DRAFT, Contract No. 18-WC-20-5245

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
KERN PROJECT, CALIFORNIA

CONTRACT BETWEEN THE UNITED STATES OF AMERICA,
NORTH KERN WATER STORAGE DISTRICT AND
BUENA VISTA WATER STORAGE DISTRICT
PROVIDING FOR THE REPAYMENT OF FUNDS EXPENDED
FOR FEDERALLY PERFORMED ISABELLA DAM SAFETY MODIFICATION PROJECT

Table of Contents

<table>
<thead>
<tr>
<th>Article No.</th>
<th>Title</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>EXPLANATORY RECITALS..................................................</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>DEFINITIONS.....................................................................</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>TERM OF THE CONTRACT..................................................</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>SAFETY OF DAMS MODIFICATIONS.................................</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>REPAYMENT OBLIGATION-TERMS OF REPAYMENT..........................</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>TITLE TO REMAIN IN THE UNITED STATES..............................</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>CHARGES FOR DELINQUENT PAYMENTS..................................</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>GENERAL OBLIGATION-BENEFITS CONDITIONED UPON REPAYMENT......</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>CONFIRMATION OF CONTRACT............................................</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS...........</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>OFFICIALS NOT TO BENEFIT.............................................</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED..........</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>BOOKS, RECORDS, AND REPORTS.......................................</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>DETERMINATIONS..........................................................</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>NOTICES........................................................................</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>CONTRACT FOR DRAFTING CONSIDERATIONS............................</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>EXHIBIT A......................................................................</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>EXHIBIT B......................................................................</td>
<td>2</td>
</tr>
</tbody>
</table>

EXHIBIT A

EXHIBIT B
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CONTRACT BETWEEN THE UNITED STATES OF AMERICA, 
NORTH KERN WATER STORAGE DISTRICT AND 
BUENA VISTA WATER STORAGE DISTRICT 
PROVIDING FOR THE REPAYMENT OF FUNDS EXPENDED 
FOR FEDERALLY PERFORMED ISABELLA DAM SAFETY MODIFICATION PROJECT

THIS CONTRACT, made this _____ day of ____________________, 20____, pursuant  
to The Flood Control Act of December 22, 1944 (58 Stat. 887), as amended and supplemented, 
the Reclamation Safety of Dams Act of November 2, 1978, as amended August 28, 1984, (92 
Stat. 2471) and October 27, 2000, (114 Stat. 1441), hereinafter referred to as the Safety of Dams 
Act (SOD) and the Water Resources Development Act of 1986, (P.L. 99-662, 100 Stat. 4263, 33 
U.S.C. 467n) hereinafter referred to as WRDA, between the UNITED STATES OF AMERICA, 
hereinafter referred to as the United States, and the North Kern Water Storage District and Buena 
Vista Water Storage District hereafter referred to as Contractors, each duly organized, existing, 
and acting pursuant to State law, with their principal places of business in California. 

WITNESSETH, That

EXPLANATORY RECITALS

[1st] WHEREAS, the United States Army Corps of Engineers (USACE) has determined 
that the Isabella Dam facilities require structural improvements in order to safely meet 
authorized project purposes and to reduce risk to the public and property from dam safety issues 
posed by floods, earthquakes, and seepage. Pursuant to the SOD Act, the U.S. Bureau of 
Reclamation (Reclamation), as the Contracting Officer, will collect the Contractors’ share of the 
reimbursable costs associated with this work; and
WHEREAS, both WRDA and the SOD Act provides that fifteen percent (15%) of the costs incurred as the result of the new hydrologic or seismic data or changes in state-of-the-art design or construction criteria deemed necessary for safety purposes shall be reimbursed/recovered and allocated to the authorized purposes of the structure; and

WHEREAS, the original construction irrigation storage allocation has been identified in Contract No. 14-06-200-1360A between the United States and the Contractors and is twenty-one and seven tenths percent (21.7%). This SOD Act Contract will utilize the same irrigation storage allocation. Therefore, 21.7% of the fifteen percent (15%) of the total cost of the Reclamation SOD Act modification for the Isabella Dam facilities is reimbursable pursuant to this Contract. The Isabella Dam projected cost estimate is six hundred forty-one million dollars ($641,000,000.00); and

WHEREAS, the United States and the Contractors agree that this Contract does not amend, modify or otherwise alter Contract No. 14-06-200-1360A between the United States and North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, dated October 23, 1964, as amended.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the parties agree as follows:

DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:

   (a) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Contract or applicable Reclamation law or regulation;
(b) “Project Cost” shall mean all costs incurred by the United States in accordance with the terms of this Contract directly related to the Safety of Dams modification of Isabella facilities. Subject to the provisions of this Contract, the term shall include, but is not necessarily limited to engineering and design costs, construction costs, and project closeout costs. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation;

(c) “Project Works” and “Project” shall mean the Isabella Reservoir and appurtenant facilities;

(d) “Repayment Obligation” shall mean the amount to be repaid by the Contractors that is equal to twenty-one and seven tenths percent (21.7%) of the fifteen percent (15%) of the SOD Modification Work;

(e) “SOD Modification Work” shall mean the work to be performed as described in Article 3 of this Contract;

(f) “Substantially Complete” shall mean the date when the United States has determined that a majority of the SOD Modification Work has been completed, and that the dam safety risk had been reduced to an acceptable level.

