



United States Department of the Interior

BUREAU OF RECLAMATION

Pacific Northwest Region
1150 North Curtis Road
Boise, Idaho 83706-1234

IN REPLY
REFER TO:

PN-3323
WTR-4.00

APR 24 1996

Klupenger Nursery & Ghses., Inc.
24075 Klupenger Road NE.
Aurora OR 97002

Subject: Willamette Basin Project Water Service Contract No. 6-07-10-W1110

Dear Ladies and Gentlemen:

Enclosed for your records is a conformed original of the fully executed subject contract, which provides for the use of stored water for irrigation use from the Willamette Basin Project commencing with the 1996 irrigation season.

If you have not yet contacted the Oregon Water Resources Department for your permits to divert, we suggest you do so. We are furnishing that agency a conformed copy of the contract so they will be in a position to proceed with issuing the required permit to divert stored water.

RECEIVED

APR 29 1996

WATER RESOURCES DEPT.
SALEM, OREGON

Sincerely,

Ryan M. Patterson
Program Manager
Lands and Repayment

Enclosure

cc: Oregon Water Resources Department
158 12th Street NE.
Salem OR 97310
(w/copy of contract)

U.S. Army Corps of Engineers
Attention: CENPP-PE-HR
PO Box 2946
Portland OR 97208
(w/copy of contract)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Willamette Basin Project, Oregon

CONTRACT FOR WATER SERVICE

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Willamette Basin Project, Oregon

CONTRACT FOR WATER SERVICE

THIS CONTRACT, made this 22nd day of April, 1996 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 Klupenger's Nursery & Ghses., Inc., 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 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

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

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 Furnished: Limitations on Deliveries

4. The United States shall make available each year to the Contractor during the irrigation season from March 1 to October 31, inclusive, stored water from the Willamette Basin Project for the irrigation of land owned by the Contractor described as follows:

16.0 acres, SE1/4 NW1/4, Sec. 33, T. 3 S., R. 1 W., W.M.
31.0 acres, SW1/4 NE1/4, Sec. 33, T. 3 S., R. 1 W., W.M.
9.0 acres, SE1/4 NE1/4, Sec. 33, T. 3 S., R. 1 W., W.M.
1.6 acres, SW1/4 NE1/4, Sec. 28, T. 3 S., R. 1 W., W.M.

Of the land described, not more than 57.6 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 maximum diversion of 144 acre-feet of stored water annually, measured at the point of delivery of said water.

Payments for Water

5. (a) An annual payment of \$1,152 for the first irrigation season shall be made to the United States at the time of executing this contract, and subsequent annual payments of \$1,152 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 not to exceed 144 acre-feet of stored water, hereinafter referred to as the base entitlement, for irrigation of the lands described in Article 4 of this contract. The Contracting Officer will consider adjusting the water service payment downward or upward from the base entitlement based on information received from the Contractor, the State of Oregon, or other reliable sources as to the actual amounts of water and stored water delivered

each month to the Contractor during the irrigation season and on other factors in addition to the amounts of water and stored water actually delivered, as deemed appropriate by the Contracting Officer. Any such adjustment will be determined and subtracted or added to the payment for the next year by the Contracting Officer; Provided, that in order for an adjustment to be made, information on the amounts of water and stored water delivered each month must be received 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 as a minimum be the greater of either the product of \$2 multiplied by the number of acres described in Article 4 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 United States for the irrigation water marketing program of the Willamette 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) Payments required hereunder shall be made to the Bureau of Reclamation at the location described in Article 14 of this contract.

Contract Preparation Assignment Fee

6. (a) Upon execution of this contract, a \$100 fee for the preparation of this contract is due and payable by the Contractor to the United States.

(b) All future contract actions, including new contracts, contract amendments, supplements, and assignments will be charged a \$100 fee: Provided, That the fee shall be reviewed by the Contracting Officer and revised from time to time to cover costs to the United States.

Charges for Delinquent Payments

7. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of 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 prescribed by section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall 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, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

Furnishing of Water

8. (a) Upon payment of the annual payment specified in subarticle 5(a) above, the United States will furnish water to the Contractor from the Willamette Basin Project pursuant to this contract. No water shall be furnished if the Contractor is delinquent in payment of the required annual payment.

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

2300 feet north and 1250 feet west of the southeast corner of Sec. 28, T. 3 S., R. 1 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 devices satisfactory to the Contracting Officer. 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. 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 deliveries. Changes in such schedule may be made only upon sufficient advance notice to the Contracting Officer to allow him to adjust releases to meet the new schedules. Upon the appointment of a State watermaster to govern diversions from the stream concerned, the Contractor shall be required to conform its diversions and releases to the control of the stream as established by the watermaster.

(d) The Contractor and all other entities heretofore or hereafter contracting with the United States for a right to use water from the Willamette Basin Project shall, to the extent of their base entitlement, have equal priority to the use of water from such project so far as that may be physically

practicable and legally possible, without regard to the date of their respective contracts.

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 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 stored 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.

(c) In the interest of conservation and protection of environmental resources, from time to time, but not less often than once every 5 years, this contract shall be reviewed by the Contracting Officer. The terms and conditions of this contract may be modified, if deemed necessary by the Contracting Officer, to avoid or minimize impacts to candidate, listed or proposed threatened and endangered species, or other valuable natural resources.

Any modification by the Contracting Officer shall be announced by written notice to the Contractor.

