unit of the Helena Great Falls Division, Pick-Sloan Missouri Basin Program.

o. "Project water" or "Contract water" shall mean water stored in Clark Canyon Reservoir and made available under the terms of this Contract, excluding the underlying natural flow water rights of Shareholders of the Company, during the Irrigation season to be beneficially used on the District lands and the Shareholder lands in accordance with applicable provisions of State and Federal law.

p. "Shareholder" or "Shareholders" shall mean owners of stock in the Company.

q. "Shareholder lands" shall mean the irrigable lands represented by shares of stock in the Company upon which the Company water supply may be put to beneficial use, as identified in Exhibit C attached hereto, as such lands may be further modified through inclusions and exclusions as provided herein.

r. "Water supply repayment period" shall mean the 40-year period beginning with the Year in which the first water supply capital payment is made pursuant to Article 7 hereof.

s. "Water supply works" or "Project works" shall mean the Clark Canyon Dam and Reservoir, and Barretts Diversion Dam as it relates to the Company water supply, and that

portion of the Canyon Ferry Dam and Reservoir necessary to store and regulate water for downstream replacement of the Contract water supply, and all facilities appurtenant thereto. For the purposes of administering Subarticle 8(f) and Article 9 of this Contract, except as provided in 9(a)(2), Canyon Ferry Dam and Reservoir shall not be considered Project works.

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

PART A - M&I Water Service

DELIVERY OF WATER TO THE COMPANY FOR M&I PURPOSES

2. a. The United States has constructed the Water supply works to supply the Company with the Company water supply. During the Irrigation season, the United States shall deliver water for M&I or miscellaneous purposes as defined in this Contract to the Company and the Company shall pay for such water supply pursuant to the provisions of Article 3 herein. Water deliveries shall be made at such times during the Irrigation season and in such quantities, within the capacity of the Project works and as requested by the Company.

b. The Company, pursuant to guidelines promulgated by the Joint Board, shall be responsible for estimating, measuring and reporting water delivered for M&I purposes and for reporting changes in usage from irrigation to M&I to the Contracting Officer so the Contracting Officer can prospectively apply the appropriate M&I rate as provided in Subarticle 3a. The Company shall continuously collect and maintain such information and take such other steps as may be necessary in this regard.

c. The Contracting Officer shall have the final right to determine whether any particular water use constitutes M&I or irrigation.

d. Deliveries for M&I purposes shall not increase the allotments of water provided for under Subarticles 6c and 6d.

RATES AND METHOD OF PAYMENT FOR M&I WATER

3. a In addition to all other payments due under this Contract, the Company shall pay the United States annually at a rate of \$6 per acre foot of water projected to be delivered for M&I purposes, in advance of delivery. Such payment shall be due January 1 of each year. By November 1 of each year the Company shall report to the Contracting Office the actual amount of M&I water used during that season. Any difference between the beginning of the year estimate and the actual use of water shall become an adjustment to be applied toward the payment for the following year.

b. During the term of Part A of this Contract, the payments due for M&I water delivery and the rate per acre-foot may be reviewed and adjusted at the option of the Contracting Officer when determined necessary to reflect current water pricing policies.

TERM OF PART A

4. a. Part "A" of this Contract shall become effective January 1, 2007 for a period of forty (40) years.

b. Part A of this Contract may be renewed upon written request by the Company to the United States on or before two (2) years prior to the date of expiration hereof. Such renewal shall be based on applicable laws, rules and regulations in effect at the time. The charges to be paid by the Company to the United States under such renewal shall be upon such terms and conditions as may be mutually agreeable to the United States and the Company.

END OF PART A

PART B – Irrigation Repayment

EFFECTIVE DATE OF PART B AND TERMINATION OF 1958 CONTRACT

5. This Contract shall become effective January 1, 2007, and on that date shall supersede and replace the 1958 contract in its entirety.

