

WATER STORAGE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA

AND

THE CITY OF SHADY COVE, OREGON

FOR

WATER STORAGE SPACE
IN LOST CREEK LAKE PROJECT, OREGON

THIS AGREEMENT, entered into this 15th day of July 2002, by and between THE UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the District Engineer executing this agreement, and City of Shady Cove, a municipal corporation of the State of Oregon (hereinafter called the "City"):

WITNESSETH THAT:

WHEREAS, The Flood Control Act of 1962. (Public Law 87-874) authorized the construction, operation, and maintenance of the Lost Creek Lake Project on the Rogue River, Oregon (hereinafter called the "Project"); and

WHEREAS, the City desires to enter into an agreement with the Government for the use of storage included in the Project for municipal and industrial water supply, and for payment of the cost thereof in accordance with the provisions of the Water Supply Act of 1958, as amended (43 U.S.C. 390b-f); and

WHEREAS, the City, as shown in Exhibit "A" attached to and made part of this agreement, is empowered to enter into an agreement with the Government and is vested with all necessary powers of accomplishment of the purposes of this agreement, including those required by Section 221 of the Flood Control Act of 1970, (42 U.S.C. 1962d-5d) as amended;

NOW, THEREFORE, the Government and the City agree as follows:

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ARTICLE 1 - Water Storage Space.

a. Project Construction. The Government, subject to the directions of Federal law and any limitations imposed thereby, has designed and constructed the Project so as to include therein space for the storage of water by the City.

b. Rights of City.

(1). The City shall have the right to utilize an undivided 0.0039 percent (estimated to contain 12 acre-feet after adjustment for sediment deposits) of the usable storage space in the Project between elevations 1,872 feet and 1,751 feet, National Geodetic Vertical Datum (NGVD), which usable conservation storage space is estimated to contain 308,250 acre-feet after adjustment for sediment deposits. This storage space is to be used to impound water for present demand or need for municipal and industrial water supply.

(2). The City shall have the right to withdraw water from the lake, or to order releases to be made by the Government through the outlet works in the Dam, subject to the provisions of Article 1c and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appurtenances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the District Engineer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the City, under the authority of and in accordance with the provisions of 10 U.S.C. 2669 and such other authorities as may be necessary. Subject to the conditions of such easement, the City shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges granted under this agreement.

c. Rights Reserved. The Government reserves the right to control and use all storage in the Project in accordance with authorized Project purposes. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life and/or property, including the right not to make downstream releases during such periods of time as are deemed necessary, in its sole discretion, to inspect, maintain, or repair the Project.

d. Quality or Availability of Water. The City recognizes that this agreement provides storage space for raw water only. The Government makes no representations with respect to the quality or availability of water and assumes no responsibility therefor, or for the treatment of the water.

e. Sedimentation Surveys.

(1). Sedimentation surveys will be made by the District Engineer during the term of this agreement at intervals not to exceed fifteen (15) years unless otherwise agreed to in writing by both parties. When, in the opinion of the District Engineer, the findings of such survey indicate any Project purpose will be affected by unanticipated sedimentation distribution, there shall be an equitable redistribution of the sediment reserve storage space among the purposes served by the Project including municipal and industrial water supply. The total available remaining storage space in the Project will then be divided among the various Project features in the same ratio as was initially utilized. Adjusted pool elevations will be rounded to the nearest one-half foot. Such findings and the storage space allocated to municipal and industrial water supply shall be defined and described as an exhibit which will be made a part of this agreement and the reservoir regulation manual will be modified accordingly.

(2). The Government assumes no responsibility for deviations from estimated rates of sedimentation, or the distribution thereof. Such deviations may cause unequal distribution of sediment reserve storage greater than estimated, and/or encroachment of the total storage at the Project.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the City. The City has the full responsibility to acquire in accordance with State laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this agreement. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the City except as such controversies may affect the operations of the Project by the Government.

ARTICLE 3 - Operation and Maintenance. The Government shall operate and maintain the Project and the City shall pay to the Government a share of the costs of such operation and maintenance as provided in Article 5. The City shall be responsible for operation and maintenance of all installations and facilities which it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation and maintenance of such installations and facilities.

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ARTICLE 4 - Measurement of Withdrawals and Releases. The City agrees to furnish and install, without cost to the Government, suitable meters or measuring devices satisfactory to the District Engineer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The City shall furnish to the Government monthly statements of all such withdrawals. Prior to the construction of any facilities for withdrawal of water from the Project, the City will obtain the District Engineer's approval of the design, location and installation of the facilities including the meters or measuring devices. Such devices shall be available for inspection by Government representatives at all reasonable times. Releases from the water supply storage space through the Project outlet works shall be made in accordance with written schedules furnished by the City and approved by the District Engineer and shall be subject to Article 1c. The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

ARTICLE 5 - Payments. In consideration of the right to utilize the aforesaid storage space in the Project for municipal and industrial water supply purposes, the City shall pay the following sums to the Government:

a. Project Investment Costs.

