

77751

Vol. 181 Page 13985

THIS AGREEMENT made this 10th day of July, 1985 between A.P.G. Co., an Oregon Corporation, and KLAMATH IRRIGATION DISTRICT, an Oregon Irrigation District, herein sometimes called K.I.D.

WITNESSETH:

ARTICLE ONE

1.1

A.P.G. Co. proposes to enter into a "License to Utilize Reclamation Land, A-Canal Algae Plant, A.P.G. Co." with the United States of America, acting by and through its Bureau of Reclamation, Department of the Interior, herein sometimes called the United States, for the purpose of allowing A.P.G. Co. to operate and maintain an algae harvesting complex, including floating barges, small buildings, anchors for the barges, and appurtenant facilities, on a parcel of land located near the Headworks of the A-Canal in the Southwest quarter of the Northeast quarter (SW1/4NE1/4) of Section Thirty (30), Township Thirty-eight (38) South, Range Nine (9) East, Willamette Meridian, also shown on Exhibit "A"; and containing an area of approximately .27 acre, more or less, for the period from January 1, 1985, to December 31, 1994 with an option to A.P.G. Co. to extend the License period for one successive period of ten years all on the terms, provisions and conditions set forth in said proposed License Agreement. Reference is hereby made to said proposed License Agreement for details.

1.2

K.I.D. pursuant to various contracts between it and the United States of America is responsible for the operation, maintenance and repair of a portion of the Klamath Project including the A-Canal

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Headworks and for the delivery of irrigation water through the A-Canal Headworks to water users in the Klamath Project.

## 1.3

The consent of K.I.D. is required as a condition of the granting of such License and the United States has submitted the proposal to K.I.D. for its consent. K.I.D. is concerned about A.P.G. Co.'s proposed operations as it may affect the safety of the A-Canal Headworks and possible liability and expense which might be imposed upon K.I.D. and claims which might be made against it in the event of any failure or problems with the Headworks or if A.P.G. Co.'s operations affected its ability to receive and deliver water through the Headworks. K.I.D. is also concerned because its experience in recent years indicates that the cost to it of delivering water to the water users in the Project will continue to escalate. These costs include not only normal operation, maintenance and repair but also the necessity of renovating and replacing obsolete worn out canals, ditches, drains, bridges, tunnels, pumps, headworks, and other structures throughout the Klamath Project. K.I.D. has been concerned whether the compensation which it receives from A.P.G. Co. will be sufficient to compensate it proportionately for the benefits received by A.P.G. Co. or whether the other Water Users in the Project will be forced to pay part of the costs through the assessments and charges which are made against them. K.I.D. is of the opinion that the granting of the License to A.P.G. Co. will increase K.I.D.'s risks, burdens and costs.

ARTICLE 2

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2.1

In consideration of K.I.D. consenting to said License A.P.G. Co., its successors and assigns agree as follows.

A.

A.P.G. Co. and its successors and assigns shall forever and in perpetuity indemnify, defend, and hold K.I.D. and its successors and assigns wholly harmless, without limitation by the following recital, from any and all claims, suits, actions, proceedings, liability, injuries, or damages including those which are not presently known or foreseeable arising, resulting, occurring, or attributable directly or indirectly in whole or in part to A.P.G. Co.'s operations.

B.

A.P.G. Co. shall during the initial 10 years of said License pay unto K.I.D. the sum of \$3,000.00 per year. The 1st of said payments shall be made within 30 days of the date upon which A.P.G. Co. and the United States execute said License Agreement. The 2nd of said payments shall be made on or before the 31st day of December, 1985 and a like installment of not less than \$3,000.00 shall be paid on the 31st day of each December thereafter until the full sum of \$30,000.00 has been paid to K.I.D. It is mutually agreed that said total sum shall constitute the reimbursement to K.I.D. for A.P.G. Co's share of K.I.D.'s operation and maintenance expenses during said 10 year period.

C.

