

Return to:
Carron Helberg
U.S. Bureau of Reclamation
1917 Marsh Road
Yakima, WA 98901

ORIGINAL
E1/2NE1/4, Sec 29, T. 20 N, R. 14E WM
Tax Parcel No. 479134 & Map No.201429-29010-0010
Kittitas County, Washington
Amended Contract No. 12-07-13-L1149

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Yakima Project, Kittitas Division, Washington**

CORRECTED LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this 2nd day of AUGUST, 2016, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388; 43 U.S.C. § 391), and all acts amendatory thereof or supplementary thereto, collectively referred to as the Federal Reclamation Laws, specifically authorized under Section 10 of the Reclamation Project Act of August 4, 1939 (53 Stat. 1187; 43 U.S.C. § 485) as amended, and provisions of 43 C.F.R. § 429, between the **UNITED STATES OF AMERICA**, hereinafter referred to as the United States, acting by and through the Department of the Interior, Bureau of Reclamation, hereinafter referred to as Reclamation, and **MARK E. WENGER AND DARCY L. SPENCER-WENGER, Husband and Wife**, hereinafter referred to as the Licensee.

WITNESSETH, THAT:

WHEREAS, the United States, through Reclamation and pursuant to Federal Reclamation Laws, acquired certain lands for that irrigation facility and its appurtenant works known as the Kittitas Main Canal Lateral 4.9, a feature of the Yakima Project, Kittitas Division, Washington; and,

WHEREAS, the Kittitas Reclamation District, hereinafter referred to as the District, under contractual obligation to the United States, operates and maintains the Kittitas Main Canal Lateral 4.9, hereinafter referred to as Lateral 4.9, as transferred works of the Yakima Project; and,

WHEREAS, the Licensee seeks this License from Reclamation to widen their access route, over and across the westerly 10-foot portion of the Lateral 4.9, along with a 168 square foot area, of which only the westerly 2-feet will be graveled, as described in Exhibit A and depicted in Exhibit B, including the transitional area, as described in Exhibit C and depicted in Exhibit D. The United States acquired this land from the District by Warranty Deed dated February 5, 1929; and,

WHEREAS, granting of this License by the United States for use of portions of said United States land as sought by the Licensee, will not, under the terms and conditions hereinafter provided, be incompatible with the purposes for which the Lateral 4.9 and its associated lands are administered by Reclamation.

NOW, THEREFORE, the parties hereto do mutually agree as follows and by accepting this License, a use authorization, the Licensee agrees to comply with and be bound by the following terms and conditions during all operation, maintenance, use and termination activities:

1. **USE**. United States hereby grants the following use authorization to the Licensee, subject to the terms and conditions of this license, a ten (10) foot access road, along with the transitional area, upon, over, and across land owned in fee by the United States, all located in the east one-half of the northeast quarter (E1/2NE1/4), Section Twenty-nine (29), Township Twenty (20) North, Range Fourteen (14) East, Willamette Meridian, Kittitas County, State of Washington, more particularly described in attached Exhibit A and Exhibit C, and depicted on Exhibit B and Exhibit D, and which is made a part hereof.

2. **FEES**. In compliance with Federal regulations as set forth at 43 CFR § 429, the Licensee shall compensate Reclamation as follows:

a. The Licensee, has paid a nonrefundable application fee in the amount of \$100.00, the receipt of which is hereby acknowledged.

b. The Licensee has paid initially estimated administrative processing costs for processing, execution, and management of this License. The receipt of initial administrative processing costs in the amount of \$690.00 is hereby acknowledged.

c. The Licensee shall compensate Reclamation for a requisite use fee as set forth at 43 CFR § 429.23. The receipt of a use fee for the term of this License in the amount of \$310.00 is hereby acknowledged.

3. **TERM**. The term of this license is for a ten (10) year period, starting from the date of the original License executed on July 23, 2013, by both parties.

