

Contract No. \_\_\_\_\_  
Acre-feet purchased: \_\_\_\_\_ Acre-Feet

**Draft – 11/14/2013**

FLORIDA WATER CONSERVANCY DISTRICT

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

This Third-Party Agreement (Agreement) is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between the Florida Water Conservancy District (District), and \_\_\_\_\_ (Buyer), as approved by the United States of America (United States).

**RECITALS**

A. The District has entered into a Long-Term Water Service Contract (District Contract) with 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 miscellaneous beneficial uses provided by the Colorado River Storage Project Act approved April 11, 1956 (70 Stat. 105), for 2,500 acre-feet of water stored in Lemon Reservoir, a participating Project of the Colorado River Storage Project. 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 2,500 acre-feet of water for municipal and industrial use and other miscellaneous 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. When the District is providing the water described in this Agreement for use as replacement water to the Florida River to augment depletions by the Buyer or for any other purpose specifically identified in Article 2 below, water will be provided by the District pursuant to the terms and conditions of any Court decree, substitute water supply plan, and/or other document attached hereto as Exhibit A.

D. The Point of Delivery pursuant to this Agreement is at the release from Lemon Dam.

## 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 this Agreement by the District, subject to the approvals required by **Article** 16, and shall expire \_\_\_\_\_, \_\_\_\_, 20\_\_\_. This Agreement is subject to and limited by the terms of the District Contract.

1.1 Pursuant to the Act of June 21, 1963 (77 Stat. 68), renewal of this Agreement may be performed upon written request from the Buyer not less than one year prior to expiration of this Agreement. Renewal of this Agreement shall be upon such terms and conditions as may be mutually agreeable to the United States, the District, and the Buyer. Any such renewal shall be subject to applicable Federal law, State law, and Reclamation policy in existence at the time of renewal.

2. The water to be released pursuant to this Agreement is described in detail in the document attached to this Agreement as Exhibit A (Plan for Augmentation, substitute water supply plan, decree and/or other document) and shall be limited to the use(s) described in Exhibit A.

3. The amount of water purchased (Contracted Water) by the 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 \$ \_\_\_\_\_ per acre-foot annual charge associated with the District's irrigation repayment obligation pursuant to Contract No. 14-06-400-1322, until payout in the United States fiscal year 2021; plus

4.1.2 \$ \_\_\_\_\_ minimum charge for one acre-foot or less to reimburse the District for costs of administration of this Agreement and the District Contract; plus

4.1.3 \$ \_\_\_\_\_ per acre-foot for each acre-foot of water purchased by the Buyer, the Colorado River Storage Project Municipal and Industrial (M&I) water rate, as calculated annually by the Bureau of Reclamation according to the terms of the District Contract; plus

4.1.4 \$ \_\_\_\_\_ per acre-foot for annual system improvement costs and water conservation activity costs, and replacement costs, all associated with the Florida Project Works; plus

4.1.5 \$ \_\_\_\_\_ per acre-foot for annual operation and maintenance of Florida Project Works.

Total amount paid by the Buyer upon signing this Agreement: \$\_\_\_\_\_ (4.1.1 x acre-feet purchased + 4.1.2 if one acre-foot or less or 4.1.2 x acre-feet purchased if greater than one acre-foot + 4.1.3 x acre-feet purchased + 4.1.4 x acre-feet purchased + 4.1.5 x acre-feet purchased).

*Example 1: Buyer is purchasing two acre-feet in 2013.*

*Total amount paid is \$936.85 or (\$1.495 x 2, plus \$200 x 2 plus \$83.78 x 2, plus \$168.66 x 2, plus \$14.49 x 2);*

*Example 2: Buyer is purchasing one half acre-foot in 2013.*

*Total amount paid is \$334.22 or (\$1.495 x 0.5, plus \$200, plus \$83.78 x 0.5, plus \$168.66 x 0.5, plus \$14.49 x 0.5).*

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 Colorado River Storage Project M&I water rate, as calculated for such year by the Bureau of Reclamation, plus the annual irrigation repayment obligation costs for each acre-foot of water purchased, plus the annual administration costs for each acre-foot of water purchased, plus the annual 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 as calculated for such year by the District. The rates may be adjusted by the District as necessary to ensure that costs identified in Articles 4.1.2, 4.1.4 and 4.1.5 are recovered. The derivation of rates, as adjusted by the District shall be available upon request of the Buyer pursuant to Article 15.

