

5-87570



# United States Department of the Interior



BUREAU OF RECLAMATION  
Pacific Northwest Region  
1150 North Curtis Road, Suite 100  
Boise, Idaho 83706-1234

IN REPLY REFER TO:

PN-3324  
WTR-4.00

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Mr. Richard Haake  
Whitewater Ranch, LLC  
43137 McKenzie Hwy  
Leaburg, OR 97489

WATER RESOURCES DEPT  
SALEM, OREGON

Subject: Water Service Contract No. 129E101769, Willamette River Basin Project, Oregon

Dear Mr. Haake:

Enclosed for your records is a fully executed original of the subject contract, which provides for the irrigation use of up to 136.6 acre-feet of stored water from the Willamette River Basin Project beginning with the 2012 irrigation season.

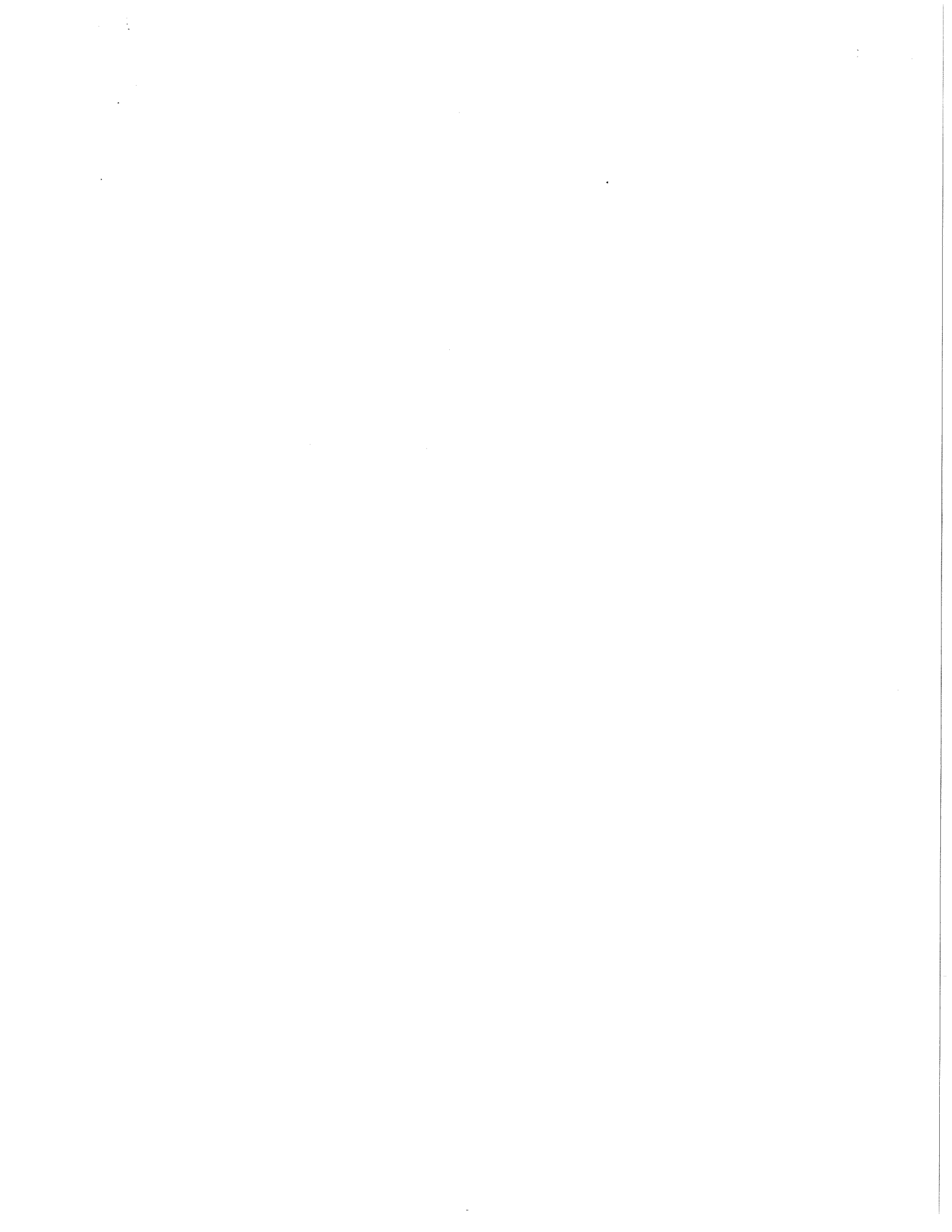
If you have any questions, please contact Mr. Bill Parks, Economist, at the above address or by telephone at 208-378-5344.

