

21 January 2005

Ent 284828 Bk 764 Pg 126-132
Date: 24-JUN-2005 11:47AM
Fee: \$22.00 Check Filed By: MWC
ELIZABETH PALMIER, Recorder
WASATCH COUNTY CORPORATION
For: FIRST AMERICAN TITLE HEBER

Parcel No. WCWEP-W-0588-1(P)

Contract No. 05-LA-40-0280

Order No. 4173990

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

WASATCH COUNTY WATER EFFICIENCY PROJECT
BONNEVILLE UNIT, CENTRAL UTAH PROJECT

CONTRACT AND GRANT OF EASEMENT

THIS CONTRACT AND GRANT OF EASEMENT, made this 17th day of May, 2005, in pursuance of the Act of June 17, 1902 (32 STAT.388), and the Act of April 11, 1956 (70 Stat. 105), and Acts amendatory thereof or supplementary thereto, and pursuant to the provisions of the Reclamation Projects Authorization Act of 1992 (Public Law 102-575), between THE UNITED STATES OF AMERICA, hereinafter styled the United States, acting through such officer as is authorized therefor by the Secretary of the Interior, and

CLARK F. FITZGERALD and JEANNE S. FITZGERALD,
AS TRUSTEES, and their successors as Trustee, of the
CLARK and JEAN FITZGERALD FAMILY TRUST dated December 23, 1997

hereinafter styled Grantors,

WITNESSETH, That for and in consideration of the mutual agreements herein contained, the parties hereto do covenant and agree as follows:

1. The Grantors do hereby sell and by this Contract and Grant of Easement, with covenants of warranty, grant to the United States, free of lien or encumbrance, except as otherwise provided herein, the following described interests in real property situated in the County of Wasatch, State of Utah, to-wit:

A perpetual easement upon part of an entire tract of property for the purpose of operation and

maintenance of a pipe line and appurtenant structures, on, over, under, or across the following-described property:

Parcel No. WCWEP-W-0588-1(P) (Perpetual Easement)

A perpetual easement upon part of an entire tract of property situate in the Southeast quarter of the Southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Twenty (20), Township Three (3) South, Range Five (5) East, Salt Lake Base and Meridian, for the purpose of operation and maintenance of a pipe line and appurtenant parts thereof. The boundaries of said part of an entire tract are described as follows:

Beginning at a point in a west boundary line of said entire tract, which is Thirteen Hundred Eighty-two and Forty-five Hundredths (1382.34) feet North 89°54'26" East along the Section line and Three Hundred Ninety-six and Forty Hundredths (396.40) feet North from the Southwest corner of said Section Twenty (20); thence North Twenty-three and Thirty-six Hundredths (23.36) feet along said west boundary line; thence North 58°53'13" East One Hundred Twelve and Eighty-eight Hundredths (112.88) feet; thence North 2°41'09" East One Hundred Seventy-six and fifty-three Hundredths (176.53) feet; thence North 48°29'41" East Thirty-three and Eighty-eight (33.88) feet to the north boundary line of said entire tract; thence South 89°59'36" East Three Hundred Eighty-eight and Forty Hundredths (388.40) feet along said north boundary line to the westerly boundary line of the Wasatch Canal thence Southeasterly Forty and Ninety-two Hundredths (40.92) feet along the arc of a One Hundred Eighty and Eighty-four Hundredths (180.84) foot radius curve to the left, chord bears South 60°39'48" East Forty and Eighty-three Hundredths (40.83) feet along said westerly boundary line; thence North 89°59'36" West Four Hundred Sixteen and Forty-one Hundredths feet; thence South 48°29'41" West Seventeen and Eighty-five Hundredths (17.85) feet; thence South 2°41'09" West One Hundred Seventy-eight and Seventy-six Hundredths (178.76) feet; thence South 58°53'13" West One Hundred Thirty-five and Sixty-three Hundredths (135.63) feet to the point of beginning.

Parcel No. WCWEP-W-0588-1 contains a total of Three Hundred Thirty-five Thousandths (0.335) of an acre more or less.

1a. The Grantors warrant that Grantors are the owners of the real property whereon the above-described easement lies.