WATER SUPPLY WORKS - WATER TO BE FURNISHED TO THE COMPANY
WATER ALLOTMENT AND DROUGHT MANAGEMENT PLAN

6. a. The United States has constructed the Project works to furnish the District with a full water supply and the Company with a supplemental water supply. For each Irrigation season, the United States shall deliver to the Company their supplemental water supply and the Company shall pay for such water supply pursuant to the provisions of Article 7 herein. Water deliveries shall be made at such times during the Irrigation season and in such quantities, within the capacity of the Project works, as provided herein.

b. The District and the Company shall form a Joint Board composed of an equal number of representatives of the District and the Company and a representative of the Contracting Officer. The purpose of the Joint Board will be to administer the Conservation storage in accordance with the terms of this contract, the District's Repayment Contract No. 069D670010, and Exhibit A – Water Allotment Methodology / Drought Management Plan. The Joint Board shall function and have only the duties as provided in the attached Exhibit B – Joint Board Operating Guidelines. Exhibit B shall be reviewed by the District, the Company and the Contracting Officer annually or as otherwise agreed, and may, as provided in Exhibit B, be amended as deemed appropriate. If Exhibit B is amended, its provisions as revised shall automatically supersede and replace the Exhibit B as attached to this Contract and existing just prior to such amendment.

c. During each year of this Contract, the United States shall store all flows of the Beaverhead River entering Clark Canyon Reservoir with the exception of amounts released for maintenance of stream flow, to supply downstream rights in priority of individuals who are not members of the District and not Shareholders of the Company, and to provide Flood storage space, as directed by the Corps of Engineers through the Contracting Officer. From Conservation storage, in combination with natural flow rights, during the Irrigation season in average water years, the United States shall furnish an allotment to the District and to the Company in accordance with the following priorities and in accordance with Exhibit A – Water Allotment Methodology / Drought Management Plan.

First Priority - Company: An allotment of 4.0 acre feet per acre for each acre of land, as provided in Exhibit A.

Second Priority - District: An allotment of 3.1 acre feet per acre for each acre of land as provided in Exhibit A.

Third Priority: When sufficient water is available as determined by the Joint Board, additional allotments of water will be provided to the Contract acres specified in priorities 1 and 2 above, in accordance with Exhibit A.

Exhibit A shall be reviewed by the District, the Company and the Contracting Officer annually or as otherwise agreed, and may be amended as deemed appropriate, as provided in Exhibit A. If Exhibit A is amended, its provisions as revised shall automatically supersede and replace the Exhibit A as attached to this Contract and existing just prior to such amendment.

d. If the Joint Board, in consultation with the Contracting Officer, determines that shortages of water may occur as described in Exhibit A, it will implement the Drought Management Plan contained therein.

e. The minimum release from the Reservoir Outlet Works shall be at least 25 cfs when the Drought Management Plan is in effect. During all other periods, the minimum release shall be in excess of 25 cfs for the maintenance of stream flow as may be determined by the Joint Board with concurrence from the Contracting Officer. In the event the Joint Board and the Contracting Officer can not agree on a minimum release, the Contracting Officer will make the final determination, in consultation with the Joint Board. Any changes directed by the Contracting Officer to alter the minimum releases shall only be made after consultation with the Joint Board unless an emergency condition exists, in the opinion of the Contracting Officer.

f. No water deliveries from storage in Clark Canyon Reservoir will be made to meet the District or the Company's irrigation or M&I demands at any time when the storage content in the reservoir is at 10,000 acre feet or less.

g. The Parties agree to implement the environmental considerations as outlined in Exhibit D. Exhibit D shall be reviewed by the Company and the Contracting Officer annually or as otherwise agreed, and may, as provided in Exhibit D, be amended as deemed appropriate. If Exhibit D is amended, its provisions as revised shall automatically supersede and replace the Exhibit D as attached to this Contract and existing just prior to such amendment.

h. All water deliveries under this Contract shall be in accordance with applicable state and Federal law and shall be limited to the amount of water that may be beneficially used on Shareholder lands.

