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STATE OF UTAH
COUNTY OF KANE
BOOK 11188 PAGE 323

11188
AGREEMENT

*Division of State Resources
495 West Capitol
Salt Lake City
Utah*

This Agreement entered into this September day of 1970, 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 AMERICAN FORK IRRIGATION COMPANY of Utah County, a corporation organized and existing 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 the drilling and equipping of a 16-inch well approximately 600 feet deep as a water supply for supplemental irrigation to the lands of the WATER COMPANY; and

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 distribution system located in Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, and 24, T5S, R1E; and Sections 34, 35, and 36, T4S, R1E; and Section 31, T4S, R2E, SLB&M.

2. The WATER COMPANY agrees that the STATE shall retain title to the real estate, easements, and water rights now held by the BOARD OF WATER RESOURCES by virtue of an existing agreement with the WATER COMPANY for the construction of a canal lining project; and further agrees to warrant to the STATE all right, title, and interest which it has or may have in Application No. 25373, Certificate No. 5940, Change Application a-5846; Application No. 26682, Segregation No. 26682a, and Change Application a-5845; all on file with the State Engineer of Utah.

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.

BOOK 1197 PAGE 323

5. The STATE agrees to pay to the WATER COMPANY seventy-five percent (75%) of the total cost of constructing the project, but in no event shall the amount paid by the STATE exceed Thirty Thousand Dollars (\$30,000.00), 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 monthly 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, 1970, 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 Thirty Thousand Dollars (\$30,000.00) 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. The purchase price shall be payable over a period of time not to exceed six (6) years, without interest, according to the following annual payment schedule: (a) annual payments for the years 1971 and 1972 shall be \$3,200.00, or more; (b) annual payments for the years 1973 to 1976, inclusive, shall be one-fourth (1/4) or more, per year, of the remaining balance of the total purchase price as defined above.

9. The first annual installment of \$3,200.00, or more, shall become due and payable on the First day of December, 1971, and a like sum, or more, shall be due and payable on the First day of December, 1972. The third annual installment of one-fourth (1/4), or more, of the remaining balance shall become due and payable on the First day of December, 1973, and a like amount shall be due and payable 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 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 ten percent (10%) per annum.

10. All payments made by the STATE to the WATER COMPANY under this Agreement shall be made payable to AMERICAN FORK IRRIGATION COMPANY and mailed to:

Leland R. Mitchell, President
296 North 200 West
American Fork, Utah 84003

BOOK 1197
PAGE 324

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 pump and motor, 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 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 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. It is further agreed that the WATER COMPANY will not incur any indebtedness whatsoever for a principal sum in excess of Ten Thousand Dollars (\$10,000.00) 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 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.

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. After the WATER COMPANY 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 revest the same title to the aforesaid property and water rights in the WATER COMPANY.

17. 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 WATER COMPANY, without first having 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 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 AMERICAN FORK IRRIGATION COMPANY, Party of the Second Part, has caused these presents to be signed and executed on its behalf by Leland R. Mitchell, its President, and Albert S. Bailey, its Secretary, by a resolution of its stockholders at a meeting held 13 January, 1970.

APPROVED:
BOARD OF EXAMINERS -- STATE OF UTAH

BOARD OF WATER RESOURCES

[Signature]
Governor

[Signature]
Chairman

[Signature]
Secretary of State

[Signature]
Director

[Signature]
Attorney General

AMERICAN FORK IRRIGATION COMPANY

APPROVED AS TO
AVAILABILITY OF FUNDS:

[Signature]
President

[Signature]
Budget Officer

[Signature]
Secretary

APPROVED:

APPROVED AS TO FORM:

[Signature]
Director of Finance

[Signature]
Assistant Attorney General

STATE OF UTAH)
: ss.
County of Utah)

On the 18th day of September, 1970, personally appeared before me Leland R. Mitchell and Albert S. Bailey who, being by me duly sworn, did say that they are the President and Secretary, respectively, of the AMERICAN FORK IRRIGATION COMPANY and that the said instrument was signed in behalf of said corporation by authority of a resolution of its stockholders, and the said Leland R. Mitchell and Albert S. Bailey acknowledged to me that said corporation executed the same.



[Signature]
Notary Public

Residing at American Fork, Utah

My Commission expires: March 30th 1974

BOOK 1197 PAGE 326