

## WASHINGTON STATE COUNTY AUDITOR/RECORDER'S COVER SHEET

RETURN TO: **Bureau of Reclamation**  
**Attention: Cas Garza, EPH-2809**  
**P.O. Box 815**  
**Ephrata, WA 98823**

Document Title(s): **Consent to Use Agreement**

Reference Number(s): **7-07-16-L3971 (Reclamation Contract No.)**

Grantor(s) [Last, First and Middle Initial]:

1. **United States of America**

Additional names on page \_\_\_\_ of documents.

- 2.

Grantee(s) [Last, First and Middle Initial]:

1. **City of Othello**

Additional names on page \_\_\_\_ of documents.

- 2.

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range):

A parcel of land within the right-of way boundary of the Potholes East (PE) Canal between station (STA) 764+12.00, and STA 737+63.40 of the centerline of said canal, as shown on Sheet 33 of Block 49, of Farm Unit plat maps with revision to, December 11, 1963. Said land located in the Northeast quarter (NE¼) of Section 4, Township 15 North, Range 29 East, Willamette Meridian, Adams County, Washington.

Assessor's Property Parcel Number:

Remarks: **Contract dated March 30, 2007. The contract consists of 11 pages. Reclamation Tract No. 18557. If you have any questions, please contact Ms. Cas Garza, Realty Specialist, at 509-754-0204.**

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The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy of, or completeness of the indexing information provided herein.



RETURN TO:  
Bureau of Reclamation  
Attn: Cas Garza  
P. O. Box 815  
Ephrata, WA 98823

Contract No. 7-07-16-L3971  
Tract No. 18557  
Section 4, T.15 N., R.29 E., W.M., Adams County

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Columbia Basin Project  
Ephrata, Washington

CONSENT TO USE AGREEMENT

THIS AGREEMENT, made this 30th day of March, 2007, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), Reclamation Project Act of August 4, 1939, (53 Stat. 1187), the Columbia Basin Act of 1943 (57 Stat. 14; 16 U.S.C. §835), the Act of August 30, 1890, (26 Stat. 391), and Acts amendatory thereof or supplementary thereto, known as the Federal Reclamation Laws, including without limitation by this enumeration all acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA, hereinafter called the United States, acting by and through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as Reclamation, and the officer executing this Agreement, hereinafter referred to as the Contracting Officer, and the CITY OF OTHELLO, a municipal corporation, of the State of Washington, hereinafter referred to as the Consentee.

WITNESS, THAT:

WHEREAS, in connection with the Columbia Basin Project, hereinafter referred to as the Project, the United States, through the Bureau of Reclamation, Department of the Interior, has pursuant to Federal Reclamation Laws, acquired certain land rights in Adams County and has constructed or owns irrigation works, known as the Potholes East Canal, hereinafter referred to as the Project Facility, located within a portion of the northeast quarter (NE¼) of Section Four (4), Township Fifteen (15) North, Range Twenty-nine (29) East, Willamette Meridian, Adams County, Washington, and which is operated and maintained by the South Columbia Basin Irrigation District, hereinafter referred to as the District; and

WHEREAS, the Consentee wishes to construct, operate and maintain a gravity sewer line and appurtenant structures within and across the 425 foot-wide easement for the Project Facility more particularly described and depicted in Exhibits A and B, attached hereto and by this reference incorporated herein; and

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions, mutual covenants, agreements, and stipulations hereinafter stated within this Agreement, the parties hereto do mutually agree as follows:

1. **DEFINITIONS.** The following terms, whenever used in this Agreement, shall have the respective meanings:

a.. "Lands" shall mean any land wherein the United States has or may hereafter acquire fee title ownership, including those lands withdrawn from the Public Domain for the development of the Project, or right-of-way as defined in 7.a.

b. "Third Party" includes any person or private or public entity not a party to this Agreement.

