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MAY 14 2019
Department of Water Resources
Eastern Region

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

THIS AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT (this "Agreement") is made and entered to be effective as of the 1st day of March, 2019 (the "Effective Date"), by and between **Kip M. Hunter and Brandi Hunter**, husband and wife, whose address is 467 S. 1600 W., Pingree, Idaho 83262 (hereinafter "Seller"), and **LCSC Enterprises LLC**, a Texas limited liability company, whose address is 433 Las Colinas Blvd. Suite 1290, Irving, Texas, 75039-5058 (hereinafter "Buyer"). Buyer and Seller are individually a "Party" and together the "Parties".

RECITALS:

A. Seller is the owner of Water Right No. 35-2824 (the "Water Right"), which was decreed on April 2, 2012 in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of the State of Idaho. The Water Right is more fully described in the report obtained from the Idaho Department of Water Resources ("Department" or "IDWR") attached hereto as **Exhibit 1**.

B. Previously, in conjunction with a previous agreement to sell the Water Right to Lance and Lisa Funk, Seller was able to agree with certain protestants to conditions associated with a protested water right transfer application that the Water Right could be split into (1) a 46-acre portion as a primary ground water right, and (2) a 75-acre portion to include the following condition: "Use of this right is combined with water from Aberdeen Springfield Canal Co."

C. In conjunction with execution of this Agreement, Seller and Lance and Lisa Funk have agreed to terminate their prior purchase and sale agreement. Accordingly, IDWR has not processed the signed stipulations between Seller and the protestants to the transfer application referenced in the immediately preceding recital. Nevertheless, the Parties anticipate that the protestants to the transfer will maintain its agreement to the 75-acre/46-acre split of the Water Right.

D. Based on the foregoing, Seller desires to sell, and Buyer desires to buy, the entirety of the Water Right—upon approval of (1) the approval of the 75-acre portion of the Water Right; and (2) the approval of the 46-acre portion of the Water Right—pursuant to the terms and provisions of this Agreement.

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IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENTS:

1. Water Right Purchase. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, the Water Right, which has the following elements:

WATER RIGHT NO. 35-2824

Diversion Rate: 2.14 cfs
Diversion Volume: 440 acre-feet per year
Irrigated Acres: 121 acres

2. Purchase Price and Down Payment.

(a) Purchase Price. The purchase price for the Water Right is [REDACTED] (the "Purchase Price").

(b) Down Payment. The Down Payment for purchase of the Water Right shall be [REDACTED] (the "Down Payment"), which is the total portion of the Purchase Price associated with the 75-acre portion of the Water Right. The Down Payment shall be paid contemporaneous with the execution of this Agreement to be held in a trust account associated with Buyer's attorney, William Parsons (of Parsons, Smith, Stone, Loveland & Shirley, LLP). The Down Payment shall be credited toward the Purchase Price if the 75-acre Transfer (defined below) is approved as described in paragraph 4 below and the Parties proceed to Closing.

(c) Remaining Portion of Purchase Price. The remaining portion of the Purchase [REDACTED], which is the total portion of the Purchase price associated with the 46-acre portion of the Water Right—shall be delivered to a trust account associated with Buyer's attorney, William Parsons (of Parsons, Smith, Stone, Loveland & Shirley, LLP) within fourteen (14) days of submission of the 46-acre Transfer (defined below) and shall be paid to Buyer upon satisfactory approval of the 46-acre Transfer (defined below) as described in paragraph 4(b) below.

3. Property Retained. Seller reserves and retains unto Seller all remaining water rights, including but not limited to stock in the Aberdeen-Springfield Canal Company, appurtenant to the property upon which the Water Right is currently appurtenant. No land, easements, or other property interests, other than the Water Right, are included in this Agreement.

4. Transfer Applications.

(a) Transfer Filings. Buyer intends to file with IDWR, or amend a current filing with IDWR, one or more *Applications for Transfer of Water Right* for the 75-acre portion of the Water Right (the "75-acre Transfer") and a 46-acre portion of the Water Right (the "46-acre Transfer") to amend and move the Water Right to Buyer's desired locations. The Parties will cooperate in obtaining IDWR approval of the Transfer and will provide and execute any necessary documents requested by IDWR. Buyer will be responsible for the costs to file the any of the transfer applications, including all attorney fees, consultant fees, and filing fees associated with preparation of the Transfer. Buyer shall file the 75-acre Transfer on or before April 30, 2019.

