

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

BOISE PROJECT, IDAHO

CONTRACT FOR THE RAISE OF ANDERSON RANCH DAM  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND THE IDAHO WATER RESOURCE BOARD

**THIS CONTRACT** is made this 19 day of November, 2021, pursuant to section 4007(b) of the Water Infrastructure Improvements for the Nation Act the, P.L. 114-322 (WIIN Act), the Reclamation Act of June 17, 1902 and acts supplementary and amendatory, and the Sundry Civil Expenses Appropriations Act for 1922, (43 USC 395) commonly known as the Contributed Funds Act, all of which are known as Federal Reclamation Law, between the **UNITED STATES OF AMERICA**, acting through the Department of the Interior, Bureau of Reclamation (“Reclamation”), acting through the Regional Director, Columbia-Pacific Northwest Region (“the Contracting Officer”) and the **STATE OF IDAHO** acting through the **IDAHO WATER RESOURCE BOARD** (the “Board”), an agency created by Article XV, Section 7 of the Idaho Constitution and Idaho Code §§ 42-1732 to 42-1734.

## **1. EXPLANATORY RECITALS**

### **1.1 Existing Boise Project**

The United States has constructed the existing Anderson Ranch Dam of the Boise Project pursuant to the Federal Reclamation Laws primarily for the furnishing of water for irrigation purposes and for flood control purposes. The Arrowrock Division of Reclamation’s Boise Project includes Anderson Ranch and Arrowrock reservoirs and an off-stream reservoir, Lake Lowell. The three reservoirs are operated together in coordination with Lucky Peak Reservoir, a United States Army Corps of Engineers reservoir, for all of which Reclamation holds the legal title to the water rights and issues and administers spaceholder contracts. The active storage space of the reservoir system is approximately 1 million acre-ft, operated primarily for irrigation and flood control.

### **1.2 Feasibility Report and Finding of Feasibility**

At the request of the Board, Reclamation cost-shared with the Board pursuant to Memorandum of Agreement No. R18MR11171 as amended (2018 MOA), under authority of the WIIN Act, to perform an

investigation of the feasibility of raising Anderson Ranch Dam six feet. Reclamation issued the resulting Feasibility Report in November 2020. A determination of a finding of feasibility by the Secretary is evidenced by a December 9, 2020, letter from the Commissioner to the Chair of the Subcommittee on Energy and Water Development of the Senate Committee on Appropriations.

### **1.3 Mitigation to Existing Spaceholders for Lost Water During Construction**

The Feasibility Report recognized that there may be a drawdown of Anderson Ranch reservoir during construction of the proposed project, which could impact the existing spaceholders' storage accounts during construction. The Feasibility Report estimated the cost of mitigating this impact and generally envisioned the method of mitigation would be a combination of leasing water through the Water District 63 rental pool and entering into financial agreements. Reclamation has developed a conceptual plan to use the existing Idaho Water Supply Bank storage rental pools. However, the degree to which mitigation is required and the resulting costs depend on the degree of reservoir restriction as determined based on the dam raise design.

### **1.4 Additional Planning-Level Design Work**

In response to findings and recommendations from the Independent Design, Estimating, and Construction (DEC) Review of the Feasibility Report, Reclamation's design team will evaluate design of a modification to the existing spillway crest structure in lieu of removal and replacement. If this alternative is selected, the design team will adjust the spillway modification construction description accordingly. This Planning-level Design and initial stages of Final Design will inform the required reservoir restriction during construction and associated mitigation for lost storage water of the existing spaceholders.

### **1.5 Environmental Compliance**

A draft environmental impact statement (Draft EIS) has been completed for the Feasibility Report, which evaluated the proposed action of raising Anderson Ranch Dam six feet. The specific method for mitigation for lost storage water of the existing spaceholders was not detailed in the Draft EIS. An EIS cannot be finalized, nor a record of decision (ROD) issued, until additional design work is performed that will inform the analysis of impacts associated with the construction activities and inform the extent of mitigation required to offset those impacts. Completion of environmental compliance has been paused pending additional design work, mitigation development and resulting cost estimate refinement. Planning level design, environmental compliance, development, and cost estimating will be completed under the 2018 MOA. A ROD will not be issued until environmental compliance is completed.

### **1.6 WIIN Act Deadline and Objective of This Contract**

Section 4013 of the WIIN Act requires the project be under construction, by December 16, 2021, in order to maintain its authorization under the WIIN Act. Section 4011(f)(2) of the WIIN Act defines construction to mean "designing, materials engineering and testing, surveying, and building of water storage" (Construction As Defined By The WIIN Act). Section 4007(b)(3)(B) requires an agreement be secured providing upfront funding as is necessary to pay the non-Federal share of the capital costs, before

construction commences. The parties desire to enter into this contract and to begin design beyond feasibility level (Final Design) before the December 16, 2021 deadline. The objectives of this contract are to: (1) provide for the cost share for (a) Final Design and (b) construction of the Dam Raise in the event a ROD is issued selecting the 6-ft Dam Raise, and (2) to allocate obligations and entitlements that will accrue to the parties after the Dam Raise.

