

A.P.N. 07-440-04

BOOK 374 PAGE 229-235
OFFICIAL RECORDS
RECORDED AT THE REQUEST OF
Mt. Wheeler, Inc
2004 FEB -3 PM 5:01

EUREKA COUNTY, NEVADA
M.N. REALEATI, RECORDER
FILE NO. FEES 20.00
185184

AGREEMENT FOR ELECTRICAL SERVICE AND LINE EXTENSION
PERMANENT IRRIGATION PUMP SERVICE

THIS AGREEMENT made and entered into this 8 th day of Sept, 2003 between. **Mt. Wheeler Power, Inc.**, a Nevada corporation, located at P.O. Box 151000, 1600 Great Basin Blvd., Ely, Nevada 89315, hereinafter called "Mt. Wheeler Power", and **MARK MOYLE FARMS LLC**, hereinafter called "Applicant".

WHEREAS, Mt. Wheeler Power, Inc. shall have electric power and energy available for sale at Applicant's premises as soon as certain electric lines and facilities are constructed;

NOW, THEREFORE, THIS AGREEMENT:

Mt. Wheeler Power agrees to sell and deliver to the Applicant, and the Applicant agrees to purchase and pay for electric power and energy sufficient to operate a <100> horsepower irrigation pump motor at the location hereinafter described under the following terms:

1. SERVICE CHARACTERISTICS:

- A. Service hereunder shall be alternating current, <3> **three** phase, <4> **four** wire, (60) **sixty** hertz and <277/480> volts.
- B. The Applicant agrees to abide by Mt. Wheeler Power's regulations and policies in regard to the connection of the Applicant's electrical facilities to Mt. Wheeler Power's facilities. Applicant agrees that Mt. Wheeler Power shall have the right to inspect Applicant's facilities to insure they comply with Mt. Wheeler Power's regulations and policies which are applicable to health, safety and welfare codes, as well as local, state and federal laws and regulations.
- C. During the Non-Irrigation Season, Applicant's facilities may be used as set forth in Mt. Wheeler Power's Rate Codes, Rules, Regulations and Policies as the same may be amended from time to time.

2. PAYMENT AND SECURITY:

- A. Applicant shall pay Mt. Wheeler Power for services hereunder at rates and upon the terms and conditions set forth in Mt. Wheeler Power's applicable Irrigation Rate

Code, as the same may from time to time be amended or modified. The cost of the line extension shall be the total of all necessary expenditures including all construction and related costs. Notwithstanding any provisions of the Rate Code, however, and irrespective of the Applicant's requirements or use, the Applicant shall pay to Mt. Wheeler Power not less than \$ 3,559.33, the line extension minimum, the seasonal kilowatt demand charge, or the equivalent installed horsepower charge when applicable, whichever is the greater, per irrigation season, for having service available hereunder, during the term hereof. However, in no case shall the seasonal minimum charge be less than as provided in the Rate Code.

- B. The initial monthly billing period shall start when service becomes available to the applicant during an irrigation season, or at the time of commencement of the irrigation season next following the date Mt. Wheeler Power first makes service available to the Applicant hereunder, whichever shall occur first. If service becomes available (30) thirty days or more after the commencement of the irrigation season, any yearly minimum charge for the initial season shall be prorated on the basis of the ratio that the time the service is available or furnished hereunder during the initial irrigation season bears to the total time in a full irrigation season.
- C. Bills for service hereunder shall be paid at the offices of Mt. Wheeler Power in either Ely or Eureka, Nevada, monthly, prior to the due date posted on the billing statement. If the applicant shall fail to pay any such bill within aforementioned time, Mt. Wheeler Power may discontinue service hereunder as set forth in Mt. Wheeler Power's applicable Rules, rates and Policies. It is expressly understood that such discontinuance of service shall not relieve the Applicant of any of his obligations under this Agreement and those documents expressly incorporated herein 4440by reference.
- D. The Applicant agrees that, at any time, Mt. Wheeler Power may adjust rates for service and/or its service rules, regulations and policies applicable to Applicant.
- E. For purposes of this Agreement, the irrigation season and the non-irrigation season shall be defined in the rates, rules, regulations and policies of Mt. Wheeler Power.
- F. The prepayment of any annual minimum seasonal charge shall be due and payable pursuant to the rates, rules, and regulations and policies of Mt. Wheeler Power, whether or not service is actually used. If any annual seasonal minimum has been prorated in the initial season, the full prepayment for the seasonal minimum bill shall be paid to Mt. Wheeler Power prior to connection of service. Irrigation services shall be energized each season in accordance with the terms of Mt. Wheeler Power's current irrigation rates, rules and regulations.
- G. Mt. Wheeler Power shall make available electric power on or about the date of the Applicant's written request. When construction is required, service shall be made available as soon as possible contingent upon the timely delivery of materials and any other force majeure as defined in Paragraph 4 hereof.
- H. If any default be made in any installment or other payment for having service available or for service pursuant hereto, and such default is not cured within (10) ten days of the mailing of written notice, certified mail return requested, to the last address of the Applicant as set forth on the books of Mt. Wheeler Power, then, without further notice or demand, the entire unpaid balance payable and to become payable during the full term of this Agreement and any accrued interest thereon, shall, at Mt. Wheeler Power's option become immediately due and payable.

