

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Boise Project

R.O. Draft - 4/4/56
Contract No. 14-06-100-1009

REHABILITATION AND BETTERMENT CONTRACT BETWEEN THE UNITED
STATES OF AMERICA AND THE NEW YORK IRRIGATION DISTRICT

THIS AGREEMENT, made this 25th day of June , 1956, by and between THE UNITED STATES OF AMERICA (hereinafter called the United States), acting through the Secretary of the Interior and pursuant to the act of October 7, 1949 (63 Stat. 724), and the NEW YORK IRRIGATION DISTRICT (hereinafter called the District), a corporation organized and existing under the laws of the State of Idaho, and having its place of business at Boise, Idaho,

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, the District, in conjunction with four other irrigation districts participates in the Arrowrock Division of the Boise Federal Reclamation Project, which project irrigation system includes the New York Canal, the main delivery canal from the Boise River to the lands of the districts; and

3. WHEREAS, such canal for the first 23.2 miles from its beginning at the Boise River has deteriorated to the extent that it requires immediate rehabilitation and betterment to insure an adequate supply of water for the lands of the District, and other portions of the project require the lining of a canal and the acquisition of pipe for the replacement of flumes, and it is the desire of the District that the United States undertake to do this rehabilitation and betterment work; and

4. WHEREAS, the United States is willing to undertake this rehabilitation and betterment work according to the terms and provisions of this contract;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations herein set forth, it is hereby covenanted and agreed as follows:

Definitions

5. The following terms used in this contract shall have the following respective meanings:

"Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

"Project works" shall mean the entire Arrowrock Division of the Boise Federal Reclamation Project, including the New York Canal and other facilities operated jointly by the Boise Project Board of Control under agreements with this District and other districts.

Term of Contract

6. This contract shall become effective upon its execution by the Secretary, and shall remain in effect until the United States has been paid, in full, its rehabilitation and betterment charge obligation and any and all other amounts owing to the United States under this contract.

United States to Rehabilitate and Better Project Works

7. (a) The United States will undertake, within the limit of funds appropriated therefor, the repair, rehabilitation and betterment of the project works in accordance with the following general plan:

(1) on the first 23.2 miles of the New York Canal, repair, improve, replace, and construct concrete lining, earth sections, concrete side lining, and cutoff walls;

(2) installation of 1,800 lineal feet of concrete lining in the Deer Flat Low Line Canal in section thirty-six (36), township four (4) north, range five (5) west, Boise meridian; and

(3) provide materials for replacement with concrete siphons of Mora Flumes Nos. 1 and 2, Vantress Flume, Nordica Flume, Chance Flume, and the Deer Flat North Canal Flume.

(b) Should it appear necessary or desirable to the Secretary after consultation with the Boise Project Board of Control, either before or during construction, the work mentioned and described by this article may be modified in design or location, or work may be eliminated or added to that mentioned or described above. There shall be advance consultation with the Boise Project Board of Control as to the final design, location, and construction programming of the work.

(c) The cost to the United States of the repair, rehabilitation and betterment of the project works described in this article is estimated to be a sum not exceeding \$2,225,000, and this amount is the

limit of the obligation of the United States to the District for the work described in (a) of this article. The Secretary will notify the District, in writing, when the work is completed or when the total cost has reached the limit determined in this article, and the work will then be deemed to have been completed within the meaning of this contract.

Cost of Work to be Repaid by District;
Annual Instalments and Time of Payment

8. (a) The District shall pay to the United States the District's share of the actual cost of the work described in article 7, in an amount of 10.80 percent of the total actual costs of such work, not to exceed the sum of \$240,300, and this total actual cost is established as the District's rehabilitation and betterment charge obligation.

(b) The District shall pay to the United States the rehabilitation and betterment charge obligation in 20 annual instalments. Pending the determination and announcement by the Secretary of the actual rehabilitation and betterment charge obligation, the then completed construction cost shall constitute the basis for the annual instalments under this article. Each annual instalment under paragraph (b) of this article shall be, as nearly as possible, 1/20th of such rehabilitation and betterment charge obligation; provided, that if any accrued instalments are based on the Secretary's estimate of rehabilitation and betterment charge obligation, the difference between those estimates and the actual obligations as finally determined and announced by the Secretary shall be spread equally, as nearly as practicable, over the instalments remaining unaccrued as of the time the actual obligations are determined and announced. The first

of said annual instalments shall be due and payable on December 31 in the second year following the year in which the Secretary notifies the District that the Congress has made available funds for the commencement of the work, and a like sum on each December 31 thereafter until the total amount is paid in full.

Statements of Costs

9. (a) Upon the completion of the work provided for in article 7 or the termination of the work thereon as determined by the Secretary for any reason, the Secretary shall furnish the District with a written statement of the estimated construction charge obligation, and thereafter, as soon as the actual construction costs can be determined by the United States, a written statement of the actual construction charge obligation shall be furnished to the District by the Secretary.

(b) The costs which make up the various obligations to be paid by the District to the United States under this contract shall embrace all expenditures of whatsoever nature or kind in relation to the function for which the charge is made, including, but without limitation by reason of this enumeration, cost of surveys and investigations, labor, property, material and equipment, engineering, legal work, superintendence, administration, overhead, general expenses, inspection, special services, and damage claims of all kinds, whether or not involving the negligence of officers, agents or employees of the United States.

United States Not Liable for Water
Shortage or Interruptions

10. 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 through the project works or interruptions in water deliveries to lands in the District resulting from drought, inaccuracy in distribution, hostile diversion, prior or superior claims, accident to or failure of facilities of the project works, whether or not attributable to negligence of officers, agents or employees of the United States, or other causes of whatsoever kind. Nor shall the District's obligations to the United States under this contract be reduced by reason of such shortages or interruptions.

General Obligations - Assessments

11. (a) All the lands included in the District shall be obligated through the District to pay to the United States the full amount of the rehabilitation and betterment charge obligation regardless of delinquencies as to particular lands in payment to the District of assessments and charges.

(b) The District shall cause to be levied and collected all necessary assessments and charges, and will use all the authority and resources of the District to make all payments to the United States when due and to meet its other obligations under this contract.

(c) Should the District be in default at any time in the payment of rehabilitation and betterment charge instalments, the Secretary, by written notice to the District, may require the District to levy toll charges for the collection of its rehabilitation and betterment charge instalments

from water users in advance of water delivery, and also establish a toll charge to be paid in advance of water delivery in addition to, or in the place of, any toll charges levied by the District.

Penalty for Delinquency in Payment

12. Every instalment, payment or charge required to be paid to the United States under this contract and which remains unpaid after it shall become due and payable shall be subject to, and the District shall pay, a penalty at the rate of 1/2 percent per month from the date of delinquency.

Supplements Existing Contracts

13. This contract shall be supplementary to all existing contracts between the United States and the District concerning the construction, operation, maintenance and repayment of the Arrowrock Division of the Boise Project, and shall not replace or supersede those contracts. The provisions of these existing contracts relating to the withholding of the delivery of water upon the default of the District or of individual water users shall be available to the United States to enforce the amounts due under this contract if the District should become delinquent under this contract.

Regulations and Determinations of Fact

14. The Secretary, after consultation with the District may, so far as the purport thereof may be consistent with the provisions of this contract, make regulations and add to and modify them, as are proper and necessary to carry out the true intent and meaning of this contract, and to supply details of its administration.

Confirmation of Contract

15. The execution of this contract shall be authorized or ratified by the qualified electors of the District at an election held for that purpose. The District, after the election and upon the execution of this contract, shall promptly secure a final decree of the proper court of the State of Idaho approving and confirming this contract and decreeing and adjudging it to be a lawful, valid and binding general obligation of the District. The District shall furnish to the United States certified copies of such decrees and of all pertinent supporting records.

Notices

16. Any notice, demand or request required or authorized by this contract shall be deemed properly given, except where otherwise herein specifically provided, if mailed, postage prepaid, to the Regional Director, Bureau of Reclamation, Boise, Idaho, on behalf of the United States, and to the Secretary, New York Irrigation District, Boise, Idaho, on behalf of the District. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

Discrimination Against Employees or Applicants for Employment Prohibited

17. (a) In connection with the performance of work under this contract, the District agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision 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 District agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of the non-discrimination clause. The District further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(b) In the performance of any part of the work contemplated by this contract, the District shall not employ any person undergoing sentence of imprisonment at hard labor.

Contingent on Appropriations or Allotment of Funds

18. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by the Congress or the allotment of Federal funds, shall be contingent on such appropriations or allotments being made. The failure of the Congress to appropriate funds, or the failure of any allotment of funds, shall not, however, relieve the District from any obligations theretofore accrued under this contract nor give the District the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Assignments Prohibited; Successors
and Assigns Obligated

19. 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 part thereof, or interest therein, shall be valid until approved by the Secretary.

Officials Not to Benefit

20. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ Wm. H. Tuller
Acting Regional Director, Region 1
Bureau of Reclamation
P.O. Box 937, Boise, Idaho

NEW YORK IRRIGATION DISTRICT

By /s/ Louis Aldecoa
President

(SEAL)

Attest:

/s/ Chas. L. King
Secretary