Term of Contract

10. (a) This contract shall become effective as of the date first above written and will have a term of not to exceed 10 years; Provided; that this contract will automatically renew for a term of not to exceed 10 years at the end of 10, 20, and 30 years from the date first above written unless sooner terminated in accordance with Articles 9 or 11, or by agreement of the parties hereto, or unilaterally as set forth in (b) below, Provided however; that this contract does not qualify as a long-term contract under the Act of July 2, 1956 (70 Stat. 483) and in no event shall this contract be in effect beyond 40 years through automatic renewals.

(b) Either the Contracting Officer or the Contractor may terminate this contract unilaterally at the end of 10, 20, or 30 years, provided the terminating party has given at least 5 years advance notice in writing to the other party.

Termination of Contract

11. 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 payment 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.

United States Not Liable for Water Shortages--Adjustments

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

Disclaimer

13. No provision of this contract, nor of any renewal thereof, 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. Because of possible fluctuations in reservoir surface elevations and downstream flows associated with the Willamette 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. 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, Lands and Repayment, Pacific Northwest Region, Bureau of Reclamation, 1150 N. Curtis Road, Boise, Idaho 83706-1234, and on behalf of the United States, when mailed, postage prepaid, or delivered to Klupenger's Nursery & Ghses., Inc., 24075 Klupenger Road NE., Aurora OR 97002. 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.

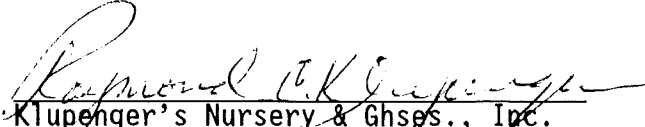
General Provisions

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.

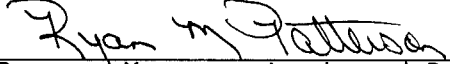
- a. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS
- b. WATER AND AIR POLLUTION CONTROL
- c. QUALITY OF WATER
- d. EQUAL OPPORTUNITY
- e. COMPLIANCE WITH RECLAMATION LAWS
- f. ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED
- g. OFFICIALS NOT TO BENEFIT
- h. WATER CONSERVATION
- i. HAZARDOUS MATERIALS

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

CONTRACTOR


Klupenger's Nursery & Ghses., Inc.

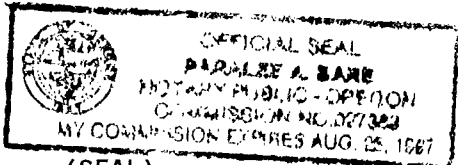
UNITED STATES OF AMERICA


Program Manager, Lands and Repayment
PN Region
Bureau of Reclamation
1150 N. Curtis Road
Boise ID 83706-1234

STATE OF Oregon)
 : ss
County of Clackamas)

On this 14th day of March, 19 96,
before me, a notary public, personally appeared Raymond C. Klupenger to
me known to be the official of the KLUPENGER'S NURSERY & GHSES., INC. that
executed the within and foregoing instrument and acknowledged said instrument to
be the free and voluntary act and deed of said Klupenger's Nursery & Ghses.,
Inc., 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.



(SEAL)

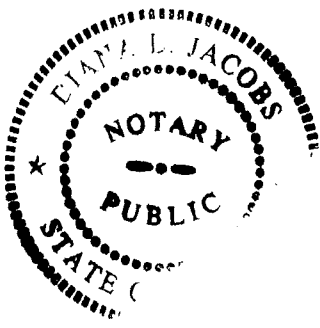
Paralee A. Bare
Notary Public in and for the
State of Oregon
Residing at: Gladstone, Or

My commission expires: 8-25-97

STATE OF IDAHO)
 : ss
County of Ada)

On this 22 day of April, 19 96, personally
appeared before me Ryan M. Patterson, 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.



(SEAL)

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

My commission expires: 5-23-2000

STANDARD PROVISIONS --- WILLAMETTE BASIN PROJECT

CONTINGENT ON 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 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 Oregon, 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 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 RECLAMATION LAWS

e. The parties agree that the delivery of irrigation water or the use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, including, but not limited to, the Reclamation Reform Act of 1982 (Public Law 97-293).

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 right or interest therein shall be valid until approved in writing by the Contracting Officer.

OFFICIALS NOT TO BENEFIT

g. No Member of or Delegate to 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.

WATER CONSERVATION

h. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this contract, the Contractor shall develop an effective water conservation program acceptable to the Contracting Officer. The water conservation program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. At subsequent 5-year intervals, the Contractor shall submit a report on the results of the program to the Contracting Officer for review. Based on the conclusions of the review, the Contracting Officer and the Contractor shall consult and agree to continue or to revise the existing water conservation program.

HAZARDOUS MATERIALS

i. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in lands, waters or facilities owned by the United States or administered by Reclamation.

(2) "Hazardous material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and the regulations promulgated pursuant to that Act.

(3) The Contractor may not allow contamination of lands, waters or facilities owned by the United States or administered by Reclamation by hazardous materials, thermal pollution, refuse, garbage, sewage, effluent, industrial waste, petroleum products, mine tailings, mineral salts, pesticides (including, but not limited to, the misuse of pesticides), pesticide containers or any other pollutants.

(4) The Contractor shall report to Reclamation, within 24 hours of its occurrence, any event which may or does result in pollution or contamination adversely affecting lands, water or facilities owned by the United States or administered by Reclamation.

(5) Violation of any of the provisions of this Article shall constitute grounds for immediate termination of this contract and shall make the Contractor liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

(6). The Contractor agrees to include the provision contained in paragraphs (1) through (5) of this Article in any subcontract or third party contract it may enter into pursuant to this contract.

(7) Reclamation agrees to provide information necessary for the Contractor, using reasonable diligence, to comply with the provision of this Article.