- I. In order to secure the payment of all sums due or to become due Mt. Wheeler Power pursuant hereto, the Applicant and Owner, if other than the Applicant, hereby grant to Mt. Wheeler Power, Inc. a lien on the Applicant's real property and any crops grown thereon described in Section 10 hereof, which lien shall be contingent upon, and shall attach to said lands and crops, upon the Applicant being in default hereunder, and Mt. Wheeler Power electing to accelerate the payments due and to become due and exercising its lien rights. In the event Mt. Wheeler Power elects to accelerate pursuant to Paragraph 2.H. and the Applicant does not cure said default, Mt. Wheeler Power may further elect to establish its lien hereunder, in which case Mt. Wheeler Power shall file with the applicable county recorder a notice of Mt. Wheeler Power's elections. Pursuant hereto, Applicant and the Owner, if other than the Applicant, do hereby grant, bargain, sell and convey unto Mt. Wheeler Power all the real properties described in Section 10 hereof, together with all the improvements situated thereon, water rights, rights-of-way, easements, tenements, hereditaments and appurtenances thereunto belonging or in anywise now or hereafter attached to or used in connection with the premises, which conveyance is for the purpose of establishing Mt. Wheeler Power's lien rights, and is conditioned upon Applicant's defaults and Mt. Wheeler Power's election to accelerate and establish its lien hereunder. Should there be no fault by Applicant under the terms hereof, during the term hereof, this conveyance shall be of no force or effect. Said lien may be foreclosed by legal proceedings under the laws of the State of Nevada or Utah, as the case may be, relating to the foreclosure of a Deed of Trust or foreclosure of a Mechanic's or Materialman's Liens, as set forth in Chapter 108 of the Nevada Revised Statutes, as the same may be from time to time amended. At anytime during the term hereof that Applicant is not in default, upon the request of the Applicant, Mt. Wheeler Power shall acknowledge in writing the fact that no default exists and that no lien has been established.
- J. The Applicant agrees to pay all costs, charges and expenses, including reasonable attorney fees, incurred by Mt. Wheeler Power, incident to the collection of any sums payable to Mt. Wheeler Power hereunder, or any portion thereof, in the event of any default or deficiency by the Applicant in carrying out the terms of this Agreement.

3. MEMBERSHIP:

- A. The Applicant hereby applies to Mt. Wheeler Power, a Nevada, non-stock, non-profit, cooperative corporation for electric distribution service to be supplied at the location herein described and for membership in the Cooperative, and agrees to be bound by the Cooperative's Articles of Incorporation, By-laws, Rules, Regulations and Policies, as the same now and hereafter adopted or amended.

4. FORCE MAJEURE:

- A. Mt. Wheeler Power shall use all reasonable diligence to provide a constant and uninterrupted supply of electric power and energy, however, in the event that Mt. Wheeler Power shall be rendered unable, wholly or in part, by force majeure to carry out its obligation under this Agreement, it is agreed the obligations of Mt. Wheeler Power, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused. The term "force majeure" as employed

herein shall mean acts of God, strikes or other industrial disturbances, acts of public enemy, vandalism, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of government and peoples, civil disturbances, explosions, breakdowns of machinery or equipment, failures, decreases or interruptions of power supply, and any other causes, whether of the kind herein enumerated, or otherwise, not within the control of Mt. Wheeler Power and which by the exercise of due diligence Mt. Wheeler Power is unable to prevent or overcome; and such term likewise includes (a) in those instances where Mt. Wheeler Power is required to obtain servitude's, right-of-way grants, easements, permits or licenses to enable Mt. Wheeler Power to fulfill its obligations hereunder, the inability of Mt. Wheeler Power to acquire, or the delays of Mt. Wheeler Power in acquiring, after the exercise of reasonable diligence, such servitude's, right-of-way grants, easements, permits or licenses, and (b) in those instances where Mt. Wheeler Power is required to furnish materials and supplies for the purpose of construction or maintaining facilities or is required to secure permits or permission from any governmental agency to enable Mt. Wheeler Power to fulfill its obligations hereunder, the inability of Mt. Wheeler Power in acquiring, after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

- B. It is understood and agreed that the settlement of strikes shall be entirely within the discretion of Mt. Wheeler Power, and that any requirement that any force majeure shall be remedied with reasonable diligence shall not require the settlement of strikes by acceding to the demands of the opposing party or parties when such course is inadvisable in the discretion of Mt. Wheeler Power.

