

**FUNDING AGREEMENT**

BETWEEN

THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
AND

CENTRAL UTAH WATER CONSERVANCY DISTRICT  
TO PROVIDE FUNDING FOR IMPLEMENTATION OF THE  
OLMSTED HYDROELECTRIC POWERPLANT REPLACEMENT PROJECT

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**PREAMBLE**

**THIS FUNDING AGREEMENT** (hereinafter the “Agreement”), is made this 5<sup>th</sup> day of February, 2015, pursuant to Sections 202(c), and 208 of the Central Utah Project Completion Act (Titles II through VI of P. L. 102-575, 106 Stat. 4605, October 30, 1992), as amended, (“CUPCA”); the Colorado River Storage Project Act of April 11, 1956 (P. L. 84-485, 70 Stat. 105), as amended (“CRSP Act”); and the Sundry Civil Expenses Appropriations Act for 1922 (enacted March 4, 1921, 41 Stat. 1404) (“Contributed Funds Act”), by and among the UNITED STATES OF AMERICA, acting through the Secretary of the Interior (the “Secretary”) and the Bureau of Reclamation (“Reclamation”), and the CENTRAL UTAH WATER CONSERVANCY DISTRICT, a non-federal water conservancy district organized and existing as a political subdivision under the laws of the State of Utah (the “District”), for the purpose of providing funding for the Olmsted Hydroelectric Powerplant Replacement Project, Bonneville Unit, Central Utah Project, and the opportunity to review activities undertaken with such funds. (The Secretary, Reclamation and the District are sometimes referred to herein individually as a “Party,” and collectively as the “Parties”).

WITNESSETH THAT:

WHEREAS, the capitalized terms set forth in these recitals not defined above are defined in Article 1 of this Agreement; and

WHEREAS, the Secretary, acting through Reclamation, and/or the District have constructed certain features of the Central Utah Project ("CUP"), a federal Reclamation project; and

WHEREAS, CUPCA has amended the CRSP Act to authorize the orderly completion of the CUP by: (i) authorizing an increase in the appropriations ceiling for the CUP, (ii) authorizing certain water conservation projects; (iii) authorizing certain fish, wildlife and recreation mitigation projects; and (iv) providing for the construction of certain project features for the delivery of municipal, industrial and irrigation water to specified areas within the CUP service area and for hydroelectric power development; and

WHEREAS, under Section 202(a)(1)(D) of CUPCA, the Secretary is authorized and directed, under certain conditions, to enter into contracts with the District to construct certain features authorized in CUPCA under the program guidelines authorized by the D&MC Act; and

WHEREAS, Title II of CUPCA authorizes the District to construct certain project features, including power generation facilities, and requires the District, among other things, to comply with environmental laws; and

WHEREAS, the District, pursuant to the 1965 Repayment Contract, has agreed, among other things, to pay the reimbursable project costs to the Secretary for the CUP, including the acquisition costs of the CUP Facilities, and to operate and maintain the CUP Facilities associated with the permanent CUP water supply; and

WHEREAS, the Secretary, pursuant to the 1965 Repayment Contract, has agreed, among other things, to compensate the District for the cost of the operation, maintenance, and

replacement of transferred works constructed pursuant to the 1965 Repayment Contract properly chargeable under Reclamation procedures and under Reclamation law to commercial power; and

WHEREAS, the Olmsted Flowline was acquired from Utah Power and Light (now known and referred to herein as "PacifiCorp"), by the United States (through Reclamation) from an initial Determination of Taking in July 11, 1987; and in order to better protect the Olmsted Water Rights, which are integral for the full development of the Bonneville Unit of the CUP and to effect the settlement, in 1990 Reclamation amended the Determination of Taking to acquire the Olmsted Powerplant and Olmsted Water Rights and incorporated them as critical components of the Bonneville Unit of the CUP; and

WHEREAS, in addition to the money paid for the acquisition of the Olmsted Facilities, the Olmsted Settlement Agreement was entered into among Reclamation, the District, and PacifiCorp, for the purpose of further payment of just compensation to PacifiCorp by providing, among other things, that the United States would hold title and PacifiCorp would continue to operate and receive the energy produced from the Olmsted Powerplant through September 21, 2015; and

WHEREAS, the continued operation of the Olmsted Powerplant is necessary to maintain the Olmsted Water Rights and the District will operate, maintain and replace the Olmsted Facilities in connection with its CUP operations, including power generation, upon transfer of the Olmsted Facilities into operation, maintenance and replacement status; and

WHEREAS, under the CRSP MOA, funds are available for operation, maintenance and replacement projects related to the CRSP; and

WHEREAS, the availability of such funds is subject to the terms and conditions of the CRSP MOA; and

WHEREAS, Section 5(c) of the CRSP Act provides that revenues collected and deposited into the Basin Fund attributable to a participating project under the CRSP Act (a “Participating Project”), are available for operation, maintenance, and replacement of that Participating Project; and

WHEREAS, the Olmsted Facilities are features of the Bonneville Unit of the CUP, which is a Participating Project of the CRSP, and as such, revenues from the Basin Fund attributable to the CUP are available for operation, maintenance and replacement of Olmsted Facilities; and

WHEREAS, the program guidelines authorized by the D&MC Act provide that funds appropriated for construction authorized under the Reclamation Act of 1902, as amended and supplemented, may be utilized by the Secretary to accomplish said construction by contract, by force account or, notwithstanding any other law and subject only to such reasonable terms and conditions as the Secretary shall deem appropriate to protect the interests of the United States, by contract entered into with the repayment organization concerned, whereby said organization shall perform said construction; and

WHEREAS, it is the understanding of the Parties hereto that under the terms of both CUPCA and the program guidelines of the D&MC Act, Congress has authorized that this Agreement and the District’s contracts with third parties need not be subject to the requirements of the Federal Acquisition Regulations, the Competition in Contracting Act, or the Contract Disputes Act; and

WHEREAS, on August 11, 1993, the Secretary and the District entered into the 1993 Compliance Agreement; and

WHEREAS, the Olmsted EA was completed and a Finding of No Significant Impact (“FONSI”), dated 16 January 2015, has been signed; and

WHEREAS, it is the intention of the Parties that the Secretary's role, with regard to the performance of this Agreement, will be limited to providing funds under the authority of CUPCA and the CRSP Act, and monitoring the expenditure of the funds so provided; and

WHEREAS, while the Secretary's role may include financial review and design and construction monitoring, it is the intention of the Parties that the Secretary's activities in this area will be in accordance with Section 202(a)(1)(D) of CUPCA.

