

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Newlands Project, Nevada

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND
TRUCKEE-CARSON IRRIGATION DISTRICT
FOR THE REPAYMENT OF PRE-CONSTRUCTION ACTIVITY COSTS
ASSOCIATED WITH EXTRAORDINARY
MAINTENANCE ON THE TRUCKEE CANAL

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Exhibit A – Pre-Construction Activities To Be Completed By Reclamation
Exhibit B – Payment Schedule

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THIS CONTRACT made this ____ day of _____, 20____, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory and supplementary thereto, including but not limited to Section 9603 of the Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111-11, 123 State. 1348, 43 U.S.C. §510b), all collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and TRUCKEE-CARSON IRRIGATION DISTRICT, hereinafter referred to as the District, a political subdivision of the State of Nevada, duly organized, existing, and acting pursuant to the laws of the State of Nevada;

WITNESSETH, That:

EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the Newlands Project in the State of Nevada for the purpose of furnishing water for irrigation and other beneficial uses to lands within the Newlands Project’s service area; and
[2nd] WHEREAS, the United States and the District executed Contract No. 7-07-20-X0348, dated November 25, 1996, as amended, which transferred the responsibility

26 for Operation and Maintenance of the Newlands Project, including the Truckee Canal, to the
27 District; and

28 [3rd] WHEREAS, the Bureau of Reclamation, hereinafter referred to as Reclamation,
29 in consultation with the District, has determined the need to perform Extraordinary Maintenance
30 (XM) on the Truckee Canal, including certain Pre-Construction Activities that are required to be
31 completed prior to initiating the actual XM construction activities on the Truckee Canal; and

32 [4th] WHEREAS, pursuant to Section 9603 of Public Law 111-11, the Secretary of the
33 Interior, acting through Reclamation, is authorized to advance the costs incurred by the District
34 in conducting XM and to negotiate an appropriate contract for the return of reimbursable costs,
35 with interest; and

36 [5th] WHEREAS, Reclamation has a requirement that the District must expend at least
37 75% of the contractually required emergency reserve fund balance and the District has remitted
38 \$30,000 to satisfy this requirement; and

39 [6th] WHEREAS, Reclamation has made available \$5,000,000 of non-reimbursable
40 funds from the Desert Terminal Lakes Program pursuant to Public Law 113-79, Section 2507, to
41 offset a portion of the Pre-Construction Activity Costs, resulting in a reduction of the amount to
42 be reimbursed by the District pursuant to the Contract; and

43 [7th] WHEREAS, Reclamation law may allow for deferment of payment under the Act
44 of September 21, 1959 (73 Stat. 584) in accordance with Reclamation policy;

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

47 DEFINITIONS

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

50 (a) “Contracting Officer” shall mean the Secretary of the Interior’s duly
51 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
52 or regulation.

53 (b) “Existing Contract” shall mean Contract No. 7-07-20-X0348 executed on
54 November 25, 1996, as amended and supplemented, between the United States and the District.

55 (c) “Extraordinary Maintenance” or “XM” shall mean major, nonrecurring
56 maintenance on the Truckee Canal that is intended to ensure the continued safe, dependable, and
57 reliable delivery of authorized project benefits of the Newlands Project and is greater than ten
58 (10) percent of the District’s annual operation and maintenance budget for the Truckee Canal and
59 greater than \$100,000.

60 (d) “Fiscal Year” shall mean the period October 1 through September 30 of
61 the following year.

62 (e) “Pre-Construction Activities” shall mean those activities, which are
63 provided in Article 3 and Exhibit “A”, that must be completed by Reclamation prior to
64 proceeding with the XM on the Truckee Canal.

65 (f) “Pre-Construction Activity Costs” shall mean the actual cost incurred for
66 Pre-Construction Activities, including all related incidental costs and associated overhead.

67 (g) “Project” shall mean the Newlands Project located in Nevada.

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TERM OF THE CONTRACT

2. This Contract shall become effective on the date first written above and shall remain in effect until the District has fully repaid to the United States its repayment obligation as described in Article 4 of this Contract.

PRE-CONSTRUCTION ACTIVITIES TO BE COMPLETED BY RECLAMATION

3. Reclamation will perform the following Pre-Construction Activities which include, but are not necessarily limited to, the following:

- (1) Pre-Construction Repayment Contract
- (2) Risk Assessment
- (3) National Environmental Policy Act Compliance
- (4) Corrective Action Study
- (5) Feasibility Study
- (6) Final Design

The tasks to be completed and the estimated funds to be expended by Reclamation are also listed in Exhibit "A". The Contracting Officer, upon consultation with the District, may update the tasks and estimated costs listed in Exhibit "A" without amendment to this Contract.