Sincerely,

Ryan M. Patterson  
Program Manager  
Repayment and Acreage Limitation

Enclosure

cc: Water Rights Division  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
(w/copy of contract)



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Willamette River Basin Project, Oregon

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CONTRACT FOR WATER SERVICE

WATER RESOURCES DEPT  
SALEM, OREGON

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Willamette River Basin Project, Oregon

**CONTRACT FOR WATER SERVICE**

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THIS CONTRACT, made this 17<sup>th</sup> day of October, 2011, 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 **Whitewater Ranch LLC**, hereinafter referred to as the Contractor;

WITNESSETH, THAT:

**EXPLANATORY RECITALS**

2. WHEREAS, The United States has constructed and operates a system of multi-purpose 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

3. WHEREAS, the Contractor owns or serves 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 DIVERTED: LIMITATIONS ON RELEASES**

4. 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:

16.5 acres, Section 1, T. 17 S., R. 1 E., W.M.  
5.3 acres, Section 12, T. 17 S., R. 1 E., W.M.  
46.5 acres, Section 6, T. 17 S., R. 2 E., W.M.

Of the land described, not more than 68.3 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 136.6 acre-feet of stored water annually, measured at the point of delivery of said water.

**PAYMENTS FOR WATER**

5. (a) An annual payment of \$1,092.80 for the first irrigation season shall be made to the United States at the time of executing this contract, and subsequent annual payments of \$1,092.80 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 136.6 acre-feet of stored water for irrigation of the lands described in Article 4 of this contract. 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 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 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.

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(e) Payments required hereunder shall be made to the Bureau of Reclamation at the location described in Article 15 of this contract.

### **CONTRACT ADMINISTRATION FEES**

6. 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**

7. (a) The Contractor shall be subject to interest and 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, in addition to the interest charge, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and administrative charges, the Contractor shall pay 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 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. The interest charge rate 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**

8. (a) Upon payment of the charges specified in Article 5 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.

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

1,400 feet south and 680 feet west of northeast corner of Section 1,  
T. 17 S., R. 1 E., W.M.

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.

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## **CONSTRAINTS ON THE AVAILABILITY OF WATER (WATER SHORTAGES)**

9. 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.

## **SPECIAL CONDITIONS**

10. (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 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 4 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 time frame established by the Contracting Officer or the applicable State and Federal fisheries agency.

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### TERM OF CONTRACT

11. This contract shall become effective as of the date first above written and will continue in effect for a period of 40 years unless sooner terminated in accordance with the provisions of Articles 10 or 12 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

12. (a) 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**

13. 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.

**DISCLAIMER**

14. 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.

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## NOTICES

15. 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, ID 83706-1234, and on behalf of the United States, when mailed, postage prepaid, or delivered to Whitewater Ranch LLC, c/o Richard Haake, 43137 McKenzie Highway, Leaburg, OR 97489. 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

16. 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. CHANGES IN CONTRACTORS ORGANIZATION
- e. ASSIGNMENTS LIMITED -- SUCCESSORS AND ASSIGNS OBLIGATION
- f. BOOKS, RECORDS, AND REPORTS
- g. COMPLIANCE WITH FEDERAL RECLAMATION LAWS
- h. PROTECTION OF WATER AND AIR QUALITY
- i. WATER CONSERVATION
- j. EQUAL EMPLOYMENT OPPORTUNITY
- k. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
- l. PRIVACY ACT COMPLIANCE
- m. MEDIUM FOR TRANSMITTING PAYMENTS
- n. CONTRACT DRAFTING CONSIDERATIONS

