

FLORIDA WATER CONSERVANCY DISTRICT

**THIRD-PARTY AGREEMENT
FOR PURCHASE OF FLORIDA PROJECT STORAGE WATER
FOR LONG-TERM WATER SERVICE**

This Agreement is entered into this ___ day of _____, ___ between the Florida Water Conservancy District, the United States and the buyer identified below (Buyer).

RECITALS

A. The District has entered into a Long-Term Water Service Contract with the United States of America (the United States), acting through the Secretary of the Interior, pursuant to The Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388) and all acts amendatory and supplementary thereto, and particularly pursuant to the contracting authority of Section 9(c)(2) of the Reclamation Project Act of August 4, 1939 (53 Stat. 1187) and the general authorization for municipal, industrial, and other beneficial (miscellaneous?) uses provided by the Colorado River Storage Project Act approved April 11, 1956 (70 Stat. 105), for 114 acre-feet of water stored in Lemon Reservoir, a participating Project of the Colorado River Storage Project (District Contract). The terms of the District Contract are incorporated into this Agreement by this reference, and a copy is available upon request

B. The District Contract authorizes the District to resell up to 114 acre-feet of Project water for municipal and industrial use and other beneficial uses, other than commercial agricultural irrigation, including but not limited to augmentation uses subject to the terms and conditions of the District Contract.

C. The District is providing the water described in this Agreement for use as replacement water to the Florida River to augment out-of-priority depletions by the applicant specifically identified in paragraph 2 below. The water is provided by the District pursuant to the terms and conditions of the Plan for Augmentation decreed in Case No. _____, Water Division 7 (or substitute water supply plan?).

AGREEMENT

In consideration of the mutual and dependent covenants contained herein, the parties to this Agreement agree as follows:

1. This Agreement shall become effective upon execution of the Agreement by the District,

subject to the approvals required by paragraph 14, and shall expire _____, 20___. This Agreement is subject to and limited by the terms of the District Contract.

2. The water rights (structures?) to be augmented by release of water pursuant to this Agreement are decreed to _____ described in detail on the Application attached to this Agreement as EXHIBIT A.

3. The amount of water purchased by Buyer under this Agreement is _____ Acre Feet.

4. For the water purchased under this Agreement, the Buyer agrees to pay the District as follows:

4.1 Upon signing this Agreement, the Buyer shall pay to the District:

4.1.1 \$_____ to reimburse the District for costs of administration of this Agreement and the District Contract; plus

4.1.2 \$_____ per acre-foot for each acre-foot of water purchased by the Buyer, the Colorado River Storage Project M&I water rate, as calculated annually by the Bureau of Reclamation according to the terms of the District Contract; plus

4.1.3 \$_____ per acre-foot for annualized system improvement costs, replacement costs and water conservation activity costs, all associated with the Project Works.

4.1.4 \$_____ per acre-foot for annual operation and maintenance of Project Works.

Total amount paid by the Buyer upon signing this Agreement: \$_____ (4.1.1 + 4.1.2 x acre-feet purchased + 4.1.3 x acre-feet purchased + 4.1.4 x acre-feet purchased).

Example: Buyer is purchasing two acre-feet in 2008.

Total amount paid is \$_____ or (\$_____ plus \$82.20 x 2, plus \$_____ x 2, plus \$_____ x 2).

4.2 Commencing in the calendar year following the year in which this Agreement is signed, the Buyer shall pay to the District annually the M&I water rate, as calculated for such year by the Bureau of Reclamation, plus the annualized system improvement, replacement and water conservation activity costs for each acre-foot of water purchased, plus the operation and maintenance costs for each acre-foot of water purchased.

4.3 On or before the last day of February of each year during the term of this Agreement, the District shall mail an invoice to Buyer's last known address, as reflected in the District's records, which shall include the following:

4.3.1 The amount of the District for costs of administration of this Agreement and the District Contract;

4.3.2 A calculation of the payment rate for M&I water for the current year, as provided to the District by the Bureau of Reclamation pursuant to the District Contract;

4.3.3 The amount of the annualized system improvement, replacement and water conservation activity costs for the District;

4.3.4 The annual operation and maintenance costs for Project Works;

4.3.5 The total amount due from Buyer to the District for the current year;

4.3.6 A form to be completed by Buyer, itemizing monthly well diversions for the prior year under water rights described in paragraph 2, as reflected by Buyer's flow meter.

4.4 On or before March 31st, Buyer shall return the completed diversion record provided by the District pursuant to paragraph 4.3.5, together with payment of the total amount due as described in the invoice.

4.5 The District shall pay all sums collected from Buyer to the United States, pursuant to the District Contract; provided, however, that the cost reimbursements described in paragraphs 4.1.1, 4.3.2 and 4.3.3 will be retained by the District.

5. By signing this Agreement, Buyer acknowledges, represents and warrants to the District:

5.1 That the information provided by Buyer to the District on the Application attached to this Agreement as EXHIBIT B is correct to the best of Buyer's knowledge;

5.2 That Buyer has read and understands the District Contract attached to this Agreement and agrees to be bound by its terms, as applicable;

5.3 That the Plan for Augmentation described in Recital C above requires that all wells must have totalizing flow meters installed and maintained in good working order;

If Buyer's well is not metered on the date of this Agreement, Buyer acknowledges that the Division Engineer will require Buyer to install and maintain a totalizing flow meter in order to qualify for protection of the water right described in paragraph 2 by the Plan for Augmentation described in Recital C.