2. **CONSENT TO USE.** The United States hereby consents to a perpetual use of the Project Facility easement for a gravity sewer line and appurtenant structures in the manner and location described in the attached Exhibits A and B, all exhibits by this reference made a part hereof.

a. Use of the Project Facility for the purposes described herein and under the terms and conditions hereof, should not unduly interfere with the construction, operation, and maintenance of the Project Facility.

b. The rights and privileges of this Agreement are nonexclusive. There shall be no additional structures added to the Project Facility without written approval by the United States.

c. The United States has only an easement right and therefore the Consentee shall obtain further clearance from the parties owning the underlying fee.

d. The Consentee will restrict its construction activities to the non-irrigation season timeframe. The approximate dates for the 2007 irrigation season are March 5, 2007 to November 5, 2007.

e. Construction activity shall not be initiated prior to notice of approval by the Contracting Officer and the District, which notice shall include the Consentees' construction schedule so that personnel from the United States and/or the District may monitor the work as it progresses. The Consentee shall notify the District forty-eight (48) hours in advance of any construction, operation, and maintenance performed under the authority of this Agreement so that it can monitor the work.

3. **PAYMENTS BY CONSENTEE.** In compliance with Federal regulations as set forth in 43 CFR §429, the Consentee shall pay to the United States the current administrative costs of Two Hundred Dollars (\$200.00), receipt of which is hereby acknowledged.

4. **MAINTENANCE OF GRAVITY SEWER PIPELINE.** Consentee agrees to maintain the gravity sewer pipeline and appurtenant structures as follows:

a. **General Requirements.** The gravity sewer pipeline and appurtenant structures will be maintained by the Consentee without cost to the United States or the District, or their successors and assigns, and in such a manner as to not interfere with normal construction, operation, or maintenance of the Project Facility or with the administration of adjacent Lands owned by the United States or the District. The Consentees' maintenance activities are not to block operation and maintenance road traffic unless blockages are specifically requested and approved by the United States and the District.

b. **Third Party Equipment.** The Consentee shall not install or allow the installation of any equipment owned and operated by others on the Project Facility without prior written approval by the United States and/or the District. The Consentee shall assume all responsibility for ensuring that all equipment installed on the Project Facility is operated in conformance with the terms of this Agreement. All obligations imposed on the Consentee by acceptance of this Agreement for compliance with applicable laws and regulations and for the indemnification of United States and the District and their authorized representatives apply with equal force to the Consentee in regard to the operation of any equipment

installed on the Project Facility, regardless of ownership, unless that equipment is installed by or on behalf of United States or the District or their authorized representatives. The United States and the District shall not assume any obligation to provide an alternate site for operation of Third Party-owned equipment if that equipment is determined to interfere with the operations and programs of the United States and District.

c. Insurance. Any Contractors who perform maintenance work on the gravity sewer pipeline and appurtenant structures included within this Agreement shall have in force, at all times, single limit public liability and property damage insurance in the minimum amount of Fifty Thousand Dollars (\$50,000.00), with the United States and the appropriate District named as additional insureds. Such policy shall contain a provision or rider that it will not be canceled or its provisions altered before thirty (30) days written notice is given to the United States and the District by the insurance company. In the event the Contractors are self-insured, a letter shall be sent to the United States and the District obligating the Consentees' self-insurance fund for Fifty Thousand Dollars (\$50,000.00), with the United States and the appropriate District named as additional insureds, and said letter shall be signed by a person authorized to obligate the Contractor. A document attesting to this person's authority shall be included. The bond shall be retained for a minimum of one (1) year after completion of construction to guarantee repair of any damages to the Project Facility belonging to the United States and the District and included in this Agreement.

d. Repairs. During the Districts' irrigation season, and one month prior thereto, the Consentee shall immediately repair any damage to said Project Facility caused by the Consentees' operation or maintenance of Consentees' gravity sewer pipeline and appurtenant structures. At other times, such repairs shall be made within a reasonable time. All operation and maintenance work performed by the Consentee upon the Project Facility of the United States shall be undertaken only at times, according to plans, and in a manner satisfactory to the Contracting Officer and the District.

