



**PETER GOLDMARK**  
COMMISSIONER OF PUBLIC LANDS

## **IRRIGATED CASH LEASE**

Lease No. 12-092579

BY THIS LEASE, the STATE OF WASHINGTON, Department of Natural Resources, hereinafter called the "State," leases to \_\_\_\_\_ (SUCCESSFUL BIDDER), hereinafter called the "Lessee," the premises in Adams County, Washington, the legal description, encumbrances, and reservations, if any, of which are set forth in Exhibit 1A (the "Premises"). This lease is made upon the terms and conditions and for the consideration enumerated herein. All exhibits to this lease are attached and incorporated herein.

### **SECTION 1 OCCUPANCY**

**1.01 Lease Term.** This lease shall commence on date of signature by State ("Commencement Date"), and shall expire on December 31, 2026 ("Termination Date").

**1.02 Condition of Premises.** Taking possession of the Premises by Lessee shall constitute acknowledgment by Lessee that the Premises are in good and tenantable condition and that the Premises are in all respects suitable for the uses permitted in Section 2. The State has no obligation to make any repairs, additions, or improvements thereto and expressly disclaims any warranty that the Premises are suitable for such permitted use(s). Lessee acknowledges its use of the Premises is subject to State's exercise of State's Reservations set forth in Section 4.

## SECTION 2 USE OF PREMISES

**2.01 Permitted Use.** For this lease, the following use(s) and no other use(s) is/are permitted:

<b>PERMITTED USE</b>	<b>ACRES</b>	<b>AUTHORIZED CROPS</b>
Irrigated Agriculture	244.30	Alfalfa, Cereal Grains, Corn, Grass Seed, Hay, Onions, Potatoes
Conservation	48.29	Conservation Leave

In the event Lessee desires a change in acreage, crops, or use, including grazing, authorization must be obtained in advance and in writing from State. Approval may be conditioned upon adjustment of the payments identified in Section 3, in accordance with changes in acreage, crops, or use. If approved, a written Change in Permitted Use authorization will be provided to Lessee, which shall automatically amend this lease on the date the Change in Permitted Use becomes effective by its terms. Permitted use(s) may be further limited by Section 6. The Lessee shall put the Premises to full beneficial use in accordance with customary industry standards, the permitted use(s), acres, and crop(s) designated herein, and any plan of development schedules identified herein. Failure to do so will be grounds for default.

The Bureau of Reclamation designated irrigable acreage for the Premises is 244.3 acres. At no time will the acres authorized for irrigated crops exceed this acreage limitation.

**2.03 Plan of Development.** Any proposed changes in acreage, crops, or use of the Premises must be submitted in writing to, and approved by, State as a plan of development. The State will review the plan and, if acceptable, issue written approval. The Lessee shall perform all development according to the terms of the approved plan of development.

**2.04 Irrigation System Development.** The Lessee shall furnish and install at Lessee's own expense that portion of the irrigation system specified in the approved irrigation system plan and design which will meet the criteria outlined in Subsection 2.05. The State will not pay for any portion of the irrigation system unless specifically agreed to in writing by State.

**2.05 Plans and Specifications.** Except for any facilities that may be installed or constructed by State, as set forth in the Notice of Intent to Lease, Lessee shall furnish and install all new or replacement irrigation facilities on the Premises according to the following criteria:

1. Plans. Plans shall be prepared by Lessee to show location of the components, size of pumps, motors, pipelines, valves and other controls, including the electrical system and the overall length of each size of pipe. Plans shall be for the final design to irrigate the irrigable land for which water is available. Plans may show staged development to be completed over one or more years. Plans are subject to review and written approval by State.

2. Minimum Specifications. The buried portions of the irrigation system shall have a designed sprinkler application rate of at least eight (8) gallons per minute per acre. Trickle system application rates shall be at least five (5) gallons per minute per acre. All construction must meet the following conditions:

a. Materials used shall have a minimum expected life of twenty-five (25) years. The Lessee shall provide such information and data as needed for review of the materials. The Lessee shall install the system in accordance with the manufacturer's recommendations.

b. All components of the system shall have a manufacturer's design pressure of at least one hundred twenty-five (125) percent of designed operating pressures.

c. The velocity of water in the mainlines or submainlines of the system shall not exceed five (5) feet per second.

d. All plans shall include pressure relief valves, air relief valves, drains, thrust blocks and anodes.

3. Preconstruction Conference. A preconstruction conference will be held with State to review the plans and specifications. The Lessee may request alteration or deviation from the above specifications at this conference. Any change in specifications must be authorized in writing by State before construction begins.

4. Compliance. State may make inspections to confirm Lessee's conformance with approved plans and specifications. If construction is not in accordance with approved plans and specifications, Lessee shall immediately take actions as required to correct any deficiency.

**2.06 Operating Schedule.** The Lessee shall notify State fifteen (15) days prior to starting work on the development of the Premises as set forth in this lease. If requested by State, Lessee shall either a) meet with a representative of State prior to starting any development of the Premises to establish an operating schedule or b) submit a written operating schedule for State's approval prior to starting any development of the Premises.

**2.08 Limitations on Use.** In connection with Lessee's use of the Premises, Lessee shall:

1. Conform to all applicable laws, rules and regulations of any public authority affecting the Premises. The Lessee shall provide to State, within ten (10) days of receipt of same, a copy of any notice received from any public authority which indicates that Lessee is not in compliance with applicable laws, rules and regulations. In addition, Lessee shall bear, at Lessee's sole expense, any costs associated with bringing the Premises into compliance, including any attorneys' fees, costs, fines or penalties;

2. Remove no valuable material or timber, without prior written approval of State;
3. Take all reasonable precautions to protect the Premises from fire, and make every effort to report and suppress such fires as may occur;
4. Obtain all applicable licenses or permits;
5. Use only electric fences approved by Underwriters Laboratories;
6. Not live, reside, or permit others to live or reside on the Premises without prior written approval from State.

**2.09 Authorized Crop Rotation.** The Lessee is authorized to produce potatoes and onions only once every four (4) years on the same field or circle. Failure to comply will be grounds for default. Any change in this rotation schedule must be approved in writing by State. The Lessee may request a change to this clause and Subsection 3.01; if agreed upon, approval will be given by State in writing.

**2.20 Additional Plan of Development Requirements.** Lessee will be responsible for construction of and all costs for modifying the point of diversion and related infrastructure to increase capacity at turnout to provide 60 acres irrigation water from the East Low Canal to the NW<sup>1</sup>/<sub>4</sub> of Premises and 10 additional acres to the NE<sup>1</sup>/<sub>4</sub> circle under WSC 390-050, in compliance with East Columbia Basin Irrigation District requirements.

### **SECTION 3 PAYMENT**

Payments made hereunder may be applied first to interest, then to outstanding or delinquent rent, leasehold tax and other charges owed, then to current rent, leasehold tax, and charges.

**Note to Bidders: Annual rent is based on a rental rate of \$210.00 per irrigated acre for 244.30 acres. If East Columbia Basin Irrigation District authorizes up to 10.7 additional irrigable acres, rent will be changed to reflect the additional acres.**

**3.01 Cash Rent.** The Lessee shall pay to State the required rent of \$51,303.00 for the period of January 1, 2017 to December 31, 2017. Rent shall be paid in two (2) semi-annual payments of \$25,651.50 due on May 1, 2017, and \$25,651.50 due on November 1, 2017, with the same amount due semi-annually thereafter, subject to Subsection 3.08.

In addition, Lessee shall pay to State a one-time bonus bid of \$\_\_\_\_\_ (Amount proposed by successful bidder) due no later than Auction date, 2016.

Lessee shall obtain written approval from State prior to allowing aftermath grazing on the Premises. State Land Manager and Lessee shall negotiate aftermath grazing rent which shall be no less than twenty-five dollars (\$25.00) per acre annually.

**3.05 No Counterclaim, Setoff, or Abatement of Rent.** Rent and all other sums payable by Lessee hereunder shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected.

**3.06 Interest Penalty for Past-Due Rent and Other Sums Owed.** The Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the commencement date hereof), until paid, on rent or other sums owing under the terms of this lease, commencing the date such rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to satisfy or pay under this lease, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

**3.08 Adjustment of Rent.** On January 1, 2022 (Adjustment Date), upon the effective date of the approval of any new Permitted Use, or upon the execution of any new CRP contract, a new rent will be established to be effective as of the Adjustment Date. The adjusted rent shall be determined by State through an evaluation of fair market rental value. Failure on the part of State to establish a new rent by the Adjustment Date shall not preclude State from doing so then or thereafter, and the adjusted rent shall be retroactive to the Adjustment Date, unless otherwise provided by State.

**3.09 Leasehold Excise Tax on Rent.** In addition to all rents, Lessee shall pay leasehold excise tax, in compliance with Chapter 82.29A of the Revised Code of Washington.

## SECTION 4 RESERVATIONS

**4.01 Compliance.** The State shall have access to the Premises at all reasonable times to determine and secure compliance with this lease. Failure to inspect or enforce compliance shall not be construed as a waiver of State's right to declare a breach, nor relieve Lessee of any liability to State for any breach of the terms, conditions, or requirements of this lease.

**4.02 Access.** The State reserves the right to grant easements on the Premises.

**4.03 Uses.** The State reserves the right to lease the Premises for other uses which are compatible with Lessee's permitted use(s) set forth in Section 2.01, provided State notifies subsequent lessees of the existence of this lease prior to entering any subsequent lease and any future lease requires all future lessees to avoid any substantial interference with Lessee's use of the Premises. State further reserves the right to sell, lease, or otherwise dispose of minerals, coal, oil, gas, gravel, stone, forestry resources or other valuable materials in a manner consistent with Lessee's right to use the Premises for its permitted use(s) set forth in Subsection 2.01. Lessee's obligations under this lease shall not increase as a result of any subsequent lease except that Lessee shall be required to notify State of any interference with Lessee's permitted use(s).

Lessee's Plan of Development and placement of improvements must be such that State's adjacent ownership, if any, will not be impaired.

**4.04 Public Hunting, Fishing and Nonconsumptive Wildlife Activities.** The Premises shall be open and available to the public for purposes of hunting, fishing, nonconsumptive wildlife, and other activities, unless a closure is authorized in writing by State, as stated in RCW 79.10.125. In the event that a closure is authorized by State for hunting, fishing or nonconsumptive wildlife activities, Lessee shall post the Premises accordingly with signs to inform the general public of such closure. Authority to close the Premises may be given to protect interests of Lessee, State, or the general public.

**4.05 Right to Inspect.** State has the right to inspect the Premises at all times, including improvements constructed thereon. In addition, Lessee shall allow State's employees access to buildings and facilities during regular business hours of Lessee's operations, or at other times as may be requested by State. State's inspection shall not waive any requirement of this lease nor shall any representation made by any State employee during the course of an inspection amend or in any way modify this lease or Lessee's obligations under this lease.

**4.06 Roads.** During the term of this lease, Lessee is granted, subject to rights previously granted, a nonexclusive easement to use existing roads on the Premises only for permitted operations under this lease. The State reserves the right to build roads and grant easements to others to use new and existing roads. The Lessee may not construct new roads or undertake any modification or alteration to existing roads without the prior written consent of State.

**4.08 Non-Default Termination.** In response to a written request from Lessee asking to surrender the leasehold, State may, at its sole discretion, terminate all or part of this lease upon satisfaction by Lessee of all outstanding rents, duties, and obligations. The State may condition the surrender upon payment of a fee to be set by State and Lessee's acknowledgement of the continuation of any obligations that survive termination of this Lease pursuant to Section 9.07.

This lease, or any portion thereof, is also subject to termination upon sixty (60) days' written notice in the event State includes the Premises in a plan for higher and better use, land exchange, or sale. The Lessee will be allowed to use the Premises for the remainder of the current grazing season for grazing purposes and/or for the remainder of the farming season to harvest any permitted crop, subject to the permitted use(s) set forth in Subsection 2.01.

## SECTION 5 REQUIREMENTS

**5.01 Assessments.** Lessee shall pay all assessments that may be charged against the Premises unless otherwise approved in writing by State due to a shared use of the Premises authorized by State pursuant to Section 4.03. Lessee's responsibility to pay an assessment shall never be reduced below Lessee's share of the use and control of the Premises. Assessments will be billed at the time rent is due, and may include collection of payments for more than one billing cycle, or on another schedule determined by State to avoid administrative costs associated with billing.

The Lessee's obligations under this subsection are not limited to assessments relating to the encumbrances (if any) listed in the legal description referred to in Exhibit 1A of this lease, but extend to all assessments that may be charged against the Premises, including, but not limited to, weed assessments, watershed protection district assessments, conservation district assessments, storm water runoff assessments, and local improvement district assessments.

**5.02 Utilities.** Lessee shall be liable for all electrical power and other utility charges or expenses associated with Lessee's use of the Premises, including, but not limited to, power minimums and disconnect charges incurred prior to termination or expiration of this lease.

**5.03 Taxes.** The Lessee shall pay all federal, state and local taxes, penalties and interest owing due to Lessee's failure to pay such taxes, penalties and interest including, but not limited to, personal property tax and leasehold excise tax (in accordance with Chapter 82.29A of the Revised Code of Washington), as it may be amended from time to time, that may be charged against the lease and improvements located on the Premises. If State must pay any taxes, penalties or interest because of Lessee's failure to pay such taxes, penalties or interest, Lessee shall immediately, upon notice from State, reimburse State for such expenditures and the obligation shall accrue interest until paid.

**5.04 Insolvency of Lessee.** If Lessee becomes insolvent, bankrupt, or has a receiver appointed, State may terminate this lease. Insolvency as used herein will mean the inability of Lessee to meet obligations as they come due.

**5.05 Insurance/Indemnity/Hold Harmless.** To the fullest extent permitted by law, Lessee shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against any and all claims, including claims by Lessee's employees, agents, and contractors, arising out of or resulting from any act or omission of Lessee, its agents, employees and contractors while operating under this lease or at the Premises. "Claims" as used in this subsection means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. The Lessee's obligation to indemnify, defend and hold harmless State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials. The Lessee waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

General Insurance Requirements. The Lessee shall, at all times during the term of the lease at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance is a default of this lease.

