

AGREEMENT FOR SALE OF WATER RIGHTS

This AGREEMENT FOR SALE OF WATER RIGHTS ("Agreement") is entered into effective this 24th day of February 2005 (the "Effective Date"), by and between Idaho Water Company, LLC, an Idaho limited liability company, of 1135 Valley Road South, Eden, Idaho 83321 ("Seller"), and the City of Mountain Home, Idaho, a municipal corporation of the County of Elmore, State of Idaho, of P. O. Box 10, Mountain Home, Idaho 83647 ("Buyer").

RECITALS

(a) Seller holds an option to purchase real property in Elmore County, Idaho ("Property") that includes Idaho Water Rights Nos. 61-2167 and 61-2210 (the "Water Rights") from a third party. Copies of the Partial Decrees for the Water Rights are attached hereto as Exhibit A and by this reference made a part hereof.

(b) Seller desires to exercise its option to purchase the Property (including the Water Rights), and then convey the Water Rights to Buyer on the terms and conditions hereinafter set forth. Buyer desires to buy the Water Rights from Seller on the terms and conditions hereinafter set forth. No land is included in this Agreement.

IN CONSIDERATION OF the foregoing recitals, the purchase price to be paid by Buyer to Seller and the mutual promises and covenants set forth below, Seller agrees to sell the Water Rights to Buyer, and Buyer agrees to purchase them.

1. **PURCHASE PRICE.** The total purchase price for the Water Rights is \$ (Purchase Price") payable by Buyer to Seller at the times and in the amounts as follows:

(a) **Earnest Money:** Seller shall make earnest money payments to the Buyer at the times and in the amounts as follows (the "Earnest Money"):

- i. **First Earnest Money Payment:** Upon execution of this Agreement by Seller and Buyer, Buyer shall pay to Seller \$25,000.00 in cash as an earnest money payment (the "First Earnest Money"). The First Earnest Money is non-refundable to Buyer except as provided below.
- ii. **Second Earnest Money Payment:** If the closing on the sale of the Water Rights does not occur on or before the one-year anniversary of the Effective Date of this Agreement, Buyer shall pay Seller \$30,000.00 in cash as an additional earnest money payment (the "Second Earnest Money"). The Second Earnest Money is non-refundable to Buyer except as provided below.

(b) **Balance of the Purchase Price:** If the closing on the sale of the Water Rights occurs on or before the one-year anniversary of the Effective Date of this Agreement, at closing Buyer shall pay to Seller the Purchase Price in cash less the amount of the First Earnest Money. If the closing on the sale of the Water Rights occurs after the one-year anniversary of the Effective Date of this Agreement, at closing Buyer shall pay to Seller the Purchase Price in cash

Home, Idaho 83647, or at such other place as agreed to by the parties. On or before the closing date, Buyer and Seller shall deposit with the closing agent all funds and documents necessary to complete this sale, including the Idaho Department of Water Resources Change of Ownership form showing the Buyer as the new owner of the Water Rights. Seller and Buyer shall execute such closing or escrow instructions, not inconsistent with the terms of this Agreement, as may be requested by the closing agent from time to time.

10. COMMISSIONS. Each Party represents to the other that it has engaged no broker in connection with the negotiations leading to this Agreement. Buyer and Seller hereby agree to indemnify and defend the other against any and all commissions, finder's fees or other fee or any claim therefor by any broker in connection with this transaction claiming through the indemnifying party.

11. ATTORNEY FEES. In the event it becomes necessary for either of the parties hereto to retain legal counsel for enforcement of their rights hereunder after default of the other party or to institute suit for enforcement of their rights hereunder, then the party not in default, or the prevailing party in case of suit, shall be entitled to recover reasonable attorney's fees from the other party, in addition to the other damages allowed by law.

12. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and payment of the purchase price at the times set forth above.

13. SURVIVAL OF COVENANTS. All covenants and conditions in this Agreement are intended to survive closing.

14. SUCCESSORS AND ASSIGNS. The terms and conditions hereof shall extend to and be binding upon the successors and assigns of the respective parties hereto.

15. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto and may not be altered or amended except by a writing signed by the Seller and the Buyer.

16. WAIVER. All remedies shall be cumulative. Waiver of any default shall not constitute a waiver of any subsequent default.

17. HEADINGS. Headings in this Agreement for Sale of Water Rights are for convenience only and shall not be used to interpret or construe its provisions.

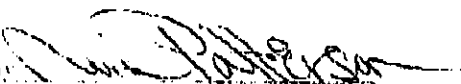
IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year in this Agreement first above written.

