

Int. 100599

Date 9/7/73

Recorded at request of

Ray H. Zenger

9:11 A.M.

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By Tom Van Wagoner Deputy Book

County Recorder

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AGREEMENT

This agreement entered into this 20th day of August, 1973, by and between the STATE OF UTAH, acting through the BOARD OF WATER RESOURCES, First Party, sometimes referred to herein as the STATE and the CENTER CREEK IRRIGATION COMPANY, a corporation, organized under the laws of the State of Utah, Second Party, sometimes referred to herein as the WATER COMPANY.

WITNESSETH

THAT WHEREAS, the STATE desires to promote a water conservation project consisting of the repair of an earthfill dam embankment and construction of a diversion structure damaged by failure of reservoir #1 original dam, and

WHEREAS, it is the desire of the WATER COMPANY to enter into a contract with the STATE, for a consideration to be hereinafter provided, and to use the water developed by the aforesaid project, and as the WATER COMPANY has the available manpower and facilities necessary to construct the aforesaid project, and is ready, willing and able to enter into a contract for such purpose.

NOW, THEREFORE, the Parties hereto enter into the following agreement and make the following assignments:

1. The WATER COMPANY hereby agrees to convey, grant and warrant to the STATE, title, in fee simple, as required to the real estate upon which the structures are to be constructed; and further agrees to convey, grant and warrant to the STATE, title to such easements and rights-of-way as shall be necessary to enable the STATE to construct, maintain and operate said project; and further agrees to grant and convey to the STATE an easement to use any and all of the WATER COMPANY'S water distribution system of canals and ditches and appurtenant works, reservoirs and facilities located in Sections 29, 30, 32, 33, 35 T4S, R6E; Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 24, 25, T4S, R5E, SLB&M, all in Wasatch County, Utah.

2. The WATER COMPANY hereby agrees to convey, grant and warrant to the STATE all right, title and interest which it has or may have to the right to the use of the water which shall be saved or conveyed through the use of the aforesaid project, and particularly a diligence right to store 581.2 acre-feet of water in Center Creek reservoirs No. 1, 2, 3 and 5, and all of the waters of Center Creek as awarded in Civil Decree #55, The Center Creek Water and Irrigation Company, a Corporation Plaintiff vs. John A. Thomas, Defendant, in the District Court of the Fourth Judicial District of the State of Utah, in and for the County of Wasatch, dated June 15, 1898, Warren N. Dusenberry, Judge, presiding.

3. The WATER COMPANY recognizes as valid the conveyance of easements and rights-of-way executed by various owners of the benefited land to the STATE, and agrees that all performance by the WATER COMPANY under this contract shall be subservient to, and in recognition of, the aforesaid rights of the STATE in and to the aforesaid easements and rights-of-way.

4. The WATER COMPANY agrees to supply the necessary manpower and facilities and agrees to complete the construction of the aforesaid project at a cost in accordance with plans, specifications and work items, a copy of which is hereby incorporated by reference and made a part hereof.

5. The STATE agrees to pay to the WATER COMPANY Eighty-Five Percent (85%) of the total cost of constructing the project, but in no event shall the amount paid by the STATE exceed Sixty-Eight Thousand Dollars (\$68,000.00) and the WATER COMPANY shall itself pay for all costs in excess of the amount paid by the STATE. The WATER COMPANY agrees and undertakes to construct to completion as designed and specified the aforesaid project in all events regardless of unforeseen contingencies and agrees to pay all costs in excess of the aforesaid amount paid by the STATE.

6. It is further agreed that the STATE shall pay Ninety Percent (90%) of the amount payable by the STATE to the WATER COMPANY upon the presentation by the WATER COMPANY to the STATE of a certified statement of the payment requirement which shall be in the nature of a monthly partial estimate of the work completed to date by the WATER COMPANY on each work item. The Ten Percent (10%) withheld as above set forth will become due and payable to the WATER COMPANY with, and as a part of, the final payment to be made by the STATE upon completion of the project, and its inspection and acceptance by an engineer designated by the STATE.

7. It is further agreed that the WATER COMPANY shall complete the project on or before June 1, 1974, and that title to the entire project, including all appurtenant facilities and water rights shall immediately vest in the STATE. It is also agreed that this contract shall not become binding upon the STATE until it has been signed by all persons and agencies required by law, and that the STATE shall not become liable to the WATER COMPANY for any commitments made by the WATER COMPANY until this contract has been completed.

