Doc. No. 5

#41

IMPERIAL IRRIGATION DISTRICT
INTER-OFFICE MEMORANDUM

TO Executive Engineer

Copies to General File

DATE October 23, 1950

FROM Executive Superintendent
DEPARTMENT Executive
AT El Centro

SUBJECT Contract No. 176r-638 between Bureau of Reclamation and the District - Davis Dam

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Attached for your file is one conformed copy of the Contract for Electric Service between the Bureau of Reclamation and Imperial Irrigation District, Symbol and Number 176r-638, recently executed by the United States and the District. This is the contract for Davis Dam power.

CONTRACT DATED
9/26/50

Evan T. Hewes
EVAN T. HEWES

Enclosure

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176r-638

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Davis Dam Project
Arizona-California-Nevada

Contract for Electric Service to Imperial Irrigation District

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Davis Dam Project
Arizona-California-Nevada

Contract for Electric Service to Imperial Irrigation District

1. THIS CONTRACT, made this 26th day of Sept. 1950, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, between THE UNITED STATES OF AMERICA, hereinafter called the United States, represented by the officer executing this contract, his duly appointed successor, or his duly authorized representative, hereinafter called the contracting officer, and IMPERIAL IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of California, hereinafter called the Contractor;

WITNESSETH THAT:

Explanatory Recitals

2. WHEREAS, the United States is constructing the Davis Dam Project in Arizona, California and Nevada, and in connection therewith is constructing an electric transmission system which will be connected with the transmission systems of the Yuma Project, the Parker Dam Power Project, and other projects of the United States under the jurisdiction of the Bureau of Reclamation, all of such transmission systems being referred to hereinafter as the "Davis System," a drawing of such system as presently planned being attached hereto and marked "Exhibit A" but without warranty of any kind or nature by the United States that said system will be constructed in all detail as thereby depicted; and

3. WHEREAS, the Contractor and the United States have entered into a Contract for Sale of Electric Power and Energy dated June 26, 1940 (Symbol and Number 12r-11729), as amended, hereinafter called the Parker Contract; and

4. WHEREAS, the Contractor has applied to the United States for electric service from the Davis Dam Project and the Secretary of the Interior on June 23, 1948, allocated to the Contractor 30,000 kilowatts from the said project, subject to the execution of an acceptable contract therefor; and

5. WHEREAS, the United States is willing to furnish electric service to the Contractor in accordance with the aforesaid allocation by the Secretary of the Interior and the terms of this contract;

6. NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

Electric Service to be Furnished

7. (a) The United States, under the terms and conditions stipulated herein, will furnish electric power and energy generated at Davis Dam powerplant and/or other powerplants on the Colorado River to the Contractor from and after the date of initial service as hereinafter defined, at the Knob Switching Station of the United States and/or at the point at which the facilities of the Contractor are attached to the 161-kilovolt bus of the Blythe Substation of the United States.

(b) The electric energy involved hereunder will be delivered as 3-phase, alternating current, at a nominal frequency of 60 cycles per second and at a nominal delivery voltage of 154,000 volts. The electric energy will be so delivered in amounts which the Contractor may from time

to time require up to an aggregate maximum rate of delivery, hereinafter called the contract rate of delivery, of 30,000 kilowatts, and up to such number of kilowatthours of net generation as can be generated, as conclusively determined by the contracting officer, by the use of 30,000/225,000 of the total amount of water available for the development of electric energy at Davis Dam during any billing period; Provided, however, That whenever there is available at Davis Dam energy in excess of the kilowatthours of net generation that can be generated by use of 180,000/225,000 of the total amount of water available for the development of electric energy at Davis Dam during any billing period, and the contracting officer determines that any of such excess may be made available for use other than on projects or in connection with the construction, operation, and maintenance thereof, under the jurisdiction of the Bureau of Reclamation of the Department of the Interior of the United States, the Contractor shall be entitled hereunder to at least 30,000/130,000 of the energy so determined to be available; Provided, further, That the United States may reduce the contract rate of delivery to 15,000 kilowatts, and the aforesaid fractions 30,000/225,000 and 30,000/180,000 to 15,000/225,000 and 15,000/180,000 respectively if and when the Contractor places the proposed Pilot Knob Powerplant in operation; Provided, further, That the United States acting by and through the contracting officer will, at the written request of the Contractor made not more than 30 months prior to the time said powerplant is scheduled to be placed in operation by the Contractor, hear and consider the views of the Contractor as to its needs for power and plans for the disposal thereof, and will within six months after receipt of

This Provision Canceled by USBR letter 9-10-54

such request ~~notify the Contractor~~ of ~~its decision to make or not make~~ such reduction ~~in the contract rate of delivery.~~ The Contractor may from time to time, in the absence of objection from the contracting officer, use energy at rates greater than the contract rate of delivery then in effect, but such greater use shall not be deemed to establish in the Contractor any right thereto and the Contractor shall cease any such greater use whenever and for the periods of time as directed by the contracting officer.