(b) IDWR Final Order on Transfers. If the final order for the 75-acre Transfer (described in the recitals) indicates that the Transfer is (i) denied, (ii) approved by IDWR for less than 75 acres, or (iii) approved by IDWR with conditions that materially devalue the 75-acre portion of the Water Right for Buyer's intended use thereof, Buyer shall have the right to terminate this Agreement by providing written notice to the Buyer within fourteen (14) days of the date of the IDWR denial, or unacceptable approval of, the 75-acre portion. In the event this Agreement is terminated, Buyer shall at its sole expense take such action as may be required to void or reverse the Transfer in order to return the Water Right to the condition it existed as on the Effective Date, and Seller shall return the Down Payment to Buyer. If the approval for the 75-acre Transfer is satisfactory to Buyer, Buyer shall release the Down Payment to Seller no sooner than fourteen (14) days after the 75-acre Transfer approval, but no later than twenty-one (21) days after issuance of the 75-acre Transfer approval. The same procedure described in this paragraph 4(b) shall be followed with respect to the 46-acre Transfer.

5. Closing.

(a) Closing Location. The Closing shall occur at the offices of Parsons, Smith, Stone, Loveland & Shirley, LLP, or at another location mutually agreed by the Parties.

(b) Documents to be Delivered at Closing. At Closing, Buyer and Seller shall execute (with acknowledgements, as needed) and/or deliver all instruments, documents and the Purchase Price (less the Down Payment) for the Water Right or applicable portion of the Water Right. The documents Seller shall deliver to Buyer at closing include: (i) a Special Warranty Deed (the "Deed") for each water right transfer for 35-2824 substantially in the form attached to this Agreement as **Exhibit 2**; and (ii) any lien release or other documents reasonably requested to confirm the conveyance of the Water Right free and clear of encumbrances.

(c) Fees and Costs of Closing. The cost of recording the Deed shall be paid by Buyer. All other expenses not specifically referenced in this Agreement with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.

6. Default. In addition to either Party's failure to perform any material term or condition of this Agreement or a Party's breach of any of such Party's representations or warranties (in which event the non-defaulting party may pursue any available remedy, including equitable relief), each Party shall be deemed in default hereof if such Party files a petition in bankruptcy or is adjudicated bankrupt or insolvent, makes an assignment for the benefit of its

creditors, or consents to the appointment of a receiver of itself or of its property, or institutes proceedings for its reorganization.

7. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the effective date of this Agreement and again as of the Closing as follows:

(a) Authority. Seller has the full legal right, power and authority to enter into and perform this Agreement and will convey good marketable title of the Water Right in fee simple, and Seller (at its expense) shall remove, or cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Water Right on or before closing.

(b) Conveyance. Provided that the conditions in Paragraph 4 are satisfied, Seller shall then convey the Water Right free and clear of all liens, encumbrances and restrictions, except such restrictions on the use of water as may appear on the water right record contained in **Exhibit 1** and in the transfers approved by the Department.

(c) Appurtenance. The Water Right are appurtenant to and have been beneficially used as the water source to irrigate its place of use and/or been properly preserved for future use (i.e., placed in the Idaho water supply bank) consistent with Idaho law.

(d) Not Forfeited. The Water Right has not been forfeited or abandoned in whole or in part.

(e) No Representation or Warranty Concerning Suitability for Buyer's Intended Use. Seller has not made, and hereby makes, no representation or warranty to Buyer except as expressly contained in this Agreement.

8. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller as of the effective date of this Agreement and again as of the Closing for the Water Right, as follows:

(a) Authority. Buyer has the legal power, right, and authority to enter into this Agreement and to perform Buyer's obligations hereunder.