1b. The Grantors, for themselves, their successors and assigns, agrees that, within the perpetual easement area described herein: (i) no buildings or structures of a permanent nature will be constructed and no trees will be planted; (ii) removal of materials from or placement of materials upon the area shall be subject to written approval of the United States, its agents or assigns; (iii) future easements to third parties on, over, under, or across the area will be subject to the written approval of the United States, its agents or assigns; (iv) damage to the canal or

appurtenant structures caused by the Grantors negligent use of the easement shall be repaired at the sole cost of the Grantors.

1c. It is understood and agreed that the rights to be granted to the United States, as described in Article 1 hereof, shall be free from lien or encumbrance except: (i) coal, oil, gas, and other mineral rights reserved or outstanding as of the date of this contract; (ii) any exploration or exploitation of such coal, oil, gas, and other minerals shall be approved in writing, by the Secretary of the Interior or his duly-authorized representative; (iii) rights-of-way of record for roads, railroads, telephone lines, transmission lines, ditches, conduits, or pipelines, on, over, under, or across said lands in existence on such date; and (iv) court liens, judgments or financial encumbrances, such as Deeds of Trust, for which a formal consent has been obtained from the court or the lien holder.

1d. Grantors, for themselves, their successors and assigns, understands and agrees that any alteration, modification, change, or placement of improvements, by Grantors or any third party, within the above-described easement area, subsequent to the date of execution of this Contract and Grant of Easement, shall be made at Grantors own risk, and Grantors hereby releases the United States from liability for any and all loss or damage of every description or kind whatsoever which is caused by or as a direct result of such alteration, modification, change, or placement of improvements within said area; provided, however, that nothing in this Article shall be construed as releasing the United States from liability for its own negligence.

1e. The United States, at its sole cost and expense, within the easement herein described, will: (i) replace or repair with materials of like kind and equal quality any fences, ditches, pipelines, driveways, or roadways, including appurtenances thereto existing at the time of execution of this contract by the Grantors that are damaged or destroyed by construction of the canal, and appurtenant structures, (ii) grade to reasonably even and regular surfaces, all fills, cuts, and waste banks, and (iii) at its option, the United States will compensate the Grantors for damage or loss of the above items based on an appraisal mutually acceptable to the United States and the Grantors.

1f. The United States agrees that any crop loss or crop damages incurred as a result of the construction of the project on the above described parcel of land are not included in the consideration paid under Article 3 hereof. The construction contractor will be responsible for payment for such loss or damages. If they are not, the United States will compensate the Grantors for such loss or damages based on an appraisal mutually acceptable to the United States and the Grantors.

1g. The United States, at its sole cost and expense, will provide and maintain temporary irrigation facilities whenever use of existing irrigation facilities is disrupted by said project.

2. The Grantors hereby ratifies and affirms the right of the United States, its permittees, successors or assigns, to construct, reconstruct, realign, enlarge, improve, relocate, repair, operate and maintain said canal, and all other fixtures, devices and appurtenances related thereto, and to

conduct all related activities in, on, under, and across the land described in paragraph 1 above, together with the right of access thereto for such purposes, at any time and from time to time, under the following conditions:

(a) The United States may, at any time, install and/or use gates in any fences which are now, or may hereafter be, constructed on said lands described herein.

(b) The rights granted to, and exercised by, the United States shall be subject to all fencing, canals, ditches, pipelines, roadways, and rights-of-way, including the right of the Grantors to use the lands within said parcel for agricultural purposes, which do not or could not directly or indirectly interfere with or endanger the exercise of the rights of the United States.

3. The United States shall purchase said easement on the terms herein expressed, and on execution and delivery of this Contract and Grant of Easement, and approval by the proper officials of the United States, it shall cause to be paid to the Grantors as full purchase price the sum of Seven Thousand Dollars (\$7,000.00) which will be sent directly to a financial institution by Direct Deposit/electronic Funds Transfer.

4. The Grantors shall, at their own cost, procure and have recorded all assurances of title and affidavits which the Grantors may be advised by the United States are necessary and proper to show in the Grantors complete fee simple unencumbered title to the property whereon the above-described easement lies, subject only to the interests, liens, or encumbrances expressly provided herein. Abstracts or certificates of title or title insurance will be procured by the United States at its expense. The expense of recording this Contract and Grant of Easement shall be borne by the United States.

