

93

AGREEMENT

This Agreement entered into this 10th day of February, 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 OGDEN RIVER WATER USERS' ASSOCIATION, a corporation, organized under the laws of the State of Utah, Second Party, sometimes referred to herein as the WATER ASSOCIATION;

W I T N E S S E T H

THAT WHEREAS, the STATE desires to promote a water conservation project consisting of constructing approximately 2,000 linear feet of 42-inch diameter reinforced concrete pipeline, drilling and equipping a 20-inch diameter well 300 to 500 feet deep, together with fences, screens, bypass boxes, and other appurtenant works, all located along the South Ogden Highline Canal south and east of Ogden, Weber County, Utah; and

WHEREAS, it is the desire of the WATER ASSOCIATION 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 ASSOCIATION 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 ASSOCIATION 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 ASSOCIATION'S facilities in Sections 3, 9, 10, 16, 17, and 18, T5N, R1W; Sections 23, 24, 26, 27, and 34, T6N, R1W; and Sections 16, 17, 18, and 19, T6N, R1E; SLB&M.
2. The WATER ASSOCIATION 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 Applications to Appropriate Water No. 32890 (35-1251), Certificate No. 8716; and No. 32891 (35-1252) amended by Change Applications Nos. a-8252 and a-8764.
3. The WATER ASSOCIATION 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 ASSOCIATION 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 ASSOCIATION agrees to supply the necessary manpower and facilities and agrees to complete the construction of the project, 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 ASSOCIATION One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500.00) toward construction of the project. The WATER ASSOCIATION agrees and undertakes to construct to completion the aforesaid project in all events, regardless of unforeseen contingencies, and agrees to pay all costs in excess of the aforesaid amount to be 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 ASSOCIATION upon the presentation by the WATER ASSOCIATION 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 ASSOCIATION on each work item. The Ten Percent (10%) withheld as above set forth will become due and payable to the WATER ASSOCIATION 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 ASSOCIATION 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. 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 ASSOCIATION for any commitments made by the WATER ASSOCIATION until this contract has been completed.

8. The STATE agrees to sell, and the WATER ASSOCIATION 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 price defined to be the combined total of all funds paid by the STATE to the WATER ASSOCIATION for the construction of the project, but not to exceed One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500.00), plus all expenses incurred by the STATE for the investigation, engineering, and inspection of the project; such combined total to be determined by the STATE upon completion of the project. The purchase price shall be payable over a period of time not to exceed Eighteen (18) years, in annual installments of one-eighteenth (1/18), or more per year, of the total purchase price as defined above, without interest.

9. The first annual installment of One-Eighteenth (1/18), or more, of the total purchase price, as defined above, shall become due and payable on the First day of December, 1977; and a like sum, 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 full 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. All payments made by the STATE to the WATER ASSOCIATION under this Agreement shall be made payable to the OGDEN RIVER WATER USERS' ASSOCIATION, and mailed to 1483 Wall Avenue, Ogden, Utah 84404.

11. During the period of such purchase under this contract, provided the WATER ASSOCIATION is not delinquent in any manner, the WATER ASSOCIATION 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 ASSOCIATION agrees to assume, at the WATER ASSOCIATION'S expense, the full and complete obligation of maintaining the constructed 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 ASSOCIATION 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 ASSOCIATION 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.

13. The WATER ASSOCIATION 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 ASSOCIATION hereby agrees to indemnify the STATE to the extent of such claim or cause of action.

1347 no 694

STATE OF UTAH §
 §
County of Weber §

On the 10 day of February, 1976, personally appeared before me James H. Randall and Clyde A. Lindquist who, being by me duly sworn, did say that they are the President and Director, respectively, of the GREEN RIVER WATER USERS' ASSOCIATION, and that the said instrument was signed in behalf of said corporation by authority of a resolution of its stockholders, and said James H. Randall and Clyde A. Lindquist acknowledged to me that said corporation executed the same.

William G. [Signature]
Notary Public

Residing at: Cedar, Utah

My Commission Expires: 11-25-77



805357

7-3-0

FILED AND RECORDED

Utah Water Users

MAR 11 10 24 AM '76

BY *[Signature]*
DEPUTY

Viewed Indexed
Photographed Copy Made
Microfilmed Approved