

O-KLA-97-32  
Contract No. 8-07-20-16884

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Klamath Project

EASEMENT FOR ROADWAY ACCESS  
F-23 CANAL

THIS INSTRUMENT, made this 10th day of 1998, in accordance with the Act of Congress approved Jun 17, 1902, (32 Stat. 388) and acts amendatory thereof and supplementary thereto, all such acts being commonly known and referred to as the Federal Reclamation Laws, by and between the UNITED STATES OF AMERICA, acting by and through its Department of the Interior, Bureau of Reclamation, hereinafter called the "United States," represented by the officer executing this instrument on its behalf, and KLAMATH COUNTY, hereinafter called "Grantee."

RECITALS

The United States has constructed and the Klamath Irrigation District is operating, as a feature of the Klamath Project, the F-23 Canal in Klamath County, Oregon; and

The Grantee proposes to cross the right-of-way of the F-23 Canal with a 24" CMP culvert and roadway which are necessary to prevent land locking property by providing this access to Washburn Way; and

No other safe and practical access is available to the Grantee; and

The United States has, at this time, no objection to such use and has determined that the grant of such an easement will not be incompatible with the purpose for which said parcel was acquired and is being administered, nor will the easements interfere with the operation of the F-23 Canal.

EASEMENT

In consideration of the premises and subject to the terms and conditions hereinafter set forth, the parties hereto agree:

1. The United States hereby grants to Grantee, without warranty of title, a nonexclusive right, privilege, and easement to occupy portions of the F-23 Canal right-of-way with construction and maintenance of roadway crossing for an access street located on a portion of

After Recording return to  
Klamath County Public Works  
3735 Shasta Way  
Klamath Falls, OR 97603

United States acquired land described in the legal description and shown on the attached map marked Exhibit "A" and made a part hereof.

2. Upon execution of this instrument Grantee shall pay to the United States a fee of \$500.00, said sum reflects the fair market value for the easement areas. In addition, the Grantee will reimburse the United States for all administrative costs.

3. Grantee hereby agrees to indemnify and hold harmless the United States, its agents, and employees, from any loss or damage, and from any liability on account of personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of Grantees' activities under this easement.

4. The waiver of a breach of any of the provisions hereof shall not be deemed to be a waiver of a subsequent breach of the same provision or of any other provision hereof.

5. This easement is granted for and limited to the specific purposes set forth in Article 1 hereof, and the issuance of this instrument shall not constitute nor be construed as a surrender of subordination to Grantee of the jurisdiction or supervision of the United States in the land herein described.

6. The terms and provisions of this agreement shall inure to the benefit of and be binding upon the successors and assigns of the Grantee.

7. If Grantee ceases to use the easement for an access road for a period of 5 years, such easement shall terminate and the Grantee may be required, at the discretion of the United States, to restore the land to its original condition. Said restoration shall be at the expense of the Grantee.

8. The following Hazardous Materials provisions are applicable to this easement:

(a) *The grantee shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and instructions, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored or disposed of on or in lands, waters or facilities owned by the United States or administered by Reclamation.*

(b) *"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.*

(c) *The grantee may not allow contamination of lands, waters or facilities owned by the United States or administered by Reclamation by hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, pesticides (including, but not limited to, the misuse of pesticides), pesticide containers or any other pollutants.*

(d) The grantee shall report to Reclamation, within 24 hours of its occurrence, any event which may or does result in pollution or contamination adversely affecting lands, water or facilities owned by the United States or administered by Reclamation.

(e) Violation of any of the provisions of this Article shall constitute grounds for immediate termination of this contract and shall make the grantee liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

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

(g) Reclamation agrees to provide information necessary for the grantee using reasonable diligence, to comply with the provision of this Article.

#### 9. Construction and Maintenance:

(a) All construction, reconstruction, or maintenance work shall conform to normal acceptable engineering standards, be in accordance with all applicable Federal, State, and local laws, rules, and regulations, and shall be done in such manner as to not interfere with those rights and privileges of the United States, together with the responsibility for any damage to United States facilities and/or loss of use as a result of damages to the facilities.

(b) Any culverts to be placed in the F-23 Canal will be placed on grade and properly sized by the Grantee with the approval of Klamath Irrigation District. The size of the culvert placed in this crossing has been determined to be 24 inches. Future maintenance will be the responsibility of the Grantee. If in the future it becomes necessary to enlarge the F-23 Canal, the Grantee agrees to remove or modify facilities constructed under this easement at the Grantee's expense.

10. Failure of the Grantee to comply with any of the conditions and requirements of this easement shall warrant termination of the easement.

11. The Grantee warrants that no person or agency has been employed or retained to solicit or secure this conveyance upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial agencies maintained by the Grantee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this conveyance without liability or in its discretion to require Grantee to pay full amount of such commission, percentage, brokerage or contingent fee to the United States.

