

**PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
327 N WENATCHEE AVENUE
WENATCHEE WA 98801**

REGULAR COMMISSION MEETING

DECEMBER 21, 2020

Public participation will be by phone only

Dial: 1-206-207-1700

Meeting ID: 177-378-2038#

****Please remember to mute your phone to reduce background noise****

Please contact PUD staff at 509-661-4212 to let us know if you intend to participate by phone

STUDY SESSION

10:00 AM

1. Pledge of Allegiance and Safety/HPI Minute – Tim Detering
2. Approval of the Agenda
Any item on the Consent Agenda shall be subject to transfer to the Regular Agenda upon request of any Commission member
3. CPO Winner Recognition – Steve Wright
4. Two Dam Independent Operations Update – Janet Jaspers

BUSINESS SESSION

Consent Agenda

5. Minutes of the December 7, 2020 Regular Meeting
6. Vouchers: Accounts Payable Summary Report dated December 16, 2020:
 - a. Vouchers totaling \$24,969,267.30;
 - b. Approval of Customer Deposit Returns and Conservation Incentive payments for the period December 2, 2020 through December 15, 2020 in the amount of \$55,739.46;
 - c. Approval of the net Payroll, Warrant Nos. 237316 through 237334 and Advice Nos. 705823 through 706576 for the pay period ending 12/06/2020 in the amount of \$2,056,862.51;

- d. Approval of Warrant Nos. 27120 through 27160 totaling \$9,454.51 for claim payments from the workers' compensation self-insurance fund for the period ending December 14, 2020.
7. A RESOLUTION RATIFYING FIELD WORK ORDERS NOS. 1, 2 AND 3, AUTHORIZING FINAL ACCEPTANCE OF WORK PERFORMED UNDER BID NO. 19-37 WITH TITAN ELECTRIC, INC. DBA TITAN ELECTRIC CONTRACTING INC OF WYOMING AND AUTHORIZING PAYMENT OF RETAINAGE
8. A RESOLUTION RATIFYING FIELD WORK ORDER NO. 1, AUTHORIZING FINAL ACCEPTANCE OF WORK PERFORMED UNDER BID NO. 20-06 WITH KRCI, LLC OF EAST WENATCHEE, WA AND AUTHORIZING RELEASE OF THE BOND IN LIEU OF RETAINAGE
9. A RESOLUTION AUTHORIZING FINAL ACCEPTANCE OF PERFORMANCE UNDER BID NO. 20-12 WITH HURST CONSTRUCTION LLC OF EAST WENATCHEE AND AUTHORIZING PAYMENT OF RETAINAGE

Regular Agenda

10. A RESOLUTION AUTHORIZING AMENDMENT NO. 9 TO SERVICES AGREEMENT (SA NO. 13-058) WITH THYSSENKRUPP ELEVATOR CORPORATION TO PROVIDE MAINTENANCE OF THE DISTRICT'S ELEVATOR EQUIPMENT
11. A RESOLUTION RATIFYING FIELD WORK ORDER/CHANGE ORDER NOS. 1 AND 2, AND APPROVING FIELD WORK ORDER/CHANGE ORDER NO. 3 TO CONTRACT NO. 19-47 WITH MAGNUM POWER LLC FOR UNIT PRICE ELECTRICAL DOCK CREW
12. A RESOLUTION REJECTING ALL BIDS AND DECLARING THAT NO BIDS WERE RECEIVED FOR ROCKY REACH C1 – C7 SHAFT SLEEVE REPLACEMENT (BID NO. 20-32) AND AUTHORIZING THE SHAFT SLEEVE REPLACEMENT WORK BE OBTAINED BY NEGOTIATION
13. A RESOLUTION APPROVING AN ADDENDUM TO TEMPORARY WATER RIGHT MITIGATION AGREEMENT BETWEEN THE REGIONAL WATER SYSTEM MEMBERS, CROWN COLUMBIA WATER RESOURCES, LLC
14. A RESOLUTION APPROVING A WATER RIGHT PURCHASE AND SALE AGREEMENT BETWEEN THE REGIONAL WATER SYSTEM MEMBERS AND THE CITY OF WENATCHEE
15. Manager Items

REGULAR COMMISSION MEETING AGENDA

December 21, 2020

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16. Commission Items

a. General Manager Annual Evaluation

Proposed motion: Move to set a special meeting on Tuesday, February 2, 2021 @ 1:00pm to be held virtually for the purpose of holding an executive session for the purpose of evaluating the performance of a public employee pursuant to RCW 42.30.110(1)(g). Virtual meeting information will be posted on the PUD website.

17. Follow-up on Delegation of Action Items from Previous Board Meeting

18. Delegation of Action Items

19. Additional Public Comment

Members of the public are encouraged to ask specific questions after each item presented. This agenda item is for additional comments/questions related to matters not on the agenda.

20. Matters of general business as may necessarily come before the Commission

21. Executive Session: To discuss with legal counsel agency enforcement actions, litigation, potential litigation to which the District or its board is, or is likely to become, a party, and/or legal risks, as authorized by RCW 42.30.110(1)(i), to plan the strategy or position to be taken during the course of collective bargaining, as authorized by RCW 42.30.140(4)(b), and to review the performance of a public employee, as authorized by RCW 42.30.110(1)(g)

This agenda and resolutions (if any) may be revised by the Commission as appropriate.

RESOLUTION NO. _____

A RESOLUTION RATIFYING FIELD WORK ORDERS NOS. 1, 2 AND 3, AUTHORIZING FINAL ACCEPTANCE OF WORK PERFORMED UNDER BID NO. 19-37 WITH TITAN ELECTRIC, INC. DBA TITAN ELECTRIC CONTRACTING INC OF WYOMING AND AUTHORIZING PAYMENT OF RETAINAGE

FACTUAL BACKGROUND AND REASONS FOR ACTION

The District Commission by Resolution No. 17-14215 delegated authority to the General Manager to advertise, award and execute contracts when the total contract price is \$3,000,000 or less. Authority was also granted to the General Manager and the staff to execute field work orders under certain circumstances.

On January 23, 2020, the District entered into a contract (Bid No. 19-37) with Titan Electric Inc. dba Titan Electric Contracting Inc. (Contractor) of Wyoming for Goodwin Bridge Transmission and Distribution Relocation Construction, in the amount of \$1,694,200.60. This contract was advertised for public bid and was awarded as required by RCW 54.04.070 and .080.

The work in Field Work Orders Nos. 1, 2 and 3 consists of conditions and work not anticipated or included in the original contract but within the scope of the contract. The District's staff has executed Field Work Orders Nos. 1, 2 and 3, which are on file in the offices of the District and summarized as follows:

Field Work Order No.	Amount
1. Additional costs associated with work on structures Andrew York - Anderson Canyon Structures 5/11, 5/15 and Mission Tap Structure Five	\$15,247.71
2. Underground and Overhead Distribution Design Revisions	\$50,285.22
3. Distribution and Fiber Changes, Reconciliation for Unit Price Contract Item and Utility Verification Allowance, and Correction of Additional CDF Installation Cost	\$20,359.03
Total	\$85,891.96

Field Work Orders Nos. 1, 2 and 3 result in a net increase of \$85,891.96 in the contract price for a new revised total price of \$1,780,092.56 (excluding sales tax), which the District's Engineers recommend be ratified. Resolution No. 17-14215 provides that this type of field work order shall be presented to the Commission for approval as part of the final acceptance resolution.

District staff has determined that the completion of all contract work occurred on November 30, 2020. In accordance with the terms of the contract, retainage in an amount not exceeding 5% of the contract price has been withheld from the Contractor.

The General Manager of the District concurs with staff's recommendations that the District accept the work performed by the Contractor, ratify Field Work Orders Nos. 1, 2 and 3 and authorize the payment of retainage due the Contractor, subject to the requirements of the contract and state law.

ACTION

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, as follows:

Section 1. Field Work Orders Nos. 1, 2 and 3 to Bid No. 19-37 with Titan Electric Inc. dba Titan Electric Contracting Inc. for the work specified above, which will result in a net increase in the purchase price of \$85,891.96, for a total revised contract price of \$1,780,092.56, plus Washington State sales tax, is hereby ratified.

Section 2. All the contract work required under Bid No. 19-37 was completed on November 30, 2020 and the same is hereby accepted, subject to Section 3 hereof. Payment of retainage to the Contractor in the amount determined by the District's auditor to be due is authorized to be paid to the Contractor subject to Section 3 and Section 4 hereof, and subject to the provisions and limitations of Chapter 39.12 RCW (Prevailing Wages on Public Works) and 60.28 (Liens for Labor, Materials and Taxes on Public Works).

Section 3. This resolution shall not constitute an acceptance by the District of any work performed or goods supplied pursuant to the aforementioned contract, which are not in strict compliance with the contract terms and conditions.

Section 4. After the expiration of the forty-five (45) day period for giving the District notice of lien and after receipt of the Department of Revenue's certification of the Contractor's payment of taxes, the Employment Security Department's Certificate of Payment of Contributions, Penalties and Interest on Public works Contracts and the Department of Labor & Industries' Certificate of Release of the State's Lien on Public Works contracts and the District being satisfied that taxes certified as due or to become due are discharged and the filed claims of materialmen and laborers, if any, together with a sum sufficient to pay costs of foreclosing the liens and attorney's fees, have been paid, the District's General Manager is authorized and directed to withhold from the remaining retained amounts for claims the District may have against the Contractor, and the balance shall be paid to the Contractor. In the event said taxes, claims, expenses and fees have not been paid, the General Manager is authorized and directed to withhold an amount equal to unpaid taxes and unpaid claims, together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and the balance shall be paid to the Contractor.

DATED this 21st day of December 2020.

President

ATTEST:

Vice President

Secretary

Commissioner

Commissioner

Seal

RESOLUTION NO. _____

A RESOLUTION RATIFYING FIELD WORK ORDER NO. 1, AUTHORIZING FINAL ACCEPTANCE OF WORK PERFORMED UNDER BID NO. 20-06 WITH KRCCI, LLC OF EAST WENATCHEE, WA AND AUTHORIZING RELEASE OF THE BOND IN LIEU OF RETAINAGE

FACTUAL BACKGROUND AND REASONS FOR ACTION

The District Commission by Resolution No. 17-14215 delegated authority to the General Manager to advertise, award and execute contracts when the total contract price is \$3,000,000 or less. Authority was also granted to the General Manager and the staff to execute field work orders under certain circumstances.

