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Recorded AUG 25 1959 at 9:40 A. M.  
R est of Utah Water Power Board  
Fee Paid. Nellie M. Jack,  
Recorder, Salt Lake County, Utah  
\$ No fee By Wm. F. Hunt Deputy  
Ref. A G R E E M E N T  
270 J.R. Bingham

3417  
BOOK 1643 PAGE 205

This agreement entered into this 27<sup>th</sup> day of March, 1959, in original and four copies, by and between the State of Utah, acting through the UTAH WATER AND POWER BOARD, First Party, sometimes referred to herein as the State, and the BELL CANYON IRRIGATION COMPANY, a corporation organized under the laws of the State of Utah, Second Party, and the NORTH DRY CREEK IRRIGATION COMPANY, a corporation, organized under the laws of the State of Utah, Third Party, sometimes referred to herein as the irrigation companies.

W I T N E S S E T H

THAT WHEREAS, the First Party desires to promote a water conservation project consisting of the reconstruction and enlargement of the two dams now forming the Lower Bell Canyon Dam; and the construction of a third dam or levee on the south rim of the reservoir; and of the extension of the existing gatewell and outlet conduit; the construction of a new spillway and other appurtenant facilities; which project will raise the water in the aforesaid reservoir by twelve (12) feet, making possible an additional 182 acre-feet of storage capacity.

WHEREAS, it is the desire of the Second Party and the Third Party to enter into a contract with the First Party, for a consideration to be hereinafter provided, and to use the water developed by the aforesaid project, and as the Second Party and the Third Party have the available manpower and facilities necessary to construct the aforesaid project, and are ready, willing and able to enter into a contract for such purpose; and

WHEREAS, by prior contracts dated June 3, 1948, April 28, 1953, June 30, 1954, and October 8, 1957, the First Party has assisted the Second Party in the construction of water conservation projects within Salt Lake County; and

WHEREAS, by prior contract dated February 10, 1959, the First Party

has assisted the Third Party in the construction of a water conservation project in Salt Lake County; and

WHEREAS, as a part of said contracts, the Second Party and Third Party have previously conveyed, granted, and warranted to the First Party, title in fee simple, to the real estate upon which the structures are to be constructed; and further have conveyed, granted, and warranted to the First Party title to such easements and rights-of-way as shall be necessary to enable the First Party to maintain and operate said project; and further have conveyed to the First Party an easement to use any and all of the Second Party's and Third Party's facilities in their distribution systems consisting of open canals and closed pipelines located in Salt Lake County and more particularly described as extending through parts of Sections 2, 7, 8, 10, 11, 14, 15, 16, 17, 18, 19, 21, 22, 28, 29, and 30, all in T3S, R1E, SLB&M.

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

1. The Second Party and Third Party hereby agree to convey, grant and warrant to the First Party, title to the real estate upon which the structures are to be constructed; and further agree to convey, grant and warrant to the First Party, title to such easements and rights-of-way as shall be necessary to enable the First Party to construct, maintain and operate said project.

2. The Second Party hereby agrees to convey and transfer to the First Party all of its rights to the use of water from Bell Canyon and North Dry Creek including, but not limited to the right to the use of said waters as awarded to the Second Party by that certain decree dated January 8, 1902, in the case of Dry Creek Reservoir and Irrigation Company and others, vs. Draper Irrigation Company, and including all applications to change the point of diversion, place and nature of use of said water now filed or to be hereafter filed with the Utah State Engineer, and specifically including Certificate No. 740 as issued by the Utah State Engineer.

3. The Second and Third Parties recognize as valid, the conveyance of easements and rights-of-way executed by various owners of the benefited land to the First Party, and agree that all performance by the Second and Third Parties under this contract shall be subservient to, and in recognition of the aforesaid rights of the First Party in and to the aforesaid easements and rights-of-way.

4. The Second and Third Parties agree to supply the necessary manpower and facilities, and agree to complete the construction of the aforesaid project at a cost in accordance with plans, specifications and work items, a copy of which is attached to this contract and which is hereby incorporated by reference and made a part hereof.

5. The First Party agrees to pay to the Second Party and Third Party eighty percent (80%) of the total cost of constructing the project, but in no event shall the amount paid by the First Party exceed \$52,000.00, and the Second and Third Parties shall themselves pay for all costs in excess of the amount paid by the First Party. The Second and Third Parties agree to undertake to construct to completion as designed and specified, the aforesaid project in all events, regardless of unforeseen contingencies, and agree to pay all costs in excess of the aforesaid amount paid by the First Party.