### **1.7 Other Potential Partners**

The Draft EIS indicated potential spaceholders of the New Space may be existing Reclamation contractors and the Board, which could, in turn, contract water to existing Water District 63 water users and/or may offer water through the Idaho Water Supply Bank Water District 63 rental pool. Some irrigation entities who have current contracts with Reclamation for existing storage space in the Boise Project have expressed interest in contracting directly with Reclamation for a portion of the New Space from the Dam Raise, instead of through the Board. The Board, through Resolution Nos. 19-2020 and 14-2021, has indicated its interest in being the sole contracting partner with Reclamation.

### **1.8 Federal Appropriations**

The Consolidated Appropriations Act, 2021, P.L. 116-260 Title II, provided Reclamation \$10 million for its cost-share portion of the Anderson Ranch Dam Raise Project construction and associated activities, including securing upfront funding agreements, executing water contracts, performing final design, environmental permitting and mitigation, contract solicitation, construction implementation, and general project administration.

### **1.9 Water Right**

The Board has applied for a water right (no. 63-34753) with the Idaho Department of Water Resources (IDWR) for the Anderson Ranch Dam Raise Project.

**NOW, THEREFORE**, in consideration of the foregoing recitals, and the terms, conditions, covenants, and agreements set forth herein, the parties agree as follows:

## **2. TERMS APPLICABLE TO ENTIRE CONTRACT**

### **2.1 General**

Provisions of this Article 2 shall apply to the entire contract. The Standard Articles in Article 6 also apply to the entire contract.

### **2.2 Definitions**

For purposes of this contract, the following definitions apply:

**“Anderson Ranch Dam Raise Project”** means the project described in the Feasibility Report, including but not limited to the Dam Raise and Rim Projects. The proposed project entails a 6-foot raise of Anderson Ranch Dam, raising the reservoir elevation from 4196 feet to 4202 feet, which will create an additional 29,145 acre-ft of active capacity for storage of water. Major components of the plan include

using compacted zoned fill and compacted soil cement on the downstream face and construction of a reinforced concrete parapet wall along the upstream crest; replacement of the spillway ogee crest structure, bridge, center pier, spillway floor slabs and chute walls, and approach structure; and removal, refurbishment, and reinstallation of existing spillway radial gates as described in the Feasibility Report (pg. ES-21). As described in Chapter 6 of the Feasibility Report, certain facilities located near the perimeter, or rim, of Anderson Ranch Reservoir will be affected by the increased water level of the reservoir.

“**Board**” means Idaho Water Resource Board (IWRB).

“**Construction As Defined By The WIIN Act**” means the same as in WIIN Act section 4011(f)(2), which defines construction as designing, materials engineering and testing, surveying, and building of water storage.

“**Contracted Space**” means the ninety percent (90%) of New Space that will be allocated to the Board.

“**Cost-Share Ratio**” means the cost share of the Anderson Ranch Dam Raise Project between Reclamation and the Board. The Feasibility Report estimated total construction cost of the Project to be \$83.3 million, not including applicable interest during construction. Estimated total construction costs consist of: (1) the joint construction costs benefitting both Federal and Non-Federal purposes, and (2) certain specific costs associated with the construction of culverts solely benefitting the Federal fish and wildlife purpose. The Non-Federal share of joint construction costs is 89.80% and will be the responsibility of the Board, while the Federal share of joint construction costs is 10.20% and will be paid by Reclamation appropriations. The specific costs of construction of culverts benefitting fish and wildlife will be borne 100% by the United States. Any other specific costs identified during development of the Anderson Ranch Dam Raise Project will be borne solely by the benefitting purpose and party responsible for funding its cost of construction. Taking into account the Feasibility Level estimate of combined joint and specific project construction costs, the resulting cost-share ratio for total project construction costs is 88.95% to Non-Federal purposes, to be the responsibility of the Board, and 11.05% of the total costs to Federal purposes, to be the responsibility of the United States. The percentages are rounded for purposes in this paragraph; however, decimal precision will be used when apportioning actual costs.

“**Dam Raise**” means raising Anderson Ranch Dam an additional 6-ft, pursuant to the Feasibility Report and ROD that would be issued pursuant to NEPA.

“**EIS**” means Environmental Impact Statement pursuant to NEPA.

“**ESA**” means the Endangered Species Act, 16 USC 1531, *et seq.*

“**Existing Spaceholders**” means entities who hold contracts with Reclamation for space in Anderson Ranch Reservoir as of the effective date of this contract.

“**Feasibility Level Design**” means design to a degree that allows a determination of whether construction of a facility or a project is feasible.

