

Application for a Permit to Use
Surface Water

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Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 503-986-0900
 www.oregon.gov/OWRD

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant

NAME Brewster Road, LLC; Attn: Barney Kropf		PHONE (HM) -	
PHONE (WK) 206-227-6412	CELL -	FAX -	
ADDRESS 23495 Powerline Road			
CITY Harrisburg	STATE OR	ZIP 97446	E-MAIL * barney.kropf@yahoo.com

Organization

NAME		PHONE	FAX
ADDRESS			CELL
CITY	STATE	ZIP	E-MAIL *

Agent – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME THEODORE RESSLER, RG, CWRE – SUMMIT WATER RESOURCES, LLC		PHONE 503-701-4535	FAX -
ADDRESS PO Box 11268			CELL -
CITY PORTLAND	STATE OR	ZIP 97211	E-MAIL * TRESSLER@SUMMITWR.COM

Note: Attach multiple copies as needed

* By providing an e-mail address, consent is given to receive all correspondence from the Department electronically. (Paper copies of the proposed and final order documents will also be mailed.)

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot legally use water until the Water Resources Department issues a permit.
- The Department encourages all applicants to wait for a permit to be issued before beginning construction of any proposed diversion. Acceptance of this application does not guarantee a permit will be issued.
- If I begin construction prior to the issuance of a permit, I assume all risks associated with my actions.
- If I receive a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to receive water to which they are entitled.



I (we) affirm that the information contained in this application is true and accurate

	Barney Kropf	9/15/22
Applicant Signature	Print Name and Title if applicable	Date
_____	_____	_____
Applicant Signature	Print Name and Title if applicable	Date

SECTION 2: PROPERTY OWNERSHIP

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

- YES, there are no encumbrances.
- YES, the land is encumbered by easements, rights of way, roads or other encumbrances.
- NO, I have a recorded easement or written authorization permitting access.
- NO, I do not currently have written authorization or easement permitting access.
- NO, written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).
- NO, because water is to be diverted, conveyed, and/or used only on federal lands.

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Affected Landowners: List the names and mailing addresses of all owners of any lands that are not owned by the applicant and that are crossed by the proposed ditch, canal or other work, even if the applicant has obtained written authorization or an easement from the owner. *(Attach additional sheets if necessary).*

NA

Legal Description: You must provide the legal description of: 1. The property from which the water is to be diverted, 2. Any property crossed by the proposed ditch, canal or other work, and 3. Any property on which the water is to be used as depicted on the map. [See Attachment 3 for legal description of property](#)

SECTION 3: SOURCE OF WATER

A. Proposed Source of Water

Provide the commonly used name of the water body from which water will be diverted, and the name of the stream or lake it flows into (if unnamed, say so), and the locations of the point of diversion (POD):

Source 1: Stored water (Willamette River Basin Project)	Tributary to: South Santiam River
TRSQQ of POD: T11S, R2W, S25, NENW	

If any source listed above is stored water that is authorized under a water right permit, certificate, or decree, attach a copy of the document or list the document number (for decrees, list the volume, page and/or decree name).



B. Applications to Use Stored Water

Do you, or will you, own the reservoir(s) described in Section 3A above?

- Yes.
- No. (Enclose a copy of your written notification to the operator of the reservoir of your intent to file this application, which should have been mailed or delivered to the operator.) See Attachment 4

The Applicant will be accessing stored water for this permit under an existing Water Service Contract from the U.S. Bureau of Reclamation (see Attachment 5).

If all sources listed in Section 3A are stored water, the Department will review your application using the expedited process provided in ORS 537.147, unless you check the box below. Please see the instruction booklet for more information.

By checking this box, you are requesting that the Department process your application under the standard process outlined in ORS 537.150 and 537.153, rather than the expedited process provided by ORS 537.147. To file an application under the standard process, you must enclose the following:

- A copy of a signed non-expired contract or other agreement with the owner of the reservoir (if not you) to impound the volume of water you propose to use in this application.
- A copy of your written agreement with the party (if any) delivering the water from the reservoir to you.

SECTION 4: SENSITIVE, THREATENED OR ENDANGERED FISH SPECIES PUBLIC INTEREST INFORMATION

This information must be provided for your application to be accepted as complete. The Water Resources Department will determine whether the proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened or endangered fish species.

To answer the following questions, use the map provided in [Attachment 3](#) or the link below to determine whether the proposed point of diversion (POD) is located in an area where the Upper Columbia, the Lower Columbia, and/or the Statewide public interest rules apply.

For more detailed information, click on the following link and enter the T,R,S,QQ or the Lat/Long of a POD and click on "Submit" to retrieve a report that will show which section, if any, of the rules apply:
https://apps.wrd.state.or.us/apps/misc/lkp_trsqq_features/

If you need help to determine in which area the proposed POD is located, please call the customer service desk at (503) 986-0900.

Upper Columbia – OAR 690-033-0115 thru -0130

Is the POD located in an area where the Upper Columbia Rules apply?

- Yes
- No

If yes, you are notified that the Water Resources Department will consult with numerous federal, state, local and tribal governmental entities so it may determine whether the proposed use is consistent with the "Columbia River Basin Fish and Wildlife Program" adopted by the Northwest Power Planning Council in 1994 for the protection and recovery of listed fish species. The application may be denied, heavily conditioned, or if appropriate, mitigation for impacts may be needed to obtain approval for the proposed use.

If yes,

- I understand that the proposed use does not involve appropriation of direct streamflow during the time period April 15 to September 30, except as provided in OAR 690-033-0140.
- I understand that I will install, operate and maintain a fish screen and fish passage as listed in ORS 498.301 through 498.346, and 509.580 through 509.910, to the specifications and extent required by Oregon Department of Fish and Wildlife, prior to diversion of water under any permit issued pursuant to this application.
- I understand that the Oregon Department of Environmental Quality will review my application to determine if the proposed use complies with existing state and federal water quality standards.
- I understand that I will install and maintain water use measurement and recording devices as required by the Water Resources Department, and comply with recording and reporting permit condition requirements.