COMPANY'S REPAYMENT OBLIGATIONS

7. a. The Company shall repay the Company's repayment obligation through payment of the charges described in Subarticles 7b and 7c.

b. The Company shall make a base payment annually of \$19,000 from the effective date of this Contract through the Year 2046. The Parties agree that any base payments that are in excess of the calculated ability to pay of the Company are made in part in consideration of the conversion of the 1958 contract to a repayment contract pursuant to Subsection 9(d) of the Reclamation Project Act of 1939. The Parties further agree that notwithstanding the future determinations regarding ability to pay, the annual base payments set forth herein shall not be reduced. This base payment shall increase by \$1.50 per acre for each acre of land in excess of the base acreage established in Article 13. The Company shall be responsible for reporting acres receiving irrigation water to the Contracting Officer so the Contracting Officer can prospectively apply the appropriate charges as provided by this Subarticle. The Company shall continuously collect and maintain such information and take such other steps as may be necessary in this regard.

c. The Company shall also repay such additional sums against the Water supply works costs as may be within the Company's ability to pay as determined by the Contracting Officer in accordance with then current Reclamation policy; *Provided, That* such additional payment shall not be assessed unless and until the Company's ability to pay exceeds the base payment stated in Subarticle 7b above, at which time the Company's annual water supply

payment shall be the sum of the base payment stated in Subarticle 7b above plus an ability to pay payment which shall be the net amount by which the Company's determined ability to pay exceeds the Company's base payment in Subarticle 7b above. The Parties agree that the Company does not have any ability to pay at the time of the execution of this Contract.

d. Each annual installment of the Company's repayment obligation as provided in Subarticles 7b and 7c shall be paid on or before January 1 of the Year in which it is due.

e. The Parties agree that the Company's repayment obligation for the irrigation portion of the existing Water supply works shall be fully satisfied upon fulfillment of the payments provided in Subarticles 7b and 7c, and that these payments shall constitute full and complete payment of all sums required by law of the Company for the capital repayment of the irrigation portion of the existing Water supply works, and that no capital payments beyond the Water supply repayment period shall be due from the Company for repayment of the irrigation portion of the existing Water supply works.

COMPANY'S RESERVE FUND OBLIGATION

8. a. Commencing on the effective date of this Contract, the Company shall accumulate and maintain a reserve fund. The Company shall establish and maintain that reserve fund to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service, or for purposes outlined in Subarticle 8d below.

b. The Contractor shall accumulate the reserve fund with annual deposits or investments of not less than \$20,000 to a federally insured interest- or dividend-bearing account or in securities guaranteed by the Federal Government: Provided, That money in the reserve fund shall be available within a reasonable time to meet expenses for such purposes as those identified in Subarticle 8d. Such annual deposits and the accumulation of interest to the reserve fund shall continue until the basic amount of \$800,000 is accumulated. Following an emergency expenditure from the fund, the annual deposits shall continue from the year following the emergency expenditure until the previous balance is restored. After the initial amount is

accumulated or after the previous balance is restored, the annual deposits may be discontinued and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

c. Upon mutual agreement between the Company and the Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and uncertainty stemming from the size and complexity of the project; the size of the annual operation and maintenance budget; additions to, deletions from, or changes in Project works; and operation and maintenance costs not contemplated when this Contract was executed.

d. The Company may make expenditures from the reserve fund only for:

- 1) extraordinary OM&R; 2) ordinary OM&R incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water supply to the Company; 3) additions and/or modernization, including, but not limited to, activities which improve the operation, reduce the need for future maintenance, and modify and improve the operating efficiencies of the Project works. Reserve funds may be used for previously planned activities involving these types of costs, or for these types of costs incurred during emergency actions necessitated by periods of special stress as described in item 2) above. The Parties agree that the fund shall be used to make extraordinary repairs, replace, and renew Project facilities to assure that the Project works remain in a state which will allow the Project as a whole to operate efficiently, appropriately, and in accordance with advancements in irrigation program technologies; and 4) for payment of annual construction charges to the United States at times when payment of such charges would otherwise cause undue burden on the Company's water users; such as, but not limited to, periods of special stress caused by damaging droughts, storms, earthquakes, floods or other emergencies. Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Whenever the reserve fund is reduced below the current balance by expenditures therefrom, the Company shall restore that balance by the accumulation of annual deposits as specified in Subarticle 8b herein.

