

**DUPLICATE ORIGINAL**

Contract No. 009D6B0120  
Amendment No. 2

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Franklin, Superior-Courtland, and Courtland Units,  
Bostwick Division,  
Pick-Sloan Missouri River Basin Program, Kansas

AMENDATORY CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
AND THE KANSAS-BOSTWICK IRRIGATION DISTRICT NO. 2  
FOR DEFERMENT OF CONSTRUCTION CHARGES

THIS AMENDATORY CONTRACT, made this 9<sup>TH</sup> day of DECEMBER, 2005, between the UNITED STATES OF AMERICA, hereinafter called the "United States", acting through the Secretary of the Interior, pursuant generally to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly, but not limited to Sec. 9(d) of the Act of August 4, 1939 (53 Stat. 1187), as amended and supplemented, the Act of December 22, 1944 (58 Stat. 887), and the Act of July 2, 1956 (70 Stat. 483), all collectively known as the Federal Reclamation laws, and the KANSAS-BOSTWICK IRRIGATION DISTRICT NO. 2, an irrigation district organized and existing pursuant to the laws of the State of Kansas, with its principal place of business in Courtland, Kansas, hereafter called the "District".

WITNESSETH, THAT:

The following statements are made in explanation:

EXPLANATORY RECITALS

WHEREAS, by Contract No. 009D6B0120 dated July 25, 2000, the District contracted with the United States for the use of and repayment for the water supply and distribution works, in accordance with Reclamation Law; and

WHEREAS, the Act of September 21, 1959, provides that if the Secretary of the Interior determines that the payment of an annual construction installment by an entity will unnecessarily burden that entity, he may provide for a deferment of that annual payment; provided that any amendatory contract executed to effect a deferment shall provide that it is only an interim solution of the repayment problems dealt with, and its terms are not, in themselves, to be construed as criterion of the terms of an amendatory contract that may be subsequently negotiated; provided that the deferment does not provide for an extension to the District's repayment period; and

WHEREAS, the project area suffered severe drought conditions in 2004; and

WHEREAS, the District requested to defer the 2004 annual water supply payment of \$21,250 and the annual distribution works payment in the amount of \$376,640; and

WHEREAS, the 2004 annual water supply payment and the annual distribution works payments due in semi-annual installments April 1 and November 1, 2004, were deferred by Contract Amendment No. 1 dated August 27, 2004; and

WHEREAS, the project area has suffered severe drought conditions in 2005; and

WHEREAS, the District has requested to defer the 2005 annual water supply payment of \$21,841 and the annual distribution works payment in the amount of \$410,880; and

WHEREAS, since the execution of Contract No. 009D6B0120 dated July 25, 2000, several Standard Articles have been revised and the parties desire to incorporate such changes.

NOW THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is agreed between the parties hereto as follows:

1. Subarticle 5.b. is deleted in its entirety and replaced with the following:

“ b. The District made annual water supply payments of \$21,250 in 2001, 2002, and 2003. The 2004 annual payment was deferred. The 2005 annual payment is hereby deferred. The District shall make base water supply payments of \$21,841 beginning in 2006 and continuing through 2015, \$96,512 in 2016 and 2017, \$85,591 for 2018 through 2039, with a final base installment of \$85,564 in 2040. It is the intention of the parties that the increase in the annual base payment shall occur in the year following the final repayment of the capital costs of the distribution works under Article 6 of this Contract; and that if for any reason that final payment is delayed, the change in the base payment shall be likewise delayed to coincide with the year following the delayed final capital payment for the distribution works. The parties agree that any base payments that are in excess of the calculated ability to pay of the District are made in part in consideration of the conversion of Part A of the 1951 contract to a repayment contract pursuant to Subsection 9(d) of the Reclamation Project Act of 1939. The parties agree that notwithstanding the future determinations regarding ability to pay, the payments set forth in (b) herein shall not be reduced.”