WHEREAS, funding which has been identified as being available for the Project from a variety of federal sources, which the Parties recognize may be insufficient to fully complete the Project; as such, additional funds may need to be provided by the District, under authority of the Contributed Funds Act and through this Agreement, to facilitate the full completion of the Project; and

WHEREAS, the Contributed Funds Act provides authority for the Secretary, acting through Reclamation, to receive and expend, without further appropriation, moneys ". . . received from any State, municipality, corporation, association, firm, district, or individual for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided by the reclamation law. . ."; and

WHEREAS, the District is willing to contribute and advance to the Secretary the funds necessary to cover all costs incurred in completion of the Project to the extent other federal funds are not otherwise available for such purpose, as set forth herein; and

WHEREAS, the Parties hereto desire to perform their respective responsibilities and obligations in connection with the Project;

NOW THEREFORE, for and in consideration of the mutual agreements herein contained, the Parties hereto do mutually covenant and agree as follows:

## 1. GENERAL DEFINITIONS OF ACTS, AGREEMENTS AND TERMS

Where used in this Agreement, the following definitions shall apply:

### (a) Key Acts

(1) "Contributed Funds Act" shall mean the Sundry Civil Expenses Appropriations Act for 1922 (enacted March 4, 1921, 41 Stat. 1404).

(2) "CRSP Act" shall mean the Colorado River Storage Project Act, enacted April 11, 1956, 70 Stat. 105, as amended.

(3) "CUPCA" shall mean the Central Utah Project Completion Act, which consists of Titles II through VI of the Act of October 30, 1992, P. L. 102-575, as amended.

(4) "D&MC Act" shall mean the Drainage and Minor Construction Act of June 13, 1956, 70 Stat. 274.

(5) "NEPA" shall mean the National Environmental Policy Act of 1969, enacted January 1, 1970, P. L. 91-190.

### (b) Key Agreements

(1) "1965 Repayment Contract" shall mean that certain agreement, dated December 28, 1965, Contract No. 14-06-400-4286, as amended and supplemented, by and between Reclamation and the District, which provides for CUP repayment.

(2) "1993 Compliance Agreement" shall mean that certain agreement, dated August 11, 1993, by and between the District and the Secretary, that provides for compliance with the provisions of the Central Utah Project Completion Act.

(3) "CRSP MOA" shall mean that certain Memorandum of Agreement, dated January 24, 2011, by and among the states of Colorado, New Mexico, Utah, and Wyoming, and Colorado River Energy Distributors Association, the Bureau of Reclamation, Department of the

Interior, and Western Area Power Administration, which provides for the use of certain Basin Fund revenues to fund operation and maintenance projects within the Upper Colorado River Basin and Participating Projects as proposed by non-federal parties and approved by Reclamation in accordance with legislative authority.

(4) "Implementation Agreement" shall mean that certain agreement dated contemporaneously herewith, Contract No. WS-15-100, by and among the United States Department of the Interior, the Bureau of Reclamation, the Western Area Power Administration and the Central Utah Water Conservancy District, which provides for implementation of the Project.

(5) "Olmsted Settlement Agreement" shall mean that certain court-ordered agreement, dated September 21, 1990, Contract No. 0-07-40-P0170, as amended, by and among the United States of America Department of the Interior Bureau of Reclamation, the Central Utah Water Conservancy District, and PacifiCorp Electric Operations.

(c) Key Terms

(1) "Annual" shall mean the period of November 1 through October 31 inclusive, which is the water year on the Provo River system.

(2) "Basin Fund" shall mean the Upper Colorado River Basin Fund established under Section 5 of the CRSP Act.

(3) "Contributed Funds" shall mean funds contributed by the District for the Project pursuant to the requirements of the Contributed Funds Act.

(4) "CUP" shall mean the Central Utah Project, a federal Reclamation project authorized as a Participating Project of the CRSP, including, without limitation, those specific portions of the Bonneville Unit of the CUP for which the District is responsible for

OM&R activities.

(5) "CUP Facilities" shall mean all facilities authorized for completion in connection with the CUP.

(6) "Olmsted EA" shall mean the Environmental Assessment of the Olmsted Hydroelectric Powerplant Replacement Project, dated 16 January 2015.

(7) "Olmsted Facilities" shall mean the facilities comprised of the Olmsted diversion (the "Olmsted Diversion"), the Olmsted flowline, (the "Olmsted Flowline"), tunnel, reservoir, Olmsted Reach A, spillway, rock tunnel, penstock, the Olmsted Powerplant (the "Olmsted Powerplant"), tailrace, and all appurtenant buildings, equipment and facilities, as shown and depicted on EXHIBIT A attached hereto and incorporated by this reference.

(8) "Olmsted Hydroelectric Powerplant Replacement Project" or "Project," shall mean all work and related activities associated with the construction of the Project Facilities as shown on EXHIBIT B attached hereto and incorporated by this reference. See also "Work", Subsection (13) below.

(9) "Olmsted Water Rights" shall mean the water rights acquired by Reclamation under which water is authorized for use in generating power through the Olmsted Facilities, and used in the development of the Bonneville Unit water supply.

(10) "OM&R" shall mean operation, maintenance, and replacement of facilities subsequent to the transfer of the Project Facilities to the District.

(11) "Power Interference" shall mean a reduction of power generation caused by any water other than CUP Bonneville Unit Project Water. The water rights authorizing the use of water for power generation at the Olmsted Powerplant are currently decreed under the Provo River Decree, Civil No. 2888. By way of explanation, the total quantity of water authorized

for power generation use under said decreed rights is 429 cfs, which is comprised of two separate water rights as follows: (i) a diligence right for 229 cfs with a priority of 1897, and (ii) an appropriated right for 200 cfs with a priority of 1917 (collectively, the "Power Rights"). The Power Rights are non-consumptive and other water right holders historically had the right to make consumptive use of the water after the water passed through the Olmsted Powerplant. By virtue of change applications, the holders of these consumptive use rights have moved their points of diversion and/or place of use in ways that cause the water that previously passed through the Olmsted Powerplant to now be diverted and used elsewhere. These change applications however are junior to the Power Right, and the exercise of these junior consumptive use rights cause interference with the ability to use the water for power generation purposes at the Olmsted Powerplant, resulting in what is referred to in this Agreement as Power Interference. Power Interference can occur in three separate ways. (i) by diverting any water other than CUP Bonneville Unit water for consumptive use, that would otherwise have flowed through the Olmsted Powerplant, at locations other than into the Olmsted Flowline; (ii) consumptive use of water under the Power Rights which is diverted into the Olmsted Flowline and then re-diverted from the Olmsted Flowline ahead of the turbine thereby reducing potential power generation; and (iii) non-CUP storage water which is delivered through the Olmsted Flowline when the Olmsted Flowline is at full capacity, thereby displacing potential power generation.

