

On the 5th day of October, 1965, before me the undersigned, a Notary Public in and for said County and State, personally appeared Dale T. Smedley, known to me to be the president and A. Kent Smith, known to me to be the Secretary of the Corporation that executed the above instrument for and on behalf of the Corporation therein named, and acknowledged to me that such corporation executed the same by due authority of the Board of Directors.

Witness my hand and official Seal.

(Notary Seal)

My Commission Expires: July 10, 1967

HAROLD A. RAMONILEY
Notary Public
Residing Salt Lake City, Utah.

Recorded at the request of Kent Smith Construction Company, November 16 A.D. 1965 at 10:15 o'clock A.M.

Betty J. Randall
Deputy County Recorder

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A G R E E M E N T

No. 33944

7524

This agreement entered into this 22nd day of September 1965, 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 NORTHWEST IRRIGATION COMPANY, INC., a corporation, organized under the laws of the State of Utah, Second Party, sometimes referred to as the WATER COMPANY.

W I T N E S S E T H

THAT WHEREAS, the STATE desires to promote a water conservation project consisting of repairing and enlarging an existing dam and appurtenant works.

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 agree 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 agree to grant and convey to the STATE an easement to use any and all of the WATER COMPANY'S facilities through which the water of the following decree, certificate and application are applied to beneficial use situated across and upon the following Sections of land: Sections 24, 25, and 26, T5N, R1E; Sections 19 and 30, T5N, R2E, S1E6W.
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 to the use of the waters of Cottonwood Creek under rights Nos. I 140, I 167, I 209, I 238, 219, 250, and 254 for Application No. 11074, awarded to Northwest Irrigation Company as set forth in that certain decree adjudicating the Weber River system at pages 24-31, entered in Case No. 7467, in the District Court of the Second Judicial District of the State of Utah, in and for Weber County, entitled, "Plain City Irrigation Company vs. Hooper Irrigation Company, North Ogden Irrigation Company, et al, Judge Lester A. Wade presiding and dated June 3, 1937; and Certificate of Appropriation of Water No. 4113 for Application No. 14527-a and Application to appropriate Water No. 14527 on file in the office of the Utah State Engineer.
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 sixty percent of the total cost of constructing the project, but in no event shall the amount paid by the STATE exceed \$33,000.00, 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, 1966, 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, right-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 \$33,000.00, plus all expense incurred by the STATE for the investigation, engineering and inspection of the project, and to be determined by the STATE upon the completion of the project, and payable over a period of time not to exceed twenty (20) years, in annual installments of one twentieth (1/20), or more per year, of the total purchase price as defined above, without interest.

9. The first annual installment of one twentieth (1/20), or more, of the total purchase price, as defined above, shall become due and payable on the first day of December 1967, 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 residuum 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 Northwest Irrigation Company, Inc./ Lee E. Rollins, Secretary R. Y. D. Morgan.

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 assign 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 \$15,000.00, 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 revert 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 May 7, 1965; and the Northwest Irrigation Company, Inc. Party of the Second Part, has caused these presents to be signed and executed on its behalf by Paul F. Warner, its President, and Lee B. Rollins, its Secretary, by a resolution of its Board of Directors at a meeting held September 23, 1965.

APPROVED:
BOARD OF EXAMINERS - STATE OF UTAH

Calvin C. Rasmussen
Governor

Clyde C. Miller
Secretary of State

Phil L. Hansen
Attorney General

APPROVED
AS TO AVAILABILITY OF FUNDS:

W. C. Larsen
Budget Officer

10/15/65
Date

APPROVED:

T. W. Stuart
Director of Finance

UTAH WATER AND POWER BOARD

Leo F. Harvey
Chairman
Jay R. Bingham
Executive Director

NORTHWEST IRRIGATION COMPANY, INC.
(Water Company)

Paul F. Warner
President

Lee B. Rollins
Secretary
APPROVED AS TO FORM.

Dallin W. Jansen
Assistant Attorney General

STATE OF UTAH)
) ss.
County of Morgan)

On the 30th day of September, 1965, personally appeared before me Paul F. Warner, and Lee B. Rollins who being by me duly sworn, did say that they are the President and Secretary, respectively, of the Northwest Irrigation Company, Inc., and that the said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and said Paul F. Warner and Lee B. Rollins acknowledged to me that said corporation executed the same.

Dorothy Winchester
Notary Public
Residing at

My Commission Expires:

March 4, 1966

(Notary Seal)

CERTIFICATION AND ACKNOWLEDGMENT

STATE OF UTAH)
County of MORGAN) ss

Comes now Lee B. Rollins, who being first duly sworn upon oath deposes and says: That he is the duly qualified secretary of the Northwest Irrigation Company, a corporation organized under the laws of the State of Utah; that on the 23rd day of Sept., 1965, a meeting of the directors of the aforesaid corporation was held at Mt. Green, Utah, which meeting was held in the manner required by law and after due notice had been given to the aforesaid directors in the manner prescribed by law; that at such meeting 92 percent of the shares of stock in this corporation were represented; that such percentage of stock was legally sufficient to authorize the said directors 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 92 percent of all the outstanding stock of the Northwest Irrigation Company.

RESOLUTION

IT IS HEREBY RESOLVED that Paul F. Warner, President, and Lee B. Rollins, Secretary, acting on behalf of the Northwest Irrigation Company, are hereby authorized to enter into a contract with the State of Utah, acting through the Utah Water and Power Board, for the construction of an irrigation project consisting of an earth dam 15 feet above the existing dam located two miles northwest of Mountain Green, Morgan County, Utah.

FURTHER, that the total estimated cost of completing the project will be \$60,000.00, of which amount the Utah Water and Power Board will pay 60 percent of the cost of construction but not to exceed \$33,000.00 and all additional costs to complete the project will be paid by the Northwest Irrigation Company, and

FURTHER, that this corporation shall assign to the Utah Water and Power Board its properties, easements and water rights, appurtenant to said project on condition that the same, with the approval of the Utah State Senate, 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 Utah Water and Power Board for the construction of the project, but not to exceed \$33,000.00, plus all expense incurred by the Utah Water and Power Board 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.

Lee B. Rollins
Secretary

STATE OF UTAH)
County of Morgan) ss

On this 24th day of September, 1965, appeared before me Lee B. Rollins, who is personally known to me to be the Secretary of the Northwest 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.

(Notary Seal)

Louise McCausby
NOTARY PUBLIC
Residing at: Morgan, Utah

My Commission Expires: March 5, 1968

Recorded at the request of Utah Water & Power Board November 24 A. D. 1965 at 3:00 o'clock P. M.

Harriet D. ...
Deputy County Recorder

No. 31944
HARRIET D. ...
THE NORTHWEST IRRIGATION COMPANY, INC., a corporation of Morgan County, Utah, hereby grants, conveys and warrants to the State of Utah, acting through the UTAH WATER AND POWER BOARD, a grant, of Salt Lake City, Utah for the sum of ten dollars and other valuable consideration, to be paid to the said State of Utah, for the right