

Columbia-Snake River Irrigators Association Transmittal Memorandum

DATE: May 29, 2014

TO: Board of Directors and Mr. Craig Simpson, Manager, East Columbia Basin Irrigation District
Mr. Richard Lemargie, Legal Counsel, ECBID
Ms. Stephanie Utter, Manager, and Ms. Christina M. Davis-Kerman, Water and Land Contract Specialist, Ephrata Field Office, U.S. Bureau of Reclamation (Columbia Basin Project)
Mr. John J. Hockberger, Office of Solicitor, U.S. Dept. of Interior, Boise, Idaho
Mr. Derek Sandison, Office of Columbia River-Ecology, and Mr. Keith Stoffel and Mr. Kevin Brown, Eastern Region Office-Ecology.

FROM: Ron Reimann, President, CSRIA
Darryll Olsen, Ph.D., CSRIA Board Representative

SUBJECT: Request for Formal Review and Execution of Water Service Contract (Review Draft WSC) and Supplemental No.4 (Master Contract), for New Water Service Delivery to the N-I-90 System 1 Project

The CSRIA Board of Directors respectfully submit the attached Water Service Contract, and Supplement No.4 to the Master Water Service Contract, to the Manager and Board of Directors, East Columbia Basin Irrigation District, and the Columbia Basin Project Managers, USBR, for your review and execution consideration.

We acknowledge the dedicated leadership of the ECBID and the Columbia Basin Project, USBR, managers/directors to bring about our ability to present this WSC request to you. Your path has led to the current development of the System 1 Project, and it will bring forth additional System Projects, to serve Eastern Washington's irrigated agriculture industry.

We acknowledge the highly capable efforts of the OCR-ERO-Ecology water resources managers to complete the intricate regulatory process leading to the issuance of the State Secondary Water Use Permit, and your collaborative assistance with CSRIA in preparing this WSC, for ECBID-USBR review.

As earlier discussed with you, we would request that USBR staff initiate and complete a general eligibility review of the System 1 Project acres. As well, our technical representatives and legal counsel are available to you, at any time, to review specific contract provisions implementation features.

**3030 W. Clearwater, Suite 205-A, Kennewick, WA 99336
509-783-1623, FAX 509-735-3140, E-Mail DolsenEcon@AOL.com**

To ensure consistency with our recent discussions on the primary acres water permits, we would request to review further with OCR-ERO-Ecology managers the primary acres designated under the existing groundwater rights, to be served by replacement surface water. The total place of use acres do not expand the base water allocation, as calculated for the primary acres.

We also will be making a final re-confirmation of the specific acres assigned to the N-I-90, System 1 Project, with the Project Participants and their financial representatives.

CSRIA representatives/Project Participants are readily available to meet with the ECBID Board/Manager, and CBP-USBR Managers, to discuss this WSC request; and our legal counsel is available to discuss this WSC review draft with your legal counsel per your direction.

The System 1 Project pre-construction engineering has been completed, the Participants have secured approved Project financing (with lending rates locked-in for near-term funding dispersion), and we are in a position to commence immediately Project construction engineering and development, with the execution of the WSC. We are prepared to engage construction activity this summer, allowing for water service delivery to the Participants by the spring of 2016. Your support in meeting this water delivery schedule is important.

Again, we offer our full acknowledgement for your work to bring additional surface water to the Odessa Subarea, and we look forward to building this first system project, with your approval of the WSC/Master Contract Supplement.

Attachments

cc: Sen. Mark Schoesler, Senate Majority Leader, WA State
 Sen. Jim Honeyford, Capital Budget Committee, WA State
 Rep. Hans Dunshee, Capital Budget Committee, WA State
 Rep. Judy Warnick, Capital Budget Committee, WA State (Senate Candidate)
 U.S. Sen. Maria Cantwell, WA State
 U.S. Rep. Doc Hastings, WA State
 Ms. Maia Bellon, Director, Ecology-WA
 Ms. Lori Lee, PNW Regional Dir., USBR
 Adams County Commission
 Franklin County Commission
 Grant County Commission
 Mr. Brian Kuest, Project Financial Coordinator, and Tom O'Brien, Clifton-Larson-Alan CPAs
 Mr. Jeff Fagg, Riley Mengarelli, and Terry Hansen, NW Farm Credit
 Jim Boone, AXA Equitable Insurance
 Mr. Mike McKay, KeyBank
 Mr. Steve Lancaster and Terry Weimer, WA Trust Bank
 Mr. Fred Ziari and Tom Buchholtz, IRZ Consulting Engineers
 N-I-90, System 1 Participants

