

**A G R E E M E N T**

This agreement entered into this 2nd day of July 1960, 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 SHEEP CREEK IRRIGATION COMPANY, a corporation, organized under the laws of the State of Utah, Second Party, sometimes referred to herein as the irrigation company.

**W I T N E S S E T H**

THAT WHEREAS, the First Party desires to promote a water conservation project consisting of the construction of an extension of Carter Creek Canal, generally circling easterly and southerly 1850 feet from its beginning or diversion point in East Carter Creek to Tepee Lake; and, construct a drop spillway in the original Carter Creek Canal at Lily Pad Lake which lowers the water transmitted in said canal 140 feet in elevation from Lily Pad Lake to Lower Carter Creek canal. The project lies altogether in the Green River drainage basin on the east slope of the Uintah Mountains above elevation 8000 feet within the boundaries of the Ashley National Forest, and a portion of said canal extending through land unsurveyed by the U. S. General Land Office, and

WHEREAS, it is the desire of the Second Party to enter into a contract with the First Party, for a consideration to be hereinafter provided, and to use the water developed by the aforesaid project, and as the Second Party 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, and

WHEREAS, by prior contract dated December 22, 1947, the First Party acquired the right to improve the existing Sheep Creek canal of the Sheep Creek Irrigation Company in Daggett County, Utah, thereby conserving water lost by seepage, and by enlarging the capacity of said canal to permit the use of water not before appropriated, and

WHEREAS, as part of said contract the Second Party previously conveyed, granted and warranted to the First Party its right to the use of 20 second-feet of water acquired by its filing in the Office of the Utah State Engineer No. 9739, Certificate No. 5732; and the Second Party thereby assigns and conveys to the First Party all its right, title and interest in and to the water saved and made available by the said improvement and enlargement of said canal; and the Second Party thereby assigns to the First Party to secure prompt payment of its obligation to the First Party of \$20,000.00 all its right, title and interest in the entire portion of Sheep Creek canal upon which the improvement is made, from its point of diversion to all lands irrigated thereunder; and the Second Party and the First Party recognises the First Party as the owner of the increased capacity of said canal over 80 second-feet by reason of said improvement, and

WHEREAS, the Second Party does herein agree to assign to the First Party such easements and right-of-ways and other conveyances as may be necessary to enable the First Party to construct, maintain and operate the project in its own name and as its own property, and

WHEREAS, the Second Party does herein agree to convey, grant and warrant to the First Party all right, title and interest which it has or may have in the existing Carter Creek canal and appurtenant structures, and the water rights and the water of the Second Party conveyed through the said canal, which water is covered by application filed in the Office of the State Engineer No. 20,450, and

WHEREAS, the Second Party does herein agree to convey, grant and warrant to the First Party all right, title and interest which it has or may have in the extension of Carter Creek canal and appurtenant works to be constructed under this contract from its point of diversion on East Carter Creek to Teepee Lake and the drop spillway to be constructed under this contract in the existing Carter Creek canal of the outlet of Lily Pad Lake for the purpose of preventing erosion by lowering the water conveyed in said canal 140 feet in elevation and a distance of 400 feet from said lake to Lower Carter Creek canal, and

WHEREAS, the Second Party agrees herein to assign to the First Party all its water rights and the water of the Second Party to be conveyed through the above described Carter Creek canal extension which water is covered by application filed with the State Engineer No. 30001.

NOW THEREFORE, the Parties hereto enter into the following agreement and make the following conveyance of property and assignments.

1. The Second Party hereby agrees to convey, grant and warrant to the First Party all its right, title and interest in the Carter Creek canal and appurtenant works described as follows.

Beginning at the point of diversion of Carter Creek canal from East Carter Creek situated in the Ashley National Forest, Daggett County, on unsurveyed land at a point S. 11,400 feet and E. 5870 feet of the SE cor. Sec. 26, T2N, R18E, S1B&M; thence meandering northwesterly 5191 feet, or N. 54°50' W. 5050 feet from the said point on East Carter Creek to the point of comingling with and rediversion from Middle Carter Creek situated N. 9520 feet and E. 1700 feet of the above described section corner; thence meandering northwesterly 3896 feet, or N. 32°40' W, 5050 feet from said point on Middle Carter Creek to the point of comingling with and rediversion from West Carter Creek situated S. 4560 feet and W. 880 feet of the above described section corner; thence meandering north and west 10,064 feet or N. 37°30' W. 5430 feet from said point on West Carter Creek to the point of comingling with and rediversion from Weyman Creek situated S. 265 feet and W. 4200 feet of the above described section corner; thence meandering over surveyed land northerly and westerly 3428 feet or N. 72°45' W. 2800 feet from said point on Weyman Creek to the point of comingling with and rediversion from South Beaver Creek situated N. 550 feet and W. 1590 feet of the SE cor. Sec. 27, T2N, R18E, S1B&M; thence meandering northeasterly 2600 feet, northwesterly 3200 feet and easterly 2972 feet, or N. 40°50' W. 5140 feet from said point on South Beaver Creek to the point of comingling with and rediversion from North Beaver Creek situated S. 2980 feet and W. 240 feet of the S½ cor. Sec. 27, T2N, R18E, S1B&M; thence meandering northerly 4370 feet and northwesterly 5060 feet, or

N. 24°00' W. 6900 feet from said point on North Beaver Creek to the point of discharge into Cabin Wash; and beginning at the point of rediversion from said wash situated S. 700 feet and W. 1335 feet of the NW cor. Sec. 27, T2N, R18E, S1B&M and meandering northwesterly 2458 feet or N. 60°30' W. 890 feet from said point of rediversion on Cabin Wash to the point of comingling with and rediversion from Sheep Creek into the existing Sheep Creek canal situated N. 1700 feet and W. 2540 feet of the S ¼ cor. Sec. 21, T2N, R18E, S1B&M; the total length of Carter Creek canal being 43,241 feet or 8.2 miles.