On June 5, 2020, the District entered into a contract (Bid No. 20-06) with KRCCI, LLC (Contractor) of East Wenatchee, WA for Confluence State Park Boat Launch Replacement, in the amount of \$291,000. This contract was advertised for public bid and was awarded as required by RCW 54.04.070 and .080.

The work in Field Work Order No. 1 consists of conditions and work not anticipated or included in the original contract but within the scope of the contract. The District's staff has executed Field Work Order No. 1, which are on file in the offices of the District and summarized as follows:

Field Work Order No.	Amount
1. Addition to Scope of Work and increase to Contract Price	\$2,893.28
Total	\$2,893.28

Field Work Order No. 1 results in a net increase in the contract price for a new revised total price of \$293,893.28 (excluding sales tax), which the District's Engineers recommend be ratified. Resolution No. 17-14215 provides that this type of field work order shall be presented to the Commission for approval as part of the final acceptance resolution.

District staff has determined that the completion of all contract work occurred on December 8, 2020. In accordance with the terms of the contract, the Contractor has provided a bond in lieu of retainage equal to 5% of the contract price.

The General Manager of the District concurs with staff's recommendations that the District accept the work performed by the Contractor, ratify Field Work Order No. 1 and authorize the release of the related bond in lieu of retainage, subject to the requirements of the contract and state law.

ACTION

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, as follows:

Section 1. Field Work Order No. 1 to Bid No. 20-06 with KRCCI, LLC for the work specified above, which will result in a net increase in the purchase price of \$291,000 by \$2,893.28 for a total revised contract price of \$293,893.28, plus Washington State sales tax, is hereby ratified.

Section 2. All the contract work required under Bid No. 20-06 was completed on December 8, 2020 and the same is hereby accepted, subject to Section 3 hereof. Release of the Contractor's bond in lieu of retainage is authorized subject to Section 3 and Section 4 hereof, and subject to the provisions and limitations of Chapter 39.12 RCW (Prevailing Wages on Public Works) and 60.28 (Liens for Labor, Materials and Taxes on Public Works).

Section 3. This resolution shall not constitute an acceptance by the District of any work performed or goods supplied pursuant to the aforementioned contract, which are not in strict compliance with the contract terms and conditions.

Section 4. After the expiration of the forty-five (45) day period for giving the District notice of lien and after receipt of the Department of Revenue's certification of the Contractor's payment of taxes, the Employment Security Department's Certificate of Payment of Contributions, Penalties and Interest on Public Works Contracts, and the Department of Labor & Industries' Certificate of Release of the State's Lien on Public Works Contracts and the District being satisfied that taxes certified as due or to become due are discharged and the filed claims of materialmen and laborers, if any, together with a sum sufficient to pay costs of foreclosing the liens and attorney's fees, have been paid, the District's General Manager is authorized and directed to release the bond in lieu of retainage. In the event said taxes, claims, expenses and fees have not been paid, the General Manager is authorized and directed to file a claim against the bond in lieu of retainage in an amount equal to unpaid taxes and unpaid claims, together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and following payment of such claim, release the bond in lieu of retainage.

DATED this 21st day of December 2020.

President

ATTEST:

Vice President

Secretary

Commissioner

Commissioner

Seal

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING FINAL ACCEPTANCE OF PERFORMANCE UNDER BID NO. 20-12 WITH HURST CONSTRUCTION LLC OF EAST WENATCHEE AND AUTHORIZING PAYMENT OF RETAINAGE

FACTUAL BACKGROUND AND REASONS FOR ACTION

The District Commission by Resolution No. 17-14215 delegated authority to the General Manager to advertise, award and execute contracts when the total contract price is \$3,000,000 or less.

On September 10, 2020, the District entered into a contract (Bid No. 20-12) with Hurst Construction LLC (Contractor) of East Wenatchee for Rock Island Reservoir 45CH235 - Bank Stabilization, in the amount of \$440,000.00. This contract was advertised for public bid and was awarded as required by RCW 54.04.070 and .080.

District staff has determined that the work required under the contract has been performed in accordance with the terms of the contract and recommends that the District accept the work.

District staff has determined that the completion of all contract work occurred on December 10, 2020. In accordance with the terms of the contract, retainage in an amount not exceeding 5% of the contract price has been withheld from the Contractor.

The General Manager of the District concurs with staff's recommendations that the District accept the work performed by the Contractor and recommends the District authorize the payment of retainage due the Contractor, subject to the requirements of the contract and state law.

ACTION

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, as follows:

Section 1. All the contract work required under Bid No. 20-12 was completed on December 10, 2020, and the same is hereby accepted, subject to Section 2 hereof. Payment of retainage to the Contractor in the amount determined by the District's auditor to be due is authorized to be paid to the Contractor subject to Section 2 and Section 3 hereof, and subject to the provisions and limitations of Chapter 39.12 RCW (Prevailing Wages on Public Works) and 60.28 (Liens for Labor, Materials and Taxes on Public Works).

Section 2. This resolution shall not constitute an acceptance by the District of any work performed or goods supplied pursuant to the aforementioned contract, which are not in strict compliance with the contract terms and conditions.

Section 3. After the expiration of the forty-five (45) day period for giving the District notice of lien and after receipt of the Department of Revenue's certification of the Contractor's payment of taxes, the Employment Security Department's Certificate of Payment of Contributions, Penalties and Interest on Public Works Contracts, and the Department of Labor & Industries' Certificate of Release of the State's Lien on Public Works Contracts and the District being satisfied that taxes certified as due or to become due are discharged and the filed claims of materialmen and laborers, if any, together with a sum sufficient to pay costs of foreclosing the liens and attorney's fees, have been paid, the District's General Manager is authorized and directed to withhold from the remaining retained amounts for claims the District may have against the Contractor, and the balance shall be paid to the Contractor. In the event said taxes, claims, expenses and fees have not been paid, the General Manager is authorized and directed to withhold an amount equal to unpaid taxes and unpaid claims, together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and the balance shall be paid to the Contractor.

DATED this 21st day of December 2020.

President

ATTEST:

Vice President

Secretary

Commissioner

Commissioner

Seal

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING AMENDMENT NO. 9
TO SERVICES AGREEMENT (SA NO. 13-058) WITH
THYSSENKRUPP ELEVATOR CORPORATION TO
PROVIDE MAINTENANCE OF THE DISTRICT'S
ELEVATOR EQUIPMENT

FACTUAL BACKGROUND AND REASONS FOR ACTION

The District entered into a Services Agreement (SA No. 13-058) on January 19, 2013 with ThyssenKrupp Elevator Corporation to provide maintenance only of the District's elevator equipment, in an amount not to exceed \$56,831.87. Amendments 1 through 8 added \$432,035.94 for a not-to-exceed dollar amount of \$488,867.81 and extended the Service Agreement through December 31, 2020.

District staff has identified the need for continuing services for maintaining the District's elevator equipment.

District staff recommends that it is in the best interest of the District to amend Services Agreement No. 13-058 with ThyssenKrupp Elevator Corporation to extend for one additional year in the amount of \$79,402.68, for a total revised contract price not to exceed \$568,270.49 through 2021.

The General Manager has reviewed District staff's recommendation and concurs in the same.

ACTION

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY DISTRICT
NO. 1 OF CHELAN COUNTY, WASHINGTON as follows:

Section 1. The General Manager is hereby authorized to execute an Amendment to Services Agreement (SA No. 13-058) with ThyssenKrupp Elevator Corporation to provide the additional services identified above. The revised contract price will not exceed \$568,270.49 without prior Commission approval. A copy of the Amendment is on file in the offices of the District.

DATED this 21st day of December 2020.

President

ATTEST:

Vice President

Secretary

Commissioner

Commissioner

RESOLUTION NO. _____

A RESOLUTION RATIFYING FIELD WORK ORDER/CHANGE ORDER NOS. 1 AND 2, AND APPROVING FIELD WORK ORDER/CHANGE ORDER NO. 3 TO CONTRACT NO. 19-47 WITH MAGNUM POWER LLC FOR UNIT PRICE ELECTRICAL DOCK CREW

FACTUAL BACKGROUND AND REASONS FOR ACTION

The District Commission by Resolution No. 17-14215 delegated authority to the General Manager to advertise, award and execute contracts when the total contract price is \$3,000,000 or less. Authority was also granted to the General Manager and the staff to execute field work orders under certain circumstances.

On July 18, 2019 the District entered into a contract (Bid No. 19-47) with Magnum Power LLC of Castle Rock, Washington for Unit Price Electrical Dock Crew in the amount of \$593,853.18. This contract was advertised for public bid and was awarded as required by RCW 54.04.070 and .080. The bid by the Contractor was the low bid and met the District's specifications.

The work in Field Work Order Nos. 1 and 2 were initiated to complete additional work not originally anticipated at the time of bidding but are within scope of this contract. District staff determined that District crews were not available to complete this additional work. Work included public power benefit fiber expansion make ready work in Manson along Totem Road and several transmission and distribution asset replacement jobs. A complete list of these jobs are on file. District's staff has executed Field Work Order/Change Order Nos. 1 and 2 to complete work through 2020, which are on file in the offices of the District and summarized as follows:

FWO/CO No.	Description	Amount
1	Increase the not-to-exceed Contract Price (Ratify)	\$250,000
2	Increase the not-to-exceed Contract Price (Ratify)	\$245,000
3	Increase the not-to-exceed Contract Price (Approve)	\$2,500,000
Total		\$2,995,000

Field Work Order Nos. 1 and 2 result in a net increase in the Contract Price of \$495,000 for a revised not to exceed contract price of \$1,088,853.18 (excluding sales tax), which District staff recommend be ratified.

Additionally, District Staff desires to execute FWO/CO No. 3 to increase the not to exceed amount by \$2,500,000 for a revised not to exceed Contract Price of \$3,588,853.18 to cover anticipated work through July of 2022. Work includes, but is not limited to, public power benefit fiber expansion make ready work in four separate areas and additional distribution and transmission maintenance.