(b) Buyer's Due Diligence. Buyer and Buyer's consultants and counsel have had a full opportunity to review all documents, records, and other information made available to Buyer by Seller and/or otherwise reasonably available to Buyer through public or other sources, related to the nature and extent of the Water Right, the laws and rules affecting their transfer and use by Buyer, and the suitability or fitness of the Water Right for Buyer's intended purposes.

9. Warranties to Survive Closing. All representations and warranties made by the Parties herein are also covenants, and each Party shall take all such actions as may be required to satisfy said covenants and to cause the representations and warranties to be true on and as of the Closing. The Parties' respective obligations to close and consummate the transaction contemplated herein are contingent upon the representations, warranties, and covenants contained in this Agreement being true, valid, and satisfied on and as of the Closing. All such representations and warranties shall survive the Closing.

10. Miscellaneous.

(a) Attorneys' Fees. Each party shall pay their own attorneys' fees associated with preparation and review of this Agreement. Additionally, if either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.

(b) Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

Seller

Kip M. Hunter
Brandi Hunter
467 S. 1600 W.
Pingree, ID 83262

Buyer

LCSC Enterprises LLC
433 Las Colinas Blvd. Suite 1290
Irving, TX 75039-5058

Seller's Representative

Robert L. Harris
Holden, Kidwell, Hahn & Crapo,
PLLC
PO Box 50130
Idaho Falls, ID 83405

Buyer's Representative

William A. Parsons
Parsons, Smith, Stone, Loveland &
Shirley, LLP
PO Box 910
Burley, ID 83318

(c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Water Right. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.

(d) Broker. It is understood and agreed by and between the Parties that the transaction herein contemplated does not involve a broker for either Seller or Buyer. To the extent any broker commissions are owed as a result of this transaction by Buyer, Buyer agrees to be solely liable therefore, and Buyer agrees to indemnify Seller from any such commissions. To the extent any broker commissions are owed as a result of this transaction by Seller, Seller agrees to be solely liable therefore, and Seller agrees to indemnify Buyer from any such commissions.

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(e) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.

(f) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.

(g) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.

(h) Counterparts. This Agreement may be executed in any number of counterparts for all the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

(i) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

(j) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.

(k) Essence of Time. Time is of the essence in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"SELLER"


Kip M. Hunter


Brandi Hunter

"BUYER"

LCSC Enterprises LLC

By: Blair Dance
Its: _____

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"SELLER"

Kip M. Hunter

Brandi Hunter

"BUYER"

LCSC Enterprises LLC

By: Blair Dance
Its: Manager

Exhibit 1
(the "Water Right")

5/10/2018

Water Right Report

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

5/10/2018

WATER RIGHT NO. 35-2824

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BRANDI HUNTER
Current Owner	KIP M HUNTER 467 S 1600 W PINGREE, ID 83262 2086803449
Original Owner	CHARLIE DROGHEI PINGREE, ID
Original Owner	JENNIE DROGHEI 467 S 1600 W PINGREE, ID 83262 2086844169
Security Interest	BANK OF IDAHO 399 N CAPITOL AVE IDAHO FALLS, ID 83402 2085283013

Priority Date: 08/28/1961
Basis: Decreed
Status: Active
Water Supply Bank Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	11/01	2.14 CFS	440 AFA
Total Diversion			2.14 CFS	

Location of Point(s) of Diversion:

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=2824&SplitSuffix=%20%20&TypeWaterRight=True>

5/10/2018

Water Right Report

GROUND WATER|NENWSE|Sec. 29|Township 03S|Range 33E|BINGHAM County

Place(s) of use:

Place of Use Legal Description: IRRIGATION BINGHAM County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
03S	33E	28		NWSW	35		SWSW	35						
		29		NESE	33		NWSE	18						

Total Acres: 121

Conditions of Approval:

1. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
2. E02 USE OF THIS RIGHT IS COMBINED WITH WATER FROM ABERDEEN SPRINGFIELD CANAL CO.

