

## **AGREEMENT FOR USE OF AQUIFER RECHARGE SITE**

THIS AGREEMENT for Use of Aquifer Recharge Site (“Agreement”) is made and entered into among the CITIES OF BLISS, BURLEY, CAREY, DECLO, DIETRICH, GOODING, HAZELTON, HEYBURN, JEROME, PAUL, RICHFIELD, RUPERT, SHOSHONE and WENDELL (collectively "Cities"), each a municipal corporation existing under the laws of the state of Idaho and the LOWER SNAKE RIVER AQUIFER RECHARGE DISTRICT, an Aquifer Recharge District, formed and existing under the provisions of Idaho Code § 42-4201, *et seq.* (“District”).

### **RECITALS:**

- A. The Cities collectively, have groundwater rights that are potentially subject to curtailment under the provisions of orders entered by the Idaho Department of Water Resources under water calls made by Rangen, Inc (“Rangen”).
- B. The Cities have entered into an agreement with Clear Springs Foods Company (“CSF”) and Rangen for the delivery of 1500 acre feet of storage water held by CSF (“Storage Water”) for 2014 to an aquifer recharge site northeast of the city of Gooding, Idaho (“Gooding Recharge Site”).
- C. The Cities have agreed to pay conveyance costs for the delivery of the Storage Water to the Gooding Recharge Site to the American Falls Reservoir District #2 (“AFRD#2”). AFRD#2 has agreed to deliver the Storage Water.
- D. The Gooding Recharge Site is located on real property owned by the United States of America, acting through the Bureau of Land Management, an agency of the Department of the Interior (“BLM”).
- E. The Cities have experienced difficulties in obtaining final approval from the BLM for the use of the Gooding Recharge Site for the delivery of the Storage Water.
- F. If the Cities are able to timely deliver the Storage Water to a recharge site acceptable to CSF and Rangen, Rangen has agreed that such delivery will constitute mitigation for the Cities’ use of their junior groundwater rights under existing curtailment orders affecting the Cities under the Rangen calls through March 31, 2016.
- G. Rangen and CSF have agreed to accept the recharge site owned and controlled by the District approximately two (2) miles north of the city of Shoshone, Idaho (“District Recharge Site”), as an alternate delivery site for the Storage Water in the event that the Gooding Recharge Site is unavailable to the Cities for such purposes.
- H. The delivery of the Storage Water by January 19, 2015, to a recharge site acceptable to Rangen is of critical importance to the Cities.

I. The parties now wish to enter into an agreement by which District will grant the Cities permission to use the District Recharge Site for the delivery of the Storage Water prior to January 19, 2015.

IT IS THEREFORE AGREED in consideration of these recitals and the promises and covenants hereafter contained as follows:

1. **PERMISSION FOR USE OF SITE.** District hereby grants to the Cities permission to use the District Recharge Site two (2) miles north of the city of Shoshone, Idaho, as more particularly described on **EXHIBIT A** attached hereto for the following purposes:

A. For the discharge of up to fifteen hundred (1500) acre feet of Storage Water held by CSF for 2014, the delivery rights for which have been assigned by CSF to AFRD#2.

2. **TIME OF DELIVERY.** The delivery of the Storage Water to the District Recharge Site will be accomplished on or before January 19, 2015.

3. **COSTS.** The Cities agree to pay all conveyance costs for the delivery of the water as assessed by AFRD#2. Further, the Cities agree to pay for all analytical engineering and related labor costs for the design, sampling, monitoring and measuring of the delivery of the Storage Water to the District Recharge Site as may be required by the Idaho Department of Environmental Quality ("DEQ") or other governmental agencies. It is estimated that the cost to comply with DEQ requirements may be between Four Thousand Dollars (\$4000) and Six Thousand Dollars (\$6000).

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4. **Indemnification.** The Cities agree to indemnify and hold the District harmless from any and all claims arising out of the delivery and recharge of the Storage Water.

5. **NOTIFICATION; CONTINGENCY.** The Cities agree to give written notice to the District at the address provided below at least seven (7) days prior to the initial delivery of the Storage Water to the District Recharge Site. The parties recognize that the District Recharge Site is an alternative site for the delivery of the Storage Water and that the Cities will only give notice under this paragraph in the event it is determined that the Gooding Recharge Site is unavailable to them.

6. **GOVERNMENTAL APPROVALS.** The Cities agree to apply for and bear all costs related to any required permits or approvals from the DEQ or other governmental agencies that may be required for the use of the District Recharge Site as contemplated by this Agreement.

7. **INTEGRATION.** The parties hereto acknowledge that the terms, conditions and covenants of this agreement shall supersede any prior negotiations and agreements of the parties, that there are no other agreements not contained in this agreement, and that this agreement shall be the final expression of the agreement of the parties and shall control. No modifications of this agreement shall be valid unless in writing and executed by all the parties hereto.

8. **TIME IS OF THE ESSENCE.** The parties hereto acknowledge and agree that time is, and shall be, the essence of each and every term and condition contained herein.

9. **BINDING EFFECT.** This agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

10. **ATTORNEY FEES ON DEFAULT.** If default be made by any party hereto in keeping or performing any of the covenants, conditions or agreements herein agreed to be kept by them, and the other party is required to bring an action to enforce any of the covenants, conditions or agreements herein contained, then and in such event, the prevailing party in such action shall pay to the non-defaulting party, in addition to all other relief obtained, shall be entitled to be awarded reasonable attorney's fees, together with any costs and disbursements incurred in such action.

11. **NOTICES:** Any notices, demands and the like, which are required to be given hereunder, or which either party hereto may desire to give to the other, shall be given in writing and may be delivered personally or may be sent by registered mail or certified mail, postage prepaid, to each of the parties as follows:

**CITIES:** Robert E. Williams  
Williams, Meservy & Lothspeich, LLP  
PO Box 168  
153 East Main  
Jerome ID 83338

**DISTRICT:** Lower Snake River Aquifer Recharge District  
PO Box 767  
Hagerman ID 83332  
lsrard@northrim.net (Linda Lemmon) cell (539-1730)  
twolorkowskis@q.com (Bob Lorkowski) cell (320-5812)

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or at any other address of which the parties may advise each other at any future time.

11. **COUNTERPARTS.** This Agreement may be executed in original counterparts.

SIGNED BY THE MAYOR this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

CITY OF BLISS, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_

City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF BURLEY, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF CAREY, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF DECLO, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF DIETRICH, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF GOODING, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF HAZELTON, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF HEYBURN, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF JEROME, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF PAUL, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF RICHFIELD, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF RUPERT, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF SHOSHONE, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk



SIGNED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF WENDELL, IDAHO

By: \_\_\_\_\_  
Mayor

ATTEST: \_\_\_\_\_  
City Clerk

LOWER SNAKE RIVER AQUIFER RECHARGE DISTRICT  
An Aquifer Recharge District

By: Greg Hirai  
Its: President