(c) The electric service will be furnished continuously except (1) for interruptions or reductions due to uncontrollable forces, as herein defined; and (2) for temporary interruptions or reductions which, in the opinion of the contracting officer, are necessary or desirable for the purposes of maintenance, repairs, replacements, installation of equipment, or investigation and inspection; Provided, That the United States, except in case of emergency as determined by the contracting officer, will give the Contractor reasonable advance notice of such temporary interruptions or reductions and will remove the cause thereof with diligence.

Schedule of Rates

8. (a) The Contractor shall pay for all electric service furnished hereunder subsequent to midnight August 2, 1953, in accordance with the rates, charges and conditions set out in Rate Schedule R3-F3, attached hereto and hereby made a part hereof, Provided, That for billing purposes the electric service furnished at the two points of delivery hereunder shall be treated as a single point of delivery and that the billing demand will be the aggregate highest thirty-minute integrated demand measured simultaneously at the two points of delivery to the Contractor during the month.

(b) During the period from the date of initial service hereunder, as defined in Article 14(b) hereof until midnight August 2, 1953, the first 15,000 kilowatts of aggregate highest thirty-minute integrated demand measured simultaneously at the two points of delivery to the Contractor during the month and the corresponding kilowatthours, determined by multiplying the total number of kilowatthours delivered to the Contractor at the two points of delivery during the month by the fraction 15,000 divided by the aggregate highest thirty-minute integrated demand measured simultaneously at the two points of delivery to the Contractor during the month, (provided that if said fraction exceeds one it shall be reduced to one) shall be considered to be the power and energy to which Contractor is entitled under its Parker Contract, and shall be paid for in accordance with the Parker Contract, and the balance of the power and energy delivered to the Contractor during said period shall be deemed to be Davis Dam power and energy and shall be paid for in accordance with the rates and charges set out in Rate Schedule R3-F3, the contract rate of delivery in such application of Rate Schedule R3-F3 to be as provided in Article 14(b) hereof.

(c) For a fractional part of a billing period at the beginning or end of service hereunder and for fractional parts of a billing period in which the contract rate of delivery changes, the demand charge, the kilowatthour blocks of the energy charge, and the minimum charge shall each be proportionately adjusted in the ratio that the number of hours that electric service is furnished to the Contractor in such fractional billing period bears to the total number of hours in the billing period involved.

(d) Should the aggregate delivery of electric energy be interrupted or reduced, because of conditions on the power system of the United States, below the contract rate of delivery or below the aggregate rate of delivery required by the Contractor at the time of such reduction, whichever is the lesser, for a period or periods of one (1) hour or longer in duration each, the total number of hours of curtailed service in any billing period shall be determined by adding the sum of the number of hours of interrupted service to the product of the number of hours of reduced service multiplied by the percentage of said reduction below said contract rate of delivery or below the rate of delivery required by the Contractor at the time of such reduction, whichever is the lesser. The demand charge, the kilowatthour blocks of the energy charge, and the minimum charge shall each be proportionately adjusted in the ratio that the total number of hours of such curtailed service as herein determined bears to the total number of hours in the billing period involved. The Contractor shall make written claim, within thirty (30) days after receiving the monthly bill, for reduction on account of any curtailment to service, for a period or periods of one (1) hour or longer in duration each, alleged to have occurred and which is not reflected in such bill. Failure to make such written claim, within said thirty (30) day period, shall constitute a waiver thereof. All curtailments to service, for any reason whatsoever, which are due to conditions on the power system of the United States, shall be subject to the provisions of this section (d) and the Contractor shall be limited in its remedy therefor to the relief granted by this section (d).