e. Expenditures of less than 10 percent of the current balance per emergency event from the fund for emergency actions on Transferred works may be made by the Company without prior consent of the Contracting Officer. Emergencies are defined as sudden occurrences

that would not normally develop over a period of weeks and **would involve imminent loss of life or property**. [Emphasis added.] The Contracting Officer shall be given written notice within 48 hours of any emergency expenditure not initially authorized in writing. All other proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Except for emergencies, all expenditures shall be in accordance with: a plan of action developed by the Company in cooperation with the Contracting Officer, State law, and sound and accepted accounting practice and procedure.

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

g. On or before April 1 of each Year, the Company shall provide a current statement of the principal and accumulated interest of the reserve fund account to the Contracting Officer.

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

9. a. In addition to the charges and deposits set forth in Articles 3, 7 and 8 of this Contract, the Company shall also pay the costs outlined in (1) through (4) below. All such costs shall be paid annually in advance, one-half due on or before January 1 and the remaining one-half due on or before July 1 of each Year. Payment shall be based on an estimate of such costs with adjustments made on the July 1 bill to reflect the actual costs of the previous Year; *Provided, That* in order to avoid incurring a deficit in the funding of such costs, the Contracting Officer may bill the Company for any projected deficit and the Company shall pay such amount within 30 days after receipt of such notice thereof.

(1) The Company's share, as determined by the Contracting Officer, of the annual OM&R costs incurred by the United States or the District on the Project works. For the first Year of this Contract, this charge shall also include the

Company's share of the previous year's OM&R costs incurred under the 1958 contract which remain unpaid. The Company's share of the OM&R costs incurred by the District shall be paid directly to the District.

(2) An appropriate share of the OM&R cost associated with Canyon Ferry Dam and Reservoir which may be considered in the future, at the option of the Contracting Officer, only for Contract water supplied to Shareholder lands determined to have either an underlying natural flow water right with a priority date later than February 21, 1961, or to not have an underlying natural flow water right. Such determination of natural flow water rights will be made by the State in a final decree as part of the statewide general stream adjudication process or have been included in a natural flow water right pursuant to an Application for Change of Water Right under State law.

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

(4) Such costs for inspections, investigations, reviews and repairs of project works as are determined by the Contracting Officer to be reimbursable by the Company.

b. The Contracting Officer shall, to the extent practicable and foreseeable, inform the Company by March 1 of each year of the estimate of the following year's costs to be paid in advance by the Company in accordance with this Article for the Company's use in its budgeting process.

**POINT OF DELIVERY, MEASUREMENT, AND RESPONSIBILITY FOR DELIVERY
OF WATER**

10. a. Water to be delivered to the Company pursuant to this Contract shall be delivered from Clark Canyon Reservoir to the Beaverhead River at the outlet works of Clark Canyon Dam and Reservoir. For the purpose of computing the amount of water furnished to the Company, such water shall be measured by the Company at the river head gate from which it is diverted with equipment owned, installed, operated, and maintained by shareholders of the Company. The Contracting Officer's determination as to such measurements shall be final.

b. The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water furnished to the Company hereunder beyond the point of delivery as provided in Subarticle 10a, and the Company shall hold the United States harmless on account of damage or claim of any nature whatsoever, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water beyond said point of delivery. The Company 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.

c. The United States reserves the right to claim all of the waste, seepage and return flow derived from deliveries of Contract Water pursuant to this Contract for use in a manner consistent with the provisions of State Law within, and for the benefit of, the East Bench and Canyon Ferry Units of the Pick-Sloan Missouri Basin Program, with first priority given to the East Bench Unit. The Parties recognize that during previous contracts with the Company and the District, the United States intended and planned on waste, seepage and return flow to meet the beneficial use needs of Company and District water users and to satisfy the historical water use of private water users not within the Company but within the Project boundaries, all in accordance with State water law.