4. **EXTENSION**. This License may be renewed, for additional consecutive 10-year extensions at the option of the United States, its successors and assigns, if the Licensee has met all requirements of this License. This License may be renewed based on the following conditions:

a. The Licensee shall notify the United States of its desire to renew this license by written notice according to Article fifteen (15) herein. Said written notice must be received by the United States not less than forty-five (45) days prior to the termination of this License. The Licensee

shall pay to the United States, their successors and assigns, complete compensation and consideration for the above License renewal(s).

b. Reclamation shall reevaluate the current license and evaluate the proposed License extension based upon the following criteria:

- i. The premises authorized for use have been used and maintained in accordance with the provisions of this License.
- ii. The premises will continue to be used for the purposes previously authorized in order to fulfill the intent of this License.
- iii. The Licensee has shown previous good faith compliance with the terms and conditions of this existing License and has not engaged in any activity or transaction contrary to Federal contracts, leases, permits, laws, or regulations.

5. **SUBLEASES AND ASSIGNMENTS.** No assignment or transfer of this License or Licensee's rights hereunder or any part or interest therein shall be valid without written authorization from Reclamation. The form of assignment or transfer to be used shall be approved by Reclamation.

6. **LAND USE STIPULATION.** There is reserved to the United States, their successors and assigns, the prior right to use any of the access road herein described to construct, operate, and maintain all structures and facilities, including, but not limited to canals, wasteways, laterals, ditches, roadways, electrical transmission lines, communication structures generally, substations, switchyards, power plants, fish screens, fish ladders and other appurtenant irrigation and power structures and facilities, without any payment made by the United States, or their successors for such rights.

7. **UNRESTRICTED ACCESS.** The United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits and drill test holes, and to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever. Reclamation will make every reasonable effort to keep damages to a minimum.

8. **HOLD HARMLESS.** The Licensee hereby agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other activities of the Licensee.

9. **TERMINATION.** This License will terminate and all rights of the Licensee hereunder will cease, and the Licensee will quietly deliver to the United States possession of the premises in like condition as when taken, should any of the following occur:

a. The United States reserves rights to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for termination of this License or other damage to the Licensee's activities or facilities.

b. Reclamation may, at any time and at no cost or liability to the United States, terminate this License in the event of a natural disaster, a national emergency, a need arising from security requirements, or an immediate and overriding threat to public health and safety.

c. Reclamation may, at any time and at no cost or liability to the United States, terminate this License for activities other than existing authorized private exclusive recreational or residential use as defined under § 429.2 if Reclamation determines that any of the following apply:

(i) The use has become incompatible with authorized Project purposes, project operations, safety, and security;

(ii) A higher public use is identified through a public process described at § 429.32(a)(1); or

(iii) Termination is necessary for operational needs of the Project.

d. Reclamation may, at any time and at no cost or liability to the United States, terminate this License if Reclamation determines that the Licensee has failed to use the license for its intended purpose. Further, failure of use within the timeframe specified in the terms of this license may constitute a presumption of abandonment of the requested use and cause termination of this License.

e. Reclamation may, at any time and at no cost or liability to the United States, terminate this License if the Licensee fails to comply with all applicable Federal, State, and local laws, regulations, ordinances, or terms and conditions of any use authorization, or to obtain any required permits or authorizations.

f. Any activity deemed to be illegal on Federal lands will be cause for immediate termination of this License.

g. At the option of Reclamation upon discontinuance by the Licensee of the use of the lands and Project facilities of the United States covered by this License for the purposes herein stated for a period of twelve (12) consecutive months.

h. At the option of the Licensee by providing written notice to Reclamation.

If this License is terminated under Article 9(f), the United States reserves the right to bar the Licensee from the authorization to use acquired or withdrawn public land on the Yakima Project for a period of time, as determined by the Area Manager.

10. **PROTECTION OF UNITED STATES INTERESTS.** The Licensee shall use said premises for the purposes stated herein and agrees that in the use of said premises it shall conduct its operations and maintain its facilities in a good and workmanlike manner; and, shall ensure compliance with all Federal, State, and local laws and Regulations, Executive Orders, and Reclamation Policies and Directives and Standards. The failure of the Licensee, after due notice, to abide by any of the terms and conditions of any of such applicable laws, rules, and regulations shall cause this License to be subject to immediate termination at the option of the United States.

11. **WAIVER OF LIABILITY.** The Licensee agrees that the United States, their successors and assigns, shall not be liable for any damage to the access road, including loss of service, which may result from the construction, operation, or maintenance by Reclamation or the District, upon lands or Project facilities, including, but not limited to damage to the access road that may occur as the result of seepage, floodage, or erosion from works constructed by the United States. Nothing contained in this paragraph shall be construed as in any manner limiting other reservations in favor of the United States contained in this License.