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 pursuant to Article 4.2 and an accounting form to be completed by Buyer, itemizing monthly water use for the prior year described in Article 2 as reflected by Buyer's measuring device to Buyer's last known address, as reflected in the District's records.

4.4 In the event that the District incurs additional attorney's fees, engineering fees or other costs in connection with Buyer's Plan for Augmentation, substitute water supply plan, decree and/or any other document, including, but not limited to providing evidence in such case, Buyer will reimburse the District those costs within 30 days of invoicing. All balances remaining after 30 days will incur interest at a rate of ten percent (10%) per annum.

4.5 On or before March 31st of each year during the term of this Agreement, the Buyer shall return the completed accounting form provided by the District pursuant to Article 4.3, together with payment of the total amount due as described in the invoice.

4.6 The District shall pay all sums collected from Buyer, as described in Article 4.1.1 and 4.1.3 above, to the United States; provided, however, that all other cost reimbursements described in Article 4.1 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 Exhibit A is correct to the best of Buyer's knowledge;

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

5.3 That a Court decree, substitute water supply plan, and/or other document, described in Recital C above requires that all subject diversions must have measuring devices as required by the District or the Division Engineer installed and maintained in good working order by Buyer. Water purchased under this Agreement, as specifically identified in Article 2, 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, Colorado, at times and in amounts determined by the Division Engineer and as approved by the District.

5.4 That the Buyer cannot request scheduled releases from Lemon Dam which would damage Florida 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. The Buyer 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, if water purchased under this Agreement is for augmentation and/or exchange purposes, it 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 Agreement is intended to create a water right to Contracted Water obtained pursuant to this Agreement, 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 Agreement, or any Third Party Agreement;

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 for Buyer's purposes, including protection of Buyer 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

water year to water year.

5.10 That in the event water available for release under this Agreement 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. Buyer specifically acknowledges that water purchased under this Agreement is subject to curtailment, and that, if water is being purchased for augmentation purposes, Buyer will need to purchase additional water to ensure a full supply in times of shortage.

6. Buyer agrees to maintain permanent accounting records of all water use as described in Article 2, as reflected by Buyer's measuring device, and to submit a copy of such records to the District annually with the payment described in Article 4.2.

7. The payment by Buyer of the amounts described in Article 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 Plan for Augmentation or substitute water supply plan identified in Article 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, but is not required to, terminate this Agreement in the event of failure by the Buyer to perform Buyer's obligation to pay the sums due under this Agreement, in the event of a misrepresentation or breach of warranty by Buyer, or due to the inability of the District to provide water for augmentation or substitute water supply plans. 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, Water Division 7, Colorado. No liability shall attach to the District for such termination.

10. In the event of breach of this Agreement by Buyer, Buyer shall reimburse the District for all costs, attorney's fees and damages incurred by the District, whether or not litigation is commenced.

11. 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 approved by the United States and the Division Engineer, Water Division 7, Colorado.

12. 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.

13. The water purchased under this Agreement shall be binding upon Buyer's successors in interest.

14. No guarantee is made by Reclamation or the District as to the quality of Contracted Water released under this Agreement.

15. 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.

16. 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 record this Agreement in the records of the La Plata County, Colorado, Office of Clerk and Recorder.

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

\_\_\_\_\_  
Regional Director  
Upper Colorado Region  
Bureau of Reclamation

List of Attachments: Exhibit A – Decree, Plan for Augmentation, Substitute Water Supply Plan and/or other document