e. Restoration. Maintenance of the gravity sewer pipeline and appurtenant structures will be performed in a good and workmanlike manner in order to eliminate any voids, and the Consentee shall take all necessary steps to assure that canal water seepage does not develop as a result of its operation and maintenance of the gravity sewer pipeline and appurtenant structures. The Consentee will restore and reseed all disturbed areas caused by the construction activities in a manner and time and with seed mix approved by the District and the United States. In addition, the Consentee is responsible for prevention of the infestation and spread of noxious weeds in accordance with State and local weed regulations.

f. Explosives. The use of explosives by the Consentee shall not be permitted upon the Project Facility of the United States or the District.

g. Laws and Regulations. The Consentee shall operate and maintain the gravity sewer pipeline and appurtenant structures in a good and workmanlike manner and shall insure compliance with the laws of the State of Washington, with all laws, regulations, and orders of the United States and the District, and with any other public authority affecting such gravity sewer pipeline and appurtenant structures. Failure of the Consentee to abide by any of the terms and conditions of this Agreement after due notice shall cause this Agreement to be subject to immediate termination at the option of the Contracting Officer.

5. CONSENTEES' HAZARDOUS MATERIALS OBLIGATIONS. The Consentee agrees to perform this Agreement in accordance with the following hazardous material requirements:

a. The Consentee shall not allow contamination or pollution of Lands, Project waters, or the Project Facility of the United States or administered by Reclamation and the District. The Consentee shall take reasonable precautions to prevent such contamination or pollution by its employees and agents and by third parties and to provide for remediation, restoration and rehabilitation if contamination or pollution occurs.

b. The Consentee shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation and District' policies and instructions, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of upon Lands, the Project Facility, or in Project waters of the United States and the District.

c. "Hazardous material" means any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq.*, and the regulations promulgated pursuant to that Act. In addition, it shall include thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

d. Upon discovery of any event which may or does result in contamination or pollution of Lands, Project waters, or the Project Facility, the Consentee shall initiate emergency measures to protect health and safety and the environment if necessary and shall report such discovery with full details of the actions taken to the Contracting Officer and the District. Reporting shall be immediately upon the occurrence if it is an emergency and the first working day if it is not an emergency.

e. Violation of any of the provisions of this Article 5, upon which the Consentee do not take immediate corrective action may, as determined by the Contracting Officer, constitute grounds for termination of this Agreement and shall make the Consentee liable for the cost of full and complete remediation and/or restoration and rehabilitation of any Lands, the Project Facility, or Project waters of the United States and the District that are adversely affected as a result of the violation.

f. The Consentee agrees to include the provisions contained in paragraphs (a) through (e) of this Article 5 in any subcontract or third party contract it may enter into pursuant to this Agreement.

g. The Consentee agrees to contact the Contracting Officer to obtain any additional information needed to comply with the provisions of this Article 5

6. **PEST CONTROL.** The Consentee agrees to perform this Agreement in accordance with the following requirements whenever pesticides are used:

a. The Consentee and/or their successors or assigns shall not permit the use of any pesticides (excluding personal/domestic products intended for personal use) for the control of insects, mammals, or noxious and undesirable weeds on Reclamation-owned and controlled Lands covered by this Agreement without prior written approval by Reclamation. The Consentee shall submit to Reclamation for approval an Integrated Pest Management Plan (IPMP) thirty (30) days in advance of pesticide application. This IPMP will take into consideration all alternatives for pest control. If a pesticide is ultimately used, only the pesticide that presents the least impact on the human and natural environment will be used.

b. All pesticides used shall be in accordance with the current registration, label direction, or other directives regulating their use (State Department of Agriculture, Department of Ecology, OSHA, etc.). Restricted pesticides or pesticides having the signal word "Danger" on the label shall not be used without the prior approval of Reclamation. The Consentee shall be responsible for complying with all training (Federal, State, and local), operational requirements, and licensing requirements as may be pertinent to and required for the application of pesticides within the State. All Pesticide Application Records shall be maintained in accordance with State guidelines. A copy of said documents shall be furnished to Reclamation within five (5) working days after any application of a pesticide.