“**Feasibility Report**” means the Boise River Basin Feasibility Study Final Feasibility Report issued by Reclamation in November 2020.

“**Final Design**” means design of a facility or project beyond Feasibility Level Design.

“**Irrigation use**” means the use of contract water to: 1) irrigate land primarily for the production of commercial agricultural crops or livestock and 2) domestic and other uses that are incidental thereto.

“**Municipal and Industrial Use**” means the use of contract water for municipal, industrial, and

miscellaneous other purposes, not falling under the definition of “irrigation” use above, or within another category of water use under an applicable Federal authority.

“**NEPA**” means National Environmental Policy Act of 1969 (P.L. 91-190, as amended and supplemented).

“**New Space**” means the storage space created by the 6-ft raise of Anderson Ranch Dam. 29,145 acre-feet is the approximate volume but may be refined further.

“**OM&R**” means operation, maintenance, and replacement.

“**Parties**” means the Bureau of Reclamation and the Idaho Water Resource Board.

“**Rim Projects**” means projects that will be undertaken to ensure existing facilities that will be impacted by the enlarged reservoir are made whole as described generally in Feasibility Report.

“**ROD**” means Record of Decision pursuant to NEPA.

“**Secretary**” means the Secretary of the United States Department of the Interior.

“**Substantial Completion**” means the determination by Reclamation that the Anderson Ranch Dam Raise Project is sufficiently completed to be used for its intended purpose and costs are known for purposes of performing the Final Cost Allocation.

“**Reclamation Space**” means the ten percent (10%) of New Space that will be used by Reclamation.

“**Water users**” means organizations and individuals whom the Board will agree to make water available from its portion of the New Space.

“**WIIN Act**” means the Water Infrastructure Improvements for the Nation Act, P.L. 114-322.

### **2.3 Term and Termination of Contract**

Subject to the terms, conditions, and provisions set forth herein, this contract shall become effective on the date first written above, which shall be the date the contract is signed by the Contracting Officer. This contract shall remain in effect until terminated by mutual written agreement of the parties or as set forth below.

- (a) At any time before Reclamation issues its solicitation of the construction contract, the Board may terminate this contract. If the ROD does not select the 6-ft Dam Raise and does not provide for contracting solely with the Board for the New Space, either party may terminate this Contract. In the event of termination, neither party shall be entitled to reimbursement of costs incurred up to the effective date of termination; however, adjustment of costs will be made to ensure the Cost-Share Ratio is met. Parties may agree to renegotiate a subsequent contract.
- (b) After the stage covered by subsection (a) above, and prior to Substantial Completion of the Anderson Ranch Dam Raise Project, this contract may be terminated by:
  - (i) The Board sending notice of termination to Reclamation.

- (ii) Reclamation, if adequate funding is not forthcoming during construction of the Anderson Ranch Dam Raise Project. Reclamation shall provide the Board written notice of intent to terminate and allow the Board sixty days to pay all amounts due. If the Board does not pay all amounts due within the sixty-day period, termination of this contract is effective. Upon such termination, the Board is liable for all costs associated with necessary remediation actions. Payment for remediation will be negotiated before solicitation of the construction contract in conjunction with section 4.2(b).

#### **2.4 Project Development Actions**

- a) General. Reclamation and the Board will coordinate and cooperate in undertaking actions associated with the successful development of the Anderson Ranch Dam Raise Project and allocation of associated benefits, including acquiring the water right(s) to fill the New Space, and undertaking all other reasonably related actions, which include actions more specifically delineated in Exhibit A. The Board will undertake actions assigned to it under Article 2.4, Project Development Actions. The Board agrees that Exhibit A may be updated from time to time by Reclamation with the concurrence of the Board without amending this contract.
- b) Costs and Cost-Share. The total design and construction costs of the project are estimated at a Feasibility Level to be \$83.3 million, not including applicable interest during construction. Costs for the work described in Article 2.4 will be shared between the Board and Reclamation at the Cost-Share Ratio. Part of the Board's cost share may be provided as in-kind services. In-kind services may include, but not be limited to, services by Board personnel and contracting costs related to the management and execution of the project. Valuation of in-kind services shall be in accordance with 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87).
- c) Payment. Payment from the Board for costs will be pursuant to Article 2.5.