CITY OF MOUNTAIN HOME, IDAHO,
a municipal corporation,

By

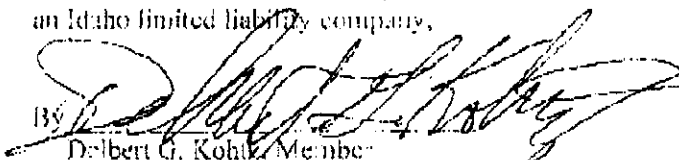
Joe B. McNeal, Mayor

ATTEST:

By 
Nina Patterson, City Clerk



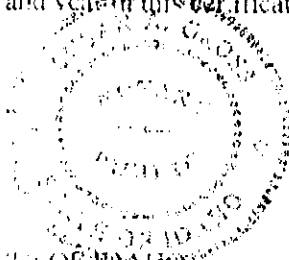
IDAHIO WATER COMPANY, LLC,
an Idaho limited liability company,

By 
Delbert G. Kohls, Member

STATE OF IDAHO)
) ss.
 COUNTY OF ELMORE)

On this 24th day of February, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared B. McNeal and Nina Patterson, known to me to be the Mayor and City Clerk, respectively, of the City of Mountain Home, Idaho, a municipal corporation that executed the foregoing instrument or the persons who executed the instrument on behalf of said municipal corporation, and acknowledged to me that said municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Susan A. McNeal
 Notary Public for Idaho,
 Residing at Mountain Home, ID
 My commission expires: 02/04/08

STATE OF IDAHO)
) ss.
 COUNTY OF Ada)

On this 4th day of March, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Delbert C. Kohtz, known to me to be a member of Idaho Water Company, LLC, the limited liability company that executed the foregoing instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that said limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Carol Gill
 Notary Public for Idaho,
 Residing at: Meredean, Id
 My commission expires: 4/5/2010

Ryan Warkentin
Ryan Warkentin

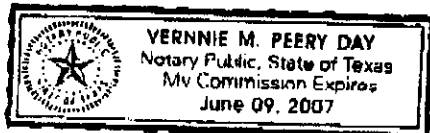
Jennifer Warkentin
Jennifer Warkentin

STATE OF TEXAS

County of Dallas)
) SS

On this 28th day of January 2005, before me the undersigned Notary Public in and for said state, personally appeared John W. Warkentin, Katherine E. Warkentin, Ryan Warkentin and Jennifer Warkentin known or identified to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Vernie M. Peery Day
Notary Public for State of Texas
Residing at 501 Keeler, Dallas, TX

STATE OF IDAHO

County of Teton)
) SS



On this 10th day of March 2005, before me the undersigned Notary Public in and for said state, personally appeared Delbert G. Kohtz known or identified to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

COPY

Notary Public for

Residing at

Barbara Dirksen
Idaho, U.S.A.

OPTION AGREEMENT FOR PURCHASE AND SALE-4

OPTION AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

THIS AGREEMENT made and entered into this 24th day of February 2005 by and between **Delbert G. Kohtz** of 1135 Valley Rd. Eden, Idaho 83325, hereinafter referred to as "Buyer" and **John W. Warkentin** and **Katherine E. Warkentin** husband and wife of 1916 Zuni Trail, Dalhart Texas 79022 and **Ryan Warkentin** and **Jennifer Warkentin** husband and wife, who for purposes of this agreement utilize the aforementioned address, hereinafter collectively referred to as "Seller".

WITNESSETH:

That in consideration of the Stipulations herein contained and the payments to be made as hereinafter specified, the Seller hereby agrees to sell to the Purchaser, and the Purchaser hereby agrees to purchase from the Seller, the following described real property, hereinafter the "real property" and certain listed "personal property" situated in the County of Elmore, State of Idaho.

IRRIGATED REAL PROPERTY LEGAL DESCRIPTION : Township 4S Range 5E

Sec 19 SE ¼ and SW1/4, Township 4S Range 5E Section 30 NE 1/4

And perpetual non-exclusive easement for ingress and egress to the above described parcels,

PERSONAL PROPERTY

TOGETHER WITH Idaho Department of Water Resources license No. 61-2167 for irrigation and License No. 61- 2210 for irrigation for a total 450 acres, and SEE EXHIBITS:

1. Water Rights Reports

1 – Deep Well 150 h.p. U.S. Electric Motor Serial #1391722 with Layne and Bowler Turbine Pump and Panel

1 – Deep Well 300 h.p. U.S. Electric Motor Serial #1385692 with Layne and Bowler Turbine Pump and Panel.

