

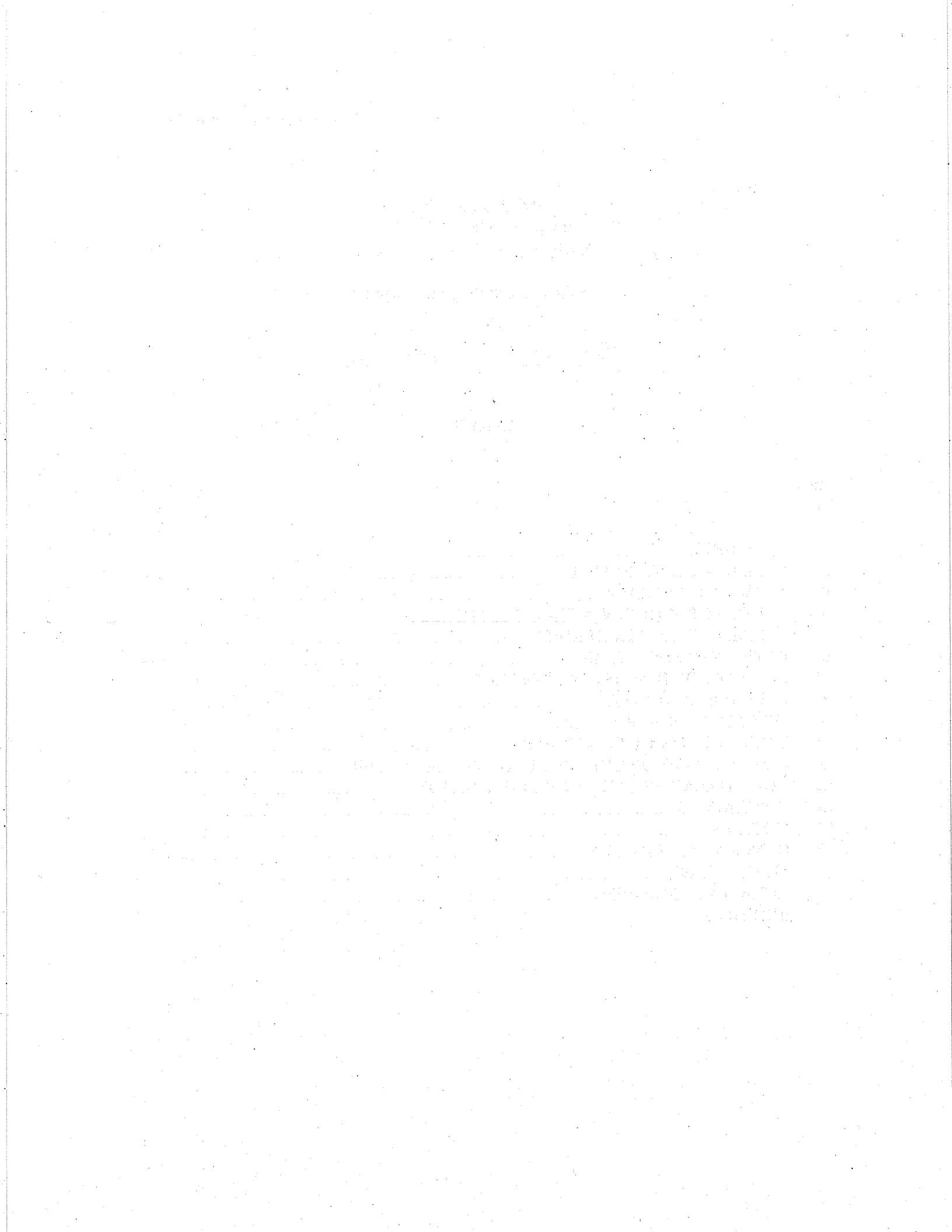
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Willow Creek Project, Oregon

CONTRACT FOR WATER SERVICE

Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
1	PREAMBLE	1
2-3	EXPLANATORY RECITALS	1-2
4	TERM OF CONTRACT	2
5	LANDS FOR WHICH WATER IS FURNISHED: LIMITATIONS ON DELIVERIES	2
6	PAYMENTS FOR WATER	3-4
7	CONTRACT ADMINISTRATION FEES	4
8	RELEASE OF WATER	4-5
9	SPECIAL CONDITIONS	5-6
10	TERMINATION OF CONTRACT	6-7
11	CONSTRAINTS ON THE AVAILABILITY OF WATER	7
12	HOLD HARMLESS AND INDEMNIFICATION	7
13	DISCLAIMER	7-8
14	NOTICES	8
15	GENERAL PROVISIONS	8
	SIGNATURES	9
	ACKNOWLEDGEMENTS	10
	EXHIBIT A	