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

**WHITEWATER RANCH LLC**

By: *Richard J. Linder, Agent*  
Signature and Title

Attest:

By: \_\_\_\_\_  
Signature and Title

**UNITED STATES OF AMERICA**

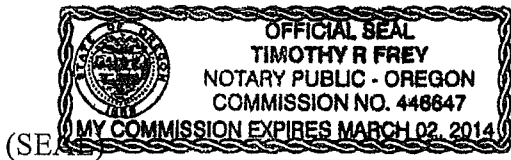
By: *Ryan M. Patterson*  
Program Manager  
Repayment and Acreage Limitation  
PN Region  
Bureau of Reclamation  
1150 N. Curtis Road, Suite 100  
Boise, ID 83706-1234

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STATE OF Oregon )  
 : ss  
County of Lane )

On this 24 day of August, 2011, before me, a notary public, personally appeared Richard Haake and \_\_\_\_\_ known to me to be the official(s) of the **WHITEWATER RANCH LLC**, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said **WHITEWATER RANCH LLC**, 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.



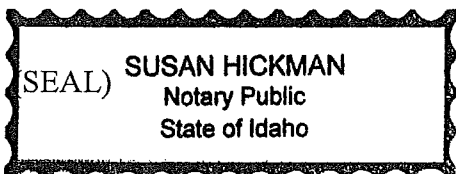
Timothy R. Frey  
Notary Public in and for the  
State of Oregon  
Residing at: Eugene, Oregon  
My commission expires: 03/02/2014

\*\*\*\*\*

STATE OF IDAHO)  
 : ss  
County of Ada)

On this 17 day of October, 2011, personally appeared before me Ryan M. Patterson, 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 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



**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 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 rates 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.

CHANGES IN CONTRACTOR'S ORGANIZATION

(d). 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

(e). 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.

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## BOOKS, RECORDS, AND REPORTS

(f). 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

(g). 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

(h). (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.

## WATER CONSERVATION

(i). 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 a water conservation plan, as required by Section 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

## EQUAL EMPLOYMENT OPPORTUNITY

(j). 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, as amended (EO 11246), 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 EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by EO 11246, 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 EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246, 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 EO 11246, 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.

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## COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

(k). (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.),] 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 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

(l). (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 (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 (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

(m). (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.