The General Manager of the District concurs with staff's recommendations that Field Work Order/Change Order Nos. 1 and 2 be ratified, and that Field Work Order/Change Order No. 3 be approved.

ACTION

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, as follows:

Section 1. The Commission finds that Field Work Order/Change Order Nos. 1 and 2 were properly executed pursuant to the authority delegated by Resolution No. 17-14215 and said Field Work Order/Change Orders are hereby formally acknowledged and ratified.

Section 2. The General Manager of the District is hereby authorized to execute Field Work Order/Change Order No. 3. A copy of the Field Work Order/Change Order shall be on file in the offices of the District.

DATED this 21st day of December 2020.

President

ATTEST:

Vice President

Secretary

Commissioner

Commissioner

Seal

RESOLUTION NO. _____

A RESOLUTION REJECTING ALL BIDS AND DECLARING THAT NO BIDS WERE RECEIVED FOR ROCKY REACH C1 – C7 SHAFT SLEEVE REPLACEMENT (BID NO. 20-32) AND AUTHORIZING THE SHAFT SLEEVE REPLACEMENT WORK BE OBTAINED BY NEGOTIATION

FACTUAL BACKGROUND AND REASONS FOR ACTION

The Commission, by Resolution No. 17-14215, delegated authority to the General Manager to advertise, award and execute contracts when the total contract price is \$3,000,000 or less.

District staff prepared bidding documents for Rocky Reach C1 – C7 Shaft Sleeve Replacement (Bid No. 20-32). During the C1 through C7 Turbine Hub Refurbishment Program execution staff discovered that the original Turbine Shaft Sleeves on C2 and C7 showed wear from roughly 60 years of service on the units. For the District to ensure another 50 years of service from the turbine sleeves, new replacements may be required if indications of excessive wear appear on subsequent units C3, C4, C5 or C6 unit refurbishments.

Sealed proposals were invited and published in accordance with RCW 54.04.070 and said bids were opened on December 4, 2020 at 3:15 pm Pacific Time in the offices of the District.

Three bids were received pursuant to that invitation. The bid proposals either included material changes to the terms and conditions of the bid or did not meet all statutory requirements.

District staff is of the opinion that the bids are non-responsive and should be rejected. Resolution No. 17-14215 requires that the rejection of bids must come before the Commission for action when staff is recommending an action other than rebidding.

Pursuant to RCW 54.04.080, the District may procure the work on the open market and negotiate a contract rather than re-advertising if no bids are received. District staff recommends that, due to time constraints and project requirements, the Rocky Reach C1 – C7 Shaft Sleeve Replacement be procured by negotiation, rather than re-advertising for bids.

The General Manager of the District has reviewed District staff's recommendation and concurs in the same.

ACTION

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY as follows:

Section 1. The bids received to furnish Rocky Reach C1 – C7 Shaft Sleeve Replacement (Bid No. 20-32) are rejected as not responsive. District staff is authorized to obtain Rocky Reach C1 – C7 Shaft Sleeve Replacement by negotiation and the General Manager (or his /her designee) is authorized to execute a contract for the same with terms and conditions acceptable to the General Manager.

DATED this 21st day of December 2020.

President

ATTEST:

Vice President

Secretary

Commissioner

Commissioner

Seal

RESOLUTION NO. _____

A RESOLUTION APPROVING AN ADDENDUM TO
TEMPORARY WATER RIGHT MITIGATION
AGREEMENT BETWEEN THE REGIONAL WATER
SYSTEM MEMBERS, CROWN COLUMBIA WATER
RESOURCES, LLC**FACTUAL BACKGROUND AND REASONS FOR ACTION**

The District entered into a Water Contract – Regional Water System (“Contract”) with the City of Wenatchee and the East Wenatchee Water District to collectively form the Regional Water System (“Regional”) effective January 1, 1999. The Contract was subsequently amended pursuant to a First Amendment to Water Contract – Regional Water System on June 23, 2008 and a Second Amendment to Water Contract – Regional Water System on August 17, 2020.

In 2012, Regional purchased additional water rights from the Pioneer Water Users Association (“Pioneer”). In total, 6,186.71 acre-feet (1,769.63 acre-feet consumptive use) were purchased to provide continuous municipal supply.

Because Regional did not have a present need for the additional water rights purchased for municipal supply, the Regional members agreed to place the water rights into a temporary Trust Water Right for ten years (dating from August 27, 2012) to benefit instream flows.

A private company, Crown Columbia Water Resources, LLC (“Crown”), approached the Regional members requesting to use its water rights acquired from Pioneer on a temporary basis as mitigation for the issuance of new, temporary water rights by the Department of Ecology (“Ecology”).

Pursuant to Crown’s request, the Regional members entered into a Temporary Water Right Mitigation Agreement (“Temporary Agreement”) on May 17, 2016. Crown wishes to modify the Temporary Agreement pursuant to the proposed Addendum to Temporary Water Right Mitigation Agreement (“Addendum”) attached hereto as Exhibit “1” and incorporated herein.

Along with other provisions, the Addendum provides:

- Regional shall extend the term of the temporary Trust Water Right through December 31, 2032.
- Crown asserts that no party has sought use of the Trust Water Right made available under the Temporary Agreement prior to this Addendum.
- Crown has entered a Mitigation Loan Agreement with Granite Farms, LLC (“Granite Farms”), effective March 20, 2020, which is attached as Exhibit “A”

to the Addendum. Crown desires to use the Trust Water Right to meet a portion of the water use demands under the Mitigation Loan Agreement.

- Crown has also entered a Trust Water Right Agreement with Ecology, dated April 18, 2016, which shall also be utilized to provide additional irrigation water to Granite Farms.
- The request by Crown would utilize the entire consumptive use portion of the Trust Water Right, as well as 312 acre-feet non-consumptive use (based on an 85% consumptive use anticipated by the agricultural uses undertaken by Granite Farms), totaling 2,082 acre-feet.
- Crown shall reimburse Regional for all fees and costs incurred relating to the Addendum, including attorneys' fees and the processing of any applications through Ecology.
- All other terms and conditions of the Temporary Agreement remain intact.

The Contract established a Regional Water System Coordinating Committee (“Coordinating Committee”) comprised of elected representatives and a staff person from each Regional member. By several meetings held in March 2020 and April 2020, the Coordinating Committee staff reviewed the details of the Addendum and agreed to recommend the approval of the Addendum to their respective governing bodies. At a Commission Meeting on September 21, 2020, the District Board of Commissioners was informed of the Addendum and agreed with the recommendation to move forward.

Regional members have been represented in Addendum negotiations by Peter Fraley of the law firm Ogden Murphy Wallace, PLLC. District staff reviewed the Addendum and recommend that it is in the best interest of the District to approve the Addendum.

The General Manager has reviewed the District staff's recommendation and concurs in the same.

ACTION

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, as follows:

Section 1. The Commission hereby approves the Addendum to Temporary Water Right Mitigation Agreement and authorizes the General Manager, as a member of the Regional Water System, to execute such Addendum.

Section 2. The Commission hereby delegates to the General Manager, or his designee, the authority to execute any and all necessary and customary documents to take any and all necessary actions to effectuate the Addendum to Temporary Water Right Mitigation Agreement.

Dated this 21st day of December, 2020.

President

ATTEST:

Vice President

Secretary

Commissioner
Seal

Commissioner

ADDENDUM TO TEMPORARY WATER RIGHT MITIGATION AGREEMENT

THIS ADDENDUM TO TEMPORARY WATER RIGHT MITIGATION AGREEMENT (“Addendum”) is entered into this date by and between the Regional Water System (formed by Interlocal Agreement among the Chelan County Public Utility District No. 1, the East Wenatchee Water District, and the City of Wenatchee), a municipal water purveyor (hereafter, “Regional”), and Crown Columbia Water Resources, LLC, a Delaware limited liability company (hereafter “Crown”), sometimes collectively referred to as the “Parties” or individually a “Party”.

RECITALS

- A. The Parties entered a Temporary Water Right Mitigation Agreement on May 17, 2016 (the “Temporary Agreement”).
- B. Pursuant to the Temporary Agreement, Crown originally published a Notice of Temporary Trust Water Availability in 2016. Crown also published a Notice of Temporary Trust Water Right Availability in April of 2020 requesting interested parties to contact Crown on or before June 21, 2020. Crown did not annually publish the Notice during the years 2017-2019 as required by the Temporary Agreement.
- C. Crown confirms that no party has sought use of the trust water right made available under the Temporary Agreement prior to this Addendum and that no responses were received regarding the public notices in 2016 and 2020.
- D. Crown has entered a Mitigation Loan Agreement with Granite Farms, LLC (“Granite Farms”), effective March 20, 2020, which is attached hereto as Exhibit “A” (the “Mitigation Agreement”). Crown desires to use the trust water right under the Temporary Agreement (the “Trust Right”) to meet a portion of the water use demands under the Mitigation Agreement.
- E. Crown has also entered a Trust Water Right Agreement with Ecology, dated April 18, 2016 (“Trust Agreement”), which will also be utilized to provide additional irrigation water to Granite Farms.
- F. The request by Crown would utilize the entire consumptive use portion of the Trust Right.
- G. Parties desire to enter this Addendum to reflect the use of the Trust Right by Granite Farms and the passage of time.

AGREEMENT

Now therefore, in light of the above Recitals, which are incorporated herein by this reference as part of the agreement of the Parties, and in consideration of the mutual covenants set out below, the Parties agree as follows:

1. Definitions. The definitions and defined terms in the Temporary Agreement are incorporated herein by this reference.

2. Trust Water Right. Crown desires to use 2,082 acre feet of the Trust Right for purposes of mitigating a new water right to be used by Granite Farms (referred to as a water budget neutral [WBN] water right, where the Trust Right provides the mitigation for the WBN water right). The 2,082 acre feet sought by Crown includes 1,770 acre feet designated as consumptive use, and 312 acre feet as non-consumptive (based on an 85% consumptive use anticipated by the agricultural uses undertaken by Granite Farms). The balance of the Trust Right, or approximately 4,104.7 acre feet, will be primarily available for non-consumptive uses only and will not be used by Granite Farms and remains in trust and available for mitigation under the Temporary Agreement.

