

John McPherson

Vol M03 Page 53521

AFTER RECORDING, RETURN TO:

Klamath Irrigation District
6640 KID Lane
Klamath Falls OR 97603

State of Oregon, County of Klamath
Recorded 07/29/2003 9:51 a m
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Linda Smith, County Clerk
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**WELL GRANT SPONSORSHIP AGREEMENT
(KID SERVICE AREA)**

THIS AGREEMENT is made as of the 12th day of September, 2002, by and between the Klamath Irrigation District, 6640 KID Lane, Klamath Falls, Oregon 97603, a Municipal Corporation acting pursuant to the provisions of ORS Chapter 545 ("KID"), and John McPherson, 13555 Tingley Lane, Klamath Falls, Oregon 97603 ("Water User").

RECITALS:

A. The 2001 Oregon Legislative Assembly passed, and the Governor signed into law, Senate Bill 5555, which authorized the State of Oregon, acting through its Department of Water Resources, to enter into Grant Agreements with water districts formed pursuant to ORS Chapter 545 and other specified chapters for water supply augmentation within the U. S. Bureau of Reclamation Klamath Project.

B. Water User's land is located within the Klamath Project, but Water User is not one of the water districts that qualifies under said law to receive grant money for the development of a ground water well.

C. Water User has requested that KID, which is qualified to receive said grant funds, "sponsor" Water User's application for grant funds to develop a well and appurtenant equipment on Water User's land described on Exhibit "A" attached hereto.

D. KID, acting through its Board of Directors, is willing to act as a sponsor for Water User as long as there is no liability to KID of any kind or nature arising from its agreement to sponsor Water User for the repayment of said grant funds, for the cost of obtaining the grant funds, for the cost of installing and operating the well, or costs associated with defending the right to use the well.

E. Water User, having considered the terms under which KID will agree to sponsor its grant application, desires to enter into this Agreement and pursue grant funds from the State of Oregon pursuant to said law.

AGREEMENT

The parties do hereby mutually and severally covenant and agree as follows:

1. KID agrees to act as the "sponsor" for Water User in Water User's application to the Oregon Department of Water Resources for grant funds available under the terms of Senate Bill 5555 (2001 Legislative Assembly), on the terms and conditions set forth herein.

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2. Water User, in consideration of the consent and agreement of KID to act as its "sponsor," covenants and agrees as follows:

a. Water User agrees to reimburse KID for all costs of acting as its sponsor, including reimbursing KID for the actual cost to it of the time required of KID's Manager, Office Manager, and other employees, attorneys, and, if reasonably necessary, its accountants' charges resulting from its agreement to sponsor Water User's grant application. All charges and actual costs incurred by KID shall be detailed on a statement provided by KID to Water User. Payment of all said charges shall be due and payable within ten (10) days of the date said statement is mailed to Water User. Said charges are in addition to any other charges, assessments, and fees otherwise payable by Water User to KID.

b. Water User will negotiate and pay for any land purchases and easements that are necessary for the placement, construction, and operation of the well and the conveyance of the well water to Water User's land or delivery facilities.

c. Water User shall solicit proposals or, if appropriate, bids for the drilling and casing of the well, for the pumps, electrical panels, and other improvements necessary to fully construct and improve the well to the point where the water from the well can be conveyed through Water User's system to the land to be served by the well.

d. Water User will contract with and pay the cost of obtaining a certified water rights engineer to assist it in preparing and filing the permit for the well and the water rights application for the well. Water User shall be solely responsible for obtaining any and all governmental approvals and permits, including, as necessary, Oregon Department of Water Resource permits, Klamath County Land Use permits, and USBR permits. Water User shall also be responsible for obtaining any modification of any contracts between it and the USBR, if the Water User uses USBR facilities.

e. After construction of the well, Water User shall be solely responsible for the payment of all costs and expenses incurred in operating and maintaining the well and delivering water from the well.

f. Water User shall be solely responsible and liable for the delivery of the water from the well, including resolving any disputes that may arise over the right to receive the water.

g. Water User shall be solely responsible and liable for ensuring the full, strict, and complete performance of KID's obligations under the terms and conditions of the Grant Agreement made between the Oregon Department of Water Resources and KID for funding of Water User's well and improvements. Water User agrees that KID will not and shall not accept any funds from the State or release to Water User any funds received by it from the Oregon Department of Water Resources under the terms of the grant until such time as Water User has completed its project and the Department of Water Resources has certified to KID that the project is complete and that it was completed in strict, full, and complete compliance with the terms of the Grant Agreement. Water User shall be solely responsible for obtaining said certification from the State.

h. Water User covenants and agrees that it shall indemnify and hold KID harmless from any and all claims arising or related to Water User's application for the grant, compliance with the Grant Agreement, construction, maintenance, and operation of the well, and delivery of water from the well. Water User specifically acknowledges that there currently exists a dispute among ground water users in this area whereby some users who have lost the use of their wells are threatening legal action against agricultural water users, and that the construction and operation of this well may lead to legal action against KID as a result of entering into this Agreement with Water User. Water User shall be responsible and liable for all costs of defending itself and KID in the event of such claim or action, and it shall indemnify and hold KID harmless therefrom. The agreement to indemnify KID shall include paying any damages, costs, attorney's fees, expert witness fees, KID employee labor costs, and other liability charges and expenses incurred by KID as a result of litigation or the threat of litigation, and any judgment awarded against KID.

i. Water User covenants and agrees that it will immediately stop pumping of the well upon direction, oral or written, from KID's Manager or Assistant Manager, when KID, in its sole discretion, determines that the pumping of the well or the distribution of water from the well is impacting, in any manner, KID's operations, maintenance, or other water management. Water User shall not, thereafter, begin pumping the well until it receives approval from KID to resume pumping.