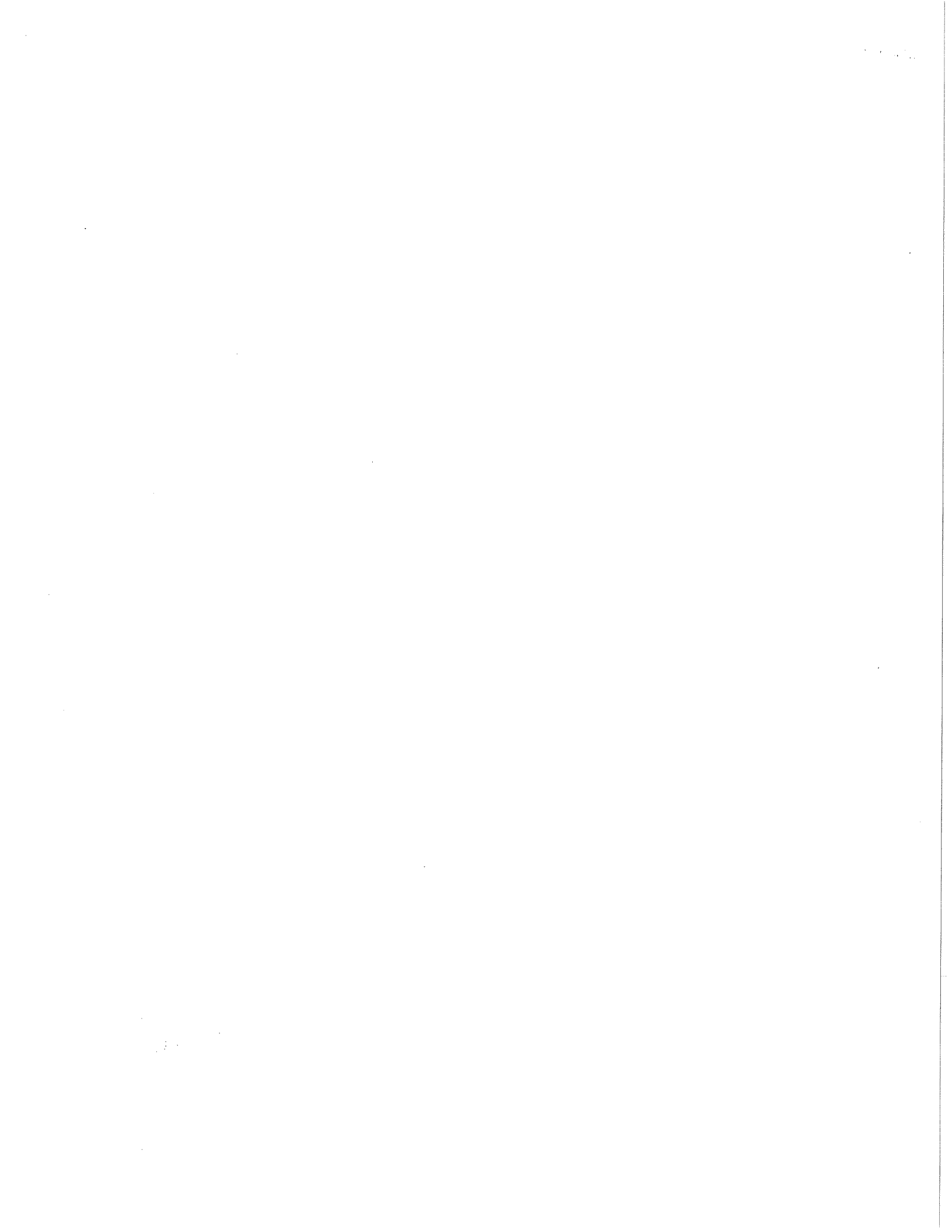
#### CONTRACT DRAFTING CONSIDERATIONS

(n). 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 18 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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SALEM, OREGON



S-87540



# United States Department of the Interior



IN REPLY REFER TO:

PN-3324  
WTR-4.00

BUREAU OF RECLAMATION  
Pacific Northwest Region  
1150 North Curtis Road, Suite 100  
Boise, Idaho 83706-1234

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Mr. Richard Haake  
McKenzie River Ranch, LLC  
43137 McKenzie Hwy  
Leaburg, OR 97489

WATER RESOURCES DEPT  
SALEM, OREGON

Subject: Water Service Contract No. 129E101770, Willamette River Basin Project, Oregon

Dear Mr. Haake:

Enclosed for your records is a fully executed original of the subject contract, which provides for the irrigation use of up to 100 acre-feet of stored water from the Willamette River Basin Project beginning with the 2012 irrigation season.

If you have any questions, please contact Mr. Bill Parks, Economist, at the above address or by telephone at 208-378-5344.

Sincerely,

Ryan M. Patterson  
Program Manager  
Repayment and Acreage Limitation

Enclosure

cc: Water Rights Division  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
(w/copy of contract)

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Willamette River Basin Project, Oregon