3 Lindsay Zimmatic Pivot Irrigation Systems Serial No. L70273, P43277 and P39911

PURCHASE PRICE: The full purchase price for the property is

FiveThousand Dollars) The purchase price shall be paid in full at the time of closing except where other arrangements have been made with the "seller" as to carrying the contract with buyer

1 **OPTION:** A payment of \$25,000.00 initiates a 365 day option period commencing at the signing date, in which to transfer the water Rights to another place of use. Because of the time consuming nature of the water transfer and possible protests to the transfer, Buyer can pay Seller another \$25,000.0 for another 365 day period. The balance at the end of the first option period shall be No interest will be paid on the first option period. If Buyer consummates this contract the option payments will be applied to the balance. The balance during the second year of this contract after the second \$25,000.00 payment is paid shall be plus interest beginning 365 days after signing. Title shall remain with the Seller until property is paid for at closing. Seller shall retain all rental payments by Seller's renter until closing. Buyer shall notify Seller if this contract is to close before March 1 of that year so Seller can plan the farming operation for that year. Water will not be moved from the place of use during the farming season. If Buyer does not close this contract the option payments and interest shall be retained by the seller. Buyer will give notice if the option is to be abandoned. This contract shall be in effect on the date the first option payment is paid.

2 **TITLE:** A good and marketable title free and clear of liens and title insurance will be provided by the seller at closing. Lienholder may hold a lien on all the Real Property until their lien is paid off. The seller will arrange for purchasing of the title insurance. Buyer shall arrange the closings so the seller will pay the least closing costs. Buyer and seller will share the closing costs on the contract.

3 **TAXES:** Purchaser shall pay all property taxes assessed against the real property and improvements thereon, commencing from the date of closing.

4 **WATER RIGHTS:** The parties hereby acknowledge that there are valid water rights for the purpose of irrigation which are appurtenant to the real property.

5 **ZONING:** Elmore County Zones the subject land agriculture.

6 **LIENHOLDERS:** Any Lienholders against the property shall first be paid out of the proceeds of the transaction so as to provide clear title to the land.

7 **POSSESSION OF THE REAL PROPERTY:** Delivered to Purchaser at the time of closing

OPTION AGREEMENT OF PURCHASE AND SALE - 2

8 **ATTORNEY'S FEES:** In the event any action is filed to enforce or recover under any provision of this Contract, the prevailing party in such suit shall be entitled to reasonable attorney's fees, in addition to ordinary costs of suit.

9 **BINDING EFFECT OF CONTRACT:** Subject to the restrictions on assignments herein set forth, this Contract and the terms, conditions and provisions hereof shall inure to and be binding upon the respective heirs, personal representatives, and assigns of the parties.

10. **COSTS AND ENTIRE AGREEMENT:** Costs incurred, such as surveys and appraisals shall be the responsibility of the Buyer. The parties will share equally in the cost of preparation of the documents and the cost of closing. This contract constitutes the entire agreement of the parties on the subject matter dealt with.

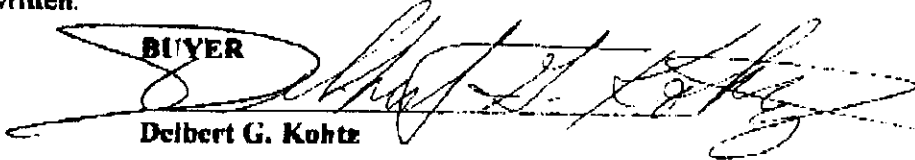
11. **TAX AND LEGAL CONSEQUENCES:** It is understood and agreed that each party hereto has relied upon his own legal and/or tax consultant or representative and not upon any representations of the other party as to the legal and or tax consequences of this agreement.

12. **REMEDIES:** If Purchaser fails or refuses to comply with the conditions assumed by them, or to perform all their obligations hereunder, Seller may, at their option,

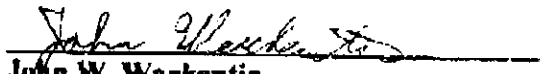
(a) Rescind and terminate this contract, whereupon all rights and obligations hereunder shall have no further effect.

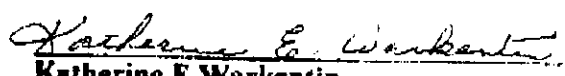
IN WITNESS WHEREOF the parties have executed this instrument, in duplicate, on the day and year first above written.

BUYER


Delbert G. Kohtz

SELLER


John W. Warkentin


Katherine E Warkentin

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