(e) Effective as of the first day of the month of April 1950 the 161/34.5-kilovolt transformer in the substation referred to in Article 4(d) of the Parker Contract shall be considered as removed from service and the readiness-to-serve charge prescribed in Article 8(a)(I) of the Parker Contract shall be reduced to $6,450.00 and the minimum charge referred to in Article 8(b) of said contract shall be reduced to $167,400.00; Provided, That the minimum charge for the year 1950 shall be reduced to $170,550.00. The charges under the Parker Contract for the first billing period after the date of this contract shall be adjusted to take into account reductions provided for in this Article 8(e).

Resale Rates

9. (a) The Contractor will cooperate with the United States in promoting the widespread and abundant use of electric power and energy and to that end it will be the primary objective of the parties hereto to make electric service available to the ultimate consumers at the lowest possible rates consistent with sound business principles.

(b) The Contractor will account for the operations of its power system as a separate department, using a system of accounting substantially in accordance with the Federal Power Commission's Uniform System of Accounts, or other standard system of accounting acceptable to the contracting officer.

(c) The Contractor will cause to be published annually, on or about March 15th, in a newspaper having general circulation in the area served, an operating and financial statement in such detail as is specified by the previously mentioned standard system of accounts,

showing the result of operations, and the disposition of the revenues resulting therefrom, during the year covered by said statement, and will file promptly thereafter with the contracting officer a copy of said statement showing the fact and date of such publication. If said statement has not been audited by an independent certified public accountant licensed to practice in the State of California, the contracting officer shall have the right, at reasonable times, to examine the books and records of the Contractor for the purpose of verifying said statement.

(d) The Contractor will revise its rate schedules from time to time as may be necessary to comply with the objectives set forth in Article 9(a) hereof and will keep the contracting officer fully informed as to any such revisions. The Contractor shall keep on file with the contracting officer at all times copies of its rate schedules then in effect.

Modification of Rates

10. Should the United States, during the term of this contract, modify the rates for furnishing electric service from the Davis Dam Project, under terms and conditions similar to those under which electric service is furnished hereunder, as conclusively determined by the contracting officer, it will promptly notify the Contractor thereof. The Contractor may, if it so elects, receive the advantage of such modified rates, effective as of the date the rates were so modified by the United States. The Contractor shall be deemed to have elected to take advantage of the modified rates if it does not advise the contracting officer in writing to the contrary within sixty (60) days after the date of such notification.

Billing and Payments

11. The United States will submit bills to the Contractor on or before the tenth day of each month for electric service furnished hereunder during the preceding month, and payments will be due and payable by the Contractor on the first day of the month immediately succeeding the date each bill is submitted. If the Contractor fails to pay any bill when due:

(a) An interest charge of one percent (1%) of the amount unpaid shall be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one-half of one percent (1/2%) of the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including interest, is paid in full; and

(b) The United States shall have the right to discontinue furnishing electric service to the Contractor only after fifteen (15) days' advance written notice of non-payment of bills, and to refuse to resume same so long as any part of said amount due remains unpaid. Such a discontinuance of electric service will not relieve the Contractor of liability for the minimum charge during the time said electric service is so discontinued. If any of the meter tests provided for herein discloses that the error of any meter or meters exceeds two percent (2%), correction based upon the inaccuracy found shall be made of the records of electric service furnished since the beginning of the monthly billing period immediately preceding the billing period during

which the test was made; Provided, That no correction shall be made for a longer period than such inaccuracy may be determined to have existed. Any correction in billing resulting from such correction in meter records shall be made in the next monthly bill rendered by the United States to the Contractor, and such correction when made shall constitute full adjustment of any claim between the parties hereto arising out of such inaccuracy of meters. The rights given herein to the United States shall be in addition to all other remedies available to the United States, either at law or in equity, for the breach of any of the provisions hereof.

Measurement of Electric Energy Delivered

12. The electric energy delivered to the Contractor hereunder, and under the Parker Contract after the date of initial service hereunder, and the rate of delivery thereof will be measured at the Knob Switching Station and the Blythe Substation by metering equipment to be furnished and maintained by the United States, unless otherwise agreed by the Contractor and the contracting officer. The electric energy delivered to the United States pursuant to Articles 21 and 22 hereof and the rate of delivery thereof will be measured at the Knob Switching Station and the Blythe Substation by metering equipment to be furnished and maintained by the United States unless otherwise agreed by the Contractor and the contracting officer. The meter or meters shall be sealed and the seals shall be broken only upon occasions when the meter or meters are to be inspected, tested, or adjusted, and representatives of the Contractor shall be afforded reasonable opportunity to be present upon

such occasions. The meter or meters shall be tested at least once each year and at any reasonable time upon request therefor by either party hereto. Any metering equipment found to be defective or inaccurate shall be repaired and readjusted or replaced. Should any meter fail to register, the electric energy delivered hereunder through such meter, and the rate of delivery thereof, during such period of failure to register shall, for billing purposes, be estimated from the best information available.