In the event that A.P.G. Co. shall exercise its option to extend its License period for said one successive period of 10 years or if said

License remains in force after December 31, 1994, A.P.G. Co. shall pay K.I.D. an annual payment for each of said years which is the largest of the following.:

1. The sum of \$6,000.00;
2. The previous year's payment adjusted in accordance with the Consumer Price Index for all urban consumers as provided in said License between the United States and A.P.G. Co;
3. The fair rental value of the Licensed premises as determined by three M.A.I. Appraisers selected as follows: A.P.G. Co. and K.I.D. shall each select one such Appraiser. The two Appraisers so selected shall select the third Appraiser. Provided however, that such appraisal and determination of fair rental value shall not be made and the increase in rental shall be limited to the greater of 1 and 2 above unless one of the Parties to this Agreement shall serve written Notice on the other Party that it wishes such appraisal made not later than 30 days after the adjustment in accordance with the Consumer Price Index has been made pursuant to 2 above. The Annual Payment shall be made as soon as it has been determined but in no event later than the 30th day of June of the year for which it is payment.

D.

In the event of the exercise of said option to renew or any other renewal or extension of A.P.G. Co.'s License with the United States, K.I.D. shall have the right to require the negotiation, amendment or change of any provisions in the light of past experience and then existing or prospective conditions.

ARTICLE THREE

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3.1

In consideration of the Agreement by A.P.G. Co. herein contained, K.I.D. agrees to approve said License between the United States and A.P.G. Co.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the date first herein written.

A.P.G. CO.

KLAMATH IRRIGATION DISTRICT

By Sydney K. Giacomini  
(KID) Sydney K. Giacomini  
PRESIDENT

By Dick Owens  
Dick Owens  
PRESIDENT

By J. Anthony Giacomini  
J. Anthony Giacomini  
SECRETARY

By David A. Solem  
David A. Solem  
SECRETARY

STATE OF OREGON )  
County of Klamath ) SS

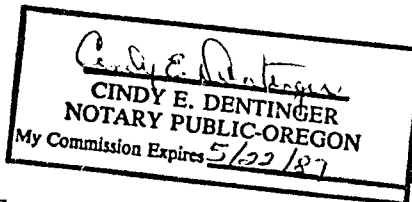
July 10, 1985.

Personally appeared <sup>KID</sup> Sydney K. Giacomini and J. Anthony Giacomini who, being duly sworn, did say that the former is the President and that the latter is the Secretary of A.P.G. Co., an Oregon corporation, and that the Seal affixed to the foregoing instrument is the Corporate Seal of said Corporation and that said instrument was signed and sealed in behalf of said Corporation by authority of its Board of Directors; and each of them acknowledged said instrument to be its voluntary act and deed.

BEFORE ME:

13990

(SEAL)



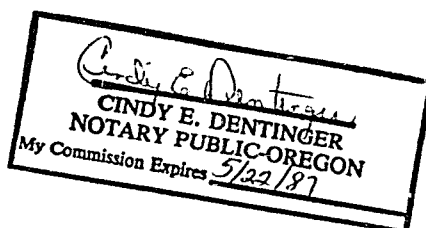
Cindy E. Dentinger  
Notary Public for Oregon  
My Commission Expires: 5/22/87