5. SUCCESSION:

- A. This Agreement shall be binding upon and inure to the benefit of all of the parties, hereto, their heirs, administrators, executors, successors and assigns; and to the successor in interest of the lands herein described.

6. RIGHT OF ACCESS:

- A. Applicant and owner shall grant an adequate, recordable right-of-way/easement for Mt. Wheeler Power's electric lines and facilities, and duly authorized representatives of Mt. Wheeler Power shall be permitted to enter Applicant's premises at all times in order to carry out the provisions hereof and to maintain, construct, reconstruct or otherwise service said electric lines and facilities.

7. LEGAL OWNER:

- A. The legal owner of the property is MARK MOYLE FARMS LLC.

8. TERM:

- A. This Agreement shall become effective on the date service first becomes available in the ~~2004~~^{6/14/15-04} irrigation season and shall remain in effect for a period of ~~3~~ THREE year. The Applicant shall be notified of the date that begins the term of the

Agreement during the initial irrigation season. Service after the term of this Agreement may continue on a year to year basis under the provisions of the Rate Code, and under the terms of the Irrigation Policy, Rules and Regulations of Mt. Wheeler Power, as the same may from time to time be amended or revised.

9. CONTRIBUTION IN AID OF CONSTRUCTION:

- A. Prior to the start of construction Applicant shall pay to Mt. Wheeler Power a non-refundable contribution in aid of construction in the amount of \$ -0-.

10. LAND DESCRIPTION AND LOCATION OF IRRIGATION PUMP:

- A. The pump shall serve <160> irrigated acres located in the SE4, of Section 19, Township 22N Range 54E, of EUREKA County, State of NEVADA.
B. The well and pump will be located approximately <2300> feet from the SE corner of said Section 19.

11. LIEN AGREEMENT

- A. The Applicant agrees to and does hereby grant a lien on the Applicant's real property and any crops grown thereon, hereinafter described, to Mt. Wheeler Power as security for the payment of the minimum bill of \$ 3,559.33 per year for <3> THREE years as set forth above. In the event that Applicant defaults in the payment of the minimum bill then Mt. Wheeler Power shall have a right to immediately record this agreement in the county where the real property is located and foreclose its lien in the same manner as provided for the foreclosure of a Deed of Trust or foreclosure of a Mechanic's and Materialmen's liens in chapter 108 of the Nevada Revised Statutes. Said lien is hereby granted on that certain real property and improvements located in the County of EUREKA, State of NEVADA and particularly described as follows:

A portion of the SE4 of Sec. 19, T22N, R54E, M.D.B.&M.

TOGETHER WITH all building, improvements and crops located thereon.
TOGETHER WITH all and singular the tenements, hereditaments, easements, and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof, or of any part thereof.

12. NOTICE

- A. All notices to be given under this Agreement shall be mailed, certified mail, return receipt requested, or hand delivered, to Mt. Wheeler Power, Inc., at P.O. Box 151000, 1600 Great Basin Blvd., Ely, Nevada 89315; and, to the Applicant at the address for Applicant as set forth by Applicant's signature at the end of this Agreement.

13. WAIVER

- A. Failure of either party to enforce any of the provisions of this Agreement shall not be construed as waiver, or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.

14. SEVERABILITY

- A. If any portion of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If the Court finds a provision of this Agreement is invalid or unenforceable, but that by limiting such provision, it will become valid and enforceable, then such provision shall be deemed to be written, construed and enforced is so limited.

15. GOVERNING LAW

- A. This lease shall be construed in accordance with the laws of the State of Nevada. Venue for any dispute under the terms of this Agreement shall be in White Pine County, State of Nevada.

16. ENTIRE AGREEMENT/AMENDMENT

- A. This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement, oral or written. This Agreement may only be modified or amended in writing, if both parties to this Agreement sign the writing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in triplicate.

APPLICANT:

Mark Moyle Farms LLC
Applicant's Business Name

Laura Moyle
Applicant's Signature

P.O. Box 842
Fallon NV 89407
Address of Applicant

STATE OF Nevada

COUNTY OF Churchill

This instrument was acknowledged

before me on Sept. 4, 2003

by Terren Moyle

Laura L. Ivey
Notary Public



Received by Billing Department

5030825
Location

Rev 8/21/03
jrm/gw

UTILITY:

Mt. Wheeler Power, Inc.

Shelli Watts
Mt. Wheeler Power Representative

SR Billing Watts
Title

Work Order No. 403115

STATE OF NEVADA

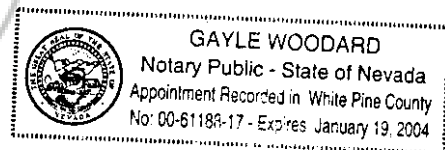
COUNTY OF WHITE PINE

This instrument was acknowledged

before me on Sept. 8, 2003

by Shelli Watts

Gayle Woodard
Notary Public



179784
Account #