j. The costs, expenses, and fees that Water User agrees to pay as a result of this Agreement are in addition to and not in lieu of any costs, expenses, charges, and assessments that Water User is currently obligated to pay to KID under any other agreements. Water User covenants and agrees that it shall not intentionally or unintentionally breach, suspend, or terminate any such existing agreements, and that it shall faithfully perform its obligations under the terms of said agreements. Water User waives any rights it may now have or may hereafter have to exclude land from KID, to cancel any contracts with the USBR, or to cease payment of contract fees, charges, and assessments to KID. Further, Water User agrees that it shall not deliver or allow the delivery or use of any water from the well on any land that on the date of this Agreement was subject to the payment of charges, assessments, or contractual obligations to KID but, after the date of this Agreement are excluded from KID or relieved from payment of charges, assessments, or contractual obligations to KID. Prior to receiving any water from the well, the owners of the land that will receive the water shall sign an Addendum Agreement agreeing to be bound by the terms and conditions of this Agreement.

3. The parties mutually agree that KID's role under this Agreement is simply to act as a conduit for any funds from the State of Oregon to Water User paid pursuant to the provisions of said law. KID shall have no responsibility or duty to perform any act whatsoever, except to execute such documents as the State of Oregon may require in making its grant for Water User's project. KID reserves the right to review and approve the terms of any Grant Agreement from the State to ensure that they are in compliance with the terms of this Agreement, and that KID will have no liability whatsoever arising from Water User's failure to complete the project in strict and full compliance with the terms of this Agreement.

4. In the event that KID initiates any legal action or suit to enforce the terms of this Agreement, including a suit for damages resulting from Water User's breach of this Agreement, then Water User promises and agrees to pay KID's attorney's fees incurred in any arbitration,

trial court, or appellate court proceeding, its expert witness fees, and all costs of litigation, including reimbursement of the employment costs incurred by KID for participation by KID employees as reasonably required to prosecute or defend KID in such suit or action. In the event of a breach by Water User of any term or condition of this Agreement, KID shall, in addition to other remedies available at law or in equity, be entitled to obtain a permanent injunction barring Water User, its contractees, successors, and assigns from pumping any water from the well. If Water User fails to pay to and/or reimburse KID for any costs, expenses, charges, fees, or other liability incurred by KID, which Water User is required to pay to or for KID, KID may file a lien against the land described on Exhibit "A" attached hereto and any land entitled to receive water from the well and enforce it in the manner provided in ORS 545.482 to ORS 545.508

5. Water User represents and warrants to KID that prior to signing this Agreement, this Agreement was reviewed by Water User's independent legal counsel, who advised Water User of its rights and liabilities under the terms of this Agreement. Water User represents that it has not relied upon any statement or representation of KID, its officers, directors, employees, or attorneys that are not specifically set forth in this Agreement.

6. Water User represents and warrants to KID that the execution of this Agreement by Water User was duly approved by its governing Board, officers, or land owners as appropriate, and that Water User has the full legal authority to make and enter into this Agreement.

7. The parties represent and warrant that this Agreement contains the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Water User acknowledges and agrees that any amendment to this Agreement must be made in writing and shall not have any effect or be binding upon KID until approved by its Board of Directors at a public meeting in the manner required by law. Water User acknowledges that no officer, employee, or attorney of KID has any authority whatsoever to modify or waive any term of this Agreement, that said power to modify or waive any term of this Agreement is reserved to the Board of Directors of KID, which may only act at a public meeting in accordance with law.

8. Time is of the essence of this Agreement. Each party shall perform the provisions hereof in good faith and without unnecessary delay.

9. This Agreement is made in the state of Oregon and shall be interpreted and enforced as provided by the laws of the state of Oregon.

10. All provisions of this Agreement shall survive the completion of the project, including specifically, paragraph 2.h., above.

11. The terms and conditions of the Grant Agreement between the state of Oregon and KID for Water User's project are incorporated herein by this reference.

12. Except as may be otherwise expressly provided in this Agreement, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same postage prepaid, to the other party at the address or number set forth on Page 1 of this Agreement, or to such other addresses or

numbers as either party may hereafter provide to the other. Any communication or notice so addressed and mailed shall be deemed to have been given three (3) days after mailing. Any communication or notice delivered by facsimile shall be deemed to have been given when receipt of transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to have been given when actually delivered.

13. This Agreement shall be binding upon and inure to the benefit of KID, Water User, and their respective successors and assigns, except that Water User may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent, in writing, of KID.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed as of the date set forth above.

KLAMATH IRRIGATION DISTRICT, "KID"

By: *David A. Cacka*
Its President

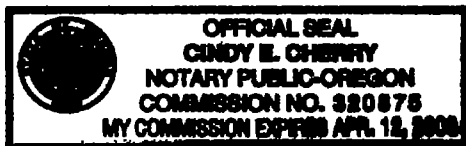
By: *David A. Solen*
Its Secretary

"WATER USER"

By: *John L. McPherson*

STATE OF OREGON, County of Klamath) ss.

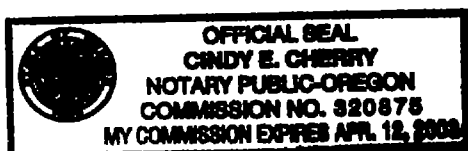
This instrument was acknowledged before me on the 8th day of October, 2002 by David A. Cacka, as President, and by David A. Solen, as Secretary, of the Klamath Irrigation District.



Cindy E. Cherry
Notary Public for Oregon
My Commission Expires: 4/12/03

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on the 27th day of September, 2002 by John L. McPherson, as "Water User."



Cindy E. Cherry
Notary Public for Oregon
My Commission Expires: 4/12/03