2.1 Crown entered the Mitigation Agreement with Granite Farms prior to presenting the transaction to Regional as required by Section 5(f) of the Temporary Agreement. Subject to the terms and conditions of this Addendum, the use of 2,082 acre feet of the Trust Right under the terms and conditions of the Temporary Agreement and this Addendum for the agricultural purposes sought by Granite Farms is hereby approved by Regional.

2.2 Notwithstanding the approval of the use of the Trust Right as set forth in Section 2.1, above, the terms and conditions of the Temporary Agreement and this Addendum shall apply to all matters as between Crown and Regional. As a condition of this Addendum, Granite Farms must sign and acknowledge the terms and conditions of the Temporary Agreement and this Addendum as controlling the temporary use of the Trust Right (the form of said acknowledgment shall be prepared and provided by Regional). In the event of a conflict between the Mitigation Agreement and the Temporary Agreement and this Addendum, the terms and conditions of the Temporary Agreement and this Addendum shall control. The Parties agree that while Regional has approved the use of the Trust Right as outlined herein, Regional is not a party to or bound by the terms of the Mitigation Agreement.

2.3 The Parties agree that the Trust Right is not part of or subject to the Trust Agreement and that nothing in the Trust Agreement shall apply to or govern the treatment of the Trust Right. The Trust Right shall not be placed in the water bank created pursuant to the Trust Agreement.

3. Extension of Trust Water Right Term. Unless Regional receives the Seasonal Change Notice described in Section 4.2 below, Regional will undertake good faith efforts to extend the term of the temporary trust water donation associated with the Trust Right through December 31, 2032. If Regional is successful in doing so, then this Addendum shall be binding on

the Parties effective as of the date the extension is approved by Ecology and the term of the Temporary Agreement shall end on December 31, 2032, subject to the rights set forth in Section 2(a) and (b) of the Temporary Agreement. If Regional is unable to extend the term of the temporary trust water donation on or before January 31, 2021, then this Addendum shall terminate and be of no further force or effect between the Parties and all applications pending with Ecology pursuant to this Addendum shall be withdrawn, without liability or recourse by one Party against the other, except for the cost reimbursement set forth in Section 6, below. Regional is under no obligation to further extend the temporary donation of the Trust Right or to extend the term of the Temporary Agreement beyond December 31, 2032 and Section 2(d) of the Temporary Agreement is hereby stricken effective as of the date this Addendum becomes binding on the Parties.

4. Application(s) with Ecology.

4.1 WBN Application. Crown will immediately undertake the efforts and process the application necessary with the Department of Ecology to allow for the issuance of a WBN water right for Granite Farms in an amount no more than 2,082 acre feet, using the Trust Right as mitigation. The WBN shall be mitigated by the Trust Right to the same extent approved by Ecology, not to exceed 2,082 acre feet without the written approval of Regional. The WBN water right application shall make it clear that the mitigation is temporary, expiring on December 31, 2032, or sooner pursuant to the terms of the Temporary Agreement or this Addendum, and spell out all of the conditions associated with the use of the Trust Right set forth in the Temporary Agreement and this Addendum. Crown and Granite Farms shall be solely responsible for compliance with the terms and conditions of the WBN water right. In the event the WBN water right is not approved by December 31, 2021, then this Addendum shall terminate unless extended in writing, signed by the Parties.

4.2 Seasonal Change Application. Crown may pursue a seasonal change application for the 2021 calendar year only by giving Regional written notice of this election on or before December 31, 2020 (the "Seasonal Change Notice"). In the event the Seasonal Change Notice is timely provided, the seasonal change application to be prepared by Crown shall (a) withdraw the Trust Right from trust with Ecology for use by Granite Ridge for the calendar year 2021 only, and (b) redeposit the Trust Right into trust with Ecology effective no later than December 31, 2021, with a term through December 31, 2032, for purposes of the WBN water right application to be pursued by Crown pursuant to Section 4.1, above for the period January 1, 2022 through December 31, 2032. In the event the Seasonal Change Notice is provided, then Regional shall not be obligated to extend the term of the deposit into trust of the Trust Right as set forth in Section 3, above (the seasonal change application will address the extension of the deposit into trust through December 31, 2032).

4.3 Coordination and Approval. All documents, information and communications to be submitted to Ecology by Crown or Granite Farms shall be copied to Regional. Regional must approve all applications and all supporting documents associated with the Trust Right to be prepared by Crown prior to the submittal of any application or supporting documents to Ecology (this includes both the seasonal change application, if pursued, and the WBN water right application). Regional

must approve the Report of Examination to be issued by Ecology associated with the WBN water right to Granite Farms and the decision by Ecology with regard to the seasonal change application, if pursued by Crown. In the event Regional's approval of the any application, the Report of Examination, or other decision by Ecology, does not occur, then this Addendum shall terminate, without any liability or recourse by either Party (however, Crown shall remain obligated to reimburse Regional for costs Regional has incurred through the date of termination).

4.4 Authority; Signatures. In addition to the acknowledgment to be signed by Granite Farms as set forth in Section 2.2, above, Granite Farms shall sign all applications (and all related documents, as necessary) submitted to Ecology. Granite Farms is the lessee of the property on which the WBN water right will be used. The lessor (owner) is the Port of Walla Walla (the "Port"). The Port shall also sign all applications (and all related documents, as necessary) submitted to Ecology. In addition, the Port shall take action at a regularly scheduled public meeting to approve the use of the Trust Right as mitigation for a WBN water right (and the seasonal change application, if pursued by Crown) on the property leased by Granite Farms and to authorize the signatures by the Port on any document submitted to Ecology anticipated by this Addendum.

5. Annual Fee and Payment Terms. Attached hereto as Exhibit "B" and incorporated herein by this reference is a calculation of Crown's annual payments to Regional consistent with the Temporary Agreement (based on 2,082 acre feet; calculation will be updated based on the number of acre feet actually approved for the purposes set forth herein). The calculation includes the additional "50-50" allocation set forth in Section 3(a) of the Temporary Agreement, and the anticipated Leasehold Excise tax that must be paid along with each annual payment. The annual fee, until the Temporary Agreement is terminated, shall be paid by Crown to Regional pursuant to the attached schedule on or before March 1st of each year, commencing March 1, 2021 if the WBN water right or the Seasonal Change Application is processed to allow for use by Granite Farms at any time during the calendar year 2021. As to the portion of the Trust Right described in this Addendum (2,082 acre feet), the payment date set forth in this Paragraph 5 shall govern when the annual payment is due. In addition (and in order to synchronize the payment dates in the Mitigation Agreement), the annual adjustment set forth in Section 3 of the Temporary Agreement shall occur on March 1st of each year commencing March 1, 2022 and continuing each year thereafter. For purposes of any changes to the annual fee described in the Temporary Agreement, the annual amount paid by Crown is set forth in the schedule set forth on Exhibit B and shall govern the period through December 31, 2032, subject to early termination of the Temporary Agreement or as otherwise set forth in this Addendum.

5.1 In the event Granite Farms fails to pay the annual fee to Crown as set forth in the Mitigation Agreement on or before February 15th of each year (said payment is for the following one-year period), then Crown shall not be obligated to pay Regional on or before March 1st as set forth in this Addendum. In this event, this Addendum, the WBN water right, and the seasonal change application (if applicable) shall immediately terminate and be of no further force or effect without further action by either Party, provided, however that Crown shall cooperate with Regional to terminate the WBN water right. In the event of termination, there shall be no liability or recourse

by either Party against the other (however, Crown shall remain obligated to reimburse Regional for costs Regional has incurred through the date of termination).

6. Cost Recovery. As a condition of this Addendum, Crown shall reimburse Regional for all fees and costs (including, but not limited to, attorney fees) incurred related to or arising out of this Addendum (including the negotiating and drafting of this Addendum) and the review and processing of any applications with Ecology. Crown shall be solely responsible for all fees and costs incurred through Ecology and to process any document arising from or related to this Addendum and the Temporary Agreement. Any reimbursement owed by Crown shall be paid within ten (10) days of Crown's receipt of a written invoice from Regional as set forth in Section 3 of the Temporary Agreement. The reimbursement set forth herein is due whether or not the Trust Right is extended through 2032, the Seasonal Change Application is pursued or granted, or the WBN water right is granted.

7. Security Deposit. The Parties affirm that Crown has previously deposited a \$20,000 security deposit with Regional for the full and faithful performance of the Temporary Agreement and agree that the security deposit shall also apply to the full and faithful performance by Crown of the terms of this Addendum. In addition, any payment from Crown not paid when due shall be governed by the Temporary Agreement, including but not limited to Section 3(e) of the Temporary Agreement.

8. Indemnity; Insurance. As a condition of this Addendum, Crown shall provide a certificate of insurance confirming the obligations set forth in Section 10 of the Temporary Agreement. Crown hereby affirms that the indemnity set forth in Section 10 of the Temporary Agreement applies to any actions taken by Crown or others with regard to the Trust Right arising out of or related to this Addendum. Crown hereby indemnifies and holds Regional harmless from and against any and all losses, costs or damages incurred by Regional arising out of or associated with this Addendum, including, but not limited to, any claim asserted by Granite Farms, a determination by Ecology, now or in the future, that any action taken pursuant to this Addendum resulted in a diminution or alteration of the full quantities and municipal uses authorized under the Trust Right, failure to comply with the terms and conditions of the WBN water right, and the like.

Remainder of page left blank intentionally.

9. Entire Agreement. Except as modified by this Addendum, the Parties hereby affirm and ratify all terms and conditions of the Temporary Agreement. In the event of a conflict between the terms of the Temporary Agreement and this Addendum, the terms and conditions associated with this Addendum shall control. Nothing herein or in any prior addendum shall be construed or interpreted as creating a right to further extend the term of the Temporary Agreement, and any such further extension shall be committed to Regional’s sole discretion. This is an Agreement between Regional and Crown. It is expressly understood that nothing herein shall make Granite Farms a third party beneficiary arising under the Temporary Agreement or this Addendum.