#### **2.5 Board Advancement of Funds**

- a) General. The Board will provide funds to cover Reclamation's actions in advance at a rate that at least meets the Board's Cost-Share Ratio. Reclamation will bill the Board periodically to keep expenses for the year at the Cost-Share Ratio. If it is determined that additional funds are necessary for Reclamation's continued performance of the initially scheduled tasks, additional funds must be approved, in writing, by the parties, and received by Reclamation prior to Reclamation incurring additional costs. In the event that additional funds are not received, the Board acknowledges that Reclamation will cease work and cannot resume working on these tasks until Reclamation holds sufficient funds in its account(s). Reclamation shall deposit funds advanced by the Board into a Reclamation account for use on the Anderson Ranch Dam Raise Project. Reclamation shall hold the Board funds separate from all other funds and shall not

commingle those funds with any other funds. Reclamation shall return all unexpended funds within 60 days after termination of this contract or completion of construction.

b) Method of making payment. The Board shall make all advanced payments payable to the Bureau of Reclamation upon receipt of the billing invoice, by remitting payments electronically or to Reclamation's lock box at:

Bureau of Reclamation  
Region: Columbia-Pacific Northwest (CPN)  
P.O. Box 301501  
Los Angeles, CA 90030-1501

The Board shall notify Reclamation prior to each deposit of payment by sending an electronic notification via email address that Reclamation will provide. Reclamation uses the Automated Clearinghouse Vendor Express payment system for electronic funds transfer (EFT) between the government and the Board's financial institution along with explanatory information regarding the payment. The form required to implement the Vendor Express system is the SF-3881, ACH Vendor/Miscellaneous Payment Enrollment Form. As needed, Reclamation shall send the SF-3881 to the person listed above to gather the financial institution and bank account information. Unexpended funds will be returned to the Board by EFT unless the Board qualifies for exemption from this payment method.

#### **2.6 Adjustment of Costs to Ensure Cost-Share Ratio is Maintained**

At least annually, and upon termination, there shall be an adjustment of costs. If Reclamation has paid more than its share of the Cost-Share Ratio, the Board will make payment necessary to ensure Reclamation has not paid more than its cost share portion.

#### **2.7 Reimbursement of Costs to Board if Reclamation Contracts With Others.**

In the event Reclamation contracts with other individuals or entities for New Space associated with the Dam Raise, Reclamation agrees that such contract(s) will require a prorated reimbursement to the Board of costs incurred by the Board up to the effective date of such contract(s). The costs incurred by the Board will include the Board's costs under the 2018 MOA subject to the greater of 3.5% interest or the Board's current interest rate, calculated from effective date of the 2018 MOA.

#### **2.8 Assignment or Partial Assignment of Contract**

No assignment or partial assignment of this contract or any right or interest therein, except for agreements entered into by the Board pursuant to Article 5.6, shall be valid unless approved in writing by the Contracting Officer.

#### **2.9 Savings Clause**

If any provision of this contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of this contract and the application of such provision to other persons or circumstances, shall not be affected thereby and shall be enforced unless doing so would result in such a material change as to cause a loss of fundamental benefits otherwise afforded to either

party.

### **2.10 Contract Provisions Subject to Issuance of ROD**

It is understood by the Parties that terms of this contract, other than those related to Article 3, will be subject to and contingent upon Reclamation's issuance of a final decision to allow construction to proceed after issuance of a Final EIS and ROD. Further, it is the understanding of the parties that the provisions of this contract may be modified by mutual agreement to ensure consistency with the ROD, following issuance of a ROD, if the Anderson Ranch Dam Raise Project is approved.

## **3. COMPLETION OF PLANNING PHASE**

### **3.1 Planning-Level Design Work, Final EIS and ROD**

Reclamation will proceed diligently to complete: (1) design work required to determine the extent of mitigation necessary to offset impacts to Existing Spaceholders, and (2) preparation and issuance of a Final EIS and ROD, which will include, among other things, determination of appropriate mitigation consisting of replacement water so as not to impact Existing Spaceholders. Allocation and payment of costs associated with Planning Level Design and environmental compliance work through issuance of a ROD is covered by the 2018 MOA.

### **3.2 Commencement of Construction As Defined by the WIIN Act**

Reclamation will commence Construction As Defined By The WIIN Act on or before December 16, 2021, which will include initiating Final Design of the Dam Raise or preparatory work on the Rim Projects. Work for the Rim Projects will consist of relocating or replacing assets to the extent authorized by law. Costs for the work described in this paragraph will be shared between the Board and Reclamation in accordance with the Cost-Share Ratio defined in Art 2.2. The commencement of construction under this Article 3.2 will satisfy the requirements of Section 4011(f)(2) of the WIIN Act.

## **4. CONSTRUCTION PHASE**

### **4.1 Water Right**

Prior to Reclamation's solicitation of a construction contract, permit(s) for the diversion and storage of water for the Anderson Ranch Dam Raise Project shall be obtained from the IDWR. The Board and Reclamation agree to cooperate in taking all reasonably necessary actions to obtain permit(s) from IDWR. The Board further agrees that, following issuance of the ROD, it will take the necessary steps to ensure Reclamation owns the portion of the water right application or permit, as the case may be, attributable to the ten percent (10%) of the New Space to be held by Reclamation. The parties agree to negotiate the ownership of the water right between the United States and the Board for the remaining 90% of the New Space.

