

24286

THIS AGREEMENT made and entered into this 26th day of December, 1990, by and between LOWELL N. JONES CO., an Oregon Corporation, and ASPHALT CONSTRUCTION CO., a co-partnership consisting of Gene R. Byrnes, Billee Schrieber, Michelle R. Lenninger, Shannon Gayle Byrnes, James M. Byrnes, Gene A. Schrieber and the James Ray Byrnes Trust, Secured Party.

RECITALS

A

First Party is the owner of Lots 7A, 7B, 8A, 8B, 9A, 9B, 10A, 10B, 10C, 10D, 11A, 11B, 16A, 16B, Block 2, Railroad Addition to the City of Klamath Falls, Oregon.

B

Second Party is the owner of Lots 12A, 12B, 12C, 12D, 13, 14A, 14B, 15A, 15B, Block 2, Railroad Addition to the City of Klamath Fall, Oregon.

C

First Party has a hot water well located on the boundary between Lots 10B and 10D, Block 2, Railroad Addition to the City of Klamath Falls, Oregon.

D

Second Party has a hot water well located on lot 14A, Block 2, Railroad Addition to the City of Klamath Falls, Oregon.

E

The City of Klamath Falls now requires that all geothermal fluid be reinjected into the ground.

F

The Parties desire to use the First Party's well as the source well and the Second Party's well as the reinjection well.

G

The First Party, at First Party's expense, has constructed a hot water pipe to transport geothermal fluids from the First Party's well to the Second Party's well and has connected the pipe to the Second Party's well and has made improvements to the Second Party's well.

NOW, THEREFORE, in consideration of these premises, the Parties mutually agree as follows:

1. Conveyance. First Party does grant and convey to the Second Party an easement for the purpose of obtaining geothermal fluids for the First Party's well together with an easement 10 feet in width from the First Party's well along the location of the existing connection pipe to the Second Party's property and further grant unto the Second Party an irrevocable easement for access to the well and well head and connection pipe over such portion of the First Party's property as is reasonably necessary for the inspection and maintenance of the source well and connection line.

2. Conveyance. Second Party does hereby grant and convey to the First Party an easement for the purpose of reinjecting the geothermal fluid from the First Party's well into the Second Party's well together with an easement 10 feet in width along the existing connection pipe from the boundary of the Second Party's property to the Second Party's well and further grants unto the First Party an irrevocable easement for access to the well, the well

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WILLIAM L. SISEMORE
Attorney at Law
540 Main Street
KLAMATH FALLS, ORE.
97601

503/882-7229

O.S.B. #70133

JAN 2 PM 2 08

1 head and the connection pipe over such portion of the Second Party's pro-
 2 perty as is reasonably necessary for the inspection and maintenance of the
 reinjection well and the connection line.

3 3. Completion of System. The First Party shall, at it's expense, com-
 4 plete the necessary work as anticipated by the Parties to finish the project.

5 4. Pumping Expense. The First Party shall be responsible for the
 6 expense of pumping the geothermal fluids from the First Party's well into
 the Second Party's well.

7 5. Use of Heat. The First Party and the Second Party shall each be
 8 entitled to extract up to 50% of the heat energy of the well system.

9 6. Maintenance of Exchange Systems. The First Party and the Second Party
 10 shall each be solely responsible for the heat exchange system they shall use
 on their respective property. The heat exchange system used by either of
 the Parties shall not unreasonably interfere with the use of the well system
 by the other party.

11 7. Maintenance of System. The wells, casings and connection pipe of the
 12 system shall be maintained at the least reasonable cost to both Parties in the
 following manner:

13 A. Should any malfunction, apparent malfunction or physical deficiency
 14 of the well or its components become apparent to either of the
 parties, said difficulty shall, if mutually agreeable to the parties,
 15 be corrected, repaired or replaced. Costs of such work shall be
 borne equally by the Parties.

