



FILE# 7676006
 YAKIMA COUNTY, WA
 12/09/2009 11:21:56AM
 AGREEMENT
 PAGES: 11
 FIRST AMERICAN TITLE COMPANY

RETURN TO:
 Bureau of Reclamation
 Attn: Timothy McCoy
 1917 Marsh Road
 Yakima, WA 98901

Recording Fee: 72.00
 Contract No. 9-07-13-L1106
 Tax Parcel Nos. 201234-33003,
 201103-12001, 201103-11002
 Ptn of S½S½, Sec. 34, T12N, R 20E
 Yakima County, Washington

**UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
 Yakima Project, Washington**

**CONSENT-TO-USE AGREEMENT
 Between the
 UNITED STATES OF AMERICA
 And
 STROTHER ORCHARDS, INC.**

THIS AGREEMENT, made this 30th day of November, 2009, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), Section 10 of the Act of August 4, 1939 (53 Stat. 1187), and acts amendatory thereof or supplementary thereto, all of which Acts are commonly known and referred to as the Federal Reclamation Laws, between **THE UNITED STATES OF AMERICA**, hereafter called the United States, represented by the official executing this agreement, and **STROTHER ORCHARDS, INC.**, a corporation organized in the State of Washington, hereinafter referred to as the Consentee;

WITNESSETH, THAT:

WHEREAS, in connection with the Yakima Project, hereinafter referred to as the Project, the United States, through the Department of Interior, Bureau of Reclamation, hereinafter referred to as Reclamation, has, pursuant to Federal Reclamation Laws, acquired certain lands needed in connection with the Project, and owns certain irrigation distribution facilities, known as the Roza Main Canal, in Yakima County, Washington, hereinafter referred to as Project facilities; and,

WHEREAS, the Roza Irrigation District, hereinafter called the District, is under a repayment contract with the United States and said Project facility is operated and maintained by the District, a portion of which is located in the South half of the South half (S½S½) of Section Thirty-four (34), Township Twelve (12) North, Range Twenty (20) East, Willamette Meridian, Yakima County Washington; and,

201234-33003 201103-12001 201103-11002
 SEC 34 T12N R20E S½ S½ Full legal. P.11

WHEREAS, the Consentee desires to utilize the access road located on the north side of the previously mentioned Project facility for access to land located in Section Three (3), Township Eleven (11) North, Range Twenty (20) East, W.M., for agricultural purposes; and,

WHEREAS, the use of the land for the purposes described herein, under the terms and conditions hereof, will not be inconsistent with requirements of the Project;

NOW, THEREFORE, in consideration of the mutual covenants and stipulations hereinafter stated, the parties hereto do mutually agree as follows:

1. **USE.** The United States hereby grants to the Consentee subject to the terms and conditions of this agreement, permission and consent to use and maintain a thirty (30) foot access road generally located on the north side of the Project facilities, including permission and consent to cross over the Project facility by an existing bridge licensed by the United States to Marvin L. Estes, upon, over, and across an easement owned by the United States, located in the South half of the South half (S½S½) of Section Thirty-four (34), Township Twelve (12) North, Range Twenty (20) East, Willamette Meridian, Yakima County Washington, said easement lying within Tax Parcel Number 201234-33003 and more particularly described in attached Exhibit 'A' and depicted in Exhibit 'B', and by this reference is made a part hereof.

The use authorized under this agreement is subject to the Consentee acquiring the appropriate legal authority from the underlying landowner to enter upon and use said property for the purposes intended herein.

The use authorized under this agreement is for ingress to and egress from lands owned by the Consentee located in Section Three (3), Township Eleven (11) North, Range Twenty (20) East, aka Tax Parcel Numbers 201103-12001 & 201103-11002, for agricultural purposes only.

2. **FEES.** In compliance with Federal regulations as set forth in 43 CFR § 429, the Consentee shall pay to the United States a non-refundable application fee of One Hundred Dollars (\$100.00), receipt of which is hereby acknowledged, and all administrative costs for this agreement including, but not limited to, evaluating, issuing, terminating, and monitoring required by Reclamation to ensure compliance with the terms and conditions of this agreement.

3. **TERM.** The term of this agreement is for a ten (10) year period, starting from the date of execution of this document by both parties.

4. **EXTENSION.** This agreement may be renewed at the option of the United States for a period of ten (10) years if Consentee has met all requirements of this agreement. This agreement may be renewed based on the following conditions:

a. The Consentee shall notify the United States of their desire to renew this agreement by written notice according to Article fifteen (15) herein. Said written notice must be received by the United States not less than sixty (60) days prior to the termination of this agreement.

b. Reclamation shall reevaluate the current agreement and evaluate the proposed agreement extension based upon the following criteria:

- i. The premises authorized for use have been used and maintained in accordance with the provisions of this agreement.
- ii. The premises will continue to be used for the purposes previously authorized in order to fulfill the intent of this agreement.
- iii. The Consentee has shown previous good faith compliance with the terms and conditions of the existing agreement and has not engaged in any activity or transaction contrary to Federal contracts, leases, permits, laws, or regulations.