REGIONAL WATER SYSTEM:

CROWN:

CITY OF WENATCHEE

CROWN COLUMBIA WATER RESOURCES,
LLC

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

EAST WENATCHEE WATER DISTRICT

By: _____
 Name: _____
 Title: _____
 Date: _____

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

By: _____
 Name: _____
 Title: _____
 Date: _____

Pursuant to Section 2.2, above, Granite Farms hereby acknowledges and agrees that the Trust Right, as defined herein, is subject to the terms and conditions of the Temporary Agreement and this Addendum.

GRANITE FARMS, LLC

By: _____
 Name: _____
 Title: _____
 Date: _____

EXHIBIT "A"
Mitigation Loan Agreement

Mitigation Loan Agreement

Recitals: Crown Columbia Water Resources, L.L.C. (hereinafter "Crown") has entered into Mitigation Agreements with multiple parties that obligate those parties to place their water rights into the State Water Right Trust Program to create mitigation intended to offset the issuance of new water rights. Granite Farms, L.L.C, hereinafter referred to as "Borrower" desires to contract with Crown to provide mitigation to support a temporary water right that will benefit Borrower's property. This Mitigation Loan Agreement (the "Agreement") does not in any way obligate any other party or any water right that has been provided to Crown to create said mitigation value. It is expected that Crown may change its reliance on other parties and water rights mitigation agreements as it deems necessary in its sole discretion. Only Crown is obligated by this contract to provide and sustain the mitigation values as set forth herein.

THIS AGREEMENT is made this _____ day of March 2020, between Crown Columbia Water Resources, L.L.C., herein referred to as "Crown", and Granite Farms, L.L.C., herein referred to as "Borrower":

1. Mitigation. Crown hereby agrees to provide the amounts specified in Exhibit 1, together with sufficient instantaneous demand quantities (collectively the "Loan"), to support the issuance of a temporary water right benefitting Borrower's property as described in Exhibit 1. All deliveries subject to Crown's contingencies in Exhibit 3.
2. Term. The term of this Agreement shall be for the 2020 through 2032 irrigation seasons, subject to Breach & Forfeiture provisions in Section 10.
3. Payment.
 - a. Borrower shall pay to Crown the amounts specified in Exhibit 2 under the heading "Annual Loan Payment Due" by February 15th of each year, or the following business day should it fall on a weekend or holiday. Notwithstanding, 2020's payment shall be paid upon execution of this Agreement.
 - b. Borrower shall pay, by separate check or ACH, to Crown the amounts specified in Exhibit 2 under the heading "Origination Fee Due (1.0%)" by January 1st of each year, or the following business day should it fall on a weekend or holiday . Notwithstanding, 2020's

payment shall be paid at the same time as 2020's Annual Loan Payment.

- c. Upon successful completion of this permitting effort Borrower shall be solely responsible for abiding by the terms of said temporary water right permit.
4. Loan Cost Advance. Prior to December 31, 2020, Borrower shall reimburse Crown for the cost of permitting up to a maximum of \$10,000.
5. Security Deposit. Prior to December 31, 2020, Borrower shall pay to Crown \$48,750 as security for the faithful performance by Borrower to the terms and conditions of this agreement to be held by Crown in a non-segregated account or to be applied as security with parties that provide the water rights upon which Borrower's permitting relies. Crown may apply such security, or such part thereof as may be necessary toward the payment of any and all sums due under this agreement or toward any expense or damages incurred by Crown on account of Borrower's breach of any of the obligations contained in the agreement, all without notice of demand to Borrower. Borrower shall immediately restore any amounts applied by Crown in this manner.
The security deposit shall not be construed as prepayment of any fee or amount due under this Agreement. Crown shall place the security deposit in a general account, may co-mingle the security deposit with other funds, and all interest shall accrue to the benefit of Crown. Upon the full and faithful performance of this Agreement or upon early termination of this Agreement as set forth herein, the security deposit shall be returned to Borrower in its entirety; provided Borrower is not otherwise in default and all sums owed to Crown are current at the time of early termination.
6. Notice to Title. [Intentionally Deleted]
7. Liens - Subordination. Borrower shall not suffer or create any liens of any kind against Crown or Crown's property of any kind. The Agreement is subject to and subordinate at all times to liens placed upon the water rights by Crown.
8. Assignment – subletting – amendment to permitting instrument. Neither party shall have any right to sell, assign or transfer this Agreement, or the permitting instrument(s) issued for Borrower's project, or any interest

therein. However, Crown may, in its sole discretion, authorize such a transaction upon payment of an additional fee. This Agreement shall not be assignable by operation of law. Crown shall own any permitting and water rights created by the permitting efforts described herein. Borrower shall license the use of such water consistent with the terms of the permitting instruments and this Agreement. Notwithstanding Crown's ownership of any permitting instruments and water rights, Crown shall have no authority to amend the permitting instruments in any manner whatsoever, except as is consistent with continuing to provide the water use authority to Borrower as contemplated herein.

In the event that Borrower wishes to amend or replace the diversionary permitting authority with an amended or different permit, Borrower and Crown agree to cooperate to accommodate such needs that Borrower may have. Borrower shall bear the costs of acquiring new or amended permitting authority and may use its own professionals in doing so, subject to consent from Crown prior to filings with governmental agencies being made, such consent not to be withheld without good reason. Each party shall bear its own costs in this regard. Examples of such changes or amendments could be, but are not limited to, a change in permitting area of use or added diversion points. It is understood that any amended or new diversionary permitting instrument would continue to be constrained by the same mitigation quantities as provided for herein, and under the same schedule and amount of payment and in support of the same original project.

9. Indemnity. Crown shall not be liable in any way or to any extent or at all, for or on account of any injury or damage to any property or person at any time resulting from the Borrower's use or nonuse of the mitigation or permitted water right, and Borrower shall save Crown harmless from any liability by reason of anything done or permitted to be done or suffered to be done, or omitted to be done relative to said mitigation or permitted water right whether such liability arises by contract or tort. Borrower shall be responsible for payment of fines for safety violations that occur within its own operations. Borrower shall indemnify and save harmless Crown from any claim of any person for injuries to life, person or property by reason of anything done or permitted to be done or omitted to be done by Borrower relating to the mitigation or permitted water right. In the event that government or third-party action prevents water from being utilized as contemplated by this agreement Crown shall not be liable for any losses

resulting from such governmental or third-party action and Borrower shall hold Crown harmless from any parties' claims against Crown resulting from loss of water from this agreement as the result of governmental or third-party actions. Borrower, at Borrower's expense, shall name Crown as its additional insured with all existing general liability and property damage insurance provider(s) and maintain such coverage throughout the term of this Agreement.

10. Breach and Forfeiture. It is agreed that the full and prompt performance of the terms and conditions of this Agreement is of the essence and should either party be in default of any of the same and such default has continued for fifteen (15) days after written notice by the notifying party setting forth the particular default claimed, this Agreement shall, at the option of the notifying party, be forfeited. In such event it is expressly agreed that if Crown is the notifying party, Crown may enforce such forfeiture by communicating its withdrawal of mitigation for the Borrower to any relevant regulatory authority. If Borrower's default arises from nonpayment of amounts contemplated herein the Borrower shall not be entitled to notice of such default and Crown may enforce its remedies immediately. Crown's remedies include application of Borrower's Security Deposit, withdrawal of mitigation, suit of Borrower for unpaid obligations, and/or Crown's ability to cure the default itself and charge interest to Borrower as described below.

As an additional and not alternative remedy, at Crown's option, should Borrower be in default hereunder other than a default in the payment, Crown may cure or correct the same and the costs of such action by Crown shall immediately be due and payable from Borrower, together with interest on said sum at the rate of twelve percent (12%) per annum, and the non-payment of said sum by Borrower shall be adequate grounds for Crown to invoke the other remedies as provided for in this paragraph.

Except as stated below, nothing contained herein shall release or diminish Crown's obligation to fully mitigate for the permitting instrument once it is issued for Borrower's diversionary uses, for the full term of this Agreement save such amount as Borrower voluntarily releases in writing from this obligation, at Borrower's sole discretion.

- a. If Crown's default arises from a failure to provide mitigation acceptable to the Department of Ecology, at any time during the

issuance of the permitting authority for Borrower's project, then Crown shall be entitled to notice of such default.

- b. However, if any third party that has an agreement with Crown, upon which Crown has relied for the mitigation for this agreement, withdraws said mitigation such that it no longer supports this agreement then Crown shall not be liable for any reduction in Borrower's permit authority that may result from such third-party action.

Borrower hereby accepts the risk of such partial termination subject to the following:

- i. For approximately 2,080 acre feet, Crown shall provide a minimum advance termination notice of two (2) calendar years from the date Crown provides notice to Borrower of Depositor termination.
- ii. For approximately 1,220 acre feet, Crown shall provide a minimum advance termination notice of one (1) calendar year from the date Crown provides notice to Borrower of Depositor termination.
- iii. Crown shall use reasonable best efforts to replace such water from other depositors then-available within the bank. If Crown fails to provide substitute water rights to replace the partial termination, Annual Loan Payments and Origination Fees (per Exhibit 2) would be pro-rated during the remaining term.

All remedies herein provided to Crown and Borrower shall be in addition and not to the exclusion of other remedies provided by law.

11. Attorney Fees. In the event of any litigation arising out of the performance of this Agreement, the prevailing party shall be entitled to reasonable attorney fees in addition to other costs and disbursements allowed by law. Venue of any action shall lie in Chelan County, Washington.

12. Binding Effect. This Agreement and all terms and conditions and covenants hereof shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, assigns, successors, and legal representatives.

