

ORIGINAL

CONTRACT BETWEEN THE UINTAH WATER CONSERVANCY DISTRICT
AND THE ASHLEY UPPER IRRIGATION COMPANY
FOR SALE OF THE USE OF IRRIGATION WATER
VERNAL UNIT, CENTRAL UTAH PROJECT

| <u>INDEX</u> | | |
|-------------------|---|------|
| Article Number | Article | Page |
| 1-3 | Preamble | 1 |
| 4 | Terms of Payment | 2 |
| 5 | Variable Repayment Plan | 3 |
| 6 | Development Period - Annual Charge | 3,4 |
| 7 | Payment of Operation and Maintenance Expenses | 4,5 |
| 8 | Company to Use all Powers to Collect Charges | 5,6 |
| 9 | Security for Payment | 6 |
| 10 | Refusal of Water in Case of Default | 6 |
| 11 | Penalty for Delinquency | 7 |
| 12 | Operation and Maintenance of Company Facilities | 7 |
| 13 | Beneficial Use of Water | 7 |
| 14 | Land for Which Water is Furnished: Limitations on Area | 7,8 |
| 15 | Water Shortages, Waste, Seepage, and Return Flow | 8 |
| 16 | Delivery of Project Water | 9 |
| 17 | Sale of Project Water Limited | 9 |
| 18 | Crop Reports, Accounting and Other Measures | 9 |
| 19 | Assignment Limited - Successors and Assigns Obligated | 10 |
| 20 | Approval of United States Necessary | 10 |
| 21 | Water Conservancy Act of Utah | 10 |

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AND THE ASHLEY UPPER IRRIGATION COMPANY
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THIS CONTRACT, made this 18th day of Nov. , 1958,
between the UINIAH WATER CONSERVANCY DISTRICT, organized under the
laws of the State of Utah, with its principal place of business at
Vernal, Utah, herein styled the District, and the ASHLEY UPPER
IRRIGATION COMPANY, a corporation, organized under the laws of the
State of Utah, with its principal place of business at Vernal, Utah,
herein styled the Company:

WITNESSETH, That:

2. WHEREAS, the District entered into a contract with the
United States, dated July 14, 1958, hereinafter referred to as the
Government-District contract, for the repayment of certain costs of
construction of the works of the Vernal Unit, Central Utah Project,
which Unit is hereinafter referred to as the project, by means of
which water, hereinafter referred to as project water, will be de-
livered from Stanaker Reservoir and other sources for irrigation,
municipal, and other uses, and a portion thereof will be available
for use by the Company.

3. NOW, THEREFORE, in consideration of the mutual and
dependent stipulations and covenants herein contained, it is hereby
mutually agreed by and between the parties hereto as follows:

TERMS OF PAYMENT

4. The District will sell to the Company and the Company agrees
to purchase the perpetual right to the use of 9120 acre-feet of

project water as hereinafter defined annually for irrigation purposes. The Company will pay to the District \$764,500.00 , herein referred to as the Company construction obligation, in successive annual payments of \$15,290.00 , for a period of fifty (50) years following the development period established, as provided by Article 5 of the Government-District contract. The computation of the Company construction obligation is based upon that part of the District obligation to the United States to be paid by irrigation water users, to-wit, \$1,500,000. Provided, that the annual amount provided herein shall be paid whether water contracted for herein is delivered or taken by the Company, and be it further Provided that the water purchased hereunder is to supplement the Company's existing rights as limited under that certain contract between the United States and the Company dated 9/12/58 relating to exchange and adjustment of water rights. In the project operation, project irrigation water will be apportioned annually to the Company and all other project irrigation users executing similar contracts using operating criteria furnished by the United States. An acre-foot as defined hereunder shall entitle the Company to 1/17,900 of the total annual project irrigation water supply so apportioned. It is understood that by these apportionments the amount of water to be delivered under this contract will fluctuate each year dependent upon the District's apportionment which will be based on its estimate of water available to project users under their existing water rights. Any project water purchased hereunder remaining in storage on May 15 of the next following irrigation season will become project water and the Company shall be entitled to no holdover storage rights beyond such date.

VARIABLE REPAYMENT PLAN

5. If the District should elect to make payments in accordance with the variable repayment plan, as provided in Article 16 of the Government-District contract, or should payments be adjusted by land classes as contemplated by Article 4 thereof, then, and in that event, the Company agrees that the annual installment payments provided for in the preceding article shall be increased or decreased, as the case may be, in the same ratio as payments by the District to the United States are increased or decreased under such repayment plan.