12. **ADDITIONAL STIPULATIONS.** The Licensee agrees to adhere to the following requirements for all repairs, operation, and maintenance performed under the authority of this License.

a. The access road shall not be blocked at any time for any reason. The Licensee shall not dig, blade, or cause any disturbance of the soil adjacent to the wasteway facility. The access road shall be maintained in a manner that will not interfere with the United States use of the access road along the Project Facility. The Licensee shall maintain and may gravel the westerly 2-feet of the 10-foot access road, along with the transitional area, but no soil or earthen material will be allowed to be taken from United States land.

b. The Licensee agrees that the United States, their successors and assigns, shall not be liable for any damage to the access area, including loss of service, which may result from the construction, operation, or maintenance by Reclamation, upon United States lands, Project waters or Project facilities of the United States, including, but not limited to damage to the access road, which may occur as the result of seepage, floodage, or erosion from works constructed by the United States.

c. The access road shall be operated, and maintained by the Licensee without cost to the United States or its assigns, and in such a manner as to cause no interference with the normal operation of project facilities. All repair, operation, and maintenance work performed by the Licensee within the lands of the United States shall be undertaken only at times, according to plans, and in a manner satisfactory to Reclamation.

d. No structures, including power poles or woody plants shall be allowed within the Project facilities access road area.

e. No blasting or use of explosives of any kind will be allowed on Reclamation land or the Project Facility.

f. The Licensee shall minimize the disturbance of vegetation and soil resources consistent with good land management practices and shall be liable for any and all damages to the premises caused by their activities. Acceptable land management practices include but are not limited to (1) maintaining the fertility of the soil, (2) protecting the land from erosion and (3) controlling weeds. In addition, the Licensee is responsible for the prevention of the infestation and spread of noxious weeds in accordance with State and local weed regulation.

13. **HAZARDOUS MATERIALS.** The Licensee agrees to perform this License in accordance with the following hazardous material requirements:

a. The Licensee may not allow contamination or pollution of United States lands, Project waters or Project facilities for which Licensee has the responsibility for care, operation, and maintenance and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

b. Licensee shall comply with all applicable United States, State, and local laws and regulations, and Reclamation Policies and Directives and Standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in United States lands, Project waters or Project facilities.

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.

d. Upon discovery of any event which may or does result in contamination or pollution of United States lands, waters or facilities, Licensee shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to Reclamation's Environmental Protection Specialist located in the Columbia-Cascades Area Office. Reporting may be within a reasonable time period. A reasonable time period means; within twenty-four (24) hours of the time of discovery if it is an emergency, or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

e. Violation of any of the provisions of this Article 13, as determined by Reclamation's Environmental Protection Specialist, may constitute grounds for termination of this license. Such violations require immediate corrective action by the Licensee and shall make the Licensee liable for the cost of full and complete remediation and/or restoration of any United States resources or facilities that are adversely affected as a result of the violation.

f. The Licensee agrees to include the provisions contained in paragraphs (a) through (e) of this Article 13 in any subcontract or third party contract it may enter into pursuant to this license.

g. The Licensee agrees to contact Reclamation's Environmental Protection Specialist to obtain any additional information needed to comply with the provisions of this Article 13.

14. **DISCOVERY OF CULTURAL RESOURCES.** The Licensee shall immediately provide an oral notification to Reclamation's Archaeologist of the discovery of any and all antiquities or other objects of archaeological, cultural, historic, or scientific interest on United States lands. The Licensee shall follow up with a written report of their finding(s) to Reclamation's Archaeologist, located in the Columbia-Cascades Area Office, within forty-eight (48) hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and artifacts discovered as a result of activities under this License. The Licensee shall immediately cease the activity in the area of the discovery, make a reasonable effort to protect such discovery, and wait for written approval from Reclamation's Archaeologist before resuming the activity. Protective and mitigative measures specified by Reclamation's Archaeologist shall be the responsibility of the Licensee.