5.4 When in priority, water purchased under this Agreement will be released

from Lemon Reservoir and delivered to the Florida River at the outlet works of Lemon Dam upon request of the Division Engineer, Water Division 7, at times and in amounts determined by the Division Engineer, and only for the purpose of providing replacement water to the Florida River to augment out-of-priority depletions by the water right (structures?) specifically identified in paragraph 2.. The Third Party Contractor recognizes that it cannot request scheduled releases from Lemon Dam which would damage Project facilities. The District will not open dam gates to satisfy the water purchased hereunder once gates are closed, which normally occurs at the end of the irrigation season, but may occur at other times for maintenance purposes, or due to natural disaster such as fire. Third Party Contractor agrees that it may not request release of water purchased hereunder after such gates are closed unless the District confirms that it can satisfy the requested release through the Lemon Reservoir bypass facilities;

5.5 That water purchased under this Agreement will not protect Buyer from curtailment as a result of a call placed by any water right upstream of the Florida Project and senior to Buyer's water right;

5.6 That nothing in this contract is intended to create a water right to Contracted Water obtained pursuant to this contract, and the Third Party Contractor may not claim a water right based on any legal theory arising under State or Federal law, before any State or Federal judicial or administrative body based on the use of Contracted Water under this or any Third Party Contract;

5.7 That the amount of water purchased by Buyer under this Agreement has been determined solely by Buyer, and that the District makes no representation that the amount purchased by Buyer is sufficient to protect Buyer's water rights (structures) from curtailment as a result of a call placed by senior water rights diverting water downstream from the Lemon Dam;

5.8 That the amount to be paid annually by Buyer under this Agreement is due and payable in full, whether or not the water purchased is actually released from Lemon Reservoir;

5.9 That Buyer shall have no holdover of water storage in Lemon Reservoir from year to year; therefore, any water purchased under this Agreement which is not released by October 31 (15?) in each year shall become integrated with the water supply for all purposes of the Lemon Reservoir and be available for all purposes at that time.

5.10 That in the event water available for release under this Contract is curtailed for any reason, including drought, error, the reaching of maximum use of water allotted to the State of Colorado, closing of the gates, or other reasons pursuant to the provisions of the District Contract, no liability shall attach to the District for such curtailment, even if said curtailment results in a reduction of the amount of water released under this Agreement;

5.11 That, except as expressly contained in this Agreement, no representation by or

on behalf of the District has been made to Buyer as to the amount of water purchased by Buyer under this Agreement, the effectiveness of such purchase in protecting any water right from curtailment or the availability of water to the District under the District Contract.

6. Buyer agrees to maintain permanent records of all well diversions under water rights (structures?) described in paragraph 2, as reflected by Buyer's flow meter, recorded by Buyer at least monthly, and to submit a copy of such records to the District annually with the payment described in paragraph 4.4.

7. The payment by Buyer of the amounts described in paragraph 4 is a condition precedent to receiving benefits under this Agreement. In the event that Buyer's tendered payment is dishonored, the District shall not make water available for Buyer until Buyer provides payment of the amount due, plus interest at the rate of ten percent (10%) per annum from the date of tender and a late charge equal to five percent (5%) of the payment, in Good Funds (cash, electronic transfer funds, certified check or cashier's check). Buyer shall also pay all attorney's fees and costs incurred by the District for collection efforts of delinquent payments. Payments received shall be applied first to the payment of costs and attorney fees incurred, if any, second to the payment of late charges and accrued interest, and the balance applied to the overdue payment.

8. This Agreement may not be assigned, or the water purchased hereunder transferred, by Buyer without the written consent of the District, at its discretion and approval by the United States. Upon any transfer of the water right identified in paragraph 2, Buyer shall notify the District of such transfer in writing. The notice shall include the name, address and telephone number of the person to whom the transfer will be made and an application for transfer. The District may, in its discretion, assess an administration fee to record the transfer as a condition of approving the transfer. Any transfer of the water purchased under this Agreement without the consent and approval required by this paragraph shall be void.

9. The District may terminate this Agreement in the event of failure by the Buyer to perform Buyer's obligation to pay the sums due under this Agreement, or in the event of a misrepresentation or breach of warranty by Buyer. In the event of termination by the District, any sums paid by Buyer shall be non-refundable. The District shall give written notice of termination to Buyer, the United States and the Division Engineer.

10. This Agreement constitutes the entire and only agreement between the District and Buyer relating to the subject matter hereof. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties and the United States and approved by the Division Engineer.

11. The use of water purchased under this Agreement shall comply fully with the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 *et seq.*) prior to the approval of this Agreement by the United States.

12. The water purchased under this Agreement shall be appurtenant to the water right

identified in paragraph 2, and the terms of this Agreement shall be binding upon Buyer's successors in interest to said water right.

13. No guarantee is made by Reclamation or the District as to the quality of Contracted Water released under this Third Party Contract.

14. Any notice to Buyer provided for in this Agreement shall be in writing and shall be given and be effective upon (1) hand delivery to Buyer or (2) mailing such notice by first-class U.S. mail, addressed to Buyer at the Buyer's address stated on the first page of this Agreement, or to such other address as Buyer may designate by notice to the District. Any notice to the District shall be in writing and shall be given and be effective upon (1) hand delivery to the District's president or (2) by mailing such notice by first-class U.S. mail to the President, Florida Water Conservancy District, 1523 County Road 243, Durango, Colorado 81301, with a copy to P.O. Box 1157, Durango, Colorado 81302.

15. This Agreement is subject to approval by the United States. Upon execution by all parties, and subject to timely payment by Buyer, the District will issue an Augmentation Certificate, a copy of which will be recorded in the records of the County in which structure identified in EXHIBIT B is located and a copy of which will be provided to Buyer in a form that can be attached to the structure.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

Attest:

FLORIDA WATER CONSERVANCY DISTRICT

Secretary

Phillip S Craig, President

Buyer:

Approved:

UNITED STATES OF AMERICA

By: Carol DeAngelis
Western Colorado Area Office
Bureau of Reclamation