

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

COPY

CONTRACT
BETWEEN THE UNITED STATES OF AMERICA
AND THE CENTRAL ARIZONA WATER CONSERVATION
DISTRICT FOR THE TRANSFER OF OPERATION
AND MAINTENANCE OF FACILITIES

Table of Contents

<u>Article</u>	<u>Title</u>	<u>Page</u>
1.	Preamble	1
2.	Explanatory Recitals	2
3.	Purpose of Contract	3
4.	Miscellaneous Construction Activities and OM&R during Construction	4
5.	Operation Agreement	4
6.	Operation and Maintenance of Transferred Works--Payment of Miscellaneous Costs	4
7.	Funding	8
8.	Examination and Inspection of Project Works for Determining Adequacy of Operation, Maintenance, and Safety of Dams Programs	11
9.	Safety Regulations	12
10.	Rules, Regulations, and Determinations	13
11.	Water and Air Pollution Control	14
12.	Contingent on Appropriation or Allotment of Funds	14
13.	Uncontrollable Force(s)	15
14.	Third Party Beneficiaries	15
15.	Officials Not to Benefit	16
16.	Notices	16
17.	Equal Opportunity	16
18.	Compliance with Civil Rights Laws and Regulations	19
	Signatory Page	21

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

COPY

CONTRACT
BETWEEN THE UNITED STATES OF AMERICA
AND THE CENTRAL ARIZONA WATER CONSERVATION
DISTRICT FOR THE TRANSFER OF OPERATION
AND MAINTENANCE OF FACILITIES

1. Preamble

THIS CONTRACT, made this 5th day of August, 1987, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, or supplementary thereto, particularly the Reclamation Extension Act of August 13, 1914 (38 Stat. 686), the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Movable Property Transfer Act of July 29, 1954 (68 Stat. 580), as amended, and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, all collectively hereinafter referred to as "Federal Reclamation Laws", between THE UNITED STATES OF AMERICA, hereinafter referred to as the "United States", acting through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as "Reclamation", and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a district created, organized, and existing under and by virtue of the laws of the State of Arizona, hereinafter referred to as the "District";

1 WITNESSETH:

2 2. Explanatory Recitals

3 WHEREAS, the District and the United States
4 entered into Contract No. 14-06-W-245, dated December
5 15, 1972, hereinafter referred to as the "Repayment
6 Contract," which provides, among other things, for the
7 United States to construct the Project and for the
8 District to repay to the United States the reimbursable
9 costs of the Project allocated to the District; and

10 WHEREAS, part of the Water Supply System is
11 now operational and is being utilized to deliver water
12 to the Project Service Area; and

13 WHEREAS, the Project, which will be very large
14 and highly complex with sophisticated computer control
15 systems and other complex equipment, will require an
16 OM&R work force comprised of numerous specialists and
17 technicians and the creation of such a work force will
18 require several years; and

19 WHEREAS, in accordance with Federal objectives
20 of transferring OM&R of Project Works to Project
21 beneficiaries at the earliest practicable date to
22 minimize the size of the Federal work force involved in
23 Project OM&R, to avoid a large reduction in the Federal
24 work force with its accompanying adverse impact on
25 employees if OM&R were not transferred to the District
26 until completion of the Project, and to avoid
27
28

1 potential disruption of Project OM&R, the parties agree
2 that it would be mutually beneficial to enter into a
3 contract which (1) would provide for an early, smooth,
4 effective, and efficient assumption by the District of
5 Project OM&R, including OM&R of Project facilities prior
6 to formal transfer of the Project Works to OM&R status,
7 (2) would facilitate the development of a well trained
8 OM&R work force as construction progresses, and (3)
9 would protect the financial interests of the United
10 States and the District by assuring competent, long-term
11 management of the Project based on a working
12 relationship of mutual trust and common interest between
13 the parties; and

14 WHEREAS, the District is willing and able to
15 accomplish the work with assistance from the United
16 States as provided for herein;

17 NOW THEREFORE, in consideration of the mutual
18 covenants herein contained, the parties hereto agree as
19 follows:

20 3. Purpose of Contract

21 The purpose of this contract is to provide for
22 transfers to and assumption by the District of the OM&R
23 of the Project Works. The provisions of the Repayment
24 Contract as presently constituted, or as amended in the
25 future, shall apply to this contract and shall be
26 controlling in the event of conflict between the
27 Repayment Contract and this contract unless otherwise
28 expressly provided herein. Definitions

1 included in the Repayment Contract are applicable to
2 this contract. The first letters of terms so defined
3 are capitalized herein.

