

# WATER SUPPLY BANK LEASE CONTRACT

MAY 29 2013

DEPARTMENT OF  
WATER RESOURCES

This Lease Contract ("**Lease**") is effective May 6, 2013, between the Idaho Water Resource Board ("**Board**"), and

**Lessor: TMCO, INC.**  
PO BOX 1366  
NAMPA ID 83653  
(208) 466-8907

## RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

NOW, THEREFORE, in consideration of the mutual covenants and contracts herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **WATER RIGHTS:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water rights described as follows:

### Summary of Water Rights or Portions Leased to the Bank

| <u>Water Right</u>            | <u>Lease Rate</u> | <u>Lease Volume</u> | <u>Acre Limit</u> | <u>Total Leased Acres</u> |
|-------------------------------|-------------------|---------------------|-------------------|---------------------------|
| 63-7019                       | 1.09 CFS          | 326.7 AF            | NA                | 72.6 AC                   |
| 63-7956                       | 0.36 CFS          | 153.8 AF            | NA                | 72.6 AC                   |
| <b>Combined Lease Totals:</b> | <b>1.45 CFS</b>   | <b>326.7 AF</b>     | <b>NA</b>         | <b>72.6 AC</b>            |

The water rights described herein shall be available for rental from the Bank as follows:

Authorized Period of Use under Lease: 4/1 to 10/31

2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

**Minimum Payment Acceptable:** Negotiated Rental Rate: \$497.25 annually for a portion of the leased amount. See conditions of acceptance below and rental agreement on file with the Department. The remaining portion of the lease will be rented at the current rental rate.

3. **TERM OF LEASE:** This Lease shall take effect when both parties have signed it and shall continue in effect until December 31, 2017.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

SUPPORT DATA

IN FILE #

63-7019

JUN 03 2013

IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

**TMCO, INC.**

PO BOX 1366

NAMPA ID 83653

By 

Date 5-28-13

Printed Name Tom MALSON

Title President

**IDAHO WATER RESOURCE BOARD**

322 East Front Street

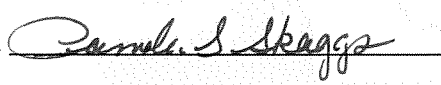
P.O. Box 83720

Boise, ID 83720-9098

By 

Date 05-30-2013

Brian Patton, Acting Administrator  
Idaho Water Resource Board

Lease approved by IDWR 

Date 05-30-2013

SCANNED

JUN 03 2013

**ATTACHMENT A**  
**WATER RIGHT NO. 63-7019**  
**WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

The water right or portion thereof leased to the bank is described as follows:

**Lessor:** **TMCO, INC.**  
 PO BOX 1366  
 NAMPA ID 83653  
 (208) 466-8907

**Priority Date:** 8/21/1967

**Source:** GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u>   | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u>   |
|-----------------------|---------------|-----------|-----------------------|-----------------|
| IRRIGATION            | 04/01         | to 10/15  | 1.09 CFS              | 326.7 AF        |
|                       | <b>Total:</b> |           | <b>1.09 CFS</b>       | <b>326.7 AF</b> |

**LOCATION OF POINT(S) OF DIVERSION:**

|                |        |                  |               |
|----------------|--------|------------------|---------------|
| GROUND WATER   | NW¼SW¼ | Sec. 1, Twp 06N, | Rge 05W, B.M. |
| PAYETTE County |        |                  |               |
| GROUND WATER   | SW¼SW¼ | Sec. 1, Twp 06N, | Rge 05W, B.M. |
| PAYETTE County |        |                  |               |
| GROUND WATER   | SE¼NE¼ | Sec. 2, Twp 06N, | Rge 05W, B.M. |
| PAYETTE County |        |                  |               |

**PLACE OF USE TO BE IDLED UNDER THIS LEASE:** IRRIGATION

| Twp | Rge | Sec | NE |    |    |    | NW  |     |      |     | SW   |      |     |     | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|-----|-----|------|-----|------|------|-----|-----|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE  | NW  | SW   | SE  | NE   | NW   | SW  | SE  | NE | NW | SW | SE |        |
| 06N | 05W | 01  |    |    |    |    |     |     | 18.2 | 9.0 | 10.2 | 11.9 | 5.5 | 4.9 |    |    |    |    | 59.7   |
| 06N | 05W | 12  |    |    |    |    | 6.1 | 6.8 |      |     |      |      |     |     |    |    |    |    | 12.9   |