CONTRACT FOR WATER SERVICE

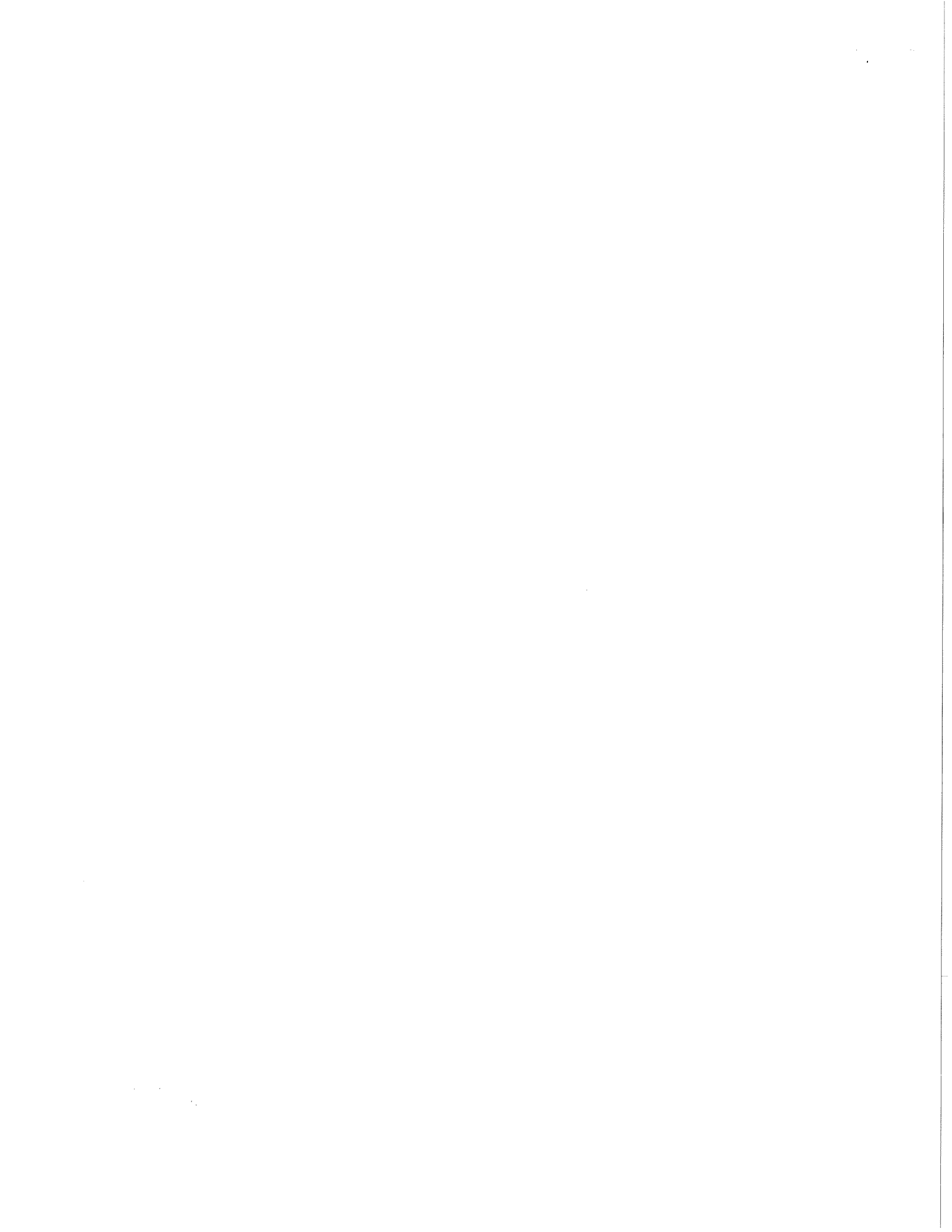
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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Willamette River Basin Project, Oregon

**CONTRACT FOR WATER SERVICE**

THIS CONTRACT, made this 17<sup>th</sup> day of October, 2011, 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 **McKenzie River Ranch LLC**, hereinafter referred to as the Contractor;

WITNESSETH, THAT:

**EXPLANATORY RECITALS**

2. WHEREAS, The United States has constructed and operates a system of multi-purpose 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 Contractor owns or serves 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 DIVERTED: LIMITATIONS ON RELEASES**

4. 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:

50 acres, Section 1, T. 17 S., R. 1 E., W.M.

Of the land described, not more than 50 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 100 acre-feet of stored water annually, measured at the point of delivery of said water.

**PAYMENTS FOR WATER**

5. (a) An annual payment of \$800 for the first irrigation season shall be made to the United States at the time of executing this contract, and subsequent annual payments of \$800 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 100 acre-feet of stored water for irrigation of the lands described in Article 4 of this contract. 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 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 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.

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(e) Payments required hereunder shall be made to the Bureau of Reclamation at the location described in Article 15 of this contract.

### **CONTRACT ADMINISTRATION FEES**

6. 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**

7. (a) The Contractor shall be subject to interest and 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, in addition to the interest charge, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to the interest and administrative charges, the Contractor shall pay 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 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. The interest charge rate 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

8. (a) Upon payment of the charges specified in Article 5 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.