5. SUBLEASES AND ASSIGNMENTS. No assignment or transfer of this agreement or the Consentee's rights hereunder or any part or interest therein shall be valid without written authorization from Reclamation. The form of assignment or transfer to be used shall be approved by Reclamation.

6. LAND USE STIPULATION. There is reserved to the United States, their successors and assigns, the prior right to use any of the right-of-way herein described to construct, operate, and maintain all structures and facilities, including, but not limited to canals, wasteways, laterals, ditches, roadways, electrical transmission lines, communication structures generally, substations, switchyards, power plants, fish screens, fish ladders and other appurtenant irrigation and power structures and facilities, without any payment made by the United States, or their successors for such rights.

7. UNRESTRICTED ACCESS. The United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits and drill test holes, and to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever. Reclamation will make every reasonable effort to keep damages to a minimum.

8. HOLD HARMLESS. The Consentee hereby agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other activities of the Consentee under this agreement.

9. PROTECTION OF UNITED STATES INTERESTS. The Consentee shall use said premises for the purposes stated herein and agrees that in the use of said premises they shall conduct their operations and maintain their facilities in a good and workmanlike manner; and, shall ensure compliance with all Federal, State, and local laws and regulations, Executive Orders, and Reclamation policies and directives and standards.

10. The failure of the Consentee, after due notice, to abide by any of the terms and conditions of any of such applicable laws, rules, and regulations shall cause this agreement to be subject to immediate termination at the option of the United States.

11. WAIVER OF LIABILITY. The Consentee agrees that the United States, their successors and assigns, shall not be liable for any damage to the access road which may result from the construction, operation, or maintenance by Reclamation or the District upon lands or Project facilities, including, but not limited to, damage that may occur as the result of seepage, floodage, or erosion from works constructed by the United States or the District. Nothing contained in this paragraph shall be construed as in any manner limiting other reservations in favor of the United States contained in this agreement.

12. ADDITIONAL STIPULATIONS. The Consentee agrees to adhere to the following requirements for all use and maintenance performed under the authority of this agreement.

a. The access road shall not be blocked at any time for any reason. The Consentee shall not dig, blade, or cause any disturbance of the soil adjacent to the access road. The access road shall be maintained in a manner that will not interfere with the United States or District use of the road along the Project Facility. The Consentee shall gravel and maintain the access road, but no soil or earthen material will be allowed to be taken from United States land.

b. The Consentee agrees that the United States, their successors and assigns, shall not be liable for any damage to the access area, including loss of service, which may result from the construction, operation, or maintenance by Reclamation, upon lands, Project waters or Project facilities of the United States, including, but not limited to damage to the access road, which may occur as the result of seepage, floodage, or erosion from works constructed by the United States.

c. The access road shall be used and maintained by the Consentee without cost to the United States or its assigns, and in such a manner as to cause no interference with the normal operation of project facilities.

d. No structures, including power poles, or woody plants shall be allowed within the Project facilities access road area.

e. No blasting or use of explosives of any kind will be allowed on Reclamation land or right-of-way on the Project facility.

f. The Consentee shall minimize the disturbance of vegetation and soil resources consistent with good land management practices and shall be liable for any and all damages to the premises caused by their activities. Acceptable land management practices include but are not limited to (1) maintaining the fertility of the soil, (2) protecting the land from erosion and (3) controlling weeds. In addition, the Consentee is responsible for the prevention of the infestation and spread of noxious weeds in accordance with State and local weed regulation.

12. HAZARDOUS MATERIALS. Consentee agrees to perform this agreement in accordance with the following hazardous material requirements:

a. The Consentee may not allow contamination or pollution of United States lands, waters or facilities for which the Consentee has the responsibility for care, operation, and maintenance and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

b. The Consentee shall comply with all applicable United States, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in United States lands, waters or facilities.

c. "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and the regulations promulgated pursuant to that Act.

d. Upon discovery of any event which may or does result in contamination or pollution of United States lands, waters or facilities, the Consentee shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to Reclamation's Environmental Protection Specialist located in the Columbia-Cascades Area Office. Reporting may be within a reasonable time period. A reasonable time period means; within twenty-four (24) hours of the time of discovery if it is an emergency, or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

e. Violation of any of the provisions of this Article, as determined by Reclamation's Environmental Protection Specialist, may constitute grounds for termination of this agreement. Such violations require immediate corrective action by the Consentee and shall make the Consentee's liable for the cost of full and complete remediation and/or restoration of any United States resources or facilities that are adversely affected as a result of the violation.

f. The Consentee agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or third party contract it may enter into pursuant to this agreement.

g. The Consentee agrees to contact Reclamation's Environmental Protection Specialist to obtain any additional information needed to comply with the provisions of this Article.