DISTRICT'S REPAYMENT OBLIGATION

4. (a) The District shall be obligated to repay the entire sum of funds expended by Reclamation to perform Pre-Construction Activities as provided in Article 3, plus accrued interest, as determined pursuant to Article 4(b) herein, less \$30,000 and \$5,000,000 as described in 5th and 6th WHEREAS clauses respectively, which total is hereinafter referred to as the Repayment Obligation.

90 (b) The interest rate used for computing interest on federal funds applied
91 towards Pre-Construction Activity Costs shall be the Department of the Treasury rate as of the
92 beginning of the Fiscal Year in which Pre-Construction Activities are commenced, on the basis
93 of average market yields on outstanding marketable obligations of the United States with the
94 remaining periods of maturity comparable to the applicable reimbursement period of the project,
95 adjusted to the nearest 1/8 of 1 percent on unamortized balance of any portion of the Repayment
96 Obligation. Interest accrual shall commence on each date federal funds are incurred towards
97 Pre-Construction Activity Costs and be computed on an annual basis on the unpaid balance of
98 the reimbursable costs of XM work, as determined by the Contracting Officer.

99 (c) Upon completion of all Pre-Construction Activities, or upon written
100 mutual consent of the parties, the Contracting Officer shall notify the District in writing of the
101 Repayment Obligation and shall provide the District with a repayment schedule requiring equal
102 annual installments over the period provided in Article 4(d) herein, which schedule shall be
103 incorporated into this Contract as Exhibit "B", which may be updated by the Contracting Officer
104 without further amendment hereof.

105 (d) The District shall repay the total Repayment Obligation over a period of
106 eight (8) years from the date on which the Contracting Officer determines that the Pre-
107 Construction Activities are complete.

108 (e) The District may, at any time, prepay all or any portion of the unpaid
109 Repayment Obligation as provided herein without penalty, notwithstanding any interest accrued.

110 PRESERVATION OF EXISTING CONTRACT

111 5. Except as specifically provided herein, the Existing Contract shall continue in full
112 force and effect as originally written, executed, and amended.

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REVIEW AND PARTICIPATION

6. Reclamation shall afford the District with a reasonable opportunity to review and comment on reports, drawings or other work products prepared in connection with Pre-Construction Activities. The District shall provide a copy of their comments to the Contracting Officer within thirty (30) days from the date that Reclamation provides the work products to the District for their review.

REPORTING

7. Following the execution of this Contract and until the completion of the Pre-Construction Activities, Reclamation will provide the District with a semi-annual report each June 30 and December 31 that identifies Pre-Construction Activity Costs to date, interest accrued to date, and an estimated date as to when the Pre-Construction Activities will be completed.

SEVERABILITY

8. In the event that a final judicial decision is entered by a court of competent 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 days of the date of such final court decision identify by mutual agreement the provisions in this Contract which are affected by the court decision; and (ii) within three months thereafter promptly agree on the appropriate revision(s) to the Contract. The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent they can do so without violating any applicable provisions of law, the parties shall continue to perform pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

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TITLE TO REMAIN IN THE UNITED STATES

9. Title to products, whether draft or final, and all documents and electronic files and related materials related to the Pre-Construction Activities performed under this Contract by Reclamation shall be and remain in the name of the United States unless otherwise provided by Congress, notwithstanding the full payment to the United States of District’s repayment obligations under this Contract.

CHARGES FOR DELINQUENT PAYMENTS

10. (a) The District shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the District 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 District 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 District 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 District 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 PAYMENT

11. (a) The obligation of the District to pay the United States as provided in this Contract is a general obligation of the District notwithstanding the manner in which the obligation may be distributed among the District's water users and notwithstanding the default of individual water users in their obligations to the District.

(b) The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract.

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CONFIRMATION OF CONTRACT

167 12. Promptly after the execution of this Contract, the District shall provide evidence
168 to the Contracting Officer that, pursuant to the laws of the State of Nevada, the District is a
169 legally constituted entity and the Contract is lawful, valid, and binding on the District. This
170 Contract shall not be binding on the United States until such evidence has been provided to the
171 Contracting Officer's satisfaction.