(12) "Project Facilities" shall mean all Olmsted Facilities located downstream of the reservoir as shown on Exhibit B, and all appurtenant buildings, equipment and facilities including the upgrade of electrical equipment necessary to maintain the existing interconnection with PacifiCorp.

(13) "Work" shall mean all work and related activities associated with

construction of Project Facilities. See also "Project", Subsection (8) above.

## **2. REPAYMENT OBLIGATIONS IN FORCE**

The rights and obligations created in this Agreement do not supersede or affect the rights and obligations of the Parties under the 1965 Repayment Contract, which remains in full force and effect.

## **3. TERM OF CONTRACT**

This Agreement shall become effective upon the date of execution and shall remain in effect unless and until modified or superseded by the Parties in accordance with Article 15 herein or terminated under Article 16 herein.

## **4. PROJECT FEATURES TO BE CONSTRUCTED**

Subject to and in conformance with CUPCA and the terms and conditions of this Agreement and other applicable contracts, the District will perform the construction of the Project Facilities.

## **5. RESPONSIBILITY OF THE UNITED STATES**

(a) Funds to be transferred by the Secretary to the District will include funds appropriated to Reclamation and authorized under Section 201(e) of CUPCA, Escrow Funds as described in Article 7(a)(1) herein, CRSP MOA funds, CRSP Act Section 5(c) funds, and Contributed Funds, as shown on TABLE A, attached hereto and incorporated herein by reference.

(b) In conformance with the provisions of Article 7 herein, the Secretary will make available to the District such funds identified therein to fund Project costs.

(c) The Secretary has entered into the Implementation Agreement with the District and other parties that describes the responsibilities of each Party thereto and the contracts necessary for implementation of the Project. If there are inconsistencies between the Implementation

Agreement and this Agreement, this Agreement shall govern, as it applies to the Parties to this Agreement.

(d) As required in Article 8 herein, the Secretary will review and approve the Annual work plan ("Construction Work Plan"), submitted by the District during Project construction, to assure conformance with planned objectives, and to determine whether the Work to be accomplished fits within appropriated and programmed funds, and represents reasonable costs for the Project. Within forty (40) days after submittal, the Secretary will approve or reject each Construction Work Plan, including negotiated changes. If after forty (40) days the Construction Work Plan has not been specifically rejected in writing by the Secretary, it will be considered approved.

(e) In addition, the Secretary reserves the right to inspect, review and approve, at the Secretary's discretion, any and all aspects of the Work performed with funds provided under this Agreement for adherence to sound engineering principles including designs, specifications, and construction, including start-up and testing, and for compliance with the Construction Work Plan, Project plans and specifications, and applicable federal laws and regulations. Subject to the terms of the 1993 Compliance Agreement, the Secretary shall notify the District in writing within ten (10) days after determining to withhold approval of proposed design, specifications, or construction. While the Secretary shall reserve the right to withhold approval at any phase of design or construction, final responsibility to comply with sound engineering principles of design and construction shall at all times rest with the District as provided in Section 6(b) herein. The failure of the Secretary to identify a deficiency in design or construction, to withhold approval, or to properly notify the District of approval withheld shall in no manner relieve the District of its responsibilities as enumerated herein and in related agreements.

(f) The United States shall not be held liable for damages resulting from the design, construction, operation, maintenance, and replacement by the District of the Project implemented under this Agreement.

## **6. RESPONSIBILITY OF THE DISTRICT**

(a) The District will diligently pursue CRSP MOA funding for the Project.

(b) The District will be responsible for all aspects of the design and construction of the Project Facilities, including, but not limited to, the following:

(1) Assisting with obtaining necessary rights-of-way in accordance with Articles 9 and 15 hereof;

(2) Preparing Project designs and specifications;

(3) Performing the Work, or causing such Work to be performed;

(4) Furnishing one set of "as built" drawings to the Secretary upon completion of the Project;

(5) Obtaining necessary licenses and permits;

(6) Awarding all contracts including but not limited to engineering, design and construction, and contracts providing for material acquisition, inspection, oversight and construction management;

(7) Complying with all applicable Federal, State, County, and local municipal laws, codes, and regulations, in performing the Work;

(8) Correcting or compensating for damages to property which occur as a result of construction, subject to Subsections (12) and (13) below;

(9) Complying with all federal fish, wildlife, recreation and environmental laws in accordance with the 1993 Compliance Agreement;

(10) Using proper safety and health precautions to protect the Work, the workers, the public, and the property of others;

(11) Preparing and submitting Construction Work Plans to the Secretary;

(12) Maintaining self-insured status to cover potential liability of the District towards third parties and the public at large; and

(13) Indemnifying the United States with respect to any third party action arising under or related to the design and construction of the Project.

(c) The District shall not commence construction of Project Facilities until any remaining environmental documentation necessary to comply with NEPA and other federal fish, wildlife, recreation, and environmental laws and regulations has been approved in writing, the FONSI has been signed and a notice to proceed has been issued by the Secretary's Program Director.

(d) The District shall provide Contributed Funds for the Project as provided in Article 7 herein.

(e) The District has entered into the Implementation Agreement with the Secretary and other parties that describes the responsibilities of each party thereto and the contracts necessary for implementation of the Project.

## **7. COSTS AND FUNDING**

(a) Potential Funding Sources. The Parties intend to fund the Project using several potential funding sources identified in Table A, and as described below:

(1) Olmsted Settlement Agreement Escrow Fund

Section 6(b)(1) of the Olmsted Settlement Agreement addresses the establishment of an account funded from federal appropriations. These funds are considered a construction

appropriation and have been allocated as a part of Jordanelle Dam and Reservoir and will be repaid accordingly, because the principal reason for constructing and replacing the Olmsted Powerplant is to maintain and protect the water supply of Jordanelle Reservoir. Pursuant to the Funding Agreement and CUPCA, these funds will be transferred to the District.

(2) Power Interference Account Fund

Under provisions of the Olmsted Settlement Agreement, the District has collected funds during the term of the Olmsted Settlement Agreement from entities that have caused Power Interference. To date, the District has collected certain funds in an account controlled by the District that will be used for the Project. The District will transfer those available funds, including any additional funds collected pursuant to the Olmsted Settlement Agreement, to the Secretary where they will be accounted for and administered as Contributed Funds. Pursuant to the Funding Agreement and CUPCA, these funds will be transferred by the Secretary to the District.