Total Acres: 72.6

**COMBINED LIMITS OF LEASED RIGHT:**

| <u>Combined Rights</u> | <u>Lease Rate</u> | <u>Lease Volume</u> | <u>Acre Limit</u> | <u>Total Leased Acres</u> |
|------------------------|-------------------|---------------------|-------------------|---------------------------|
| 63-7019 and 63-7956    | 1.45 CFS          | 326.7 AF            | NA                | 72.6 AC                   |

**ADDITIONAL CONDITIONS OF ACCEPTANCE**

1. The water right(s) referenced above is accepted into the bank and a portion of the lease is rented in accordance with a private agreement formulated between the lessor and the renter. The right will be rented from the bank at the 10% standard Department share of \$17.00 per acre-foot.
2. While a right is in the bank, the lessor may not use the right without approval of the Department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.
3. A right accepted into the bank stays in the bank until the Board releases it, the lease term expires, or upon request from the lessor to change the term of the lease, provided the Board approves the release. Unless approved by the Department, leased rights may not be immediately available for release.

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Attachment A

4. While a water right is in the bank, forfeiture provisions are stayed.
5. The use of water for irrigation under this right may begin as early as March 1 and may continue to as late as November 15, provided other elements of the right are not exceeded. The use of water before April 1 and after October 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.
6. While this right is leased to the bank, the unleased portion of rights 63-7019 and 63-7956 are limited when combined to a total maximum diversion rate of 4.95 cfs and an annual volume of 1,113.3 af for the irrigation on 247.4 acres.
7. While this right is leased to the bank, the unleased portion of rights 63-7019, 63-7956, and 63-11282 are limited when combined to a total of 15.28 cfs.
8. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
9. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.
10. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other Department application process.
11. In accordance with Idaho Code §§ 42-248 and 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
12. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
  - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season.
  - b. If a change in ownership is processed by the Department during a rental season, rental payment will be made to the person or entity who is the lessor of record at the beginning of that rental season.
  - c. New lessor(s) of record will receive payment after the following rental season.
13. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

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**ATTACHMENT A**  
**WATER RIGHT NO. 63-7956**  
**WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

The water right or portion thereof leased to the bank is described as follows:

**Lessor:** **TMCO, INC.**  
 PO BOX 1366  
 NAMPA ID 83653  
 (208) 466-8907

**Priority Date:** 4/1/1974

**Source:** GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u>   | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-----------------------|---------------|-----------|-----------------------|---------------|
| IRRIGATION            | 04/01         | to 10/31  | 0.36 CFS              | 153.8         |
|                       | <b>Total:</b> |           | <b>0.36 CFS</b>       | <b>153.8</b>  |

**LOCATION OF POINT(S) OF DIVERSION:**

|              |                |                  |               |
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| GROUND WATER | NW¼SW¼         | Sec. 1, Twp 06N, | Rge 05W, B.M. |
|              | PAYETTE County |                  |               |
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|              | PAYETTE County |                  |               |
| GROUND WATER | SE¼NE¼         | Sec. 2, Twp 06N, | Rge 05W, B.M. |
|              | PAYETTE County |                  |               |

**PLACE OF USE TO BE IDLED UNDER THIS LEASE:** IRRIGATION

| Twp | Rge | Sec | NE |    |    |    | NW  |     |      |     | SW   |      |     |     | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|-----|-----|------|-----|------|------|-----|-----|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE  | NW  | SW   | SE  | NE   | NW   | SW  | SE  | NE | NW | SW | SE |        |
| 06N | 05W | 01  |    |    |    |    |     |     | 18.2 | 9.0 | 10.2 | 11.9 | 5.5 | 4.9 |    |    |    |    | 59.7   |
| 06N | 05W | 12  |    |    |    |    | 6.1 | 6.8 |      |     |      |      |     |     |    |    |    |    | 12.9   |

Total Acres: 72.6

**COMBINED LIMITS OF LEASED RIGHT:**

| <u>Combined Rights</u> | <u>Lease Rate</u> | <u>Lease Volume</u> | <u>Acre Limit</u> | <u>Total Leased Acres</u> |
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2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of the Department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.

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