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286643

AGREEMENT

This agreement entered into this 7th day of April 1964, 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

KAYS CREEK IRRIGATION COMPANY

a corporation, organized under the laws of the State of Utah, Second Party, sometimes referred to as the WATER COMPANY.

WITNESSETH

THAT WHEREAS, the STATE desires to promote a water conservation project consisting of 6640 feet of 21 inch pipe located in Sections 10 and 11, T4N, R1W, SLB&M, near Layton, Davis County, Utah.

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 facilities in the Kays Creek Irrigation Company distribution System in Sections 8, 9, 10, 11, 14, 15, 16, T4N, R1W, SLB&M.

2. The WATER COMPANY hereby agrees to convey, assign and quitclaim to the STATE all right, title and interest which it has or may have, to the right to use of water which shall be saved or conveyed through the use of the aforesaid project, and particularly certificated water rights numbered as follows:

<u>Application Number</u>	<u>Certification Number</u>
1752	5456
1753	10340
3747	14348

and Diligence Claim #1051.

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 fifty-five percent of the total cost of constructing the project, but in no event shall the amount paid by the STATE exceed \$18,000. 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.

Utah Water & Power Board
APR 28 1964
Date
By: *Emily T. Eldredge*
EMILY T. ELDRIDGE
291
Secretary
Davis County
308

7. It is further agreed that the WATER COMPANY shall complete the construction of the project on or before December 1, 1964, 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 \$ 18,000, plus all expense 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, and payable over a period of time not to exceed fifteen (15) years, in annual installments of one fifteenth (1/15), or more per year, of the total purchase price as defined above, without interest.

9. The first annual installment of one fifteenth (1/15), or more, of the total purchase price, as defined above, shall become due and payable on the First day of December 19 65, 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 UTAH WATER AND POWER BOARD, 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 six percent (6%) per annum.

10. The WATER COMPANY hereby orders and directs that all payments made under this agreement shall be made payable to Kays Creek Irrigation Company, and mailed to

Richard Cook, Secretary
2029 East Gentile, Layton, Utah

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. The WATER COMPANY does hereby assume during the life of this agreement, the full obligation of maintaining the construction works, 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 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 mortgage 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 \$ 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 to 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.

After the WATER COMPANY shall have paid in full the purchase price as defined above, the STATE 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 WATER COMPANY, as are vested in the STATE.

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 in accomplishing the construction 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. 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 person, firm or corporation, by the said WATER COMPANY without having first secured the written consent of the STATE 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 February 21, 1964; and the

KAYS CREEK IRRIGATION COMPANY

Party of the Second Part, has caused these presents to be signed and executed on its behalf by Clyde B. Adams, its President, and Richard Cook, its Secretary, by a resolution of its Board of Directors at a meeting held January 9, 1964.

UTAH WATER AND POWER BOARD

APPROVED: BOARD OF EXAMINERS - STATE OF UTAH

Ray K. Bingham
Chairman Executive Director
Richard Cook
Executive Director

Samuel R. Taylor
Governor

Lawrence F. Jacobs
Secretary of State

Paul Kesler
Attorney General

KAYS CREEK IRRIGATION COMPANY (Water Company)

Clyde B. Adams
President

Richard Cook
Secretary

APPROVED AS TO AVAILABILITY OF FUNDS:

A. Bertie Bunker 4-17-64
Budget Officer Date

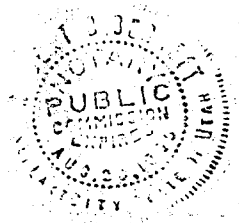
APPROVED AS TO FORM:

APPROVED:
C.R. Hopkins
Director of Finance

Dallin W. Jensen
Assistant Attorney General

STATE OF UTAH }
County of Davis } ss.

On the 10 day of April, 1964 personally appeared before me Clyde B. Adams, and Richard Cook who being by me duly sworn, did say that they are the President and Secretary, respectively, of the Kays Creek Irrigation Company and that the said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said Clyde B. Adams and Richard Cook acknowledged to me that said corporation executed the same.



Robert D. Bennett
Notary Public

Salt Lake Residing at:

My Commission Expires: August 28, 1965