RIGHTS TO BENEFICIAL USE OF WATER

11. a. Rights to the beneficial use of the Contract / Company water supply shall be governed by the Federal Reclamation laws, other applicable Federal laws, and the laws and judicial decisions of the State of Montana, as the same may at any time apply to this Contract; but any such rights to beneficial use shall in no way extend or enlarge the rights of the Company to the delivery of water through the Water supply works involved herein other than as provided in this Contract; *Provided, That* the right to delivery of water under this Contract shall not be abrogated so long as the Company is not in violation of any of the provisions of this Contract, or in violation of applicable Federal laws, rules, or regulations or State laws.

b. No rights or interest in or to the Contract water supply other than to receive water annually pursuant to the terms and limitations of this Contract shall accrue to the Company. However, by its execution hereof, the Company does not intend to abrogate the opportunity of any shareholder or other person or entity claiming by, through, or under the Company to assert rights or interests in water delivered hereunder.

c. Nothing in this Contract shall be construed as limiting or affecting the right or opportunity of Shareholders to lease water under terms and conditions acceptable to the Joint Board and with the concurrence of the Contracting Officer.

d. Rights to the beneficial use of the water provided hereunder shall not be diminished because of conservation activities, reductions in annual deliveries, implementation of the Drought Management Plan as provided in Exhibit A, or other water management practices to provide for carryover storage.

e. The Company agrees it shall use its best efforts to ensure water is delivered only to Shareholders whose water rights or claims comply with the terms of this Contract and with applicable State and Federal law, as determined by the courts of the State of Montana or other proper authority.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

12. a. In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

b. If there is a condition of shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

**ELIGIBLE SHAREHOLDER LANDS TO RECEIVE THE
COMPANY WATER SUPPLY**

13. a. The Shareholder lands eligible to receive the Company water supply are limited to 33,706 acres as shown on Exhibit C. All lands receiving the Company water supply must be lands represented by shares in the Company. Any changes to the eligible lands and/or increase in acreages must be reviewed by the Joint Board and receive concurrence from the Contracting Officer prior to receiving the Company water supply.

b. Requests from the Company to the Contracting Officer for concurrence as provided in Subarticle 13a may be submitted no more frequently than once every five (5) years.

c. Exhibit C shall be reviewed by the Company and the Contracting Officer annually or as otherwise agreed, and may, as provided in Exhibit C, be amended as deemed appropriate. If Exhibit C is amended, its provisions as revised shall automatically supersede and replace the Exhibit C as attached to this Contract and existing just prior to such amendment.

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

14. The Act of July 24, 1957, (71 Stat. 309) along with the Reclamation Reform Act of 1982 (96 Stat. 1263), which contain among other requirements, pertinent acreage limitations, pricing and equivalency provisions applicable to the Unit, will be applicable to the Company.

STANDARD CONTRACT ARTICLES

CONTRACT DRAFTING CONSIDERATIONS

15. Articles 1 through 7, 9 through 11, and 13 of this Contract have been drafted, negotiated, and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated articles.

CHARGES FOR DELINQUENT PAYMENTS

16. a. The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, in addition to the interest charge, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and administrative charges, the Contractor shall pay a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest charge rate shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

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

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

17. a. The obligation of the Contractor to pay the United States as provided in this contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligation to the Contractor.

b. The payment of charges becoming due pursuant to this contract is a condition precedent to receiving benefits under this contract. The United States shall not make water available to the Contractor through East Bench Unit project facilities during any period in which the Contractor is in arrears in the advance payment of any operation and maintenance charges due the United States or in arrears for more than 12 months in the payment of any construction charges due the United States. The Contractor shall not deliver water under the terms and conditions of this contract for lands or parties which are in arrears in the advance payment of operation and maintenance charges or in arrears more than 12 months in the payment of construction charges as levied or established by the Contractor.

