

Contract No. 5-07-10-10528

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Willamette Basin Project, Oregon

CONTRACT FOR WATER SERVICE

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Application No. 68100

Permit No. 49024

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Willamette Basin Project, Oregon

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CONTRACT FOR WATER SERVICE

THIS CONTRACT, made this 5th day of November, 1984,  
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 (53 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 George Horning,  
(Name)  
Route 1, Box 591, Monroe, Oregon 97456,  
(Address)

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 Basin, Oregon,  
herein styled the Willamette Basin Project, from which there is a flow  
of water than 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

1           3.    WHEREAS, The Contractor owns land or provides water service  
2 to the owners of lands hereinafter described, for which a water supply  
3 is desired to be secured from the United States;

4           NOW, THEREFORE, in consideration of the premises and the  
5 payment by the Contractor to the United States of the charges in the  
6 manner hereinafter provided, it is agreed:

7           Lands for Which Water is Furnished: Limitations on Deliveries

8           4.    The United States shall make available each year to the  
9 Contractor during the irrigation season from April 1 to September 30,  
10 inclusive, water from the Willamette Basin Project for the irrigation  
11 of land owned by or served by the Contractor described as follows:

12           14.2 acres, SE1/4SE1/4, Sec. 9, T. 14 S., R. 5 W., W.M.

13           13.0 acres, SW1/4SE1/4, Sec. 9, T. 14 S., R. 5 W., W.M.

14           1.1 acre, NE1/4NE1/4, Sec. 16, T. 14 S., R. 5 W., W.M.

15           4.0 acres, NW1/4NE1/4, Sec. 16, T. 14 S., R. 5 W., W.M.

16           7.0 acres, SE1/4NE1/4, Sec. 16, T. 14 S., R. 5 W., W.M.

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19    Of the land described, not more than 40 acres are to be irrigated.

20    The amount of water to be made available hereunder shall be that  
21    quantity which may be applied beneficially in accordance with good usage  
22    in the irrigation of the land above described, but in no event shall it  
23    exceed a total diversion of 40 acre-feet annually, measured at the  
24    point of delivery of said water.

63100

Payments for Water

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2           5. (a) An annual payment of \$ 50 for the first irrigation  
3 season shall be made to the United States at the time of executing this  
4 contract, and subsequent annual payments of \$ 50 will be due on or  
5 before April 1 of each succeeding irrigation season in advance of water  
6 use. This payment will entitle the Contractor to receive 40 acre-  
7 feet of stored water in accordance with Article 4 of this contract.  
8 Payment for the minimum charge is nonrefundable regardless of the amount  
9 of water actually used.

10           (b) From time to time, but not less often than once every  
11 5 years, the minimum charge shall be reviewed by the Contracting Officer  
12 and revised, if necessary, to cover costs to the United States for the  
13 irrigation water marketing program of the Willamette Basin Project. Any  
14 revision by the Contracting Officer will apply only to future charges  
15 and shall be announced by written notice to the Contractor at least  
16 3 months prior to the beginning of the irrigation season to which the  
17 new rate would be applicable.

18           (c) Payments required hereunder shall be made to the Bureau of  
19 Reclamation at the location described in Article 13 of this contract.

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Charge for Late Payments

6. The Contractor shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; Provided, That the late payment charge percentage rate will not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment will remain in effect until payment is received or a different rate is published. The late payment rate for a 30-day period will be determined on the day immediately following the due date and will be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received will first be applied to the late charge on the principal and then to payment of the principal.

Furnishing of Water

7. (a) Upon payment of the minimum charge specified in sub-article 5(a) above, the United States will furnish a maximum of 40 acre-feet of water to the Contractor from the Willamette Basin Project. No water shall be furnished if the Contractor is delinquent in payment of the required minimum charge.

(b) Water for the purposes hereof shall be made available and measured at the following point(s) of diversion:

- 1,200 feet north and 1,450 feet east of the southwest corner of
- A. Richardson D. L. C., within the NE1/4NE1/4, Section 16, T. 14 S., R. 5 W., W.M.