Lower Columbia – OAR 690-033-0220 thru -0230

Is the POD located in an area where the Lower Columbia rules apply?

Yes No

If yes, you are notified that that the Water Resources Department will determine, by reviewing recovery plans, the Columbia River Basin Fish and Wildlife Program, and regional restoration programs applicable to threatened or endangered fish species, in coordination with state and federal agencies, as appropriate, whether the proposed use is detrimental to the protection or recovery of a threatened or endangered fish species and whether the use can be conditioned or mitigated to avoid the detriment.

If a permit is issued, it will likely contain conditions to ensure the water use complies with existing state and federal water quality standards; and water use measurement, recording and reporting required by the Water Resources Department. The application may be denied, or if appropriate, mitigation for impacts may be needed to obtain approval of the proposed use.

If yes, provide the following information (the information must be provided with the application to be considered complete).

Yes No The proposed use is for more than **one** cubic foot per second (448.8 gpm) and is not subject to the requirements of OAR 690, Division 86 (Water Management and Conservation Plans).

If yes, provide a description of the measures to be taken to assure reasonably efficient water use:

NA

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Statewide – OAR 690-033-0330 thru -0340

Is the POD located in an area where the Statewide rules apply?

Yes No

If yes, the Water Resources Department will determine whether the proposed use will occur in an area where endangered, threatened or sensitive fish species are located. If so, the Water Resources Department, Department of Fish and Wildlife, Department of Environmental Quality, and the Department of Agriculture will recommend conditions required to achieve “no loss of essential habitat of threatened and endangered (T&E) fish species,” or “no net loss of essential habitat of sensitive (S) fish species.” If conditions cannot be identified that meet the standards of no loss of essential T & E fish habitat or no net loss of essential S fish habitat, the agencies will recommend denial of the application unless they conclude that the proposed use would not harm the species.

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SECTION 5: WATER USE

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (cfs) or gallons-per-minute (gpm). If the proposed use is from storage, provide the amount in acre-feet (af):
 (1 cfs equals 448.8 gpm. 1 acre-foot equals 325,851 gallons or 43,560 cubic feet)

SOURCE	USE	PERIOD OF USE	AMOUNT
Stored water (Willamette River Basin Project)	Irrigation	April 1 – October 31	29.9* <input type="checkbox"/> cfs <input type="checkbox"/> gpm <input checked="" type="checkbox"/> af

Note:

*The Applicant’s existing Water Service Contract with U.S. Bureau of Reclamation authorizes a volume of 92.2 acre-feet per season for irrigation of 41.1 acres under Certificate 94546 (see Attachment 4). The Applicant is requested a modification of this contract to allow use of the existing authorized 92.2 acre-feet for irrigation use under both Certificate 94546 and the land proposed in this new permit application (see Attachment 5).

Please indicate the number of primary, supplemental and/or nursery acres to be irrigated.
 Primary: **19.7** Acres Supplemental: **0** Acres Nursery Use: **0** Acres
 If supplemental acres are listed, provide the Permit or Certificate number of the underlying primary water right(s): **NA**
 Indicate the maximum total number of acre-feet you expect to use in an irrigation season: **29.9 acre-feet**

- If the use is **municipal or quasi-municipal**, attach **Form M NA**
- If the use is **domestic**, indicate the number of households: **NA**
- If the use is **mining**, describe what is being mined and the method(s) of extraction: **NA**

SECTION 6: WATER MANAGEMENT

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A. Diversion and Conveyance

What equipment will you use to pump water from your source?

- Pump (give horsepower and type): **15 Hp centrifugal pump**
- Other means (describe):

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water.

Stored water will be diverted at the proposed point of diversion by a skid mounted centrifugal pump. The suction hose in the river will be equipped with a Pump-Rite L250 fish screen. The diversion pump will deliver water to PVC mainline that will deliver water via a closed pipe system to the irrigation zones where water will be applied using drip emitters.

B. Application Method

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)

The place of use will be irrigated by drip.

C. Conservation

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to public uses of affected surface waters.

The amount of water requested is needed for irrigation of hazelnut trees to be planted on the proposed place of use. The use of drip irrigation will prevent waste, and prevent runoff and damage to aquatic life and riparian habitat. The applicant will install a totalizing flow meter at the point of diversion to measure the quantity of water diverted.

SECTION 7: RESOURCE PROTECTION

In granting permission to use water from a stream or lake, the state encourages, and in some instances requires, careful control of activities that may affect the waterway or streamside area. See instruction guide for a list of possible permit requirements from other agencies. Please indicate any of the practices you plan to undertake to protect water resources:

[X] Diversion will be screened per ODFW specifications in ORS 498.301 through 498.346 to prevent uptake of fish and other aquatic life.

Describe planned actions: The point of diversion will be equipped with an ODFW approved fish screen.

[X] Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas.

Note: If disturbed area is more than one acre, applicant should contact the Department of Environmental Quality to determine if a 1200C permit is required.

Describe planned actions and additional permits required for project implementation: The point of diversion is the existing authorized point of diversion for Certificate 86665. No excavation or clearing of banks is required to develop the point of diversion for this project.

[X] Operating equipment in a water body will be managed and timed to prevent damage to aquatic life.

Describe planned actions and additional permits required for project implementation: The point of diversion is the existing authorized point of diversion for Certificate 86665. No equipment will be operated in a water body to develop the point of diversion for this project.

[X] Water quality will be protected by preventing erosion and run-off of waste or chemical products.

Describe planned actions: Drip irrigation will be used to prevent erosion and run-off of waste or chemical products.

[] List other federal and state permits or contracts to be obtained, if a water right permit is granted.

SECTION 8: PROJECT SCHEDULE

- a) Date construction will begin: Within 5 years of permit issuance
b) Date construction will be completed: Within 5 years of permit issuance
c) Date beneficial water use will begin: Within 5 years of permit issuance

SECTION 9: WITHIN A DISTRICT

[] Check here if the point of diversion or place of use are located within or are served by an irrigation or other water district.