15. **NOTICES.** All written notices required or desired to be given under this License shall be in writing and may be delivered by personal delivery via recognized delivery services such as United Parcel Service (UPS) or Federal Express (FED EX) or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

United States of America
Bureau of Reclamation
Yakima Field Office
1917 Marsh Road
Yakima, WA 98901-2058

Mark E. Wenger and
Darcy L. Spencer-Wenger
P.O. Box 2214
Issaquah, WA 98027

Any notice delivered by personal delivery shall be deemed received by the addressee upon actual delivery. The addresses to which notices are to be delivered may be changed by giving 15 days notice of such change in accordance with this paragraph. This paragraph shall apply where notice is required under this License, and no specific requirements are set forth. Where this License provides for a specific notice in a different manner, the more specific requirements shall prevail.

16. **RIGHTS OF THIRD PARTIES.** The permission granted by this License 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 License. It is also the responsibility of the Licensee for determining what utilities are located within the access area and for notifying said utility owners of the Licensee's use.

17. **COVENANT AGAINST CONTIGENT FEES.** The Licensee warrants that no person(s) or agency(s) have been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agencies maintained by the Licensee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this License without liability or in its discretion to require the Licensee to pay, in addition to the license price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

18. **OFFICIALS NOT TO BENEFIT.** No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

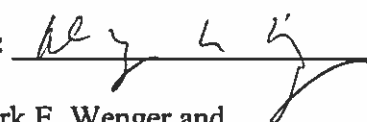
19. **SEVERABILITY.** Each provision of this License shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this License shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of this License as a whole.

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

MARK E. WENGER

By:  _____

DARCY L. SPENCER-WENGER

By:  _____

Mark E. Wenger and
Darcy L. Spencer-Wenger
P.O. Box 2214
Issaquah, WA 98027

UNITED STATES OF AMERICA

CHAD STUART

By:  _____

Yakima Field Office Manager
Bureau of Reclamation
1917 Marsh Road
Yakima, WA 98901

ACKNOWLEDGMENT

STATE OF WASHINGTON)
)
:SS
County of King)

On this day personally appeared before me, the undersigned Notary, to me known to be **Mark E. Wenger**, to be the individual that executed the within and foregoing instrument and acknowledged said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal on this the 22nd day of July, 2016.



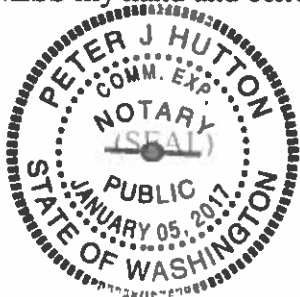
[Signature]
Notary Public in and for the
State of Washington
Residing at: Black Diamond
My commission expires: 01/05/2017

ACKNOWLEDGMENT

STATE OF WASHINGTON)
)
:SS
County of King)

On this day personally appeared before me, the undersigned Notary, to me known to be **Darcy L. Spencer-Wenger**, to be the individual that executed the within and foregoing instrument and acknowledged said instrument to be her free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal on this the 22nd day of July, 2016.



[Signature]
Notary Public in and for the
State of Washington
Residing at: Black Diamond
My commission expires: 01/05/2017