2. Subarticle 6.a. is deleted in its entirety and replaced with the following:

“ a. The United States has made reimbursable expenditures of \$13,995,401 for construction of distribution works. The District, under the 1951 contract, repaid \$8,651,955.66 of this amount. In addition, the District made scheduled annual distribution works payments of \$376,640 in 2001, 2002, and 2003. The 2004 annual payment was deferred. The 2005 annual payment is hereby deferred. The District shall repay to the United States the remaining unpaid balance of \$4,213,525.34 in accordance with the payment schedule in Attachment A, which is attached hereto and made a part hereof.”

3. Subarticle 14.f. is deleted in its entirety and replaced with the following:

“ f. The District agrees to indemnify the United States for, and to hold the United States and all of its representatives harmless from, all damages resulting from suits,

actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of the District or the United States on transferred works required under this Contract, regardless of who performs those duties. The District does not agree to indemnify the United States for any damages arising from intentional torts or malicious actions committed by employees of the United States.

4. Article 17 is deleted in its entirety and replaced with the following:

“EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE”

17. a. The Contracting Officer may, from time to time, examine the following: the District's books, records, and reports; the project works being operated by the District; the adequacy of the operation and maintenance program, the reserve fund, and the water conservation program including the water conservation fund, if applicable. Notwithstanding title ownership, where the United States retains a financial, physical, or liability interest in facilities either constructed by the United States or with funds provided by the United States, the Contracting Officer may examine any or all of the project works providing such interest to the United States.

b. The Contracting Officer may or the District may request the Contracting Officer to, conduct special inspections of any project works being operated by the District and special audits of the District's books and records to ascertain the extent of any operation and maintenance deficiencies to determine the remedial measures required for their correction, and to assist the District in solving specific problems. Except in an emergency, any special inspection or audit shall be made only after written notice thereof has been delivered to the District by the Contracting Officer.

c. The District shall provide access to the project works, operate any mechanical or electrical equipment, and be available to assist in the examination, inspection, or audit.

d. The Contracting Officer shall prepare reports based on the examinations, inspections, or audits and furnish copies of such reports and any recommendations to the District.

e. The costs incurred by the United States in conducting operation and maintenance examinations, inspections, and audits and preparing associated reports and recommendations related to high- and significant hazard dams and associated facilities shall be nonreimbursable. Associated facilities include carriage, distribution, and drainage systems; pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road; regulating reservoirs (low hazard); fish passage and protective facilities, including hatcheries; river channelization features; rural/municipal water systems; desalting and other water treatment plants; maintenance buildings and service yards; facilities constructed under Federal loan programs (until paid out); and recreation facilities (reserved works only); and any other facilities as determined by the Contracting Officer.

f. Expenses incurred by the District, as applicable, in participating in the operation and maintenance site examination will be borne by the District.

g. Requests by the District for consultations, design services, or modification reviews, and the completion of any operation and maintenance activities identified in the formal recommendations resulting from the examination (unless otherwise noted) are to be funded as project operation and maintenance and are reimbursable by the District to the extent of current project operation and maintenance allocations.

h. Site visit special inspections that are beyond the regularly scheduled operation and maintenance examinations conducted to evaluate a particular concern(s) or problem(s) and provide assistance relative to any corrective action (either as a follow up to an operation maintenance examination or when requested by the District) shall be nonreimbursable.

i. The Contracting Officer may provide the State an opportunity to observe and participate in, at their own expense, the examinations and inspections. The State may be provided copies of reports and any recommendations relating to such examinations and inspections."

5. All terms and conditions of the existing contract between the parties hereto shall remain in full force and effect except as they are specifically modified by this amendatory contract.

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

THE UNITED STATES OF AMERICA

By [Signature]  
Regional Director

KANSAS-BOSTWICK IRRIGATION  
DISTRICT NO. 2

By [Signature]  
President

ATTEST:

[Signature]  
Secretary

**ATTACHMENT A**

**ANNUAL DISTRIBUTION WORKS CONSTRUCTION CHARGE  
OBLIGATION PAYMENTS**

<u>YEAR</u>	<u>AMOUNT</u>
2006	\$421,353
2007	\$421,353
2008	\$421,353
2009	\$421,353
2010	\$421,353
2011	\$421,353
2012	\$421,353
2013	\$421,353
2014	\$421,353
2015	\$421,348.34 (final payment)