All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by State's Risk Manager, before the lease is executed. If an insurer is not so admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

Before starting work under this lease, Lessee shall, at State's request, furnish State at its Region Office with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements and lease.

The State shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accordance with the following specifications:

1. Insurers subject to 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give State forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, State shall be given ten (10) days advance notice of cancellation.
2. Insurers subject to 48.15 RCW (Surplus lines): The State shall be given twenty (20) days advance notice of cancellation. If cancellation is due to non-payment of premium, State shall be given ten (10) days advance notice of cancellation.

Sublessee(s) must comply fully with all insurance requirements stated herein. The Lessee shall include all sublessee(s) as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each sublessee. Failure of sublessee(s) to comply with insurance requirements does not limit Lessee's liability or responsibility.

The State, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies.

All insurance provided in compliance with this lease shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

The Lessee waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this lease.

If Lessee is self-insured, evidence of its status as a self-insured entity shall be provided to State and upon receipt by State shall be automatically incorporated into this lease. If requested by State, Lessee must describe its financial condition and the self-insured funding mechanism.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Lessee, and such coverage and limits shall not limit Lessee's liability under the indemnities and reimbursements granted to State in this lease.

The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

<b>Description</b>	<b>Commercial General Liability (CGL) Insurance</b>
General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000

The Lessee shall maintain commercial general liability (CGL) insurance and, if necessary, commercial umbrella insurance with a limit of not less than the amounts listed above per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the “each occurrence” limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the “each occurrence” limit.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of the Premises, operations, independent contractors, sublessees, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insureds (cross liability) condition.

Employer’s Liability Insurance and Worker’s Compensation Insurance. Lessee shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

The Lessee shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of Lessee and employees of any sublessees. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this lease. Except as prohibited by law, Lessee waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers compensation, employers liability, commercial general liability or commercial umbrella liability insurance.

If Lessee or sublessee fails to comply with all State of Washington workers compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Lessee shall indemnify State. Indemnity shall include all fines, payment of benefits to Lessee, sublessees, employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such.

Business Auto Policy. The Lessee shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of “Any Auto”.

Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a “covered pollution cost or expense” as provided in the 1990 or later editions of CA 00 01.

The Lessee waives all rights against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

**5.06 Records.** Lessee shall prepare, maintain, and keep records in accordance with applicable law and prudent business practices. A clear, complete, detailed record and accounting of business of every kind and character affecting payment due State and crop production, shall be maintained at a location in Washington, for a period of at least seven (7) years following: (1) each harvest; (2) payment of rent; or, (3) the date accounting is provided to State, whichever is later. Further, Lessee shall prepare, maintain, and keep records of management practices conducted on the Premises, including, but not limited to, the use of pesticides, for the term of this lease or as required by law.

**5.07 Right to Examine Books and Records.** The acceptance by State of any payment under Section 3 herein shall be without prejudice to State's right to examine Lessee's books and records to verify the amount of crops and/or proceeds received by Lessee from the Premises. Lessee shall authorize and permit State or its agents to examine any and all books, records and files of all kinds for the use of State for the purpose of determining and enforcing compliance with the provisions of this lease.

**5.09 Harvest Reports.** Lessee shall, as soon as possible, furnish harvest reports to State at its Region Office, but no later than thirty (30) days after final date of harvest of all crops. Harvest reports shall include the planted acreage and variety of crops harvested, quantity, the grades if known, the field number, circle number, block number, or location of each crop grown and the place of storage, processing or other disposition of the crops.

**5.10 Conservation Plan.** Fifteen (15) days prior to disturbing any vegetation or soil to cultivate any previously uncultivated land on the Premises, Lessee shall furnish State with a copy of a conservation plan approved by the Natural Resource Conservation Service (NRCS). The plan shall be partial fulfillment of the requirements set forth in Subsection 6.02(1).

## SECTION 6 MANAGEMENT

**6.01 Weed Control.** The Lessee shall control all noxious weeds on all lands under this lease in a manner consistent with applicable laws. The Lessee shall be responsible for, or shall immediately reimburse State for, any noxious weed control costs incurred as a result of Lessee's failure to control noxious weeds on said Premises.

**6.02 Management.** The Lessee shall manage and maintain the Premises, and all improvements related to Lessee's use of Premises regardless of ownership thereof, in accordance with customary standards of the industry. In addition, Lessee shall:

1. Follow the "Resource Management Plan" (RMP) attached hereto as Exhibit 6A and by this reference made a part hereof. The State shall have the right to amend the RMP to meet future needs or changes in circumstances or Permitted Uses.
2. Upon request of State, and jointly with State, enter into a "Management Agreement" (MA) on terms and conditions acceptable to State, which, upon joint

execution shall automatically amend and be made a part of this lease, and a copy thereof shall be attached as Exhibit 6B. The MA shall identify specific management objectives for Lessee's operation and the specific steps or practices which Lessee shall implement in order to meet these objectives. The Lessee shall meet the specific management objectives by the dates outlined in the MA. The State shall have the right to amend the MA to meet future needs or changes in circumstances.

3. The Lessee acknowledges that a "Coordinated Resource Management" (CRM) plan either has been or may in the future be developed between Lessee, State and other landowners in the general location of the Premises for the protection, preservation, and use of agricultural and grazing premises under multiple ownership. Lessee shall cooperate with State and other landowners to complete or develop a CRM plan. After a CRM plan has been developed, this lease shall automatically be amended to incorporate the terms of the CRM plan by attaching the CRM plan as Exhibit 6C.
6. Incorporate all crop residue and stubble into the soil at a time and by a tillage method recommended by the County Extension Agent (Agent) or the NRCS Soil Conservation Technician (Technician) for the local area, so as to comply with all state and federal laws relating to water and air quality, and to avoid soil erosion. Any deviation from the technical recommendations by the Agent or Technician must be authorized in writing by State.
8. Within fifteen (15) days following the harvest of carrots, dry beans, onions, potatoes, and/or sugar beets grown on the Premises, Lessee shall plant and irrigate, at their sole cost and expense, a cover crop of wheat or other cereal grain with the minimum seeding of fifty (50) pounds per acre, or Lessee may fall seed alfalfa. Failure to comply shall be a default of this lease.

**6.03 Federal Farm Program.** If Lessee is enrolled in any federal farm program at any time during the lease term, Lessee shall conform to United States government federal farm program requirements as they now exist, or as they may be amended, to maintain eligibility related to program participation. Deviations from such programs are permissible only if allowed, in advance, in writing by State. Participation in any land retirement program must have prior written approval from State. Unless otherwise agreed, if Lessee is enrolled in one or more Conservation Reserve Program contract(s) that extend beyond the expiration of this lease and Lessee is not issued a new lease for the premises at its expiration, Lessee shall take all necessary action to terminate its participation and relinquish its rights in the Conservation Reserve Program contract(s) to allow State or the new lessee or owner to become a successor to the existing contract or a participant to a new contract under the same terms and conditions as the existing contract.

The Lessee shall be reimbursed the residual value of Lessee's actual expenses incurred to establish eligible practices required by the existing Conservation Reserve Program contract(s) subject to the following: Actual expenses will be taken from Form AD-245, or a similar form approved by the Commodity Credit Corporation, and offset by all cost-shares received from or payable by the Commodity Credit Corporation and any other source. Straight line depreciation will be used to determine the residual value of these expenses over the duration of the Conservation Reserve Program contract(s) with a salvage value of zero at the expiration of the contract(s). The residual value of these expenses will be collected at the time of public auction and the money so collected will be remitted to Lessee, less the value of any damages or waste to the property caused by Lessee.

#### **6.04A Water Supply. (Groundwater Sources)**

1. Identification of Water Right Permit / Certificate. The State holds water right Ground Water Certificate Nos. G3-24823C and G3-21237C (hereafter "Permit(s)/Certificate(s)"). Nothing in this lease is intended to transfer or otherwise limit State's ownership of the water rights associated with the Permit(s)/Certificate(s). Lessee acknowledges that any surplus water resulting from Lessee's conservation or other water management practices belongs to State and may be transferred or used for other purposes at State's option, so long as it does not prevent Lessee from using the water needed for the lease purposes set forth in Subsection 2.01.
2. Lessee's Obligations to Protect State's Water Right. Lessee acknowledges receipt of a copy of the Permit / Certificate and the terms and conditions of State's approved water right issued by the Washington State Department of Ecology (Ecology), copies of which are attached hereto as Exhibit 6D and incorporated herein by this reference ("State's Water Right"). Lessee agrees to take any and all action necessary to comply with the terms and conditions of State's Water Right and to put all water Lessee is permitted to use under the terms of this lease to its full beneficial use. Lessee shall not take action that could cause relinquishment of State's Water Right, as described in RCW 90.14.180 and RCW 90.14.140, unless State approves in writing of any such action. Lessee shall avoid taking any action to harm or degrade the water quality source or otherwise negatively affect the quantity or quality of State's Water Right from the point of withdrawal to the place of use. Lessee acknowledges that failure to do one or more of the following violates Lessee's obligation to protect State's Water Right: (1) complying with all provisions in this lease; (2) promptly advising State of any diminution in water use by Lessee; and (3) cooperating and not interfering with State's efforts to perfect water under the water right Permit(s) and/or to prevent relinquishment of any water Lessee is authorized to use under this lease.
3. Limits on Lessee's Use of State's Water Right. Lessee shall use water on the Premises only as prescribed in the Permit(s)/Certificate(s) and as detailed in Subsection 2.01 of this lease to irrigate crops and other specified purposes, at the place of use authorized by State's Water Right. In the event Lessee makes any changes to its irrigation practices that result in a change in the volume of water used, or in any diminution in water use, or in water management practices as described below in this subsection, Lessee shall notify State within twenty (20) days of any change. Upon receiving such notice, if State determines that Lessee's action puts State's Water

Right at risk, State may take any action deemed necessary to protect State's Water Right, including offering any portion unused by Lessee to another party, and Lessee shall cooperate with State to effect any necessary transfer or name change to another party of the unused portion. If a water right has not been perfected at the time the lease is entered, Lessee shall take all steps necessary to enable State to perfect the water right allocated to Lessee under this lease by fully developing the irrigable acres. Lessee shall cooperate with State in any efforts State or another lessee of State is conducting to perfect any portion of the water right not authorized for use by Lessee. Once perfected and certificated, the water right shall become a part of "State's Water Right" as defined in this section.

4. Water Management Practices and Conservation. Lessee shall notify State of any on site water management practices that may result in surplus water being available, through any means, including, but not limited to, crop rotations to lower water duty crops, better conservation practices using more efficient water application methods, or other means, within twenty (20) days of implementing such practices. Lessee shall notify State of any surplus water available as a result of on site water management practices as soon as identified by Lessee.

5. State Does Not Guarantee Water Availability, Water Right, Water Quantity, or Water Quality. Lessee acknowledges that State has made no representation to Lessee of water availability, water quantity or quality, or any other representation to guarantee the use of water under State's Water Right. Lessee hereby releases and forever discharges State, its officers, directors, agents, and employees from any and all claims or causes of action arising from Lessee's use of State's Water Right, including, but not limited to water availability, quality or quantity of any water or water supply and any other water-related problems such as, but not limited to, lack, contamination, failure, excess, shortage, interruption or stoppage of water.

6. No Right to Transfer or Assign State's Water Right. Lessee shall not use State's Water Right on lands other than the Premises, nor attempt to change any of the elements of State's Water Right, including but not limited to, changes in the place, purpose, point of withdrawal, or any other action that would require approval from Ecology, without State's prior written approval.

7. Lessee shall not withdraw water under state ground Water Right Nos. G3-24823C and G3-21237C nor from the State-owned well without prior written approval from State. The well will be retained in a condition that would allow for pump reinstallation and operation upon prior notice of lack of water availability from the primary district water source. The Lessee is responsible for capping the State-owned well in such a way to prevent any contamination.

#### **6.04B Water Supply. (Water Service Contracts)**

1. The Lessee shall comply with the Water Service Contract Nos. 290-26 and 390-050 entered into on December 6, 2010 and May 4, 2016 with the East Columbia Basin Irrigation District, and any amendments thereto, which by this reference is made a part hereof. Copies of Contract Nos. 290-26 and 390-050 are attached hereto as Exhibit 6D and incorporated herein by this reference.

Lessee shall utilize water on the Premises and shall do so in a manner which shall preserve State's rights to use the water.

2. State Does Not Guarantee Water Availability, Water Right, Water Quantity, or Water Quality. Lessee acknowledges that State has made no representation to Lessee of water availability, water quantity or quality, or any other representation to guarantee the use of water to serve the purposes of this lease. Lessee hereby releases and forever discharges State, its officers, directors, agents, and employees from any and all claims or causes of action arising from Lessee's use of water, including, but not limited to water availability, quality or quantity of any water or water supply and any other water-related problems such as, but not limited to, lack, contamination, failure, excess, shortage, interruption or stoppage of water.

3. Federal Project Restrictions. No later than thirty (30) days after leasing or development of the Premises, whichever is later, Lessee must be in compliance with laws relating to federal reclamation project water.

**6.06 Irrigation System.** The Lessee has inspected State-owned irrigation system on the Premises and accepts the same in its present condition. The State does not warrant the system's fitness for intended use, its capacity, or the quality or quantity of water which it may produce. The Lessee shall, at its sole expense, maintain, winterize and repair State-owned irrigation system in a prudent manner to keep it operational.

**6.07 Maintenance Records.** The Lessee shall keep at a reasonable location, clear, complete and detailed records of all maintenance, repairs, and replacement of parts of every kind and character, affecting State-owned irrigation system.