12. No member of or delegate to Congress or resident Commissioner shall be admitted to any share or part of this conveyance or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this conveyance if given to a corporation or company for its general benefit.

13. There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the Grantee's work; provided, however, that if such reserved rights are not identified in at least general terms in this easement and exercised for works authorized by the Congress within 10 years following the date of this easement, they will not be exercised unless the Grantee, or Grantee's successor in interest is notified of the need, and grants an extension or waiver. If no extension or waiver is granted, the United States will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost for reconstruction of Grantee's works to accommodate the exercise of the United States' reserved rights. As alternatives to such compensation, the United States, at its option and at its own expense, may mitigate the damages by reconstructing the Grantee's works to accommodate the United States facilities, or may provide other adequate mitigation measures for any damage to the Grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

THE UNITED STATES OF AMERICA

By 

Kathleen Wirkus, Area Manager  
Klamath Basin Area Office

NOTED:

KLAMATH IRRIGATION DISTRICT

By 

David Solem, Manager  
Klamath Irrigation District

By 

Francis Roberts, Public Works Director  
Klamath County

14942

Oregon  
S 0130DEPARTMENT OF  
TRANSPORTATION

REGION 4 RIGHT OF WAY

November 25, 1997

United States Bureau of Reclamation  
6600 Washburn Way  
Klamath Falls, OR 97603-9365File: R6326-030  
Name: Washburn Airport Partners  
Section: Washburn Way  
Highway: South Klamath Falls  
County: Klamath  
FAP#: NoneBUREAU OF RECLAMATION  
FILED

NOV 28 1997

KLAMATH FALLS, OREGON

Dear Ms. Tina Baker or Mr. Jim Bryant:

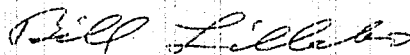
Here are maps and a description illustrating a sixty-foot right of way across your lateral canal F-23, with the centerline of a north-south roadway being 650 feet west of the northeast Section corner of Section 21, Township 39 South, Range 9 East W.M., Klamath County, Oregon. This roadway is necessary to prevent landlocking the property to the north in Section 16, by providing access to Washburn Way across the property in Section 21.

24" perk ID  
A 36" CMP culvert is proposed for placement in your canal which we understand is the same size as in this canal at other locations. This design is from our Klamath Falls Construction Office and any technical questions may be directed through Mike Stinson, the Project Manager, at 383-5665.

Please include this crossing in our mutual agreement and direct any questions concerning the inclusion of this crossing in our agreement to me at the Bend right of way office, 541-388-6371. This is a joint project and the right of way is being purchased in the name of Klamath County so the subject roadway will be a County road. Let me know if there is anything further you need from me in order to proceed.

Thank you.

