

A G R E E M E N T

This agreement entered into this 14<sup>th</sup> day of March, 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 HARPER 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 one and one-half miles of concrete canal lining with appurtenant control structures, located adjacent to the Harper Spring in Box Elder County, Utah, on Highway 69, six miles north of Birgham City; the location also being described as in parts of Sections 15, 22, 23, and 26, Township 10 North, Range 2 West, 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 Harper Irrigation Company's distribution system, located in the SE $\frac{1}{4}$  of Section 15, the NE $\frac{1}{4}$  of Section 22, the W $\frac{1}{2}$  of Section 23; and the NW $\frac{1}{4}$  of Section 26, all in T10N, R2W, 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 recognized diligence use and described as follows: All of said Second Party's right and title to the use of water from Harper Spring, located in Harper Ward, Box Elder County, Utah. The point of diversion therefrom being located South 556.5 feet and West 199.0 feet from the NE Corner of Section 22, T10N, R2W; said water right having been conveyed to the Second Party by private individuals in exchange for stock in the Harper Irrigation Company.

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 seventy-five percent (75%) of the total cost of constructing the project, but in no event shall the amount paid by the First Party exceed \$10,000.00, 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 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 the 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 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, the project as constructed 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 \$10,000.00, 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 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, and is hereby given the right to use the First Party's water rights, easements, rights-of-way, concrete canal lining, and other facilities constructed thereunder. The Second Party does hereby assume during the life of this agreement, the full obligation of maintaining the easements, rights-of-way, concrete canal lining 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 revest 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 October 24, 1958; and the HARPER IRRIGATION COMPANY, Party of the Second Part, has caused these presents to be signed and executed on its behalf by WILBURN J. BATY, its President, and SHIRLEY JENSEN, its Secretary, by a resolution of its Stockholders at a meeting held January 28, 1959.

APPROVED:

BOARD OF EXAMINERS - STATE OF UTAH

Amos Albee  
Governor

Lamont F. Brown  
Secretary of State

E. R. Calcutt  
Attorney General

APPROVED AS TO AVAILABILITY OF FUNDS:

STATE FINANCE COMMISSION

W. M. Moffat  
Chairman

Whittenburg  
Commissioner

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Commissioner

UTAH WATER AND POWER BOARD

Orson A. Christensen  
Chairman  
Jay R. Bingham  
Executive Director

HARPER IRRIGATION COMPANY

Wilburn J. Baty  
President

Shirley Jensen  
Secretary

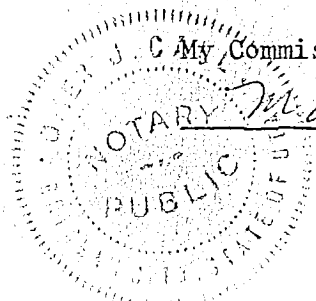
APPROVED AS TO FORM:

Robert H. Tolson  
Assistant Attorney General

STATE OF UTAH            §  
County of Box Elder    § ss.

On the 7 day of Mar, 1959, personally appeared before me WILBURN J. BATY, and SHIRLEY JENSEN, who being by me duly sworn, did say that they are the President and Secretary, respectively, of the HARPER IRRIGATION COMPANY, and that the said instrument was signed in behalf of said corporation by authority of a resolution of its Stockholders, and said Wilburn J. Baty and Shirley Jensen acknowledged to me that said corporation executed the same.

Robert H. Tolson  
NOTARY PUBLIC  
Residing at: Bingham Utah



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