**6.09 Site Rehabilitation.** Prior to expiration or termination of this lease, at State's request and sole option, Lessee, at its sole cost, shall rehabilitate the Premises as follows:

1. The Lessee shall remove all above-ground irrigation systems, trellis systems, and other above ground fixtures.
2. The Lessee shall establish a grass seed mixture acceptable to the State on the portion of the premises in Irrigated Agriculture as outlined in Subsection 2.01 to reduce soil erosion.

**6.10 Deleterious, Hazardous, Toxic, or Harmful Substances.**

1. Deleterious Material. The Lessee shall not make or permit any filling in of the Premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the Premises, except as approved in writing by State. If Lessee deposits and then fails to remove all nonapproved fill material, refuse, garbage, wastes or any other of the above materials from the Premises, Lessee agrees that State may, but is not obligated to, remove such materials and charge Lessee for the cost of removal and disposal.

2. Hazardous, Toxic, or Harmful Substances.

a. The Lessee shall not keep on or about the Premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out Lessee's permitted use(s) under Subsection 2.01 and unless Lessee fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended.

b. With respect to Lessee's use of the premises or as a result of Lessee's personal knowledge of activities on the premises, Lessee shall:

(1) Immediately notify State of (i) all spills or releases of any Hazardous Substance affecting the Premises, (ii) all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (iii) all inspections of the Premises by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Premises, (iv) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Premises;

(2) On request, provide copies to State of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the Premises; and

c. The Lessee shall be fully and completely liable to State, and shall indemnify, defend, and hold harmless State and its agencies, employees, officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances or that of Lessee's employees, agents, sublessees, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

**6.11 Condition of Premises at End of Lease.** Prior to vacating the Premises, Lessee shall leave the Premises, and all improvements described in Section 8 of this lease to which State has elected to claim title, in the state of repair and cleanliness required to be maintained by Lessee during the term of this lease, and shall peaceably and quietly surrender the same to State.

## SECTION 7 SUBLEASES AND ASSIGNMENTS

**7.01 Sublease.** The Premises, in whole or in part, and the appurtenances thereon shall not be subleased without prior written approval from State and only if Lessee obtains sublessee's agreement to be bound by the terms and conditions of this lease for sublessee's use of the Premises.

Pursuant to the sublease, sublessee shall comply with all the terms and conditions as stated in this lease and any supplements thereto. This authorization in no way releases Lessee from its obligations under this lease, including but not limited to the responsibility that all payments, rent and taxes are paid in accordance with the terms of the lease.

**7.02 Assignment.** State may assign the lease at State's option. The Lessee shall not hypothecate, mortgage, assign, encumber, transfer, or otherwise alienate this lease or any interest therein, or engage in any other transaction which has the effect of transferring or affecting the right of enjoyment of the Premises, without the prior written approval of State.

If Lessee is a corporation, partnership or other association, the transfer of more than fifty percent (50%) of the ownership interest in such entity, or the sale of all or substantially all of the assets of such Lessee shall be deemed to constitute an assignment of this lease which requires prior written approval of State.

**7.03 Approval of Sublease or Assignment.** In granting such approval, State reserves the right to change the terms and conditions of this lease as it may affect the sublessee/assignee. The State shall be entitled to consider, among other items, the proposed sublessee's/assignee's financial condition, managerial capability, business reputation, nature of the proposed sublessee's/assignee's business, the then current fair market rental value of the Premises, and such other factors as may reasonably bear upon the suitability of the sublessee/assignee or transferee as a tenant of the Premises or the holder of this lease. The State may require reimbursement for any additional administrative costs resulting from the assignment.

Consent of State to an assignment or transfer shall not constitute a waiver of State's right to approve or disapprove subsequent assignments or transfers. The acceptance by State of payment or performance shall not constitute consent to any assignment or transfer, and State's consent shall be evidenced only in writing.

**7.04 Assignee/Transferee Obligations.** Each permitted assignee or transferee of Lessee shall assume all obligations under the lease occurring after the date of the assignment, including any amended terms or conditions of the lease assignment. Notwithstanding any such assignment or transfer, Lessee shall remain liable for any obligations occurring prior to the date of the assignment. Lessee shall be jointly and severally liable with the assignee or transferee for all obligations under the lease occurring after the date of the assignment with respect to those obligations that exist as of the date of assignment, unless released in writing by State, which release shall not be unreasonably withheld. Upon State's satisfaction that Lessee has demonstrated to State that Assignee will be capable of fully performing the terms of the lease,

State may release Lessee from all but those provisions that survive termination of the Lease pursuant to Subsection 9.07. Unless released in writing, Assignor's obligations shall continue in full force and effect until the Termination Date.

**7.10 Name Change.** If during the term of this Agreement Lessee changes its name, Lessee shall provide State with documentation legally supporting the name change within sixty (60) days of the effective date of the change. Lessee may contact State's Southeast Region office in Ellensburg (identified in Subsection 9.03) for a list of acceptable documentation.

## **SECTION 8 IMPROVEMENTS**

**8.01 Authorized Improvements.** No improvement shall be placed by Lessee on the Premises without the prior written consent of State. Consent shall be granted through this lease or a written Letter of Authorization issued by State. Unauthorized improvements placed by Lessee shall either be removed by Lessee without damage to the Premises, removed by State at Lessee's expense, or become the property of State, at State's option.

All improvements currently on the Premises belong to State except those authorized improvements placed by Lessee which, if any, are listed in Exhibit 8A. Exhibit 8A may be supplemented with a Letter of Authorization issued by State, for the purpose of authorizing additional improvements to the Premises during the term of this lease. Letters of Authorization shall be cumulative and become addenda to Exhibit 8A when determining the sum of all authorized improvements.

**8.03 Disposition of Authorized Improvements.** Upon the expiration or earlier non-default termination of this lease, all improvements shall belong to State as provided in RCW 79.13.050 without compensation to Lessee, except for those authorized improvements set forth in Exhibit 8A and all subsequent Letters of Authorization, which are identified within those exhibits as remaining in Lessee's ownership after expiration of the lease; provided, however, all improvements set forth on Exhibit 8A and all subsequent Letters of Authorization and all crops shall be forfeited and become the property of State upon cancellation of this lease for default.

If Lessee has been authorized by this lease to retain ownership of improvements beyond the expiration of this lease and Lessee is not issued a new lease at expiration, State, at its sole discretion, will elect one of the following options: 1) State shall purchase such improvements; 2) State shall offer the premises and all improvements for lease or sale at public auction; or, 3) Lessee shall remove such improvements within, and in no case later than, sixty (60) days after expiration of the lease, provided that any improvements remaining thereafter shall belong to State.

If the value of improvements to remain the property of Lessee is not set forth in Exhibit 8A and agreement cannot be reached between State and Lessee on the value of such improvements in order for State to exercise option 1 or 2 in the preceding paragraph, a review board of appraisers consisting of three (3) individuals will be formed to determine the fair market value of the improvement as defined in RCW 79.13.160. These individuals must have expertise in the fields

of agriculture germane to the permitted use of the Premises to serve on this review board. Per RCW 79.13.160, said review board shall be made up of one (1) member appointed by State, whose expenses shall be borne by State, one (1) member appointed by Lessee, whose expenses shall be borne by Lessee, and one (1) member to be appointed by the two aforementioned members, whose expenses shall be shared equally by Lessee and State. The majority decision of the review board shall determine the value of such improvements; and, the review board shall report its findings to State and Lessee.

The review board of appraisers shall determine the value of the improvements, by owner, and the value of the land; and, state the distinct values which, when added together, constitute the traditional fair market value of the assets.

Under option 2 above, State shall, upon determination of the value of the improvements, offer the Premises for lease or sale at public auction, with improvements. The value of such improvements shall be collected at the time of public auction and the money so collected shall be remitted to Lessee, less any damages or waste to the property or State-owned improvements committed by Lessee. Lessee shall execute a bill of sale or other instrument requested by State showing transfer of title to the improvements immediately upon State's request following the determination of value and prior to transfer of funds due Lessee for the improvements as set forth herein.

If the lease prepared as a result of the review board's determination is not bid at the public auction, then Lessee shall have one hundred eighty (180) days to remove the authorized improvements, after which time all improvements remaining on the Premises shall belong to State.

**8.04 Removal of Improvements During Lease.** During the term of this lease, authorized improvements owned by Lessee may be removed by Lessee upon the prior written approval of State. The Lessee shall be liable for any and all rents and any and all damage to the Premises or any improvement belonging to State resulting from such removal.

**8.05 Surety Bond.** At State's request, Lessee shall obtain a surety bond, cash deposit, certificate of deposit, savings account assignment, performance bond issued by a company acceptable to State, or letter of credit to guarantee payment of damages and performance of all provisions or obligations of Lessee under this lease, in an amount established by State, to assure completion of construction, development, rehabilitation, or removal of any improvements costing in excess of \$2,500.

**8.06 State's Repairs.** The State shall not be required or obligated to make any repairs, alterations, maintenance, replacements, or repairs in, on, or about the Premises, or any part thereof, during the term of this lease.

**8.07 Lessee's Repairs, Alteration, and Maintenance.** With respect to Lessee's use of the Premises, Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto (regardless of ownership) in good order and repair and safe condition for the safe conduct of any activities or enterprises conducted

on the Premises pursuant to this lease, and keep and maintain the Premises, including all improvements in a clean, sanitary and attractive condition.

## **SECTION 9 DEFAULT AND REMEDIES**

**9.01 Nonwaiver.** Waiver by State of strict performance of any provision of this lease shall not be a waiver of nor prejudice State's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance, rent, or any other sum owing, by State following a breach by Lessee of any provision of this lease shall not constitute a waiver of any right of State with respect to such breach and State shall be deemed to have waived any right hereunder only if State shall have expressly done so in writing.

**9.02 Attorneys' Fees.** If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of the agreement, the substantially prevailing party shall be entitled to reasonable attorneys' fees, costs, and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

**9.03 Notices and Submittals.** Any notice or submittal given under this lease shall be deemed as received when delivered by hand or five (5) days after deposit in the United States mail with first-class postage affixed, addressed as noted below. Changes of address shall immediately be given in accordance with this subsection. Any notice or submittal given under this lease shall be sent:

To State:

Where lease provisions require submittal to State office:

Department of Natural Resources  
Product Sales and Leasing Division  
PO Box 47014  
Olympia, WA 98504-7061

Where lease provisions require submittal to State at its Region Office:

Department of Natural Resources  
Southeast Region  
713 Bowers Road  
Ellensburg, WA 98926-9301

To Lessee:

At the address affixed with Lessee's signature or Lessee's last known address.

**9.04 Landlord Liens.** The State may file, and maintain during the term of this lease, landlord or crop liens in order to secure any payment or obligation under this lease.

**9.05 Lessee Liens.** The Lessee shall not suffer or permit any lien to be filed against State's interest in the Premises, improvements or crops growing thereon by reason of work, labor, services or materials performed thereon or supplied to, by or through Lessee. If any such lien is filed, Lessee shall immediately cause the same to be discharged of record, but in no case later than thirty (30) days after the date of filing or creation of such lien unless other arrangements are authorized in writing by State in advance. The Lessee shall indemnify State for any costs, damages or expenses (including attorneys' fees and courts' costs) incurred as a result of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to lease termination or cancellation.

**9.06 Default.** If Lessee breaches or defaults on any undertaking, promise or performance called for herein, whether material or not, State may cancel this lease after Lessee has been given thirty (30) days' notice of the breach or default and such breach or default has not been corrected within such time. Upon such cancellation, all improvements and crops on the Premises shall be forfeited and become the property of State subject only to any previously approved waiver of interest or security interest, and Lessee shall immediately deliver up possession of the Premises to State. The State may seek damages for any and all violations or defaults with or without canceling this lease. In the event State deems the breach or default to constitute a threat to safety, life, or property it may elect to intervene immediately, without notice, to remedy the breach or default and Lessee hereby agrees to repay State for all costs in remedying the breach or default upon demand, together with interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the commencement date hereof), until paid, commencing from the date of expenditure at the rate set forth in this lease. Alternatively, State may require Lessee to act immediately to remedy the breach or default, should State deem it a threat to safety, life, or property.

In the event of any default by Lessee, State shall have the right, with or without canceling the lease, to reenter the Premises and to remove all persons and property from the Premises and take whatever actions may be necessary or advisable to relet, protect or preserve the Premises. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in State's discretion at the expense and for the account of Lessee. The State shall not be responsible for any damages or losses suffered by Lessee as a result of such reentry, removal, storage or other disposition, and no such action shall be construed as an election to terminate this lease unless a written notice of termination is given to Lessee.

Whether or not State elects to cancel this lease on account of any default by Lessee and subject to any non-disturbance and attornment agreements, if any, State shall have a right to terminate any and all subleases, licenses, concessions, or other arrangement for possession affecting the Premises. Alternatively, State, at its sole discretion, may succeed to Lessee's interest in such sublease, license, concession, or arrangement, and Lessee shall have no further right to, or interest in the rent or other consideration receivable thereunder.

**9.07 Survival.** All obligations of Lessee to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this lease, and shall continue as obligations until fully performed. All clauses of this lease which require performance beyond the termination or expiration date, including but not limited to Section 5.05 and 6.10, shall survive the termination or expiration date of this lease. However, upon expiration or earlier termination of this lease, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Premises and all improvements thereon, unless specified otherwise in this lease, shall cease.

**9.08 State's Right to Cure Defaults.** If Lessee fails to perform and is in default of any undertaking or promise contained herein, including those set forth in any plan of development, State shall have the option, but is not obligated, to make such performance after giving ten (10) days written notice to Lessee. The State's costs and expense to correct Lessee's failure to perform shall be reimbursed by Lessee and shall be immediately due and payable, together with interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the commencement date hereof), until paid, accruing from the date such cost or expense is incurred.

**9.09 Remedies Cumulative.** The specified remedies to which State may resort under the terms of this lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Lessee of any provision of this lease.

**9.10 Force Majeure.** The Lessee's failure to comply with or delayed compliance with any of the obligations under this lease shall be excused only if due to causes entirely beyond Lessee's control and without the fault or negligence of Lessee, including; riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God. The performance of Lessee's obligations under the Lease shall be excused only for the period of delay and the time period for performance shall be extended by the same number of days in the period of delay.