Borrower's indemnities are personally guaranteed by Brad Smith ("Guarantor")

13. Interpretations. The paragraph headings used herein are for identification purposes only and shall not be construed as modifying or limiting the actual language and contents of the paragraphs themselves.
14. Estoppel. Within thirty (30) days after a request by either party to this agreement, the other party shall furnish an acknowledged written statement in form satisfactory to the requesting party that: (i) confirms any terms of the agreement, (ii) confirms either that no offsets or defenses exist against the agreement, or if any offsets or defenses are alleged to exist, their nature and extent, (iii) whether any default then exists under this agreement or any event has occurred and is continuing, which, with the lapse of time, the giving of notice, or both, would constitute such a default, and (iv) any other matters as a party may reasonably request. If the furnishing party does not furnish such statement within the 30-day period, the furnishing party automatically appoints the requesting party as its attorney-in-fact to execute and deliver the statement on its behalf, which power of attorney shall be coupled with an interest and shall be irrevocable. Such a failure by the furnishing party to furnish such a statement within 30 days may, at the election of the requesting party, be deemed a default of the furnishing party in the performance of this Agreement.
15. Intentionally deleted
16. Confidential Information and Non-Circumvention. In connection with the negotiation of this agreement and as part of executing this agreement the parties, and their advisors, have and will disclose to each other certain confidential and proprietary information and material regarding their businesses and they are both willing to receive such information and material, all in accordance with the terms and conditions of this agreement. Confidential and proprietary information means and will include all information that has or will be disclosed by the parties that is not known by, or generally available to the public at large, and that concerns the business and affairs of the parties or their affiliates. "Confidential Information" may include without limitation information or documents regarding the parties ideas, concepts, costs, prices, research, development or know-how, and any other nonpublic technical or business information

of the parties that they know or have reason to know that either party would treat as confidential for any purpose, such as maintaining a competitive advantage or avoiding undesirable publicity. The parties will not have any obligation to specifically identify any information as to which the protection of this Agreement extends by any notice or other action.

The parties, and their advisors, will use the Confidential Information solely for the purposes of effecting this agreement and not for their own or any third party's benefit. The parties, and their advisors, will hold the Confidential Information in strict confidence, and will not, without the prior written consent of the parties, copy or disclose any portion thereof to any third party except in the furtherance of this agreement. The parties, and their advisors, will employ all reasonable steps to protect Confidential Information from unauthorized or inadvertent use or disclosure, including but not limited to all steps that it takes to protect its own information that it considers proprietary and trade secret. The parties may disclose Confidential Information to its responsible employees, consultants, potential investors, lenders, acquirers and regulatory agencies with a bona fide need to know, but only in a manner consistent with the parties carrying out their obligations under this agreement. The parties will not be liable for disclosure of Confidential Information pursuant to law or the order, requirement or request of any court or government authority, provided the parties are notified in writing prior to such disclosure and are given the reasonable opportunity to defend. The parties will take reasonable steps in any such disclosure to have the court or governmental authority protect the confidentiality of all information so disclosed. Any such disclosure by the parties will, in no way, be deemed to change, alter or diminish the confidential and proprietary status of such Confidential Information.

Borrower and Crown agree to cooperate in the performance of the actions contemplated by this Agreement, and to pursue in good faith the common goals expressed herein. Borrower shall not at any time, without the prior written consent of Crown, which consent Crown may withhold in its sole discretion, (a) attempt in any manner to deal directly or indirectly in any manner with any of the individuals or companies related to or doing business with Crown including by having any part of or deriving any benefit from any arrangement similar to any aspect of the relationship described in this agreement, or (b) by-pass, compete, avoid, circumvent, or attempt to circumvent Crown relative to its water rights.

Confidential Information will not include information that: (a) is or becomes part of the public domain through no fault or breach on the part of the parties; or (b) as demonstrated by its written records, was already lawfully known (without restriction on disclosure) prior to being disclosed by the parties.

Borrower will not seek to replace Crown's water during the term of this Agreement except as replacement mitigation for amounts withdrawn as described in Section 10(b)(i-iii).

ALL CONFIDENTIAL INFORMATION IS PROVIDED BY THE PARTIES "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES REGARDING ITS ACCURACY, COMPLETENESS, PERFORMANCE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

All Confidential Information remains the exclusive property of the party that developed said information and the parties acknowledge and agree that nothing contained in this Agreement will be construed as granting any rights, by license or otherwise, to any Confidential Information, except as expressly specified in this Agreement.

This Agreement's obligations as to non-circumvention will remain in effect from the date of this agreement until seven years after the termination of this agreement. The termination of this Agreement will not affect either party's obligation with respect to the Confidential Information disclosed prior to the effective date of termination.

17. Notices. All notices to be given by the parties are to be in writing and may be either served personally or may be deposited in the United States mail, postage prepaid, either registered or certified mail, with certificate of mailing obtained, and shall be given to the address of the party set forth below, or as the same may be changed from time to time by written notice to the other party. The effective date of the giving of the notice or the date from which any time period shall run shall be the day the notice is deposited in the United

States mail, or the date notice is personally served. Notices delivered by overnight service shall be deemed delivered on the following day. Notices shall be mailed or delivered as follows:

TO CROWN:

Crown Columbia Water Resources
c/o Crown West Realty, LLC
3808 N Sullivan Road
N-15, #202
Spokane Valley, WA 99216

And copy to:

Frank J. Walter, III
Petrus Partners, Ltd.
1350 Ave of the Americas
Suite 1600
New York, NY 10019
Phone: (212) 977-3000
Email: frankwalter@petruspartners.com

TO BORROWER:

Granite Farms, L.L.C.
Attn: Brad Smith
3866 Hanson Loop Rd.
Burbank, WA 99323
Phone: (509) 539-6515
E-mail: smith4960@hotmail.com

18. Right of First Offer. Borrower shall provide Crown with a Right of First Offer for lending any additional water required to irrigate any expanded ground beyond that provided herein.

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

Crown Columbia Water Resources, L.L.C.:

F. Walter 3/16/2022

Borrower:

Granite Farms, L.L.C.

[Signature]

Guarantor:

Brad Smith

[Signature]

Exhibit 1:
Legal Description

WALLA WALLA COUNTY, STATE OF WASHINGTON

PARCEL A:

Township 7 north, Range 31 east of the Willamette Meridian.

Section 2: All, EXCEPT Burlington Northern Railroad right of way

Tax Parcel #31-07-02-00-0001

Section 11: All, EXCEPT that portion lying within Cummins Road.

Tax Parcel #31-07-11-00-0001

Township 8 north, Range 31 east of the Willamette Meridian.

Section 35: All that portion lying south and east of the Burlington Northern Railroad right of way.

Tax Parcel #31-08-35-41-0003

PARCEL B:

The east half of Section 14 in Township 7 north, of Range 31 east of the Willamette Meridian.

EXCEPTING THEREFROM that portion lying within Nine Mile Canyon Road.

TOGETHER WITH an easement for purposes of ingress and egress and for the purpose of installing and maintaining an irrigation pipeline herein, over and across the southerly 30 feet in width of Section 13 in Township 7 north, of Range 31 east of the Willamette Meridian.

Tax Parcel #31-07-14-11-0007 & #31-07-14-41-0001

ALSO, The southwest quarter of Section 18 in Township 7 north, of Range 32 east of the Willamette Meridian.

EXCEPT the west 40 feet lying within Cummins Road.

Tax Parcel #32-07-18-31-0003

END OF EXHIBIT A



Exhibit 2:
Mitigation and Payment Schedule

Calendar Year	Acre Feet	Rate Per Acre Foot	Annual Loan Payment Due	Origination Fee Due (1.0%)
2020	139	\$200.00	\$27,800	\$278
2021	3,300	\$140.00	\$462,000	\$4,620
2022	3,300	\$142.45	\$470,085	\$4,701
2023	3,300	\$144.94	\$478,311	\$4,783
2024	3,300	\$147.48	\$486,682	\$4,867
2025	3,300	\$150.06	\$495,199	\$4,952
2026	3,300	\$152.69	\$503,865	\$5,039
2027	3,300	\$155.36	\$512,682	\$5,127
2028	3,300	\$158.08	\$521,654	\$5,217
2029	3,300	\$160.84	\$530,783	\$5,308
2030	3,300	\$163.66	\$540,072	\$5,401
2031	3,300	\$166.52	\$549,523	\$5,495
2032	3,300	\$169.44	\$559,140	\$5,591

Exhibit 3
Contingencies

1. Crown's obligation to provide the Loan is contingent upon DOE permitting.
2. Borrower's Payment obligations may be pro-rated if the Port of Walla withdraws Borrower's farmland, or portions thereof. Such changes will become effective the subsequent calendar year.
3. Crown's obligation to provide the Loan in years 2021 through 2032 is contingent upon Crown's underlying depositors agreeing to receive their annual payments after February 15th each year and agreeing to not require payment by Crown should Borrower default on its payment to Crown that year.

Exhibit 4
Summary of Leased Water Rights

Water Right Number	Approximate Quantity (AF)
CS4-022119CL(B)	2,100
CS4-022119CL(A)@2	700
CG4-01203C	330
CS4-SWC9231	64
CS4-SWC2532	129
Any other rights that may be required.	