16 B. Should any malfunction, apparent malfunction or physical deficiency
 17 of the well or its components become apparent to either of the
 parties, and if the parties cannot or will not agree to corrective
 18 action and costs as described in A above, the party alleging the
 apparent malfunction of the well or its components shall so notify
 19 the other party by certified mail, return receipt requested, of the
 alleged malfunction. Within five days after the date of receipt or
 20 the date of refusal to receive notice (weekends and legal holidays
 not included) the First Party shall engage the services, advice and
 21 direction of either: 1) a mechanic or contractor considered by
 First Party as competent to drill, ream, case, provide installation
 22 of downhole exchangers in geothermal wells, or otherwise capable
 of dealing with the problems of geothermal heat source
 23 installations, or 2) a registered mechanical engineer whom First
 Party consider qualified to deal with the problems of
 24 geothermal heat source installations. Whatever advice or direction
 is provided by above selected consultant shall be faithfully fol-
 25 lowed, corrective action taken and the costs shall be borne equally
 (including consulting fees, if any) by both parties. First Party
 26 shall impress on both consultant and contractor or mechanic pro-
 viding corrective action the need for timely completion and correction.
 27 Accounts of cost shall be kept by First Party.

28 C. Should First Party neglect, refuse or otherwise fail to select and
 29 engage a consultant within five days after the delivery date of, or
 refusal to receive, the notice as outlined above, then Second Party
 30 shall notify the First Party by certified mail, return receipt
 requested, that he is assuming the prerogative and responsibility of
 31 First Party to engage a consultant and proceed as outlined for the
 Party above.

32 D. Should the parties to this agreement feel that it would be advisable
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for an inspection of the well, such inspection shall be conducted as they mutually agree, and the cost of said inspection shall be borne equally by the Parties.

8. Deterioration of the Well. A drop of % or more of the water level in the source well (at completion feet below land surface) or a temperature drop to ° F or below of the source well (after extracted energy has been stopped for 24 hours, and not caused by leak or break in the loop) shall be considered a deterioration of the well and shall not be considered a correctible malfunction. Should deterioration of the well occur, neither Party shall be liable to the other for corrective action. Should deterioration of the well occur, attempted repair, modification or other corrective action shall be taken only by mutual agreement of all Parties.

9. Sale or transfer of interest in the well for the benefit of other property. The Parties agree that neither Party shall transfer any of their interest in the well system for the benefit of any other real property without the express written consent of the other Party.

10. Relocation of connection pipe. In the event that either of the Parties should desire to relocate the existing connection pipe from its present location, the Party desiring to move the location of the connection pipe shall so notify the other Party by certified mail, return receipt requested. The Parties shall meet within 30 days from the receipt of the notice. If the Parties cannot agree upon the relocation of the connection pipe, the connection pipe shall remain in its present location. If the Parties can agree upon the relocation of the connection pipe, the Party desiring the relocation of the pipe shall be solely responsible for the cost of relocating the connection pipe. The costs shall include the cost of construction and the cost to remedy any damages to the other Party's property. Any movement of the connection pipe shall be done in such a manner that it does not unreasonably interfere with the use of the well system by the other Party or in the use of the other Party's property.

11. Intent of Agreement. This agreement shall be appurtenant to and binding on the real property subjected hereto and benefited thereby, and the covenants herein contained shall be deemed to run with the land.

12. Collection of Enforcement Costs. In the event of a dispute between the parties, if either Party incurs any expense to enforce or to recover for the breach of this agreement, either by court action or otherwise, the prevailing party in such dispute shall be entitled to recover from the other Party all of his costs and expenses reasonably incurred in enforcing this agreement or recovering for the breach of this agreement, including but not limited to all attorney fees and court costs in a trial court, and appellate court if an appeal is taken. Any reimbursable cost incurred under this agreement shall be paid in full within ten days after receipt of a billing, supported by the account of cost kept under the provisions of this agreement.

IN WITNESS WHEREOF, the undersigned have executed this agreement this 26th day of December, 1990.

LOWELL N. JONES CO.

BY Lowell N. Jones - Pres

BY Theresa L. Jones - Secy

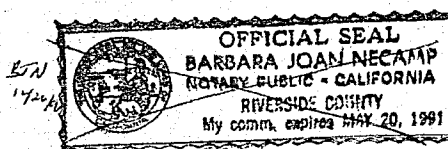
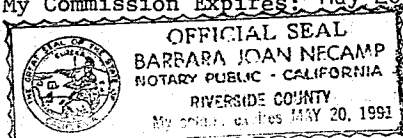
STATE OF ~~OREGON~~)
California) SS
County of ~~KLAMATH~~)
Riverside

This instrument was acknowledged before me on the 26th day of December, Agreement - Page 3.