Sincerely,

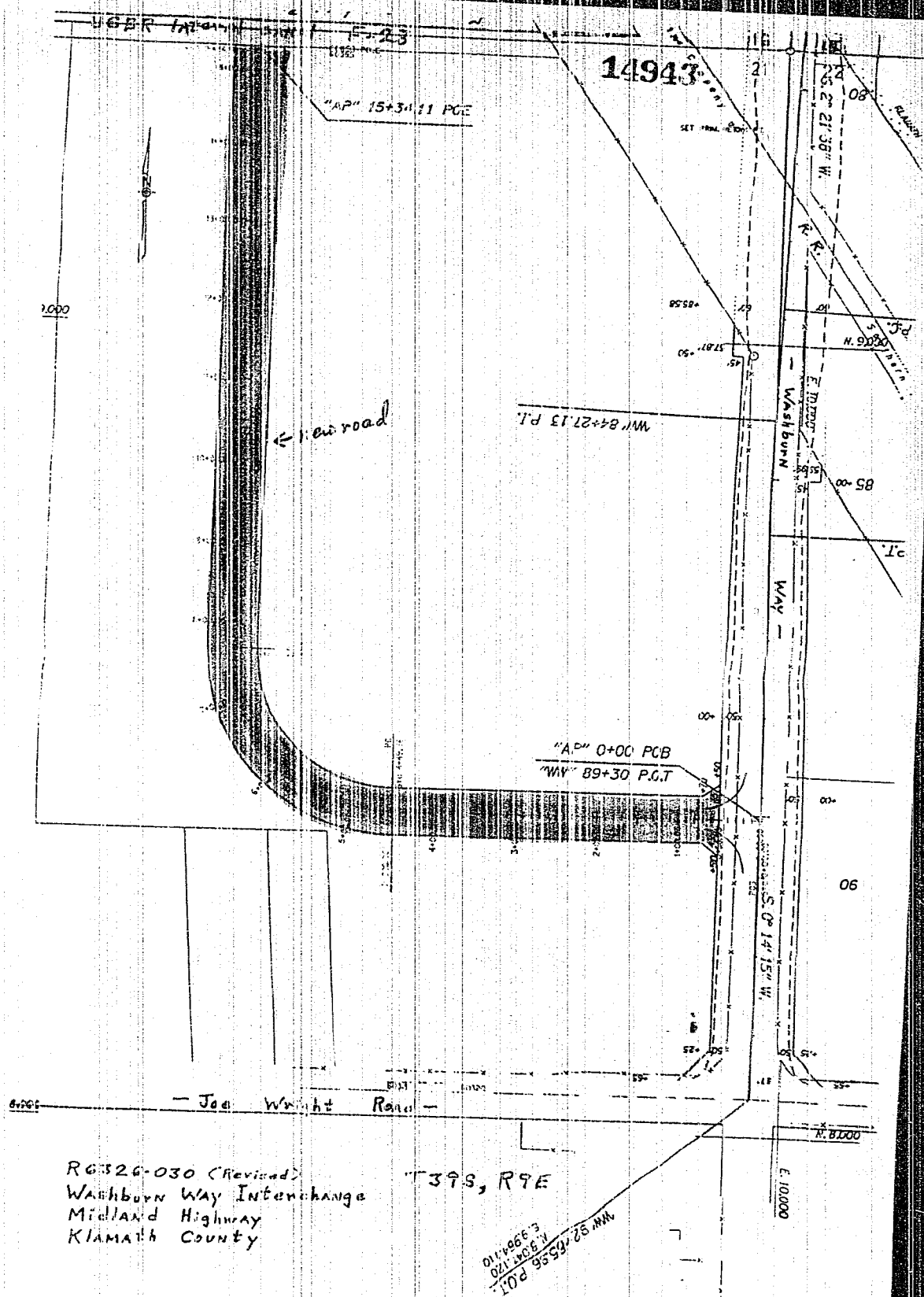


Bill Lillebo, Right of Way Agent

Enc.

cc w/o enc: Stinson, Nelson

63020 O. B. Riley Rd.  
Bend, OR 97701  
(503) 383-6196EXHIBIT A  
1 of 5



RG326-030 (Revised)  
Washburn Way Interchange  
Midland Highway  
Klamath County