**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION**

Willow Creek Project, Oregon

TEMPORARY CONTRACT FOR WATER SERVICE

THIS CONTRACT, made this 2nd day of April, 2010, 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 1965 (P.L. 89-298), and the Act of October 18, 1978 (P.L. 95-482), between the **UNITED STATES OF AMERICA**, hereinafter referred to as the United States, represented by the Contracting Officer executing this contract, and **The Willow Creek District Improvement Company**, hereinafter referred to as the Contractor;

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. **WHEREAS**, The United States has constructed and operates Willow Creek Dam as a feature of the Willow Creek Project, Oregon, has impounded therein a quantity of water that can be used for irrigation of land and other beneficial uses, and has appropriated such water pursuant to the laws of the State of Oregon for beneficial use under the Federal Reclamation Laws; and

3. **WHEREAS**, the Contractor owns or serves land hereinafter described, for which a supplemental source of water is desired to be secured from the United States for the irrigation of lands that have previously been irrigated; and

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

TERM OF CONTRACT

4. This contract shall become effective as of the date first above written and shall continue through December 31, 2011, unless sooner terminated in accordance with Article 10, or by agreement of the parties hereto.

LANDS FOR WHICH WATER IS FURNISHED: LIMITATIONS ON DELIVERIES

5. The United States shall release each year to the Contractor during the irrigation season from April 1 to October 31, inclusive, water from the Willow Creek Project for the irrigation of land owned or served by the Contractor described as follows:

See attachment 1.

Of the land described in attachment 1, not more than 2,538.14 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, up to a maximum diversion of 2,011.6 acre-feet of stored water, measured at the point of release of said water.

PAYMENTS FOR WATER

6. (a) An annual payment of \$70,406.00 for the first irrigation season shall be made to the United States at the time of executing this contract, and a subsequent annual payment of \$70,406.00 will be due on or before April 1 of the 2011 irrigation season in advance of water use. This payment will entitle the Contractor to receive up to a maximum of 2,011.6 acre-feet of stored water for irrigation of the lands described in Article 5 of this contract. In the event some portion of the 2,011.6 acre-feet is not required by the Contractor, the Contracting Officer will refund or credit a portion of the water service payment based on

information received from the Contractor or other reliable sources and substantiated by the State of Oregon 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 diverted, as deemed appropriate by the Contracting Officer; Provided, that in order for a refund or credit to be made, information on the amounts of stored water delivered each month must be received in writing by the Contracting Officer by December 1 of that year; Provided, further, that regardless of the amount of water released to the Contractor under this contract, a minimum charge of \$17,601.50 shall apply.

(b) The annual charge set forth in (a) above is based on an initial rate of \$35 per acre-foot of stored water. 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 United States for the irrigation water marketing program of the Willow Creek 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) Payments required hereunder shall be made to the Bureau of Reclamation at the location described in Article 14 of this contract.

CONTRACT ADMINISTRATION FEES

7. All future contract actions, contract amendments, supplements, and assignments will be subject to a charge in an amount sufficient to cover costs to the United States.

RELEASE OF WATER

8. (a) Upon payment of the monies specified in subarticle 6(a) above, the United States will release water to the Contractor from the Willow Creek Project pursuant to this contract. No water shall be released if the Contractor is delinquent in payment of the required payments.

(b) Water shall be made available to the Contractor at the outlet works of Willow Creek Dam. The Contractor shall receive the water at that point and shall be wholly responsible for diverting, conveying, and utilizing any water under this contract.

(c) Water made available hereunder will be measured by the United States at the release point stated in subarticle 8(b). All losses of water from seepage, evaporation, or other cause, below said point of measurement, shall be borne by the Contractor.

(d) Water released under this contract shall be used by the Contractor for the purpose of irrigating the lands described in Article 5 and shall not be sold or used for other purposes.

(e) Water for the purposes described herein shall be taken by the Contractor at the following point(s) of diversion:

See attachment 2.

The water taken by the Contractor hereunder shall be measured by means of measuring or controlling devices satisfactory to the Contracting Officer or the State-appointed watermaster. Such devices shall be furnished, installed, and maintained 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.

(f) The Contractor agrees to comply with all applicable Federal, State, and local laws governing water use under this contract. The Contractor shall secure from the State of Oregon any needed licenses or permits governing the diversion and use of water hereunder. The Contractor shall be responsible for the cost of any fees, licenses, permits, and administrative and distribution costs charged by the State of Oregon. All diversions shall be subject to the jurisdiction of the State official in charge of the distribution of the waters of the river from which the diversion is made.

(g) All requests to the United States for water releases and flow changes at Willow Creek Project under this agreement shall be coordinated with authorized representatives of the Oregon Department of Water Resources (OWRD) to ensure proper compliance with State law.

SPECIAL CONDITIONS

9. (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 5. 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 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 Willow Creek Project determined in accordance with the law governing the project.

