

WATER RIGHT SHORT-TERM LEASE AGREEMENT

THIS WATER RIGHT SHORT-TERM LEASE AGREEMENT ("Agreement") is made and entered into this 23 day of July, 2024 ("the Effective Date"), by and between the Selah Moxee Irrigation District ("SMID"), and Chiawana Orchard ("water user").

Recitals

A. WHEREAS, SMID is the owner of a certain Water Right, under Water Right Certificate Number S4-84594-J, ("SMID's Water Right"). SMID's Water Right has been confirmed for the withdrawal of up to 13,781.0 acre-feet per year ("af/y"), for irrigation of 2,001.94 acres, between April 1 and October 31, with a priority date of January 26, 1887; and

B. WHEREAS, SMID's Water Right was transferred to the Washington State Trust Water Right Program ("TWRP") for instream flow and mitigation purposes in accordance with Chapters 90.03, 90.38 and 90.42 RCW, pursuant to the Water Banking Agreement; and

C. WHEREAS, The Department of Ecology has issued an Emergency Drought Authorization (No. _____) and has agreed to cost share 25% of the total lease cost with the WATER USER. WATER USER has agreed to pay the remaining 75% of the lease cost; and

D. WHEREAS, WATER USER agrees to the short-term leasing of 86 af/y of water ("WATER USER's Proposed Water Right") to serve as WATER USER's emergency drought well mitigation ("WATER USER's intended purposes"); and SMID desires to provide to WATER USER, WATER USER's Proposed Water Right and to take such other actions as herein provided;

NOW, THEREFORE, in consideration of the foregoing, of payment of the acquisition price as described herein and of the mutual covenants hereinafter set forth, the Parties hereto hereby agree as follows:

1. Price. Subject to the terms and conditions set forth in this Agreement, SMID agrees to provide, and WATER USER agrees to lease WATER USER's Proposed Water Right for the amount of 86 af/y at a price of \$225 (75% of \$300) per af; Totaling Dollars (\$ 19,350) ("75% of the Lease Price") for the 2024 irrigation year only.

2. Payment Terms. The Lease price shall be paid to SMID at the time of signing this Agreement.

3. Cooperation. WATER USER and SMID agree to cooperate and provide each other, when requested, any and all documents, records, or other information that each may need to facilitate and complete the proposed transaction when requested by the other party.

4. **WATER USER's Acknowledgements.** WATER USER acknowledges that SMID makes no promise or warranty, express or implied, as to whether and to what extent any quantity of water may ultimately be deemed beneficially used and/or suitable for lease, it being understood that WATER USER is free to conduct its own due diligence inquiry regarding the validity-and-extent of the subject SMID's Water Right, its transferability, and its suitability to provide mitigation.

5. **Governing Law and Venue.** This Agreement shall be interpreted, construed, and enforced according to the laws of the State of Washington. Venue shall be in Yakima County, Washington.

6. **Legal Relationships.** The Parties to this Agreement execute the same solely as set forth in this Agreement. No partnership, joint venture or joint undertaking shall be construed from these presents, and except as herein specifically provided, neither party shall have the right to make any representation for, act on behalf of, or be liable for the debts of the other.

7. **Assignment; Successors.** Neither WATER USER nor SMID may sell, transfer, assign, pledge, or encumber its interest in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

8. **Entire Agreement.** All understandings and agreements previously existing between the Parties, if any, are merged into this Agreement, which alone fully and completely expresses their agreement, and the same is entered into after full investigation, neither party relying upon any statement or representation made by the other not embodied herein.

9. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument. All such counterparts together shall constitute a fully executed Agreement. Email transmission of this Agreement and retransmission of any signed email transmission shall be the same as delivery of an original.

10. **Amendment.** This Agreement may not be modified or amended except by the written agreement of the Parties.

IN WITNESS WHEREOF the Parties have signed and delivered this Agreement as of the day and year first above written.

SELAH MOXEE IRRIGATION DISTRICT:

Name:



By: Michael McGree, Board President
Nathan Draper for Mike McGree.



Paul Githart, Chianona Orchards Area Manager



DRAFT Water Mitigation Certificate

Applicant Address

Chiawana Orchards
3107 River Road
Yakima, WA 98902

Grantor: Selah-Moxee Irrigation District (SMID) **Certificate Number:** 2024-09

Grantee: Chiawana Orchards **Date Issued:** 7/23/24

Parcel Number(s): 952675

Site Address: SW of SW Sec 02 T 16N R 19E (Kittitas County)

Proposed Project Description: 2024 Emergency Drought Well Lease

Water use on these parcels is from: **Mitigation Quantity:** 86 AFY
 groundwater well(s) **Duration:** Purchase
 surface water **Lease:** 1 years

Abbreviated Legal Description:
(see page 2 for full legal description, if needed)

Terms and Conditions:

1. This Mitigation Certificate is for use on the above-mentioned parcel(s) and legal description only and is not transferable for use at other locations or for any other uses without SMID concurrence.
2. Grantee is required to independently develop its source of water and obtain permit approval from Ecology.
3. SMID agrees it will reserve water authority for this Draft Mitigation Certificate for a period not exceeding 2 years from issuance, unless extended at the request of the applicant and at the sole discretion of the District.
4. SMID may cancel this Draft Mitigation Certificate if the applicant is unable to obtain required authorizations within the time periods allotted.
5. If Ecology grants permit authority for this project, then following payment of remaining required fees, that include, but are not limited to closing costs and the remaining balance of the purchase price, SMID will issue a Final Mitigation Certificate to Grantee.
6. Grantee shall provide the Final Mitigation Certificate to Ecology and record it with the County Auditor.
7. If Ecology or a Court determines that any water use authorized by this Mitigation Certificate has been abandoned, relinquished, cancelled, or otherwise forfeited, then such quantity of water reverts to SMID without compensation to the Grantee. The applicant has a duty to use and protect such water for its own use.
8. SMID is pledging senior water rights held in the Ecology Trust Water Right Program to offset the Grantee's project. However, all water rights, even senior water rights held by SMID to offset this mitigation certificate, may be subject to curtailment due to drought, lack of water, or other reasons. SMID makes no guarantee against such future curtailment or of any future Department of Ecology regulation, Court adjudication, or other legal action as to the validity or use of the water right.

Issued By

SMID

Nathan Draper
District Manager

[Signature]
Manager Signature