



OFFICIAL RECORDS

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Wiser's irrigation  
pumps

EASEMENT AND LICENSE AGREEMENT

BOBBIE GAGNER

BENTON COUNTY AUDITOR

THIS AGREEMENT is entered into between the PORT OF BENTON, a municipal corporation of the State of Washington, hereafter referred to as the "Port", and the WISER COMPANY, INC., a Washington corporation, hereafter referred to as "Wiser"; WITNESSETH:

SECTION I  
EASEMENT

The Port hereby grants to Wiser an easement for the purpose of installing, constructing, using and maintaining an irrigation water transmission line across the Port of Benton property in the Richland Industrial Park from George Washington Way to the Columbia River, north of the existing Battelle Memorial Institute pipeline and north of Horn Rapids Road, more particularly described on Exhibit A attached to this Agreement. The Easement shall be thirty feet in width, being fifteen feet on each side of the line described in Exhibit A. As partial consideration for the grant of this easement, Wiser shall provide two outlets on Port property from the irrigation line constructed by Wiser. The locations and sizes of the outlets to be provided for the Port shall be mutually agreed upon by the Port and Wiser. The Port shall notify Wiser of its election to connect to the outlets, which shall be done at a time and in a manner that will not interfere with Wiser's agricultural irrigation. The Port shall install and maintain the connections at its own expense. The Port shall be entitled to use water from the pipeline at no cost for the operation and maintenance of the system constructed and installed by Wiser.

SECTION 2  
LICENSE

The Port hereby grants to Wiser a license to use the south side of the lower dock facility location on the water intake dock facility (hereafter "dock facility") located on the Columbia River and a license to locate, install, operate, maintain, replace and remove two pumps with associated drive motors, electrical switch gear, and flow control systems in accordance with the specifications attached hereto as Exhibit B and the non-exclusive right to use the Port's dock facility and concrete pad adjacent thereto for the purpose of pumping and conveying water from the Columbia River to the connection point of the pipeline installed by Wiser in the above-described easement.

SECTION 3  
TERMS AND CONDITIONS

The use of the easement and the license granted to Wiser is subject to the following terms and conditions:

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EXCISE TAX NOT REQUIRED  
BENTON COUNTY EXCISE TAX DIVISION  
BY Imfuma DEPUTY

3/23/94

Port of Benton  
2952 George Washington Way  
Richland, WA 99352

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1. Wiser shall not interfere with any of the other parties presently utilizing the water intake dock facility and Wiser shall protect and preserve the property of the Port or any other party presently using dock facilities or the easement.

2. In the event future development of the premises or expansion of the dock require modification or relocation of the pumps or other equipment installed by Wiser, Wiser shall cooperate with the Port and other affected parties to complete the modifications or relocations. The cost of modifying or relocating Wiser's equipment or accessories shall be borne by Wiser. The Port agrees to time such modifications or relocations so as not to interfere with Wiser's agricultural irrigation.

3. The license granted to Wiser to use the water intake dock facility shall be non-exclusive and the Port reserves the right to grant similar rights to other parties as long as the additional use does not unreasonably interfere with the rights granted to Wiser.

4. Wiser shall provide the Port with "as-built" drawings which accurately depict the equipment installed pursuant to the license and the pipeline and appurtenant structures installed in the easement.

## SECTION 4

TERM

This agreement shall be effective on the 1st day of January, 1990 and shall continue in effect for a term of twenty-five years until December 31, 2014, at which time it shall terminate, unless terminated earlier by agreement of the parties or by termination as provided in Section 12 of this agreement.

The Port and Wiser may negotiate a new contract upon termination.