EXHIBIT "B" Schedule of Annual Payments

	Base Fee	LHET (12.84%)	Granite Farms	50/50	Regional 50%	LHET on 50%	Per AF Total	Annual Payment	Annual LHET	Net to Regional
2016	\$65.00	-	-	-	-	-	-	-	-	-
2017	\$66.63	-	-	-	-	-	-	-	-	-
2018	\$68.29	-	-	-	-	-	-	-	-	-
2019	\$70.00	-	-	-	-	-	-	-	-	-
2020	\$71.75	-	-	-	-	-	-	-	-	-
2021	\$73.54	\$9.44	\$140.00	\$42.02	\$21.01	\$2.70	\$106.69	\$222,127.63	\$25,275.78	\$196,851.85
2022	\$75.38	\$9.68	\$142.45	\$42.39	\$21.20	\$2.72	\$108.98	\$226,887.92	\$25,817.45	\$201,070.47
2023	\$77.26	\$9.92	\$144.94	\$42.76	\$21.38	\$2.75	\$111.31	\$231,745.64	\$26,370.21	\$205,375.43
2024	\$79.20	\$10.17	\$147.48	\$43.11	\$21.56	\$2.77	\$113.69	\$236,702.83	\$26,934.28	\$209,768.55
2025	\$81.18	\$10.42	\$150.06	\$43.46	\$21.73	\$2.79	\$116.12	\$241,761.61	\$27,509.92	\$214,251.69
2026	\$83.21	\$10.68	\$152.69	\$43.80	\$21.90	\$2.81	\$118.60	\$246,924.12	\$28,097.36	\$218,826.77
2027	\$85.29	\$10.95	\$155.36	\$44.12	\$22.06	\$2.83	\$121.13	\$252,192.56	\$28,696.85	\$223,495.71
2028	\$87.42	\$11.22	\$158.08	\$44.43	\$22.22	\$2.85	\$123.71	\$257,569.17	\$29,308.65	\$228,260.52
2029	\$89.60	\$11.51	\$160.84	\$44.74	\$22.37	\$2.87	\$126.35	\$263,056.24	\$29,933.02	\$233,123.22
2030	\$91.84	\$11.79	\$163.66	\$45.02	\$22.51	\$2.89	\$129.04	\$268,656.12	\$30,570.23	\$238,085.89
2031	\$94.14	\$12.09	\$166.52	\$45.30	\$22.65	\$2.91	\$131.78	\$274,371.20	\$31,220.54	\$243,150.65
2032	\$96.49	\$12.39	\$169.44	\$45.55	\$22.78	\$2.92	\$134.58	\$280,203.92	\$31,884.25	\$248,319.67
TOTAL:										\$2,660,580.43

RESOLUTION NO. _____

A RESOLUTION APPROVING A WATER RIGHT
PURCHASE AND SALE AGREEMENT BETWEEN THE
REGIONAL WATER SYSTEM MEMBERS AND THE
CITY OF WENATCHEE

FACTUAL BACKGROUND AND REASONS FOR ACTION

The District entered into a Water Contract – Regional Water System (“Contract”) with the City of Wenatchee (“City”) and the East Wenatchee Water District (“EWWD”) to collectively form the Regional Water System (“Regional”) effective January 1, 1999. The Contract was subsequently amended pursuant to a First Amendment to Water Contract – Regional Water System on June 23, 2008 and a Second Amendment to Water Contract – Regional Water System on August 17, 2020.

Water Right Claim S4-007327CL (“Lineage Water Right”) was recently transferred to the City. The Lineage Water Right claims surface water from the Columbia River as set forth in Exhibit “A” to the Water Right Purchase and Sale Agreement (“Agreement”) attached hereto as Exhibit “1” and incorporated herein.

To improve the availability, redundancy, and value of municipal water resources that serve the Regional Water System service area, Regional wishes to purchase the Lineage Water Right from the City pursuant to that Water Right Purchase and Sale Agreement attached hereto as Exhibit “1.”

The Contract established a Regional Water System Coordinating Committee (“Coordinating Committee”) comprised of elected representatives and a staff person from each Regional member. By meeting held July 29, 2020, the District and EWWD Coordinating Committee staff reviewed the details of the acquisition and agreed to recommend the purchase of the Lineage Water Right to their respective governing bodies. City of Wenatchee staff did not attend the July 29, 2020 meeting due to a conflict of interest. At a Commission Meeting on September 21, 2020, the District Board of Commissioners was informed of the Lineage Water Right purchase opportunity and agreed with the recommendation to move forward.

Along with other provisions, the Agreement provides:

- Regional members shall collectively pay \$1,400.00 per acre-foot of water for the 780 acre-feet annual quantity set forth in the Lineage Water Right. Pursuant to Section 4.2 of the Agreement, this quantity is subject to fund reconciliation should it be determined the quantity is higher or lower than 780 acre-feet per year. Payment will be made from Regional’s cash reserves.

- Regional shall pay all fees and costs incurred by Ogden Murphy Wallace, PLLC relating to services outlined in Section 4.2 of the Agreement.
- The anticipated closing date of this transaction is within thirty (30) days of the effective date of the Agreement.

Regional members have been represented in Agreement negotiations by Peter Fraley of the law firm Ogden Murphy Wallace, PLLC. District staff reviewed the Agreement and recommend that it is in the best interest of the District to approve the Agreement.

The General Manager has reviewed the District staff’s recommendation and concurs in the same.

ACTION

IT IS RESOLVED BY THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, as follows:

Section 1. The Commission hereby approves the Water Right Purchase and Sale Agreement and authorizes the General Manager, as a member of the Regional Water System, to execute such Agreement for the acquisition of the Lineage Water Right.

Section 2. The Commission hereby delegates to the General Manager, or his designee, the authority to execute any and all necessary and customary documents at closing and to take any and all necessary actions to effectuate the Water Right Purchase and Sale Agreement with the City of Wenatchee.

Dated this 21st day of December, 2020.

President

ATTEST:

Vice President

Secretary

Commissioner

Commissioner

Seal

EXHIBIT 1 – WATER RIGHT PURCHASE AND SALE AGREEMENT

WATER RIGHT PURCHASE AND SALE AGREEMENT

THIS WATER RIGHT PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into by and between the City of Wenatchee, a Washington municipal corporation (“Seller”), and the Regional Water System (formed by Interlocal Agreement among the Chelan County Public Utilities District No. 1, the East Wenatchee Water District, and the City of Wenatchee), a municipal water purveyor (“Purchaser”). Seller and Purchaser are sometimes referred to herein individually as a “Party,” and collectively as the “Parties.”

RECITALS

- A. Cedergreen Foods Corporation filed Water Right Claim S4-007327CL in 1972 with the Department of Ecology (“Ecology”) claiming use of surface water from the Columbia River commencing in 1915 (the “Lineage Water Right”). A copy of the Lineage Water Right is attached as Exhibit “A” and incorporated herein by this reference.
- B. The Lineage Water Right has not been changed or amended since its original filing in 1972.
- C. The Lineage Water Right was recently transferred to the Seller.
- D. Seller and Purchaser desire to enter into this Agreement to ensure Purchaser has adequate municipal water resources available to serve the Regional Water System service area, as it now exists or is hereafter amended. The Purchaser intends to include the Lineage Water Right in future Comprehensive Water System Plans and Water Right Self Assessments submitted to the Washington State Department of Health (“DOH”).

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the Parties agree as follows:

1. **Recitals.** The foregoing recitals and exhibits are incorporated herein by this reference as binding commitments of the Parties.
2. **Agreement.** On the terms and conditions set forth herein, Seller agrees to sell and Purchaser agrees to purchase all of the Lineage Water Right.
3. **Description of Lineage Water Right.** Cedergreen Foods Corporation filed a water right claim with Ecology in 1972 claiming the right to divert 2.3 cubic feet per second and 780 acre feet per year of surface water from the Columbia River for the purpose of year-round cooling of a refrigeration plant. Use of the Lineage Water Right dates back to 1915 based on use by Columbia Ice and Cold Storage Company. The point of withdrawal on the Columbia River was historically shared with the Seller when the City of Wenatchee’s water plant was located adjacent to the facility.

4. Purchase Price and Terms. The purchase price will be computed based on One Thousand Four Hundred and No/100 Dollars (\$1,400) per acre-foot of water. The initial purchase price is based on the 780 acre-feet set forth in the Lineage Water Right and totals One Million Ninety-Two Thousand and No/100 Dollars (\$1,092,000.00 US).

4.1 Payment. Purchaser shall pay the initial Purchase Price of \$1,092,000 to Seller at Closing, as defined herein.

4.2 Water System Planning; Claim Amendment; Change Application; Reconciliation.

4.2.1 Each member of the Regional Water System shall consistently and diligently report the Lineage Water Right as part of water system planning efforts, as comprehensive water system plans and amendments thereto are submitted to and processed by the DOH. The characterization of the Lineage Water Right shall be agreed upon by the Parties and be consistent with a municipal right under DOE POL 2030 (9)(b) (i.e. held for existing customers, future growth or supply needs, or other reasonable future use in a water system plan).

4.2.2 The Seller asserts that the Lineage Water Right has annual withdrawal attributes in excess of 780 acre feet and has been used for municipal purposes. After the step described in Paragraph 4.2.1 herein has occurred (i.e. agreement on the characterization of the Lineage Water Right for purposes of reporting to DOH), Seller shall have the option to submit a Claim Amendment to Ecology, seeking to amend the Lineage Water Right to reflect the increased annual quantities and a municipal purpose of use (“Claim Amendment”). If the Seller elects to pursue the Claim Amendment, Seller shall diligently process the Claim Amendment in consultation with Purchaser.

4.2.3 Whether or not the steps in Sections 4.2.1 and 4.2.2, above are successful in characterizing the Lineage Water Right consistent with the Seller’s current analysis of the Lineage Water Right, the Seller must submit a change application to Ecology or a Water Conservancy Board or other entity of competent jurisdiction (provided the other entity of competent jurisdiction is approved by Regional) (“Change Application”) and diligently process said Change Application until a final decision is rendered. The Change Application must be in a form that is approved by Purchaser, in writing, before the Change Application is submitted. The Change Application shall identify the purpose of use as municipal, provide for year-round, uninterrupted use, the points of withdrawal or diversion requested by Regional, and provide for a minimum development schedule of 30 years. The Seller’s processing of the Change Application, on terms and conditions acceptable to the Purchaser, is a material consideration for the Purchaser entering this Agreement. Seller shall submit and diligently process the Change Application until a final decision is rendered (“final decision” shall mean a final, binding, non-appealable decision on the Change Application). If the final decision is not obtained by December 31, 2027 (as may be extended by mutual written agreement signed by Seller and Purchaser), then it shall be a material default in this Agreement. Following timely approval of the Change Application, each member of Regional shall update their water system plans (in the ordinary course of renewal and submittals) to reflect the outcome of the Change Application.

4.2.4 If the final decision on the Change Application is acceptable, as reasonably determined by Regional (e.g. municipal purpose of use, place of use, year round use, uninterrupted, authorized diversion or withdrawal points, development schedule, etc.), the Parties agree to reconcile the purchase price based on the extent and validity of the Lineage Water Right as set forth in the final decision on the Change Application. In the event said final decision determines that the annual quantity of water available under the Lineage Water Right is less than 780 acre-feet, Seller shall refund to Purchaser \$1,400 per acre-foot under the 780 acre-foot quantity. However, if said final decision determines the annual quantity of water available under the Lineage Water Right is more than the 780 acre-feet, then Purchaser shall pay Seller \$1,400 per acre-foot over the 780 acre-foot quantity. All reconciled funds shall be paid to the appropriate Party within one hundred and eighty (180) days following said final decision on the Change Application.