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NOTICES

173 13. Any notice, demand, or request authorized or required by this Contract shall be
174 deemed to have been given, on behalf of the District, when mailed, postage prepaid, or delivered
175 to the Area Manager, Lahontan Basin Area Office, 705 North Plaza Street, Carson City, Nevada
176 89701, and on behalf of the United States, when mailed, postage prepaid, or delivered to the
177 Board of Directors, Truckee-Carson Irrigation District, Post Office Box 1356, Fallon, Nevada
178 89407-1356. The designation of the addressee or the address may be changed by notice given in
179 the same manner as provided in this Article for other notices.

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CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

181 14. The expenditure or advance of any money or the performance of any obligation of
182 the United States under this Contract shall be contingent upon appropriation or allotment of
183 funds. Absence of appropriation or allotment of funds shall not relieve the District from any
184 obligations under this Contract. No liability shall accrue to the United States in case funds are
185 not appropriated or allotted.

186

OFFICIALS NOT TO BENEFIT

187 15. No Member of or Delegate to the Congress, Resident Commissioner, or official of
188 the District shall benefit from this Contract other than as a water user or landowner in the same
189 manner as other water users or landowners.

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CHANGES IN DISTRICT'S ORGANIZATION

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

196

ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

197 17. The provisions of this Contract shall apply to and bind the successors and assigns
198 of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein
199 by either party shall be valid until approved in writing by the other party.

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EQUAL EMPLOYMENT OPPORTUNITY

201 18. During the performance of this Contract, the District agrees as follows:

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

212 (2) The District will, in all solicitations or advertisements for employees
213 placed by or on behalf of the District, state that all qualified applicants will receive consideration
214 for employment without regard to race, color, religion, sex, sexual orientation, gender identity,
215 disability, or national origin.

216 (3) The District will send to each labor union or representative of workers
217 with which it has a collective bargaining agreement or other contract or understanding, a notice,
218 to be provided by the Contracting Officer, advising the labor union or workers' representative of
219 the District's commitments under section 202 of Executive Order 11246 of September 24, 1965
220 (EO 11246), and shall post copies of the notice in conspicuous places available to employees and
221 applicants for employment.

222 (4) The District will comply with all provisions of EO 11246, and of the rules,
223 regulations, and relevant orders of the Secretary of Labor.

224 (5) The District will furnish all information and reports required by EO
225 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,
226 and will permit access to his books, records, and accounts by the Contracting Agency and the
227 Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
228 regulations, and orders.

229 (6) In the event of the District's noncompliance with the nondiscrimination
230 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
231 canceled, terminated or suspended in whole or in part and the District may be declared ineligible
232 for further Government contracts in accordance with procedures authorized in EO 11246, and
233 such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule,
234 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

235 (7) The District will include the provisions of paragraphs (1) through (7) in
236 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
237 Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions will be
238 binding upon each subcontractor or vendor. The District will take such action with respect to

239 any subcontract or purchase order as may be directed by the Secretary of Labor as a means of
240 enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in
241 the event the District becomes involved in, or is threatened with, litigation with a subcontractor
242 or vendor as a result of such direction, the District may request the United States to enter into
243 such litigation to protect the interests of the United States.

244 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

245 19. (a) The District shall comply with Title VI of the Civil Rights Act of 1964
246 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
247 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
248 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990
249 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and
250 with the applicable implementing regulations and any guidelines imposed by the U.S.
251 Department of the Interior and/or Bureau of Reclamation.

252 (b) These statutes prohibit any person in the United States from being
253 excluded from participation in, being denied the benefits of, or being otherwise subjected to
254 discrimination under any program or activity receiving financial assistance from the Bureau of
255 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
256 Contract, the District agrees to immediately take any measures necessary to implement this
257 obligation, including permitting officials of the United States to inspect premises, programs, and
258 documents.

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

266 (d) Complaints of discrimination against the District shall be investigated by
267 the Contracting Officer's Office of Civil Rights.

268 CERTIFICATION OF NONSEGREGATED FACILITIES

269 20. The District hereby certifies that it does not maintain or provide for its employees
270 any segregated facilities at any of its establishments and that it does not permit its employees to
271 perform their services at any location under its control where segregated facilities are
272 maintained. It certifies further that it will not maintain or provide for its employees any
273 segregated facilities at any of its establishments and that it will not permit its employees to
274 perform their services at any location under its control where segregated facilities are
275 maintained. The District agrees that a breach of this certification is a violation of the Equal
276 Employment Opportunity clause in this Contract. As used in this certification, the term
277 "segregated facilities" means any waiting rooms, work areas, rest rooms, and wash rooms,
278 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,