Table with 2 columns: Irrigation District Name (NA), Address

City	State	Zip
------	-------	-----

SECTION 10: REMARKS

Use this space to clarify any information you have provided in the application. *(Attach additional sheets if necessary).*

Attachment List:

- Attachment 1 Map
- Attachment 2 Land Use Form
- Attachment 3 Legal Description of Property
- Attachment 4 Existing Water Service Contract
- Attachment 5 Request for Water Service Contract Modification

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Minimum Requirements Checklist

Minimum Requirements (OAR 690-310-0040, OAR 690-310-0050 & ORS 537.140)

Include this checklist with the application

Check that each of the following items is included. The application will be returned if all required items are not included. If you have questions, please call the Water Rights Customer Service Group at (503) 986-0900.

Please submit the original application and signatures to the Water Resources Department. Applicants are encouraged to keep a copy of the completed application.

- SECTION 1: Applicant Information and Signature
- SECTION 2: Property Ownership
- SECTION 3: Source of Water
- SECTION 4: Sensitive, Threatened or Endangered Fish Species Public Interest Information
- SECTION 5: Water Use
- SECTION 6: Water Management
- SECTION 7: Resource Protection
- SECTION 8: Project Schedule
- SECTION 9: Within a District
- SECTION 10: Remarks

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Include the following additional items:

- Land Use Information Form with approval and signature of local planning department (*must be an original*) or signed receipt.
- Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.
- Fees - Amount enclosed: **\$2,054.00**
See the Department's Fee Schedule at www.oregon.gov/owrd or call (503) 986-0900.
- Map that includes the following items:
 - Permanent quality and drawn in ink
 - Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
 - North Directional Symbol
 - Township, Range, Section, Quarter/Quarter, Tax Lots
 - Reference corner on map
 - Location of each diversion, by reference to a recognized public land survey corner (distances north/south and east/west)
 - Indicate the area of use by Quarter/Quarter and tax lot identified clearly.
 - Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
 - Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)

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Attachment 1
Map

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Attachment 2
Land Use Information Form

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Land Use Information Form

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Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
503-986-0900
www.oregon.gov/OWRD

NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

This form is NOT required if:

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or groundwater registration modification, and all of the following apply:
 - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
 - b) The application involves a change in place of use only;
 - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
 - d) The application involves irrigation water uses only.

NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land use form and return it to the WRD. If no land use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0900.

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Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
503-986-0900
www.oregon.gov/OWRD

Applicant

NAME Brewster Road, LLC; Attn: Barney Kropf			PHONE (HM) -	
PHONE (WK) 206-227-6412		CELL -		FAX -
ADDRESS 23495 Powerline Road				
CITY Harrisburg	STATE OR	ZIP 97446	E-MAIL* barney.kropf@yahoo.com	

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
11S	2W	25	NENW	00300	EFU	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Irrigation
11S	2W	25	NWNW	00300	EFU	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Irrigation
11S	2W	25	SWNW	00300	EFU	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Irrigation
11S	2W	25	SEnw	00300	EFU	<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Irrigation

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Linn County

B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water
 Water Right Transfer
 Permit Amendment or Groundwater Registration Modification
 Limited Water Use License
 Allocation of Conserved Water
 Exchange of Water

Source of water: Reservoir/Pond Groundwater Surface Water (name) _____

Estimated quantity of water needed: 29.9 cubic feet per second gallons per minute acre-feet

Intended use of water: Irrigation Commercial Industrial Domestic for _____ household(s)
 Municipal Quasi-Municipal Instream Other _____

Briefly describe:

The Applicant is seeking a surface water permit for the use of up to 29.9 acre-feet of stored water from the Willamette River Basin Project (under contract with the U.S. Bureau of Reclamation) to irrigate 19.7 acres of hazelnut orchard.

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

For Local Government Use Only



The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land use plan. Do not include approval for activities such as building or grading permits.

Please check the appropriate box below and provide the requested information

- Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): LCC 928.310(B)(1).
- Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. (Please attach documentation of applicable land use approvals which have already been obtained. Record of Action/land use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land Use Approval:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

Local governments are invited to express special land use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

NAME <u>Kate Bentz</u>		TITLE: <u>Assistant Planner</u>
SIGNATURE <u>[Signature]</u>	PHONE: <u>541-967-3816</u>	DATE: <u>8/30/22</u>
GOVERNMENT ENTITY <u>Linn County</u>		

Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____

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Attachment 3
Legal Description of Property



LINN COUNTY, OREGON **2021-21693**
 D-WD
 Stn=10120 K. PETERSON 09/13/2021 03:09:00 PM
 \$20.00 \$11.00 \$10.00 \$60.00 \$19.00 \$120.00
 I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.
 Steve Druckenmiller - County Clerk

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After recording return to:
 Brewster Road, LLC, an Oregon Limited Liability Company
 24495 Powerline Rd
 Harrisburg, OR 97446

Until a change is requested all tax statements shall be sent to the following address:
 Brewster Road, LLC, an Oregon Limited Liability Company
 24495 Powerline Rd
 Harrisburg, OR 97446
 File No. 486138AM

STATUTORY WARRANTY DEED

John Wittrig,
 Grantor(s), hereby convey and warrant to

Brewster Road, LLC, an Oregon Limited Liability Company,

Grantee(s), the following described real property in the County of Linn and State of Oregon free of encumbrances except as specifically set forth herein:

See Attached Exhibit A

FOR INFORMATION PURPOSES ONLY, THE MAP/TAX ACCT #(S) ARE REFERENCED HERE:

11S-02W-25 300 66098

The consideration paid for the transfer is \$1,055,460.00, PURSUANT TO AN IRC 1031 TAX DEFERRED EXCHANGE ON BEHALF OF GRANTOR.

The above-described property is free of encumbrances except all those items of record, if any, as of the date of this deed and those shown below, if any:

2021-2022 Real Property Taxes, a lien not yet due and payable

AMERITITLE 486138AM

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BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this 9 day of September, 2021.