c. All pesticide application will be conducted by a certified pesticide applicator. The Consentee and/or their successors or assigns must have obtained, or have one (1) employee who has obtained, a current State Pesticide Applicator's license prior to making any pesticide application; at a minimum, a private applicator's license is required.

d. Label directions and/or warnings relative to temperature or other weather conditions shall be closely adhered to. In addition, spraying application shall not be performed in or near designated public use areas or other inhabited areas if human or domestic animal contact is imminent, either directly or by drift or when sustained wind speed is above five (5) miles per hour or is gusting. If applicable, persons wishing to re-enter the treated area shall adhere to the re-entry restrictions as described on the label.

e. All types of spray equipment, tools, and machines to be used for pesticide application shall be in proper working condition and shall be suitable for use with the pesticide to be applied. Said equipment shall be calibrated prior to the spraying season and at such times during the season as deemed necessary by Reclamation.

f. Mixing of chemicals and cleaning of application equipment shall be done in such an area where pesticides or cleaning residues can be readily prevented from entering a storm drain, sewer, or other non-target areas. The Consentee shall be responsible for containment and clean up of all pesticide spills. The Consentee shall notify Reclamation of any spills within twenty-four (24) hours of such an event.

g. The Consentee shall dispose of all pesticide containers in accordance with label instructions.

h. Aerial application of pesticides is prohibited without prior written consent by Reclamation's designated representative.

7. **RIGHTS RESERVED.** There is reserved to the United States and the District, and their successors and assigns, the prior right to use any of the Lands and Project Facility herein described to construct, operate, and maintain all structures and facilities without any liability for damages of any kind to the Consentee or without any payment of compensation to the Consentee made by the United States and the District, or their successors and assigns, for exercise of such rights. There is also reserved to the United States and the District, and their successors and assigns, at all proper times and places, freely to have ingress to, passage over, and egress from all of said Lands and Project Facility for the purpose of exercising, enforcing, and protecting the rights reserved herein.

8. **EXPENSE REIMBURSEMENT.** The Consentee further agrees that if the construction, operation, or maintenance of Project Facility should be made more expensive by reason of the operation or maintenance of the gravity sewer pipeline and appurtenant structures, such additional expense is to be estimated by the United States, which estimate is to be final and binding upon the parties hereto. Within 30 days after demand is made upon the Consentee for payment of any such sums, the Consentee will make payment thereof to the United States and/or the District, their successors or assigns. As an alternative to payment, the Consentee, at their sole cost and expense and within time limits established by the United States or its successors or assigns, may adapt the gravity sewer pipeline and appurtenant structures to accommodate the Project Facility of the United States and the District. The Consentee shall pay upon demand any costs incurred by the United States and the District occasioned by the failure of the Consentee to adapt its gravity sewer pipeline and appurtenant structures within the time limits specified.

9. **RIGHTS OF THIRD PARTIES.** The rights granted by this Agreement are nonexclusive and are subject to all existing valid rights previously acquired by Third Parties, which include any person or private or public entity not a party to this Agreement. It is also the responsibility of the Consentee for

determining what other utilities are located within the alignment of the gravity sewer pipeline and appurtenant structures and for notifying said utility owners of the Consentees' gravity sewer pipeline and appurtenant structures project.

**10. CONSENTEES' LIABILITY AND INDEMNITY/HOLD HARMLESS AGREEMENT.** The Consentee agrees to assume and be solely liable for any and all loss or damage, including, but not limited to, personal injury or death to persons and damage to property of the United States and the District, their successors or assigns, Third Parties, or claims therefore arising out of the Consentees' operation or maintenance of the gravity sewer pipeline and appurtenant structures or the Consentees' performance or failure to perform in accordance with this Agreement. The Consentee further agrees to indemnify and hold harmless the United States and the District, their successors and assigns, from such loss or damage.