8. The STATE agrees to sell, and the WATER COMPANY agrees to purchase the land, easements, rights-of-way, water rights, the constructed works, and all appurtenant facilities acquired by the STATE in this Agreement and Assignments at a total purchase price defined to be the combined total of all funds paid by the STATE to the WATER COMPANY for the construction of the project, but not to exceed Sixty-Eight Thousand Dollars (\$68,000.00), plus all expenses incurred by the STATE for the investigation, engineering and inspection of the project, and to be determined by the STATE upon the completion of the project. The purchase price shall be payable over a period of time not to exceed Seventeen (17) years in annual installments of One-Seventeenth (1/17), or more per year of the total purchase price as defined above, without interest.

9. The first annual installment of One-Seventeenth (1/17), or more, of the total purchase price, as defined above, shall become due and payable on the first day of December 1974, and a like sum, or more, to be due and payable on the first day of December of each and every year thereafter until the full purchase price, as defined above, shall have been paid in full; said sums shall be payable at the office of the DIVISION OF WATER RESOURCES, and the first monies received by the STATE under the terms of this contract will be applied against the indebtedness incurred by the STATE for investigation, engineering, and inspection until fully paid, and any residue will be applied to the funds paid by the STATE for the construction of the project. Delinquent payments shall bear interest at a rate of Ten Percent (10%) per annum.

10. All payments made by the STATE to the WATER COMPANY under this Agreement shall be made payable to CENTER CREEK IRRIGATION COMPANY and mailed to Curtis Muir, President, R.F.D. #1, Heber City, Utah, 84032, or such person as may hereafter be designated by the WATER COMPANY.

11. During the period of such purchase under this contract, provided the WATER COMPANY is not delinquent in any manner, the WATER COMPANY shall have and is hereby given the right to use the STATE's water rights, and all facilities constructed thereunder. During the life of this Agreement, the WATER COMPANY agrees to assume, at the WATER COMPANY's expense, the full and complete obligation of maintaining the constructed works, and other facilities, and of protecting all water rights from forfeiture.

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12. In order to secure the payment of the aforesaid purchase price, it is hereby expressly agreed that the STATE may require the WATER COMPANY to assess all outstanding shares of their stock for the full amount of any delinquencies in the aforesaid purchase installments. It is further agreed by the WATER COMPANY that it will not incur any mortgages or encumbrances, other than those already acquired by it, on any of its property, real or personal, without first securing the written consent of the STATE. It is further agreed that the WATER COMPANY will not incur any indebtedness whatsoever for a principal sum in excess of Twenty-Five Thousand Dollars (\$25,000.00) without first procuring the written consent of the STATE. The remedies herein provided shall be deemed cumulative, and not exclusive.

13. The WATER COMPANY hereby warrants the STATE that the construction of the project will not interfere with existing water rights. If the project herein described shall give rise to a claim, or cause of action to any holder of any water rights because of the interference with such rights by the operation of the aforesaid project, then the WATER COMPANY hereby agrees to indemnify the STATE to the extent of such claim or cause of action.

14. If either party to the contract violates any of the conditions or covenants made herein, the other may give written notice of such breach or failure, and if the same shall not be cured within Ninety (90) days after such notice, the other may declare the contract forfeited and may proceed to its remedies at law for such breach.

15. The WATER COMPANY hereby agrees to assume the full obligation for any claim or liability for any injury or death of persons, or for any property loss or damage that may arise from the construction and operation of this project for the STATE; and further, the WATER COMPANY agrees to hold the STATE immune for all such claims for damages, injury, or death of persons during the life of this Agreement.

16. After the WATER COMPANY shall have paid in full the purchase price as defined above, the STATE shall execute such deeds and bills of sale as will be necessary to revest the same title to the aforesaid property and water rights in the WATER COMPANY.

17. This Agreement, or any part thereof, or the benefits to be received under this Agreement, may not be the subject of any assignment to any person, firm or corporation, by the said WATER COMPANY, without first having secured the written consent of the STATE to any such proposed assignment or disposition of this Agreement.