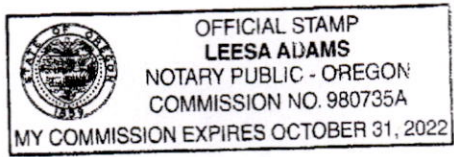
John Wittrig
John Wittrig

State of OR } ss
County of Linn }

On this 9 day of September, 2021, before me, Leesa Adams a Notary Public in and for said state, personally appeared John Wittrig, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Leesa Adams
Notary Public for the State of OR
Residing at: Lebanon, OR
Commission Expires: 10-31-2022



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EXHIBIT "A"

486138AM

PARCEL I: (11S-02W-25 TL#300)

A portion of Parcel II of Deed Volume 1785, Page 195, which reads as immediately follows:

Beginning at the Northwest corner of the Northeast Quarter of Section 25, in Township 11 South, Range 2 West of the Willamette Meridian in Linn County, Oregon; and running thence North 89°33' East along the North line of Section 25 a distance of 21.402 chains to a point 1.288 chains West of the West right of way line of Linn County Market Road No. 24, said point being also the Southwest corner of that certain tract of land conveyed to Willamette Valley Lumber Company and recorded on Page 7 of Volume 151, Linn County, Deed Records; and being in the approximate center of One Horse Slough; thence North 15° West along the channel of said One Horse Slough 0.697 chains, thence North 89°33' East 1.325 chains to a 3/4" pipe on the West right of way line of said Market Road No. 24; thence along said right of way on a 1880 foot radius curve to the left (the chord of which bears North 12°52' West 0.158 chains) a distance of 0.158 chains to a 3/4" iron bolt; thence North 13°02' West along said right of way 8.316 chains to a 3/4" iron pipe; thence South 76°58' West 3.00 chains to the approximate center of One Horse Slough; thence North 53°15' West along the Channel of said One Horse Slough 12.50 chains; thence North 47°00' West along the Channel of said One Horse Slough 13.00 chains to the approximate East Bank of the South Santiam River; thence West 5.44 chains to a point due North of the Northeast corner of the Edward Abbott Donation Land Claim No. 56, in said Township and Range; thence South 6.38 chains to the Northeast corner of said Claim 56; thence South 0°17' 1/2" West along the East line of said Claim 56, a distance of 11.0 chains to the center of the South Santiam River, thence following the center line of said South Santiam River upstream as follows: South 28°00' West 10.00 chains, thence South 55°00' West 18.00 chains and South 20°00' West 11.20 chains to the South line of the aforementioned Donation Land Claim No. 56; thence North 89°55' East along the South line of said Claim 56 a distance of 23.12 chains to the Southeast corner thereof; thence North 0°17' 1/2" East along the East line of said Claim 56 a distance of 2.20 chains to a 3/4" iron bolt at the Southwest corner of Lot 1 in Section 25 in said Township and Range; thence North 89°33' East 7.47 chains to a 3/4" bolt at the Southeast corner of said Lot 1; thence North 0°05' West 20.00 chains to the point of beginning, and lying and being situated in Linn County, Oregon.

EXCEPTING THEREFROM:

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Beginning on the West right of way of Brewster Road (C.R. 24) at the Easterly Southeast corner of "Parcel II", as described and conveyed to John Wittrig in Linn County Deed Volume 1785, Page 195; thence along the arc of a 1880.00 foot radius curve to the left for 10.43 feet (chord bears North 12°52'00" West 10.43 feet); thence North 13°02'00" West 548.86 feet; thence leaving said right of way, South 76°58'00" West 198.00 feet, more or less, to the center of One Horse Slough; thence along the following three calls along the center of said Slough: South 44°22'09" East 140.34 feet; South 26°48'18" East 113.61 feet; South 15°21'32" East 310.24 feet to the South line of said "Parcel II"; thence leaving said Center of Slough North 89°33'00" East 87.45 feet to the point of beginning.

PARCEL 2: INTENTIONALLY DELETED

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Attachment 4
Existing Water Service Contract



United States Department of the Interior

BUREAU OF RECLAMATION
1150 North Curtis Road
Boise, ID 83706-1234



IN REPLY REFER TO:

CPN-6323
2.2.4.22

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Brewster Road LLC
34466 Brewster Rd.
Lebanon, Oregon 97355

Subject: Water Service Replacement Contract No. 219E102085, Willamette River Basin Project, Oregon

To Whom it May Concern:

Enclosed for your records is a fully executed original of Contract No. 219E102085, which replaces Contract No. 5-07-10W1082 and provides water for irrigation use beginning with the 2021 irrigation season.

The contract provides up to 92.20 acre-feet of stored water from the Willamette River Basin Project for irrigation use on a total of 41.1 acres.

If you have any questions about the contract, please contact Ms. Joy Kelley, Repayment Specialist at the above address, at (208) 378-5346 or jkelly@usbr.gov, or me at (208) 378-5306 or emcgarry@usbr.gov.

Sincerely,

E. GAIL McGARRY

E. Gail McGarry
Program Manager
Reclamation Law Administration

Enclosure

cc: Water Rights Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

U.S. Army Corps of Engineers
Attention: CENWP-EC-HR
P.O. Box 2946
Portland, OR 97208-2946

Continued next page.

INTERIOR REGION 9 • COLUMBIA-PACIFIC NORTHWEST

IDAHO, MONTANA*, OREGON*, WASHINGTON

* PARTIAL

cc: Continued from previous page.