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

1,400 feet south and 680 feet west of northeast corner of Section 1,  
T. 17 S., R. 1 E., W.M.

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.

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## **CONSTRAINTS ON THE AVAILABILITY OF WATER (WATER SHORTAGES)**

9. 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.

## **SPECIAL CONDITIONS**

10. (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 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 4 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 time frame established by the Contracting Officer or the applicable State and Federal fisheries agency.

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### **TERM OF CONTRACT**

11. This contract shall become effective as of the date first above written and will continue in effect for a period of 40 years unless sooner terminated in accordance with the provisions of Articles 10 or 12 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**

12. (a) 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.

**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 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 rates 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.

CHANGES IN CONTRACTOR'S ORGANIZATION

(d). 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

(e). 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.

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## BOOKS, RECORDS, AND REPORTS

(f). 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

(g). 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

(h). (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.

## WATER CONSERVATION

(i). 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 a water conservation plan, as required by Section 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

## EQUAL EMPLOYMENT OPPORTUNITY

(j). 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, as amended (EO 11246), 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 EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by EO 11246, 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 EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246, 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 EO 11246, 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.

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## COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

(k). (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.),] 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 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.

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(l). (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 (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 (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

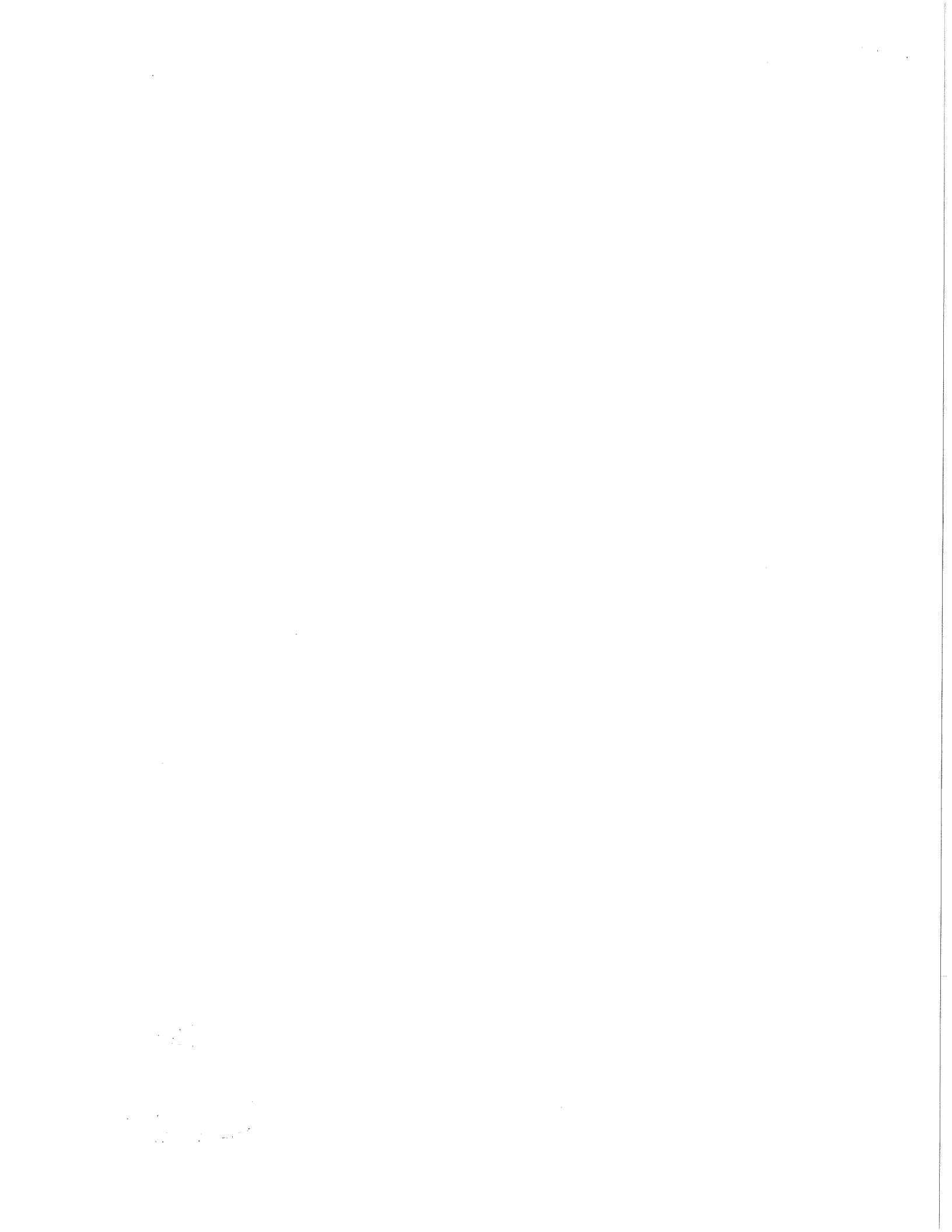
(m). (1) All payments from the Contractor to the United States under this contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