DEVELOPMENT PERIOD - ANNUAL CHARGE

6. Notice of the commencement of the development period hereby fixed at three years shall be given by the District upon the receipt of said notice from the United States as provided in Article 5 of the Government-District contract. Said notice shall contain a statement of the charge per acre-foot or other charge for the use of project water for the first year of the development period, and shall provide that charges are payable on or before December 1 of the year in which such notice is given. A notice of the annual charge for each succeeding year of the development period shall be given by the District on or before August 1 of the year preceding the year for which the project water is to be received, and this charge shall be payable on or before December 1 of the same year. Charges for the use of water shall be established with the object of collecting during the whole of said development period an aggregate amount sufficient to defray the portion allocated to irrigation by the Secretary of the Interior or his duly authorized representative hereinafter called the Secretary,

of all costs of operation and maintenance, accruing during the development period, of all works to be utilized by the United States for the benefit of any of the lands situated in the District. To the extent that payments made by the Company are greater or less than actual costs of operation and maintenance, adjustment thereof shall be made as provided in Article 5(c) of the Government-District contract. If necessary, supplemental notices may be issued as provided in Article 7.

PAYMENT OF OPERATION AND MAINTENANCE EXPENSES

7. After the end of the development period, the Company agrees to pay to the District annually in advance its appropriate share of the expenses of operation and maintenance allocated to irrigation water users. The Company's share shall bear the same ratio to the operation and maintenance and replacement expenses allocated to irrigation as the quantity of project water purchased under this contract bears to the total quantity of project irrigation water sold or otherwise disposed of by the District. An operation and maintenance charge notice, containing a statement of the estimated cost of operation, maintenance, and replacement to be paid by the Company shall be furnished to the Company annually on or before August 1 of the year preceding the year to which the notice is applicable. The Company shall pay the amount set out in any such operation and maintenance charge notice on or before December 1 of the year in which such notice is given.

Whenever, in the opinion of the District, the funds so advanced will be inadequate to operate and maintain the irrigation works being operated by the District, a supplemental operation and maintenance charge notice may be given at any time stating therein the amount of the

Company's share of the additional funds required, and the Company shall advance such additional amounts on or before the date specified in the supplemental notice. If the funds advanced by the Company under this article exceed the Company's pro rata share of the actual cost of operation and maintenance for such irrigation works for the year for which advanced, the surplus shall be credited on the operation and maintenance charge payment due for the succeeding year or in the case there is no such payment due to the District for the succeeding year, it shall be applied on the next installment to be paid by the Company to the District under the provisions of Article 4 of this agreement.

In the same manner as above, but beginning the first year in which water is available to the Company, the Company agrees to pay an appropriate share of annual payments to the reserve fund for operation and maintenance which the District is obligated to establish under the provisions of Article 10 of the Government-District contract.

COMPANY TO USE ALL POWERS TO COLLECT CHARGES

8. The Company will levy and collect all necessary assessments and calls against its outstanding stock, including amounts sufficient to make up for the defaults of its stockholders who do not pay such assessments and calls, in order to pay to the District all charges specified in this agreement. The Company agrees to use all of its powers and resources, including but not limited to the power to sell the stock of delinquent stockholders and to withhold delivery of project water in order to collect the necessary funds to pay such charges. If other purchasers or allottees of project water default in their payments to the District and if the District is otherwise unable to

meet its indebtedness to the United States under said Government-District contract, the Company agrees to levy and collect additional assessments in sufficient amount to pay to the District its proper share of such delinquencies. If said delinquencies are finally recovered from the defaulting purchasers or allottees, the District agrees to make appropriate adjustments in subsequent charges against the Company.

SECURITY FOR PAYMENT

9. The Company hereby grants to the District a first lien upon the proceeds of annual and special assessments against the stock of the Company to the extent necessary to meet the annual payments due the District under this contract.

REFUSAL OF WATER IN CASE OF DEFAULT

10. No project water shall be delivered through the project works to or for the Company if it is in arrears in the advance payment of development period charges or of operation and maintenance charges or other charges due the District, or if it is in arrears more than 12 months in the payment of the annual installments provided in Article 4, or more than 12 months in arrears in the payment of any other amounts due the District. The provisions of this article are not exclusive and shall not in any manner prevent the District from exercising any other remedy given by this contract or by law to enforce the collection of any payments due under the terms of this contract.

