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A G R E E M E N T

This Agreement entered into this 29th day of July, 1959, 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 SALEM POND 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 4,120 feet of concrete canal together with drains, turn-out gates, and water control structures, located near Salem, Utah County, Utah, in Section 10 and 11, T9S R2E, SLB&M.

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.

NOW THEREFORE, the Parties hereto enter into the following agreement and make the following assignments:

1. The Second Party hereby agrees to convey, grant and warrant to the First Party, title to such easements and rights-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 the Salem Pond Company's canal distribution system in Sections 10 and 11, T9S R2E, SLB&M.

2. The Second Party hereby agrees to convey, assign and quitclaim 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 44% of the water decreed by the Court Decree of the Probate Court of Utah County, Utah, Honorable George W. Bean presiding, January 10, 1874, which Decree grants to Salem Pond Company

7- through its predecessors in right, all of the water from Salem Pond. Said 44% represents the right of the West Ditch.

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 45% of the total cost of constructing the project, but in no event shall the amount paid by the First Party exceed \$3,000.00, 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, 1959, and that title to the entire project, including all appurtenant facilities and water rights shall

8- 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, 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 \$3,000.00, 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 nine (9) years, in annual installments of one-ninth, (1/9), or more per year, of the total purchase price as defined above, without interest.

9. The first annual installment of one-ninth (1/9), or more, of the total purchase price, as defined above, shall become due and payable on the First day of December, 1960, 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 residue 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,

9- and is hereby given the right to use the First Party's water rights, concrete canal and other facilities constructed thereunder. The Second Party does hereby assume during the life of this agreement, the full obligation of maintaining the concrete canal 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 \$20,000.00, 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 re-vest 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 May 14, 1959; and the SALEM POND COMPANY, Party of the Second Part, has caused these presents to be signed and executed on its behalf by Lynn Christensen, its President, and W. E. Christensen, its Secretary, by a resolution of its Stockholders at a meeting held July 6, 1959.

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]
Vice Chairman

[Signature]
Executive Director

[Signature]
Salem Pond Company

[Signature]
President

[Signature]
Secretary

APPROVED AS TO FORM:

[Signature]
Assistant Attorney General

STATE OF UTAH ()
County of Utah () : ss.

On the 7 day of July, 1959, personally appeared before me Lynn Christensen and W. E. Christensen, who, being by me duly sworn, did say that they are the President and Secretary, respectively, of the Salem Pond Company, and that the said instrument was signed in behalf of said corporation by authority of a resolution of its Stockholders, and said Lynn Christensen and W. E. Christensen acknowledged to me that said corporation executed the same.

Morris S. Christensen
NOTARY PUBLIC

Residing at: Salem, Utah



My Commission Expires: 19, 1963

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THEMA WEST SUGARWATE
CLERK OF THE COUNTY RECORDS
Thelma West Sugarwate
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