Power Factor

13. The Contractor shall maintain a power factor at each point of delivery of not less than ninety percent (90%) lagging; Provided, That the Contractor will be permitted to operate at a lower power factor. when conditions are such, as determined by the contracting officer, that a lower power factor will not prevent the United States from making full use of its available generating and transmission facilities.

Term of Contract

14. (a) The term of this contract shall commence on the date hereof and shall terminate at midnight December 31, 1970; Provided, That either party may terminate this contract on or after December 31, 1962, by notice in writing given not less than three years prior to the date of termination specified in such notice.

(b) The date of initial service hereunder is hereby defined as the date upon which the United States is ready to furnish from Davis Powerplant, and Contractor is ready to receive electric service hereunder; Provided, That the Parker Contract shall terminate midnight August 2, 1953; Provided further, That from the date of initial service hereunder

until midnight August 2, 1953, the effective contract rate of delivery for such service shall be 15,000 kilowatts.

(c) Anything in this contract to the contrary notwithstanding, the United States shall not be obligated to furnish electric service to the Contractor hereunder nor the Contractor to receive service unless and until the construction by the United States of the facilities required for the furnishing of said electric service has been completed, as conclusively determined by the contracting officer.

(d) It is understood that the construction by the United States of the facilities required for the furnishing of electric service hereunder may be completed in such manner as to permit delivery of power and energy to the Contractor under its Parker Contract at Blythe Substation prior to the date of initial service hereunder as defined in Article 14(b) hereof. In the event such delivery shall be initiated, power and energy delivered to the Contractor at the Blythe Substation prior to such date of initial service hereunder shall be paid for in accordance with the rates and charges set out in Rate Schedule R3-F3; Provided, That the minimum bill provision of said rate schedule shall not apply; Provided further, That the billing demand for a fractional part of a billing period at the beginning or end of service under this Article 14(d) shall be proportionately adjusted in the ratio that the number of days that electric service is furnished hereunder in such fractional period bears to the total number of days in the billing period involved. The readiness-to-serve charge provided for in the Parker Contract as adjusted by Article 8(e) hereof shall be reduced by an amount equal to such readiness-to-serve charge multiplied by a fraction

the numerator of which is the billing demand for deliveries at the Blythe Substation and the denominator of which is 15,000 kilowatts. All energy delivered at Knob Switching Station or at Drop 4 when this Article 14(d) is in effect shall be paid for in accordance with the energy charge provided in the Parker Contract. The minimum annual payment provided for in the Parker Contract shall not be reduced except as provided in Article 8(b) of the Parker Contract and Article 8(e) of this contract. Metering of power and energy delivered under this Article 14(d) shall be in accordance with Article 12 hereof, unless otherwise agreed by the Contractor and the contracting officer.

Power Systems of Contractor and Its Contractors

15. The Contractor shall, and it shall require its contractors for purchase of energy to construct, operate and maintain its and their power systems and/or electrical equipment in a manner which will not interfere with any service supplied from the Davis System. The United States may discontinue delivery of energy hereunder to the Contractor if, after reasonable notice by the contracting officer of any unsatisfactory condition on the power system and/or electrical equipment of the Contractor or any of such contractors which interferes or may interfere with any service supplied from the Davis System, the Contractor or such contractor or contractors refuse to make such changes as may be necessary to eliminate such unsatisfactory condition. Nothing herein contained shall be construed to render the United States liable for any claims, demands, costs, losses, causes of action, damages or liability of whatsoever kind or nature arising out of or resulting from the construction, operation or maintenance of the power systems and/or electrical equipment of the Contractor or of any of such contractors.

Notices

16. (a) Any notice, demand or request required or authorized by this contract to be given or made to or upon the United States shall be delivered, or mailed postage prepaid, to the Project Engr. Parker-Davis Project, Phoenix, Arizona - see USBR letter 4-11-51 Regional Director, Bureau of Reclamation, Boulder City, Nevada.)