Ms. Tere O'Rourke
National Marine Fisheries Service
1201 NE Lloyd Blvd., Suite 1100
Portland, OR 97232
(w/ copy of encl to each)

bc: Assistant Solicitor, Water and Power, Washington DC (CBrown)
84-55000 (MKelly), CCA-1000 (TOxford), CPN Acct Techs (HGraeff)
(w/copy of contract sent by Form B-27 to each)

Note to Acct Techs: \$100 contract administration fee and 2021 water service paid under contract no. 5-07-10-W1082.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Willamette River Basin Project, Oregon

REPLACEMENT CONTRACT FOR WATER SERVICE
BETWEEN THE UNITED STATES
AND
BREWSTER ROAD LLC

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Willamette River Basin Project, Oregon

REPLACEMENT CONTRACT FOR WATER SERVICE
BETWEEN THE UNITED STATES
AND
BREWSTER ROAD LLC

THIS CONTRACT, made this 21st day of September, 2021, pursuant to section 9(e) of the Act of August 4, 1939 (53 Stat. 1187), and section 8 of the Act of December 22, 1944 (58 Stat. 887, 891), (which acts are commonly known and referred to as the Reclamation Laws), the Flood Control Act of 1938 (52 Stat. 1222), and the Flood Control Act of 1950 (64 Stat. 170), between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the Contracting Officer executing this contract, and **Brewster Road LLC**, hereinafter referred to as the Contractor;

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, The United States has constructed and operates a system of multipurpose reservoirs in the Willamette River Basin, Oregon, herein styled the Willamette River Basin Project, from which there is a flow of stored water that can be used for irrigation of land and other beneficial uses, which flow, as it has been developed or as it will be augmented, was appropriated by the United States pursuant to the laws of Oregon for beneficial use under the Federal Reclamation Laws; and

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3. WHEREAS, The United States of America entered into a contract on August 23, 1995, Contract No. 5-07-10-W1082 with Jim Fleishman for an irrigation water supply for use on lands owned by the Contractor; and

4. WHEREAS, the Contractor owns or serves land hereinafter described, for which a water supply is desired to be secured from the United States;

TERMINATION OF PRIOR CONTRACT

5. Contract No. 5-07-10-W1082, dated August 23, 1995, is being replaced by this contract and is no longer of any force and effect.

NOW, THEREFORE, in consideration of the premises and payments by the Contractor to the United States in the manner hereinafter provided, it is agreed:

LANDS FOR WHICH WATER IS DIVERTED: LIMITATIONS ON RELEASES

6. Upon completion of an assessment and corresponding finding that the fish screen at the diversion described in subarticle 12(d) of this contract is in compliance with National Marine Fisheries Service Criteria, for a period not to exceed 40 years from the date first above written, the United States shall release each year to the Contractor during the irrigation season from March 1 to October 31, inclusive, stored water from the Willamette River Basin Project for the irrigation of land owned or served by the Contractor as described as follows:

- .1 acre NE¼ NE¼ Section 25, T 11 S., R 2 W., W.M.
- 39.8 acres NW¼ NE¼ Section 25, T 11 S., R 2 W., W.M.
- 1.2 acres SE¼ NE¼ Section 25, T 11 S., R 2 W., W.M.

Of the land described, not more than 41.1 acres are to be irrigated. The amount of stored water to be made available hereunder shall be that quantity which may be applied beneficially in accordance with good usage in the irrigation of the land above described, but not to exceed a

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maximum diversion of 92.2 acre-feet of stored water annually, measured at the point of delivery of said water.

PAYMENTS FOR WATER

7. (a) An annual payment of \$737.60 for the first irrigation season shall be made to the United States at the time of executing this contract, and subsequent annual payments of \$737.60 will be due on or before March 1 of each succeeding irrigation season in advance of water use. This payment will entitle the Contractor to receive up to a maximum of 92.2 acre-feet of stored water for irrigation of the lands described above. The Contracting Officer will consider adjusting the water service payment downward based on information received from the Contractor, the State of Oregon, or other reliable sources as to the actual amount of stored water diverted each month by the Contractor during the irrigation season and on other factors in addition to the amount of stored water actually released, as deemed appropriate by the Contracting Officer. Any such adjustment will be determined and subtracted from the payment for the next year, or refunded if the contract is no longer in effect, by the Contracting Officer; Provided, that in order for an adjustment to be made, information on the amounts of stored water diverted each month must be received in writing by the Contracting Officer by December 1 of that year.

(b) The annual payment set forth in (a) above is based on an initial rate of \$8 per acre-foot of stored water; Provided, that such annual payment shall at a minimum be the greater of either the product of \$2 multiplied by the number of acres described in Article 6 of this contract or \$50. From time to time, but not less often than once every 5 years, the rate per acre-foot of stored water and the minimum payment shall be reviewed by the Contracting Officer and revised, if necessary, by the Contracting Officer for the irrigation water marketing program of the Willamette River Basin Project. Any revision by the Contracting Officer will apply only

to future payments and shall be announced by written notice to the Contractor at least 3 months prior to the beginning of the irrigation season to which the new rate would be applicable.

(c) All payments from the Contractor to the United States under this contract shall be made by the medium requested by the United States. The required medium of payment may include checks, wire transfers, or other types of payment specified by the United States. Except when otherwise specified by the United States, all payments shall be made by check.

(d) Upon execution of the contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

(e) Payments required hereunder shall be made to the Bureau of Reclamation at the location described in Article 18 of this contract.

CONTRACT ADMINISTRATION FEES

8. The Contractor shall incur a fee for all future contract and inspection actions, including but not limited to new contracts, contract amendments, supplements, assignments and inspection of Contractor diversions. Prior to any future action and/or inspection, the fee will be determined by the Contracting Officer and shall be sufficient to cover such costs incurred by the United States and cost of contractors of the United States in the performance of the above activities.

CHARGES FOR DELINQUENT PAYMENTS

9. (a) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor

shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

RELEASE OF WATER

10. (a) Upon payment of the charges specified in Article 7 above and completion of the fish screen assessment activities identified in Article 6 above, the United States will release water from the Willamette River Basin Project pursuant to this contract. No water shall be released if the Contractor is delinquent in payment of the required annual payments or fish screen requirements are not met.

(b) Water diverted pursuant to this contract shall be measured at the following point(s) of diversion in accordance with Oregon State law:

47 Degrees; 30 Minutes West, 625 feet from north ¼ corner of
Section 25, T.11 S., R 2 W., Willamette Meridian

The Contractor shall be wholly responsible for securing said water at that point and diverting, conveying, and utilizing it. Water so diverted shall be measured by means of measuring and controlling devices satisfactory to the Contracting Officer. Such devices shall be furnished, installed, maintained and/or modified as necessary by and at the expense of the Contractor, but they shall be and remain at all times available for reading and monitoring by the United States or an appropriate State-appointed watermaster whose representative may at all times have access to

them over any lands of the Contractor. All losses of water from seepage, evaporation, or other cause, below said point of measurement, shall be borne by the Contractor.