The Contractor shall receive said water at the point of diversion and shall be wholly responsible for securing said water at that point and diverting, conveying, and utilizing it. The water to be delivered hereunder shall be measured by means of measuring or controlling

1 devices satisfactory to the Contracting Officer. Such devices shall  
2 be furnished, installed, and maintained by and at the expense of the  
3 Contractor, but they shall be and remain at all times under the control  
4 of the United States or of an appropriate State-appointed watermaster  
5 whose representative may at all times have access to them over any  
6 lands of the Contractor. All losses of water from seepage, evaporation,  
7 or other cause, below said point of measurement, shall be borne by the  
8 Contractor.

9 (c) The monthly supply of water hereunder diverted in any  
10 one month of the irrigation season shall not exceed 35 percent of the  
11 total maximum annual diversion set forth in subarticle 7(a) above. The  
12 Contractor shall, to the extent practicable, submit to the Contracting  
13 Officer an advance schedule as to the precise time of water deliveries.  
14 Changes in such schedule may be made only upon sufficient advance  
15 notice to the Contracting Officer to allow him to adjust releases to  
16 meet the new schedules. Upon the appointment of a State watermaster  
17 to govern diversions from the stream concerned, the Contractor shall  
18 be required to conform its diversions and releases to the control of  
19 the stream as established by the watermaster.

20 (d) The Contractor and all other entities heretofore or  
21 hereafter contracting with the United States for a right to use water  
22 from the Willamette Basin Project shall, to the extent of their base  
23 entitlement, have equal priority to the use of water from such project  
24 so far as that may be physically practicable and legally possible,  
25 without regard to the date of their respective contracts.

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Special Conditions

8. (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 4. 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 deliver water under this contract is subject to an operating plan for the Willamette Basin Project determined in accordance with the law governing the project.

(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 automatically when water is made available to the lands described in Article 4 by such an organization to serve these and other lands presently irrigated or planned for irrigation in future years from the Willamette Basin Project.

Term of Contract

9. This contract shall become effective as of the date first above written and will continue in force for 40 years unless sooner terminated in accordance with Articles 8 or 10 or by agreement of the parties hereto.

Termination of Contract

10. 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

1 period of 30 days or upon failure of the Contractor to abide by any  
2 notice, order, rule, or regulation of the United States or the State of  
3 Oregon now or hereafter established affecting water service hereunder.

4 United States Not Liable for Water Shortages--Adjustments

5 11. On account of drought or uncontrollable forces, there may occur  
6 a shortage in the total quantity of water available for furnishing to the  
7 Contractor by the United States pursuant to this contract. In no event  
8 shall any liability accrue against the United States or any of its  
9 officers, agents, or employees for any damage direct or indirect arising  
10 from such shortages. If such a shortage occurs, the United States will  
11 apportion the available water supply among the Contractor and others  
12 entitled by existing and future contracts to receive water from the  
13 Willamette Basin Project.

14 Disclaimer

15 12. No provision of this contract, nor of any renewal thereof, nor  
16 the furnishing of water hereunder will be construed to bind the United  
17 States after the expiration of this contract as the basis of a permanent  
18 water right. Because of possible fluctuations in reservoir surface  
19 elevations and downstream flows associated with the Willamette Basin  
20 Project, the United States does not guarantee the availability of water  
21 at the point of the Contractor's diversion facilities as they may now  
22 be constructed or constructed hereafter. Further, the United States  
23 will not be held responsible for any acts or omissions of the  
24 Contractor's agents or of persons to whom water is furnished.

25 Notices

26 13. Any notice, demand, or request authorized or required by this  
27 contract shall be deemed to have been given, on behalf of the Contractor,



1 when mailed, postage prepaid, or delivered to the Regional Director,  
2 Pacific Northwest Region, Bureau of Reclamation, Box 043, 550 West Fort  
3 Street, Boise, Idaho 83724, and on behalf of the United States, when  
4 mailed, postage prepaid, or delivered to George Horning  
5 Route 3, Box 588, Corvallis, OR 97330. "The designation of the addressee  
6 or the address may be changed by notice given in the same manner as  
7 provided in this article for other notices.

