

Utah Division of
Water Resources 805361 Book 1347 PAGE 698
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DEPUTY *Edith D. Dabek*

AGREEMENT

Plotted Indexed
Photocopied Card File
Microfilmed Abstracted

This Agreement entered into this 30th day of January, 1980, 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 ASSOCIATION:

W I T N E S S E T H

THAT WHEREAS, the Utah 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 Parties hereto did on February 10, 1976, July 13, 1977, November 28, 1977, and May 11, 1978, enter into contracts for construction of water conservation facilities for the ASSOCIATION; and

WHEREAS, pursuant to said contracts, title to the constructed facilities, an easement to use any and all of the ASSOCIATION'S distribution system, and Water Right Application Nos. 48206, 32890, and 32891 amended by Change Application Nos. a-8252 and a-8764, were conveyed to the STATE; and

WHEREAS, the STATE now desires to promote an additional water conservation project in two phases: Phase I consisting of construction of approximately 1000 feet of 48-inch and 42-inch diameter reinforced concrete pipeline and approximately 1100 feet of concrete and timber coverings to protect portions of the ASSOCIATION'S canals from flash flooding, and Phase II consisting of construction of approximately 2855 feet of 42-inch diameter reinforced concrete pipeline; the project being located in Sections 15, 22, 26, 27, 34 and 35, T6N, R1W and Sections 23, 24, 25, and 26, T8N, R2W, SLB&M, in Weber and Box Elder Counties, Utah; and

WHEREAS, it is the desire of the 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 ASSOCIATION has the available manpower and facilities necessary to construct phase I of 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 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.

2. The ASSOCIATION further agrees that the STATE shall retain title to the water rights, easements, rights-of-way, water distribution facilities, and all other property conveyed to the STATE by the ASSOCIATION, pursuant to the prior contracts between the Parties dated February 10, 1976, July 13, 1977, November 28, 1977, and May 11, 1978 until the ASSOCIATION has fully paid its obligation under the terms of this Agreement and said prior contracts.

3. The 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 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 ASSOCIATION agrees to supply the necessary manpower and facilities and agrees to complete the construction of the aforesaid project regardless of unforeseen contingencies, 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 ASSOCIATION Seventy-Five Percent (75%) of the total cost of constructing phase I of the project, but in no event shall the amount paid by the STATE for phase I exceed One Hundred Sixty-Nine Thousand Dollars (\$169,000.00) and the ASSOCIATION agrees to pay all costs in excess of the 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 ASSOCIATION upon the presentation by which shall be in the nature of a partial estimate of the work completed to date by the ASSOCIATION on each work item. The Ten Percent (10%) withheld as above set forth will become due and payable to the 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. The Ten Percent (10%) withheld may, at the discretion of the Director of the Board of Water Resources, be paid upon completion and acceptance of separate phases or increments of the project.

7. All payments made by the STATE to the ASSOCIATION under this Agreement shall be made payable to Ogden River Water Users' Association, and mailed to Edward H. Southwick, Secretary-General Manager, 1483 Wall Avenue, Ogden, Utah 84404, or such person as may hereafter be designated by the ASSOCIATION. All items of labor and equipment shall be fully accounted for, and a final report rendered to the Utah BOARD OF WATER RESOURCES as part of the final acceptance and approval by the STATE.

8. It is further agreed that the ASSOCIATION shall complete the construction of phase I of the project on or before December 1, 1980, and that title to the entire first phase of the project, including all appurtenant facilities and water rights shall immediately vest in the STATE.

9. The STATE agrees to sell, and the 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 total purchase price defined to be the combined total of all funds paid by the STATE to the ASSOCIATION for the construction of phase I of the project, but not to exceed One Hundred Sixty-Nine Thousand Dollars (\$169,000.00) 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.

10. The purchase price shall be payable over a period of time not to exceed twenty (20) years, in annual installments of one-twentieth (1/20) or more, of the total purchase price, as defined above, without interest. 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, 1981, 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 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 Eighteen Percent (18%) per annum. In addition to the aforesaid annual installments, the ASSOCIATION shall also pay to the STATE any cost sharing funds paid to the ASSOCIATION by Ogden City which are designated as annual payments for Phase I of the project; said payments shall be credited toward the purchase price for Phase I, as defined above.