## SECTION 10 GENERAL PROVISIONS

**10.01 No Partnership.** The State is not a partner nor a joint venturer with Lessee in connection with the activities conducted and business carried on under this lease, and State shall have no obligation with respect to Lessee's debts or other liabilities.

**10.02 Lessee's Authority.** Persons executing this lease on behalf of Lessee represent that they are authorized to do so and represent and warrant that this lease is a legal, valid, and binding obligation on behalf of Lessee, and is enforceable in accordance with its terms.

**10.03 State's Authority.** This lease is entered into by State pursuant to the authority granted by statute and the Constitution of State of Washington. The terms and conditions hereof are subject to such statutory and constitutional provisions as may be now in effect and such provisions which do not impair the contractual rights of Lessee under this lease which may lawfully be enacted subsequent to the date of this lease.

**10.04 Preservation of Markers.** Any legal land subdivision survey corners, reference points or monuments are to be preserved. If such are destroyed or disturbed, they shall be re-established by a licensed land surveyor in accordance with U.S. General Land Office standards at Lessee's expense. Corners and/or reference points or monuments that must necessarily be disturbed or destroyed in the process of carrying out the operations allowed by this lease must be adequately referenced and/or replaced in accordance with Chapter 58.09 RCW. Such references and replacements must be approved in writing by State prior to removal of said corners, reference points or monuments.

**10.05 Condemnation.** In the event that State is unable to successfully contest the authority of any entity seeking to condemn the Premises and if the entirety of the Premises are taken by proper exercise of the power of eminent domain, this lease shall terminate as of the date possession was taken by said public authority pursuant to such condemnation. If any part of the Premises is so taken and, in the opinion of either State or Lessee, it is not economically feasible to continue this lease, either party may terminate the lease. Such termination by either party shall be made by notice to the other party given not later than thirty (30) days after possession is so taken, the termination to be effective as of the later of thirty (30) days after said notice or the date possession is so taken. If part of the Premises is so taken and neither State nor Lessee elects to terminate this lease, or until termination is effective, as the case may be, the payment due under this lease shall be abated in the same proportion as the portion of the Premises so taken bears to the whole of the Premises. All damages awarded for the taking or damaging of all or any part of the Premises, or State-owned improvements thereon, shall belong to and become the property of State, and Lessee hereby disclaims and assigns to State any and all claims to such award, provided, however, that State will not claim any interest in any award for personal property or authorized improvements belonging to Lessee as set forth in Section 8 and State will not claim a share of any award made to Lessee for interruption of or damage to Lessee's business or for moving expenses. The State may share in the value of crops in accordance with the crop division and/or additional payment set forth in Section 3.

**10.06 Interpretation and Numbering.** This lease has been submitted to the scrutiny of all parties hereto and each party has been given the opportunity to consult with legal counsel. This Lease shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight given to it being drafted by any party hereto or their counsel. Section and subsection numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this lease.

Section and subsection numbers may be omitted or out of sequence because of inclusion or exclusion of sections or subsections in this lease at the option of State. Cross references to sections or subsections that are not included in this lease should not be construed as material references.

**10.07 Time of Essence.** Time is expressly declared to be of the essence of this lease and each and every covenant of Lessee hereunder. In the event time for performance falls on a weekend or legal holiday designated by the United States or Washington State, performance shall be deemed to be timely rendered if so rendered on the next business day.

**10.08 Lease Changes and Additions.** Any changes or additions to this lease or the attached exhibits shall be made in writing, executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements.

**10.09 Entire Agreement.** This written lease or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

**10.10 Invalidity.** If any term or provision of this lease or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void, or illegal, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this lease shall be valid and be enforced as written to the fullest extent permitted by law.

**10.11 Discrimination.** The Lessee shall not conduct or suffer any business upon the Premises which unlawfully discriminates against any person on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

**10.12 Proprietary Information/Public Disclosure.** Materials or information submitted as required in this Agreement shall become public records within the meaning of RCW Chapter 42.56.

Any submitted materials or information that Lessee claims as exempt from disclosure under the provisions of RCW 42.56.210 must be clearly designated. The page must be identified and the particular exemption from disclosure upon which Lessee is making the claim must be identified by the RCW citation number.

The State will consider a Lessee's request for exemption from disclosure; however, State will make an independent decision on the applicability of any claimed exemption consistent with applicable laws. The portion of a document claimed as exempt must qualify for exempt status as identified in RCW 42.56. Marking the entire submitted materials or information exempt from disclosure cannot be honored. If a public records request is made regarding materials that Lessee has requested as exempt, the affected Lessee will be given notice of the request and allowed ten

business days, or the time allowable by law, whichever is less, to seek a court injunction against the requested disclosure prior to State fulfilling the public records request.

**10.13 Exhibits.** Exhibits referenced herein, including those which may be added during the term of this lease, are incorporated herein by reference and are to be considered terms of this lease.

**SUCCESSFUL BIDDER**

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
SIGNATORY\_ALL\_CAPS, "Title, if needed"

Address: "Lessee Street Address"  
"Lessee City, State, Zip"

Phone: "Area Code/Phone Number"

UBI #: "Enter UBI Number"

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES**

Dated: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
PETER GOLDMARK  
Commissioner of Public Lands

Approved as to form  
September 23, 2010  
by Pamela Krueger,  
Assistant Attorney General

"[Select one Notary; delete one not used]"

**NOTARIAL CERTIFICATE  
ACKNOWLEDGMENT IN AN INDIVIDUAL CAPACITY**

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On this day personally appeared before me \_\_\_\_\_, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledged that \_\_\_\_\_ signed the same as \_\_\_\_\_ free and voluntary act and deed, for the uses and purposes therein mentioned.

DATED: \_\_\_\_\_  
(Seal or Stamp)

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_

My appointment expires \_\_\_\_\_

**NOTARIAL CERTIFICATE  
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ **[name(s)]** **[is/are]** the person(s) who appeared before me, and said person(s) acknowledged that **[he/she/they]** signed this instrument, and on oath stated that **[he/she/they]** **[was/were]** authorized to execute this instrument, and acknowledged that **[he/she/they]** **[was/were]** the \_\_\_\_\_ **[office or title(s)]** of \_\_\_\_\_ **[business name of Lessee]** to be the free and voluntary act of such **[party/parties]** for the uses and purposes mentioned in this instrument.

DATED: \_\_\_\_\_  
(Seal or Stamp)

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_

My appointment expires \_\_\_\_\_



**EXHIBIT 1A**  
**Legal Description of Premises, and Encumbrances, if any**

That Portion of NW<sup>1</sup>/<sub>4</sub> and E<sup>1</sup>/<sub>2</sub> lying north and east of the East Low Irrigation Canal, Section 16, Township 16 North, Range 30 East, W. M., Adams County, Washington, containing 292.59 acres, more or less, according to government survey thereof.

Subject to easements for rights of way for county roads heretofore granted under Application Nos. 50-CR0849 and 50-CR0465, for indefinite terms.

Subject to easement for right of way for overhead powerline heretofore granted under Application No. 50-016362, for an indefinite term.

Subject to easement for right of way for buried cable heretofore granted under Application No. 50-048191, for an indefinite term.

Subject to easement for right of way for railroad heretofore granted under Application No. 50-000432, for an indefinite term.

Subject to the rights of the holder of Department of Natural Resources Water Rights File No. 78-000623, filed on June 4, 1973.

Subject to the restrictions of the Reclamation Reform Act of 1982, as filed under Water Rights File No. 78-000239.

Subject to assessments imposed by Adams County Noxious Weed Board, East Columbia Basin Irrigation District, or any entity properly authorized to assess property.

**EXHIBIT 6A  
RESOURCE MANAGEMENT PLAN**

Lease No(s). 12-092579

**OBJECTIVE**

This Resource Management Plan (RMP) describes the management objectives and practices agreed upon by State and Lessee to manage agricultural and grazing production on Washington's trust lands. Adherence to this RMP is mandatory. Failure to comply may result in default under Subsection 9.06 of the associated lease or leases. If the management requirements of this RMP cannot be followed due to climatic variations or unforeseen events, Lessee shall consult with State unit manager regarding any proposed changes to the RMP.

**CROPLAND MANAGEMENT**

**Composite Erosion Rate:** The Lessee shall maintain or improve the soil profile by applying farming practices that reduce sheet, rill and wind erosion. The composite erosion rate for the crop rotation shall not exceed the soil loss tolerance "T": the amount of topsoil that can be replaced naturally in a year on the soil mapping unit found on the leased premises.

**Soil Additions and Pesticides:** Organic and inorganic substances shall be applied to meet plant requirements. Application methods utilized shall aid in the prevention of substances moving into water bodies, leaching into ground water, or building excessive residual levels in the soil profile. This will be accomplished through following all federal, state and local laws, and as prescribed by label.

The Lessee shall have and follow an Integrated Pest Management (IPM) plan. This means utilizing a coordinated decision-making and action process that considers all pest management methods and strategies, and applies them in an environmentally and economically sound manner to meet pest management objectives. The elements of integrated pest management include:

1. Preventing pest problems;
2. Monitoring for the presence of pests and pest damage;
3. Establishing the density of the pest population (which may be zero) that can be tolerated;
4. Treating pest problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control

methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and

5. Evaluating the effects and efficacy of pest treatments.

**Crop Residue (irrigated):** The Lessee shall maintain the following crop residue levels during the critical erosion period (November - May) to conserve soil moisture, increase soil infiltration, reduce soil loss, and improve soil tilth. Residue will be measured using the line and point method.

Minimum lbs/acre	
1,000	of small grain residue.
1,200	of corn residue.
900	of Sudan grass residue.

**Fertilizer Management:** The Lessee shall use soil and petiole sampling and testing, to determine amounts and timing of nutrient applications required to meet the needs of the plants to be grown. Methods of application shall be used that will ensure optimum uptake by the plants, while insuring that nutrients will not be transported into any water bodies.

**Irrigation Management:** The Lessee shall use science-based irrigation scheduling practices. These practices shall match the irrigation water application to the water requirements of each crop being grown to promote efficiency, improve crop yield, and minimize water quality impairment. Irrigation methods shall be used to ensure proper amounts of water are delivered to the plants in a timely fashion.

**Mass Soil Movement and Gully Erosion:** The Lessee shall apply farming practices that limit the potential for mass soil movement and gully erosion.

**Pesticide Management:** The Lessee shall utilize Integrated Pest Management (IPM) in conjunction with standard industry methods for controlling pests. Methods of application shall be utilized that will ensure optimum protection of the plants, while insuring that pesticides will not be transported off site or have non-target impacts.

**System Monitoring:** The Lessee shall monitor existing irrigation systems to ensure that they are operating near optimum efficiency.

**Water Metering:** The Lessee shall install and maintain water meters on all water delivery systems.

## **WEED MANAGEMENT**

**Noxious Weed Control:** The Lessee shall prevent noxious weed infestations by applying management practices which discourage their establishment or spread. The Lessee shall detect and control the invasion of new noxious weeds. Noxious weeds will be controlled using appropriate mechanical, biological and chemical treatments that meet the requirements of state and federal law.

The Lessee shall use Integrated Pest Management (IPM) to control weeds. This means using a coordinated decision-making and action process that considers all weed management methods and strategies, and applies them in an environmentally and economically sound manner to meet weed management objectives. The elements of integrated pest management for weeds include:

1. Preventing weed problems;
2. Monitoring for the presence of weed species;
3. Establishing the density of the weed population (which may be zero) that can be tolerated;
4. Treating weed problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and
5. Evaluating the effects and efficacy of weed control treatments.

**EXHIBIT 6D  
Water Supply**

Update Bill Cert  
G3-21237

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

**CERTIFICATE OF WATER RIGHT**

THIS CERTIFICATE SUPERSEDES GROUND WATER CERTIFICATE NO. G3-21237C ISSUED SEPTEMBER 7, 1979.

Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)

Ground Water (Issued in accordance with the provisions of Chapter 203, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE June 4, 1973	APPLICATION NUMBER G3-21237	PERMIT NUMBER G3-21237P	CERTIFICATE NUMBER G3-21237C
-------------------------------	--------------------------------	----------------------------	---------------------------------

NAME  
**NORMAN VERN GARNER AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES**

ADDRESS (STREET) (CITY) (STATE) (ZIP CODE)  
Star Route East Othello Washington 99344

This is to certify that the herein named applicant has made proof to the satisfaction of the Department of Ecology of a right to the use of the public waters of the State of Washington as herein defined, and under and specifically subject to the provisions contained in the Permit issued by the Department of Ecology, and that said right to the use of said waters has been perfected in accordance with the laws of the State of Washington, and is hereby confirmed by the Department of Ecology and entered of record as shown.

PUBLIC WATER TO BE APPROPRIATED

SOURCE  
a well

TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
	1350	487.5

QUANTITY, TYPE OF USE, PERIOD OF USE  
1350 gallons per minute, 487.5 acre-feet per year, from February 1 to November 30, each year, for the irrigation of 195 acres.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION/WITHDRAWAL  
350 feet north and 260 feet east from the Center 1/4 corner of Sec. 16.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	T.R.S.P.A.	COUNTY
Star Route East	16	16	30 E.	41	Adams

RECORDED PLATTED PROPERTY

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

195 acres within the 1/4 of Sec. 16 lying northerly of East Low Canal; ALL IN T. 16 N., R. 30 E.W.M.

ECY 040-1-2 (Rev. 4-77)

(SEE REVERSE SIDE)

CERTIFICATE

PROVISIONS

This Superseding Certificate is issued to correct an error in authorized acreage contained in the original certificate issued September 7, 1979. The number of acres is hereby reduced from 250 to 185 to reflect actual irrigation development and beneficial use of ground water. As a consequence, the acre-footage is being reduced from 625 to 487.5 based on 2.5 acre-feet per acre.