***ECBID Water Service Contract
For
North I-90-System One Water Supply***

EAST COLUMBIA BASIN IRRIGATION DISTRICT
Columbia Basin Project, Washington

WATER SERVICE CONTRACT

FOR

FIRST PHASE CONTINUATION ACRES

IN THE ODESSA GROUND WATER SUBAREA UTILIZING

NORTH I-90 SYSTEM ONE WATER

FOR GROUND WATER REPLACEMENT

THIS CONTRACT, Made this ____ day of _____, 2014, 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 Columbia Snake River Irrigators Association, as the Participant's Representatives for certain parties to the Water and Primary Irrigation System Agreement (System One, North I-90), hereinafter called the Participants,

WITNESSETH, That:

EXPLANATORY RECITALS

1. 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. 11r-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 Supplement No. 2 dated September 13, 2005, as amended on March 6, 2014; and Supplement No. 3 dated March 6, 2014; and Supplement No. 4, dated _____, 2014; and

(c) The District is authorized pursuant to Supplement No. 4 to the Master Water Service Contract to enter into contracts with District water users for the delivery of the additional First Phase Continuation Water available as a result of the issuance of secondary Water Right No. S4-33091, the implementation of the Water and Primary Irrigation System Agreement (System One, North I-90) and the utilization of capacity in the main conveyance facilities to certain First Phase Continuation Acres located within the Odessa Ground Water Subarea (Odessa Subarea); and

(d) The United States has determined that water under secondary Water Right No. S4-33091 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; and

(e) The Participants are the holders 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

(f) The Participants are the holders of ground water permit(s) or ground water certificate(s) issued by the Washington State Department of Ecology which authorizes the use of said ground water for the irrigation of the same acreage identified herein as First Phase Continuation Acres said certificate or permit being listed in Appendix 1 hereto; and

(g) The Participants have applied to the Washington State Department of Ecology for superseding ground water permits or certificate pursuant to RCW 90.44.510;

NOW THEREFORE, it is agreed as follows:

DEFINITIONS

2. 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" under this contract shall have the same meaning as it is defined in the Master Water Service Contract and made available under this contract pursuant to Supplement No. 4.

"North I-90 System One Water" shall mean the additional First Phase Continuation Water supply available through secondary Water Right No. S4-33091 and as a result of implementation of the Water and Primary Irrigation System Agreement (System One, North I-90) and the utilization of capacity in the main conveyance facilities, which can be provided by the District pursuant to this contract for the irrigation of First Phase Continuation Acres located within the Odessa Subarea.

"First Phase Continuation Acres" shall have the same meaning as it is defined in the Master Water Service Contract and shall include those lands for which water is made available under this contract pursuant to Supplement No. 4.

"Ground Water Replacement Water" shall mean changing the source of irrigation water from ground water being withdrawn from the Odessa Subarea to surface water from the Columbia Basin Project being made available pursuant to the terms of Supplement No. 4 to the Master Water Service Contract and this contract.

TERM OF CONTRACT

3. (a) This contract becomes effective on the date first above written and covers the District delivery of North I-90 System One water as a source of Ground Water Replacement Water to the lands described herein. This contract shall be in effect until the expiration of the Master Water Service Contract and Supplement No. 4, on July 2, 2020, unless terminated earlier as otherwise provided herein.

(b) If the Master Water Service Contract, as supplemented, is renewed, this contract, unless terminated earlier as provided herein, with the consent of the District may be renewed for additional 10 year periods following July 2, 2020, provided such 10 year periods may not extend beyond the renewed or extended expiration dates of the Master Water Service Contract.

CONDITIONS OF WATER DELIVERY

4. (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. 4, dated _____, 2014 and the terms of this contract, govern the delivery of irrigation water and the Participants' obligations hereunder.

