

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

COLORADO RIVER STORAGE PROJECT
FLAMING GORGE STORAGE UNIT

CONTRACT FOR EXCHANGE OF WATER
GREEN RIVER BLOCK

BETWEEN THE UNITED STATES OF AMERICA
AND THE STATE OF UTAH

THIS CONTRACT, made this _____ day of _____, 20____, under the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof and supplementary thereto, and particularly the Colorado River Storage Project (CRSP) Act of April 11, 1956 (43 U.S.C. § 620, et seq.) (CRSP Act), and the Reclamation Project Act of 1939, Section 14 (43 U.S.C. § 389), all collectively referred to as the Federal Reclamation Laws, is between the UNITED STATES OF AMERICA (United States), [acting through the Bureau of Reclamation \(Reclamation\)](#), represented by the Contracting Officer executing this Contract, and the STATE OF UTAH, acting through the Utah Board of Water Resources (Board).

RECITALS

- a. The CRSP Act authorized construction and operation and maintenance (O&M) of facilities for the purposes of, among other things, making it possible for the states of the Colorado River Upper Basin, including the State of Utah, to utilize their apportionments of water under the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact (collectively Compacts).
- b. The United States constructed the Flaming Gorge (FG) Unit, as an initial storage unit of the CRSP, as authorized by the CRSP Act. The FG Unit is located on the Green River in the State of Utah, and impounds Flaming Gorge Reservoir, which lies within the States of Utah and Wyoming. Flaming Gorge Dam is located on the upper mainstem of the Green River in northeastern Utah.
- c. Below the FG Dam, the Green River supports populations of four endangered native fishes. The Upper Colorado River Endangered Fishes Recovery Program (Recovery Program) was established in 1988 under an agreement signed by the [United States](#)

[Bureau of Reclamation](#) (Reclamation) and the states of Colorado, Utah, and Wyoming to recover the endangered fishes while allowing for continued water development in the Upper Basin. Operation of the F-G Dam influences downstream flow and temperature regimes, the ecology of the Green River, and recovery of the native fishes. Downstream of the FG Dam, the Green River is joined by the Yampa, White, and Duchesne Rivers, and portions of each have been designated as critical habitat under provisions of the Endangered Species Act of 1973 (16 U.S.C. § 1531-1544) (ESA). Reclamation's current obligations for the recovery of the endangered fish in the Green River, through implementation of the ESA, were established in the 2006 Record of Decision (ROD) on the Operation of Flaming Gorge Dam Final Environmental Impact Statement (FEIS).

- d. Reclamation's commitment, as described in the FG ROD, is to manage FG Dam releases in Reach 1 (immediately below the dam) to meet Reach 2 flow targets, as measured with the United States Geological Survey (USGS) stream gauge on the Green River at Jensen, Utah. The assumption, based on the then projected hydrology and depletions in the 2006 ROD analysis, was that Reach 3 targets measured with the USGS stream gauge on the Green River at Green River, Utah, would be met once Reach 2 targets were met.
- e. The CRSP Act authorized the construction of sixteen participating projects, including the Central Utah Project (CUP). Because of its size and complexity, Reclamation divided the CUP into six units to be built in two phases. The "Initial Phase" of the CUP included four units, of which three have been fully constructed, with the remaining unit nearing completion. The "Ultimate Phase" of the CUP consisted of the Uintah and Ute Units, with only the Uintah Unit being partially developed. In 1992, in the Central Utah Project Completion Act (CUPCA)(Pub. L. 102-575), Section 501(a)(3), Congress stated that there is no present intent to proceed with Ultimate Phase construction.
- f. In 1996, Reclamation assigned the water right associated with the Ultimate Phase portion of the CUP, [No. 41-3479 \(A30414d\) \(as numbered by the Utah State Engineer\)](#), to the State of Utah, through the Board of Water Resources (Assigned Water Right), ~~when funding was curtailed~~. The Board desires to put the Assigned Water Right to beneficial use.
- g. The [March 12, 1996](#) Assignment agreement for the Assigned Water Right includes the provision "Upon release from Flaming Gorge Reservoir, said water right can be developed, diverted and perfected by the State of Utah as permitted by law. The State of Utah agrees that if it stores water in or benefits directly from the Colorado River Storage Project Facilities, the state of Utah will enter into a water service contract with the United States." (Assignment Provision).
- h. This Contract is one of two contracts that will satisfy the Assignment Provision. The Board is requesting to enter into two separate contracts for the Assigned Water Right: this contract is for the depletion of 72,641 acre-feet (AF) [of water](#) and is intended for the