(3) CRSP MOA Fund

The Parties acknowledge that Funds made available to the Project through the CRSP MOA will be transferred out of the Basin Fund and held in a Reclamation account designated for the CUP and approved for the Project. These funds will subsequently be transferred by the Secretary to the District pursuant to the terms of this Agreement and CUPCA. The availability of such funds is subject to the terms and conditions of the CRSP MOA.

(4) CRSP Act, Section 5(c) Basin Fund

Miscellaneous revenues generated from the CUP have been collected and deposited into the Basin Fund as a credit for the CUP. These funds include, among others, lease payments from the Jordanelle hydropower facility, carriage fees, and license fees. The funds associated with the CUP are available for operation, maintenance and replacement of the CUP

Facilities. The funds made available for the Project will be transferred to the District pursuant to the terms of CUPCA. The Parties understand and agree that procedurally, these funds will be requested by Reclamation through its annual work plan process for use of Basin Fund revenues.

(5) Additional Federal Appropriations

Additional funds may become available through federal appropriations. If these funds are used for implementation of the Project they will be subject to the terms under which they were appropriated. Terms may include restrictions and/or repayment requirements. These funds will be transferred to the District pursuant to the terms of CUPCA.

(6) Contributed Funds

The District will provide non-federal funds under the provisions of the Contributed Funds Act to provide for implementation of the Project. In accordance with the Construction Work Plan, these funds will be paid in advance to the Secretary and initially held in the Olmsted Contributed Funds Account, a Reclamation account. They will be transferred by the Secretary to the District pursuant to the terms of this Agreement and CUPCA as if they had been specifically appropriated for that purpose. Any unused Contributed Funds will be returned to the District without interest paid by the Secretary. Costs incurred up to the execution of this Agreement will be considered as part of the overall Project costs.

(A) Under the current July 2014 cost estimate shown on Table A, the total value of funds to be contributed by the District and accepted by the Secretary under this Agreement for purposes related to the Project, will not exceed \$12,000,000, unless the July 2014 cost estimate is exceeded or otherwise mutually agreed to by the Parties.

(B) The District will advance as Contributed Funds to the Secretary for the Project an amount equal to the difference between the anticipated total cost of completion

of the Project and the amount of funds available for the Project through other federal funding sources, subject to the following:

(i) The Secretary will account for all Contributed Funds made available for the Project through the creation of a separate account, to be entitled the Olmsted Contributed Funds Account, for work to be performed in connection with the Project required to be paid with Contributed Funds. Upon execution of this Agreement, the District will remit to the Secretary no less than a sum of \$1,000,000 to initially fund the Olmsted Contributed Funds Account. These funds will be transferred to the Project Account, as defined in Article 7(b)(1). A base balance of no less than \$1,000,000 will be held in the Project Account at all times, until completion of the Project. All remittances by the District into the Olmsted Contributed Funds Account will be held therein by the Secretary subject to the terms of this Agreement. All payments made by the District to fund and restore the Olmsted Contributed Funds Account will reference Contract No. 15-WC-40-566.

(ii) Payments required to be made by the Secretary to the District pursuant to CUPCA from Contributed Funds for costs related to the Project shall be made from the Olmsted Contributed Funds Account. As needed, the Secretary will submit to the District a request for payment of such monies as shall be necessary to restore the fund balance within the Olmsted Contributed Funds Account. The District agrees to remit such payment to the Secretary within fifteen (15) days of receipt of the Secretary's request.

(iii) Beginning on April 1 in the year immediately following the execution

of this Agreement, and during each quarter of the calendar year thereafter, the Secretary will provide to the District a quarterly accounting of all amounts transferred by the Secretary and held in the Olmsted Contributed Funds Account in connection with the Project during the preceding calendar quarter.

(iv) Following completion of the Project, or termination of this Agreement, which ever first occurs, Reclamation's Finance Office will, within 90 days, refund to the District any unexpended Contributed Funds.

(b) Funding Commitments. For the purpose of funding the Project, the Secretary agrees and commits to provide federal funds from the Olmsted Settlement Agreement escrow fund, funds from the Basin Fund pursuant to the CRSP MOA that are proposed by the Basin States and approved by Reclamation, and funds collected into the Basin Fund pursuant to Section 5(c), attributable to the CUP. Subject to the provisions of Section 7(c) herein, the Secretary agrees to utilize its best efforts in requesting other, additional federal appropriations for the Project. The current federal funding amounts from these sources are set forth in Table A. The District agrees and commits to provide funds from the Power Interference Fund as part of the Contributed Funds in the amount set forth in Table A, subject to the following:

(1) The District shall maintain a separate interest-bearing account in a federally-chartered bank dedicated exclusively to the funding of the Work (the "Project Account"). Immediately upon receipt of the funds which it receives from the Secretary as provided in Subsection (a) above, the District shall deposit all of said funds into the Project Account. Interest on the funds in the Project Account shall remain in said account and be applied to the Project, and all accrued interest thereon shall be used for Project purposes. The District shall be authorized to draw upon the Project Account to fund the Work pursuant to this Agreement. The District shall quarterly

provide to the Secretary a full and detailed accounting of all deposits into and withdrawals from the Project Account until completion of the Project.

(2) If the actual, total cost of the Project exceeds \$29,693,000 (July, 2014 Costs), all actual costs in excess of the total estimated Project cost shall be paid by the District as necessary to complete the Project. The payment of any such funds shall be designated as Contributed Funds in accordance with Article 7(a)(6) herein, unless otherwise changed by Congress. At the conclusion of Project construction, any unexpended federal funds transferred to the District and remaining in the Project Account will be returned to the Secretary.

(c) Appropriation of Additional Federal Funds. To the extent federal funds are required to be provided for the Project beyond the funds enumerated in this Agreement, the Parties agree that said funds shall be provided only in accordance with appropriations of the Congress of the United States, and that the Secretary's obligation to provide said funds for the Project is contingent upon the Congress making an appropriation therefore. If Congress fails to appropriate said funds, this Agreement may, at the sole option of the District, be terminated and considered to be completed without liability to the District or the Secretary, or it may be continued, at the sole option of the District, utilizing only non-federal funds contributed by the District. The District further releases the Secretary from any and all liability for damages for breach of this contract as a result of Congress' failure to appropriate said funds.

(d) Modification of Table A. The Parties acknowledge that the actual amount of funds available for the Project as set forth on Table A may change subsequent to the execution hereof, and accordingly agree that Table A may be superseded and replaced with a substitute Table A to reflect the then current estimates, without the necessity of amending this Agreement.

