

AGREEMENT

This Agreement entered into this 14th day of June, 1976, 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 IVINS IRRIGATION COMPANY, a corporation, organized under the Laws of the State of Utah, Second Party, sometimes referred to herein as the WATER COMPANY:

W I T N E S S E T H

THAT WHEREAS, the Legislature has authorized the BOARD OF WATER RESOURCES, under Title 73-10, to enter into contracts for the construction of conservation projects, which in the opinion of the Board, will best conserve and utilize the water resources of the State of Utah; and

WHEREAS, the STATE desires to promote a water conservation project consisting of construction of approximately 12,000 linear feet of concrete canal lining and approximately 2,600 feet of 24-inch pipeline; replacement of two siphons; and repair of a diversion dam for the irrigation of lands to the west of Ivins, Washington County, Utah; 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 this 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 facilities in Sections 30 and 31, T41S, R16W, SLB&M; and Section 25, T41S, R17W, SLB&M.

2. The WATER COMPANY hereby agrees to convey, assign, 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 developed or conveyed through the use of the aforesaid project, and particularly that certain water right evidenced by Utah Certificate of Water Right #3689, Application #7838 (81-77) for 1000 acre-feet with a priority of August 21, 1918; and that certain water right evidenced by Utah Certificate of Water Right #2139, Application #2368 (81-7) for 30.0 cfs with a priority date of November 15, 1930.

3. The WATER COMPANY recognizes as valid the conveyance of easements and rights-of-way executed by various owners of the 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 in accordance with plans, specifications, and work items, a copy of which is hereby incorporated by reference and made a part hereof.

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5. The STATE agrees to pay to the WATER COMPANY Seventeen Percent (17%) of the total cost of constructing the project, but in no event shall the amount paid by the STATE exceed Twenty Thousand Dollars (\$20,000.00) 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 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 construction of the project on or before December 1, 1976, and that title to the entire project, including all appurtenant facilities and water rights shall immediately vest in the STATE. All payments made by the STATE to the WATER COMPANY under this Agreement shall be made payable to IVINS IRRIGATION COMPANY, and mailed to Irvin Ence, President, Ivins, Utah 84738, or such person as may hereafter be designated by the WATER COMPANY.

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 Twenty Thousand Dollars (\$20,000.00) plus all expense incurred by the STATE for the investigation, engineering, and inspection of the project, and to be determined by the STATE upon completion of the project. The purchase price, as defined above, shall be payable over a period of time, without interest, in annual installments of One Thousand Dollars (\$1,000.00), or more, per year for the first two years and Two Thousand Dollars (\$2,000.00), or more, per year thereafter.

9. The first annual installment of One Thousand Dollars (\$1,000.00), or more, shall become due and payable on the First day of December, 1977; the second annual payment of One Thousand Dollars (\$1,000.00), or more, shall become due and payable on the First day of December, 1978, and Two Thousand Dollars (\$2,000.00), or more, shall 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 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. 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.

11. 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 its 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.

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12. 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.

13. 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.

14. The WATER COMPANY hereby agrees to assume the full obligation for any claims or liability for any injury or death of persons, or for any property loss or damage that may arise from the construction and from the 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.

15. The WATER COMPANY shall, during the construction period under this Agreement, establish in a bank of its choice, a special checking account under the name of 'Ivins Irrigation Project', and all monies used from any source for payment of obligations towards the construction work shall be deposited in this special account and dispersed by check to meet the obligations of the project construction. All items of labor and equipment shall be fully accounted for, and a final report rendered to the Utah BOARD OF WATER RESOURCES as a part of the final acceptance and approval by the STATE.

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.

18. It is 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 executed.

REQUEST: Division of Water Resources
BOOK 253 PAGE 686-689
FEE No Fee AMT ✓
DOCUMENT 205180 WASHINGTON COUNTY RECORDER
BY: B.T.