STATE OF OREGON       )  
County of Klamath    ) SS

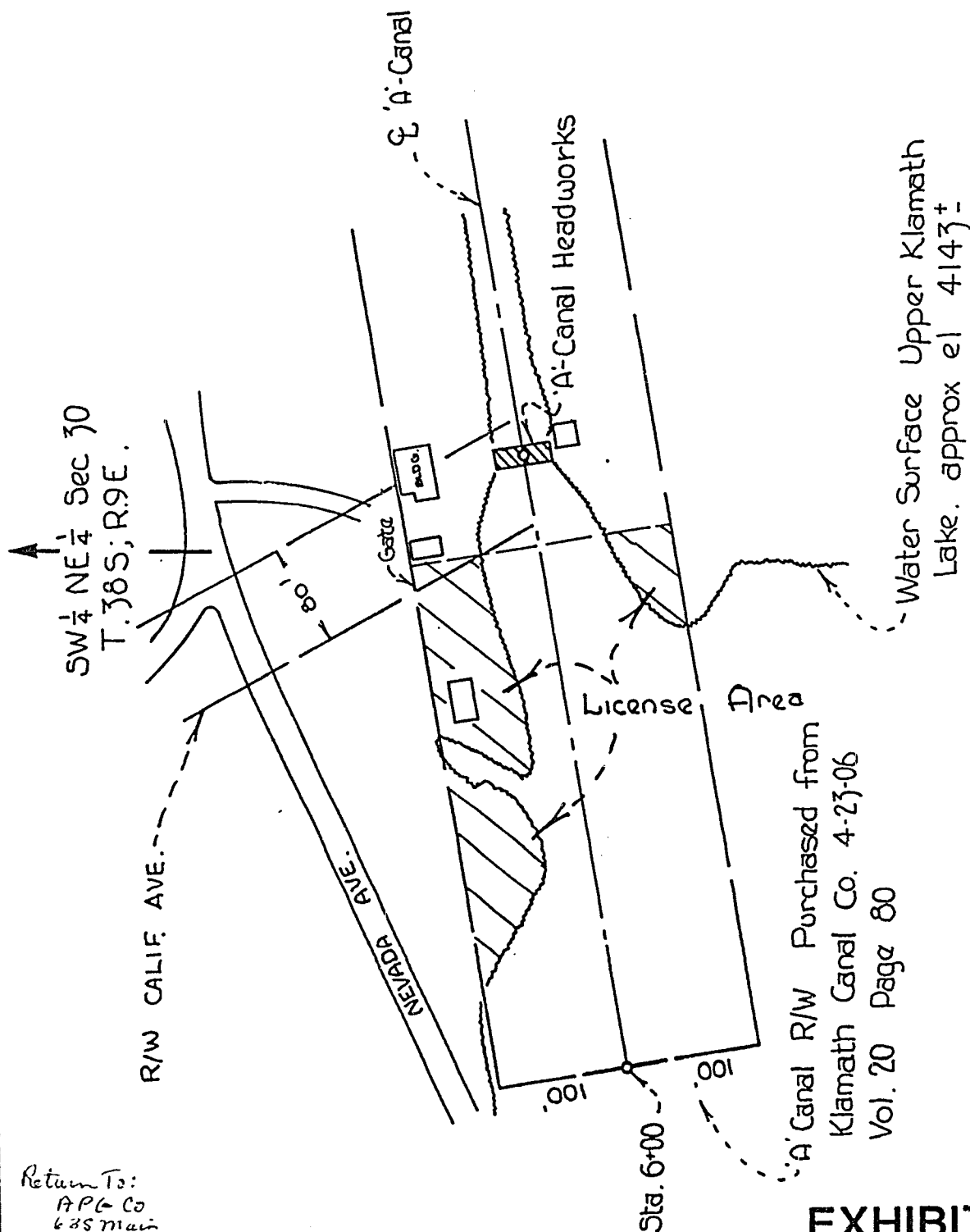
On this 10<sup>th</sup> day of July, 1985, personally appeared Dick Owens and David A. Solem, who, being duly sworn did each say that Dick Owens is the President and David A. Solem is the Secretary of Klamath Irrigation District and that the Seal affixed to this Instrument is the Official Seal of said Klamath Irrigation District and that said Instrument was signed on behalf of Klamath Irrigation District by authority of its Board of Directors and each of them acknowledged said Instrument to be the voluntary act and deed of Klamath Irrigation District.

BEFORE ME:

(SEAL)



Cindy E. Dentinger  
Notary Public for Oregon  
My Commission Expires: 5/22/87



Return To:  
APC Co  
635 Main  
Klamath Falls, Or 97601

# EXHIBIT A

STATE OF OREGON: COUNTY OF KLAMATH:                   §§.

Filed for record at request of \_\_\_\_\_ the 4th day  
of August A.D., 19 87 at 4:24 o'clock P M., and duly recorded in Vol. M87,  
of Deeds on Page 13985.

**FEE**      **\$29.00**

Evelyn Biehn, County Clerk  
By Prison

County Clerk  
*Patricia Smith*