(b) The Participants may, after making advance annual payment therefore in accordance with Article 6 hereof, divert, when available, water from the East Low canal at approximate GPS coordinates N47° 12.12", W119° 10.95" for the irrigation of 14,530 acres of land, identified as First Phase Continuation Acres, which are shown on the map attached hereto as Exhibit A.

(c) The Participants shall receive said water at the above point of diversion and the Participants 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 device shall be furnished, installed, and maintained by and at the expense of the Participants, 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 Participants. All losses of water from seepage, evaporation, or other cause, below said point of measurement, shall be borne by the Participants.

(d) The Participants, 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 Participants' land from the point of delivery. The Participants 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 of canalside plants, including measuring facilities, shall be approved in advance by the District and, if required, by the United States.

(e) The Department of Ecology will issue superseding surface water right permits or certificates pursuant to RCW 90.44.510. The Participants shall reduce or cease withdrawal of ground water from the Odessa Subarea as provided in the superseding permits or certificates during the term of this contract. The specific groundwater permits or certificates and associated acreage are listed in Exhibit A hereto.

PAYMENT FOR WATER

5. (a) The Participants shall make payments to the District as set forth herein, *provided that* notwithstanding execution of this single contract by the Participant's Representative, in implementing this Agreement each Participant shall be separately billed and charged and there shall in no case be joint and several liability of Participants for obligations hereunder.

(b) The payment to the District shall be _____/acre/year, of which no more than 50% may be billed in advance.

(c) In the event the Participant is unable to utilize any North I-90 System One 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 Participant for the following year. In the event that the Participant 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 Participant 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.

(d) The required 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 a Participant. The District further reserves the right to specify the method of irrigation to be used on the subject lands.

WASTE, SEEPAGE, AND RETURN FLOW WATERS

6. (a) Each Participant 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 a Participant 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 a Participant under this contract, and all such waters are reserved and retained as a source of water supply for the Project.

WATER MANAGEMENT AND CONSERVATION

7. Each Participant shall develop and carry out any water management and conservation program that may be required by the District.

DISCLAIMER

8. It is understood and agreed between the parties that no provision for the delivery of North I-90 System One 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 Participants 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 North I-90 System One 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 North I-90 System One 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 North I-90 System One 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;

TERMINATION

9. This Contract shall become effective as of the date first written above and will have a term which is to run concurrent with the Master Water Service Contract between the District and the Bureau of Reclamation, including all renewals, with the Master Water Service Contract having renewal rights as set forth therein, and *provided that* the Participants shall have the same right of renewal as against the District as the District has against the United States.

10. In the event of any failure by the Participants 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.

COVENANTS

11. 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 Participants and their heirs, administrators, executors, assigns, and successors.

REPORTS AND RECORDS

12. The Participants 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 Participant within the Project and in the same manner as other Participants 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 Water and Primary Irrigation System Agreement (System One, North I-90), and the Participants 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/Ground Water Replacement Acres, East Columbia Basin Irrigation District." Said Rules and Regulations shall be duly complied with by the Participants. 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/Ground Water Replacement Water and such supplemental rules and regulations shall be adhered to by the Participants, their 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)

By
President
Board of Directors

ATTEST

By
District Secretary

Columbia Snake River Irrigators Association
by Dr. Darryll Olsen
as Participants' Representative for the Participants
set forth in the Water and Primary Irrigation System
Agreement (System One, North I-90)

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 _____ 2014.

(SEAL)

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

RULES AND REGULATIONS FOR WATER SERVICE CONTRACTS FOR FIRST
PHASE CONTINUATION/GROUND WATER REPLACEMENT 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/Ground Water Replacement Acres and the terms and conditions thereof, where applicable as determined by the District, shall be fully complied with by the Participants.

I

Construction of Irrigation Facilities to Serve Participants' Lands

1. Participants shall obtain a District permit approving of the plans for the construction of canalside 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 Participants' expense. The canalside diversion facilities and the water measuring device shall be under the District's exclusive control.
2. The Participants 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. Participants shall furnish to the District a map showing the location of the distribution system at completion of construction engineering, including dimensions of circle sprinkled areas and other areas and the acreage to be irrigated, and the point of water diversion from the Participants' pipeline or other conveyance facility to each of said areas. If the size of the Participants' proposed diversion, in the event of an operation failure, could adversely affect the District's operation, the District may require the Participants to install an automatic alarm system.
3. An approved water flow meter shall be installed by the Participants 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 Participants 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 Participants as in this contract provided.