6. It is further agreed that the First Party shall pay ninety percent (90%) of the amount payable by the First Party to the Second and Third Parties upon the presentation by the Second and Third Parties to the First Party of a certified statement of the payments requirement which shall be in the nature of a partial estimate of the work completed to date by the Second and Third Parties on each work item. The ten percent (10%) withheld as above set forth will become due and payable to the Second and Third Parties with, and as a part of the final payment to be made by the First Party upon completion of the project, and its inspection and acceptance by an engineer designated by the First Party.

7. It is further agreed that the Second and Third Parties shall

complete the construction of the project on or before December 1, 1960, and that title to the entire project, including all appurtenant facilities and water rights shall immediately vest in the First Party. It is also agreed that this contract shall not become binding upon the First Party until it has been signed by all persons and agencies required by law, and that the First Party shall not become liable to the Second and Third Parties for any commitments made by the Second and Third Parties until this contract has been completed.

8. The First Party agrees to sell, and the Second and Third Parties agree jointly and severally to purchase the easements, rights-of-way, water rights, the entire land area covered by the reservoir at full stage and by the dam, and appurtenant facilities, and all appurtenant facilities acquired by the First Party in this Agreement and Assignments at a total purchase price defined to be the combined total of all funds paid by the First Party to the Second and Third Parties for the construction of the project, but not to exceed \$52,000.00, plus all expense incurred by the First Party for the investigation, engineering and inspection of the project, and to be determined by the First Party upon the completion of the project, and payable over a period of time not to exceed twelve (12) years, in annual installments graduated as to time of payments and amounts to be divided into five (5) payment periods as shown in the following "MINIMUM INSTALLMENT SCHEDULE".

MINIMUM INSTALLMENT SCHEDULE

- (a) For the first four-year period commencing December 1, 1961, the annual installment payment shall be five percent (5%) of the total amount; or more, per year of the total purchase price as defined above, without interest.
- (b) For the second one-year period commencing December 1, 1965, the annual installment payment shall be seven percent (7%) of the total amount; or more, per year of the total purchase price as defined above, without interest.
- (c) For the third four-year period commencing December 1, 1966, the annual installment payment shall be ten percent (10%) of the total amount, or more, per year of the total purchase price as defined above without interest.

- (d) For the fourth two-year period commencing December 1, 1970, the annual installment payment shall be twelve percent (12%) of the total amount, or more, per year of the total purchase price as defined above, without interest.
- (e) For the fifth one-year period commencing December 1, 1972, the annual installment payment shall be nine percent (9%) of the total amount, or more, per year of the total purchase price as defined above, without interest.

9. The first annual installment of five percent (5%), or more, of the total purchase price, as defined above shall become due and payable on the First day of December 1961, and each succeeding installment as stipulated in the "Minimum Installment Schedule", shall become 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 UTAH WATER AND POWER BOARD, and the first monies received by the First Party under the terms of this contract will be applied against the indebtedness incurred by the First Party for investigation, engineering and inspection, until fully paid, and any residue will be applied to funds paid by the First Party for the construction of the project. Delinquent payments shall bear interest at a rate of six percent (6%) per annum.

10. It is further agreed by the Second Party, that it will maintain a complete and separate accounting record of all expenditures made in connection with the cost of the project. The records, as maintained, shall become the property of the First Party upon the completion of the project.

11. During the period of such purchase under this contract, provided the Second and Third Parties are not delinquent in any manner, the Second and Third Parties shall have, and are hereby given the right to use the First Party's water rights, dam, reservoir, and other facilities constructed thereunder. The Second and Third Parties do hereby assume during the life of this agreement, the full obligation of maintaining the dam, reservoir, and other facilities, and of protecting all water rights from forfeiture.

12. In order to secure the payment of the aforesaid purchase price, it is hereby expressly agreed that the First Party may require the Second and Third Parties 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 Second Party and the Third Party that they will not incur any mortgage or encumbrances, other than those already acquired by them, on any of their property, real or personal, without first securing the written consent of the First Party. It is further agreed that the Second and Third Parties will not incur any indebtedness whatsoever for a principal sum in excess of \$30,000.00, without first procuring the written consent of the First Party. The remedies herein provided shall be deemed cumulative, and not exclusive.