(b) Any notice, demand or request required or authorized by this contract to be given or made to or upon the Contractor shall be delivered or mailed postage prepaid, to the President of the Board of Directors, Imperial Irrigation District, El Centro, California

(c) The designation of any person specified in this article or in any such request or notice, or the address of any such person, may be changed at any time by notice given in the same manner as provided in this article for other notices.

Cooperation of Contracting Parties

17. If, in the maintenance of their respective power systems and the utilization thereof for the purposes of this contract, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other to furnish personnel, materials, tools, and equipment for the accomplishment thereof, the party so requested shall cooperate with the other and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of properly itemized bills from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance, including administrative and general expenses not exceeding fifteen per centum (15%) of such costs, to be determined on the basis of current charges or rates used in its own operations by the party rendering assistance.

Restrictions Relative to Labor

18. (a) No laborer or mechanic, in the employ of the Contractor, doing any part of the work contemplated by Article 17 of this contract, shall be required or permitted to work more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the Contractor in the performance of any part of the work contemplated by Article 17 of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars shall be imposed upon the Contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the United States; Provided, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, title 40, sections 321, 324, 325, 325a, and 326 relating to hours of labor and to compensation for overtime.

(b) The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in all

subcontracts; Provided, however, That this clause does not refer to, extend to or cover the business or activities of the Contractor which are not related to or involved in the performance of any part of the work contemplated by this contract. This Article is subject to the provisions of Article 2, Chapter 2, Part 7, Div. 2, of the Labor Code of California.

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

License to the Contractor

19. (a) The United States hereby grants the Contractor a license to construct, install, operate, maintain, replace, or repair, either or all, upon property of the United States under the administrative control and jurisdiction of the Bureau of Reclamation such facilities as are necessary or desirable for the purposes of this contract, with the right to connect such facilities, and other Contractor facilities, to the Davis System, subject to advance approval by the contracting officer as to design and construction. Said license and right shall remain in effect during the term of this contract. Any facilities so installed by the Contractor pursuant hereto shall be and remain the property of the Contractor, notwithstanding that the same may have been affixed to the premises, and the Contractor shall have a reasonable time after the expiration of said license in which to remove its facilities so installed.

(b) The United States hereby grants the Contractor the right during the term of this contract to transmit power through the Knob Switching Station and over the Knob Switching Station-Drop No. 4 transmission line of the United States; Provided, That the use thereof shall

not interfere in any way with the use of said facilities by the United States as conclusively determined by the contracting officer and the United States will not be obligated to make any additions to or changes in its facilities for the purpose of this Article 19(b); Provided further, That at the time any capacity in the Knob Switching Station-Drop No. 4 transmission line over and above 30,000 kilowatts is needed by the United States, the contracting officer will consider (i) the then use of capacity by the United States to serve the Contractor and (ii) the then use of capacity by the Contractor as permitted in this Article 19(b).

License to the United States

20. The Contractor, upon request from time to time by the contracting officer, will grant to the United States a license or licenses to construct, install, operate, maintain, replace, or repair, either or all, upon property of the Contractor, such facilities as are necessary or desirable for the purposes of this contract subject to advance approval by the Contractor as to design and construction. The license or licenses so granted shall be and remain in effect during the term of this contract. Any facilities so installed by the United States pursuant to said license or licenses shall be and remain the property of the United States, notwithstanding that the same may have been affixed to the premises, and the United States shall have a reasonable time after the expiration of said license or licenses in which to remove its facilities so installed.

Emergency and Breakdown Service

21. (a) In the event of a breakdown or emergency on the system of either party, the other party shall make every effort to supply during the period of such breakdown or emergency all necessary power and energy so far as it can do so consistent with its obligations to its other customers,

but the supplier shall be the sole judge of its ability to supply such power and energy. During any billing period that such power and energy is supplied the monthly meter readings shall be adjusted by adding thereto kilowatts and kilowatthours of such breakdown and/or emergency service supplied by the Contractor and subtracting therefrom the kilowatts and kilowatthours of such breakdown and/or emergency service supplied by the United States before computing charges but in no event shall the maximum demand used in billing for the current month be increased because of furnishing such breakdown and/or emergency service.