development along the Green River (Green River Block), and the remaining 86,249 AF will be addressed under a separate and distinct contract, and is intended to be used in the Lake Powell Pipeline Project.

- i. The Board desires a legally conforming reliable water supply to develop the Assigned Water Right, and is willing to forbear the diversion of a portion of the high spring natural flows to which the State is entitled under the Compacts ~~and the Assigned Water Right~~, and allow these flows to contribute to meeting the ESA Recovery Program Requirements in Reaches 1 and 2. This will assist Reclamation in its obligations under the 2006 ROD, and in addition, the Reach 3 responsibilities of Recovery Program parties. The forgone diversions will assist the Recovery Program in meeting Reach 3 requirements. In exchange, the Board will deplete an equal amount of CRSP project water from releases from the FG Unit throughout the year. This Contract does not entitle the Board to call for releases from FG.
- j. Under Section 14 of the Reclamation Project Act of 1939, (43 U.S.C. § 389), the Secretary is authorized to “enter into such contracts for exchange...of water [or] water rights...as in his judgment are necessary and in the interests of the United States.”
- k. The Secretary has determined that this exchange is in the interests of the United States because it supports both the Board’s desire to develop its apportionment under the Compacts while improving Reclamation’s ability to meet flow recommendations.
- l. Under Utah Code section 73-10-14 the Board is authorized to enter into contracts with Federal agencies “on behalf of the state for any purpose which relates to the development, conservation, protection and control of the water and power resources of the state.” The Board authorized this contract because it will allow Utah to develop its water allocation under the Compacts while improving Reclamation’s ability to reach target flows for the endangered fishes.

NOW THEREFORE, in consideration of the mutual and dependent covenants herein contained, Reclamation ~~tes~~ and the Board agree as follows:

1. DEFINITIONS

For purposes of this Contract only, the following terms are given the definitions below:

- a. Assigned Water Right: means an interest in Application to Appropriate number A30414d (as numbered by the Utah State Engineer) for the diversion of 447,500 acre-feet with 158,800 acre-feet of depletion or segregated ~~portions~~ feet of A30414d water right from it and including change applications which have or will be filed based on the

~~A30414d assigned Water Right that application.~~ The Board will require, as a condition of its approval ~~for~~ change applications it must authorize, a Third-Party Contract with the Board that is consistent with the terms of ~~stems from~~ this Contract.

- b. Compact Entitlement Water: means the water under ~~Article XV(b)~~ Article III of the Upper Colorado River Basin Compact (“Upper Basin Compact”), where the Upper Basin Compact, under Article XV(b), which expressly recognizes each compacting state’s rights and powers to regulate within its boundaries the appropriation, use, and control of water apportioned and available to the states by the Colorado River and Upper Colorado River Basin Compacts.
- c. ESA Recovery Program Requirements: The FG ROD Commitment 10 requires coordination with the Recovery Program. A technical working group, consisting of biologists and hydrologists from Reclamation, the Western Area Power Administration, and the Fish and Wildlife Service, will annually propose to the existing Flaming Gorge Working Group an initial flow regime that implements, to the extent possible, the Flow and Temperature Recommendations. This process will concurrently fulfill informal consultation and coordination requirements of ESA for the action agencies.
- d. Project Water: means all CRSP water released from the Flaming Gorge Unit.
- e. Third-Party Contract: means any contract entered into between the Board and a third party for the beneficial use of the Assigned Water Right.