4 4. Miscellaneous Construction Activities and OM&R
5 During Construction

6 In accordance with the provisions of Section
7 12 of the Reclamation Project Act of August 4, 1939 (53
8 Stat. 1197), the District shall perform such
9 miscellaneous construction activities and OM&R during
10 construction as, after consultation with the District,
11 Reclamation determines to be necessary or advisable to
12 facilitate a smooth, effective, and orderly assumption
13 of Project OM&R by the District.

14 5. Operating Agreement

15 Prior to issuance of Notice(s) of Completion,
16 the District and the United States shall enter into an
17 operating agreement(s) to cover details of Project
18 operations, maintenance, OM&R funding and environmental
19 compliance and commitments applicable to the Transferred
20 Works.

21 6. Operation and Maintenance of Transferred
22 Works--Payment of Miscellaneous Costs

23 (a) The provisions of the Repayment Contract
24 notwithstanding, upon consultation with the District and
25 following written notification from Reclamation, the
26 care, operation, and maintenance of any or all of the
27 Project Works shall be transferred to the District.
28

1 Title to such Transferred Works will remain in the name
2 of the United States.

3 (b) The District shall care for, operate, and
4 maintain such Transferred Works in compliance with the
5 terms of this contract, and in such manner that said
6 Transferred Works will remain in good and efficient
7 condition.

8 (c) Necessary repairs of the Transferred
9 Works shall be made promptly by the District. In case
10 of unusual conditions or serious deficiencies in the
11 care, operation, and maintenance of the Transferred
12 Works threatening or causing interruption of water
13 service, Reclamation may issue to the District a special
14 written notice of the necessary repairs. Within 60 days
15 of receipt of such notice, the District shall either
16 make the necessary repairs or submit a plan acceptable
17 to Reclamation for accomplishing said repairs. If the
18 District fails to do either within 60 days of receipt of
19 said notice, Reclamation may cause the repairs to be
20 made and the cost thereof shall be paid by the District
21 as directed by Reclamation.

22 (d) No substantial change shall be made by
23 the District in the Transferred Works without first
24 obtaining the written consent of Reclamation. The
25 request for said change shall be made in writing and
26 include a detailed design of the contemplated work. If
27 Reclamation does not reject such change within sixty
28 (60) days, the District may proceed with the work.

1 Substantial change is defined herein as major
2 relocations or changes in structures and facilities.

3 (e) The lands and rights-of-way acquired and
4 needed by the United States for the purposes of care,
5 operation, and maintenance of Transferred Works may be
6 used by the District for such purposes. With regard to
7 the lands for the Transferred Works, the District shall
8 not, unless given prior written consent from
9 Reclamation, issue or grant rights-of-way, land use
10 rights, or leases, easements, licenses, permits, or
11 special use agreements involving land, rights-of-way, or
12 Transferred Works. All such land use instruments shall
13 be issued by Reclamation only after consultation with
14 the District and concurrence by the District if the term
15 of the agreement is 25 years or more. The District
16 shall ensure that no unauthorized encroachment occurs on
17 Project lands and rights-of-way required for the
18 operation and maintenance of the Transferred Works. In
19 cases where unauthorized encroachment occurs, the
20 District will expeditiously notify Reclamation and will
21 initiate action to eliminate such encroachment unless
22 the encroachment is legalized by Reclamation.

23 (f) The District agrees to indemnify the
24 United States for, and hold the United States and all of
25 its representatives harmless from, all damages resulting
26 from suits, actions, or claims of any character brought
27 on account of any injury to any person or property
28 arising out of any act, omission, neglect, or misconduct

1 of the District or its employees in the manner or method
2 of performing any construction, care, operation,
3 maintenance, supervision, examination, inspection, or
4 other duties of the District required under this
5 contract.