The amount of water granted under this certificate is a maximum limit that shall not be exceeded, and the certificate holder shall be entitled only to that amount of water within the specified limit that is beneficially used and required for the actual crop grown on the number of acres and place of use specified in the certificate.

This authorization to make use of public waters of the state is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise.

Certificate holder shall maintain an access port as described in Ground Water Bulletin No. 1.

The final certificate of water right issues for that quantity of water that can be produced from one well only.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, except as provided in RCW 90.03.380, 90.03.390, and 90.44.020.

This certificate of water right is specifically subject to relinquishment for nonuse of water as provided in RCW 90.14.189.

Given under my hand and the seal of this office at Spokane Washington, this 30th day of July, 1982.

DONALD W. MOOS, Director  
Department of Ecology

ENGINEERING DATA

OK

by JOHN L. ARNQUIST, Regional Manager

FOR COUNTY USE ONLY



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

Washington State DNR  
RECEIVED

OCT 22 2015

SE Region - Ellensburg

October 20, 2015

Ingrid Ekstrom  
Washington State Department of Natural Resources  
713 Bowers Road  
Ellensburg, Washington 98926

Dear Ms. Ekstrom:

**Re: Temporary Authorization to Add a Point of Withdrawal  
(Adams County - WRJA 36)**

Application for Change to Ground Water Certificate No. G3-24823 has been filed with the Department of Ecology (Ecology). This application request authorization is to add a point of withdrawal to an existing well to the water right. The proposed well is located within the SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 16, T. 16 N., R. 30 E.W.M. and integrate the wells into one system pending replacement water from the ECBID.

The applicant proposes to integrate these existing wells into one system to increase operational efficiency and reduce stress on individual wells.

The authorized well under G3-24823 is located in the NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 9, T. 16 N., R. 30 E.W.M.

The proposed (existing) well is located in the SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 16, T. 16 N. R. 30 E.W.M.

Ecology hydrogeologists reviewed the application and confirmed use of the proposed well would not impair existing water rights. The proposed well is only to be used on lands owned by the Department of Natural Resources lying in the NW<sup>1</sup>/<sub>4</sub> of Section 16, T. 16 N., R. 30 E.W.M. lying northeasterly of the East Low Canal.

Your request for a Temporary Authorization to use the existing well is approved subject to the following provisions.

This Temporary Authorization shall remain in effect under the above referenced application for change for a period of three years. The applicant may request an extension of the Temporary Permit. If a water service contract from the ECBID is offered and rejected or confirmed for this property, this Temporary Permit shall be considered cancelled.

Installation and maintenance of an access port as described in Chapter 173-160 is required.



Washington State Department of Natural Resources  
G3-24823C  
October 20, 2015  
Page 2

All water wells constructed within the State shall meet the minimum standards for construction and maintenance as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Water Wells).

Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations.

This change allows for the use of an additional well pending entry into a Water Service Contract (WSC) with the ECBID. At such time this right will be standby reserve (RCW 90.44.510).

The owner of this water right has proposed to enter into a contract with the East Columbia Basin Irrigation District for delivery of surface water from the Columbia Basin Project (Project). Surface water served by the Project is to be used in place of or instead of water that could be withdrawn under this state-issued water right, not in addition to it.

In accordance with RCW 90.44.510, Ecology "shall issue a superseding water right permit or certificate for a groundwater right where the source of water is an aquifer for which the department adopts rules establishing a groundwater management subarea and water from the federal Columbia Basin project is delivered for use by a person who holds such a groundwater right. The superseding water right permit or certificate shall designate that portion of the groundwater right that is replaced by water from the federal Columbia Basin project as a standby or reserve right that may be used when water delivered by the federal project is curtailed or otherwise not available."

This water right authorizes use of groundwater in the Odessa Ground Water Management Subarea.

This provision is being added to clarify that this right will be a standby reserve right that is entirely supplemental to Columbia Basin Project water. Groundwater withdrawn under this authorization shall only be used when delivery of Project water is interrupted during the Project's irrigation season. Groundwater shall not be used before Project water delivery begins each season and after Project water delivery ends each season.

Should the contract/delivery of water from the Project be terminated by the water right holder, landowner or successor, this standby/reserve right shall be subject to cancellation. However, such cancellation shall not occur if the contract/delivery of water from the Project is terminated as a result of an action outside of the control of the water right holder, landowner or successor, such as the failure of the United States Bureau of Reclamation and an irrigation district to renew their contract.

Transfer of this standby reserve water right to other lands, or change in the nature or purpose of use of this right is prohibited.

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

The Department may field-verify this seasonal change at any time for compliance with the terms and/or conditions of this authorization.

Washington State Department of Natural Resources  
G3-24823C  
October 20, 2015  
Page 3

Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations.

All provisions and conditions of the original authorization apply.

**YOUR RIGHT TO APPEAL**

You have a right to appeal this action to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this document. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal, you must do the following within 30 days of the date of receipt of this document:

- File your appeal and a copy of this document with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this document on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>.  
To find laws and agency rules visit the Washington State Legislature Website:  
<http://www.l.leg.wa.gov/CodeReviser>.

If you have questions, please contact Kevin Brown at 509-329-3422.

Sincerely,



Keith L. Stoffel  
Section Manager  
Water Resources Program  
Eastern Regional Office

KLS/KB:md  
Enclosure

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

CERTIFICATE OF WATER RIGHT

- Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1946, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE <b>March 12, 1976</b>	APPLICATION NUMBER <b>G3-24823</b>	PERMIT NUMBER <b>G3-24823P</b>	CERTIFICATE NUMBER <b>G3-24823C</b>
--	---------------------------------------	-----------------------------------	--

NAME <b>SHARON &amp; SKIP BRINEY AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES</b>			
ADDRESS (STREET) <b>1550 West Herman Road</b>	(CITY) <b>Othello</b>	(STATE) <b>Washington</b>	(ZIP CODE) <b>99344</b>

*This is to certify that the herein named applicant has made proof to the satisfaction of the Department of Ecology of a right to the use of the public waters of the State of Washington as herein defined, and under and specifically subject to the provisions contained in the Permit issued by the Department of Ecology, and that said right to the use of said waters has been perfected in accordance with the laws of the State of Washington, and is hereby confirmed by the Department of Ecology and entered of record as shown, but is limited to an amount actually beneficially used.*

PUBLIC WATER TO BE APPROPRIATED

SOURCE <b>a well</b>		
TRIBUTARY OF (IF SURFACE WATERS)		
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
	<b>1000</b>	<b>120</b>

QUANTITY, TYPE OF USE, PERIOD OF USE  
**1000 gallons per minute, 120 acre feet per year, from February 1 to November 30, each year, for the irrigation of 60 acres.**

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION-WITHDRAWAL  
**1300 feet north and 350 feet west from the S $\frac{1}{2}$  corner of Sec. 9**

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION) <b>NE<math>\frac{1}{4}</math>SE<math>\frac{1}{4}</math>SW<math>\frac{1}{4}</math></b>	SECTION <b>9</b>	TOWNSHIP N. <b>16</b>	RANGE, (E. OR W.) W.M. <b>30 E</b>	W.R.T.A. <b>36</b>	COUNTY <b>Adams</b>
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RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

**That portion of the NW $\frac{1}{4}$  of Sec. 16, T. 16 N., R. 30 E.W.M. which lies northeasterly of the East Low Canal.**

PROVISIONS

The total combined withdrawal under this certificate and Ground Water Certificate No. G3-22170C shall not exceed 2600 gallons per minute, 320 acre feet per year for the irrigation of 220 acres.

The amount of water granted is a maximum limit that shall not be exceeded and the water user shall be entitled only to that amount of water within the specified limit that is beneficially used and required for the actual crop grown on the number of acres and the place of use specified.

This authorization to make use of public waters of the state is subject to existing rights, including any existing rights held by the United States for the benefit of Indians under treaty or otherwise.

All water wells constructed within the state shall meet the minimum standards for construction and maintenance as provided under RCW 18.104 (Washington Water Well Construction Act of 1971) and Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Water Wells).

An access port, airline and pressure gage shall be properly installed and maintained in working order.

This authorization to use public waters of the state is classified as a Publicly Owned Land Certificate in accordance with Chapter 90.66 RCW (Initiative Measure No. 59).

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, except as provided in RCW 90.03.380, 90.03.390, and 90.44.020.

This certificate of water right is specifically subject to relinquishment for nonuse of water as provided in RCW 90.14.180.

Given under my hand and the seal of this office at **Spokane** Washington, this **29th** day of **August**, 19 **85**.

ANDREA BEATTY BINKER, Director  
Department of Ecology

ENGINEERING DATA  
OK CAC

by John L. Arrquist  
JOHN L. ARRQUIST, Regional Manager

FOR COUNTY USE ONLY

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
HAMS County Auditor, Nancy Robinson



296-26  
Draft 12/8/69  
Approved 1/21/70

RETURN TO:  
East Columbia Basin Irrigation District  
P.O. Box E  
Othello, WA 99344

EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Columbia Basin Project, Washington

INTERRUPTIBLE WATER SERVICE CONTRACT FOR TEMPORARILY DEFERRED  
LANDS TO BE SERVED BY PROJECT FACILITIES

APN: 2630360000001  
State of Washington Department of Natural Resources  
Portion of the E 1/2 of Section 16, Township 16N, Range 30 EWM

East Columbia Basin Irrigation District

THIS CONTRACT, Made this 6<sup>th</sup> day of December, 2010, between the EAST  
COLUMBIA BASIN IRRIGATION DISTRICT, an irrigation district organized and existing under the  
laws of the State of Washington, hereinafter called the District, and

State of Washington Department of Natural Resources  
hereinafter called the Purchaser,

WITNESSETH, That:

WHEREAS, the following preliminary statements are made in explanation:

- (a) The United States is constructing the Columbia Basin Project in the State of Washington;  
and  
(b) The District has entered into a repayment contract with the United States (Contract No.  
14-06-100-6410 dated December 18, 1968) relating to the construction of the Columbia Basin

IST CONTRACT  
1ST COLUMBIA BASIN IRRIGATION DISTRICT  
Jens County Auditor, Nancy McBrook



Project (hereinafter called the Project) and the assumption of care, operation, and maintenance of certain Project works by the District; and

(c) The District is authorized to enter into water service contracts pursuant to Article 28 of the abovesaid repayment contract; and

(d) The Purchaser is the owner of land, in the vicinity of an existing project irrigation facility, within the operation of the District; and

(e) Said land has been found feasible of Project development, including land classification and drainage determinations; and

(f) Said land is temporarily deferred from Project development because of present lack of capacity in the Project irrigation system to serve such land on a full-time basis; and

(g) The District has determined that it is in the best interest of the District and the Project that water be made available for the irrigation of such deferred lands on an interruptible basis pending the inclusion of such lands within an irrigation block.

NOW THEREFORE, in consideration of the premises and of the mutual promises of the parties herein made, it is agreed as follows:

#### TERM OF CONTRACT

1. This contract becomes effective on the date first above written and covers the making available of irrigation water from Project facilities to the Purchases for the land described herein within the operation of the District for a period of 10 years, unless terminated earlier as provided in Article 9 hereof, and with the consent of the parties may be renewed at the end of such period for an additional 10-year period.

#### CONDITIONS OF WATER DELIVERY

2. (a) The purchaser may, after making advance annual payment therefore in accordance with Article 3 hereof, receive, when available, water from the East Low Canal at Mile 72 for the irrigation of 185 acres of land described below, to wit:

That land in the E ½ of Section 16, Township 16N, Range 30 EWM, lying north and east of the East Low Canal, Adams County, Washington as crosshatched on the attached map marked Exhibit "A".

(b) Water purchased hereunder may not be available for the irrigation of said land during peak periods of use by other Project lands within irrigation blocks. The District will make the determination of availability of water and will control its use and delivery under this contract.

(c) Project water will not be available for the irrigation of a total acreage within the boundaries of the District, out of and in irrigation blocks of more than 160 irrigable acres in a single ownership or 320 irrigable acres in the community or other joint ownership of a husband and wife.

Water Contract  
FIRST COLUMBIAN BASIN IRRIGATION DISTRICT  
Idaho County Auditor, Nancy Holbrook



(d) Irrigation water to be furnished hereunder is intended only for production of crops that do not have a need for water during the peak delivery period. The Purchaser agrees to plant only grain, forage or similar crops not requiring application of water during periods of peak demand on the said land and to use all practicable methods to insure the economical and beneficial use of such water.

(e) The Purchaser shall at his own cost and expense construct any necessary facilities which may be required to furnish water to said land, including obtaining rights of way therefore. He will be required to obtain a permit for construction of any proposed diversion and measuring facilities located on rights of way for existing Project features, based on plans to be approved in advance by the District and subject to inspection by the District, and the Purchaser shall donate to the United States any such facilities on Projects rights of way which are to be a part of the Project distribution system. If temporary facilities are approved which do not conform to the proposed irrigation block layout and they interfere with subsequent construction of the distribution system, any additional costs caused by such interference shall be borne by the Purchaser. The Purchaser hereby agrees that in any settlement in connection with acquisition or utilization of rights of way needed for later construction of the Project irrigation system across land covered by this contract no enhancement in land value will be allowed as a result of this contract, including the value of any irrigation improvements made thereon.

#### PAYMENT FOR WATER

3. (a) The Purchaser will pay to the District initially the sum of Eight Thousand Three Hundred Eighty Six and 10/100 Dollars (\$8,386.10) immediately upon being notified of the execution of this contract by the District and before any water is delivered hereunder. Annual payments thereafter under this contract will be collected by the District in advance of delivery of water hereunder. The annual charge will consist of the following: (1) a minimum operation and maintenance charge per acre of three-fourths of the estimated operation and maintenance cost per acre for the District for the then current year; (2) such additional charge as the District may make for its own purposes; and (3) a construction charge of \$1.00 per acre for the first 5-year period under this contract, \$1.40 per acre for the second 5-year period, and, in event of renewal of this contract as provided for in Article 1 hereof, \$1.80 per acre for the first 5-year period and \$2.20 per acre for the second 5-year period.