2. PURPOSE

The purpose of this Contract is to comply with the Assignment Provision and authorize the exchange of the Assigned Water Right for Project Water. Additionally, the purpose of this Contract is to support compliance with the 2006 ROD by both Reclamation and the Board.

3. OTHER AGREEMENTS AND OBLIGATIONS

- a. This Contract will not alter, modify, or amend the duties, responsibilities, relationships, or conditions outlined in any agreements not specifically mentioned in this Contract.
- b. This Contract does not alter, modify, or amend the ~~Board’s Assigned Wwater Right’s~~ Board’s Assigned Wwater Right’s priority dates, points of diversion or delivery, nature of or places of use, operations, or any other conditions not specifically mentioned in this Contract, nor does it result in any relinquishment of the Assigned Water Right ~~s established under the 1996 Assignment and Application to Appropriate number A30414d and which are the subject of this exchange contract.~~ s established under the 1996 Assignment and Application to Appropriate number A30414d and which are the subject of this exchange contract.

- c. Prior to the exchange of the Assigned Water Right for Project Water, the Board will be responsible for filing any necessary water right change applications, obtaining approval from the Utah State Engineer's Office, and providing copies to the United States at no cost to the United States.

4. TERM

This Contract begins on the date of execution, and will remain in effect for fifty (50) years, unless terminated under the provisions of this Contract. The Board may request renewal of this Contract by providing written request to the United States on or before two years prior to the date of expiration. The United States will provide the Board written notice of the renewal deadline at least sixty (60) days prior to the two year deadline. Failure of either Party by the Board to act request renewal will not result in act as an automatic termination of this Contract or preclude the opportunity for the Parties to renew the Contract. Such #Renewal shall be granted upon terms and conditions as may be mutually agreeable between the United States and the Board based upon Federal Reclamation laws and policy in effect at the time of renewal, and will include updated pricing, accounting, and contract term provisions.

5. TERMINATION

The terms and conditions of this Contract may be amended, or the Contract may be terminated on January 1 of any year, if the Board and the United States mutually agree in writing. It is the intent of the United States and the Board that this Contract remain in force for the full term of fifty (50) years, unless it is terminated or superseded by a mutually agreedment upon by another contract.

6. EXCHANGE OF WATER

For this exchange, the Board will forbear the depletion of a portion of the Green River and tributary flows to which it is entitled, and instead allow that portion of these Compact Entitlement Water rights to contribute to meeting the ESA Recovery Program Requirements in Reaches 1 and 2. This will assist Reclamation in meeting its obligation under the 2006 ROD. In exchange, the Board is authorized to deplete an equal amount of CRSP-pProject wWater from releases from the FG Unit throughout the year as water is needed for the Assigned Water Right. On an annual basis, the direct flows that will be left in the river and used to meet ESA requirements will equal the FG project releases used for depletion by the State under the Assigned Water Right. The Board will not make calls for releases from FG Unit storage, rather, it will use the CRSP-pProject wWater as it is released in accordance with the flexibility in Reclamation's operations under the 2006 ROD.

7. AMOUNT OF WATER TO BE EXCHANGED

- a. The Board and the United States acknowledge that the implementation of the exchange contemplated in this Contract remains subject to Reclamation’s Section 7 ESA Recovery Program requirements and obligations under the 2006 ROD.
- b. Each water year, the Board may deplete up to 72,641 acre-feet, which is the amount of water that would have been available to deplete under part of its Compact Entitlement Water and Assigned Water Right, but which has instead been forborne and designated to meet ESA Recovery Program Requirements in Reaches 1 and 2.

c. As a condition of approval for a change application for a segregated portion of the Assigned Water Right, State Engineer policy requires a contract consistent with the Assignment Provision. Obtaining a Third-Party Contract consistent with the terms of this Contract, as provided in Article 10, satisfies the Assignment Provision.