6 (g) The District shall cooperate with
7 Reclamation in implementing Reclamation's safety of dams
8 program. The United States agrees to provide the
9 District and the appropriate agency of the State of
10 Arizona in which the Project facilities are located with
11 design data, designs, and an operating plan for the dams
12 and related facilities consistent with the current
13 memorandum of understanding between the United States
14 and the State of Arizona relating to coordination of the
15 storage dam plan-design-construct-operate-maintain
16 process.

17 (h) In the event that Reclamation finds the
18 District is operating the Transferred Works or any part
19 thereof in violation of this contract, then, upon the
20 election of Reclamation, the United States may take over
21 from the District the care, operation, and maintenance
22 of the Transferred Works by giving written notice to the
23 District of such election and the effective date
24 thereof. Thereafter, during the period of operation by
25 the United States, upon notification by Reclamation, the
26 District shall pay to the United States, annually in
27 advance, the cost of operation and maintenance of the
28 works as determined by Reclamation. Following written

1 notification from Reclamation, the care, operation, and
2 maintenance of the works may be retransferred to the
3 District.

4 (i) In addition to all other payments to be
5 made by the District under this contract, the District
6 shall reimburse to the United States, following the
7 receipt of a statement from Reclamation, all reasonable
8 costs incurred by the United States in the
9 administration and supervision of the Project pursuant
10 to this contract.

11 (j) Title to United States owned movable
12 plant, equipment, and supplies which are available and
13 useful in the operation and maintenance of the
14 Transferred Works may be transferred to the District
15 following issuance of a Transfer Notice(s) for said
16 works. The value of the said transferred movable plant,
17 equipment, and supplies as listed on the accounts of the
18 United States on the date of transfer shall be added to
19 the District's Construction Cost Repayment Obligation as
20 appropriate. The District shall have access to said
21 accounts for the purpose of verifying said values.

22 7. Funding

23 (a) During Construction. Funding for
24 District OM&R activities during construction or for
25 miscellaneous activities during construction by the
26 District pursuant to Article 4 shall be made available
27 to the District by the United States to the extent that
28 such activities cannot be funded with revenues made

1 available from Project Water sales. Funds advanced by
2 the United States will be allocated among the Project
3 beneficiaries as a capitalized construction cost. All
4 District activities which are to be funded by the United
5 States in accordance with this Subarticle 7(a) shall be
6 scheduled by the District and funded by the United
7 States in accordance with the provisions of "Exhibit A"
8 which is attached hereto and by this reference made a
9 part hereof.

10 (b) Prior to Notice of Completion. During
11 the period of time following the issuance of a Transfer
12 Notice(s) for any or all of the Project Works until
13 issuance of a Notice of Completion therefor, the
14 District may retain all revenues from the sales of
15 Project Water for the purpose of funding the OM&R costs
16 of the Transferred Works, including the purchase of
17 power and energy. All such revenues in excess of those
18 required to fund such OM&R costs shall be remitted to
19 Reclamation as Reclamation may direct, after
20 consultation with the District. In the event that
21 revenues from the sale of Project Water are not
22 sufficient to cover the costs of OM&R of the Transferred
23 Works, the United States shall provide funds to the
24 District upon its receipt of itemized cost statements
25 and billings therefor from the District. Reasonable
26 District overhead costs associated with Project OM&R may
27 be included in the costs to be funded by the District or
28 the United States; Provided, however, That the overhead

1 rate shall be subject to approval by the United States.
2 The United States shall be responsible for funding
3 activities necessary to correct what Reclamation
4 determines to be construction deficiencies (when not
5 funded from other sources), and the costs of
6 construction completion activities. Such United States
7 expenditures shall be allocated among Project purposes
8 as capitalized Project construction costs. All District
9 activities which are to be funded by the United States
10 pursuant to this Subarticle 7(b) shall be scheduled by
11 the District and funded by the United States in
12 accordance with the provisions of "Exhibit A" until the
13 operating agreement referred to in Article 5 has been
14 executed. Scheduling by the District and funding by the
15 United States subsequent to that date shall be pursuant
16 to the provisions of the operating agreement.