### **4.2 Payment of Advance Funds**

a) For the design phase of the contract Reclamation will bill the Board at 6-month intervals in advance for costs that Reclamation will incur during the following 6 months.

b) Prior to soliciting the construction contract, the Board shall tender payment or provide such other security, as agreed to by the parties, to: (1) ensure adequate funding available for Reclamation to solicit and enter into a construction contract for final construction of the Anderson Ranch Dam Raise Project; and (2) ensure adequate funding is available in the event the contract is terminated prior to Substantial Completion and the Board is required to remediate the site to conditions acceptable to the Contracting Officer.

#### **4.3 Construction Completion**

Reclamation will complete final construction of the Anderson Ranch Dam Raise Project in compliance with the Project Management Plan and Final Design.

#### **4.4 Mitigation of Impacts to Existing Spaceholders**

As set forth in the ROD, as applicable, Reclamation will take such actions, including execution of agreements and rentals of water through the Idaho Water Supply Bank, as needed, to ensure Existing Spaceholders are mitigated for any shortage of water during construction of the Anderson Ranch Dam Raise Project.

#### **4.5 Final Cost Allocation and Adjustment of Construction Costs**

Pursuant to Reclamation Manual Policy, Directives and Standards, after construction is substantially complete, Reclamation will conduct a final cost allocation using the same allocation methodology as the initial cost allocation. If there is a change in the cost allocation distribution between Federal and non-Federal purposes, an adjustment of relevant costs will occur. The pool of costs potentially subject to the adjustment will include all costs covered by this contract. If the adjustment results in a greater Federal cost assignment, the United States will not pay more than the \$10,000,000 that Congress has appropriated as of the effective date of this contract, unless Congress appropriates additional funds for this purpose by specifically increasing the appropriations by name in an Appropriations Act consistent with WIIN Act §4007(g)(2). The Board reserves the right to seek additional appropriations for the Federal portion of the cost share. If appropriations are not forthcoming, the parties agree to discuss the issue and if agreeable to both parties at that time, the parties may renegotiate the volume of space the United States will receive from the project.

#### **4.6 Title to Remain with United States and Treated as Reserved Works**

Title to Anderson Ranch Dam including any physical structure of the Anderson Ranch Dam Raise Project will remain with the United States and will be treated as reserved works operated and maintained by the United States.

## **5. WATER SUPPLY AND OPERATIONS**

## **5.1 General**

The terms in Article 5 will take effect after Substantial Completion of the Anderson Ranch Dam Raise.

### **5.1 Reservoir Space**

Contracted Space: The Contracting Officer will make available to the Board stored water accruing to ninety percent (90%) of the New Space, subject to the following provisions:

a) Following Substantial Completion of construction of the Dam Raise, the New Space will be added to the existing active capacity of Anderson Ranch Reservoir, which as of the effective date of this contract, is treated as 413,074 acre-feet at elevation 4196 feet. When the New Space is added to existing active capacity, the new active capacity of Anderson Ranch Reservoir will be 442,219 acre-feet at elevation 4202 feet. The New Space will be 6.59 percent of new active capacity of Anderson Ranch Reservoir and will be treated as 29,145 acre-feet.

b) While the Board's storage rights are defined in terms of active capacity in Anderson Ranch Reservoir, the Contracting Officer shall have the right, without change in the Board's obligations with respect to those storage rights, to store water accrued to those rights in any storage capacity available to it or to supply a like amount of water from other sources, by exchange or otherwise, so long as delivery for the Board of all stored water to which it is entitled under this Contract is not in any way impaired.

c) The New Space will not be added to existing Boise Reservoir System flood control space requirements.

d) The space made available to the Board, under this contract will be equivalent to 5.93 percent ( $26230/442219 = 5.93\%$ ) of the new active capacity of Anderson Ranch Reservoir and will be treated as 26,230.5 acre-feet ( $29145 * 0.9 = 26230.5$ ); provided, however, the active capacity available to the Board under this contract may be adjusted from time to time by the Contracting Officer whenever there are determinations as a result of standard procedures (sedimentation study, *etc.*) that the new active capacity is other than as stated above.

