

LEASE

CITY WELL - KIMBERLY SCHOOL DISTRICT #414

THIS AGREEMENT made this 14th day of April 2020, between the CITY OF KIMBERLY, IDAHO, a municipal corporation, hereinafter called the City, and KIMBERLY SCHOOL DISTRICT No. 414, hereinafter called the District.

WITNESSETH:

That in consideration of the agreements contained herein, the District leases unto the City, and the City leases from the District the following described real property situated in Kimberly, Twin Falls County, State of Idaho, a portion of tax Parcel No. RPK86710290030 more particularly described below, which has been developed by the City with an active City well.

PREMISES: The Premises are described as a portion of tax Parcel No. RPK86710290030 located east of the Kimberly football field, west of Oak Street south more particularly described as follows:

A portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 29, Township 10 South, Range 18 E., B. M., Twin Falls County, Idaho, more particularly described as follows:

Commencing at the northeast corner of said Section 29; thence South along the Easterly boundary of said Section 29, 991.49 feet; thence North 89°28'31" West 40.00 feet to the westerly right-of-way line of Main Street; thence South along said right-of-way 23.51 feet to a point; thence South 89°57'49" West 619.82 feet to the real point of beginning; thence South 00°00'25" West 40.00 feet; thence South 90°00'00" West 110.00 feet; thence North 00°00'00" West 100.00 feet; thence North 90°00'00" East 110.00 feet; thence South 00°00'25" West 60 feet to the real point of beginning.

(the "Premises"). Located on the Premises is an existing active well which provides water to the City's water system with said well and associated equipment (the "Well") being located in a portion of an existing storage facility located on the Premises (the "Structure").

TERM. The term of the lease shall commence on the 14th day of May, 2020 and shall terminate (20) twenty years thereafter on the 14th day of May 2040 ("Term"). It is understood and agreed that the water right appurtenant to the Premises is owned by the City, and the Premises is being leased by the City for the purpose of operating and maintaining a well for the City water system. The District acknowledges and agrees that any and all water rights being diverted by the Well shall remain the sole and exclusive property of the City.

RENEWAL OPTION. Provided that the City is not in default hereunder beyond any applicable notice and cure periods, the City shall have the right to renew this Lease for an additional twenty (20) year option period. In the event the City desires to exercise such option to renew, the City shall provide the District written notice of its request of such option at least one hundred twenty (120) days prior to the expiration of the Term. The District shall take action on the request at a duly noticed regular District meeting.

USE. The District agrees that the City may place upon the Premises additional equipment, structures and wells, which are incidental to and necessary to provide water to the City water system. The City agrees that the District may have use of the Premises provided such use is not in conflict with the use

thereof by the City for the purposes of this Lease; provided, however, the District agrees it will not use or place upon the Premises anything which may contaminate the water supply produced thereon.

ACCESS EASEMENT. The District agrees in connection with this Lease agreement to give to the City an access easement to the Premises leased hereunder.

RENT. The consideration for this Lease is the payment by the City to the District of rental equal to the water service charge pertaining to the new athletic field of the District said amounts to be considered offset one against the other during the term hereof; provided, however, that the City's obligation to provide water to the athletic field of the District shall terminate upon the termination of this Agreement as provided for herein.

TERMINATING BY DISCONTINUED USE. The City agrees in the event the Well, at any time during the term hereof, does not produce a satisfactory amount and quality of water for use in the City water system and the City elects not to further improve or deepen the Well, then the City will cap the hole, and this Lease will terminate.

ENCUMBRANCES. The City agrees during the term hereof not to encumber or permit the encumbrance by the City of the Premises and agrees to hold harmless the District therefrom.

REMOVAL OF EQUIPMENT. Upon termination of this Lease the City will remove whatever structures and equipment it has located on the Premises and will cap the Well and return possession of the Premises to the District.

INDEMNIFICATION. The City agrees to hold harmless the District from any claim or liability for personal injury to any employee of the City or any person upon the Premises by authority of the City.

ATTORNEY FEES. In the event either of the parties is obligated to employ the services of an attorney to enforce its rights hereunder, the prevailing party will be entitled to collect reasonable attorney's fees and costs from the non-prevailing party.

TERMINATION BY THE DISTRICT. The District shall have the right to terminate this Lease, or any extension thereof, at any time upon giving the City one hundred twenty (120) days' written notice to the City by certified mail or nationally recognized courier service. If this Lease is terminated the parties shall be relieved of any further obligations under this Lease as of the date of termination. The District shall have a right to terminate this Lease upon one hundred twenty (120) days' written notice only for the following reasons:

- (a) To terminate this Lease to bring it into compliance with any requirements of the State of Idaho or the Federal Government to obtain or retain eligibility for government loans, grants, aid or funding.
- (b) Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the facilities, and the remaining in force of such injunction for a period of at least one hundred twenty (120) days.
- (c) The City's failure to replace any improvements which may have been destroyed within six (6) months from the date of destruction.