(c) The Contractor shall, to the extent practicable, submit to the Contracting Officer an advance schedule as to the time of water diversions. Changes in such schedule may be made only upon sufficient advance notice to the Contracting Officer to allow him/her to adjust releases to meet the new schedules. The Contractor shall be required to conform its diversions and releases to the control of the stream as established by the watermaster and/or the United States.

(d) The Contractor hereby acknowledges Reclamation's authority to conduct periodic contract compliance reviews in accordance with Reclamation Manual Policy, *Water-Related Contracts and Charges – General Principles and Requirements* (PEC P05), and Reclamation Manual Directives and Standards, *Contract Compliance Reviews* (PEC 05-08).

CONSTRAINTS ON THE AVAILABILITY OF WATER (WATER SHORTAGES)

11. In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

If there is a condition of shortage because of inaccurate runoff forecasting or other similar operational errors affecting the Project; drought and other physical or natural causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

SPECIAL CONDITIONS

12. (a) It is the responsibility of the Contractor to comply with the laws of the State of Oregon regarding the obtaining and perfecting of permits to divert water to the lands described in Article 6. Prior to executing this contract, the Contractor shall secure any easements

from the Corps of Engineers which may be required for constructing facilities to divert and convey the stored water and shall provide written verification of such agreements to the Contracting Officer. The obligation of the United States to release water under this contract is subject to an operating plan for the Willamette River Basin Project determined in accordance with the laws governing the project and other applicable federal laws, including the Endangered Species Act (ESA).

(b) In the event the Contractor is not now a member of an irrigation district, water supply company, or other water user organization, this contract shall be terminated and water service hereunder shall cease when stored water is made available to the lands described in Article 6 by such an organization to serve these and other lands presently irrigated or planned for irrigation in future years from the Willamette River Basin Project.

(c) In the interests of conservation and protection of environmental resources, from time to time, but not less often than once every 5 years or when requested in writing by either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (NMFS), this contract shall be reviewed by the Contracting Officer. The terms and conditions of this contract, including the amount of stored water provided hereunder, may be modified or the contract terminated as determined by the Contracting Officer, to avoid or minimize impacts to species and/or critical habitat that are proposed, listed, or designated under the ESA, or to other valuable natural resources. Any termination of or modification to the contract by the Contracting Officer shall be announced by written notice to the Contractor.

(d) At the Contractor's point of diversion, fish screen(s) and/or fish passage structure(s), approved by NMFS or its designee, shall be installed, operated, and maintained in good operating condition by and at the expense of the Contractor, but shall remain at all times

available for inspection by the United States and the State of Oregon, whose representatives may at all times have access to them over any lands of the Contractor. Provided; as a condition of the continued release of water, every five to seven years, the Contractor must re-confirm that their diversion(s) are still in conformance with NMFS design guidelines. Provided further; in the event that requirements for fish passage structures and/or fish screening are changed by either the State or Federal fisheries agencies after initial compliant installation by the Contractor, the Contractor shall bring its diversion into compliance with the new requirements within a timeframe established by the Contracting Officer or the applicable State and Federal fisheries agency.

TERM OF CONTRACT

13. This contract is effective as of August 23, 1995, and will continue in effect for a period of 40 years unless sooner terminated in accordance with the provisions of Article 14 or by agreement of the parties hereto: Provided; that upon expiration of the 40-year term, renewals may be made by the Secretary of the Interior for successive periods not to exceed 40 years and under terms and conditions mutually agreeable to the parties hereto: Provided further; that the terms and conditions of each renewal shall be negotiated in light of circumstances prevailing at the time of renewal and agreed upon not later than 1 year prior to the expiration of the then existing contract.

TERMINATION OF CONTRACT

14. (a) This contract becomes operable upon completion of the fish screen assessment activities as identified in Article 6 above. The United States may terminate this contract and water service hereunder shall cease if the Contractor is delinquent in payment of the water service payment for a period of 90 days or upon failure of the Contractor to abide by the

terms and conditions of this Contract, or by any notice, order, rule, or regulation of the United States or the State of Oregon now or hereafter established affecting water service hereunder.

(b) The United States may terminate this contract and water service hereunder shall cease if a decision is reached by a Court of competent jurisdiction requiring termination of water delivery under this contract.

(c) Water service hereunder may cease, in whole or in part, if the contract water source becomes unavailable as required by, or due to the application of, federal law, including but not limited to, the Endangered Species Act.

HOLD HARMLESS AND INDEMNIFICATION

15. To the extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the United States and Reclamation, and their officers, employees, and agents, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any character (hereinafter collectively referred to as "claims") that result from, arise out of, or relate to the quality or quantity of water released pursuant to this contract, including but not limited to claims by patrons or others in privity with the Contractor related to the settlement or adverse results of litigation brought against the United States or Reclamation by third parties. The Contractor 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.

TITLE TO PROJECT WORKS

16. Title to all of the Willamette River Basin Project and associated works shall be and remain in the United States until otherwise provided for by the Congress.

DISCLAIMER

17. No provision of this contract, nor the release of water hereunder, shall confer on the Contractor a permanent water right. Because of possible fluctuations in reservoir surface elevations and downstream flows associated with the Willamette River Basin Project, the United States does not guarantee the availability of water at the point of the Contractor's diversion facilities as they may now be constructed or constructed hereafter. The United States assumes no responsibility or liability for any taking of endangered or threatened species at the Contractor's point(s) of diversion arising from the Contractor's diversion and use of water released under this contract. Further, the United States shall not be liable for any acts or omissions of the Contractor or its agents or of persons for whom water is released.

NOTICES

18. Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Program Manager, Reclamation Law Administration, Columbia-Pacific Northwest Region, Bureau of Reclamation, 1150 N. Curtis Road, Boise, ID 83706-1234, and on behalf of the United States, when mailed, postage prepaid, or delivered to Brewster Road LLC, P.O. Box 77, Harrisburg, OR 97446 (property address 34466 Brewster Rd, Lebanon, OR 97355). The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

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GENERAL PROVISIONS

19. The general provisions applicable to this contract are listed below. The full text of these general provisions is attached as Exhibit A and is hereby made a part of this contract.