### **5.2 Water Supply**

a) Natural flow in the South Fork of the Boise River at Anderson Ranch Dam will accrue to the New Space pursuant to water right(s) issued by IDWR.

b) Stored water accruing to the New Space will fill with a like priority and be allocated proportionately among the New Space. In determining the amount of stored water available, losses incidental to storage will be prorated equally over all inactive and active space in Anderson Ranch Reservoir; provided, however, the New Space will not be subject to losses resulting from flood control operations.

c) The allocation of storage, including carryover storage, to the Board shall be determined by the Contracting Officer pursuant to this contract and Federal Reclamation Law. The Contracting Officer will, subject to operational constraints, operate the reservoir system so as to store under applicable storage rights all available water, and the Contracting Officer will make available to the Board, the Board's

proportionate share of the stored water that accrues in each year to the New Space, together with any stored water that may have been held over by the Board pursuant to paragraph 5.4.

d) The Board agrees not to bring any claims against the United States resulting from the diversion into storage, storage, regulation and release of water by the United States for the account of the Board. The Board will also include the following language into its lease agreements: “The Water User hereby releases the United States, the State of Idaho and the Board and agrees to hold the United States, the State of Idaho and the Board free and harmless from all damage claims that might result from the diversion into storage, storage, regulation and release of water by the United States for the account of the Board.”

e) The United States temporarily may reduce water storage, as may be necessary, for the purpose of investigation, inspection, maintenance, repair, or replacement of any of the facilities of Anderson Ranch Dam and Reservoir. So far as it is feasible, however, the Contracting Officer will give the Board reasonable notice in advance of such temporary reduction except in cases of emergency, when notice need not be given.

### **5.3 Delivery**

a) Reclamation will operate Anderson Ranch Reservoir so as to deliver all the water to which the Board is entitled under this Contract within the capacity limits of the Reservoir and having regard for other existing rights which must be supplied therefrom. Deliveries of stored water shall be limited at any time to the amount which can be delivered by means of the Board’s proportionate share of the outlet capacity needed for delivery downstream, taking into account the requirement of passing through the Reservoir water belonging to prior rights and the physical limitation of the existing outlet works. The Board shall conform its diversions to the control of the stream as established by the Watermaster.

b) In determining the amount of stored water delivered downstream of Lucky Peak Dam, the point of measurement shall be the outlet works of Lucky Peak Dam. In determining the amount of stored water delivered to a point of delivery directly out of the Boise Reservoir System, the point of measurement shall be at that particular point of diversion.

c) The United States shall not be liable or responsible for the carriage, distribution, or diversion of water after its release from the point of measurement, or for any loss or damage of any type or description arising therefrom.

d) The distribution of the water below the point of measurement is the responsibility of the Watermaster or other designated official of the State. The costs of distribution by the Watermaster shall be the responsibility of the Board pursuant to state law.

### **5.4 Holdover**

a) The Board may hold over in Anderson Ranch Reservoir water from prior water years only to the extent that the total amount of stored water held to the credit of the Board for any season shall not exceed the amount which can be stored in the Board’s proportionate share of the New Space.

b) The Contracting Officer may itself exercise such holdover rights in any uncontracted portion of

the New Space.

- c) Water held over in the New Space shall not be reduced as a result of flood control operations.

#### **5.5 Constraints on the Availability of Water and No Liability for Shortages**

In operation of the Boise Reservoir System, 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 Board pursuant to this contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Board of said determination as soon as practicable; provided, however, notwithstanding any other provision of the contract, no liability shall accrue against the United States or any of its officers, agents, or employees for damage, direct or indirect, arising by reason of shortages in the quantity of water available to the Board under this contract or interruptions in water deliveries to facilities of the Board resulting from drought or other physical or natural causes, inaccuracy in distribution or runoff forecasting or similar operation, hostile diversion, prior or superior claims, maintenance of, accident to or failure of facilities of the United States, whether or not attributable to negligence of officers, agents, or employees of the United States, or actions taken by the Contracting Officer to meet current or future legal obligations, or other causes of whatsoever kind.

#### **5.6 Lease of Stored Water**

The Board may enter into lease agreements for water stored in the Board's space under such terms and conditions, including the setting of rates, determined by the Board without further approval of the Contracting Officer; provided however, that such lease agreements shall be in substantial compliance with the Feasibility Report and ROD; and provided further, that any such lease agreement for the lease of water shall not create a third-party beneficiary to this contract.

#### **5.7 Annual OM&R charges**

a) Reclamation will bill the Board annually for its proportionate share of the costs of OM&R of Anderson Ranch Dam, which the Feasibility Report established for the New Space as 3.33% of the total OM&R cost of Anderson Ranch Dam, based on an estimate of 29,000 acre-ft of New Space. This translated to 3.35% for the refined volume of 29,145 acre-ft of New Space. The 3.35% of Anderson Ranch OM&R costs would be further allocated between Reclamation and the Board based on the Alternative Justified Expenditure (AJE) methodology. Any future approved change in either OM&R rate formula or the AJE methodology would be correspondingly reflected in proportionate and across-the-board changes to the New Space to maintain consistency to all reservoir storage. Notice of OM&R costs due will be sent by Reclamation before April 1 of the calendar year covered by the Notice. OM&R costs are due by May 1 of each year. The Date for OM&R costs to be paid may be changed by documented agreement of the parties.