CONFIRMATION OF CONTRACT

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

NOTICES

19. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the:

Regional Director
Bureau of Reclamation
Great Plains Region
P.O. Box 36900
Billings, MT 59107-6900

and on behalf of the United States, when mailed, postage prepaid, or delivered to the:

President
Clark Canyon Water Supply Company
1200 Hwy 41
Dillon, MT 59725

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

20. The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

21. No Member of or Delegate to the Congress, Resident Commissioner, or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S ORGANIZATION

22. While this contract is in effect, no change may be made in the Contractor's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

23. The provisions of this contract shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

BOOKS, RECORDS, AND REPORTS

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

ADMINISTRATION OF FEDERAL PROJECT LANDS

25. a. The lands and interests in lands acquired, withdrawn, or reserved and needed by the United States for the purposes of care, operation, and maintenance of Federal project works may be used by the Contractor for such purposes. The Contractor shall ensure that no unauthorized encroachment occurs on Federal project lands and rights-of-way. The Contractor does not have the authority to issue any land-use agreement or grant that conveys an interest in Federal real property, nor to lease or dispose of any interest of the United States.

b. The Contractor may, subject to the written approval of the Contracting Officer, issue permits, licenses, or similar land use documents only to the extent they do not grant an interest in Federal real property.

PROTECTION OF WATER AND AIR QUALITY

26. a. Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided, That* the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

b. The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Montana; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or contract water provided by the Contractor within the Contractor's Contract water Service Area.

c. This article shall not affect or alter any legal obligations of the Secretary to

provide drainage or other discharge services.

CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

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

b. The Contractor shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions existing, or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in Federal project lands, project waters, or project works.

c. "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*, and the regulations promulgated pursuant to that Act. In addition, hazardous material shall include thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

d. Upon discovery of any event which may or does result in contamination or pollution of Federal project lands, water, or project works, the Contractor shall initiate emergency measures to protect health and safety and the environment if necessary, and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day if it is a nonemergency.

e. If violation of the provisions of this Article occurs and the Contractor does not take immediate corrective action as determined by the Contracting Officer, the Contractor may be subject to remedies imposed by the Contracting Officer, which may include termination of this contract.

f. The Contractor shall be liable for the cost of full and complete remediation and/or restoration of any Federal project lands, project waters, or project works that are adversely affected as a result of such violation, and/or termination of this contract, unless otherwise agreed to by the Contracting Officer.

g. Reclamation agrees to provide information necessary for the Contractor, using reasonable diligence, to comply with the provisions of this Article.

WATER CONSERVATION

28. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Contractor shall develop a water conservation plan, as required by Section 210(b) of the Reclamation Reform Act of 1982 (RRA) and Part 427.1 of the Water Conservation Rules and Regulations effective January 1, 1998.

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,

1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

30. a. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title II of the Americans with Disabilities Act of 1990, and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

d. Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

PRIVACY ACT COMPLIANCE

31. a. The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (Privacy Act) and the Department of the Interior rules and regulations under the Privacy Act (43 CFR 2.45 *et seq.*) in maintaining landholder certification and reporting records required to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1261), and pursuant to 43 CFR 426.18.

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

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

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

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

with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as authority for the request.

PEST MANAGEMENT

32. The Contractor shall effectively control undesirable plants and animals, as defined by the Contracting Officer, on Federal project lands, project waters, and project works for which the Contractor has operation and maintenance responsibility. This control shall include Contractor equipment and vehicle decontamination of reproductive and vegetative parts that may cause the spread of weeds and other pests upon completion of the work. Decontamination should be performed on the work area boundary prior to moving equipment and vehicles out of the area where work is performed. Programs for the control of these undesirable plants and animals on Federal project lands, project waters, and project works for which the Contractor has operation and maintenance responsibility will incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, the Contractor will adhere to applicable Federal and State laws and regulations, and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals.

MEDIUM FOR TRANSMITTING PAYMENTS

33. a. All payments from the Contractor to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

b. Upon execution of this contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the

Contractor's relationship with the United States.

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

CLARK CANYON WATER SUPPLY
COMPANY

By _____

President

ATTEST:

Secretary