Dates:

Licensed Date:

Decreed Date: 04/02/2012

Permit Proof Due Date:

Permit Proof Made Date:

Permit Approved Date:

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND

Water District Number: 120

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=2824&SplitSuffix=%20%20&TypeWaterRight=True>

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5/10/2018

Water Right Report

Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Water Supply Bank:

Lessor Name(s): BRANDI HUNTER
KIP M HUNTER

Lease Status: Active

Lease Amount: 2.14cfs

Rental Availability: 2.14cfs

Date Received: 2/14/2017

Lease Begin Date: 1/1/2017

Expiration Date: 12/31/2017

Close

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=2824&SplitSuffix=%20%20&TypeWaterRight=True>

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**Exhibit 3
(Form of the Deed)**

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Robert L. Harris
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
PO Box 50130
Idaho Falls, ID 83405

(Space Above for Recorder's Use)

SPECIAL WARRANTY DEED FOR WATER RIGHT

Kip M. Hunter and Brandi Hunter, husband and wife, whose address is 467 S. 1600 W., Pingree, Idaho 83262 (collectively "Grantor") does hereby grant, bargain, sell, assign, and convey unto **LCSC Enterprises LLC**, a Texas limited liability company, whose address is 433 Las Colinas Blvd. Suite 1290, Irving, Texas, 75039-5058 ("Grantee") and to Grantee's heirs and assigns forever, all of Grantor's right title and interest in Water Right No. 35-2824 as described in Exhibit A hereto (the "Water Right").

Grantor hereby covenants and warrants to Grantee as follows:

- (A) Grantor is the owner of the Water Right;
- (B) Grantor has not conveyed any of the Water Right to anyone other than Grantee;
- (C) The Water Right is free from all liens, claims, or encumbrances; and
- (D) Grantor has the authority to convey the Water Right to Grantee.

Grantor makes no other covenants or warranties as to the Water Right.

IN WITNESS WHEREOF, the undersigned authorized officer of Grantor, acting on behalf of Grantor, has caused his name to be hereunto subscribed.

[SIGNATURES ON FOLLOWING PAGE]

DATED this _____ day of _____, 20_____.

“GRANTOR”

Kip M. Hunter

Brandi Hunter

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2019, by **KIP M. HUNTER**.

Notary Public for Idaho
My Commission Expires: _____

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2019, by **BRANDI HUNTER**.

Notary Public for Idaho
My Commission Expires: _____

EXHIBIT A
WATER RIGHT DESCRIPTIONS TO BE COMPLETED UPON TRANSFER APPROVAL(S)

May 14, 2019

Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

JCH Engineering & Consulting, PLLC

6755 N. Albert Lane
Idaho Falls, ID 83401
(208) 308-2109
jasoncivil@alumni.nd.edu

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Department of Water Resources
Eastern Region

Re: (4) Applications for Transfer 35-2824 in the name of LCSC Enterprises, LLC

Dear Reviewing Agent:

Please find attached four applications for transfer of water right prepared on behalf of LCSC Enterprises, LLC. These transfers seek to change the place of use for portions of existing water right 35-2824. IDWR approvals of the changes should also serve to satisfy a portion of NOV E2018-1271.

Withdrawn transfer # 81292 determined 75 acres of 35-2824 were supplemental to Aberdeen-Springfield Canal shares and this portion of the right will remain within the authorized place of use and be combined with shares owned by LCSC. The majority of the remainder will be moved separately to the Lake Walcott area wells associated with existing water rights 35-7616A, 35-7491 and 35-7740 to authorize additional irrigation acreage related to NOV E2018-1271. These transfers require that the ESPA reaches of Near Blackfoot to Neeley and Neeley to Minidoka be combined for determination of ESPA reach impacts. Due to the net Snake River flow increasing the capturable and deliverable flow in the American Falls Reservoir, no negative impacts to existing water rights are anticipated and it appears the department has approved similar transfers in the past. These transfers can be considered independently and should be approvable individually.

If you need anything or I can assist in any way to expedite processing please don't hesitate to contact me at your earliest convenience.

Sincerely,



Jason C. Helms, P.E.

Attachments: (4) Applications for Water Right Transfer (35-2824) w/attachments
LCSC Check #3451 (\$580), #3452 (\$500), #3453 (\$200), #3454 (\$200)

cc: Blair Dance (LCSC Enterprises, LLC)

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