11. During the period of such purchase under this contract, provided the ASSOCIATION is not delinquent in any manner, the ASSOCIATION shall have and be hereby given the right to use the STATE's water rights, and all facilities constructed thereunder. During the life of this Agreement, the ASSOCIATION agrees to assume, at the ASSOCIATION's expense, the full and complete obligation of maintaining the constructed works, and other facilities, and of protecting all water rights, easements, and rights-of-way from forfeiture, including the payment of any fees or assessments for said water rights, easements or rights-of-way.

12. In order to secure the payment of the aforesaid purchase price, it is hereby expressly agreed that the STATE may require the ASSOCIATION to assume all outstanding shares of its stock for the full amount of any delinquencies in the aforesaid purchase installments. It is further agreed by the 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 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 ASSOCIATION hereby agrees to indemnify the STATE to the extent of such claim or cause of action.

14. In constructing or causing the project under this Agreement to be constructed, the ASSOCIATION shall comply with the provisions of the Civil Rights Discrimination Act of 1965 and hereby agrees as follows:

(a) The ASSOCIATION will not discriminate against any employee or applicant for employment because of race, color, sex, religion, ancestry or national origin.

(b) In all solicitations or advertisements for employees, the ASSOCIATION will state that all qualified applicants will receive consideration without regard to race, color, sex, religion, ancestry or national origin.

(c) The ASSOCIATION will send to each labor union or workers' representative notices to be provided, stating the ASSOCIATION's responsibilities under the statute.

(d) The ASSOCIATION will furnish such information and reports as requested by the Anti-Discrimination Division for the purpose of determining compliance with the statute.

(e) Failure of the ASSOCIATION to comply with the statute, the rules and regulations promulgated thereunder and this non-discrimination clause shall be deemed a breach of contract and it may be canceled, terminated or suspended in whole or in part.

(f) The ASSOCIATION will include the provisions of Items a - e in every subcontract or purchase order (unless exempted under the statute or rules and regulations) so that such provisions will be binding upon such subcontractor or vendor.

15. 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.

16. The ASSOCIATION 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 or from the operation of this project for the STATE; and further, the ASSOCIATION agrees to hold the STATE immune for all such claims for damages, injury, or death of persons, animals, or property during the life of this Agreement.

17. After the ASSOCIATION 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 vest the same title to the aforesaid property and water rights in the ASSOCIATION.

18. 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 ASSOCIATION, without first having secured the written consent of the STATE to any such proposed assignment or disposition of this Agreement.

19. This Agreement shall not become binding upon the STATE until it has been signed by all persons and agencies required by law, and the STATE shall not become liable to the ASSOCIATION for any commitments made by the ASSOCIATION until this Agreement has been fully executed.

IN WITNESS WHEREOF, the State of Utah, acting through the BOARD OF WATER RESOURCES, Party of the First Part, has caused these presents to be signed by the Chairman and Director of the said BOARD OF WATER RESOURCES by authority of a resolution of said Board; and the OGDEN RIVER WATER USERS' ASSOCIATION, Party of the Second Part, has caused these presents to be signed and executed on its behalf by James N. Randall, its President, and Edward H. Southwick, its Secretary-General Manager, by a resolution of its stockholders at a meeting held January 30, 1980.

APPROVED:

DEPARTMENT OF NATURAL RESOURCES

John T. Henshaw
Executive Director

BOARD OF WATER RESOURCES

Philip S. Kuyler
Chairman

APPROVED:

DEPARTMENT OF FINANCE

R.H. Williamson
Director of Finance

James F. Lawrence
Director

OGDEN RIVER WATER USERS' ASSOCIATION

APPROVED:

AS TO AVAILABILITY OF FUNDS:

Budget Officer

James N. Randall
President

Edward H. Southwick
Secretary-General Manager

APPROVED AS TO FORM:

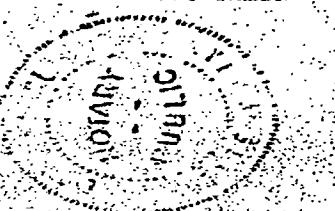
Mark M. Dickey
Assistant Attorney General

APPROVED
BOARD OF WATER RESOURCES
Longfellow Agency
CLERK

FEB 15 1980

STATE OF UTAH: I : ss
County of Weber: I

On the 30 day of January, 1980, personally appeared before me James N. Randall and Edward H. Southwick who being by me duly sworn, did say that they are the President and Secretary-General Manager respectively of the OGDEN 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 N. Randall and Edward H. Southwick acknowledged to me that said corporation executed the same.



Lee Ann Clough
Notary Public

Residing at: Ogden, Utah

My Commission Expires: July 19, 1982