(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

(n). 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 18 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.

**RECEIVED**  
OCT 20 2011  
WATER RESOURCES DEPT  
SALEM, OREGON





### HOLD HARMLESS AND INDEMNIFICATION

13. 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.

### DISCLAIMER

14. 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.

**RECEIVED**

OCT 20 2011

WATER RESOURCES DEPT  
SALEM, OREGON

## NOTICES

15. 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, ID 83706-1234, and on behalf of the United States, when mailed, postage prepaid, or delivered to McKenzie River Ranch LLC, c/o Richard Haake, 43137 McKenzie Highway, Leaburg, OR 97489. 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

16. 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. CHANGES IN CONTRACTORS ORGANIZATION
- e. ASSIGNMENTS LIMITED -- SUCCESSORS AND ASSIGNS OBLIGATION
- f. BOOKS, RECORDS, AND REPORTS
- g. COMPLIANCE WITH FEDERAL RECLAMATION LAWS
- h. PROTECTION OF WATER AND AIR QUALITY
- i. WATER CONSERVATION
- j. EQUAL EMPLOYMENT OPPORTUNITY
- k. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS
- l. PRIVACY ACT COMPLIANCE
- m. MEDIUM FOR TRANSMITTING PAYMENTS
- n. CONTRACT DRAFTING CONSIDERATIONS

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

**MCKENZIE RIVER RANCH LLC**

By: *Richard H. [Signature]* Agent  
Signature and Title

Attest:

By: \_\_\_\_\_  
Signature and Title

**RECEIVED**

OCT 20 2011

WATER RESOURCES DEPT  
SALEM, OREGON

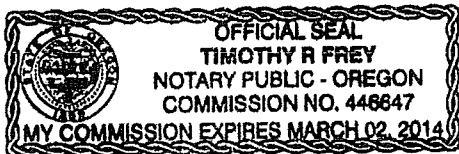
**UNITED STATES OF AMERICA**

By: *Ryan Patterson*  
Program Manager  
Repayment and Acreage Limitation  
PN Region  
Bureau of Reclamation  
1150 N. Curtis Road, Suite 100  
Boise, ID 83706-1234

STATE OF Oregon )  
 : ss  
County of Lane )

On this 24 day of August, 2011, before me, a notary public, personally appeared Richard Haake and \_\_\_\_\_ known to me to be the official(s) of the **MCKENZIE RIVER RANCH LLC**, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said MCKENZIE RIVER RANCH LLC, 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.



(SEAL)

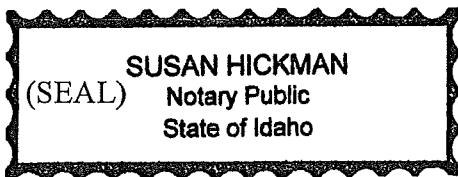
Timothy R Frey  
Notary Public in and for the  
State of Oregon  
Residing at: Eugene, Oregon  
My commission expires: 03/02/2014

\*\*\*\*\*

STATE OF IDAHO)  
 : ss  
County of Ada)

On this 17 day of October, 2011, personally appeared before me Ryan M. Patterson, 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 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