The United States shall reimburse the Grantors in an amount deemed by the United States to be fair and reasonable for the following expenses incurred by the Grantors:

(a) Recording fees, transfer taxes and similar expenses incidental to granting the easement described herein to the United States; and

(b) Penalty cost for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering said real property.

The Grantors agree to furnish the United States evidence that these items of expenses have been billed to and paid by him and further agrees that the United States alone shall determine the fairness and reasonableness of the expenses to be paid.

5. In the event that liens or encumbrances other than those expressly provided herein, do exist, the United States may, at its option, remove any and all such outstanding liens and encumbrances by reserving from the purchase price herein set forth the necessary amount and discharge same with the money so reserved, but this provision shall not be construed to authorize

the incurrence of any lien or encumbrance as against this Contract and Grant of Easement, nor as an assumption of any lien or encumbrance by the United States.

6. It is agreed that, at its election, the United States may draw its check in payment for granting the above-described easement to the order of the title contractor or closing agent, and the Grantors hereby authorizes the said contractor or agent to cash the check and make disbursements out of the proceeds to satisfy and pay any taxes, assessments, and encumbrances which are a lien against the real estate; to purchase any Federal or State documentary revenue stamps; to pay any State and local recording or transfer taxes where required, and any other expenses incident to the closing of title which are properly chargeable to the Grantors; and to remit the balance of the proceeds to Grantors; together with an itemized statement of the payments made on Grantors behalf.

7. This Contract and Grant of Easement shall become effective to bind the United States to purchase said easement immediately on its execution by the contracting officer acting under the authority of the Secretary of the Interior and shall inure to the benefit of and be binding on the heirs, executors, administrators and assigns of the Grantors, and the assigns of the United States.

8. After execution of this contract by the United States, the proper officers and agents of the United States shall, at all times, have unrestricted access to said easements to survey, construct, reconstruct, realign, enlarge, improve, relocate, repair, operate and maintain the canal, free of any claim for damage or compensation on the part of the Grantors, except as otherwise provided for in this contract.

9. If the Secretary of the Interior determines that the title to the easement should be acquired by the United States by judicial procedures, either to procure a safe title or to obtain title more quickly or for any other reason, then the award to be made for the interest acquired in said lands in said proceedings shall be the same amount as the purchase price herein provided. This contract shall constitute full and complete satisfaction of all claims by the Grantors to compensation for the land described in paragraph 1 herein.

10. The Grantors warrant that the Grantors have not employed any person to solicit or secure this Contract and Grant of Easement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul the Contract and Grant of Easement, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Grantors for the purpose of securing business with others than the United States.

11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Contract and Grant of Easement, or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this contract if made with a

corporation or company for its general benefit.

12. The terms of this Contract and Grant of Easement will survive the grant provided for herein.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above-written.

THE UNITED STATES OF AMERICA

Richard C. Urbom

Acting
For

Mary A. Cook
Realty Officer
Resources Management Division
Bureau of Reclamation,
Upper Colorado Region

APPROVED


Regional Solicitor's Office

Clark F. Fitzgerald
Clark F. Fitzgerald, Trustee, Grantor

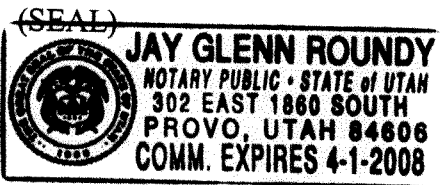
Jeanne S. Fitzgerald
Jeanne S. Fitzgerald, Trustee, Grantor

ACKNOWLEDGMENT

State of Utah)
County of Wasatch) ss.

On this 17th day of May, 20 05, personally appeared before me Jeanne S. Fitzgerald and Clark F. Fitzgerald, who, being by me duly sworn, did say, that they are the Trustees of the CLARK F. JEANNE FITZGERALD FAMILY, Trust, dated 23 DECEMBER 1997, and that the within and foregoing instrument was signed in behalf of said Trust by authority, and said they, acknowledged to me that they, as such Trustees, executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Jay Glenn Roundy
Notary Public in and for the
State of Utah
Residing at Sightland
My Commission Expires: 1 April 2008