12. DISCOVERY OF CULTURAL RESOURCES. The Consentee shall immediately provide an oral notification to Reclamation's Archaeologist of the discovery of any and all antiquities or other objects of archaeological, cultural, historic, or scientific interest on the United States lands. The Consentee shall follow up with a written report of their finding(s) to Reclamation's Archaeologist, located in the Columbia-Cascades Area Office, within forty-eight

(48) hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and artifacts discovered as a result of activities under this agreement. The Consentee shall immediately cease the activity in the area of the discovery, make a reasonable effort to protect such discovery, and wait for written approval from the Archaeologist before resuming the activity. Protective and mitigative measures specified by Reclamation's Archaeologist shall be the responsibility of the Consentee.

13. PEST CONTROL. The Consentee agrees to perform this agreement in accordance with the following requirements whenever pesticides are used:

a. The Consentee and/or their successors or assigns shall not permit the use of any pesticides (excluding personal/domestic products intended for personal use) for the control of insects, mammals, or noxious and undesirable weeds on Reclamation-owned and controlled Lands covered by this agreement without prior written approval by Reclamation. The Consentee shall submit to Reclamation for approval an Integrated Pest Management Plan (IPMP) thirty (30) days in advance of pesticide application. This IPMP will take into consideration all alternatives for pest control. If a pesticide is ultimately used, only the pesticide that presents the least impact on the human and natural environment will be used.

b. All pesticides used shall be in accordance with the current registration, label direction, or other directives regulating their use (State Department of Agriculture, Department of Ecology, OSHA, etc.). Restricted pesticides or pesticides having the signal word "Danger" on the label shall not be used without the prior approval of Reclamation. The Consentee shall be responsible for complying with all training (Federal, State, and local), operational requirements, and licensing requirements as may be pertinent to and required for the application of pesticides within the State. All Pesticide Application Records shall be maintained in accordance with State guidelines. A copy of said documents shall be furnished to Reclamation within five (5) working days after any application of a pesticide.

c. All pesticide application will be conducted by a certified pesticide applicator. The Consentee and/or their successors or assigns must have obtained, or have one (1) employee who has obtained, a current State Pesticide Applicator's license prior to making any pesticide application; at a minimum, a private applicator's license is required.

d. Label directions and/or warnings relative to temperature or other weather conditions shall be closely adhered to. In addition, spraying application shall not be performed in or near designated public use areas or other inhabited areas if human or domestic animal contact is imminent, either directly or by drift or when sustained wind speed is above five (5) miles per hour or is gusting. If applicable, persons wishing to re-enter the treated area shall adhere to the re-entry restrictions as described on the label.

e. All types of spray equipment, tools, and machines to be used for pesticide application shall be in proper working condition and shall be suitable for use with the pesticide to be applied. Said equipment shall be calibrated prior to the spraying season and at such times during the season as deemed necessary by the United States.

f. Mixing of chemicals and cleaning of application equipment shall be done in such an area where pesticides or cleaning residues can be readily prevented from entering a storm drain, sewer, or other non-target areas. The Consentee shall be responsible for containment and clean up of all pesticide spills. The Consentee shall notify Reclamation of any spills within twenty-four (24) hours of such an event.

g. The Consentee shall dispose of all pesticide containers in accordance with label instructions.

h. Aerial application of pesticides is prohibited without prior written consent by the United States official.

14. TERMINATION. This agreement will terminate and all rights of the Consentee hereunder will cease, and the Consentee will quietly deliver to the United States possession of the premises in like condition as when taken, should any of the following conditions occur:

a. The United States reserves rights to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for termination of the use authorization or other damage to the Consentee's activities or facilities.

b. Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization in the event of a natural disaster, a national emergency, a need arising from security requirements, or an immediate and overriding threat to public health and safety.

c. Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization for activities other than existing authorized private exclusive recreational or residential use as defined under 43 CFR § 429.2 if Reclamation determines that any of the following apply:

- i. The use has become incompatible with authorized project purposes, Project operations, safety, and security;
- ii. A higher public use is identified through a public process described at 43 CFR § 429.32(a)(1); or
- iii. Termination is necessary for operational needs of the Project.

d. Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization if Reclamation determines that the Consentee's have failed to use the use authorization for its intended purpose. Further, failure of use within the timeframe specified in the terms of the use authorization may constitute a presumption of abandonment of the requested use and cause termination of the use authorization.

e. Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization if the Consentee fails to comply with all applicable Federal,

State, and local laws, regulations, ordinances, or terms and conditions of any use authorization, or to obtain any required permits or authorizations.

f. Any activity deemed to be illegal on Federal lands will be cause for immediate termination of this agreement.

g. At the option of Reclamation upon discontinuance by the Consentee of the use of the lands and Project facilities of the United States covered by this agreement for the purposes herein stated for a period of twelve (12) consecutive months.

h. At the option of the Consentee by providing written notice to Reclamation.