## **8. SCHEDULE OF CONSTRUCTION WORK**

The District shall follow the budgeting procedures outlined in Article 9 of the 1993 Compliance Agreement. Utilizing that information, the District shall prepare the Construction Work Plan for each federal fiscal year during the construction period and submit it for approval by the Secretary. The Construction Work Plan will be Annually submitted, or updated and re-submitted, as appropriate, and contain a proposed organizational structure, detailed description of the Work to be performed during the year, a construction schedule, and an itemized breakdown of the federal and non-federal funds to be expended. Funds will be made available to the District pursuant to CUPCA and in accordance with the 1993 Compliance Agreement.

#### **9. TITLE TO FACILITIES AND REAL PROPERTY INTERESTS**

Title to all Project Facilities, including real and personal property, easements, rights-of way, and other such property interests acquired in connection with the Project shall be acquired in the name of the United States. Acquisition shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies for Federally Assisted Programs Act of 1970 (42 U.S.C. 4601), as amended, as well as the Department of Justice Title Standards. Title shall remain vested in the United States unless otherwise provided by law. Nothing in this Agreement shall be interpreted to transfer title to any facility, feature, or property that is currently vested in the United States to the District, or any other Party.

#### **10. FINANCIAL ACCOUNTING AND REPORTING PROCEDURES**

The District shall implement a system to monitor performance pursuant to the 1993 Compliance Agreement. The District's financial accounting records and supporting documents shall be retained, and made available for audits and reviews as authorized by the 1993 Compliance Agreement. In addition to the quarterly expenditure report, within ten days after the closing of each month's books, the District shall submit an executive summary report to the

Secretary.

## 11. CONTRACTS WITH THIRD PARTIES

(a) The District shall require contractors to furnish performance bonds and payment bonds equal to 100 percent and 50 percent, respectively, of the contract amount for all contracts exceeding \$25,000. Supply and equipment contractors will be required to furnish performance bonds on major supply or equipment contracts when the contract calls for substantial progress payments before delivery of end items.

(b) The United States shall not be a party to or obligated in any manner by contracts entered into between the District and other parties as required to fulfill the District's obligations under this Agreement. The District shall include, in a conspicuous place, in all solicitations and contracts with third parties, the following language or its substantial equivalent:

*"The United States shall not be a party to or obligated in any manner by contracts entered into between the District and other parties. The District is the responsible authority, without recourse to the United States, regarding settlement and satisfaction of all contractual and administrative issues arising out of award, performance, close-out, payments or any other matter regarding contracts (whether express or implied) between the District and third party contractors, suppliers, materialmen, or any other entity supplying goods or services at any level. This LANGUAGE MUST APPEAR IN ALL SUBCONTRACTS."*

(c) The District must include the articles listed below in all third-party contracts. The full text of these Third Party Contract Articles is attached as EXHIBIT C, and is hereby made a part of this Agreement.

- (1) Officials Not to Benefit
- (2) Equal Opportunity
- (3) Covenant Against Contingent Fees

- (4) Clean Air and Water
- (5) Convict Labor
- (6) Affirmative Action for Special Disabled Veterans and Vietnam Era Veterans
- (7) Davis-Bacon Act
- (8) Affirmative Action for Handicapped Workers
- (9) Hazardous Waste

(d) The District shall provide appropriate copies of the environmental commitment plans to each contractor. The District shall include in all consultant engineering/architect contracts, a statement and warranty by the contractor that the contractor shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications and other services furnished by the contractor. The Secretary expects that the contractor shall, without additional compensation, correct any errors and revise any deficient designs, drawings, or specifications.

## **12. CONTRACTING/PROCUREMENT STANDARDS**

(a) The conditions in this Section do not relieve the District of the contractual responsibilities arising under its contracts. The District is the responsible authority, without recourse to the Secretary, regarding the settlement and satisfaction of all contractual and administrative issues arising out of the District-awarded contracts in support of this Agreement.

(b) The District shall use its own procurement regulations which reflect applicable state and local laws. However, in accordance with the Utah State Procurement Code and applicable federal law, the District, as a political subdivision of the State of Utah, shall comply with such "mandatory applicable federal law" (such as, but not necessarily limited to, environmental or wage and hour laws), as would be generally applicable to the activities undertaken by the District

or its third party contractors. The District must conduct all procurement transactions in a manner that will provide maximum open and free competition. This applies to both negotiated and formally advertised contracts.

### **13. COMPLETION OF THE WORK**

In the event the District fails, for any reason other than non-availability of funds to be furnished by the United States under the terms of this Agreement, to complete the Work in a satisfactory manner and to the extent provided in Article 6 herein, the District will return to the Secretary all federal funds unexpended as of the date of notification. Such notification will be by certified mail from the Secretary to the District and the unexpended federal funds will be returned within 60 days of such notice. Should the District expend all the funds identified in Section 7(a) herein prior to completion of the facilities described in Article 4 herein, the District will complete the Work with non-federal funds unless otherwise provided by law.

### **14. OPERATION, MAINTENANCE AND REPLACEMENT OF OLMSTED FACILITIES**

(a) In conformance with the requirements of the 1965 Repayment Contract and this Agreement, upon completion of the Project, as determined by the Secretary, and following written notification to the District, Annual OM&R obligations and related costs for all Project Facilities will be transferred by the Secretary to the District; except that in accordance with the 1965 Repayment Contract, Annual OM&R costs associated with the Project Facilities will be reimbursed to the District by the Secretary from power revenues and other miscellaneous revenues, including Power Interference fees generated by the Project Facilities which have been deposited into the Basin Fund, and other federal appropriations.

(b) In conformance with the requirements of the 1965 Repayment Contract and the Funding

Agreement, upon completion of the Project, as determined by the Secretary, and following written notification to the District, Annual OM&R obligations and related costs for the Olmsted Facilities will be paid by revenues deposited into the Basin Fund, pursuant to the authority of Section 5(c), attributable to the CUP, including the following:

(1) OM&R costs of Project Facilities.

(2) OM&R costs for the Olmsted Facilities situated upstream of the Project Facilities will be shared by users of these upstream Olmsted Facilities pursuant to the 1965 Repayment Contract. The share of the OM&R costs for the Olmsted Facilities situated upstream of the Project Facilities will be based upon the proportion of the total volume of water diverted at the Olmsted Diversion which is used for generation at the Olmsted Powerplant, calculated as follows:

$$\left( \frac{\text{Annual Volume of water Used for Generation at the Olmsted Powerplant}}{\text{Annual Volume of water Diverted at Olmsted Diversion}} \right) \times \left( \text{Total Annual OMR cost of Olmsted Facilities upstream of Project Facilities} \right)$$

(3) Costs associated with preservation of the historic power house.