17 (c) After Notice of Completion. Following
18 issuance of a Notice(s) of Completion, the District
19 shall be responsible for funding OM&R costs of the
20 Project Works covered by the Notice(s) of Completion
21 properly allocable to it or its Subcontractors. The
22 United States shall be responsible for arranging for
23 funding of OM&R costs of such works allocable to water
24 users other than the Subcontractors. Delivery of
25 water shall be contingent on advance payment of OM&R
26 costs. Fixed OM&R costs (those not directly related to
27 the delivery of water) shall be allocated among the
28

1 Project beneficiaries on the same basis as Project
2 construction costs. The United States may direct those
3 water users that are not Subcontractors to pay OM&R
4 costs directly to the District in which event the
5 District shall bill such beneficiaries for such costs
6 with copies to the United States.

7 8. Examination and Inspection of Project Works for
8 Determining Adequacy of Operation, Maintenance, and
9 Safety of Dams Programs

10 (a) Reclamation may, from time to time,
11 examine the District's books, records and reports, and
12 the Project Works being operated by the District to
13 assist the District in determining the condition of the
14 Project Works, and the adequacy of the operation,
15 maintenance, and safety of dams programs, and the water
16 conservation program. Reclamation may examine any or
17 all of the Project Works which were constructed by the
18 United States and transferred to the District, or
19 Project Works which were constructed by the District
20 with funds advanced or reimbursed by the United States.

21 (b) Reclamation may, or the District may
22 request Reclamation to, conduct special inspections of
23 any Project Works being operated by the District and
24 special audits of the District's books and records to
25 ascertain the extent of any operation and maintenance
26 deficiencies, to determine the remedial measures
27 required for their correction, and to assist the
28

1 District in solving specific problems. Except in an
2 emergency, any special inspection or audit shall be
3 made only after written notice thereof has been
4 delivered to the District by Reclamation.

5 (c) The District shall provide access to the
6 Project Works, operate any mechanical or electrical
7 equipment, and be reasonably available to assist in the
8 examination, inspection or audit.

9 (d) Reclamation shall prepare reports based
10 on the examinations, inspections or audits, and furnish
11 copies of such reports and any recommendations to the
12 District.

13 (e) The District shall reimburse any
14 reasonable cost incurred by the United States in making
15 operation and maintenance examinations, inspections
16 (including safety of dams) and audits, and preparing
17 associated reports and recommendations.

18 (f) Reclamation may provide the State of
19 Arizona an opportunity to observe and participate, at
20 its own expense, in the examinations and inspections of
21 Project facilities which are covered under the
22 Reclamation safety of dams program. The State may be
23 provided copies of reports and any recommendations
24 relating to such examinations and inspections.

25 9. Safety Regulations

26 Any work performed by the District pursuant to
27 Article 4 of this contract shall be done in accordance
28 with all applicable Federal and State safety

1 regulations, including Reclamation's Construction Safety
2 Standards, system clearance procedures, and power system
3 safety standards. Employees of the District required
4 to operate Federally owned equipment shall be certified
5 in the same manner as Federal employees.

6 10. Rules, Regulations, and Determinations

7 (a) The parties agree that the delivery of
8 Project Irrigation Water is subject to the acreage and
9 ownership limitations and pricing provisions of
10 Reclamation Law, as amended and supplemented, including
11 but not limited to the Reclamation Reform Act of 1982
12 (Public Law 97-293).

13 (b) Reclamation shall have the right to
14 promulgate, after an opportunity has been offered to the
15 District for consultation, rules and regulations
16 consistent with the provisions of this contract, the
17 laws of the United States and the State of Arizona so
18 long as State law is not inconsistent with Federal law,
19 to add to or to modify them as may be deemed proper and
20 necessary to carry out this contract, and to supply
21 necessary details of its administration which are not
22 covered by express provisions of this contract. The
23 District shall observe such rules and regulations.

24 (c) Where the terms of this contract provide
25 for action to be based upon the opinion or determination
26 of either party to this contract, whether or not stated
27 to be conclusive, said terms shall not be construed as
28 permitting such action to be predicated upon arbitrary,

1 capricious, or unreasonable opinions or determinations.
2 In the event that the District questions any factual
3 determination made by the United States, the findings as
4 to the facts shall be made by the Secretary of the
5 Interior only after consultation with the District and
6 shall be conclusive upon the parties.