(b) Payment of the annual charge will entitle the purchaser to water in the amount of 2 acre-feet per acre. A maximum of one additional acre-foot per acre may be used when available on the following terms and conditions.

1. The Bureau of Reclamation has determined that use of the additional acre-foot per acre will not have adverse drainage impacts on platted farm units in developed blocks.

2. The additional acre-foot of water is deemed by the Bureau of Reclamation to be "First Phase Continuation Water" under the terms of the Master Water Service Contract of 1976, (Contract #14-06-100-9165) and the 1982 Supplement No. 1 thereto, which are included by reference and the charge for such water shall be the water service rate set forth in said Contract and Supplement in order to repay the United States for a portion of the construction costs of the Second Bacon Siphon and Tunnel and main conveyance facilities.

(c) Payment in advance of any delivery of water is a condition precedent to the delivery thereof except in the case of additional water, when other arrangements are made with the District, and the District reserves the right to refuse delivery of water unless and until all charges are paid.

Water Contract  
WEST COLUMBIA BASIN IRRIGATION DISTRICT  
Sasas County Auditor, Nancy Rollman



#### DISTRICT PAYMENTS TO UNITED STATES

4. The District will pay the United States each year on behalf of the land for which water is furnished hereunder, on or before June 30 of the year following that to which it applies, the construction charge provided for in item (3) of Article 3(a) hereof.

#### WASTE, SEEPAGE, AND RETURN-FLOW WATERS

5. (a) The Purchaser assumes responsibility, during the life of this contract, for disposal of waste water in connection with irrigation farming of the said land so as not to damage Project facilities or other properties and also for any necessary drainage of the said land.

(b) The United States does not abandon or relinquish any waste, seepage, or return-flow water resulting from the water being made available to the Purchaser under this contract, and all such waters are reserved to the United States as set forth in the above-said repayment contract between the United States and the District.

#### QUALITY OF WATER

6. The operation and maintenance of Project facilities for the provision of Project water under this contract shall be performed in such manner as is practicable to maintain the quality of irrigation water to be furnished hereunder. The United States and/or the District are under no obligation to construct or furnish water treatment facilities to maintain or to better the quality of water. Further, the United States and/or the District do not warrant the quality of water to be furnished pursuant to this contract.

#### POLLUTION

7. The Purchaser agrees that he will comply fully with all applicable Federal laws, orders, and regulations and the laws of the State of Washington, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to pollution or the discharge of refuse, garbage, sewage, effluent, or other pollutants.

#### DISCLAIMER

8. No provision for the delivery of water under this contract will be construed to bind the United States or the District to make such water permanently available on a continuing basis of a permanent water right. The United States and the District assume no responsibility for any permanent, continuing delivery of such water, and neither they nor their officers, agents, or employees shall have any liability for or on account of:

(a) The control, carriage, handling, use, disposal, or distribution of such water diverted from Project delivery facilities then being operated and maintained or utilized by the United States or the District;

Water Contract  
1ST COLUMBIA BASIN IRRIGATION DISTRICT  
Iowa County Auditor, Nancy McBreese



(b) Damage claims of any nature whatsoever, including, but not limited to, property loss or damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water;

(c) Any damage, whether direct or indirect, arising out of or in any manner caused by seepage, absence or drainage, or shortage or absence of said water, whether such shortage or absence be on account of inspections, repairs, improvements, new construction, changes in operation, drought, hostile diversion, supplying existing units and/or legal subdivisions in irrigation blocks, prior or superior claims, or any other causes.

#### TERMINATION

9. In the event of any failure by the Purchaser to comply with all the terms and requirements of this contract or any regulations issued in connection therewith, or his use or attempted use of water furnished hereunder in any way that is unreasonably wasteful or harmful to the Project as determined by the District, or for any purpose other than irrigation of the above-described land and none other, or the planting of crops other than those permitted herein, the District may terminate this contract, after giving reasonable notice and opportunity to comply therewith or to discontinue the authorized use, by giving subsequent written notice for failure to do so. The Purchaser may terminate this contract by written notice to the District at the end of any irrigation season but not later than November 30 of any year. In addition, this contract will terminate as of December 31 prior to the beginning of the first irrigation season following the formal announcement that water is available to the irrigation block including the herein-described land or at the time said land may be added to an existing irrigation block.

#### COVENANTS

10. All covenants and agreements herein made shall be considered as covenants running with the land and shall be binding on the Purchaser and his heirs, administrators, executors, assigns and successors.

#### CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS

11. The expenditure of any money or the performance of any work by the United States hereunder which may require appropriations of money by the Congress or the allotment of funds shall be contingent upon such appropriations or allotments being made. The failure of the Congress to so appropriate funds or the absence of any allotment of funds shall not relieve the Purchaser from any obligations then accrued under this contract, and no liability shall accrue to the United States in case such funds are not appropriated or allotted.

#### REPORTS AND RECORDS

12. The District, in cooperation with the Purchaser, shall develop and maintain annual records of reasonable estimates of land use and crop production on lands receiving Project water hereunder. Reports thereon shall be furnished to the United States in such form and on such date or dates as may be required by the United States.

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Wash County Auditor, Nancy McBrook



**RULES AND REGULATIONS**

13. The United States and the District may make rules and regulations, not inconsistent with the provisions of this contract, and the Purchaser shall observe the same.

**EQUAL OPPORTUNITY**

14. This contract shall be subject to the Equal Opportunity provisions attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

(SEAL)

ATTEST:



EAST COLUMBIA BASIN IRRIGATION DISTRICT

By *Robert L. Hill*  
President of the Board

*[Signature]*  
District Secretary

*Clay Sprague*  
Laura Dittmer  
Southeast Region Manager  
Clay Sprague  
Deputy Supervisor For Uplands

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Nancy McBroon



STATE OF WASHINGTON )  
 ) ss.  
County of )

On this 10<sup>th</sup> day of December, 2010, Personally appeared before me

Roger Watkins, to me known to be the President of the Board of Directors of the East Columbia Basin Irrigation District, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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

(SEAL)



Steven W. Kimble  
Notary Public in and for  
the State of Washington  
Residing at: Warden

My commission expires: 7-1-2014

STATE OF WASHINGTON )  
 ) ss.  
County of )

On this day personally appeared before me Clay Sprague to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 4<sup>th</sup> day of November, 2010



Sara Ann Rietzke  
Notary Public in and for the  
State of Washington  
Residing at:

My commission expires:

April 29, 2014

Major Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Nancy McBroome



### EQUAL OPPORTUNITY

During the performance of this contract, the PURCHASER, in this article referred to as the Contractor, agrees as follows:

(a) 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 Equal Opportunity clause.

(b) 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 or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

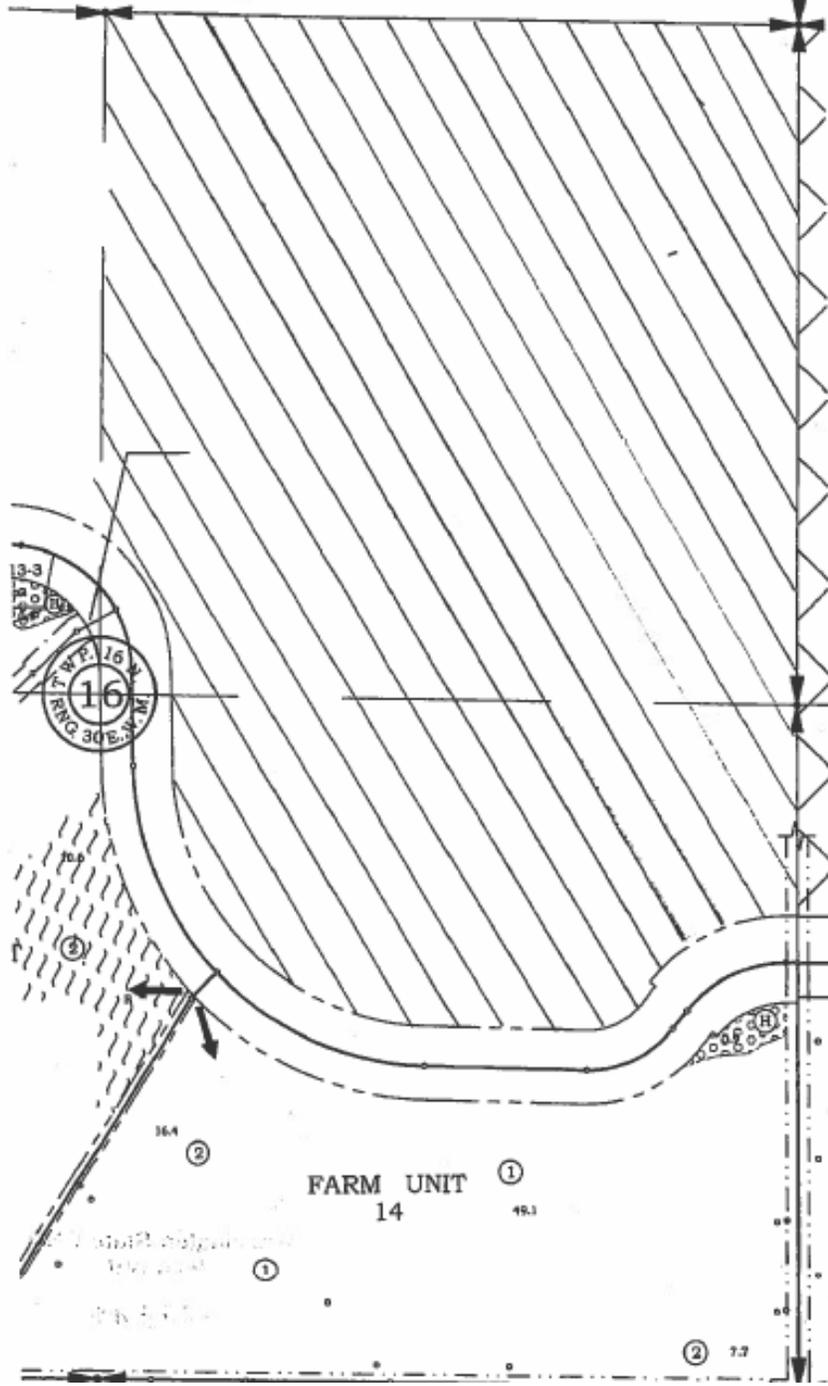
(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

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

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

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

ADAMS COUNTY, WASHINGTON



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MAIR CONTRACT  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
ADAMS COUNTY AUDITOR, NANCY HEDRICK



Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Heidi K. Hunt



Return to: East Columbia Basin Irrigation District  
P.O. Box E, Othello, WA 99344

Approved  
390-050

**EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Columbia Basin Project, Washington**

**INTERRUPTIBLE FIRST PHASE CONTINUATION WATER SERVICE CONTRACT  
FOR**

Selection	Series	Description
<input type="checkbox"/>	390	First Phase Continuation Acres – Groundwater Replacement

**Landowner: Washington State Department of Natural Resources**

**Legal Description: Northwest ¼ Section 16, Township 16 North, Range 30 E.W.M., North of the East Low Canal; portions of East ½ of Section 16, Township 16, Range 30 E.W.M., North of Canal, Adams County**

**APN: 2630160100001; 2630160200001**

THIS 390 CONTRACT, hereinafter Contract, made this 4<sup>th</sup> day of May, 2016, between the EAST COLUMBIA BASIN IRRIGATION DISTRICT, an irrigation district organized and existing under the laws of the State of Washington, hereinafter called the District, and the Washington State Department of Natural Resources hereinafter called the Landowner,

WITNESSETH, That:

**EXPLANATORY RECITALS**

2. **WHEREAS**, the following preliminary statements are made in explanation:

(a) The United States has entered into a repayment contract with the District dated October 9, 1945 (Contract and Symbol No. Ilr-1442 which was last amended and supplemented on December 18, 1968), relating in part to the Columbia Basin Project (Project) water supply for the irrigation of lands in the District, operation and maintenance of Project facilities, and repayment of the construction obligation; and

(b) The United States and the District have also entered into a Renewal Master Water Service Contract dated September 22, 2015 (Contract No. 159E101882); and

INTERRUPTIBLE FIRST PHASE CONTINUATION  
WATER SERVICE CONTRACT

PAGE 1 OF 10

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Heidi K. Hunt



(c) Pursuant to Article 7 of the Renewal Master Water Service Contract, the District is authorized to enter into contracts with landowners desiring to become District water users for the delivery of First Phase Continuation Water to certain First Phase Continuation Acres for meeting (i) irrigation requirements of such acres, and (ii) requests for leaching and other miscellaneous purposes within the meaning of the term irrigation; and

(d) The Landowner is the holder of irrigable land, as evidenced by land classification and drainage determinations, identified as First Phase Continuation Acres and located in the vicinity of an existing Project irrigation facility within the operation of the District; and

(e) This contract shall not be deemed to be a subcontract or sub-agreement under the Renewal Master Water Service Contract, nor shall it create any third party beneficiary interests enforceable against the United States; and

(f) All references to the United States herein are to be construed as notices of select laws and policies of the United States which may affect Landowner responsibilities or District administration of this contract. Applicable laws and policies of the United States are not in any way limited to or by such specific references.

**NOW THEREFORE**, it is agreed as follows:

**DEFINITIONS**

3. The following terms, for purposes of this contract, shall have the following respective meanings:

"Irrigation" shall mean the use of contract water to irrigate land primarily for the production of commercial agricultural crops or livestock, and domestic and other uses that are incidental thereto.

"Municipal and Industrial" shall mean the use of contract water for municipal, industrial, and miscellaneous other purposes not falling under the definition of "irrigation" use above or within another category of water use under an applicable Federal authority.

"First Phase Continuation Water" shall have the same meaning as it is defined in the Renewal Master Water Service Contract and shall include the water made available under this contract.

"Conserved Water" shall have the same meaning as it is defined in the Renewal Master Water Service Contract and shall include such water made available under this contract.

"First Phase Continuation Acres" shall have the same meaning as it is defined in the Renewal Master Water Service Contract and shall include those lands for which water is made available under this contract.