The Second Party further agrees to convey, grant and warrant to the First Party, title to such easements and right-of-way as shall be necessary to enable the First Party to construct, maintain and operate said project; and further agrees to grant and convey to the First Party an easement to use any and all of the Second Party's facilities in its distribution system consisting of open canals situated in Daggett County and which are more particularly described as extending through part of Section 2, T2N, R18E; Sections 13, 24, 25, 35 and 36, T3N, R18E; Sections 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33 and 35, T3N, R20E; Sections 2, 3, 6, 7, 8 and 9, T2N, R20E; Sections 1, 2 and 3, T2N, R19E; all referred to S1B&M.

2. The Second Party hereby agrees to convey, assign and quit-claim to the First Party 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 water covered by Application Nos. 20450 and 30001.

3. The Second Party recognizes as valid the conveyance of easements and rights-of-way executed by various owners of the benefited land to the First Party, and agrees that all performance by the Second Party under this contract shall be subservient to, and in recognition of the aforesaid rights of the First Party in and to the aforesaid easements and rights-of-way.

4. The Second Party 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 attached to this contract and which is hereby incorporated by reference and made a part hereof.

5. The First Party agrees to pay to the Second Party 75 percent of the total cost of constructing the project, but in no event shall the amount paid by the First Party exceed \$4000.00, and the Second Party shall itself pay for all costs in excess of the amount paid by the First Party. The Second Party 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 First Party.

6. It is further agreed that the First Party shall pay ninety percent (90%) of the amount payable by the First Party to the Second Party upon the presentation by the Second Party to the First Party of a certified statement of the payments requirement which shall be in the nature of a partial estimate of the work completed to date by the Second Party on each work item. The ten percent (10%) withheld as above set forth will become due and payable to the Second Party with, and as a part of the final payment to be made by the First Party upon completion of the project, and its inspection and acceptance by an engineer designated by the First Party.

7. It is further agreed that the Second Party shall complete the construction of the project on or before December 1, 1960, and that title to the entire project, including all appurtenant facilities and water rights shall immediately vest in the First Party. It is also agreed that this contract shall not become binding upon the First Party until it has been signed by all persons and agencies required by law, and that the First Party shall not become liable to the Second Party for any commitments made by the Second Party until this contract has been completed.

8. The First Party agrees to sell, and the Second Party agrees to purchase the easements, rights-of-way, water rights, Carter Creek canal extension, the drop spillway constructed in the original Carter Creek canal and all appurtenant facilities acquired by the First Party in this Agreement and Assignments at a total purchase price defined to be the combined total

of all funds paid by the First Party to the Second Party for the construction of the project, but not to exceed \$4,000.00, plus all expense incurred by the First Party for the investigation, engineering and inspection of the project, and to be determined by the First Party upon the completion of the project, and payable over a period of time not to exceed ten (10) years, in annual installments of one-tenth (1/10), or more per year, of the total purchase price as defined above, without interest.

9. The first annual installment of one-tenth (1/10), or more, of the total purchase price, as defined above, shall become due and payable on the First day of December 1961, 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 First Party under the terms of this contract will be applied against the indebtedness incurred by the First Party for investigation, engineering and inspection, until fully paid, and any residus will be applied to funds paid by the First Party for the construction of the project. Delinquent payments shall bear interest at a rate of six percent (6%) per annum.

10. It is further agreed by the Second Party, that it will maintain a complete and separate accounting record of all expenditures made in connection with the cost of the project. The records, as maintained, shall become the property of the First Party upon the completion of the project.

11. During the period of such purchase under this contract, provided the Second Party is not delinquent in any manner, the Second Party shall have, and is hereby given the right to use the First Party's water rights, consisting of applications to appropriate water filed with the State Engineer Nos. 20450 and 30001 and other facilities constructed thereunder. The Second Party does hereby assume during the life of this agreement, the full obligation of maintaining the Carter Creek canal and appurtenant works including the aforesaid project to be constructed under this Agreement 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 First Party may require the Second Party 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 Second Party 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 First Party. It is further agreed that the Second Party will not incur any indebtedness whatsoever for a principal sum in excess of \$5,000.00, without first procuring the written consent of the First Party. The remedies herein provided shall be deemed cumulative, and not exclusive.

13. The Second Party, hereby warrants to the First Party, 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 Second Party hereby agrees to indemnify the First Party to the extent of such claim or cause of action.

After the Second Party shall have paid in full, the purchase price as defined above, the First Party 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 Second Party, as are vested in the First Party.

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 Second Party 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 First Party, and further, the Second Party agrees to

hold the First Party 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 Second Party without having first secured the written consent of the First Party 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 December 19, 1959; and the SHEEP CREEK IRRIGATION COMPANY, Party of the Second Part, has caused these presents to be signed and executed on its behalf by C. A. Christensen, its President, and Albert H. Neff, its Secretary, by a resolution of its Stockholders at a meeting held August 18, 1958.

APPROVED:

BOARD OF EXAMINERS - STATE OF UTAH

[Signature]  
Governor

[Signature]  
Secretary of State

[Signature]  
Attorney General

APPROVED AS TO AVAILABILITY OF FUNDS:

STATE FINANCE COMMISSION

[Signature]  
Chairman

[Signature]  
Commissioner

[Signature]  
Commissioner

UTAH WATER AND POWER BOARD

[Signature]  
Chairman

[Signature]  
Executive Director

SHEEP CREEK IRRIGATION COMPANY  
(Irrigation Company)

[Signature]  
President

[Signature]  
Secretary

APPROVED AS TO FORM:

[Signature]  
Assistant Attorney General