7 (d) Nothing herein shall be construed (1) as
8 depriving either party from pursuing and prosecuting any
9 remedy in any appropriate court of the United States or
10 the State of Arizona which would otherwise be available
11 to such parties even though provisions herein may
12 declare that determinations or decisions of the
13 Secretary or other persons are conclusive or (2) as
14 depriving either party of any defense thereto which
15 would otherwise be available.

16 11. Water and Air Pollution Control

17 The District, in carrying out this contract,
18 shall comply with all applicable water and air pollution
19 and other environmental protection laws and regulations
20 of the United States and the State of Arizona, and shall
21 obtain all required permits or licenses from the
22 appropriate Federal, State, or local authorities.

23 12. Contingent on Appropriation or Allotment of Funds

24 The expenditure or advance of any money or the
25 performance of any obligation by the United States under
26 this contract shall be contingent upon appropriation or
27 allotment of funds. Absence of appropriation or
28 allotment of funds shall not relieve the District from

1 any obligations under this contract unless such
2 obligations are contingent on the appropriation or
3 allotment of Federal funds. No liability shall accrue
4 to the United States in case funds are not appropriated
5 or allotted.

6 13. Uncontrollable Force(s)

7 Neither party shall be considered in default
8 in the performance of any of its duties under this
9 contract when a failure of performance is due to an
10 uncontrollable force. For purposes of this contract,
11 uncontrollable force shall mean any cause beyond the
12 control of the party affected, including, but not
13 limited to: failure of facilities, flood, earthquake,
14 storm, lightning, fire, war, riot, civil disturbance,
15 sabotage, bankruptcy of a major contractor, or restraint
16 by a court or other public authority, which by the
17 exercise of due diligence and foresight such party could
18 not reasonably have been expected to avoid. Any party
19 rendered unable to fulfill any of its duties under this
20 contract by reason of an uncontrollable force shall give
21 written notice of such fact to the other party within a
22 period of time that is reasonable under the
23 circumstances and shall exercise due diligence to remove
24 such inability with all reasonable dispatch.

25 14. Third Party Beneficiaries

26 Nothing in this contract, express or implied,
27 is intended to confer any rights or remedies under or by
28

1 reason of this contract on any persons other than the
2 parties to it, nor is anything in this contract intended
3 to relieve or discharge the obligation or liability of
4 any third person to any party to this contract.

5 15. Officials Not to Benefit

6 No Member of or Delegate to Congress, Resident
7 Commissioner or official of the District shall benefit
8 from this contract other than as a water user or
9 landowner in the same manner as other water users or
10 landowners.

11 16. Notices

12 Any notice, demand, or request authorized or
13 required by this contract shall be deemed to have been
14 given, on behalf of the District when mailed, postage
15 prepaid, or delivered to the Regional Director, Lower
16 Colorado Region, Bureau of Reclamation, P.O. Box 427,
17 Boulder City, Nevada 89005, and on behalf of the United
18 States, when mailed, postage prepaid, or delivered to
19 the General Manager of the Central Arizona Water
20 Conservation District, 23636 North 7th Street, Phoenix,
21 Arizona 85024. The designation of the addressee or the
22 address may be changed by notice given in the same
23 manner as provided in this article for other notices.

24 17. Equal Opportunity

25 During the performance of this contract, the
26 District agrees as follows:
27
28

1 (a) The District will not discriminate
2 against any employee or applicant for employment because
3 of race, color, religion, sex, or national origin. The
4 District will take affirmative action to ensure that
5 applicants are employed, and that employees are treated
6 during employment, without regard to their race, color,
7 religion, sex, or national origin. Such action shall
8 include, but not be limited to the following:
9 Employment, upgrading, demotion, or transfer;
10 recruitment or recruitment advertising; layoff or
11 termination; rates of pay or other forms of
12 compensation; and selection for training, including
13 apprenticeship. The District agrees to post in
14 conspicuous places, available to employees and
15 applicants for employment, notices to be provided by the
16 United States setting forth the provisions of this
17 nondiscrimination clause.

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

24 (c) The District will send to each labor union
25 or representative of workers with which it has a
26 collective bargaining agreement or other contract or
27 understanding, a notice, to be provided by the United
28 States, advising said labor union or workers'

1 representative of the District's commitments under
2 Section 202 of Executive Order 11246 of September 24,
3 1965, as amended, and shall post copies of the notice in
4 conspicuous places available to employees and applicants
5 for employment.