Exhibit A

**License for Mark E. Wenger and Darcy Spencer-Wenger
Corrected Contract No. 12-07-13-L1149**

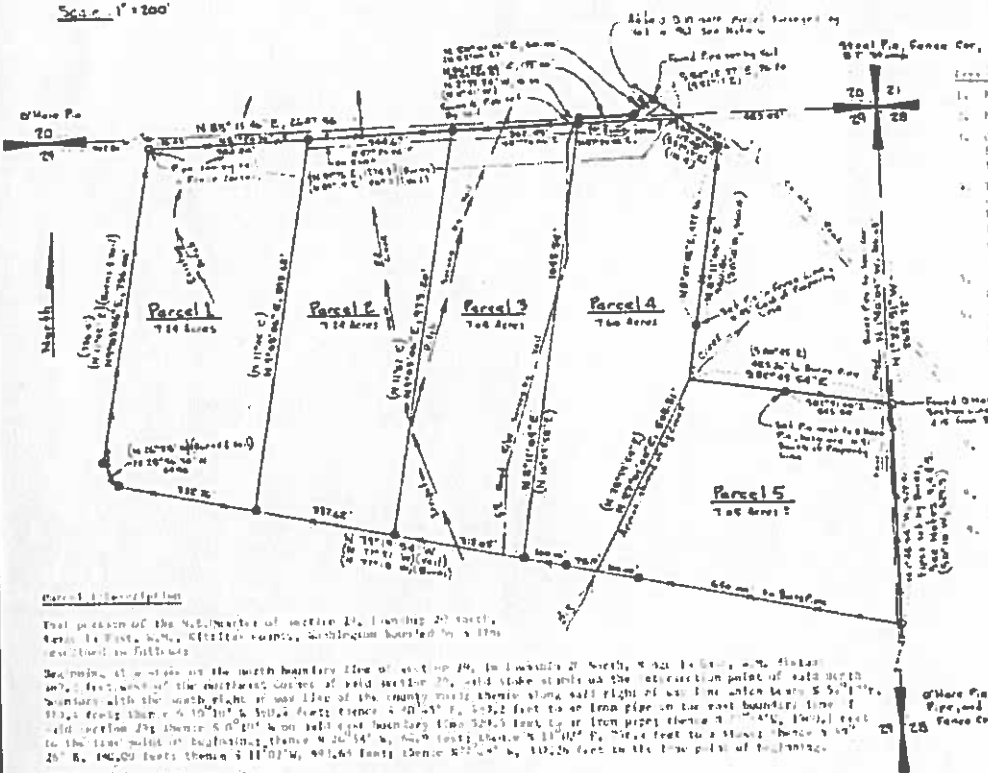
A strip of land owned by the Bureau of Reclamation located at the Kittitas Reclamation District Lateral 4.9, lying in a ten (10) foot access road, along with 168 square foot transitional area, of which 2-feet and the transitional area is to be graveled, upon, over, and across land owned in fee by the United States, all located in the east one-half of the northeast quarter (E1/2NE1/4), Section Twenty-nine (29), Township Twenty (20) North, Range Fourteen (14) East, Willamette Meridian, Kittitas County, State of Washington.

Exhibit B

449586

Sec. 29, T. 20N., R. 14E., W.M., Kittitas Co., Wa.
A Portion of the N.E. 1/4

Scale 1" = 200'



Legend

- Set 1/2\" Steel Pin, Standard 5/16\" Dia
- Found Monument of Record Case Notes
- Existing Fence - See Notes

- Notes**
1. Record of returns from this and various other records.
 2. Parties hereto were or are on the property lines.
 3. Original survey of this acre part of property, done by Burns, L.P. 29th Dec. 1876. Various feet recorded in Vol. 59, Page 314-315 according to No. 10000, Nov. 27, 1934.
 4. The second dependent survey of this acre part of property done by Vail, G.W. 27th October, 1905. In this survey Vail used the set pipes set by Burns, assumed to be on the east line of section 29, as the best available reference starting points to trace the original survey. Copies of this survey issued by Bureau on Feb. 1, 1906.
 5. The 1/2\" lateral correction to 10\" 2 west of one established in this Bureau survey line.
 6. Set 1/2\" steel pin set surveyed by Vail in October, 1905. Copies of this survey issued by Bureau and 'Corrections, said Chain Dead recorded in Vol. 71, Page 657, according to No. 10011, Nov. 17, 1906.
 7. The party descriptions are based upon the original description of report and are not reflective the differences a found and shown on this survey.
 8. Data bracketed thus () refer to original data on file in the survey submitted to original survey.
 9. If any lot is conveyed within the subdivision is sold or leased all in the year of original transfer, such status however must be preceded by a formal description of the entire

Parcel 1 Description

That portion of the N.E. 1/4 of section 29, Township 20 North, Range 14 East, West Meridian, Kittitas County, Washington bounded as follows:

beginning at a stake on the north boundary line of section 29, in Township 20 North, Range 14 East, West Meridian, 107.2 feet west of the southeast corner of said section 29, said stake stands on the intersection point of said north boundary with the north right of way line of the county road thence along said right of way line which bears S 53° 11' 11\"

Subject to all existing reservations and rights of way appurtenant to the lands.

Parcel 2 Description

That portion of the N.E. 1/4 of section 29, Township 20 North, Range 14 East, West Meridian, Kittitas County, Washington bounded as follows:

beginning at a stake on the north boundary line of section 29, in Township 20 North, Range 14 East, West Meridian, 107.2 feet west of the southeast corner of said section 29, said stake stands on the intersection point of said north boundary with the north right of way line of the county road thence along said right of way line which bears S 53° 11' 11\"

Subject to all existing reservations and rights of way appurtenant to the lands.