## SECTION 5

COMPENSATION

During each year of this agreement Wiser shall pay to the Port the sum of One Thousand Dollars (\$1,000.00) as compensation for this easement and license. Such payment shall be due and payable each year in advance. Upon the eighth anniversary and the sixteenth anniversary of the effective date of this agreement, the annual compensation shall be adjusted to reflect the then current fair market value of the license and easement granted to Wiser by the Port. The adjustment shall be made by agreement of the parties and in the event the parties are unable to agree upon the fair market value the value shall be submitted to binding arbitration by three arbitrators, with each party to select one arbitrator and the

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two arbitrators to select the third arbitrator. The compensation agreed upon by the parties or established by the arbitrators shall remain in effect until the next adjustment date. In no event shall the compensation be less than \$1,000.00 per year. In addition to the compensation set forth above, Wiser shall pay any leasehold tax assessed by the State of Washington.

SECTION 6  
MAINTENANCE

The Port shall maintain and repair the water intake dock facility in a timely manner. The Port shall not be required to repair any portion of the dock facility which is damaged as a result of the activities of Wiser. Wiser shall be responsible for the operation and maintenance of any of its equipment, accessories, or facilities installed by it either on the dock facility or in the easement, as well as repairing any damage to the dock facilities caused by its activities.

SECTION 7  
UTILITIES

Wiser shall pay for all utilities used by it either on the dock facility or the easement and shall hold the Port harmless from any such expense.

SECTION 8  
BATTELLE CONTRACT

Battelle Laboratories Northwest ( hereafter "Battelle") has a contract with the Port dated February 18, 1966 for the location of pumps on the Port's water intake dock facility and Wiser acknowledges receipt of a copy of this contract. Wiser agrees to be bound by the terms and conditions of this contract. Nothing herein shall be deemed to restrict or impair Battelle's right to use the facility in any way.

SECTION 9  
WISER EQUIPMENT

Wiser may install on the south side of the water intake dock facility vertical turbine type pumps and associated equipment as more specifically identified on Exhibit B attached hereto. Title to such equipment shall remain in Wiser and Wiser may remove, modify, replace or alter such equipment at any time during the effective period of this agreement, provided however, that Wiser shall not install equipment which damages, limits or interferes with the Port's use of the dock facility above that provided herein.



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SECTION 10  
TERMINATION

In the event Wiser fails To perform any of the obligations imposed upon it by this agreement, including the payment of compensation, the Port may give written notice of the default to Wiser and if the default is not cured within thirty days, or ten days in the case of the payment of money, then the Port may declare this agreement and all of Wiser's rights hereunder to be forfeited. Provided however, that if the default is of such a nature that it can not be cured within thirty days, the Port will not declare a forfeiture if Wiser promptly undertakes to cure the default and diligently thereafter pursues the cure to completion.

Upon the expiration of this agreement or its termination for any reason or upon Wiser's abandonment of the project, Wiser shall remove its pumps and accessory equipment from the dock facility and shall restore the dock facility to the condition it was in at the outset of this agreement. Wiser's right to use the easement shall cease and the Port may elect for the pipeline in the easement to become the sole property of the Port or the City of Richland with no further compensation to Wiser. If the Port or City elects not to take ownership of the pipeline, Wiser shall remove the pipeline and the appurtenances from the easement and restore the property to its existing grade and compaction, and repair any concrete or asphalt which is disturbed by the removal.

SECTION 11  
HOLD HARMLESS

Wiser shall defend the Port and hold it harmless from any claims, actions, liabilities, loss, or damages, including any costs, expense or attorney fees, arising from Wiser's use or occupation of the dock facility or easement or the acts or omissions of Wiser, its officers, agents or employees.

SECTION 12  
SUCCESSORS

Wiser may not assign this license or easement to any party without the prior written consent of the Port, which consent shall not be unreasonably withheld. The Port has been advised that the City of Richland, a municipal corporation, is the owner of the property which is to be served by the Wiser irrigation project and which is presently leased to Wiser. Upon termination of the City of Richland-Wiser lease, the City of Richland is entitled to possession of the irrigation project, including the license and easement provided for in this agreement. The Port hereby consents to the assignment of this agreement to the City of Richland provided the City of Richland agrees to be bound by the terms and conditions of this agreement.