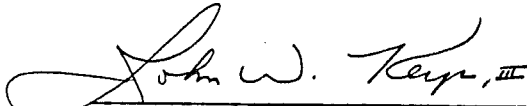
8 General Provisions

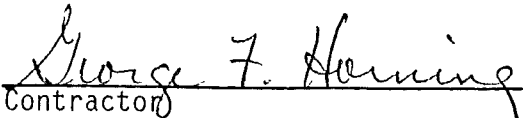
9 14. The general provisions applicable to this contract are listed  
10 below. The full text of these general provisions is attached as  
11 Exhibit A and is hereby made a part of this contract.

- 12 a. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS
- 13 b. WATER AND AIR POLLUTION CONTROL
- 14 c. QUALITY OF WATER
- 15 d. EQUAL OPPORTUNITY
- 16 e. RULES, REGULATIONS, AND DETERMINATIONS
- 17 f. ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED
- 18 g. OFFICIALS NOT TO BENEFIT
- 19 h. TITLE IV, CIVIL RIGHTS ACT OF 1964
- 20 i. WATER CONSERVATION PROGRAM

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

UNITED STATES OF AMERICA

  
ACTING Regional Director, PN Region  
Bureau of Reclamation  
Box 043, 550 West Fort Street  
Boise, Idaho 83724

  
Contractor

Article 14

STATE OF IDAHO )  
 : SS  
County of Ada )

On this 5<sup>th</sup> day of November, 1984, personally appeared before me John W. Keys III, 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.

Diana L. Jacobs  
Notary Public in and for the  
State of Idaho  
Residing at Boise

My commission expires: May 23, 1988

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STATE OF OREGON )  
 : SS  
County of Benton )

On this 4<sup>th</sup> day of Sept, 1984, before me, H. Lindsey, a Notary Public, personally appeared George F. Hocning, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

H. Lindsey  
Notary Public in and for the H. LINDSEY  
State of OREGON  
Residing at Boise  
My Commission Expires 7-7-85  
My commission expires: Monroe Or 97456

(SEAL)

## GENERAL PROVISIONS--WILLAMETTE BASIN PROJECT, OREGON

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

WATER AND AIR POLLUTION CONTROL

b. The Contractor, in carrying out this contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Washington and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

QUALITY OF WATER

c. The operation and maintenance of project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The United States does not warrant the quality of water and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of water.

EQUAL OPPORTUNITY

d. 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, 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, 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 discrimination because of race, color, religion, sex, 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 said 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, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer 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 the 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 said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The 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 said amended Executive Order, 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 a 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.

#### RULES, REGULATIONS, AND DETERMINATIONS

e. (1) The Contracting Officer shall have the right to make, after an opportunity has been offered to the Contractor for consultation, rules and regulations consistent with the provisions of this contract, the laws of the United States and the State of Oregon, to add or to modify them as may be deemed proper and necessary to carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The Contractor shall observe such rules and regulations.

(2) Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties.

#### ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

f. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any part or interest therein shall be valid until approved by the Contracting Officer.

#### OFFICIALS NOT TO BENEFIT

g. (1) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

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

#### TITLE VI, CIVIL RIGHTS ACT OF 1964 (not applicable if Contractor is actual water user)

h. (1) The Contractor agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to the Department of the Interior Regulation (43 CFR 17) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this agreement.

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

(3) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the United States, 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 financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees.

Water Conservation Program

i. (1) While the contents and standards of a given water conservation program are primarily matters of State and local determination, there is a strong Federal interest in developing an effective water conservation program because of this contract. The Contractor shall develop and implement an effective water conservation program for all uses of water which is provided from, or conveyed through, Federally constructed or Federally financed facilities. That water conservation program shall contain definite goals, appropriate water conservation measures, and time schedules for meeting the water conservation objectives.

(2) A water conservation program, acceptable to the Contracting Officer, shall be in existence prior to one or all of the following: (a) service of Federally stored/conveyed water; (b) transfer of operation and maintenance of the project facilities to the Contractor; or (c) transfer of the project to an operation and maintenance status. The distribution and use of Federally stored/conveyed water and/or the operation of project facilities transferred to the Contractor shall be consistent with the adopted water conservation program. Following execution of this contract, and at subsequent 5-year intervals until payout under this supplemental contract, the Contractor shall resubmit the water conservation plan to the Contracting Officer for review and approval. After review of the results of the previous 5 years and after consultation with the Contractor, the Contracting Officer may require modifications in the water conservation program to better achieve program goals.