(c) The District will provide a forecast of anticipated OM&R costs to the Secretary for inclusion in Reclamation's annual work plan process as required for use of Basin Fund revenues. The District will annually invoice the Secretary when the actual OM&R costs are determined, and the Secretary shall reimburse the District on an Annual basis, as billed, for all OM&R costs incurred by the District, subject to the availability of CUP revenues in the Basin Fund and subsection (e) below.

(d) Subsequent to completion of Project construction, Power Interference revenues, sufficient to offset lost power revenues due to Power Interference, as calculated and collected Annually by the District, will be remitted to the Secretary. The Secretary will deposit these

revenues through Reclamation into the Basin Fund, as attributable to the CUP.

(e) If CUP revenues in the Basin Fund are insufficient to provide for Annual OM&R of the Olmsted Facilities, the Secretary acknowledges the obligation to provide necessary funding, and, if not available through other means, agrees to utilize its best efforts to request additional federal appropriations to provide for any shortfall in funding. The Secretary's obligation to provide appropriations for the Project is contingent upon the Congress making an appropriation therefore.

## **15. MODIFICATIONS**

This Agreement may be modified subject to the written approval of both Parties.

## **16. TERMINATION**

(a) Either Party may terminate this Agreement in whole, or in part, when both Parties agree, in writing, that the continuation of the obligations under this Agreement will not produce beneficial results commensurate with the further expenditure of funds. The two Parties shall agree upon the termination conditions, including the effective date, and in case of a partial termination, the portion to be terminated. The District shall not incur new obligations for the terminated portion of this Agreement after the agreement for termination is reached, even prior to the effective date, and shall cancel as many outstanding obligations as possible. The Secretary will allow full credit to the District for the non-cancelable obligations that were properly incurred prior to the effective date of termination.

(b) If the District requests termination of this Agreement, costs incurred, and those committed within appropriated funds which cannot be canceled, will be paid by the District.

## **17. RECORDS RETENTION**

Financial records, supporting documents, and all other records pertinent to this

Agreement and the Work performed with funds provided by this Agreement, shall be retained for a period of three years from the date of submission of the final financial status report on the entire Project, with the following exception: If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### **18. INDEMNIFICATION**

The District will be responsible for any claims, injuries or damages that may occur as a result of its actions under this Agreement, as provided under applicable statutes and regulations. The District shall require each of its contractors and subcontractors to maintain liability insurance as required by the District under State of Utah Procurement Regulations.

#### **19. NOTICES**

Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the Secretary, when mailed postage prepaid, or delivered directly, in the case of the United States to the Program Director, CUP Completion Act, Office of the Secretary, Department of the Interior, 302 East 1860 South, Provo, Utah 84606 and to the Upper Colorado Region Office, Office of the Regional Director, 125 South State Street, Room 8100, UC-100, Salt Lake City, Utah 84138; and in the case of the District to the General Manager, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058. The designation of the addressees or addresses given above may be changed by notice given in the same manner as provided in this article for other notices.

#### **20. COVENANT AGAINST CONTINGENT FEES**

The District warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission,

percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the District for the purpose of securing business. For breach or violation of this warranty, the Secretary shall have the right to annul this Agreement without liability or in its discretion to subtract from the federal share the full amount of such commission, percentage brokerage or contingent fee.

## **21. GENERAL PROVISIONS**

The Standard Contract Articles applicable to this Agreement are listed below. The full text of these Standard Contract Articles is attached as EXHIBIT D and is hereby made a part of this Agreement.

- (a) Water and Air Pollution Control
- (b) Contingent on Appropriation or Allotment of Funds
- (c) Assignment Limited - Successors and Assigns Obligated
- (d) Officials Not to Benefit
- (e) Equal Opportunity (Federally Assisted Construction)
- (f) Title VI, Civil Rights Act of 1964
- (g) Certification of Non-segregated Facilities

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

**CENTRAL UTAH WATER  
CONSERVANCY DISTRICT**

By:   
Gene Shawcroft, P.E.  
General Manager

ATTEST:

By:   
Assistant to the General Manager

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**UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR**

By:   
Reed R Murray  
Program Director, CUP Completion Act

By:   
Regional Director, Upper Colorado Region

APPROVED:

By:   
Office of the Solicitor, Intermountain Region

**TABLE A**

**ESTIMATED FUNDING SOURCES  
(July 2014, Subject to Change)**

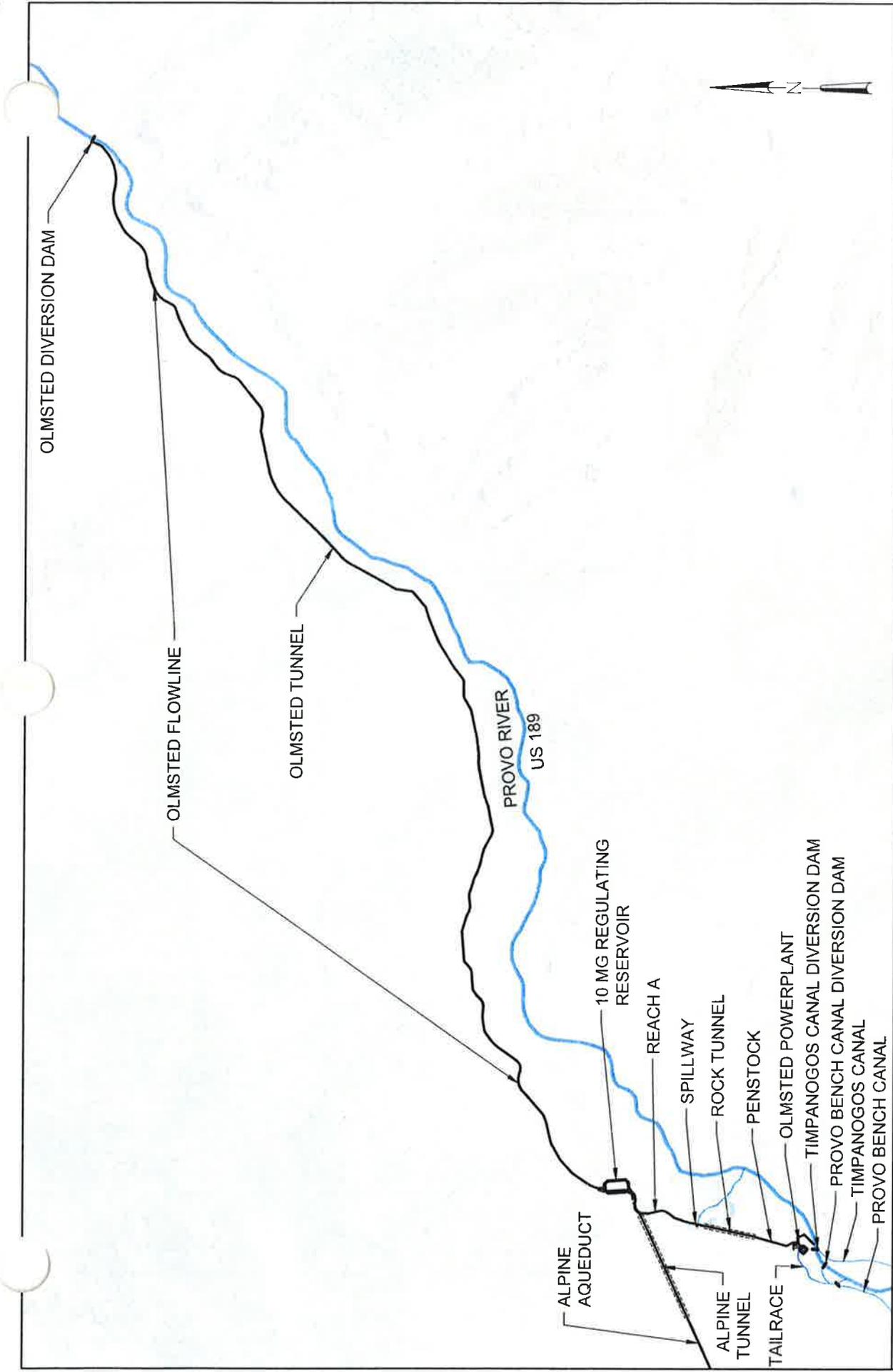
	Repaid by Power Revenues	OM&R	Construction	Total
Escrow Account	No		\$3,400,000	\$3,400,000
Approved CRSP MOA*	No	\$8,000,000		\$8,000,000
Basin Fund - 5(c)	Yes	\$5,300,000		\$5,300,000
Contributed Funds	No		\$1,400,000	\$1,400,000
Anticipated Future Funds**		\$10,593,000		\$10,593,000
District Expended Funds	No		\$1,000,000	\$1,000,000
<b>Total</b>		<b>23,893,000</b>	<b>5,800,000</b>	<b>\$29,693,000</b>

\*Total amount subject to CRSP MOA process

\*\* May include federal appropriations, additional CRSP MOA funds, or District contributed funds

<b>Estimated Project Costs, July 2014</b>	
Conveyance Costs	\$4,376,000
Powerplant Costs	\$20,125,000
Micro Powerplant Costs	\$1,328,000
Project Administration Costs	\$3,864,000
<b>Total Project Costs</b>	<b>\$29,693,000</b>

**EXHIBIT A**  
**MAP OF OLMSTED FACILITIES**



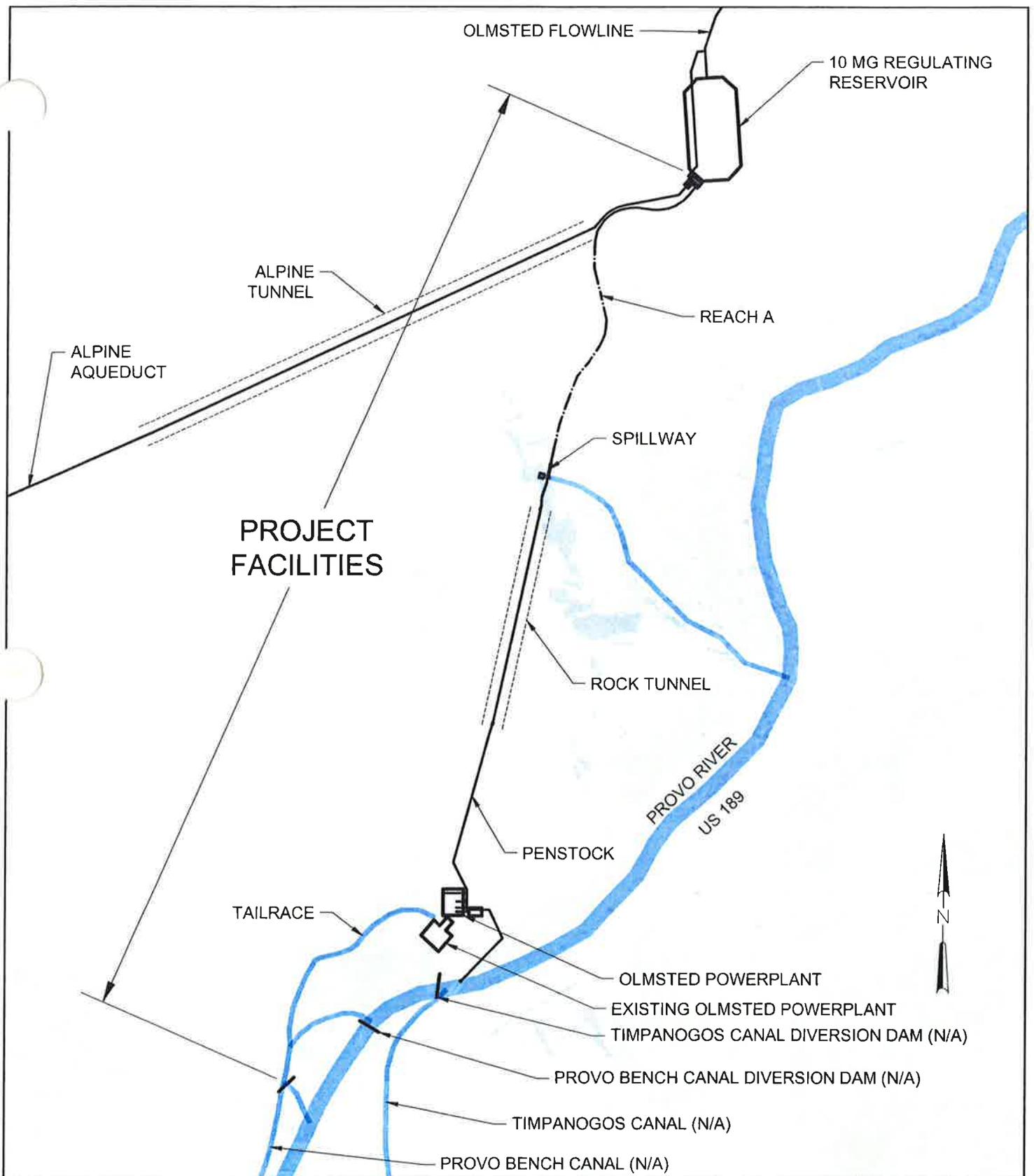
CENTRAL UTAH WATER  
CONSERVANCY DISTRICT