"Groundwater Replacement" shall mean changing the source of irrigation water from groundwater being withdrawn from the Odessa Ground Water Management Subarea



(hereinafter Odessa Subarea) to Project First Phase Continuation Water made available pursuant to the Renewal Master Water Service Contract and this contract.

#### TERM OF CONTRACT

4. (a) This contract becomes effective on the date first above written and covers the District delivery of First Phase Continuation Water to the First Phase Continuation Acres specifically described herein. This contract shall be in effect for a period of 20 years, unless sooner terminated as otherwise provided herein: *Provided*, that at the end of such period with the consent of the District this contract may be renewed for two additional 10-year periods; *Provided, further*, that in no event shall this contract or any renewal thereof be in effect beyond the term of Renewal Master Water Service Contract dated September 22, 2015 (Contract No. 159E101882).

#### PAYMENT FOR WATER

5. (a) The Landowner will pay to the District a nonrefundable annual minimum sum equal to the per acre charges determined in accordance with Article 5(b) multiplied by the number of acres irrigated hereunder immediately upon being notified of the execution of this contract by the District. Minimum annual payments thereafter shall be paid to the District in advance of delivery of water under this contract and, in any event, on or before April 30 of each year. Utilization of water prior to payment thereof shall, in addition to interest, subject the Landowner to a penalty of 5 percent (5%) of the annual minimum sum.

(b) The minimum annual per acre charge for the lands to be irrigated under this contract irrespective of whether the Landowner utilizes the full water allotment provided hereunder will consist of the following:

1. A charge of \$7.58 per acre-foot of water, multiplied by the number of acres authorized by Article 6(b) of this contract and multiplied by the amount of water per acre authorized by Article 6(c) of this contract, said product being 3.0 acre-feet, provided such charge may be adjusted to reflect changes in the rate per acre-foot as provided in the Renewal Master Water Service Contract as supplemented.
2. A per acre operation and maintenance charge equal to the average per acre operation and maintenance assessment of platted lands (i.e., farm units and water delivery units within irrigation blocks) of the District for the then current year or a percentage thereof not exceeding one hundred percent, as determined by the District.
3. Such additional charges as the District may make for its own purposes, as follows:
  - a. Pump Charges associated with pump modernization plan bonds at a rate of \$1.70 per acre per year for the term of the associated bonds (2026 and 2027).



- b. Account fee established annually by the District.
- c. Emergency Reserve fee established annually by the District.
- d. District construction debt-service charge not to exceed **\$190.00** per acre per year for term of associated financing(s) required for Odessa Groundwater Replacement Program implementation. This charge includes the following:
  - i. Development fee at a rate of **\$120** per acre for 30 years.
- e. Other charges and fees the District may establish annually (e.g. meter fees, etc.)

(c) In the event the Landowner is unable to utilize any First Phase Continuation Water provided for in the year this contract is entered into, any charges so paid shall be credited against the charges to be paid by the Landowner for the following year. In the event that the Landowner utilizes less than 50 percent (50%) of the minimum quantity of water provided for hereunder during the year the contract is entered into, the charges for that year shall be prorated based upon the amount of water actually utilized and any credit to which the Landowner is entitled to shall be applied against the charges to be paid under this contract for the following year. In no event shall the provisions of this paragraph extend the payment of charges, or the prorating thereof, beyond the year following the year that the contract is entered into for a non-District operated and maintained delivery system water service contract. In the case of a District operated and maintained delivery system water service contract, the year the first payment of charges is enforced will be the year water is made available to the Landowner under this contract.

(d) Payment in advance of any delivery of water is a condition precedent to the delivery thereof. The District reserves the right to refuse delivery of water unless and until any charges owing to the District are paid including charges owing to the District for work performed by the District on behalf of the Landowner. The District further reserves the right to specify the method of irrigation to be used on the subject lands.

(e) The District and the Landowner hereby agree that the charges for the delivery of water hereunder may be collected and enforced in the manner provided in RCW 87.03.445 (5) and (6) for the collection and enforcement of rates, tolls, and charges. All charges imposed by this contract, upon compliance with the applicable procedural provisions of said RCW 87.03.445 (5) and (6) shall at once become and constitute a lien upon and against the lands for which they are charged, with interest from the date of delinquency in case of nonpayment as authorized by State law. Any collection or enforcement of the charges against the State shall be governed by the provisions of Chapter 79.44 RCW. Said collection procedure shall be in addition to any measures available to the District, including the right of contract termination as provided for in this contract.

#### CONDITIONS OF WATER DELIVERY

6. (a) The District has heretofore entered into a repayment contract with the United States, dated December 18, 1968, which, together with the September 22, 2015



Renewal Master Water Service Contract and the terms of this contract, govern the delivery of irrigation water and the Landowner's obligations hereunder.

(b) The Landowner may, after making advance annual payment therefore in accordance with Article 5 hereof, divert, when available, water from the East Low Canal at Sta. ELC Mile 72 for the irrigation of 59.3 acres of land, identified as First Phase Continuation Acres, which are shown on the map attached hereto and more particularly described as follows: **Northwest ¼ Section 16, Township 16 North, Range 30 E.W.M., North of the East Low Canal; portions of East ½ of Section 16, Township 16, Range 30 E.W.M., North of Canal, Adams County, as depicted in Exhibit A.**

The Landowner shall receive said water at the above point of diversion and the Landowner shall be wholly responsible for the cost and expense thereof, and for taking said water at that point and diverting, conveying, and utilizing it. The water to be delivered hereunder shall be measured by means of a measuring device satisfactory to the District. In the case of water delivery from a non-District operated and maintained delivery system along the East Low Canal, such devices shall be furnished, installed, and maintained by and at the expense of the Landowner, but subject to the control of the District who may at all times have access to them over any land of the Landowner. All losses of water from seepage, evaporation, or other cause, below said point of measurement, shall be borne by the Landowner.

(c) Payment of the annual charges in accordance with Article 5 hereof will entitle the Landowner to water in the amount of 3.0 acre-feet per acre. Water purchased hereunder is made available on an interruptible basis. Such water may not be available for the irrigation of Landowner's lands during periods of water shortage or peak periods of use by other Project lands within irrigation blocks. The District will make the determination of availability of water and will control its use and delivery under this contract.

(d) The Landowner, without cost or expense to the District or the United States, shall acquire all necessary rights-of-way and construct all necessary facilities to furnish water to the Landowner's land from the point of delivery. The Landowner will be required to obtain a permit from the District and, if required, from the United States for all construction on Project rights-of-way. All plans for proposed construction, including measuring facilities, shall be approved in advance by the District and, if required, by the United States.

(e) It is possible that in the future the lands of the Landowner will be included into irrigation blocks. In the event water does become available to the Landowner's lands by such inclusion through irrigation delivery facilities constructed by either the United States or the District, the Landowner will take delivery of water therefrom for all of the Landowner's lands in such blocks, which will then be subject to assessment on the same basis as other irrigable lands in such blocks, and this contract shall be terminated as of January 1 of the year such water first will become available for a full irrigation season.

(f) In the event water becomes available to the Landowner's lands as provided in Article 6(e) hereof, the Landowner shall convey to the United States at the appraised price all of the Landowner's facilities on Project rights-of-way which may be required as determined by the United States, as part of the irrigation facilities to be constructed. The

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Heidi K. Hunt



Landowner shall further be notified of its facilities on the rights-of-way that are not required for these irrigation facilities to be constructed, and the Landowner may be required to remove or adapt the same to accommodate Project or District irrigation facilities. The Landowner shall bear all costs occasioned by its failure to remove or adapt the facilities within the time limit specified. The Landowner agrees that in any settlement in connection with acquisition or utilization of land or rights-of-way under 6(e) for the construction of irrigation facilities across lands covered by this contract, either by the United States or the District, no enhancement in land value because of the availability of water will be allowed.

**SPECIAL CONDITIONS –  
FIRST PHASE CONTINUATION ACRES:  
GROUNDWATER REPLACEMENT**

7. (a) The parties acknowledge that the landowner is the holder of a groundwater permit(s) or groundwater certificate(s) issued by the Washington State Department of Ecology which authorizes the use of said groundwater for the irrigation of the same acreage identified herein as First Phase Continuation Acres, said certificate(s) or permit(s) being G3-24823 and G3-21237.

(b) As a condition precedent to delivery by the District of First Phase Continuation Water under this contract, the Landowner will apply to the Department of Ecology and receive a superseding groundwater right permit(s) or certificate(s) pursuant to RCW 90.44.510, and the Landowner shall reduce or cease withdrawal of groundwater from the Odessa Subarea as specified in the superseding permit(s) or certificate(s).

**WASTE, SEEPAGE, AND RETURN FLOW WATERS**

8. (a) The Landowner assumes responsibility, during the life of this contract, for disposal of wastewater in connection with irrigation farming of the said land so as not to damage Project facilities or other properties and also for any necessary drainage of the said land. Failure of the Landowner to properly dispose of wastewater shall be grounds for the termination of this contract in accordance with Article 11 hereof.

(b) Neither the United States nor the District abandons or relinquishes any waste, seepage, or return-flow water resulting from the water being made available to the Landowner under this contract, and all such waters are reserved and retained as a source of water supply for the Project.

**WATER MANAGEMENT AND CONSERVATION**

9. The Landowner shall develop and carry out any water management and conservation program that may be required by the District.

**DISCLAIMER**

10. It is understood and agreed between the parties that no provision for the delivery of First Phase Continuation Water under this contract will be construed to bind the United States or the District to make such water available on a continuing basis to the Landowner or be the

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Heidi K. Hunt



basis of a permanent water right; that the United States and the District assume no responsibility for any permanent, continuing delivery of such water, and that neither they nor their officers, agents or employees shall have any liability for or on account of:

(a) The control, carriage, handling, use, disposal, or distribution of First Phase Continuation Water diverted from Project delivery facilities then being operated and maintained or utilized by the United States or the District;

(b) Damage claims of any nature whatsoever, including, but not limited to, property loss or damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of First Phase Continuation Water;

(c) Any damage, whether direct or indirect, arising out of or in any manner caused by seepage, absence of drainage, or shortage or absence of First Phase Continuation Water, whether such shortage or absence be on account of inspections, repairs, improvements, new construction, changes in operation, drought, hostile diversion, supplying other irrigated lands, prior or superior claims, administrative or court order, or any other causes;

(d) 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.

#### TERMINATION

11. In the event of any failure by the Landowner to comply with all the terms and requirements of this contract or any regulations issued in connection therewith, or if the use or attempted use of water furnished hereunder is in any way unreasonably wasteful or harmful to the Project as determined by the District or the United States, or if water is used for any purpose other than irrigation of the above-described land, the District may terminate this contract, after giving reasonable notice and opportunity to comply therewith. Either the Landowner or the District may terminate this contract by written notice to the other at the end of any irrigation season but not later than November 30 of any year, provided, however, that the Landowner may not terminate this contract unless all charges owing to the District have been paid. In addition, this contract will terminate as provided under Articles 6(e) hereof at any time the Landowner's land is included into a new Project irrigation block, or is added to an existing Project irrigation block.

#### COVENANTS

12. All the terms, conditions, covenants and agreements herein made including the rules and regulations attached hereto and made a part hereof by reference shall be deemed to be covenants running with the land and shall be binding on the Landowner and its heirs, administrators, executors, assigns, and successors.

#### OFFICIALS NOT TO BENEFIT

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Heidi K. Hunt



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

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

#### EXCESS LANDS

14. Project water made available under the terms of this agreement shall only be delivered by the District in compliance with the acreage limitation provisions of Federal Reclamation law as they now exist or may hereafter be amended. Under no conditions will recordable contracts be executed for the sale of excess lands or be accepted as a condition for delivery of water from the Project to First Phase Continuation Acres served under the terms of this agreement.

#### RULES AND REGULATIONS

15. The United States or the District may make rules and regulations, not inconsistent with the provisions of this contract, and the Landowner shall observe the same. Attached hereto and hereby made a part of this contract are rules and regulations entitled, "Rules and Regulations for Water Service Contracts for First Phase Continuation Acres, East Columbia Basin Irrigation District." Said Rules and Regulations shall be duly complied with by the Landowner. The District reserves the right to hereafter formulate and adopt such supplemental rules and regulations as it may deem necessary or advisable for the distribution and management of First Phase Continuation Water and such supplemental rules and regulations shall be adhered to by the Landowner, its heirs, administrators, executors, assigns, and successors.

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Heidi K. Hunt



IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

(SEAL)



ATTEST:

District Secretary

EAST COLUMBIA BASIN IRRIGATION DISTRICT

President of the Board

Washington State 4/15/2016  
Department of Natural Resources

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Heidi K. Hunt



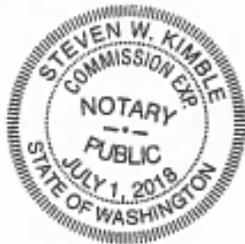
STATE OF WASHINGTON)

COUNTY OF )

On this 4<sup>th</sup> day of May, 2016, personally appeared before me Mark Booker, known to me to be the President of the Board of Directors of the East Columbia Basin Irrigation District, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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

(SEAL)



Steven W. Kimble  
Notary Public in and for the  
State of Washington  
Residing at: Warden  
Commission expires: 7-1-2018

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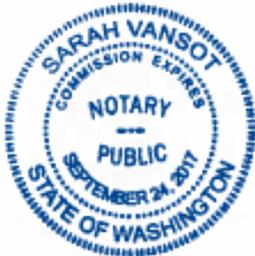
STATE OF WASHINGTON)

COUNTY OF Thurston )

I certify that I know or have satisfactory evidence that Commissioner Goldmark is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the contract of DNR to be the free and voluntary act of such part for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this 15<sup>th</sup> day of April, 2016.

(SEAL)



S. Vansot  
Notary Public in and for the  
State of Washington  
Residing at: Olympia  
Commission expires: 9.24.17

Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Heidi K. Hunt



**RULES AND REGULATIONS FOR WATER SERVICE CONTRACTS  
FOR FIRST PHASE CONTINUATION ACRES**

**EAST COLUMBIA BASIN IRRIGATION DISTRICT**

The following Rules and Regulations and the District wide Rules and Regulations annually adopted by the Board of Directors of the East Columbia Basin Irrigation District which are incorporated herein by reference shall be a part of this water service contract granted by the East Columbia Basin Irrigation District for the irrigation of First Phase Continuation Acres and the terms and conditions thereof, where applicable as determined by the District, shall be fully complied with by the Landowner.

**I.**

**Construction of Irrigation Facilities to Serve Landowner's Lands**

1. Landowner shall obtain a District permit approving of the plans for the construction of irrigation facilities, including but not limited to the diversion facilities, water measuring device and pumping plants. Construction shall be subject to the approval of the District and shall be at Landowner's expense. The diversion facilities and the water measuring device shall be under the District's exclusive control.
2. The Landowner shall furnish to the District construction plans. The plans shall include a lockable headgate, which shall be under the control of the District, water measuring device and pumping plant. The plans shall show in detail the location of the proposed diversion facilities, water measuring device, pumping plant, the power meter(s), and the size and length of the pipelines, together with any such other information as may be required by the District Manager. Landowner shall furnish to the District a map showing the location of the distribution system, including dimensions of circle sprinkled areas and other areas and the acreage to be irrigated, and the point of water diversion from the Landowner's pipeline or other conveyance facility to each of said areas. If the size of a Landowner's proposed diversion, in the event of an operation failure, could adversely affect the District's operation, the District may require the Landowner to install an automatic alarm system.
3. An approved water flow meter shall be installed by the Landowner at the location designated by the District Manager and shall be of the type and size required by the District. The meter shall be for the purpose of determining the amount of water used by the Landowner and shall be read and recorded by the District at such times as deemed necessary by the District. All water diverted from the District's facility must be measured. In the event the water flow meter becomes inoperative, the District Manager shall estimate the amount of water diverted under this contract for the irrigation of any lands served from the headgate, and such estimate and the resulting cost of water so estimated to have been diverted shall be binding upon and shall be paid for by the Landowner as in this contract provided.
4. When necessary as determined by the District, the Landowner shall secure or convey a valid nonexclusive, perpetual easement(s) over the land on which the diversion facilities, water measuring device, pumping plant, power meter and distribution system and other required facilities are to be installed and constructed. Said easement(s) shall include the District's right of vehicular ingress and egress over, along and across the lands described in the easement(s) for purposes of conducting operation and maintenance



activities, for the purpose of determining whether the terms and conditions of this contract are being kept and performed, and for other uses and purposes relative to this contract. The area of said easement shall be that required by the District, which shall include any necessary ingress and egress thereto. The District's title to said easements shall be subject to District approval and any title costs incurred in determining the validity of the District's title shall be paid for by the Landowner.

**II.**

**Conditions of Water Delivery**

1. The Landowner shall limit instantaneous pumping plant capacity to 12.5 g.p.m. (0.0278 cfs) per water service acre for pumping plants serving 320 acres or less, to 10.0 g.p.m. (0.0222 cfs) per water service acre for pumping plants serving over 320 acres but not over 640 acres and to 8.0 g.p.m. (0.178 cfs) per water service contract acre for pumping plants serving over 640 acres. The Landowner shall, at Landowner's expense, install a District approved restrictive device, upon request by the District, to assure compliance with instantaneous flow limitations.
2. If the Landowner irrigates the land described in the Water Service Contract by means of manifold irrigation water delivery system through which irrigation water from other sources could also be delivered, then Landowner shall certify all lands serviced by the manifolded system as required by the Reclamation Reform Act of 1982 prior to delivery of water.

**III.**

**Miscellaneous Provisions**

1. The District, in the event it becomes necessary to enforce the terms and conditions of this contract, in its sole and uncontrolled discretion, may shut off the water to enforce the terms of this contract by locking the diversion facility.
2. The Landowner shall pay annually the cost of the quantity of water provided for in this contract. In the event more than one area of land is being irrigated from a single diversion facility, additional quantities of water utilized over the minimum quantity shall be prorated among the two or more separate areas of land entitled to receive water and payment therefore shall be as in this contract provided.
3. Water will not be diverted from the District's facility by the Landowner at such time, during the year that the District, in its sole and uncontrolled discretion in considering the best interests of all water users of the District, determines that water should not be made available from its facilities.
4. Unless the written consent of the District is obtained, Landowner shall not irrigate, nor cause or permit any land to be irrigated from the Landowner's irrigation facilities, any land other than that described in this contract, nor shall any water from the District's facility be utilized for any purpose other than agricultural irrigation of land.
5. In the case of a common pipeline constructed from the point of diversion of water from the District's facility to serve the lands of the Landowner, or any land to be served therefrom under any other water service contract entered into by the District with any third party or parties, and in the event the Landowner, or any third party utilizing said



- common pipeline, or any of them, or their lessees, heirs, assigns or successors, fails to pay to the District any amounts due under this contract, or any amendment or modification thereof, or fails to perform any other term or condition of this contract, the District may, at its sole and uncontrolled discretion and without liability to any person, shut off the water at the point of diversion from the District's facility until such default has been corrected, or the District may take any other enforcement action herein provided. The fact that one or more persons has complied with all contract requirements shall not derogate from this provision.
6. Because of the demand for the District's available water, no water service contracts shall be granted for the irrigation of lands other than by pressurized irrigation delivery systems or other conservative distribution alternative(s). Variations from this condition will be permitted only if specifically authorized by the Board of Directors of the District.
  7. The District shall not be liable for the construction, breaking, leakage, repair or maintenance of any pipeline, including any common pipeline serving Landowner's lands and/or lands of any third party, nor for the securing and retention by the Landowner and/or any third party of any easement or right-of-way required for the delivery of water to the Landowner's lands or to the lands of any third party which may be served by any common pipeline. The District shall not be responsible for any damage, loss, cost or expense, occasioned to the Landowner or any other person, from the construction, breaking, leaking, seepage, or operation of any of the irrigation facilities, including pipelines, of the Landowner, and the Landowner shall hold the District harmless from any such loss, cost or expense.
  8. To enable the District to comply with the excess lands provisions of the District's Repayment Contract dated December 18, 1968, with the United States of America, all land ownerships of the Landowner, or any of them, or any transfer thereof, must be recorded with the Auditor of the county in which the land is located. In the event a Landowner, or any of them, or any third party, being served from the District's facility becomes the owner of excess lands, by operation of law or otherwise, and in the event the lands are being supplied with irrigation water by a common pipeline in conjunction with other Landowners, the District shall refuse to deliver water to the common pipeline from its facilities for the excess Landowner unless and until the excess status of any Landowner or third party shall have been resolved.
  9. Violation or default of any of the terms and conditions herein contained shall entitle the District to terminate this water service contract. Further, in the event a Landowner utilizes water made available hereunder in a manner that is unreasonably wasteful or harmful to the District facilities or downstream water users, (including the return of irrigation wastewater to District facilities containing undue or harmful amounts of silt and debris), or in the event the irrigation of the Landowner's lands occasions damage, by seepage or otherwise, to District facilities, the District may terminate this contract.
  10. In the event the Landowner sells or conveys the land covered by this contract, such sale or conveyance shall constitute an assignment of this contract by the Landowner and the terms and conditions hereof shall be binding upon the Landowner's grantees or successors. In the event a grantee or successor is not entitled to receive irrigation water from the District for any reason whatsoever, including the excess land provisions of Federal Reclamation law, the District shall have the right to terminate this contract. In event any person acquires title, including a purchaser's interest from the Landowner of

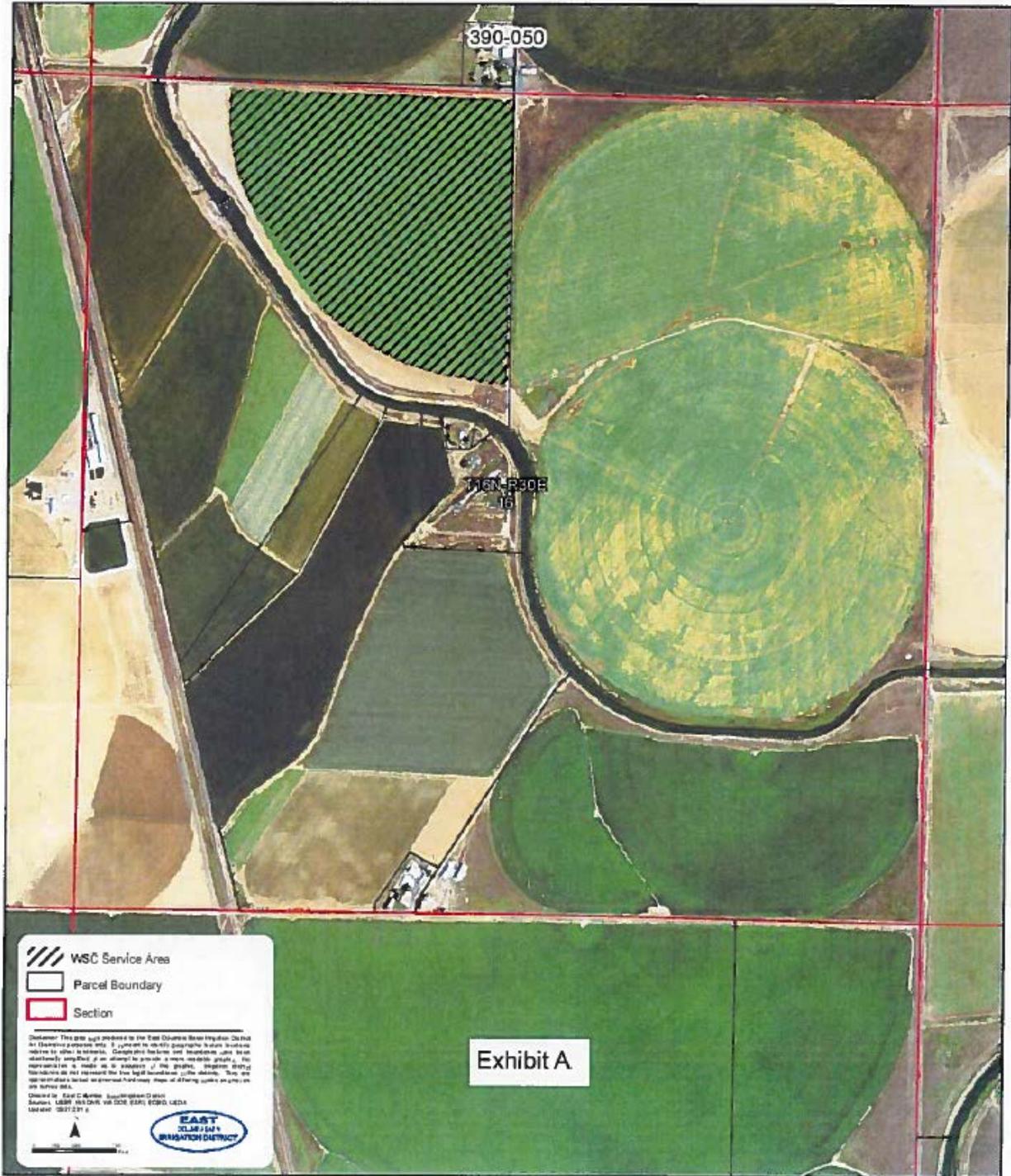
Water Contract  
EAST COLUMBIA BASIN IRRIGATION DISTRICT  
Adams County Auditor, Heidi K. Hunt



all or a portion of the lands covered by this contract, the District may, at its option, terminate this contract and require the then Landowner or Landowners to enter into a new contract or contracts with the District.

11. The term "Landowner" referred to herein in the singular shall include any and all persons herein named, whether one or more, and each shall be individually and jointly bound to the terms and conditions of this contract.
12. In addition to the termination provisions provided for in this contract, the District shall have all rights and remedies provided by law for the recovery of moneys owing and for damages occasioned by any default or breach of covenant on the part of the Landowner.

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EAST COLUMBIA BASIN IRRIGATION DISTRICT  
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**EXHIBIT 8A**  
**Authorized Improvements**

State-owned improvements include, but are not limited to:

<b>Description</b>	<b>Location</b>
Well	Within Easement No. 55-002162 SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 16, T16N, R30E, W. M.
Mainline Irrigation and Electrical System	Throughout Lease Premises

Below listed improvements are owned by current lessees. This list will be amended to show improvements purchased or installed by successful bidder.

Improvements authorized by State:

<b>Description</b>	<b>Location</b>
3 Center Pivots	SE $\frac{1}{4}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ , and NW $\frac{1}{4}$
Irrigation Pumps	Adjacent to Canal
Canal Water Box	N Side of Canal Along NW Portion of Full Circle

The Lessee is required to modify the point of diversion water box and related infrastructure to increase capacity at turnout to provide for additional irrigation of 60 acres to serve NW $\frac{1}{4}$  of Premises and 10.0 additional acres in the NE $\frac{1}{4}$ , under WSC 390-050.

<b>Description</b>	<b>Location</b>
Canal Water Box - Modified for increased capacity for additional irrigation of 60 acres in NW $\frac{1}{4}$ Premises and 10.0 acres in the NE $\frac{1}{4}$ Premises.	N Side of Canal Along NW Portion of Full Circle

The Lessee is hereby authorized to place the following improvements on the Premises:

<b>Description</b>	<b>Location</b>
Underground Pipeline and Electrical System from Point of Diversion Canal Turn-out to serve NW $\frac{1}{4}$ Circle and 10.0 additional acres in the NE $\frac{1}{4}$ Circle.	From Canal Turn-out to North Line of Premises

Provided, however, upon expiration or earlier termination of this lease, State shall acquire ownership of the following authorized improvements without compensation to Lessee:

<b>Description</b>	<b>Location</b>
Canal Water Box	Adjacent to Canal in NE $\frac{1}{4}$
Underground Pipeline and Electrical System from Canal Turn-out to NW Circle	From Canal Turn-out to North Line of Premises