(1). The City shall repay to the Government in a lump sum payment, the amounts stated below which, as shown in Exhibit "B" attached to and made a part of this agreement, constitute the entire actual amount of the investment costs, including interest during construction, and interest accrued following the end of the 10-year interest free period, 25 June 1992, allocated to the water storage right acquired by the City under this agreement. The interest rate to be used for purposes of computing interest during construction will be the coupon rate as determined by the Secretary of the Treasury on the basis set forth in the Water Supply Act of 1958, Title III of PL 85-500. For the Project, construction of which was initiated in FY 1968 this interest rate is 3.253 percent. The City shall repay:

0.12 percent of the total Project joint-use construction costs allocated to water supply	\$7,272
Interest during construction	\$818
Interest accrued form the end of the 10-year interest free period, 25 Jun 92 to date of agreement approval, estimated at 01 Jun 02	<u>\$3,052</u>
Total amount of Project investment costs allocated to the City	\$11,142

(2). The lump sum payment shall be due and payable within thirty (30) days after the date the City is notified that this agreement is approved by the Secretary of the Army or his duly authorized representative.

b. Repair, Rehabilitation, and Replacement Costs. The City will be required to pay 0.7197 percent of the cost of joint-use repair, rehabilitation, and replacement of Project features. Payment of these costs shall be made either incrementally during construction or in lump sum (including interest during construction) upon completion of construction.

c. Annual Operation and Maintenance (O&M) Expense. The City will be required to pay 0.5975 percent of the annual experienced joint-use O&M expense of the Project. The first payment for O&M expense is due and payable in advance 30 days following the anniversary of the date the City is notified that this agreement is approved by the Secretary of the Army or his duly authorized representative and shall be based on O&M expense for the Project in the Government fiscal year most recently ended. Annual O&M payments thereafter will be due and payable 30 days after each anniversary of the date the City is notified that this agreement is approved by the Secretary of the Army or his duly authorized representative. The amount of each annual payment will be the actual experienced O&M expense (allocated joint-use) for the preceding fiscal year or an estimate thereof when actual expense information is not available.

d. Delinquent Payments. If the City shall fail to make any of the aforesaid payments when due, then the overdue payments shall bear interest compounded annually until paid. The interest rate to be used for overdue payments due under the provisions of Articles 5a, 5b, 5c and 5d above shall be that determined by the Department of Treasury's Treasury Fiscal Requirements Manual (1 TFRM 6-8000, "Cash Management"). The amount charged on payments overdue for a period of less than one year shall be figured on a

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monthly basis. For example, if the payment is made within the first month after being overdue after a 15-day grace period from the anniversary date of the date of notification, one month's interest shall be charged. Thereafter a month's interest will be charged for any portion of each succeeding month that the payment is delinquent. This provision shall not be construed as giving the City a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by the City.

ARTICLE 6 - ADJUSTMENT TO PROJECT INVESTMENT COSTS. The project investment costs shown in this agreement and the exhibits are based on actual final construction costs of the project. Any further investment cost accruing to the User's water storage right shall be repaid under repair, rehabilitation and replacement costs if capitalized or under operation and maintenance expense if not capitalized.

ARTICLE 7 - Duration of Agreement. This agreement shall become effective when approved by the Secretary of the Army (or his duly authorized representative) and shall continue in full force and effect for the life of the Project.

ARTICLE 8 - Permanent Rights to Storage. Upon completion of payment(s) by the City, as provided in Article 5a herein, the City shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 U.S.C. 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

a. The City shall continue payment of annual operation and maintenance costs allocated to water supply.

b. The City shall bear the costs allocated to water supply of any necessary repair, rehabilitation, or replacement of Project features which may be required to continue satisfactory operation of the Project. Such costs will be established by the District Engineer and repayment arrangements shall be in writing in accordance with the terms and conditions set forth in Article 5b for Repair, Rehabilitation, or Replacement Costs, and be made a part of this agreement.

c. Upon completion of payments by the City as provided in Article 5a, the District Engineer shall redetermine the storage space for municipal and industrial water supply in accordance with the provisions of Article 1e. Such redetermination of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

d. The permanent rights of the City under this agreement shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the Project, such rights may be continued subject to the execution of a separate agreement, or additional supplemental agreement providing for:

(1). Continued operation by the City of such part of the facility as is necessary for utilization of the water supply storage space allocated to it;

(2). Terms which will protect the public interest; and

(3). Effective absolvment of the Government by the City from all liability in connection with such continued operation.

ARTICLE 9 - Release of Claims. The City shall hold and save the Government, including its officers, agents and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the City or as a result of the construction, operation, or maintenance of the water supply facilities and appurtenances thereto owned and operated by the City except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE 10 - Transfers and Assignments.

a. The City shall not transfer or assign this agreement nor any rights acquired thereunder, nor suballot said water supply storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this agreement, without the approval of the Secretary of the Army, or his duly authorized representative provided that, unless contrary to the public interest, this restriction shall not be construed to apply to any water that may be obtained from the water supply storage space by the City and furnished to any third party or parties, nor any method of allocation thereof.

b. Regarding approval of assignments, references to restriction of assignments shall not apply to any transfer or assignment to the Rural Economic Community Development (RECD, formerly Farmers Home Administration) or its successor agency, or nominee, given in connection with the pledging of this water storage agreement as security for any loans or arising out of the foreclosure or liquidation of said loans. The City will notify the Government in writing 15 days prior to applying for a RECD loan. A copy of the final loan instrument will be furnished to the Government for their record.