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SECTION 13  
DISPUTES

This agreement shall be interpreted and enforced according to the laws of the State of Washington. The venue of any action shall be in Benton County. In the event any action is commenced to enforce the terms of this agreement the prevailing party shall be entitled to recover all costs incurred in such an action including its reasonable attorney fees.

PORT OF BENTON

WISER COMPANY, INC.

By: *Ben Bennett*A, Ben Bennett  
Executive DirectorBy: *Thayne Wiser*THAYNE WISER  
President

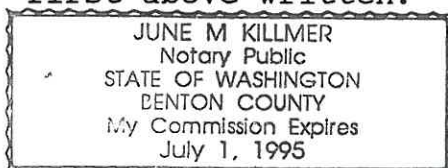
STATE OF WASHINGTON )

) SS.

COUNTY OF BENTON)

On this 8<sup>th</sup> day of March, 1994, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Thayne Wiser, to me known to be the Manager of the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

WITNESS my hand and official hereto affixed the day and year first above written.



*June M. Killmer*  
Print/Type Name:  
NOTARY PUBLIC in and for the State of  
Washington, residing at Richland  
My Commission Expires: 7/1/95

STATE OF WASHINGTON )

) SS.

COUNTY OF BENTON)

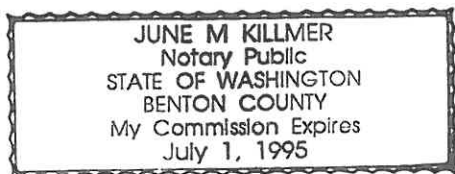
On this 8<sup>th</sup> day of March, 1994, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Scott D. Keller ~~ASSISTANT EXECUTIVE DIRECTOR~~ and Sole ~~Secretary~~, to me known to be the ~~President and Secretary~~, respectively, of the corporation that executed the foregoing instrument, and

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acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they was authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

WITNESS my hand and official hereto affixed the day and year first above written.



June M. Killmer  
Print/Type Name:  
NOTARY PUBLIC in and for the State of  
Washington, residing at Richland  
My Commission Expires: 7/1/95

## IRRIGATION EASEMENT

A thirty (30) foot wide irrigation easement, located in Sections 14, 15, and 22, all in Township 10 North, Range 28 East, Willamette Meridian, 15 feet left and right of the following described centerline:

Beginning at the quarter corner common to said sections 14 and 22; thence S 0°27'51"E, along the north-south centerline of said section 22, 19.00 feet to the True Point of Beginning. Thence S 89°54'43"E, 55.87 feet; thence N 76°19'54"E, 56.06 feet; thence N 38°35'29"E, 8.84 feet to the east-west centerline of said section 22; thence continuing N 38°35'29"E, 82.71 feet; thence N 34°39'22"E, 1918.84 feet; thence N 34°58'06"E, 898.95 feet, thence N 36°37'57"E, 279.97 feet to the southerly margin of Horn Rapids Road; thence continuing N 36°37'57"E, 30.80 feet; thence N 39°48'03"E, 72.35 feet to the northerly margin of Horn Rapids Road; thence, continuing N 39°48'03"E, 89.21 feet; thence N 88°30'30"E, 310.07 feet to the west margin of Stevens Drive, thence continuing N 88°30'30"E, 143.27 feet; thence N 87°51'05"E, 16.77 feet to the east margin of said Stevens Drive; thence continuing N 87°51'05"E, 2521.94 feet to the westerly margin of George Washington Way; thence continuing N 87°51'05"E, 8.04 feet; thence N 87°02'24"E, 81.85 feet to the easterly margin of said George Washington Way; thence continuing N 87°02'24"E, 270.82 feet; thence N 89°13'48"E, 714.44 feet; thence S 89°01'06"E, 276.27 feet; thence S 80°58'40"E, 118.98 feet, thence S 79°24'01"E, 84.40 feet; thence S 73°43'10"E, 56.27 feet; thence S 66°56'52"E, 116.81 feet, thence S 86°13'44"E, 191.52 feet to the terminus of said centerline.

Including the left and right margins of said 30 foot easement, extended or shortened to any of the boundaries aforementioned.