The Consentees' obligation to indemnify and hold harmless the United States and the District, their successors and assigns, shall survive the termination or expiration of this Agreement and shall remain in full force and effect until fully satisfied.

**11. CONSENTEES' WAIVER OF LIABILITY.** The Consentee agrees that the United States and the District, their successors and assigns, shall not be liable for any damage to the gravity sewer pipeline or appurtenant structures or equipment of the Consentee, including loss of service, which may result from the construction, operation, or maintenance by Reclamation or the District, upon Lands, Project Facility, including, but not limited to damage to improvements which may occur as the result of seepage, floodage, or erosion from works constructed by the United States or the District. Nothing contained in this paragraph shall be construed as in any manner limiting other reservations in favor of the United States or the District contained in this Agreement. This Agreement shall be construed as a waiver of the Consentees' right to recover any such damages; provided, however, that nothing in this Agreement shall be construed as releasing the United States from any liability it might have under the Federal Tort Claims Act.

**12. TERMINATION OF AGREEMENT.** This Agreement shall terminate:

a. At the option of the Contracting Officer, if the Consentee fails to comply with any of the terms and conditions of this Agreement.

b. At the option of the Contracting Officer upon discontinuance by the Consentee of the use of the Project Facility covered by this Agreement for the purposes herein stated for a period of twelve (12) consecutive months.

c. At the option of the Contracting Officer and pending field clearance of hazardous waste impacts, the Consentee may terminate the Agreement by giving six (6) months written notice to the United States.

d. At the option of the Consentee by giving written notice to the Contracting Officer.

**13. REMOVAL OF GRAVITY SEWER PIPELINE AND APPURTENANT STRUCTURES.** Upon termination of this Agreement for any reason, the Consentee may be required, at the option of the Contracting Officer, to remove the gravity sewer pipeline and appurtenant structures constructed and installed above and within the boundaries of the right-of-way by the Consentee and to return the Project Facility to a safe, useable, and cleared condition, as determined by the Contracting Officer. In the event that the Consentee does not remove the gravity sewer pipeline and appurtenant structures within one (1) year after the termination of this Agreement, said gravity sewer pipeline and appurtenant structures, at the option of the Contracting Officer, shall become the property of the United States, and the United States, or its successors or assigns, may remove the same, dispose of all materials and equipment so removed by such

means as may appear advisable, return the premises to a safe, usable, and cleared condition, and recover all costs of removal, disposal, remediation, restoration, and rehabilitation of the Facility and Right-of-way from the Consentee, or their successors and assigns. Under no circumstances shall the United States or the District, or their successors and assigns, be liable for any damage or injury to the Consentee, caused or arising directly or indirectly from the removal of the gravity sewer pipeline and appurtenant structures as provided herein.

14. **ILLEGAL USE.** Any activity deemed to be illegal on Federal lands will be cause for immediate termination of the use authorization.

15. **ASSIGNMENT OR OTHER TRANSFER OF AGREEMENT.** No assignment or transfer of this Agreement or the Consentees' rights hereunder or any part or interest therein shall be valid without the written consent of the Contracting Officer and the District. The form of assignment or transfer to be used shall be approved by the Contracting Officer.

16. **NOTICES.** Notices provided by this article will be served by postal mail addressed to the respective addresses given as set forth below and the mailing of any such notice properly enclosed, addressed, and stamped, will be considered service.

Bureau of Reclamation  
Ephrata Field Office  
P.O. Box 815  
Ephrata, WA 98823

City of Othello  
500 E. Main Street  
Othello, WA 99344

17. **CONFLICT OF INTEREST.** 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 herefrom, but this restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

18. **CAPTIONS.** Captions to the preceding sections of this Agreement have been made for the convenience of the parties and shall not be used for purposes of construction or interpretation of this Agreement.