(b) In the interest of conservation and protection of environmental resources, this contract may be reviewed by the Contracting Officer at any time. The terms and conditions

of this contract, including the amount of stored water provided hereunder, may be modified, if deemed necessary by the Contracting Officer, to avoid or minimize impacts to candidate, listed or proposed threatened and endangered species; proposed or designated critical habitat; or other valuable natural resources. Any modification by the Contracting Officer shall be announced by written notice to the Contractor.

TERMINATION OF CONTRACT

10. (a) This contract may be terminated and water service hereunder shall cease at the option of the United States at any time if the Contractor is delinquent in payment of the water service charge for a period of 90 days or upon failure of the Contractor to abide 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 Contractor shall have the right to terminate this contract for any reason: Provided, that notice of the intent by the Contractor to terminate this contract shall be in writing to the Contracting Officer at least 60 days prior to the termination date proposed: Provided further, that termination under this provision shall become effective no sooner than March 1 of the next calendar year following such written notice.

(c) Termination of this contract for any cause shall not relieve the Contractor of any financial obligations incurred by way of this contract prior to termination.

CONSTRAINTS ON THE AVAILABILITY OF WATER (WATER SHORTAGES)

11. In its operation of the Project, the United States 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 United States 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 errors in physical operations of the Project, drought, other physical causes beyond the control of the United States, 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.

HOLD HARMLESS AND INDEMNIFICATION

12. 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 derived from 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.

DISCLAIMER

13. No provision of this contract nor the furnishing of water hereunder will be construed to bind the United States after the expiration of this contract as the basis of a permanent water right. Water service, such as that provided hereunder, may only be provided in a subsequent irrigation season, or seasons, upon execution of a suitable contract for that purpose. Because of possible fluctuations in reservoir surface elevations and downstream flows associated with the Willow Creek 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. Further, the United States will not be held responsible for any acts or omissions of the Contractor's agents or of persons to whom water is furnished.

NOTICES

14. 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, Repayment and Acreage Limitation, Pacific Northwest Region, Bureau of Reclamation, 1150 N. Curtis Road, Suite 100, Boise, Idaho, 83706-1234, and on behalf of the United States, when mailed, postage prepaid, or delivered to Willow

Creek District Improvement Company, c/o Ms. Martha Pagel, 530 Center St. NE, Ste 400, Salem, OR 97301. 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.


GENERAL PROVISIONS

15. 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. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS
- b. OFFICIALS NOT TO BENEFIT
- c. CHANGES IN CONTRACTORS ORGANIZATION
- 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

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


Willow Creek District Improvement Company

By: 
Signature and Title
President of Willow Creek
District Improvement Company

Attest:

By:  MEMBER
Signature and Title

UNITED STATES OF AMERICA

ACTING 
Regional Director
PN Region
Bureau of Reclamation
1150 N. Curtis Road, Suite 100
Boise, ID 83706-1234

STATE OF)

: SS

County of MARION)

On this 25th day of March, 2010, before me, a notary public, personally appeared Bernard Damon and Brian Thompson known to me to be the official(s) of the WILLOW CREEK DISTRICT IMPROVEMENT COMPANY, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said WILLOW CREEK DISTRICT IMPROVEMENT COMPANY, for the uses and purposes therein mentioned, and on oath stated that he/she/they (circle one) is/are authorized to execute said instrument on its behalf.

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



Kay Qualls

Notary Public in and for the State of OREGON
Residing at: Hesperia
My commission expires: 12-9-2010

(SEAL)

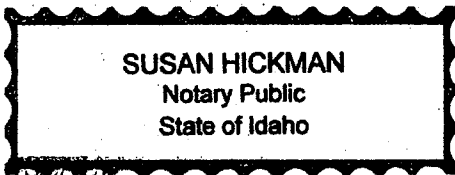
STATE OF IDAHO)

: SS

County of Ada)

On this 2 day of April, 2010, personally appeared before me Steven L. Brawley, to me known 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 he 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.



Susan Hickman

Notary Public in and for the State of IDAHO
Residing at: Meridian
My commission expires: 1-7-2016

(SEAL)

GENERAL PROVISIONS --- WILLOW CREEK PROJECT

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

(a). 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

(b). 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.

CHANGES IN CONTRACTOR'S ORGANIZATION

(c). 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.

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 water supply data; 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 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 shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Oregon and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall 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, disability, 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, disability, 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 advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the 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.

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

(5) The Contractor will furnish all information and reports required by Executive Order 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.

(6) 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 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) 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 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 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title II of the Americans with Disabilities Act of 1990 if the entity is a State or local

government entity [Title III if the entity is a non-government entity], and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(2) These statutes require that no person in the United States shall be excluded from participation in, be denied the benefits of, or be 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.

(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 (5 U.S.C. 552a) (Privacy Act) 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 (96 Stat. 1261), and pursuant to 43 CFR 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 (a) 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 Interior Department 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

(I). Articles 1 through 14 of this Contract have been drafted, negotiated, and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated articles.