4. When necessary as determined by the District, the Participants 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 Participants.

II.

Conditions of Water Delivery

1. Water shall be delivered in the quantities and to the acres identified in Exhibit A.

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 Participants 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 Participants 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, Participants shall not irrigate, nor cause or permit any land to be irrigated from the Participants' 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 Participants, 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 Participants, 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, after reasonable notice and an opportunity to cure, 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 Participants' lands and/or lands of any third party, nor for the securing and retention by the Participants and/or any third party of any easement or right-of-way required for the delivery of water to the Participants' 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 Participants or any other person, from the construction, breaking, leaking, seepage, or operation of any of the irrigation facilities, including pipelines, of the Participants, and the Participants 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 Participants, 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 the Participants, 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 Participants, the District shall refuse to deliver water to the common pipeline from its facilities for the excess Participants unless and until the excess status of any Participants 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 the Participants utilize 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 Participants' lands occasions damage, by seepage or otherwise, to District facilities, the District may terminate this contract.
10. In the event any Participant sells or conveys the land covered by this contract, such sale or conveyance shall constitute an assignment of this contract by the Participant and the terms and conditions hereof shall be binding upon the Participant'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 Participant 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 Participant or Participants to enter into a new contract or contracts with the District.

***Supplement No.4
to the Master Water Service Contract
Between USBR and ECBID***

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

SUPPLEMENT NO. 4 TO THE MASTER WATER SERVICE CONTRACT
BETWEEN THE UNITED STATES OF AMERICA
AND THE EAST COLUMBIA BASIN IRRIGATION DISTRICT

COLUMBIA

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MWSC No.
Supplement No.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

COLUMBIA BASIN PROJECT, WASHINGTON

SUPPLEMENT NO. 3 TO THE MASTER WATER SERVICE CONTRACT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE EAST COLUMBIA BASIN IRRIGATION DISTRICT

1. THIS SUPPLEMENTARY CONTRACT, hereinafter referred to as Contract, is made this ____ day of _____, 2014, pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly the Act of August 30, 1935 (49 Stat. 1028), Section 9(e) of the Act of August 4, 1939 (53 Stat. 1187), the Act of March 10, 1943 (57 Stat. 14), and the Act of October 1, 1962 (76 Stat. 677), collectively known as the Federal Reclamation Laws, between the UNITED STATES OF AMERICA, acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, hereinafter referred to as the Contracting Officer, and the EAST COLUMBIA BASIN IRRIGATION DISTRICT, an irrigation district duly organized and existing under the laws of the State of Washington, hereinafter referred to as the District or the Contractor;

WITNESSETH THAT:

EXPLANATORY RECITALS

2. WHEREAS, the United States and the District entered into a repayment contract providing for the development of the Columbia Basin Project dated October, 9, 1945 (Contract

and Symbol No. 11r-1442) which was last amended and supplemented on December 18, 1968 by an Amendatory, Supplemental and Replacement Repayment Contract (Contract No. 14-06-100-6419) and

3. WHEREAS, the United States and the District on August 27, 1976, entered into a Master Water Service Contract (Contract No. 14-06-100-9165), hereinafter referred to as the Master Water Service Contract, providing for the construction of additional facilities for the delivery of First Phase Continuation Water to First Phase Continuation Acres in the District and for other purposes; and

4. WHEREAS, First Phase Continuation Water has been delivered to First Phase Continuation Acres in the District pursuant to the execution of supplements to the Master Water Service Contract (Supplement No. 1 dated October 8, 1982, as amended on December 31, 1987, Supplement No. 2 dated September 13, 2005, as amended March 6, 2014, and Supplement No. 3 dated March 6, 2014); and

5. WHEREAS, the delivery of additional water to First Phase Continuation Acres within the Odessa Subarea is conditioned upon execution of this Supplement to the Master Water Service Contract, the intent of which is to provide for the terms and conditions of water delivery and to establish the irrigation water service charges to be paid to the United States for water made available hereunder; and