6 (d) The District will comply with all
7 provisions of Executive Order No. 11246 of September 24,
8 1965, as amended, and of the rules, regulations, and
9 relevant orders of the Secretary of Labor.

10 (e) The District will furnish all information
11 and reports required by said amended Executive Order and
12 by the rules, regulations, and orders of the Secretary
13 of Labor, or pursuant thereto, and will permit access to
14 its books, records, and accounts by the United States
15 and the Secretary of Labor for purposes of investigation
16 to ascertain compliance with such rules, regulations,
17 and orders.

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

1 (g) The District will include the provisions
2 of paragraphs (a) through (g) in every subcontract or
3 purchase order unless exempted by rules, regulations, or
4 orders of the Secretary of Labor issued pursuant to
5 Section 204 of said amended Executive Order, so that
6 such provisions will be binding upon each subcontractor
7 or vendor. The District will take such action with
8 respect to any subcontract or purchase order as may be
9 directed by the Secretary of Labor as a means of
10 enforcing such provisions, including sanctions for
11 noncompliance; Provided, however, That in the event the
12 District becomes involved in, or is threatened with,
13 litigation with a subcontractor or vendor as a result of
14 such direction, the District may request the United
15 States to enter into such litigation to protect the
16 interests of the United States.

17 18. Compliance with Civil Rights Laws and Regulations

18 (a) The District shall comply with Title VI of
19 the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section
20 504 of the Rehabilitation Act of 1975 (Public Law
21 93-112, as amended), the Age Discrimination Act of 1975
22 (42 U.S.C. 6101, et seq.) and any other applicable civil
23 rights laws, as well as with their respective
24 implementing regulations and guidelines imposed by the
25 U.S. Department of the Interior and/or Bureau of
26 Reclamation.

27 (b) These statutes require that no person in
28 the United States shall, on the grounds of race, color,

1 national origin, handicap, or age, be excluded from
2 participation in, be denied the benefits of, or be
3 otherwise subjected to discrimination under any program
4 or activity receiving financial assistance from the
5 Bureau of Reclamation. By executing this contract, the
6 District agrees to immediately take any measures
7 necessary to implement this obligation, including
8 permitting officials of the United States to inspect
9 premises, programs, and documents.

10 (c) The District makes this agreement in
11 consideration of and for the purpose of obtaining any
12 and all Federal grants, loans, contracts, property
13 discounts or other Federal financial assistance extended
14 after the date hereof to the District by the Bureau of
15 Reclamation, including installment payments after such
16 date on account of arrangements for Federal financial
17 assistance which were approved before such date. The
18 District recognizes and agrees that such Federal
19 assistance will be extended in reliance on the
20 representations and agreements made in this article, and
21 that the United States reserves the right to seek
22 judicial enforcement thereof.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties hereto have caused this contract No. 7-07-30-W0167 to be duly executed the date and year above written.

LEGAL REVIEW AND APPROVAL

UNITED STATES OF AMERICA

By: John L. Briden 7-31-87
Field Solicitor
Phoenix, Arizona

By: [Signature]
Regional Director
Lower Colorado Region
Bureau of Reclamation

ATTEST:

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

By: Marilyn H. Konstadt
Secretary

By: [Signature]
Title: President

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

RECLAMATION'S RESPONSIBILITY

1. (a) Contingent upon appropriations from Congress, Reclamation will make funds available to the District as provided in Sections 4 and 5 of this Exhibit, to cover costs of the operation and maintenance of Project features as outlined in each master work schedule described in Section 3 of this Exhibit.

(b) Reclamation will assist in the development and review of the master and semi-annual work schedules to assure that the work to be accomplished is consistent with programmed funds and reflects coordination with construction activities being performed on the Project.

(c) Reclamation will review and assist, if needed, in the operation and maintenance being performed by the District. Such assistance will include but is not limited to, all technical resources available to Reclamation.

(d) At the District's request, Reclamation may purchase and provide equipment, supplies, and materials for the District's use in carrying out the responsibilities under this contract pursuant to Section 7 of this Exhibit.

1 (e) Reclamation will make construction specifications
2 available to the District for its review prior to issuance of
3 solicitations.