4.2.5 All written or electronic communications relating to processing the Lineage Water Right as set forth herein by the Seller must be simultaneously copied to the Purchaser. All oral communications by the Seller relevant to said processing, shall be immediately summarized in writing or email and delivered to the Purchaser. The Seller and Purchaser agree to cooperate in good faith in the processing of the Claim Amendment and the Change Application. All communications to the DOH regarding the Lineage Water Right must be approved in advance by Seller and Purchaser.

4.2.6 The Seller shall be solely responsible for the costs and fees to process the Claim Amendment and the Change Application. Seller shall pay for all fees and costs associated with the work of Mark Peterson of Peterson & Marquis Law Office, and Purchaser shall pay for all fees and costs associated with the work of Ogden Murphy Wallace P.L.L.C, arising from or associated with the steps outlined in Section 4.2.

5. Representations of Seller. Seller represents to Purchaser as follows, which representations shall survive closing of this transaction:

5.1 Seller owns the Lineage Water Right free and clear of any liens or encumbrances by third parties.

5.2 To the best of Seller's knowledge, the Lineage Water Right is not subject to a claim of abandonment or relinquishment arising from the application of Washington State law.

5.3 To the best of Seller's knowledge, there are no agreements, lawsuits, or pending claims that will prohibit the Seller from transferring the water right as described herein.

5.4 To the best of Seller's knowledge, the Lineage Water Right is in good standing, with annual authorized quantities of at least 780 acre feet.

6. Representations of Purchaser. Purchaser represents that Purchaser has sufficient funds available to close the transaction contemplated in this Agreement and is not relying on any contingent source of funds.

7. Closing. Closing on the initial purchase price (i.e. 780 acre feet at \$1,400 per acre foot as set forth in Section 4, above) shall occur within thirty (30) days of the effective date of this Agreement. At Closing, the Seller shall execute a water right deed to be recorded with the Chelan County Auditor. The water right deed shall be in a form that is acceptable to Purchaser. Seller shall pay for the costs associated with recording a water right deed for the Lineage Water Right.

8. Representation and Mutual Negotiation. Purchaser is represented by Ogden Murphy Wallace, P.L.L.C and Seller is represented by of Peterson & Marquis Law Office. This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly against either Party.

9. Default. Time is of the essence in this Agreement. If the Seller defaults (that is, fails to perform the acts required of Seller) in the performance of this Agreement, the Purchaser may seek specific performance pursuant to the terms of this Agreement, damages, or rescission. If the Purchaser defaults, the Seller's sole remedy shall be rescission of the Agreement.

10. Notices. Notices hereunder shall be in writing and may be mailed or hand delivered. If mailed, such notices shall be sent postage prepaid, certified or registered mail, return receipt requested, and the date marked on the return receipt by the United States Postal Service shall be deemed to be the date on which the Party received the notice. Notices shall be mailed or delivered as follows:

To Seller:

City of Wenatchee
Attn: Utilities Manager
1320 McKittrick St
Wenatchee, WA 98801

cc:
Mark Peterson
1267 Wheatridge Drive
East Wenatchee, WA 98802

To Purchaser:

Regional Water System
c/o Ron Slabaugh
PO Box 1231
Wenatchee, WA 98807

cc:
Pete Fraley
One Fifth Street, Suite 200
Wenatchee, WA 98801

and c/o Vince Johnston
692 Eastmont Avenue
East Wenatchee, WA 98802

11. Dispute Resolution. Prior to commencing any suit, in the event of a dispute arising under this Agreement, the Party alleging the dispute must first provide the other Party written notice detailing the alleged dispute ("Dispute Notice"). The Parties shall meet and confer in good faith

within thirty (30) days of the delivery of the Dispute Notice and attempt to resolve the alleged dispute. If the Parties are unable to resolve the alleged dispute, then either Party may request mediation by providing a written notice to the other Party within sixty (60) days of the delivery of the Dispute Notice (“Mediation Notice”). If the Mediation Notice is timely provided, then the Parties shall jointly select a mediator (the costs of which shall be shared equally by the Seller and Purchaser) and attend a non-binding mediation within thirty (30) days of the Mediation Notice. If the Mediation Notice is not timely delivered, or if the Parties are unable to jointly select a mediator, or if the mediation is unsuccessful, then either Party may bring suit regarding the alleged dispute set forth in the Dispute Notice, provided said suit is brought within one hundred and eighty (180) days of the Dispute Notice. The Parties agree that this is a contractual statute of limitations as to the scope of the alleged dispute set forth in the Dispute Notice.

12. Attorney’s Fees. If any suit or proceeding is instituted by either Party against the other, including but not limited to, filing suit or requesting an arbitration, mediation or alternative dispute resolution process (collectively “proceedings”), and appeals and collateral actions relative to such suit or proceedings, each Party shall bear their own attorney’s fees and costs resulting from such action.

13. Governing Law and Venue. This Agreement shall be governed by the laws of the state of Washington and venue for any action arising from this Agreement shall be Chelan County, Washington.

14. Authority; Binding Signatures and Effect. Each of the individuals executing this Agreement warrant that they have sufficient authority to sign on behalf of the entity for which they are signing. This Agreement shall be binding upon and inure to the benefit of Seller and Purchaser and their respective heirs, personal representatives, successors, and assigns. The Seller agrees that for purposes of all matters relating to this Agreement that (a) the collective decision of the East Wenatchee Water District and the Chelan County PUD shall be the decision of and binding on the Regional Water System; and (b) all communications between the East Wenatchee Water District, the Chelan County PUD and its attorney Ogden Murphy Wallace, PLLC are privileged.

15. Entire Agreement. This Agreement contains the entire agreement and there are no other agreements, warranties, or understandings, written or oral between the Parties. Amendments to this Agreement shall be in writing and signed by the Parties.

[The remainder of this page left blank intentionally]

16. Effective Date. The “effective date of this Agreement” shall be the date of the last signature below.

PURCHASER:

SELLER:

REGIONAL WATER SYSTEM

EAST WENATCHEE WATER DISTRICT

CITY OF WENATCHEE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A" Lineage Water Right

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
WATER RIGHT CLAIMS REGISTRATION

WATER RIGHT CLAIM

RECEIVED
DEPARTMENT OF ECOLOGY
DEC-971009362
CASH _____ OTHER NONE _____

1. NAME Cedergreen Foods Corp., successor of Columbia Ice & Cold Storage Co.
ADDRESS P. O. Box 38
Wenatchee, Washington ZIP CODE 98801

RECEIVED
DEPARTMENT OF ECOLOGY
JAN-672009820
CASH _____ OTHER NONE _____

2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED: surface water
(SURFACE OR GROUND WATER)
W.R.I.A. 45
(LEAVE BLANK)

A. IF GROUND WATER, THE SOURCE IS _____
B. IF SURFACE WATER, THE SOURCE IS Columbia River

3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:
A. QUANTITY OF WATER CLAIMED 2.3 cu. ft. per second PRESENTLY USED same
(CUBIC FEET PER SECOND OR GALLONS PER MINUTE)
B. ANNUAL QUANTITY CLAIMED 780 acre feet PRESENTLY USED same
(ACRE FEET PER YEAR)
C. IF FOR IRRIGATION, ACRES CLAIMED _____ PRESENTLY IRRIGATED _____
D. TIME(S) DURING EACH YEAR WHEN WATER IS USED: continuously

4. DATE OF FIRST PUTTING WATER TO USE: MONTH February 2 YEAR 1915

5. LOCATION OF THE POINT(S) OF DIVERSION/WITHDRAWAL: 950 FEET North AND 700
FEET East FROM THE center CORNER OF SECTION 3
BEING WITHIN NE 1/4 OF SECTION 3 T. 22 N., R. 20 E (E.G.W.) W.M.
IF THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY, LOT _____ BLOCK _____ OF _____
(GIVE NAME OF PLAT OR ADDITION) (see ATTACHMENT)

6. LEGAL DESCRIPTION OF LANDS ON WHICH THE WATER IS USED: SW 1/4 of the NE 1/4 SECTION 3, TOWNSHIP 22 N., R 20 E. W. M. Beginning at the corner of 5th St. and the Burlington Northern Railroad's right of way and extending Southeasterly from 5th St. 775 ft., then Northeasterly a distance of 125 ft., then Northwesterly a distance of 775 ft., then Southwesterly a distance of 125 ft. to the point of begining and as outlined in red on the attached map. COUNTY CHELAN

7. PURPOSE(S) FOR WHICH WATER IS USED: cooling water for refrigeration plant.

8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: Appropriation

DO NOT USE THIS SPACE

THE FILING OF A STATEMENT OF CLAIM DOES NOT CONSTITUTE AN ADJUDICATION OF ANY CLAIM TO THE RIGHT TO USE OF WATERS AS BETWEEN THE WATER USE CLAIMANT AND THE STATE OR AS BETWEEN ONE OR MORE WATER USE CLAIMANTS AND ANOTHER OR OTHERS. THIS ACKNOWLEDGEMENT CONSTITUTES RECEIPT FOR THE FILING FEE.

DATE RETURNED _____ THIS HAS BEEN ASSIGNED WATER RIGHT CLAIM REGISTRY NO. _____

JAN-672007327

DIRECTOR, DEPARTMENT OF ECOLOGY

I HEREBY SWEAR THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF
X [Signature]
DATE 12-7-71
IF CLAIM FILED BY DESIGNATED REPRESENTATIVE, PRINT OR TYPE FULL NAME AND MAILING ADDRESS OF AGENT BELOW

 ADDITIONAL INFORMATION RELATING TO WATER QUALITY AND/OR WELL CONSTRUCTION IS AVAILABLE

A FEE OF \$2.00 MUST ACCOMPANY THIS WATER RIGHT CLAIM

ORIGINAL DWR

RETURN ALL THREE COPIES WITH CARBONS INTACT ALONG WITH YOUR FEE TO
DEPARTMENT OF ECOLOGY
WATER RIGHT CLAIMS REGISTRATION
P.O. BOX 829 OLYMPIA WASHINGTON 98501