Parcel 3 Description

That portion of the N.E. 1/4 of section 29, Township 20 North, Range 14 East, West Meridian, Kittitas County, Washington bounded as follows:

beginning at a stake on the north boundary line of section 29, in Township 20 North, Range 14 East, West Meridian, 107.2 feet west of the southeast corner of said section 29, said stake stands on the intersection point of said north boundary with the north right of way line of the county road thence along said right of way line which bears S 53° 11' 11\"

Subject to all existing reservations and rights of way appurtenant to the lands.

Parcel 4 Description

That portion of the N.E. 1/4 of section 29, Township 20 North, Range 14 East, West Meridian, Kittitas County, Washington bounded as follows:

beginning at a stake on the north boundary line of section 29, in Township 20 North, Range 14 East, West Meridian, 107.2 feet west of the southeast corner of said section 29, said stake stands on the intersection point of said north boundary with the north right of way line of the county road thence along said right of way line which bears S 53° 11' 11\"

Subject to all existing reservations and rights of way appurtenant to the lands.

Parcel 5 Description

That portion of the N.E. 1/4 of section 29, Township 20 North, Range 14 East, West Meridian, Kittitas County, Washington bounded as follows:

beginning at a stake on the north boundary line of section 29, in Township 20 North, Range 14 East, West Meridian, 107.2 feet west of the southeast corner of said section 29, said stake stands on the intersection point of said north boundary with the north right of way line of the county road thence along said right of way line which bears S 53° 11' 11\"

Accepted & attested this 22nd day of February, 1941, in the County of Kittitas, State of Washington.

Notary Public

Kenneth M. Allen

Notary Public

Joseph K. Suss

Witness

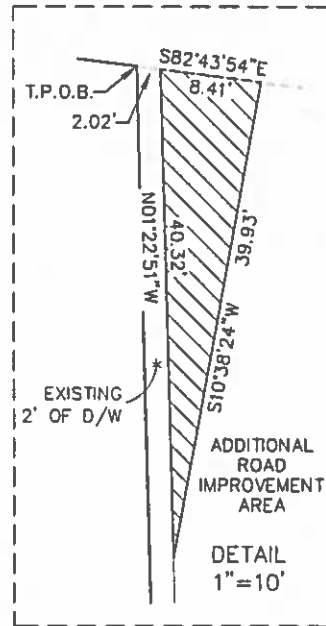
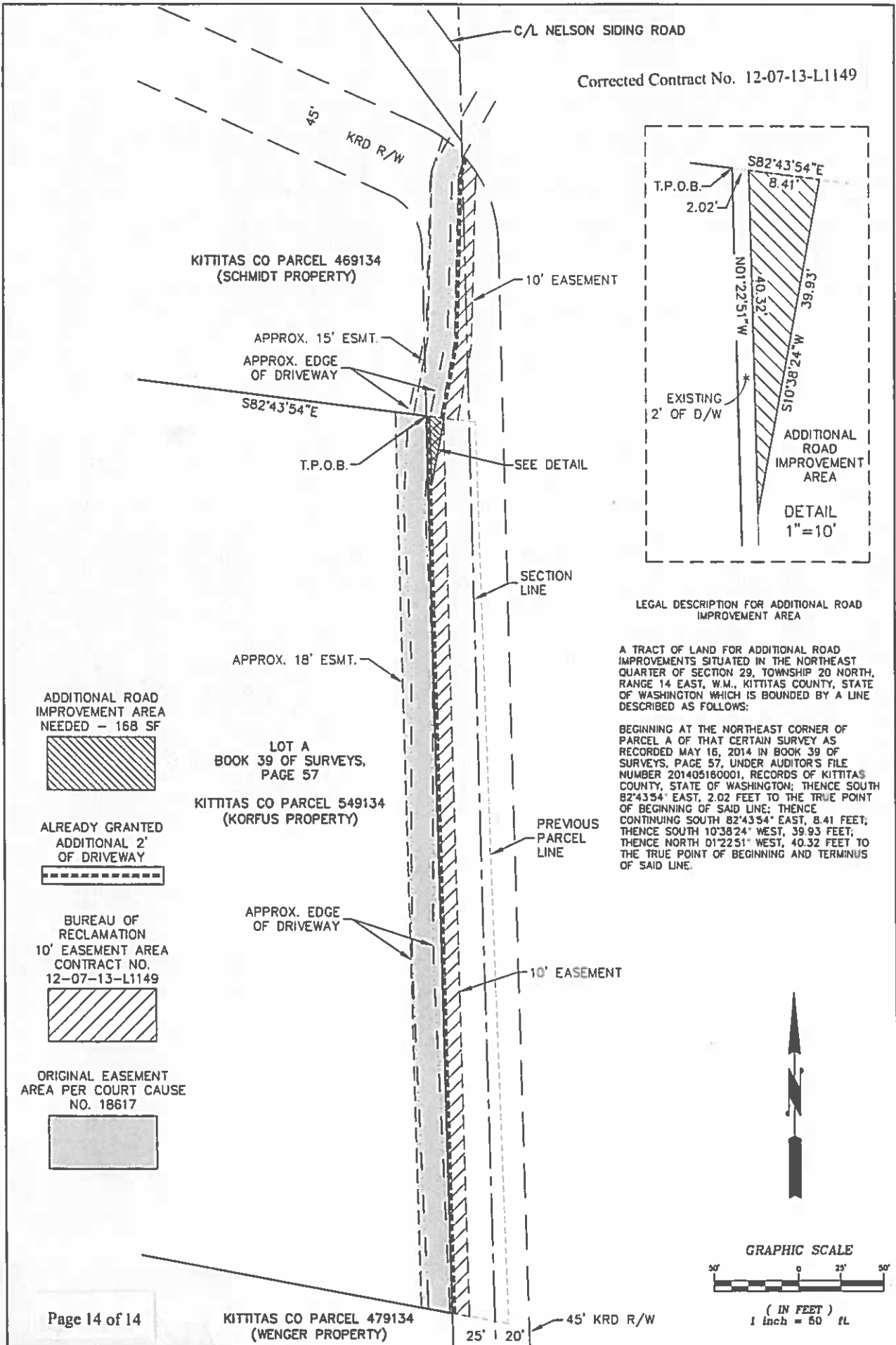
Paul Suss