13. The Second and Third Parties hereby warrant to the First Party, 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 Second and Third Parties hereby agree to indemnify the First Party to the extent of such claim or cause of action.

After the Second and Third Parties shall have paid in full, the purchase price as defined above, the First Party shall, with the approval of the Utah State Senate, execute such deeds and bills of sale as will be necessary to re-vest the same title to the aforesaid property and water rights in the Second Party and Third Party as are vested in the First Party.

14. If any of the Parties to the contract violate any of the conditions or covenants made herein, any one of them 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 others may declare the contract forfeited and may proceed to its remedies at law for such breach.

15. The Second and Third Parties hereby agree 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 in accomplishing the

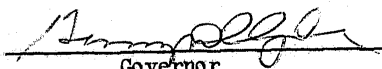
construction of this project for the First Party, and further, the Second and Third Parties agree to hold the First Party immune for all such claims for damages, injury, or death of persons during the life of this contract.

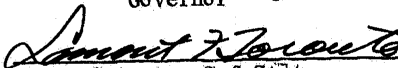
16. That this agreement, or any part thereof, or the benefits to be received under this agreement, may not be the subject of an assignment to any other persons, firm or corporation, by the said Second and Third Parties without having first secured the written consent of the First Party to any such proposed assignment or disposition of this agreement.

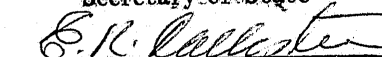
IN WITNESS WHEREOF, the State of Utah, acting through the UTAH WATER AND POWER BOARD, Party of the First Part, has caused these presents to be signed by the Chairman and Executive Director of the said Utah Water and Power Board, by authority of a resolution of said Board at a meeting held September 25, 1958; and the BELL CANYON IRRIGATION COMPANY, Party of the Second Part, has caused these presents to be signed and executed on its behalf by its President and Secretary, by authority of a resolution passed by its stockholders September 23, 1957; and the NORTH DRY CREEK IRRIGATION COMPANY, Party of the Third Part, has caused these presents to be signed by its President and Secretary, by authority of a resolution passed at a meeting of its stockholders held March 7, 1959.

APPROVED:

BOARD OF EXAMINERS - STATE OF UTAH

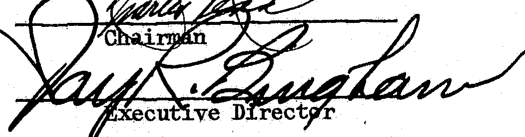
  
Governor

  
Secretary of State

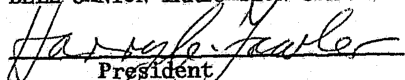
  
Attorney General

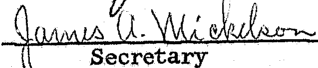
UTAH WATER AND POWER BOARD

  
Chairman

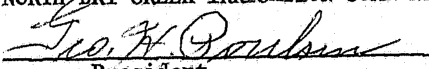
  
Executive Director

BELL CANYON IRRIGATION COMPANY

  
President

  
Secretary

NORTH DRY CREEK IRRIGATION COMPANY

  
President

  
Secretary

APPROVED AS TO AVAILABILITY OF FUNDS:

STATE FINANCE COMMISSION

W. W. Moffatt  
Chairman  
D. K. Hutchinson  
Commissioner  
R. P. Lindsey  
Commissioner

APPROVED AS TO FORM:

Robert M. [Signature]  
Assistant Attorney General

STATE OF UTAH

County of

§  
: ss.  
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On the 25<sup>th</sup> day of March, 1959, personally appeared before me HARRY C. FOWLER and JAMES A. MICKELSON, who being by me duly sworn did say that they are the President and Secretary, respectively, of the BELL CANYON IRRIGATION COMPANY; and GEORGE H. POULSEN AND L. E. VAN DAM, who being by me duly sworn, did say that they are the President and Secretary, respectively, of the NORTH DRY CREEK IRRIGATION COMPANY; and that the foregoing instrument was signed in behalf of each respective corporation by authority of a resolution of its stockholders, and said Harry C. Fowler and James A. Mickelson acknowledged to me that the Bell Canyon Irrigation Company executed such resolution; and said George H. Poulsen and L. E. Van Dam acknowledged to me that the North Dry Creek Irrigation Company executed such resolution.

Harold E. Wallace  
NOTARY PUBLIC

Residing at: Salt Lake City, Utah

My Commission Expires:

Oct. 25<sup>th</sup> 1959