1990, by Lowell N. Jones, as President of
 Lowell N. Jones Co. and Harmony Hawkins Jones as Sec. Tres.
 of Lowell N. Jones Co.

Barbara Joan Necamp
 Notary Public for Oregon State of California
 County of Riverside

(SEAL)
 My Commission Expires: May 20th, 1991



ASPHALT CONSTRUCTION CO.

Gene R. Byrnes
 Gene R. Byrnes

Billee Schrieber
 Billee Schrieber

Michelle R. Lenninger, formerly Michelle R. Gratz

SHANNON GAYLE BYRNES

BY Gene R. Byrnes
 Gene R. Byrnes, her attorney-in-fact

JAMES RAY BYRNES TRUST

JAMES M. BYRNES

BY Gene R. Byrnes
 Gene R. Byrnes, Trustee

BY Gene R. Byrnes
 Gene R. Byrnes, his attorney-in-fact

GENE A. SCHRIEBER

BY Billee Schrieber
 Billee Schrieber, his attorney-in-fact

STATE OF OREGON)
) SS
 County of Klamath)

On this 18 day of December, 1990, personally appeared the within named
 Billee Schrieber and acknowledged the foregoing instrument to be her voluntary
 act and deed. Before me:

Alvin L. Sisemore
 Notary Public for Oregon

(SEAL)
 My Commission Expires: 8-2-91

STATE OF OREGON)
) SS
 County of Klamath)

On this 18 day of December, 1990, personally appeared the within named
 Michelle R. Lenninger, formerly Michelle R. Gratz and acknowledged the fore-
 going instrument to be her voluntary act and deed. Before me:

Alvin L. Sisemore
 Notary Public for Oregon

(SEAL)
 My Commission Expires: 8-2-91

STATE OF OREGON)
) SS
 County of Klamath)

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On this 18 day of December, 1990, personally appeared Billee Schrieber who, being duly sworn, did say that she is attorney-in-fact for Gene A. Schrieber and that she executed the foregoing instrument by authority of and in behalf of said principal; and she acknowledged said instrument to be the act and deed of said principal. Before me:

Alvin L. Sisemore
Notary Public for Oregon

(SEAL)
My Commission Expires: 8-2-91 My Commission Expires December 19, 1993
STATE OF OREGON)
My Commission Expires December 19, 1993

) SS
County of Marion)

On this 14 day of December, 1990, personally appeared the within named Gene R. Byrnes and acknowledged the foregoing instrument to be his voluntary act and deed. Before me:

Anita M. Tait
Notary Public for Oregon

(SEAL)
My Commission Expires: My Commission Expires December 19, 1993

STATE OF OREGON)
) SS
County of Marion:)

On this 14 day of December, 1990, personally appeared Gene R. Byrnes who, being duly sworn, did say that he is attorney-in-fact for Shannon Gayle Byrnes and James M. Byrnes and that he executed the foregoing instrument by authority of and in behalf of said principals; and he acknowledged said instrument to be the act and deed of said principals. Before me:

Anita M. Tait
Notary Public for Oregon

(SEAL)
My Commission Expires: My Commission Expires December 19, 1993

STATE OF OREGON)
) SS
County of Marion)

On this 14 day of December, 1990, before me, a notary public in and for said county and state, personally appeared Gene R. Byrnes, of the State of Oregon, County of Marion, known to me to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Anita M. Tait
Notary Public for Oregon

(SEAL)
My Commission Expires: My Commission Expires December 19, 1993

STATE OF OREGON, ss.
County of Klamath

Filed for record at request of:

Wm. L. Sisemore
on this 2nd day of Jan. A.D., 19 91
at 2:08 o'clock PM. and duly recorded
in Vol. M91 of Deeds Page 27
Evelyn Biehn County Clerk

By Pauline M. Miller

Deputy.

Fee, \$48.00

WILLIAM L. SISEMORE
Attorney at Law
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After recording
return to
30
31