TERM OF THE CONTRACT

2. This Contract shall become effective on the date first written above and shall remain in effect for a term of 50 years from the date that the SOD Modification Work was deemed Substantially Complete, or until the Contractors have fully repaid to the United States the Project Cost described in Article 4(a) associated with the SOD Modification Work for the Project.
SAFETY OF DAMS MODIFICATIONS

(a). The United States will finance and perform all appropriate construction of the SOD Modification Work. The SOD Modification Work currently includes, but is not necessarily limited to, the following activities:

(1) Main dam full height filter and drain (with approximately 16-foot crest raise); and

(2) Retrofit of main dam control tower for access with raised dam; and

(3) Improvements to existing spillway; and

(4) Construction of an approximately 900-foot-wide emergency spillway;

and

(5) Auxiliary dam modifications, with approximately 16-foot crest raise, approximately 80-foot wide (crest width) downstream buttress, and shallow foundation treatment; and

(6) Demolition of the auxiliary dam control tower; and

(7) Relocation of state highway routes 155 to accommodate the dam crest raises; and

(8) Acquiring the Borel Canal easement and decommissioning of the Borel Canal and Outlet Works.

(b) The Contracting Officer will provide the Contractors with a quarterly report covering: construction status, specifications conformance, progress of work, and accounting analyses of SOD Modification Work expenditures when such reports and analyses are received from the USACE.
(c) The Contracting Officer will provide the Contractors with a draft Project Cost report for the Project after the SOD Modification Work is deemed Substantially Complete, and after a draft of the report is received from the USACE. The Contractors shall have 120 days from receipt of this draft to review and comment. The Contractors shall have access to documentation relating to the Project Costs throughout the 120-day period. The Contracting Officer shall issue the final Project Cost report and final Repayment Obligation after consultation among the Contractors, USACE, and the Contracting Officer.

(d) The draft and final Project Cost reports will address any supplemental funding available to the USACE obligated to the Project and whether such funding affects the final Repayment Obligation.

(e) The Contractors, either one or both, may appeal the Contracting Officers decision on the final Project Cost report and final total Repayment Obligation to the Contracting Officer, who shall make the final administrative agency determination. The Contracting Officer’s final Project Cost report, final total Repayment Obligation, and the annual irrigation repayment schedules shall take effect during the pendency of any appeal. If the Contractors’ appeal is successful, any resultant adjustments shall be credited to the annual payments.

**REPAYMENT OBLIGATION-TERMS OF REPAYMENT**

4. (a) The Contractors shall repay to the United States the Repayment Obligation described in Article 3 above. The Contracting Officer will notify the Contractors in writing the date on which the Project SOD Act modification is deemed Substantially Complete.

(b) The Contractors agree to make annual payments for the repayment of the Repayment Obligation, without interest, beginning October 1, of the next calendar year after the SOD Modification work has been deemed to be Substantially Complete and every year thereafter.
until the Repayment Obligation has been repaid. North Kern Water Storage District shall pay to
the United States its proportionate annual amount identified in Exhibit A, which may be updated
without amendment to this contract upon mutual approval of the Contracting Officer and
Contractor. Buena Vista Water Storage District shall pay to the United States its proportionate
annual amount identified in Exhibit B, which may be updated without amendment to this
contract upon mutual approval of the Contracting Officer and Contractor.

(c) The Contractors reserve the right to prepay all of any portion of the
outstanding Repayment Obligation at any time without penalty.

TITLE TO REMAIN IN THE UNITED STATES

5. (a) Title to the Isabella Dam Project facilities shall remain in the name of the
United States until otherwise provided by the Congress, notwithstanding the full payment of the
Contractors’ Repayment Obligation under this Contract.

(b) The rights and obligations created hereby are supplementary to and do not
supersede or affect the rights and obligations under any prior contracts between the United States
and the Contractors.

CHARGES FOR DELINQUENT PAYMENTS

6. (a) The Contractors shall be subject to interest, administrative, and penalty
charges on delinquent payments. If a payment is not received by the due date, the Contractors
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, the Contractors shall pay, in
addition to the interest charge, an administrative charge to cover additional costs of billing and
processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractors
shall pay, in addition to the interest and administrative charges, 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 Contractors shall also pay any fees incurred for debt
collection services associated with a delinquent payment.

