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

OPERATION, MAINTENANCE, AND REPLACEMENT OF PROJECT WORKS

(Federally Assisted Construction)

* + 1. The Contractor, without expense to the United States, will care for, operate, maintain, and replace the project works in full compliance with the terms of this contract and in such a manner that the project works remain in good and efficient condition.
    2. Necessary repairs of the project 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 project 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 requires an expedited timeframe to

complete the repairs or if circumstances will allow for a plan to be submitted within 60 days of receipt of notice.

* + 1. 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, except for the sole negligence and intentional torts committed by employees of the United States, 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 project works required under this contract, regardless of who performs those duties.
    2. The Contractor, as owner and/or operator of the dam(s) and reservoir(s) being constructed, modified, or rehabilitated with reimbursable funds being provided by the United States under provisions of this contract, accepts all responsibility for the structural integrity and safety of the dam(s) and related facilities being constructed, modified, or rehabilitated. The Contractor hereby releases the United States and its officers and employees from any liability whatsoever relating to the coordination of planning, design, construction, care operation, maintenance, and replacement for dams and related facilities.
    3. The Contractor will implement an effective dam safety program acceptable to the State(s) of in which the facilities are located and consistent with the safety of dam(s) components of the approved contracting authority providing the basis for this contract. If, for any reason, the State(s) decline(s) to review the Contractor’s dam safety program, the Contractor will implement an effective program acceptable to the Contracting Officer. The Contractor agrees to provide the appropriate agency(ies) of the State(s) 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, care construction, operation, maintenance, and replacement processes for dams and related facilities.
    4. The Contractor agrees to request that the State(s) examine and evaluate the dam(s) and related facilities at least once every 3 years for structural integrity and safety. If, for any reason, the State(s) decline(s) to inspect the facilities at 3-year intervals, the Contractor will, at a minimum, cause safety examinations and evaluations to be performed at 3-year intervals, at its own expense, by a qualified and impartial third party acceptable to the State(s) of

and the Contracting Officer. The Contracting Officer will be afforded an opportunity to observe the safety of dam(s) examinations and will be provided copies of reports and recommendations relating to the safety examinations.

* + 1. In the event the Contractor is found to be operating the project 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 such project works by giving written notice to the Contractor of such election and of 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 responsibility for the care, operation, maintenance, and replacement of the works 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 the United States following the receipt of a statement from the

Contracting Officer for 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 PROJECT WORKS

(Federally Assisted Construction)

* + 1. The Contractor, without expense to the United States, will care for, operate, maintain, and replace the project works in full compliance with the terms of this contract and in such a manner that the project works remain in good and efficient condition.
    2. Necessary repairs of the project 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 project 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 requires an expedited timeframe to complete the repairs or if circumstances will allow for a plan to be submitted within 60 days of receipt of notice.

* + 1. 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 project 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 contract(s) applicable to the policy procured. Except in cases of 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 project works required under this contract, regardless of who performs those duties. The Contractor agrees to provide annual adjustments, as necessary, 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.
    2. The Contractor, as owner and/or operator of the dam(s) and reservoir(s) being constructed, modified, or rehabilitated with reimbursable funds being provided by the United States under provisions of this contract, accepts all responsibility for the structural integrity and safety of the dam(s) and related facilities being constructed, modified, or rehabilitated. The Contractor hereby releases the United States and its officers and employees from any liability whatsoever relating to the coordination of planning, design, construction, care, operation, maintenance, and replacement for dams and related facilities.
    3. The Contractor will implement an effective dam safety program acceptable to the State(s) of in which the facilities are located and consistent with the safety of dam(s) components of the approved contracting authority providing the basis for this contract. If, for any reason, the State(s) decline(s) to review the Contractor’s dam safety program, the Contractor will implement an effective program acceptable to the Contracting Officer. The Contractor agrees to provide the appropriate agency(ies) of the State(s) 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. The Contractor agrees to request that the State(s) examine and evaluate the dam(s) and related facilities at least once every 3 years for structural integrity and safety. If, for any reason, the State(s) decline(s) to inspect the facilities at 3-year intervals, the Contractor will, at a minimum, cause safety examinations and evaluations to be performed at 3-year intervals, at its own expense, by a qualified and impartial third party acceptable to the State(s) of

and the Contracting Officer. The Contracting Officer will be afforded an opportunity to observe the safety of dam(s) examinations and will be provided copies of reports and recommendations relating to the safety examinations.

* + 1. In the event the Contractor is found to be operating the project works or any art 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 such project works by giving written notice to the Contractor of such election and of 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 project works as determined by the Contracting Officer. Following written notification from the Contracting Officer, the

responsibility for the care, operation, maintenance, and replacement of the project works 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 the United States following the receipt of a statement from the Contracting Officer for 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.