b) Whenever, in the opinion of the Contracting Officer, funds so advanced will be inadequate to operate and maintain the Project, the Contracting Officer may give a written supplemental OM&R charge notice stating therein the amount of the Board's share, based upon its percentage of active capacity, of

additional funds required as determined by the Contracting Officer, and the Board shall advance that additional amount on or before the date specified in the supplemental notice. Provided, however, except for an emergency situation as defined in the Standard Operating Procedures for the Project, the payment date specified in the supplemental notice shall be at least 90 days from the date of delivery of the notice to the Board. If funds advanced by the Board under this article exceed the Board's share of the actual cost of the OM&R of the Project for the year for which advanced, the surplus shall be credited on the OM&R charges to become due for succeeding years. Upon written request from the Board, the Contracting Officer shall provide a written accounting each year to the Board of the costs to be paid by the Board.

c) The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The Contracting Officer shall not make water available to the Board through Project facilities during any period in which the Board is in arrears in the advance payment of any OM&R charges due the United States.

d) Notwithstanding any other provision of this contract, the Board shall be in breach at any time it is more than twelve (12) months in arrears in the payment of OM&R costs. In the event of such breach, the Contracting Officer shall meet and confer with the Board to determine an appropriate remedy. If the Contracting Officer and the Board cannot reach agreement on an appropriate remedy within twenty-four months of the initial conference date, the Contracting Officer may exercise against the Board any and all rights and remedies for breach of contract.

### **5.8 Charges for Delinquent Payments**

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

### **5.9 Safety of Dams**

Upon Substantial Completion of the Anderson Ranch Dam Raise Project, in the event of a Safety of Dams Project for Anderson Ranch Dam pursuant to the Safety of Dams Act of 1978 as amended, 43 U.S.C. et seq. (SOD Act), the Board would be considered a project beneficiary, along with the Existing Spaceholders, under the SOD Act regarding repayment of reimbursable costs incurred by the United States.

## **6. STANDARD ARTICLES**

### **6.1 Notices**

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

Regional Director, Columbia-Pacific Northwest Region  
Bureau of Reclamation  
1150 N. Curtis Road, Suite 100  
Boise ID 83706

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

Chairman, Idaho Water Resources Board  
P.O. Box 83720  
Boise, ID 83720-0098

or delivered to:

322 E. Front St., Suite 648  
Boise, ID 83702

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.

### **6.2 Contingent on Appropriation or Allotment of Funds**

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 Federal appropriation or allotment of funds shall not relieve the Board from any obligations under this contract.

No liability shall accrue to the United States in case funds are not appropriated or allotted.

Reclamation agrees that all obligations of the Board, including the continuance of payments under Section 5 of this Contract, are contingent upon the availability and continued appropriation of funds.

### **6.3 Officials Not to Benefit**

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

landowners.

#### **6.4 Books, Records, and Reports**

The Board shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the Board's financial transactions related to this contract; water delivery 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. All materials are subject to state and federal public disclosure laws.

#### **6.5 Water Conservation**

Prior to the delivery of water provided from or conveyed through federally constructed facilities pursuant to this contract, the Board or water users shall develop water conservation plan(s) consistent with that required by subsection 210(b) of the Reclamation Reform Act of 1982, except water users who deliver water under this contract 1) to less than 2,000 acres of land, 2) only for M&I use and to fewer than 3,300 people, or 3) at a total average annual rate of less than 2,000 acre-feet. Water users who have existing water conservation plans described above are not required to develop new water conservation plans under this contract.

#### **6.6 Protection of Water and Air Quality**

(a) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Board and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Board.

(b) The Board will comply with all applicable water and air pollution laws and regulations of the United States and the State of Idaho and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Board; and will 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 Board facilities or project water provided by the Board.

(c) This article will not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

#### **6.7 Equal Employment Opportunity**

During the performance of this contract, the Board agrees as follows:

(a) The Board will not discriminate against any employee or applicant for employment because

of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Board 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, sexual orientation, gender identity, 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 Board 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 Board will, in all solicitations or advancements for employees placed by or on behalf of the Board, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The Board will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Board's legal duty to furnish information.

(d) The Board will send to each labor union or representative of workers with which the Board has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Board's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) The Board will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The Board will furnish all information and reports required by Executive Order No. 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 the Board's 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.

(g) In the event of the Board'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 Board may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other

sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The Board 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 No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Board 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 Board becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Board may request the United States to enter into such litigation to protect the interests of the United States.

### **6.8 Compliance with Civil Rights Laws and Regulations**

(a) The Board shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.)] [Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.)], and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being 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 Board 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 Board makes this contract 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 Board 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 Board 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 Board shall be investigated by the Contracting Officer's Office of Civil Rights.

## **6.9 Certification of Nonsegregated Facilities**

The Board hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Board agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. The Board further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

### **NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

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

## **6.10 Medium for Transmitting Payments**

(a) All payments from the Board 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 the contract, the Board shall furnish the Contracting Officer with the Board's taxpayer's identification number (TIN). The purpose for requiring the Board's TIN is for collecting and reporting any delinquent amounts arising out of the Board's relationship with the United States.