~~e.d. At the time of contract execution, 13,684 AF of the 72,641 AF which is the subject of this Contract has been developed. This 13,684 AF of water will not be available for exchange of Project Water under this Contract until such time that a new water right change application is filed on these developed portions. As a condition of approval for a change application for a segregated portion of the Assigned Water Right, State Engineer policy requires a contract consistent with the Assignment Provision. Obtaining a Third-Party Contract consistent with the terms of this Contract, as provided in Article 10, satisfies the Assignment Provision. As part of the response to a change application, the State Engineer policy requires these water rights holders to enter into an exchange agreement for FG Unit storage in a manner consistent with Third Party Contracts under this Contract, as provided in Article 10, below.~~

~~e.e. This Contract is intended only for the exchange of a portion of the Assigned Water Right for Project Water, and no other water right owned by the Board or any other person or entity. This Contract does not establish any precedent or right for other exchanges.~~

~~e.f. Additional releases from FG may be necessary to meet target flows in Reach 2 as a result of depletions under this Contract. In the event that Reach 2 target flows are not met through FG Unit operations, the Board will coordinate with Reclamation, the Recovery Program, and the Fish and Wildlife Service.~~

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8. RATE AND METHOD OF PAYMENT

- a. The Board agrees to make annual payments to the United States as compensation for the benefits received under this exchange Contract. This annual payment is based on the annual contract rate multiplied by the number of acre-feet depleted each year. The annual contract rate is \$ per AF (Contract Rate). The Contract Rate for each acre-foot of exchange water will be reviewed and adjusted every 5 years applying the Construction Cost Index.

~~b.~~ Each year, the Board will pay the United States a proportionate share of the annual operation and maintenance costs allocable to the consumptive use for the FG Unit. This amount is equal to \$3.37 per AF (O&M Assessment). This will be assessed on the amount of annual depletions that occur under Third-Party Contracts. ~~If the actual amount of depletion is different from the amount estimated for the annual payment, any adjustments will be made on the next annual billing.~~

~~e.b.~~ The sum of the Contract Rate and the O&M Assessment, multiplied by the number of AF depleted by the Board each year, will be the amount of “Annual Payment”. The first Annual Payment will be due upon execution of this Contract for the amount of depletions estimated to occur in the first year, based on the quantity of water under Third-Party Contracts. Subsequent payments will be made in advance, on or before February 1 of each year, as long as this contract is in effect. The Board will provide the Contracting Officer an estimate of annual depletions by December 1 of each year, based on the quantity of water under Third-Party Contracts, and the United States will bill the Board by January 1 of each year based upon such estimate, and the Board agrees to pay the United States within 30 days of receipt of said bill. If the actual amount of depletion in any year is different from the amount estimated for the ~~a~~Annual ~~p~~Payment, any adjustments will be made by the United States on the next annual billing.

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~~e.c.~~ The Board’s payments made under this Contract will be credited to the Basin Fund, as required by Section 5 of the Colorado River Storage Project Act, 43 U.S.C. 620d.

9. MEASUREMENT AND ACCOUNTING

- a. Water right applications will be filed with the Utah State Engineer in accordance with State Law for all diversions of exchanged ~~project~~ ~~Project~~ ~~water~~ ~~Water~~. The Board agrees that ~~these~~ applications ~~it must authorize~~ will:
- i. Establish the amount of exchange water each water user is entitled to divert and deplete; ~~and~~
 - ii. Establish the points of diversion. ~~and~~

~~b.~~ ~~The Board will require in all Third-Party Contracts:~~

~~That water users install metering devices on all exchange diversion points; and~~

~~e.~~ ~~That water users will provide to the Board annual reports of the AF quantity and beneficial uses of exchange ~~Project~~ ~~w~~Water depleted.~~

~~e.b.~~ The Board agrees to provide to the Contracting Officer an annual determination of the water available under the Assigned Water Right by the Utah Division of Water Rights, ~~and the River Commissioner.~~

~~e.c.~~ The Board will provide annual reports to the Contracting Officer that document, on at least a monthly basis, the ~~diversion-depletion~~ of the exchange water.