- a. GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT
- b. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS
- c. OFFICIALS NOT TO BENEFIT
- d. ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED
- e. BOOKS, RECORDS, AND REPORTS
- f. COMPLIANCE WITH FEDERAL RECLAMATION LAWS
- g. PROTECTION OF WATER AND AIR QUALITY
- h. EQUAL EMPLOYMENT OPPORTUNITY
- i. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
- j. PRIVACY ACT COMPLIANCE
- k. MEDIUM FOR TRANSMITTING PAYMENTS
- l. CONTRACT DRAFTING CONSIDERATIONS
- m. CHANGES IN CONTRACTOR'S ORGANIZATION

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UNITED STATES OF AMERICA

By: E. Gail McGarry
Program Manager
Reclamation Law Administration
Columbia-Pacific Northwest Region
Bureau of Reclamation
1150 N. Curtis Road
Boise, ID 83706-1234

STATE OF IDAHO)

: ss

County of Ada)

On this 16 day of September, 2021, personally appeared before me E. Gail McGarry, known to me to be the official of the UNITED STATES OF AMERICA that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above written.

[Signature]
Notary Public in and for the
State of IDAHO
Residing at: Boise
My commission expires: April 11, 2024

(SEAL)



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Exhibit A

GENERAL PROVISIONS --- WILLAMETTE BASIN PROJECT

GENERAL OBLIGATION -- BENEFITS CONDITIONED UPON PAYMENT

(a). (1) The obligation of the Contractor to pay the United States as provided in this contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligation to the Contractor.

(2) The payment of charges becoming due pursuant to this contract is a condition precedent to receiving benefits under this contract. The United States shall not make water available to the Contractor through Willamette River Basin project facilities during any period that the Contractor is in arrears in the advance payment of the greater of \$8 per acre-foot or \$50 due the United States. The Contractor shall not deliver water under the terms and conditions of this contract for lands or parties that are in arrears in the advance payment of water use as levied or established by the Contractor.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

(b). The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

(c). No Member of or Delegate to the Congress, Resident Commissioner, or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATION

(d). 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 right or interest therein by either party shall be valid until approved in writing by the other party.

BOOKS, RECORDS, AND REPORTS

(e). The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the Contractor's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

(f). The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to Federal reclamation law, including but not limited to the Reclamation Reform Act

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of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

PROTECTION OF WATER AND AIR QUALITY

(g). (1) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided, That* the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(2) The Contractor will comply with all applicable water and air pollution laws and regulations of the United States and the State of Oregon and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and will be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or project water provided by the Contractor within the Contractor's Project Water Service Area.

(3) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

EQUAL EMPLOYMENT OPPORTUNITY

(h). During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor 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, sexual orientation, gender identity, 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 Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advancements 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, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of

the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any 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 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

(i). (1) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.),] [Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.),]² and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(2) These statutes prohibit any person in the United States from being excluded from participation in, be denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(3) The Contractor makes this agreement 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 Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

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(4) Complaints of discrimination against the Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

PRIVACY ACT COMPLIANCE

(j). (1) The Contractor shall comply with the Privacy Act of 1974 (Privacy Act) (5 U.S.C. § 552a) and the Department of the Interior rules and regulations under the Privacy Act (43 CFR § 2.45 et seq.) in maintaining landholder certification and reporting records required to be submitted to the Contractor for compliance with Sections 206, 224(c), and 228 of the Reclamation Reform Act of 1982 (43 U.S.C. §§ 390ff, 390ww, and 390zz), and pursuant to 43 C.F.R. § 426.18.

(2) With respect to the application and administration of the criminal penalty provisions of the Privacy Act (5 U.S.C. § 552a(i)), the Contractor and the Contractor's employees who are responsible for maintaining the certification and reporting records referenced in (1) above and are considered to be employees of the Department of the Interior. See 5 U.S.C. § 552a(m).

(3) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Department of the Interior Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Interior/WBR-31, Acreage Limitation) which govern the maintenance, safeguarding, and disclosure of information contained in the landholders' certification and reporting records.

(4) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager responsible for making decisions on denials pursuant to 43 CFR §§ 2.61 and 2.64 and amendment requests pursuant to 43 CFR § 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(5) The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 CFR § 2.64 and each request for amendment of records filed under 43 CFR § 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR § 426.18 unless the requester elects to cite the Privacy Act as authority for the request.

MEDIUM FOR TRANSMITTING PAYMENTS

(k). (1) All payments from the Contractor to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(2) Upon execution of the contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

CONTRACT DRAFTING CONSIDERATIONS

(l). This Contract has been, negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 17 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

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CHANGES IN CONTRACTOR'S ORGANIZATION

(m). While this contract is in effect, no change may be made in the Contractor's organization, by inclusion or exclusion of lands or by any other changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

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Attachment 5
Request for Water Service Contract Modification

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CONTRACT DATA SHEET



Bureau of Reclamation
Attn: CPN-6323
1150 N. Curtis Road
Boise, ID 83706-1234
208-378-5346

RECLAMATION
Managing Water in the West

1. Applicant Information:

A. Landowners

- 1) Name of Landowner(s): Brewster Road LLC; Attn: Barney Kropf
- 2) Address: 23495 Powerline Road, Harrisburg, OR 97446
- 3) Mailing Address (if different): barney.kropf@yahoo.com
- 4) Taxpayer Identification Number(s): 862058606
(Social Security Number or Employer Identification Number¹)
- 5) Do you own all of the land where you propose to divert and make use of water? Yes

B. Water User Organizations (e.g., Irrigation Districts, Ditch/Canal Companies, Water Control Districts, Water User Associations & Cooperatives, Irrigation Improvement Districts, and similar entities organized according to State Law)

- 1) Name of Organization: _____
- 2) Name & Title of Applicant: _____
- 3) Mailing Address of Organization: _____
- 4) Taxpayer Identification Number: _____
(Social Security Number or Employer Identification Number)
- 5) Please provide the following information:
 - (a) A description of the area served by the organization (location, total acreage, number of water users, prominent crops, etc.)
 - (b) Copy of organization by-laws, articles of incorporation (if applicable), board resolution authorizing the applicant to represent and bind the organization under contract with the United States.