(b) The interest rate charged 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 rate charged 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 REPAYMENT

7. (a) The obligation of the Contractors to pay the United States as provided in this
contract is a general obligation of the Contractors notwithstanding the manner in which the
obligation may be distributed among the Contractors’ water users and notwithstanding the
default of individual water users in their obligation to the Contractors.

(b) The payment of charges becoming due pursuant to this Contract is
condition precedent to receiving benefits under this Contract. The United States shall not
operate Isabella Dam facilities for the benefit of the Contractors during any period in which the
Contractors are in arrears for more than 12 months in the payment of any construction charge
due the United States under this Contract.

CONFIRMATION OF CONTRACT

8. Promptly after the execution of this contract, the Contractors shall provide to the
Contracting Officer a certified copy of a final decree of a court of competent jurisdiction in the
State of California, confirming the proceedings on the part of the Contractors for the
authorization of the execution of this Contract. This contract shall not be binding on the United
States until such final decree has been secured.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

9. 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

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

ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

11. 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

12. The Contractors shall establish and maintain accounts and other books and records
pertaining to administration of the terms and conditions of this Contract, including the
Contractors’ 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.

DETERMINATIONS

13. The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the expressed and implied provisions of this Contract, the laws of the United States and the State of California and the rules and regulations promulgated by the Secretary of the Interior. Such determination shall be made in consultation with the Contractors.

NOTICES

14. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractors, when mailed, postage prepaid, or delivered to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, and on behalf of the United States, when mailed, postage prepaid, or delivered to the current manager of the Contractor, as follows:

- General Manager, North Kern Water Storage District, 33380 Cawelo Avenue, Bakersfield, CA 93380-9575; P.O. Box 81435, Bakersfield, CA 93380-1435 and
- Buena Vista Water Storage District, Engineer Manager, 525 N. Main Street, P.O. Box 756, Buttonwillow, CA 93206

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.
198 MEDIUM FOR TRANSMITTING PAYMENTS

199 15. (a) All payments from the Contractors 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.

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

207 CONTRACT FOR DRAFTING CONSIDERATIONS

208 16. This Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 5 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.
IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
and year first above written.

UNITED STATES OF AMERICA

By: ______________________________________
Regional Director
Mid-Pacific Region
Bureau of Reclamation

NORTH KERN WATER STORAGE DISTRICT

(SEAL)

By: ______________________________________
President of the Board of Directors

Attest:

BUENA VISTA WATER STORAGE DISTRICT

(SEAL)

By: ______________________________________
President of the Board of Directors

Attest:

By: ________________________________
Secretary of the Board of Directors
The estimated cost for the SOD Modification Work is six hundred forty-one million dollars and zero cents ($641,000,000.00) of which Contractors are collectively responsible for a proportional share of the total reimbursable cost. Said reimbursable cost is without an interest component. Based on the estimated costs of $641,000,000.00, the Contractors are responsible for repayment of twenty million eight hundred sixty-four thousand five hundred fifty dollars and zero cents ($20,864,550.00) ($641,000,000.00 x 21.7% = $139,097,000.00 x 15% = $20,864,550.00). Therefore, North Kern Water Storage District is responsible for the amounts listed below:

North Kern Water Storage District $20,864,550.00 x 68% = $14,187,894.00

North Kern Water Storage District’s annual payments based on the above allocated costs are:

October 1, 20__ $283,757.88
October 1, 20__ $283,757.88
October 1, 20__ $283,757.88
October 1, 20__ $283,757.88
… and thereafter.

The first payment will become due and payable on October 1 of the next calendar year after the Project has been deemed to be Sustainably Complete. For example: The Project is deemed Sustainably Complete on June 2, 2019. First payment will become due and payable on October 1, 2020.
The estimated cost for the SOD Modification Work is six hundred forty-one million dollars and zero cents ($641,000,000.00) of which Contractors are collectively responsible for a proportional share of the total reimbursable cost. Said reimbursable cost is without an interest component. Based on the estimated costs of $641,000,000.00, the Contractors are responsible for repayment of twenty million eight hundred sixty-four thousand five hundred fifty dollars and zero cents ($20,864,550.00) ($641,000,000.00 x 21.7% = $139,097,000.00 x 15% = $20,864,550.00). Therefore, Buena Vista Water Storage District is responsible for the amounts listed below:

Buena Vista Water Storage District $20,864,550.00 x 32% = $6,676,656.00

Buena Vista Water Storage District’s annual payments based on the above allocated costs are:

October 1, 20__ $133,533.12
October 1, 20__ $133,533.12
October 1, 20__ $133,533.12
October 1, 20__ $133,533.12
… and thereafter.

The first payment will become due and payable on October 1 of the next calendar year after the Project has been deemed to be Sustainably Complete. For example: The Project is deemed Sustainably Complete on June 2, 2019. First payment will become due and payable on October 1, 2020.