4
5 (f) Reclamation will review the proposed master and
6 semi-annual work schedules to assure that the proposed work will
7 be in compliance with all Federal, State, and local environmental
8 laws and regulations.

9
10 DISTRICT'S RESPONSIBILITY

11
12 2. The District, upon request from Reclamation and with
13 Reclamation assistance, will develop work schedules and,
14 following Reclamation approval, will provide the following
15 services in the operation and maintenance of features of the
16 Project:

17
18 (a) Recruit, employ, train, and supervise the
19 personnel required to perform the operation and maintenance
20 functions as outlined in the master and semi-annual work
21 schedules.

22
23 (b) Procure required supplies and equipment to perform
24 the operation and maintenance as outlined in the master work
25 schedule pursuant to Sections 7 and 9 of this Exhibit.

1 (c) Review specifications used by Reclamation for
2 construction of various Project facilities. Such review shall be
3 for the purpose of identifying operation and maintenance
4 concerns.

5
6 (d) Cooperate with Reclamation and other involved
7 entities to assure that proposed work will be in compliance with
8 all Federal, state, and local environmental laws and regulations.

9
10 SCHEDULE OF WORK

11
12 3. The District will prepare a master work schedule and
13 detailed semi-annual work schedules for review and approval by
14 Reclamation. The schedules will cover the following items:

15
16 (a) Master work schedules will, on a continuing basis,
17 cover three (3) full years and show by fiscal years (October
18 through September) the Project facilities to be operated and
19 maintained by the District and the total estimated costs thereof
20 by feature. The master work schedule will be updated and
21 submitted to Reclamation by January 1 of each year for the
22 upcoming three (3) years for all operation, maintenance, and
23 replacement work covered under this contract. The line items in
24 the work schedules will conform to the financial reporting
25 requirements of Reclamation's books of account.

1 (b) The detailed semi-annual work schedules will
2 identify feature costs and major equipment purchases with a
3 general description of work to be performed for each feature.
4 The line items in the work schedules will conform to the
5 financial reporting requirements of Reclamation's books of
6 account.

7
8 (c) Notwithstanding any other provision of this
9 section, the master work schedules and detailed semi-annual work
10 schedules shall be submitted sufficiently in advance of the
11 proposed operation and maintenance work to permit an adequate
12 review and approval by Reclamation of the proposed program. The
13 District will not be obligated to do any of the proposed work
14 until Reclamation has approved the master work schedule and the
15 applicable semi-annual work schedule and funds are available
16 therefor. Neither party shall make major changes or
17 modifications to the work schedules without the written approval
18 of the other party.

19
20 ADVANCES AND ACCOUNTABILITY OF FUNDS

21
22 4. (a) Reclamation will make monthly advances or
23 reimbursements to the District, for work done or to be done under
24 approved master work schedules and the approved semi-annual work
25 schedule, subject to the approval of the monthly financial report
26 described in Section 6 of this Exhibit. The payment will be made
27
28

1 as soon as administratively possible after the monthly financial
2 report has been received and approved by Reclamation.
3 Reclamation, at its election, may withhold any payment of future
4 funds for work contemplated but not yet performed if, in its
5 opinion, the District is in default or delinquent with respect to
6 performance of any of the terms or conditions of this contract;
7 and in the event funds are so withheld, the District may
8 discontinue all disputed work until the disputes are resolved and
9 the money therefor is released.

10
11 (b) The funds paid hereunder by Reclamation as defined
12 in the work schedule shall be used only for costs and expense
13 incurred by the District for work that would otherwise be
14 accomplished by Reclamation in the operation and maintenance of
15 Project facilities. Such costs and expenses may include salaries
16 and benefits of District employees; procurement of necessary
17 materials, equipment, buildings, employee training, tools,
18 supplies; administrative expenses; and all other costs which, in
19 the opinion of the District and Reclamation, are related to this
20 contract. All costs and expenses of this work program, shall be
21 limited to costs reasonably incurred in the exercise of sound
22 engineering, construction, and business practices which are
23 chargeable or allocable to the work program.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AVAILABILITY OF FUNDS

5. (a) Contingent upon appropriations, Reclamation shall provide funds to the District for the operation and maintenance functions performed by the District. The District will be notified in writing of the funds available each year.