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IN WITNESS WHEREOF, the State of Utah, acting through the BOARD OF WATER RESOURCES, Party of the First Part, has caused these presents to be signed by the Chairman and Director of the said BOARD OF WATER RESOURCES by authority of a resolution of said Board; and the

Party of the Second Part, has caused these presents to be signed and executed on its behalf by Curtis Muir, its President, and Delbert Sweat, its Secretary, by a resolution of its stockholders at a meeting held August 28, 1973.

BOARD OF WATER RESOURCES

APPROVED:
BOARD OF EXAMINERS--STATE OF UTAH

Ben H. Remy
Governor

Wm. Muir
Chairman

George L. Miller
Secretary of State

Delbert Sweat
Director

DD
Attorney General

Center Creek Irrigation Company
Water Company

APPROVED
AS TO AVAILABILITY OF FUNDS:

W. Warren
Budget Officer

SEP 10 1973
Date

APPROVED AS TO FORM

Delbert Sweat
Secretary

Delbert Sweat
Assistant Attorney General

APPROVED:

Kenneth J. Hansen
Director of Finance

SEP 5 1973

STATE OF UTAH
County of

X : ss.

On the 23rd day of AUGUST, 1973, personally appeared
before me Curtis Muir and Delbert Sweat,
who being by me duly sworn, did say that they are the President and Secretary,
respectively, of the CENTER CREEK IRRIGATION COMPANY,
and that the said instrument was signed in behalf of said corporation by
authority of a resolution of its stockholders, and said Curtis Muir
and Delbert Sweat acknowledged to me that said corporation executed

J. Harold Cole
Notary Public

Residing at: Heber City, Utah

My Commission Expires: 2-3-1977

CERTIFICATION AND ACKNOWLEDGMENT

STATE OF UTAH : ss.
 County of WASATCH

Comes now Delbert Sweat, who being first duly sworn upon oath deposes and says: That he is the duly qualified secretary of the CENTER CREEK IRRIGATION COMPANY, a corporation organized under the laws of the State of Utah; that on the 28th day of August, 1973, a meeting of the STOCKHOLDERS of the aforesaid corporation was held at CENTER CREEK, Utah, which meeting was held in the manner required by law and after due notice had been given to the aforesaid STOCKHOLDERS in the manner prescribed by law; that at such meeting sufficient shares of stock in this corporation were represented to legally authorize the said STOCKHOLDERS to transact the business for which the aforesaid meeting was held; and that at said meeting the following resolution was made, seconded and passed by a legal majority of the stock of the CENTER CREEK IRRIGATION COMPANY.

R E S O L U T I O N

IT IS HEREBY RESOLVED that Curtis Muir, President, and Delbert Sweat, Secretary, acting on behalf of the CENTER CREEK IRRIGATION COMPANY are hereby authorized to enter into a contract with the State of Utah, acting through the Board of Water Resources, for the construction of a water conservation project consisting of repair of an earthfill dam embankment Reservoir No. 1, and construction of a diversion dam structure damaged by failure of the dam.

FURTHER, that the total estimated cost of completing the project will be 80,000.00, of which amount the Board of Water Resources will pay 85 percent of the cost of construction but not to exceed \$68,000.00 and all additional costs to complete the project will be paid by the CENTER CREEK IRRIGATION COMPANY and

FURTHER, that this corporation shall assign to the Board of Water Resources its properties, easements and water rights, appurtenant to said project on condition that the same be reconveyed to this corporation upon the payment of the purchase price thereof, such purchase price to be the combined total of all money paid by the Board of Water Resources for the construction of the project, but not to exceed \$68,000.00, plus all expense incurred by the Board of Water Resources for investigation, engineering and inspection in its accomplishment of project, and

FURTHER, that this corporation shall have full use of such properties and water rights during the life of this contract, provided this corporation is not delinquent in any of its obligations under the contract. We further authorize the Board of Directors of this corporation to assess all the outstanding corporate stock for any payments which may become delinquent under the terms of the aforesaid contract.

Delbert Sweat
Secretary

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STATE OF UTAH : ss.
 County of WASATCH

On this 23rd day of August, 1973, appeared before me Delbert Sweat who is personally known to me to be the Secretary of the CENTER CREEK IRRIGATION COMPANY and who did acknowledge to me under oath that he executed the aforesaid document entitled "Certification and Acknowledgment" on behalf of said corporation.

Harold Cole
NOTARY PUBLIC

Notary Public
Commissioned: 3-19-73
Commission Expires: 2-3-1977