2. Source of water (name of stream, river): Willamette River Basin Project

3. Proposed point of diversion: 350 feet West and 390 feet South of the NE corner of the NW Quarter, corner of Section 25, Township 11 S, Range 2 W, Willamette Meridian.

4. A water right permit to divert storage water is required. Application or file number with Oregon Water Resources Department (OWRD) if you have applied for a permit to divert storage water: **The applicant currently holds a water right, Certificate 94546, and contract for stored water, Contract No. 219E102085. Contract No. 219E102085 is for 92.2 AF of stored water for irrigation of 41.1 acres associated with Certificate 94546. The applicant would like to amend Contract No. 219E102085 to incorporate the following changes.**

A) The applicant would like to change the location where the stored water under Contract No. 219E102085 is diverted to the proposed point of diversion listed under Item #3. A transfer application involving Certificate 94546 requesting this change in point of diversion is under development and will be submitted to OWRD. When the transfer application is received by OWRD and a transfer file number is assigned to the application, the applicant will notify Reclamation of the transfer file number.

B) The applicant would like to change the location where stored water under Contract No. 219E102085 is used under Certificate 94546. A transfer application involving Certificate 94546 requesting this change place of use is under development and will be submitted to OWRD. When the transfer application is received by OWRD and a transfer file number is assigned to the application, the applicant will notify Reclamation of the transfer file number.

C) The applicant would like to use the 92.2 AF associated with Contract No. 219E102085 on both the 41.1 acres associated with Certificate 94546 and 19.7 acres associated with a new water use permit application that is currently under development. When this new permit application is received by OWRD and an application file number is assigned, the applicant with notify Reclamation of the application file number.

5. Include a map of lands and diversion points. (Same as required by OWRD for application of surface/ground water permit). **See attached**

6. Do you currently hold a right to natural flows for irrigating the property described herein? **Yes, under Certificate 94546. However, the use of natural flow is limited to April 1-30 and October 1-31.**

If yes, what is/are the priority date(s)? 12/23/1992

7. Total quantity of water from storage requested: **No new water is being request. This contract data sheet requests to amend the existing stored water contract, Contract No. 219E102085 for 92.2 acre-feet.**

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8. Location of land to be irrigated in each 40-acre tract:

TOWNSHIP	RANGE	SECTION	40-ACRE TRACT (1/4) (1/4)	NO. of ACRES	TYPE of IRRIGATED CROP
Certificate 94546 (existing acreage associated with Contract No. 219E102085, as modified by transfer application to be submitted to OWRD)					
11 S	2 W	25	NE NE	1.1	Hazelnut trees
11 S	2 W	25	NW NE	40.0	Hazelnut trees
Additional land to be irrigated under new a water use permit application to be submitted to OWRD					
11 S	2 W	25	NW NW	8.4	Hazelnut trees
11 S	2 W	25	NE NW	8.1	Hazelnut trees
11 S	2 W	25	SE NW	1.5	Hazelnut trees
11 S	2 W	25	SW NW	1.7	Hazelnut trees

9. What is the present use of the land identified above? (farming; idle [fallow cultivated land]; native [appears never to have been tilled]; planted pasture or other [please specify]).

Farming and planted pasture

10. Is the land identified above currently being irrigated? **Yes and No** If yes, what is the source? (natural flows, wells, etc.) **The 41.1 acres of land associated with Certificate 94546 is currently being irrigated; the 19.7 acres of land associated with the new permit application is not currently irrigated.**

11. Diversion must be screened to prevent uptake of fish and other aquatic life. Describe plan(s) to comply with State/Federal fish screen standards: **A fish screen approved by ODFW will be installed at the point of diversion.**

12. Telephone number where you can be reached during the day: **206-227-6412**

Before returning the completed Contract Data Sheet to the address provided on page 1, please ensure you have:

- ANSWERED ALL QUESTIONS COMPLETELY
- ATTACHED AND IDENTIFIED ADDITIONAL SHEET(S) AS NECESSARY
- ATTACHED THE REQUIRED MAP
- SUBMIT PAYMENT FOR THE APPROPRIATE CONTRACT ADMINISTRATION FEE². MAKE CHECK PAYABLE TO THE U.S. BUREAU OF RECLAMATION

¹ Section 31001.(i) of the Debt Collection Improvement Act of 1996 (Chapter 10 of Pub. L. 104-134) requires each contractor with an agency of the United States to furnish their taxpayer identifying number (social security number or employer identification number) and each agency to disclose to that contractor its intent to use such number for purposes of collecting and reporting on any delinquent amounts arising out of such contractor's relationship with the Government.

² The minimum contract administration fee for most applications is \$100. However, from time to time this fee may be revised to cover the costs of the United States. We recommend you contact this office to verify the current minimum contract administration fee. If the costs to the United States of evaluating the application are in excess of the minimum contract administration fee, an estimate of the reimbursable costs for which advance payment is required will be provided to the applicant.



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September 23, 2022

Ms. Kim French
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1271

Subject: Application for a Permanent to Use Surface Water (Stored Water Only)
Brewster Road LLC

Ms. French:

On behalf of the applicant, Brewster Road LLC, please find enclosed an Application for a Permit to Use Surface Water accompanied by a check in the amount of \$2,054 for payment of the application filing fee.

If you have any questions regarding the enclosed application, you can reach me at 503-701-4535. Please copy me on any correspondence regarding this application.

Respectfully submitted,

Theodore Ressler, RG, CWRE
Summit Water Resources LLC.

Cc: Barney Kropf – Brewster Road LLC

Enclosures:

Application for a Permit to Use Surface Water (Stored Water Only)
Check # 1048 in the amount of \$2,054