If this agreement is terminated under Article 14(e), the United States reserves the right to bar the Consentee's from the authorization to use acquired or withdrawn public land on the Yakima Project for a period of time, as determined by the Area Manager.

15. NOTICES. All written notices required or desired to be given under this license shall be in writing and may be delivered by personal delivery; via recognized delivery services such as United Parcel Service (UPS), or Federal Express (FED EX), or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

Area Manager
Bureau of Reclamation
Yakima Field Office
1917 Marsh Road
Yakima, WA 98901-2058
509-575-5848

Mr. Kelly Strother
Strother Orchards, Inc.
5461 Yakima Valley Hwy.
Wapato, WA 98951
509-877-4551

Any notice delivered by personal delivery shall be deemed received by the addressee upon actual delivery. The addresses to which notices are to be delivered may be changed by giving 15 days notice of such change in accordance with this paragraph. This paragraph shall apply where notice is required under this license, and no specific requirements are set forth. Where this license provides for a specific notice in a different manner, the more specific requirements shall prevail.

16. RIGHTS OF THIRD PARTIES. The rights granted by this agreement are nonexclusive and are subject to all existing valid rights previously acquired by third parties, which include any person or private or public entity not a party to this agreement. It is the responsibility of the Consentee for determining what other property interests are located within the project area and for notifying said owners of the Consentee's use.

17. COVENANT AGAINST CONTIGENT FEES. The Consentee warrants that no person(s) or agency(s) have been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the United States shall have the right to annul this agreement without liability or in its discretion to require the Consentee to pay, in addition to the grant price

or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

18. OFFICIALS NOT TO BENEFIT. No Member of Congress shall be admitted to any share or part of any agreement or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

19. SEVERABILITY. Each provision of this agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this agreement shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of this agreement as a whole.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CONSENTEE

UNITED STATES OF AMERICA

By: Kelly Strother, President
Kelly Strother, President
Strother Orchards, Inc.

By: Walter Larrick
Field Office Manager
Bureau of Reclamation
Yakima Field Office
1917 Marsh Road
Yakima, Washington 98901

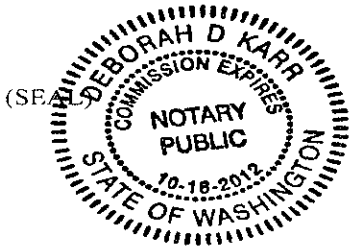
ACKNOWLEDGMENT

STATE OF WASHINGTON)
) : ss
COUNTY OF YAKIMA)

On this day personally appeared before me, the undersigned Notary, Kelly Strother, known to me to be the individual whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the uses and purposes therein expressed, as their free and voluntary act or deed.

WITNESS my hand and official seal on this 9th day of November, 2009.

My Commission expires: 10-16-2012



Deborah D. Karr
Notary Public
State of Washington
Residing at: Yakima

ACKNOWLEDGMENT

STATE OF WASHINGTON)
) : ss
COUNTY OF YAKIMA)

On this day personally appeared before me, the undersigned Notary, WALTER LARRICK, known to me to be the official of the **UNITED STATES OF AMERICA**, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the United States, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal on this 30th day of NOVEMBER, 2009.

My Commission expires: 7/15/2012

(SEAL)

Deborah M. Van Meter
Notary Public
State of Washington
Residing at: 2601 158th Myrtle

Exhibit A
Consent-to-Use for Strother Orchards, Inc.
Contract No. 9-07-13-L1106

A 30 foot strip of land located along the north bank of the Roza Main Canal commonly referred to as the Project facilities road, lying within a portion of the United States easement referred to as the Roza Canal Right Of Way, as described in the Supplemental Contract, Revised Exhibit A recorded on March 27, 1943, Page 598 Volume 360, Book of Deeds by the Yakima County Auditor, and referenced in Yakima County Auditor's Record #'s 1506448, recorded November 10, 1953, and 2291193 Recorded August 3, 1972, and the bridge crossing said canal as referenced in the license agreement made between the United States and Marvin L Estes, executed on January 15, 1974, all located in the South half of the South half (S½S½) of Section Thirty-four (34), Township Twelve (12) North, Range Twenty (20) East, Willamette Meridian, Yakima County, Washington.