~~f.d.~~ The Board will hold the United States harmless for damage or claim of damage of any nature whatsoever, including property damage, personal injury or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of ~~suchProject w~~Water by the Board.

10. THIRD PARTY CONTRACTS

a. The Board will require, as a condition of its approval of the use of the Assigned Water Right and the filing of any change applications, a Third-Party Contract. These Third-Party Contracts will be between the Board and third-party contractors.

b. The Board will require in all Third-Party Contracts:

- i. That water users install metering devices on all exchange diversion points; and
- . That water users will provide to the Board annual reports of the AF quantity and beneficial uses of Project Water depleted.

~~a-ii.~~

~~b-a.~~ The Board will provide ~~the United StatesReclamation~~ a copy of each Third-Party Contract for the Assigned Water Right water within 30 days of execution.

~~e-b.~~ Third-party contracts entered into by the State for the Assigned Water Right do not create an additional obligation for the United States to satisfy obligations under those Third-Party Contracts beyond the amount provided for under this exchange Contract.

11. ENVIRONMENTAL COMPLIANCE

Compliance with the provisions of the National Environmental Policy Act (NEPA), as amended, and the Endangered Species Act (ESA), as amended, is a prerequisite to executing this Contract. Compliance was addressed through _____ completed [date].

12. SEVERABILITY

If any provisions of this Contract or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provisions to other persons or circumstances shall not be affected thereby and may be enforced to the greatest extent permitted by law.

13. NOTICES

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Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given to the United States, Reclamation, and the Contracting Officer, on behalf of the Board, when mailed, postage prepaid, or delivered to:

Regional Director
Upper Colorado Region
Bureau of Reclamation
125 South State Street
Room 8100
Salt Lake City, Utah, 84138-1102

and on behalf of the United States to the Board, when mailed, postage prepaid, or delivered to:

Director
Utah Division of Water Resources
1594 West North Temple
Salt Lake City, UT 84116
Or
Utah Division of Water Resources
PO Box 146201
Salt Lake City, UT 84114-6201

14. STANDARD PROVISIONS

The Standard Provisions applicable to this contract are listed below. The full text of these articles is attached as Exhibit A and is hereby made a part of this contract.

- a. CHARGES FOR DELINQUENT PAYMENTS
- b. GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT
- c. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS
- d. OFFICIALS NOT TO BENEFIT
- e. ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED
- f. BOOKS, RECORDS, AND REPORTS
- g. PROTECTION OF WATER AND AIR QUALITY
- h. RULES, REGULATIONS AND DETERMINATIONS
- i. EQUAL EMPLOYMENT OPPORTUNITY
- j. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
- k. CERTIFICATION OF NONSEGREGATED FACILITIES
- l. MEDIUM FOR TRANSMITTING PAYMENTS
- m. CONTRACT DRAFTING CONSIDERATIONS
- n. CONSTRAINTS ON THE AVAILABILITY OF WATER

DRAFT – SUBJECT TO CHANGE AND SOLICITOR REVIEW

Contract No. 17-WC-40-655
Technical DRAFT 10/0530/2017

The United States and the Board agree, by their signatures below, to be bound to this contract beginning on the date written above.

UNITED STATES OF AMERICA

Approved:

Regional Director
Bureau of Reclamation

Office of the Regional Solicitor

CONTRACTOR

State of Utah
Director, Utah Board of Water Resources

DRAFT

EXHIBIT A

STANDARD PROVISIONS

The Contractor, as referred to in the following Standard Provisions, shall be the State of Utah, acting through the Utah Board of Water Resources (Board).

