* 1. **Option A:** Standard Indemnification Clause.

OPERATION, MAINTENANCE, AND REPLACEMENT OF TRANSFERRED WORKS

(Federal Construction)

* + 1. Upon substantial completion of transferred works, or as otherwise determined by the Contracting Officer, and following written notification, the operation, maintenance, and replacement responsibilities for any or all of those works may be transferred to the Contractor. Title to the transferred works will remain in the name of the United States, unless otherwise provided by the Congress of the United States.
    2. The Contractor, without expense to the United States, will care for, operate, and maintain the transferred works, including necessary replacements, in full compliance with the terms of this contract and in such a manner that the transferred works remain in good and efficient condition.
    3. Necessary repairs of the transferred works will be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, maintenance, and replacement of the transferred works threatening or causing interruption of water service, the Contracting Officer may issue to the Contractor a special written notice of those necessary repairs. Except in the case of an emergency, the Contractor will be given 60 days to either: 1) make the necessary repairs, or 2) submit a plan for accomplishing the repairs that contains a timeframe for completing the necessary repairs acceptable to the Contracting Officer. In the case of an emergency, or if the Contractor fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs will be paid by the Contractor as directed by the Contracting Officer. The Contracting Officer will determine whether an emergency exist requiring immediate repairs or if circumstances will allow for repairs to be made, or a plan to be submitted, within 60 days of receipt of notice.
    4. The Contractor will not make any substantial changes in the transferred works without first obtaining written consent of the Contracting Officer.
    5. The Contractor will take all reasonable measures to prevent any unauthorized encroachment on project land and rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its existence.
    6. Except for the sole negligence and intentional torts committed by employees of the United States, the Contractor agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character, brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, and replacement; and supervision, examination, inspection, or other duties of the Contractor or the United States on transferred works required under this contract, regardless of who performs those duties.
    7. The Contractor will cooperate with the Contracting Officer in implementing an effective dam safety program. The United States agrees to provide the Contractor and the

appropriate agency(ies) of the State(s) in which the project facilities are located with design data, designs, and an operating plan for the dam(s) and related facilities consistent with the current memorandum of understanding between the United States and the State(s) of \_\_\_\_\_ relating to the coordination of planning, design, construction, care, operation, maintenance, and replacement processes for dams and related facilities.

* + 1. In the event the Contractor is found to be operating the transferred works or any part thereof in violation of this contract or the Contractor is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this contract, then upon the election of the Contracting Officer, the United States may take over from the Contractor the care, operation, maintenance, and replacement of the transferred works by giving written notice to the Contractor of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer, the Contractor will pay to the United States, annually in advance, the cost of care, operation, maintenance, and replacement of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer, the care, operation, maintenance, and replacement may be transferred back to the Contractor.
    2. In addition to all other payments to be made by the Contractor under this contract,

the Contractor will reimburse to the United States, following the receipt of a statement from the Contracting Officer, all miscellaneous costs incurred by the United States for any work involved in the administration and supervision of this contract.

* + 1. Nothing in this article will be deemed to waive the sovereign immunity of the United States.
  1. **Option B:** Insurance Policy Alternative

OPERATION, MAINTENANCE, AND REPLACEMENT OF TRANSFERRED WORKS

(Federal Construction)

* + 1. Upon substantial completion of transferred works, or as otherwise determined by the Contracting Officer, and following written notification, the operation, maintenance, and replacement responsibilities for any or all of those works may be transferred to the

Contractor. Title to the transferred works will remain in the name of the United States, unless otherwise provided by the Congress of the United States.

* + 1. The Contractor, without expense to the United States, will care for, operate, maintain, and replace the transferred works in full compliance with the terms of this contract and in such a manner that the transferred works remain in good and efficient condition.
    2. Necessary repairs of the transferred works will be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, maintenance, and replacement of the transferred works threatening or causing interruption of water service, the Contracting Officer may issue to the Contractor a special written notice of those necessary repairs. Except in the case of an emergency, the Contractor will be given 60 days to either: 1) make the necessary repairs, or 2) submit a plan for accomplishing the repairs that contains a timeframe for completing the necessary repairs acceptable to the Contracting Officer. In the case of an emergency, or if the Contractor fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs will be paid by the Contractor as directed by the Contracting Officer. The Contracting Officer will determine whether an emergency exist requiring immediate repairs or if circumstances will allow for repairs to be made or a plan to be submitted within 60 days of receipt of notice.
    3. The Contractor will not make any substantial changes in the transferred works without first obtaining written consent from the Contracting Officer.
    4. The Contractor will take all reasonable measures to prevent any unauthorized encroachment on project land and rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its existence.
    5. The Contractor agrees to carry a commercial general liability insurance policy that covers all actions arising out of the Contractor’s care, operation, maintenance, and replacement of the transferred works or any other actions taken by the Contractor or the United States under the terms of this contract. The Contractor will ensure that the United States is named as an additional insured party in the insurance policy. Except for the sole negligence or intentional torts committed by employees of the United States, the Contractor will indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character that are not covered by the commercial general liability insurance policy, brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, and replacement; and supervision, examination, inspection, or other duties of the Contractor or the United States on transferred works required under this contract, regardless of who performs those duties. The Contractor agrees to provide annual adjustments to the commercial general liability insurance policy based on fluctuations to all costs associated with the policy, and supplement the general policy, as necessary, to ensure the agreed upon and adequate coverage is maintained throughout the term of this contract.
    6. The Contractor will cooperate with the Contracting Officer in implementing an effective dam safety program. The United States agrees to provide the Contractor and the appropriate agency(ies) of the State(s) in which the project facilities are located with design data, designs, and an operating plan for the dam(s) and related facilities consistent with the current memorandum of understanding between the United States and the State(s) of \_\_\_\_\_\_\_

relating to the coordination of planning, design, construction, operation, maintenance, and replacement processes for dams and related facilities.

* + 1. In the event the Contractor is found to be operating the transferred works or any part thereof in violation of this contract or the Contractor is found to be failing any financial

commitments or other commitments to the United States under the terms and conditions of this

contract, then upon the election of the Contracting Officer, the United States may take over from the Contractor the care, operation, maintenance, and replacement of the transferred works by giving written notice to the Contractor of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer, the Contractor will pay to the United States, annually in advance, the cost of care, operation, maintenance, and replacement of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer the care, operation, maintenance, and replacement may be transferred back to the Contractor.

* + 1. In addition to all other payments to be made by the Contractor under this contract, the Contractor will reimburse to the United States, following the receipt of a statement from the Contracting Officer, all miscellaneous costs incurred by the United States for any work involved in the administration and supervision of this contract.
    2. Nothing in this article will be deemed to waive the sovereign immunity of the United States.