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ARTICLE 11 - Officials Not to Benefit. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

ARTICLE 12 - Covenant Against Contingent Fees. The City warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the City for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this agreement without liability or in its discretion to add to the agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 13 - Environmental Quality. During any construction, operation, and maintenance by City of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State, and local laws and regulations concerning environmental pollution. Particular attention should be given to:

- a. Reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters;
- b. Reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion;
- c. Minimization of noise levels;
- d. On-site and off-site disposal of waste and spoil; and,
- e. Prevention of landscape defacement and damage.

ARTICLE 14 - Federal and State Laws.

a. Compliance. In acting under its rights and obligations hereunder, the City agrees to comply with all applicable Federal and State laws and regulations, including but not limited to the provisions of the Davis-Bacon Act (40 U.S.C. 276a et seq.); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) Title 29, Code of Federal Regulations, Part 3; and Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646)

b. Civil Rights Act. The City furnishes, as part of this agreement, an assurance (Exhibit D) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 U.S.C 2000d, et seq.) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

c. Regulatory Program. Any discharges of water or pollutants into a navigable stream or tributary thereof resulting from the City's facilities and operations undertaken under this agreement shall be performed only in accordance with applicable Federal, State, and local laws and regulations.

d. Lobbying Activities. The City furnishes, as part of this agreement, a certification (Exhibit E and if applicable, a Disclosure of Lobbying Activities) that it will comply with Title 31 U.S.C. Section 1352 of the limitation on use of appropriated funds to influence certain Federal contracting and financial transactions (Public Law 101-121, October 23, 1989) and Federal Acquisitions Regulation 52.203-12 issued pursuant thereto.

ARTICLE 15 - Definitions.

a. Project investment costs. The initial cost of the Project, including: land acquisition; construction; interest during construction on the value of land, labor, and materials used for planning and construction of the Project.

b. Interest during construction. An amount of interest which accrues on expenditures for the establishment of Project services during the period between the actual outlay and the time the project is first made available for water storage.

c. Specific costs. The costs of Project features normally serving only one particular Project purpose.

d. Joint-use costs. The costs of features used for any two or more Project purposes.

e. Plant-in-service date. This date is the date that the Project is physically available to initiate deliberate impoundment for water supply purposes.

f. Annual operation and maintenance (O&M) expense. Annual expenses funded under the O&M, General Account. These expenses include the daily Project O&M costs as well as those O&M costs which are not capitalized.

g. Repair, rehabilitation, and replacement Cost. Costs funded under the Operation and Maintenance, General, or Construction, General accounts but not associated with initial

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Project investment or construction costs. Such expenditures are for costly, infrequent work that is non-recurring in nature and are intended to ensure continued satisfactory operation of the Project

h. Fiscal Year. Refers to the Government's fiscal year. This year begins on 1 October and ends on 30 September. The September calendar year corresponds to the fiscal year.


i. Life of the Project. This is the physical life of the Project.

j. District Engineer. Refers to the District Engineer of the Portland District of the United States Army Corps of Engineers, or his/her successor or designee.

ARTICLE 16 - Approval of Agreement. This agreement shall be subject to the written approval of the Secretary of the Army or his duly authorized representative and shall not be binding until so approved.

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

APPROVED: THE UNITED STATES OF AMERICA

By 
RANDALL J. BUTLER
Colonel, Corps of Engineers
District Engineer

DATE: 15 Jul 02

CITY OF SHADY COVE, OREGON

By 
MR. TOM ANDERSON
Mayor, City of SHADY COVE

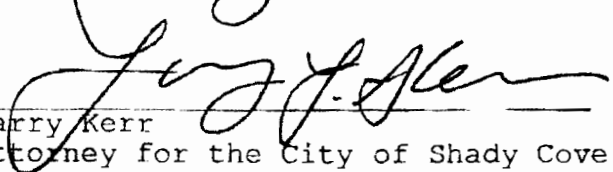
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EXHIBIT A
CERTIFICATION

I Larry Kerr, Attorney for the City of Shady Cove, hereby certify that the foregoing agreement executed by Tom Anderson, Mayor of the City of Shady Cove is within the scope of his authority to act upon behalf of the City of Shady Cove, and that in my capacity as Attorney for the City, I have considered the legal effect of Section 221 of the 1970 Flood Control Act (Public Law 91-611) and find that the City is legally and financially capable of entering into the obligations contained in the foregoing agreement and that, upon acceptance, it will be legally enforceable.

Given under my hand, this 12 day of June 2002.


Larry Kerr
Attorney for the City of Shady Cove