6. WHEREAS, the Bureau of Reclamation and the Washington State Department of Ecology prepared and issued the Odessa Subarea Special Study Final Environmental Impact Statement in August 2012, which evaluated impacts associated with implementation of Alternative 4A; and

7. WHEREAS Alternative 4A contemplates, among other things, constructing a pipeline distribution system distribution system to areas north of I-90; and

8. WHEREAS, the Bureau of Reclamation issued its Record of Decision for the Odessa Subarea Special Study Final Environmental Impact Statement adopting Alternative 4A on April 2, 2013, noting that construction of facilities would start in phases from north to south

and that the State of Washington and irrigators anticipate moving forward with non-federal funding; and

9. WHEREAS, the State of Washington has issued the Bureau of Reclamation a secondary use water right (Water Right No. S4-33091) to be utilized in connection with implementation of Alternative 4A to irrigate areas within the Odessa Subarea; and

10. WHEREAS certain Participants within the Odessa Subarea have entered into a "Water and Primary Irrigation System Agreement (System One, North I-90)" to finance and construct a new primary irrigation system to irrigate additional acreage within the Odessa Subarea (hereafter, the "Participants"), proposing to implement, in part, Alternative 4A; and

11. WHEREAS this additional acreage has been determined to lie within the First Phase Continuation Acres and is eligible for Bureau of Reclamation Service; and

12. WHEREAS, the Bureau of Reclamation has met all environmental compliance requirements for the execution of this contract;

NOW, THEREFORE, in consideration of the foregoing recitals, and the terms, conditions, covenants, and agreements set forth herein, the parties to this Contract agree as follows:

DEFINITIONS AND MEANINGS

13. This Contract uses terms appearing in the Amendatory, Supplemental, and Replacement Repayment Contract, Contract No. 14-06-100-6419, between the United States and the District, hereinafter referred to as the Repayment Contract, and the Master Water Service Contract and Supplements No. 1 and 2. The meaning of such terms shall be governed by the applicable usage or definitions appearing in those contracts, unless expressly provided to the contrary in this Contract.

(a) "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.

(b) "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.

(c) "North I-90 System One Water" shall mean the additional First Phase Continuation Water supply available through the issuance of new secondary water right No. S4-33091 and the utilization of capacity in the main conveyance facilities, which can be made available to the District for meeting the irrigation requirements of First Phase Continuation Acres located within the Odessa Subarea.

CONTRACT SCOPE AND TERM

14. (a) This Contract shall become effective as of the date first written above and will have a term which is to run concurrent with the Master Water Service Contract, including any renewals thereof, with the Master Water Service Contract having continued rights of renewal as set forth therein.

(b) This Contract does not affect other contracts between the United States and the District unless the terms of those other contracts are contrary to the terms of this Contract, in which case the terms of this Contract shall prevail.

(c) If any provision of this Contract or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced unless doing so would result in such a material change as to cause a loss of fundamental benefits otherwise afforded to either party.

FACILITIES CONSTRUCTED BY THE UNITED STATES

15. (a) The United States has constructed facilities which allow North I 90 System One Water to be made available to lands within the District and which lands are situated within the Odessa Subarea.

(b) The District recognizes that the United States is not constructing the System One, North I-90 distribution systems and that further construction of any facilities by the

United States is contingent upon federal appropriations and subsequent contractual arrangements as identified in Article 8(b) of the Master Water Service Contract.

LANDS FOR WHICH WATER IS DELIVERED — LIMITATIONS ON DELIVERIES

16. (a) The District is hereby authorized to deliver up to a maximum of 30,075¹ acre-feet of irrigation water annually to 9,733 direct groundwater replacement acres and additional acreage not to exceed the 14,350 place of use acres, all being First Phase Continuation Acres within the Odessa Subarea as identified in Exhibit A hereto attached and by this reference made a part hereof, *provided that* the irrigation water made available pursuant to this Contract shall be delivered in amounts not exceeding 3.09 acre-feet per acre and shall be measured by the District at [each farm turnout] serving such acres. The water so delivered shall be measured in second-foot-days and converted to the annual quantity in acre-feet.

(b) It is agreed that the delivery of water pursuant to this Contract shall be only under the terms of the Master Water Service Contract, this Contract and the forms of water service contract(s) expressly approved for use by the Contracting Officer, including the form of water service contract for irrigation attached hereto and by this reference made a part hereof. Forms of water service contracts previously approved or used under the terms and provisions of the Repayment Contract shall not be used to furnish water under this Contract.