(b) A record shall be maintained of energy furnished by each supplier during periods of breakdown or emergency service. Breakdown or emergency energy delivered by either party to the other under the terms of this article shall be returned kilowatthour for kilowatthour at existing points of interconnection at times and at rates of delivery to be mutually agreed upon by the duly authorized representatives of the parties hereto and meter readings for billing purposes shall be adjusted to reflect such return.

Purchase of Electric Energy by the United States

22. Should the United States, for any reason other than breakdown or emergency, desire to purchase electric energy from the Contractor at the point or points of delivery specified in Article 7(a) hereof, the Contractor agrees to supply such electric energy as the United States may request or such lesser amount as the Contractor in its sole judgment has available for the use of the United States. The United States agrees to pay the contractor for all such electric energy furnished by the Contractor at a base rate of 10.5 mills per kilowatthour, which rate includes a fuel component of 6.5 mills per kilowatthour based on a fuel price of $2.54 per barrel at El Centro, California, exclusive of tax. If in any

month of the term hereof the price of fuel oil at El Centro, exclusive of tax, shall exceed or be less than said price of $2.54 per barrel, then the fuel component of said rate per kilowatthour shall be increased or decreased in the same ratio that the average price of fuel oil at El Centro per barrel, exclusive of tax, during such month bears to the price of $2.54 per barrel, and said rate per kilowatthour shall be increased or decreased in the amount of such increase or decrease in the fuel component. The price of fuel oil at El Centro shall be deemed to be the average on a daily basis of the posted offering prices per barrel by General Petroleum Corporation, Standard Oil Company of California, Union Oil Company of California, Shell Oil Company, and Tidewater Associated Oil Company for tank car delivery of PS 400 Fuel Oil at their respective refineries in the Los Angeles basin for such month plus the freight rate in tank car lots from Los Angeles to El Centro. The Contractor shall render to the United States an itemized bill for the electric energy delivered to the United States under this Article 22 during any calendar month on or before the tenth (10th) day of the next following month and such bill shall be due and payable by the United States as soon after receipt thereof as the necessary vouchers can be prepared.

Contract Subject to Colorado River Compact and Treaty with United Mexican States

23. This contract is made upon the express condition and the express covenant that all rights hereunder shall be subject to and controlled by

(a) the Colorado River Compact approved by Section 13(a) of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), and,

(b) Executive A, Seventy-eighth Congress, second session, being a treaty between the United States of America and the

United Mexican States, signed at Washington on February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana Rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico, and Executive H, Seventy-eighth Congress, second session, a protocol, signed at Washington on November 14, 1944, supplementary to the treaty, including the reservations made by the Senate of the United States of America by their resolution April 18, 1945,

and the parties hereto shall observe and be subject to and controlled by said Colorado River Compact and said treaty and protocol in the construction, management, and operation of the dams, reservoirs, and powerplants from which electric energy is to be furnished hereunder, and in the storage, diversion, delivery, and use of water for the generation of electric energy to be delivered hereunder.

Transfer of Interest in Contract

24. No voluntary transfer of this contract or of the rights of the Contractor hereunder shall be made without the written approval of the Secretary of the Interior, and any successor or assignee of the rights of the Contractor, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of this contract to the same extent as though such successor or assignee were the original contractor hereunder; Provided, That the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed voluntary transfers within the meaning of this article,

Uncontrollable Forces

25. Neither party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term uncontrollable forces being

deemed for the purposes of this contract to mean any cause beyond the control of the party affected, including, but not limited to, inadequacy of water for the generation of the electric power and energy herein contracted for as conclusively determined by the Secretary of the Interior, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces, shall exercise due diligence to remove such inability with all reasonable dispatch.

Waivers

26. Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract shall not be deemed to be a waiver with respect to any subsequent default or matter.

Contingent Upon Appropriations

27. Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress making the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the Contractor hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

Effect on Other Contracts

28. Except as in this contract expressly provided, the Parker Contract shall remain in full force and effect,

Covenant Against Contingent Fees

29. The Contractor warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

Officials Not to Benefit

30. 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 caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By (Sgd.) E. A. Moritz
Regional Director, Region 3,
Bureau of Reclamation.

THE IMPERIAL IRRIGATION DISTRICT,

By (Sgd.) Evan T. Hewes
President of the Board of
Directors.

(SEAL)

ATTEST:

(Sgd.) Mahlon I. Mathis
Secretary