Exhibit C

**License for Mark E. Wenger and Darcy Spencer-Wenger
Corrected Contract No. 12-07-13-L1149
Additional Road Improvement Area**

A tract of land for additional road improvements situated in the Northeast Quarter of Section 29, Township 20 North, Range 14 East, Willamette Meridian, Kittitas County, Washington, bound by the following described line:

Beginning at the Northeast Corner of Parcel A of that certain survey as recorded May 16, 2014 in Book 39 of Surveys, Page 57, under Kittitas County Auditor's file number 20145160001



LEGAL DESCRIPTION FOR ADDITIONAL ROAD IMPROVEMENT AREA

A TRACT OF LAND FOR ADDITIONAL ROAD IMPROVEMENTS SITUATED IN THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 20 NORTH, RANGE 14 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON WHICH IS BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL A OF THAT CERTAIN SURVEY AS RECORDED MAY 16, 2014 IN BOOK 39 OF SURVEYS, PAGE 57, UNDER AUDITOR'S FILE NUMBER 201405160001, RECORDS OF KITTITAS COUNTY, STATE OF WASHINGTON; THENCE SOUTH 82°43'54" EAST, 2.02 FEET TO THE TRUE POINT OF BEGINNING OF SAID LINE; THENCE CONTINUING SOUTH 82°43'54" EAST, 8.41 FEET; THENCE SOUTH 10°38'24" WEST, 39.93 FEET; THENCE NORTH 01°22'51" WEST, 40.32 FEET TO THE TRUE POINT OF BEGINNING AND TERMINUS OF SAID LINE.

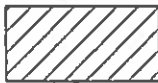
ADDITIONAL ROAD IMPROVEMENT AREA NEEDED - 168 SF



ALREADY GRANTED ADDITIONAL 2' OF DRIVEWAY



BUREAU OF RECLAMATION 10' EASEMENT AREA CONTRACT NO. 12-07-13-L1149



ORIGINAL EASEMENT AREA PER COURT CAUSE NO. 18617