19. **AMENDMENTS.** The parties agree that this Agreement may only be amended by mutual agreement. No amendment shall be binding unless it is made in writing and signed by the authorized representatives of each of the parties.

20. **INTEGRATED AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or written, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto.

21. **SEVERABILITY.** If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement, which can be given effect without the invalid provision if the remaining provisions of the Agreement conform to the requirements of applicable law and the fundamental purposes of this Agreement.

22. **BINDING EFFECT.** This Agreement shall apply to and bind the parties hereto and their successors and assigns.

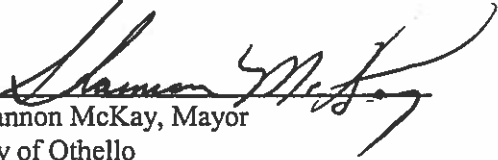


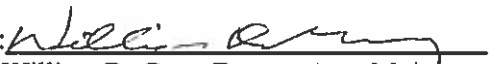


IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONSENTEE - CITY OF OTHELLO

UNITED STATES OF AMERICA

By:   
Shannon McKay, Mayor  
City of Othello  
500 E. Main Street  
Othello, WA 99344

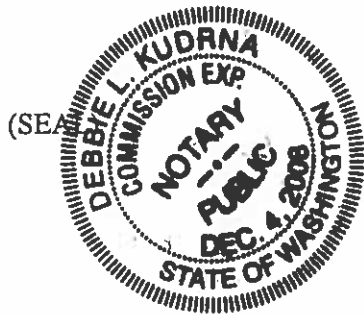
By:   
William D. Gray, Deputy Area Manager  
Bureau of Reclamation  
Upper Columbia Area, Ephrata Field Office  
P.O. Box 815  
Ephrata, Washington 98823

ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) :ss  
COUNTY OF ADAMS )

On this day personally appeared before me, the undersigned Notary, Shannon McKay, known to me to be the official of the **CITY OF OTHELLO**, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the City of Othello, for the uses and purposes therein mentioned, and on oath stated the he was authorized to execute said instrument.

WITNESS my hand and official seal on this 26<sup>th</sup> day of March, 2007.



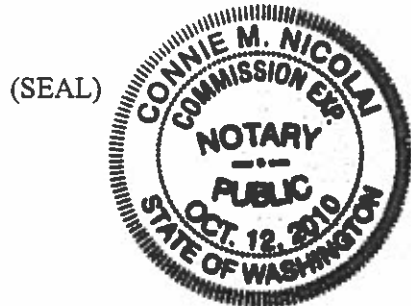
Debbie L. Kudrna  
Notary Public  
State of Washington  
Residing at: Othello, Adams County  
My Commission expires: Dec. 4, 2008

ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) :ss  
COUNTY OF GRANT )

On this day personally appeared before me, the undersigned Notary, William D. Gray, known to me to be the official of the **UNITED STATES OF AMERICA**, that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the United States, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS my hand and official seal on this 30<sup>th</sup> day of March, 2007.



Connie M. Nicolai  
Notary Public  
State of Washington  
Residing at: Ephrata  
My Commission expires: 10/12/10