279 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
280 facilities provided for employees which are segregated by explicit directive or are in fact
281 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
282 disability, or otherwise. The District further agrees that (except where it has obtained identical
283 certifications from proposed subcontractors for specific time periods) it will obtain identical
284 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
285 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
286 will retain such certifications in its files; and that it will forward the following notice to such
287 proposed subcontractors (except where the proposed subcontractors have submitted identical
288 certifications for specific time periods):

289 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
290 CERTIFICATIONS OF NONSEGREGATED FACILITIES

291 A Certification of Nonsegregated Facilities must be submitted prior to the award of a
292 subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal
293 Employment Opportunity clause. The certification may be submitted either for each
294 subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or
295 annually). Note: The penalty for making false statements in offers is prescribed in 18
296 U.S.C. § 1001.

297 MEDIUM FOR TRANSMITTING PAYMENTS

298 21. (a) All payments from the District to the United States under this Contract
299 shall be by the medium requested by the United States on or before the date payment is due. The
300 required method of payment may include checks, wire transfers, or other types of payment
301 specified by the United States.

302 (b) Upon execution of the Contract, the District shall furnish the Contracting
303 Officer with the District's taxpayer's identification number (TIN). The purpose for requiring the
304 District's TIN is for collecting and reporting any delinquent amounts arising out of the District's
305 relationship with the United States.

306 RULES, REGULATIONS, AND DETERMINATIONS

307 22. The Contracting Officer shall have the right to make determinations necessary to
308 administer this Contract that are consistent with its provisions, the laws of the United States and
309 the State of Nevada, and the rules and regulations promulgated by the Secretary of the Interior.
310 Such determinations shall be made in consultation with the District.

311 CONTRACT DRAFTING CONSIDERATIONS

312 23. This Contract has been negotiated and reviewed by the parties hereto, each of
313 whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 9 of this
314 Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be
315 considered to have drafted the stated articles.

316 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
317 the day and year first above written.

318 UNITED STATES OF AMERICA

319 By: _____
320 Regional Director, Mid-Pacific Region
321 Bureau of Reclamation

322 (SEAL) TRUCKEE-CARSON IRRIGATION DISTRICT

323 By: _____
324 President of the Board of Directors

325 Attest:

326 By: _____
327 Secretary of the Board of Directors

EXHIBIT A

Truckee-Carson Irrigation District
Newlands Project

PRE-CONSTRUCTION ACTIVITIES TO BE COMPLETED BY RECLAMATION
Tasks and Cost Estimate for Truckee Canal Extraordinary Maintenance
Pre-Construction Activity Costs

TASKS	ACTUAL COSTS FOR FY14-FY16	COST ESTIMATES FY17-FY21	TOTALS
1. Pre-Construction Repayment Contract	\$24,213	\$0	\$24,213
2. Risk Assessment	\$424,100	\$365,000	\$789,100
3. National Environmental Policy Act Compliance	\$806,923	\$2,623,680	\$3,430,603
4. Corrective Action Study	\$925,986	\$785,500	\$1,711,486
5. Feasibility Study	\$0	\$1,552,006	\$1,552,006
6. Final Design	\$55,386	\$1,054,306	\$1,109,692
Subtotal	\$2,236,608	\$6,380,492	\$8,617,100
Reclamation provided Non-Reimbursable Funds			\$5,000,000
Truckee-Carson Irrigation District provided Prepayment for the Truckee Canal XM EIS Performance Work Statement			\$30,000
Truckee-Carson Irrigation District Obligations			\$3,587,100

EXHIBIT B

Truckee-Carson Irrigation District
Newlands Project

PAYMENT SCHEDULE

Year	Principle	Interest (2.50%)	Total Payment	Balance
				\$ 3,587,100
October 1, 2019	\$ 410,323	\$ 89,678	\$ 500,000	\$ 3,176,778
October 1, 2020	\$ 420,581	\$ 79,419	\$ 500,000	\$ 2,756,197
October 1, 2021	\$ 431,095	\$ 68,905	\$ 500,000	\$ 2,325,102
October 1, 2022	\$ 441,872	\$ 58,128	\$ 500,000	\$ 1,883,229
October 1, 2023	\$ 452,919	\$ 47,081	\$ 500,000	\$ 1,430,310
October 1, 2024	\$ 464,242	\$ 35,758	\$ 500,000	\$ 966,068
October 1, 2025	\$ 475,848	\$ 24,152	\$ 500,000	\$ 490,220
October 1, 2026	\$ 490,220	\$ 12,255	\$ 502,475	\$ 0
Total	\$ 3,587,100	\$ 415,375	\$ 4,002,475	