(c) First Phase Continuation Acres in the Odessa Subarea, except in the case of federal development of distribution and drainage facilities, may be delivered water in accordance with Article 12 of the Master Water Service Contract and this Contract: *Provided*, that while receiving water service pursuant to this Contract and the form of water service contract for irrigation set forth in Exhibit B, Participants shall reduce or cease withdrawal of ground water from the Odessa Subarea as provided for in a superseding permit or certificate for ground water right to be acquired by the Participants from the Washington State Department of Ecology under RCW 90.44.510.

¹ This number is derived by multiplying the 9,733 direct groundwater replacement acres times a 3.09 acre-foot/acre water duty.

(d) The District, with the written approval of the Contracting Officer, may for purposes of adjustments and matters of its own internal administration make changes in the irrigable acreage from time to time: *Provided*, that such changes do not result in the irrigation of greater than the 14,530 place of use acres under this Contract.

CONDITIONS OF WATER DELIVERY

17. (a) The United States does not abandon or relinquish any waste, seepage, or return flow water resulting from activities hereunder, and all such water is reserved to the United States as set forth in its Repayment Contract with the District.

(b) Federal funds shall not be utilized under this Contract for irrigation or drainage facilities or related works for the irrigation of land within the Odessa Subarea with First Phase Continuation Water other than as provided for in Article 8(a) of the Master Water Service Contract, as supplemented by amendment, unless otherwise authorized in writing by the Contracting Officer.

(c) The District may, or when directed by the Contracting Officer shall, terminate the water service contract with Participants after giving reasonable notice and opportunity to comply therewith in the event of any failure by Participants in the Odessa Subarea irrigating land with First Phase Continuation Water to comply with the terms and conditions of this Contract, and Participants' water service contract with the District, or any rules issued in connection therewith, or if the Participants' attempted use of water furnished hereunder is any way wasteful or harmful to the United States or the District, or if water is used for any purpose not authorized by this Contract.

(d) The District acknowledges the Bureau of Reclamation's authority to conduct periodic contract compliance reviews in accordance with Reclamation Manual Policy, *Periodic Review of Water Deliveries with Respect to Contract Terms* (WTR P08), and Reclamation Manual Directive and Standards, *Periodic District Reviews of Water Deliveries with Respect to Contract Terms — Process for Resolving Unauthorized Use* (WTR 08-01).

RATE AND METHOD OF PAYMENT

18. It is hereby acknowledged by the parties that a review of the water service rate under the Master Water Service Contract has not been made prior to execution of this Contract, therefore it has been necessary to establish an initial composite rate as follows:

(a) The initial irrigation water service rate and method of payment for North I 90 System One Water delivered by the District is hereby established as \$ _____ per acre-foot.

This is a composite rate comprised of the following components:

- (1) \$ _____ per acre-foot: representing the current irrigation water rate in effect and established in Article 10 of the Master Water Service Contract as amended by Article 13 of Supplement No. 1 to the Master Water Service Contract.
- (2) \$ _____ per acre-foot: representing in per acre-foot terms the present annual average per-acre construction charge under the Repayment Contract.

(b) Water shall not be delivered by the District to any user of irrigation water who is in arrears of advance payment.

(c) To ensure that the Contracting Officer has accurate and appropriate information for the accounting and crediting of revenues derived from the District's water use pursuant to the Master Water Service Contract as supplemented, the District shall include the following information in writing each year when remitting payment to the United States for irrigation water made available pursuant to the Master Water Service Contract as supplemented:

- (1) The quantity of irrigation water in acre-feet, delivered to First Phase Continuation Acres within the Odessa Subarea.
- (2) The quantity of First Phase Continuation Acres within the Odessa Subarea to which irrigation water is delivered.
- (3) The quantity of First Phase Continuation Water, in acre-feet, delivered pursuant to the Master Water Service Contract and Supplement No. 1.
- (4) The quantity of First Phase Continuation Acres to which First Phase Continuation Water in (3) above is delivered.