(b) The performance of any work by the District hereunder which requires appropriation of funds by Congress shall be contingent upon such appropriations being made. The District shall not be liable for failure to operate as specified by the work schedule when its contractual obligations as contemplated by the schedule are not complete or operational due to failure of appropriation of Federal funds or to the unavailability of water. If Federal funds are not made available to the District, Reclamation may assume the responsibilities for operation and maintenance.

FINANCIAL ACCOUNTS

6. (a) The District shall establish and maintain separate accounts with records for all financial transactions related to this contract. The accounting system will accommodate the standards of internal control and accountability required by Reclamation. Representatives of the United States shall have the right to examine the District's books and records relating to matters covered by this contract.

1 (b) Monthly reports (including bills) pertaining to
2 the financial transactions under this contract shall be submitted
3 by the District to Reclamation. The monthly reports shall be due
4 on the 10th day of each month. All reports will be in a format
5 consistent with the format of the semi-annual work schedules and
6 will provide the information necessary to properly maintain
7 Reclamation's books of account pertaining to this contract.
8

9 (c) The District shall provide an audited financial
10 statement for each fiscal year. Such audits shall be made by
11 qualified persons who are sufficiently independent of those who
12 authorize the expenditure of Federal funds to produce unbiased
13 opinions, conclusions, and judgments. Audits should be made in
14 accordance with generally accepted auditing standards and the
15 standards published by the General Accounting Office, Standards
16 for Audit of Governmental Organizations, Programs, Activities,
17 and Functions.
18

19 ACQUISITION OF PROPERTY, EQUIPMENT, MATERIALS, AND SUPPLIES
20

21 7. The District is authorized to acquire with funds
22 provided by Reclamation, pursuant to the approved semi-annual
23 work schedule, property (other than real property), equipment,
24 materials, and supplies necessary to perform the operation and
25 maintenance prescribed in this contract and further detailed in
26
27
28

1 the master and semi-annual work schedules. Any property,
2 equipment, materials, and supplies purchased with Federal funds
3 shall be used by the District only for purposes of work covered
4 by this contract and cannot be used for personal use by the
5 District employees.

6
7 THIRD PARTY CLAIMS
8

9 8. The District agrees that it will not seek reimbursement
10 from nor sue the United States nor any officer, agent, or
11 employee thereof, for expenses incurred in defending third party
12 claims for personal injury, death, or property damage arising out
13 of the District's own acts or omissions.

14
15 PROCUREMENT STANDARDS/CONTRACTS WITH THIRD PARTIES
16

17 9. (a) The District shall use its own procurement
18 regulations as adopted by its Board of Directors. The District
19 must conduct all procurement transactions in a manner that will
20 promote free and open competition in consonance with sound
21 business practices and in accordance with the provisions of 48
22 CFR 52.244-2 and 48 CFR 52.244-5. This applies to both
23 negotiated and formally advertised contracts. The District may
24 also utilize, at its option, all of the procurement processes and
25 benefits available to Reclamation in obtaining services,
26 equipment, or supplies. The provisions of this subarticle
27 shall not apply to power purchases made by the District pursuant
28 to Public Law 98-381 [^] and the Navajo Power Marketing Plan. 

1 (b) Unless the District's regulations provide
2 otherwise, the District, if it elects not to do the work with its
3 own employees and equipment, shall advertise each construction,
4 equipment, or supply contract exceeding \$25,000 for competitive
5 bidding. Upon receipt of said bids, any award of contract by the
6 District which does not conform to prevailing District
7 regulations, other than to the lowest responsible bidder, shall
8 be subject to approval of Reclamation prior to consummation of
9 the transaction.

10
11 (c) Reclamation shall not be a party to or obligated
12 in any manner by contracts entered into between the District and
13 other parties except as provided in this contract.

14
15 (d) The District is the responsible authority, without
16 recourse to Reclamation, regarding the settlement and
17 satisfaction of all subcontractual and administrative issues
18 arising out of the subcontracts the District awards in support of
19 this contract.

RECORDS RETENTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. District financial records, supporting documents, and all other records pertinent to this contract shall be retained for a period of three years from the date of submission of the final financial status report, 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.