T39S, R9E

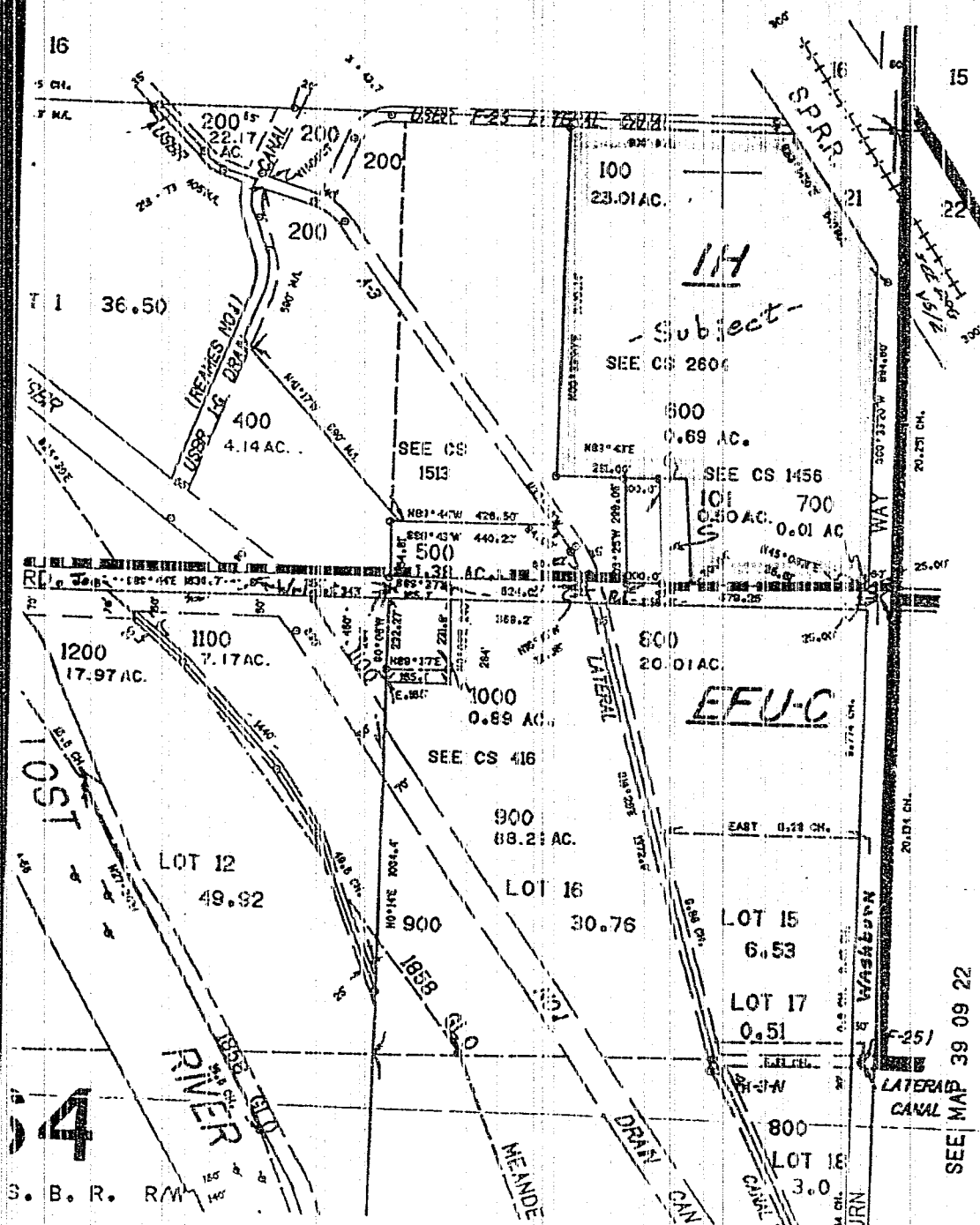
EXHIBIT A  
2 of 5

S. R.09E. W.M.  
COUNTY

Washburn Airport Partners  
R6326-030

14944

39 09.2  
& INDE





## EXHIBIT A

File 6326030

Washburn Way Intchge. & Hilyard Ave. to Joe Wright Rd. Secs.  
 Midland Highway  
 Klamath County  
 Dig. No. 10B-7-35  
 Non-Throughway  
 dln 8-18-97

Washburn Airport Partners

## Fee

A parcel of land lying in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 21, Township 39 South, Range 9 East, W.M., Klamath County, Oregon and being a portion of that property described in that deed to Washburn Airport Partners, recorded June 23, 1987 in Volume M87, Page 10800 of Klamath County Record of Deeds, the said parcel being that portion of said property included in a strip of land variable in width, lying on each side of the "AP" centerline, which centerline is described as follows:

Beginning at Engineer's centerline Station "AP"00+00.00, said station being 980.84 feet South and 4.99 feet West of the Northeast corner of Section 21, Township 39 South, Range 9 East, W.M.; thence South 89° 27' 08" West 449.76 feet; thence on a 200.00 foot radius curve right (the long chord of which bears North 45° 07' 39" West 284.91 feet) 317.09 feet; thence North 0° 17' 33" East 767.26 feet to Engineer's centerline Station "AP"15+34.11.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Southerly and Westerly Side of Centerline
"AP"00+00.00		"AP"00+50.00	45.00
"AP"00+50.00		"AP"00+70.00	45.00 in a straight line to 30.00
"AP"00+70.00		"AP"15+34.11	30.00
Station	to	Station	Width on Northerly and Easterly Side of Centerline
"AP"00+00.00		"AP"00+50.00	45.00
"AP"00+50.00		"AP"00+70.00	45.00 in a straight line to 30.00
"AP"00+70.00		"AP"15+34.11	30.00

EXCEPT therefrom that portion lying Easterly of a line parallel with and 50.00 feet Westerly of the centerline of relocated Washburn Way, which centerline is described as follows:

(CONTINUED ON PAGE 2)



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## EXHIBIT A CONTINUED - Page 2

File 6326030

Beginning at Engineer's centerline Station 'WW'85+68.65, said station being 619.49 feet South and 3.50 feet West of the Northeast corner of Section 21, Township 39 South, Range 9 East, W.M.; thence South  $3^{\circ} 14' 15''$  West 717.31 feet to Engineer's centerline Station 'WW'92+85.96.

Bearings are based upon County Survey No. 3565, filed November 16, 1981 in Klamath County, Oregon.

This parcel of land contains 2.05 acres, more or less.

NOTE: This parcel is mostly 60.00 feet wide.

Remainder: 8.04 acres, more or less, Southerly and Westerly.  
11.23 acres, more or less, Northerly and Easterly.

Prior file: 6326018.

The existing R/W of Washburn Way is 50.00 feet wide from the 'WW' centerline.

This parcel lies within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Sec 21, T 39 S, R 9 E, WM.

This parcel lies within Tax Lot 100 of 39-9-21, Klamath County.

STATE OF OREGON: COUNTY OF KLAMATH: 01

Filed for record at request of Klamath County the 4th day  
of May A.D., 19 98 at 2:33 o'clock P. M., and duly recorded in Vol. N98  
of Deeds on Page 14938

FEE No Fee

By Bertha G. Letsch, County Clerk  
Kathleen R. Reed

EXHIBIT A  
5055