**EXHIBIT A**

**City of Othello**

Consent-to-Use

Tract #18557

Contract # 7-07-16-L3971

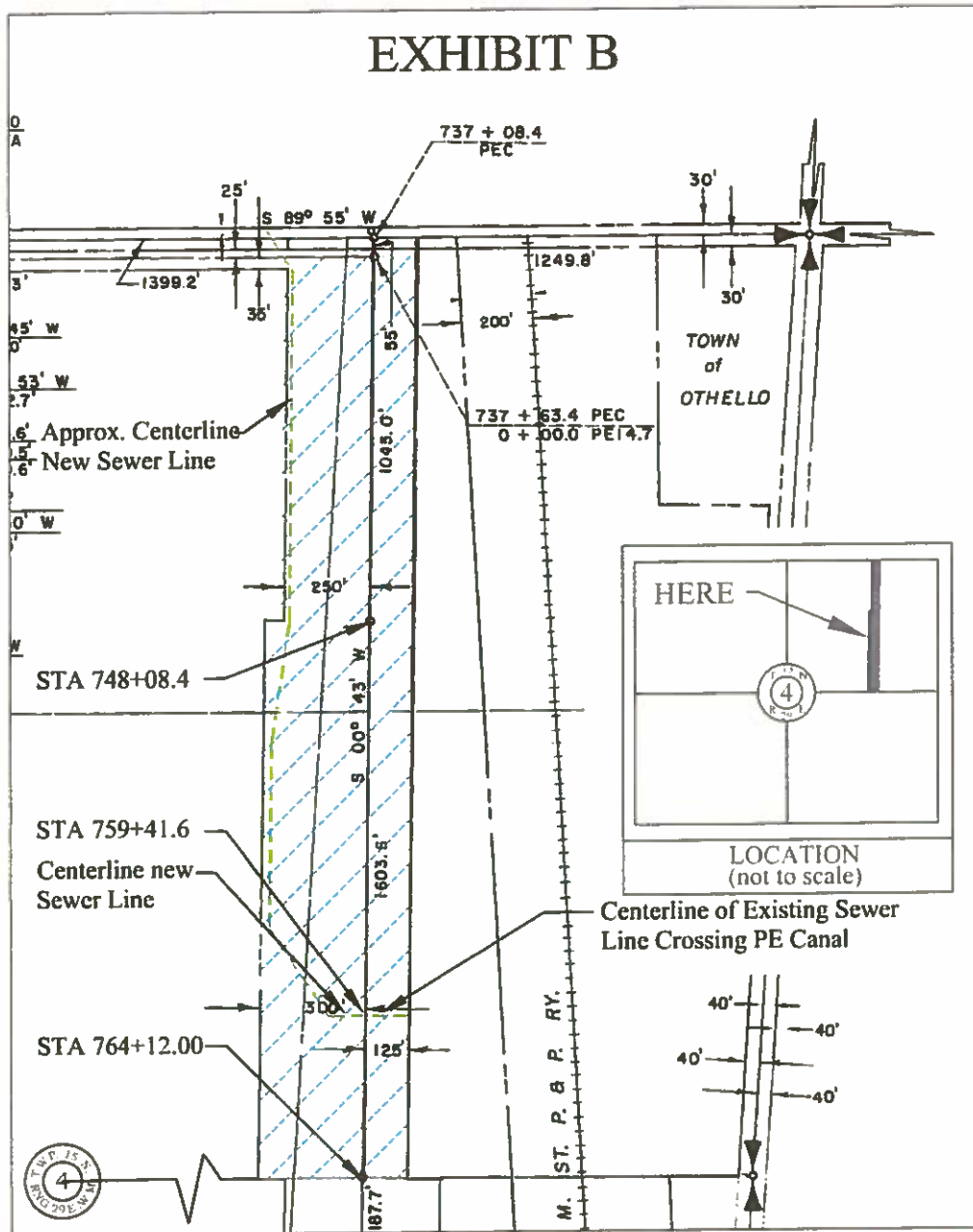
A parcel of land within the right-of way boundary of the Potholes East (PE) Canal between station (STA) 764+12.00, and STA 737+63.40 of the centerline of said canal, as shown on Sheet 33 of Block 49, of Farm Unit plat maps with revision to, December 11, 1963. Said land located in the Northeast quarter (NE $\frac{1}{4}$ ) of Section 4, Township 15 North, Range 29 East, Willamette Meridian, Adams County, Washington.

Date 3-01-2007

Area = 26.43 acres  $\pm$



# EXHIBIT B



Tract # 18557  
 Contract # 7-07-16-L3971

Consent to Use  
 Area = 24.63 Acres

A parcel of land located in the NE¼ of Section 4,  
 Township 15 N, Range 29 E, Willamette Meridian,  
 Adams County, Washington.