### **6.11 Confirmation of Contract**

Promptly after the execution of this contract, the Board will provide evidence to the Contracting Officer that, pursuant to the laws of the State of Idaho the Board is a legally constituted entity and the contract is lawful, valid, and binding on the Board. This contract will not be binding on the United States until the Board provides evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet the requirements of this Article, the Board may provide or the Contracting Officer may require a certified copy of a final decree of a court of competent jurisdiction in the State of Idaho, confirming the proceedings on the part of the Board for the authorization of the execution of this contract.

### **6.12 Rules, Regulations, and Determinations**

(a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this contract that are consistent with its expressed and implied provisions, the laws of the United States and the State of Idaho, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Board.

### **6.13 Relocation Assistance and Real Property Acquisition**

When acquiring land or an interest in land and relocating persons or personal property in connection with the construction, operation, and maintenance of project facilities, the Board shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894; 42 U.S.C. § 4601, et seq.) and Department of Transportation regulations at 49 C.F.R. part 24.

### **6.14 Dispute Resolution**

The Parties shall attempt to resolve all claims, disputes, controversies, or other matters in question between the Parties arising out of, or relating to this contract promptly, equitably, and in good faith.

### **6.15 Limitation of Liability**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Contract. Nothing herein shall be deemed to increase the Party's liability beyond the limitations of the current Idaho Tort Claims Act (Idaho Code § 6-901-929), to the extent that the Act is applicable. Nothing herein shall be deemed to increase the liability of the United States beyond the provisions of the Federal Tort Claims Act (28 U.S.C. § 1346(b), 2671 et seq.) or other applicable law.

**6.16 No Third-Party Beneficiaries**

This Agreement is not intended, nor shall it be construed to create any third-party beneficiary rights to enforce the terms of this Agreement.

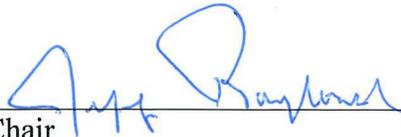
**6.17 Governing Law**

This contract shall be interpreted, governed by, and construed under applicable Federal law and any applicable provision of Idaho state law. In case of a conflict between Federal law and Idaho state law, Federal law controls. To the extent permissible under Federal Rules of Civil Procedure and other applicable Federal authority, the venue for adjudication of any disputes under this contract shall be in appropriate Federal court.

**6.18 Contract Drafting Considerations**

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 and 6.4, 6.5, 6.13-6.17 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.

**IDAHO WATER RESOURCES BOARD**

By:   
Chair  
Idaho Water Resource Board  
322 E Front Street  
Boise, ID 83702

**UNITED STATES OF AMERICA**

By:   
Acting Regional Director  
U.S. Bureau of Reclamation  
Columbia-Pacific Northwest Region  
1150 N. Curtis Road  
Boise, ID 83706

STATE OF IDAHO

COUNTY OF Ada

On this 19<sup>th</sup> day of November, 2021, personally appeared before me Jeff Raybould, known to me to be the official of the **Idaho Water Resource Board** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the **Idaho Water Resource Board**, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.

*[Handwritten signature]*

Notary Public in and for the State of Idaho

Residing at: Boise, ID

My commission expires: 2/17/2022

(SEAL)

\*\*\*\*\*

STATE OF IDAHO

COUNTY OF Ada

On this 15<sup>th</sup> day of November, 2021, personally appeared before me Roland K Springer, known to me to be the official of the **UNITED STATES OF AMERICA** that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said **UNITED STATES OF AMERICA**, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.

*[Handwritten signature]*

Notary Public in and for the State of Idaho

Residing at: Meridian ID

My commission expires: 6/2/2024

(SEAL)



**EXHIBIT A**

**ACTIONS FOR ANDERSON RANCH DAM RAISE PROJECT**

<b>Activity</b>	<b>In-Kind Services Eligible</b>
Project management and miscellaneous support	X
Leadership Oversight	X
Management Oversight	X
General project administration	X
Securing Water Rights Permit	X
If necessary, establish agreements with key project partners regarding planning, design, and construction activities	X
Reservoir Rim Projects	Eligible only upon prior approval of the Contracting Officer of this Contract (No. 21WN102130)
Complete all Federal permitting and mitigation	
If necessary, acquire lands, easements, and rights-of-way	
Complete additional surveys and geotechnical investigations for final designs	
Risk Analysis	
Value Engineering Study	
Final Design (including 30%, 60%, 90%, 100% design packages)	
Prepare solicitation packages	
Contract Solicitation	
Perform construction management and construction contract administration	
Construct the new project facilities, including mitigation	
Prepare a final cost allocation	