TERMINATION BY THE CITY. The City shall have the right to terminate this Lease, or any extension thereof, at any time upon giving the District one hundred twenty (120) days' written notice to the District by certified mail or nationally recognized courier service. If this Lease is terminated the parties shall be relieved of any further obligations under this Lease as of the date of termination. The City

shall have a right to terminate this Lease upon one hundred twenty (120) days' written notice only for the following reasons:

- (a) To terminate this Lease to bring it into compliance with any requirements of the State of Idaho or the Federal Government to obtain or retain eligibility for government loans, grants, aid or funding.
- (b) Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the facilities, and the remaining in force of such injunction for a period of at least one hundred twenty (120) days.
- (c) The District's failure to replace any improvements which may have been destroyed within six (6) months from the date of destruction.

The parties agree that the District shall have no liability to City for damages or costs incurred by the City.

MAINTENANCE, ALTERATIONS AND IMPROVMENTS. No alteration, additions or improvements will be made to the Structure, nor any sign placed upon the Premises by the City without first obtaining the written consent of the District.

ENTRY BY DISTRICT. District shall have right to enter the Premises at any reasonable time to examine the same and determine the maintenance and state of repair.

ASSIGNMENT OR SUBLETTING PROHIBITED. City shall not assign this lease nor sublet the whole or any part thereof without the written consent of the District.

WARRANTIES. There are no warranties by the District and the City, in executing the lease, is relying upon his own judgement and information.

SERVICE OF NOTICE. Any notice may be served upon the City by certified mail to the City at 242 Hwy 30, Kimberly, Idaho 83341, and any notice may be served upon the District by certified mail to the District at 141 Center Street West, Kimberly, Idaho 83341. Service of a notice by certified mail shall be deemed complete upon the date of the postmark by certified mail. Either party may change the address for services of notice by written notice to the other party.

STORAGE PROHIBITED. The City shall not store any fuel, fertilizers, or chemical of any type upon the premises.

ELECTRICITY. The City will pay all costs of power to the Premises to operate the Well.

INDEMNIFICATION. The City will indemnify and hold the District harmless from any and all damages, claims, suits, or attorney fees arising from any negligent act of the District or to the District's property.

BINDING EFFECT. This Agreement states the entire agreement between the parties. The City acknowledges that the District is not bound by any stipulations, representations, agreements, promises oral or otherwise, not printed in this Agreement. This Agreement states all of the representations relied upon by the City, and the City does not rely on any other representations of the District, its agents, servants, employees or attorneys in making this transaction.

The provisions of the contract shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

DATED this ____ day of _____, 2020.

LESSOR:

City of Kimberly, Idaho
Municipal Corporation

By: _____

Printed: _____

Title: Mayor

LESSEE:

Kimberly School District No. 414

By: _____

Printed: _____

Title: _____

STATE OF _____)

)SS.

COUNTY OF _____)

On _____, before me, _____, personally appeared
_____, personal known to me (or proved to me on the basis of satisfactory evidence)
to be the person (s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/ their authorized capacity(ies), and that by his/her/their signature(s) on
the instrument the person(s), or the entity upon behalf of which person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____.
(Signature of Notary Public)

My Commission Expires: _____

Notary Name: _____

Notary Registration Number: _____ Notary Phone: _____

Notary Registration Number: _____

County of Principal Place of Business: _____

STATE OF _____)

)ss.

COUNTY OF _____)

On _____, before me, _____, personally appeared _____, personal known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which persons(s) acted, executed the instrument.

WITNESS my hand and official seal.

(Signature of Notary Public)

My Commission Expires: _____

Notary Name: _____

Notary Registration Number: _____ Notary Phone: _____

Notary Registration Number: _____

County of Principal Place of Business: _____

It is agreed time is of the essence of this agreement and if the City, for any reason, should be in default in the performance of any of its agreements contained herein, then the District agrees to give written notice of default to the City which will specify the default, and the City shall have thirty days after receipt of said notice to correct the default, and should the City fail to correct the default within said time, then the District has the option of terminating this agreement without further notice.

This agreement binds the parties, their assigns, successors and representatives.

CITY OF KIMBERLY, IDAHO

By _____
Mayor

Attest:

City Clerk

KIMBERLY SCHOOL DISTRICT #414

By _____

Attest:
