

**Renewal I90/
Approved 10/8/1982**

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

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

**FIRST PHASE CONTINUATION ACRES
INTERRUPTIBLE WATER SERVICE CONTRACT
(EAST COLUMBIA BASIN IRRIGATION DISTRICT)
COLUMBIA BASIN PROJECT, WASHINGTON**

**APN:
Legal Desc.:
(Landowner)
East Columbia Basin Irrigation District**

THIS CONTRACT, Made this ____ day of _____, _____, 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 _____ (Landowner), hereinafter called the Purchaser,

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. I1r-1442 which was last amended and supplemented on December 18, 1968), relating in part to the water supply for the irrigation of lands in the District, operation and maintenance of facilities, and repayment of the construction obligation; and

(b) The United States and the District have also entered into a Master Water Service Contract dated August 27, 1976 (Contract No. 14-06-100-9165), and Supplement No. 1 dated October 8, 1982; and

(c) Pursuant to Article 10 of Supplement No. 1, the District is authorized to enter into contracts with District water users for First Phase Continuation Water; and

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

(e) The United States has determined that First Phase Continuation Water is available for use on the First Phase Continuation Acres described herein without adversely affecting or having a significant detrimental impact on Existing Acres, fish and wildlife interests or the environment in general.

NOW THEREFORE, it is agreed as follows:

DEFINITIONS

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

“First Phase Continuation Water” shall mean water made available under this contract pursuant to Supplement No. 1.

“First Phase Continuation Acres” shall mean those lands for which water is made available under this contract pursuant to Supplement No. 1.

TERM OF CONTRACT

4. This contract becomes effective on the date first above written and covers the making available of First Phase Continuation Water to the lands described herein. This contract shall run for a period of 20 years, unless terminated earlier as otherwise provided herein, and with the consent of the District may be renewed at the end of such period for additional 10-year periods.

CONDITIONS OF WATER DELIVERY

5. (a) The District has heretofore entered into a repayment contract with the United States, dated December 18, 1968, which, together with the August 27, 1976 Master Water Service Contract and Supplement No. 1, dated October 8, 1982 and the terms of this contract, govern the furnishing of water and the Landowner’s obligations hereunder.

(b) The Landowner may, after making advance annual payment therefore in accordance

with Article 6 hereof, divert, when available, water from the _____ at _____
_____ for the irrigation of _____ acres of land, identified as First Phase Continuation
Acres, which are shown on the map attached hereto and more particularly described as follows:

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 and the United States. Such devices shall be furnished, installed, and maintained by and at the expense of the Landowner, but subject to the control of the United States or 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) Water purchased hereunder is made available on an interruptible basis pending the inclusion of the Landowner's lands into an irrigation block or local improvement district service area. 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. 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 anticipated that in the future the lands of the Landowner will be included into either irrigation blocks or local improvement district service areas. 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 block or service area, which will then be subject to assessment on the same basis as other irrigable lands in such block or service area, 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 5(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 Landowner shall further be notified of his 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 his 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 5(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.

PAYMENT FOR WATER

6. (a) The Landowner will pay to the District a nonrefundable annual minimum sum equal to the per acre charges determined in accordance with Article 6(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 \$9.00 per acre based on a water service rate of \$3 per acre-foot of water, provided such charge will be adjusted to reflect changes in the rate per acre-foot as provided in Article 10(a) of the Master Water Service Contract;
2. A construction charge of \$2.63 per acre;
3. A per acre operation and maintenance charge equal to 75 percent of average per acre O&M assessment of platted lands (i.e., farm units and water delivery units within irrigation blocks) of the District for the then current year.
4. Such additional charge as the District may make for its own purposes.

(c) Payment of the above minimum annual charge as the same may be adjusted will entitle the Landowner to water in the amount of 3.0 acre-feet per acre for the lands described in Article 5(b) hereof. Water in addition to 3.0 acre-feet per acre, when available, may be purchased in minimum quantities of 25 acre-feet and the per-acre foot charge therefore shall be the total of the following:

1. \$3 per acre-foot of water provided such charge will be adjusted to reflect changes in the rate as provided in Article 10(a) of the Master Water Service Contract;
2. An amount equal to 130 percent (130%) of one-third of the per acre charge established in Articles 6(b)(3) and 6(b)(4).

(d) 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.

(e) 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.

(f) The District and the Landowner hereby agree that the charges for the delivery of water hereunder may be assessed, collected and enforced in the manner provided in RCW 87.03.445 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 shall at once become and constitute an assessment upon and against the lands for which they are levied, with the same force and effect and the same manner of enforcement and with the same rate of interest from date of delinquency in case of nonpayment as other District assessments. Said assessment procedure shall be in addition to any measures available to the District, including the right of contract termination as provided for in this contract.

WASTE, SEEPAGE, AND RETURN-FLOW WATERS

7. (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 10 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

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

DISCLAIMER

9. It is understood and agreed between the parties that 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 available on a continuing basis to the Landowner or be the 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 such 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 such 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 said 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, or any other causes.

TERMINATION

10. 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 or the United States 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 Article 5(e) hereof at any time the Landowner's land is included into a new Columbia Basin Project irrigation block, or is added to an existing Columbia Basin Project irrigation block.

COVENANTS

11. All 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 his heirs, administrators, executors, assigns, and successors.

REPORTS AND RECORDS

12. The Landowner 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.

OFFICIALS NOT TO BENEFIT

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 excess land provisions of 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, his heirs, administrators, executors, assigns and successors.

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

EAST COLUMBIA BASIN IRRIGATION DISTRICT

(SEAL)

President of the Board

ATTEST:

District Secretary

(Contractor)

(Contractor)

STATE OF WASHINGTON)
County of)

On this ____ day of _____, 20____ Personally appeared before me _____, 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)

Notary Public in and for the
State of Washington
Residing at:
Commission expires:

STATE OF Washington)
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.

Given under my hand and official seal this _____ day of _____, _____.

Notary Public in and for the
State of Washington
Residing at
Commission Expires:

**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 the pumping plant. 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. 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.

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 minimum quantity of water and shall pay for such additional water utilized, all as 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 in parcels comprising not less than forty (40) irrigable acres.
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 sprinkler irrigation. 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 the event any person acquires title, including a purchaser's interest from the Landowner of 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.