**EXHIBIT A**

**CUP OLMSTED FACILITIES DELIVERY SYSTEM**

VICINITY MAP

**EXHIBIT B**  
**MAP OF PROJECT FACILITIES**



**PROJECT FACILITIES**

**EXHIBIT B**

**OLMSTED HYDROELECTRIC POWERPLANT REPLACEMENT PROJECT FACILITIES**



CENTRAL UTAH WATER  
CONSERVANCY DISTRICT

## EXHIBIT C

### THIRD PARTY CONTRACT ARTICLES

#### 1. OFFICIALS NOT TO BENEFIT

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 arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

#### 2. EQUAL OPPORTUNITY

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through 11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, 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, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of

Labor. Standard Form 100 (EE0-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

### 3. COVENANT AGAINST CONTINGENT FEES

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor

proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

#### 4. CLEAN AIR AND WATER

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards," as used in this clause, means—

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency (EPA) or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with—

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency (EPA), or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed

a facility except when the Administrator, or a designee, of the Environmental Protection Agency (EPA), determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees—

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act {33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when the contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b) (4).

## 5. CONVICT LABOR

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S. C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

## 6. AFFIRMATIVE ACTION FOR SPECIAL DISABLED.AND VIETNAM ERA VETERANS

(a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal- State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause-

{1} Includes, but is not limited to, openings that occur in jobs categorized as-

(i) Production and nonproduction;

(ii) Plant and office;

(iii) Laborers and mechanics;

(iv) Supervisory and nonsupervisory;

(v) Technical; and

(vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices, such as-

(i) Employment;

(ii) Upgrading

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

(1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause. r

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

## 7. DAVIS-BACON ACT

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage-determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records

accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) Except with respect to helpers, as defined in section 22.401 of the Federal Acquisition Regulation, the work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(iv) With respect to helpers, such a classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b){2} and {b}{3} of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 8. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

### (a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as-

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

### (b) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) Noncompliance. If the Contract does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

## 9. HAZARDOUS WASTE

(a) The Contractor shall comply with all applicable Federal, State, and local laws and regulations, and Secretarial policies and instructions, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in lands, waters or facilities owned by the United states or administered by the Secretary."

(b) "Hazardous material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended 42 U.S.C. §1901, et. seg., and the regulations promulgated pursuant to that Act.

(c) The Contractor may not allow contamination of lands, waters or facilities owned by the United States or administered by the Secretary by hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, pesticides (including, but not limited to, the misuse of pesticides), pesticide containers or any other pollutants.

(d) The Contractor shall report to the Secretary's duly authorized representative, within 24 hours of its occurrence, any event which may or does result in pollution or contamination adversely affecting lands, water or facilities owned by the United States or administered by the Secretary.

(e) Violation of any of the provisions of this Article shall constitute grounds for immediate termination of this contract and shall make the Contractor liable for the cost of full and complete remediation and/or restoration of any Federal resources of facilities that are adversely affected as a result of the violation.

(f) The Contractor agrees to include the provision contained in sub-articles (a) through (e) of this Article in any subcontract or third party contract it may enter into pursuant to this contract.

(g) The Secretary's duly authorized representative agrees to provide information necessary for the Contractor, using reasonable diligence, to comply with the provisions of this Article.

**EXHIBIT D**  
**STANDARD CONTRACT ARTICLES**

## EXHIBIT D

### STANDARD CONTRACT ARTICLES

#### WATER AND AIR POLLUTION CONTROL

The District, in carrying out this contract, 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.

#### CONTINGENT ON APPROPRIATION OF ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of the Congress to appropriate funds or the absence of any allotment of funds shall not relieve the District from any obligations under this contract. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

#### 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 part or interest therein shall be valid until approved by the Secretary.

#### OFFICIALS NOT TO BENEFIT

(a) 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 here from. This restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(b) No official of the District shall receive any benefit that may arise by reason of this contract other than as a landowner within the project and in the same manner as other landowners within the project.

#### EQUAL OPPORTUNITY

During the performance of this contract, the District agrees as follows:

(1) The District will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The District 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, 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 District agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this non-discrimination clause.

(2) The District will, in all solicitations or advertisements for employees placed by or on behalf of the District, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex or national origin.

(3) The District 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 Secretary advising the said labor union or workers' representative of the District's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The District will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The District will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the District's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the District may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The District will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each contractor, subcontractor or vendor. The District will take such action with respect to any contract, 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 District becomes involved in, or is threatened with, litigation with a contractor, subcontractor or vendor as a result of such direction, the District may request the United States to enter into such litigation to protect the interests of the United States.

#### TITLE VI, CIVIL RIGHTS ACT OF 1964

(a) The District agrees that it will comply with Title V of the Civil Rights Act of July 2, 1964 (78 Stat. 241) and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFT 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the District receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

(b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the District by the United States, this assurance obligates the District, or in the case

of any transfer of such property, any transferee for the period during which the real property or structure is used for a purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance obligates the District for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the District for the period during which the Federal financial assistance is extended to it by the United States.

(c) This assurance is given 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 District by the United States, including Federal financial assistance which were approved before such date. The District recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the District, its successors, transferees, and assignees.

#### CERTIFICATION OF NONSEGREGATED FACILITIES

The District 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 District agrees that a breach of this certification is a violation of the Equal 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, or otherwise. The District further agrees that (except where it has obtained identical certifications from proposed contractors or subcontractors for specific time periods) it will obtain identical certifications from proposed contractors or subcontractors prior to the award of contracts or subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed contractors or subcontractors (except where the proposed contractors or subcontractors have submitted identical certifications for specific time periods).

#### NOTICE TO PROSPECTIVE CONTRACTORS OR SUBCONTRACTORS OR REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Non-segregated Facilities must be submitted prior to the award of a contract or subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each contract or subcontract or for all contracts or subcontracts during a period (i.e. quarterly, semiannually, or annually).

Note: The penalty for making false statements in offers is prescribed in 18u.s. c. 1001.