(a) CHARGES FOR DELINQUENT PAYMENTS

(1) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor 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 Contractor 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 Contractor 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 Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(2) 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.

(3) 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.

(b) GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

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

(2) The payment of charges becoming due pursuant to this contract is a condition precedent to receiving benefits under this contract. The United States shall not make water available to the Contractor through CRSP project facilities during any period in which the Contractor is in arrears in the advance payment of water rates or any operation and maintenance charges due the United States. The Contractor shall not deliver water under the terms and conditions of this contract for lands or parties that are in arrears in the advance payment of water rates and operation and maintenance charges as levied or established by the Contractor.

(c) 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 appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

(d) OFFICIALS NOT TO BENEFIT

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

(e) ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

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

(f) BOOKS, RECORDS, AND REPORTS

The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract. 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.

(g) PROTECTION OF WATER AND AIR QUALITY

- (1) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer:
Provided, That the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.
- (2) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Utah; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall 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

Contractor facilities or Project water provided by the Contractor within the Contractor's Project Water Service Area.

- (3) This article shall not affect or alter any legal obligations of the Secretary of the Interior to provide drainage or other discharge services.

(h) RULES, REGULATIONS, AND DETERMINATIONS

(1) 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.

(2) 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(s) of Utah], and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

(i) EQUAL EMPLOYMENT OPPORTUNITY

(1) During the performance of this Contract, the Contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The Contractor 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, disability, 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 Contractor 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 Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.
- (c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, as amended (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (d) The Contractor will comply with all provisions of EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - (e) The Contractor will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his 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.
 - (f) In the event of the Contractor'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 Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (g) The Contractor will include this clause (1), including all 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 EO 11246, so that such provisions will be binding upon each subcontractor or vendor. The Contractor 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 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request that the United States enter into such litigation to protect the interests of the United States.
- (2) The Contractor hereby agrees to incorporate, or cause to be incorporated, clause (1) as it appears above, including paragraphs numbered (a) through (g), into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R., Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grant, contract, loan, insurance, or guarantee or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.
 - (3) The Contractor will be bound by clause (1) with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the Contractor so participating is a state or local government, clause (1) is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.
 - (4) The Contractor will assist and cooperate actively with the Contracting Officer and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with this article, number 14, and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Contracting Officer and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Contracting Officer in the discharge of his or her primary responsibility for securing compliance.

- (5) The Contractor will refrain from entering into any contract or contract modification subject to EO 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to EO 11246 and will carry out such sanctions and penalties for violation of this article, number 14, as may be imposed upon contractors and subcontractors by the Contracting Officer or the Secretary of Labor pursuant to Part II, Subpart D, of EO 11246. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the Contracting Officer may take any or all of the following actions: cancel, terminate, or suspend, in whole or in part, this Contract; refrain from extending any further assistance to the Contractor under the program with respect to which its failure or refusal occurred until satisfactory assurance of future compliance has been received from the contractor; refer the case to the Department of Justice for appropriate legal proceedings.

(j) COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

- (1) The Contractor 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.
- (2) 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 Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.
- (3) The Contractor makes this agreement 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 Contractor 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 Contractor 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.
- (4) Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

(k) CERTIFICATION OF NONSEGREGATED FACILITIES

The Contractor 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 Contractor 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 Contractor 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.

(l) MEDIUM FOR TRANSMITTING PAYMENTS

(1) All payments from the Contractor 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.¹

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

(m) CONTRACT DRAFTING CONSIDERATIONS

¹This language may be modified to state Reclamation's selected method of payment.

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 14 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.

(n) CONSTRAINTS ON THE AVAILABILITY OF WATER

- (1) In its operation of the Project, 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 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.
- (2) If there is a condition of shortage because of inaccurate runoff forecasting or other similar operational errors affecting the Project; drought and other physical or natural causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.