(d) The irrigation water service rate is subject to adjustment as follows:

(1) From time to time, but not less often than once every 5 years, the irrigation water service rate shall be reviewed by the Contracting Officer and revised, as determined to be necessary by the Contracting Officer, taking into account any changes in Reclamation law and policy, Columbia Basin Project costs, allocation of costs, the rate at which First Phase Continuation Acres have been or are anticipated to be developed, and other related factors. The District may at any time request, in writing, the Contracting Officer to review the irrigation water service rate. The District shall be responsible for funding District requested reviews of the irrigation water service rate.

(2) Any revision of the irrigation water service rate by the Contracting Officer will apply only to future payments and shall be announced by written notice to the District at least ninety (90) days prior to the beginning of the irrigation season to which the new irrigation water service rate would be applicable.

(e) The costs, which make up the irrigation water service rate described in (a) of this article, shall embrace all expenditures of whatsoever kind in relation to the function for which the charge is made, including, but without limitation by reason of this enumeration, cost of surveys and investigation, labor, property, material and equipment, engineering, legal work, superintendence, administration, overhead, general expenses, inspection, special services, and damage claims of all kinds: *Provided*, that such costs shall be exclusive of amounts which the law does not require to be treated as reimbursable or which the Secretary determines as a matter of policy are to be treated as non-reimbursable: *Provided, further* that such costs shall be exclusive of charges for operation and maintenance of the project reserved works apportionable to the District and payable to the United States pursuant to the terms and conditions of the Repayment Contract.

NOTICES

19. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the District, when mailed, postage prepaid or delivered to the Regional Director, Pacific Northwest Region, Bureau of Reclamation, 1150 North Curtis

Road, Suite 100, Boise ID 83706-1234, and on behalf of the United States, when mailed, postage prepaid or delivered to the East Columbia Basin Irrigation District, P.O. Box E, Othello WA 99344. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

GENERAL PROVISIONS

20. The general provisions applicable to this Contract are listed below. The full text of these articles is attached as Exhibit C and is incorporated herein by this reference.

- a. CHARGES FOR DELINQUENT PAYMENTS
- b. GENERAL OBLIGATION-BENEFITS CONDITIONED UPON PAYMENT
- c. OPERATION AND MAINTENANCE OF TRANSFERRED WORKS
- d. EXAMINATION, INSPECTION, and AUDIT of PROJECT WORKS, RECORDS, and REPORTS for DETERMINING ADEQUACY of OPERATION and MAINTENANCE
- e. CONFIRMATION OF CONTRACT
- f. CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS
- g. OFFICIALS NOT TO BENEFIT
- h. CHANGES IN CONTRACTOR'S ORGANIZATION
- i. ASSIGNMENT LIMITED-SUCCESSORS AND ASSIGNS OBLIGATED
- j. BOOKS, RECORDS, AND REPORTS
- k. COMPLIANCE WITH FEDERAL RECLAMATION LAWS
- l. ADMINISTRATION OF FEDERAL PROJECT LANDS
- m. PROTECTION OF WATER AND AIR QUALITY
- n. CONTAMINATION OF POLLUTION OF FEDERAL PROPERTY
- o. WATER CONSERVATION
- p. EQUAL EMPLOYMENT OPPORTUNITY
- q. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

- r. PRIVACY ACT COMPLIANCE
- s. PEST MANAGEMENT
- t. MEDIUM FOR TRANSMITTING PAYMENTS
- u. CONSTRAINTS ON THE AVAILABILITY OF WATER
- v. CONTRACT DRAFTING CONSIDERATIONS

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

EAST COLUMBIA BASIN IRRIGATION
DISTRICT

(SEAL)

By
President
Board of Directors

ATTEST

By
District Secretary

UNITED STATES OF AMERICA

By
Regional Director
U.S. Bureau of Reclamation
Pacific Northwest Region
1150 N. Curtis Road, Suite 100
Boise, ID 83706-1234

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.

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 _____, UNITED STATES OF AMERICA that executed the within and foregoing instrument and acknowledged said instrument to be free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated the he was authorized to execute said instrument.

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

(SEAL)

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

Exhibit A:
Primary Groundwater Right Acres
Eligible for Replacement Surface Water
Secondary Use Permit
And
Total Allowed Place of Use Acres for New
Secondary Use Permit Coverage