PENALTY FOR DELINQUENCY

11. Every installment or charge required to be paid to the District under this contract which shall remain unpaid after its due date shall bear interest at the rate of 6 percent per annum from the date of delinquency.

OPERATION AND MAINTENANCE OF COMPANY FACILITIES

12. The Company shall operate and maintain, without cost to the District, or the United States, all of its canals and other facilities necessary to take and utilize its water, including the water purchased under this contract.

BENEFICIAL USE OF WATER

13. The basis, the measure, and the limit of the right of the Company to the use of project water shall rest perpetually in the beneficial application thereof and the Company agrees to put such water to beneficial irrigation use in accordance with law.

LANDS FOR WHICH WATER IS FURNISHED: LIMITATIONS ON AREA

14. Pursuant to the provision of the Federal Reclamation Laws, water made available hereunder shall not be delivered to more than one hundred sixty (160) irrigable acres in the beneficial ownership of any one person or other entity or of more than 320 irrigable acres held in the beneficial ownership of husband and wife as joint tenants or as tenants in common except that delivery may be made to lands held in excess of this limitation pursuant to the provisions of Section 46 of the Act of May 25, 1926 (44 Stat. 649), as amended by the Act of July 11, 1956 (70 Stat. 524). In the case of an

individual either having stock in two or more corporations which have title to irrigable lands within the District, or owning irrigable lands in his own name and having stock in a corporation or corporations which have irrigable lands within the District, the individual's proportionate stockholdings in such corporations shall be regarded as proportionate interests in the corporation's landholdings for the purpose of the application of the acreage limitation stated in this article.

WATER SHORTAGES, WASTE, SEEPAGE, AND RETURN FLOWS

15. a. On account of drouth or other causes, there may occur at times during any year a shortage in the quantity of project irrigation water available for delivery to the Company pursuant to this contract. In no event shall any liability accrue against the United States or the District or any of their officers or employees for any damage, direct or indirect, arising out of any such shortage. Deliveries to irrigation water users shall be reduced in the proportion that the number of acre-feet of such shortage as determined by the District bears to the total number of acre-feet allocated for irrigation use.

b. The United States claims all of the waste, seepage, and return flow water derived from water delivered pursuant to this contract and the same is hereby reserved and retained by the United States for beneficial use on the project.

c. During periods of water shortage, municipal water users shall have first priority to the available project water supply.

DELIVERY OF PROJECT WATER

16. Project water furnished under this contract, including water delivered pursuant to Article 15, shall be delivered and measured at a point or points designated by the District. It shall not be the responsibility of the District or the United States to provide works to convey such water from said point or points to the place of use. All project water users shall be charged a pro rata share of all conveyance and operation losses from storage to said point or points of delivery. Project water will be delivered to the Company in accordance with operating criteria furnished the District by the United States pursuant to Article 8(b) of the Government-District contract.

SALE OF PROJECT WATER LIMITED

17. The Company agrees not to sell the use of project water purchased under this contract to any person other than an irrigation water user under its canal system, within the boundaries of the Project, either on a permanent or temporary basis, without the advance written consent of the District and the United States.

CROP REPORTS, ACCOUNTING AND OTHER MEASURES

18. The Company shall take such measures as the District deems proper (a) to keep a record of crops raised and agricultural or livestock products produced in the area served by the Company, (b) to account for money received and expended, and (c) to keep and furnish suitable records of water supply and the disposition thereof.

ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED

19. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until approved by the District and the Secretary.

APPROVAL OF UNITED STATES NECESSARY

20. This agreement shall not be effective until approved by the Secretary. This agreement may be amended by the parties hereto and such amendments shall be effective upon approval of the Secretary.

WATER CONSERVANCY ACT OF UTAH

21. This contract, and any amendments thereto, shall be subject to the Water Conservancy Act of Utah, Title 73, Chapter 9, Utah Code Annotated, 1953, as amended, the rules and regulations of the Board of Directors of the Conservancy District, and the repayment contracts heretofore or hereafter executed between the United States and the Conservancy District.

IN WITNESS WHEREOF, the parties hereto have signed their
names the day and year first above written.

UINTAH WATER CONSERVANCY DISTRICT

ATTEST:

Ly. S. Sweeney
Secretary

By

[Signature]
President

ASHLEY UPPER IRRIGATION COMPANY

ATTEST:

Leon P. Christensen
Secretary

By

[Signature]
President

APPROVED:

Appd. Sol. Off.
[Signature]

E. O. Larson
Regional Director

Authorized
representative of the
Secretary of the Interior