

Ariz.
333.91
C31

COPY OF

The Carrick & Mangham Agua Fria Lands
& Irrigation Company

Water Contract

WITH

Salt River Valley Water Users'
Association

As of August 25, 1921

THIS DOCUMENT IS THE PROPERTY OF THE DEPARTMENT OF LIBRARY AND ARCHIVES — ARIZONA —	NUMBER 76190 RECEIVED DEC 6 1956
--	---

THIS AGREEMENT made in triplicate this 25th day of August, 1921, by and between CARRICK & MANGHAM AGUA FRIA LANDS AND IRRIGATION COMPANY, a corporation organized and existing under the laws of the State of Arizona, having its office and principal place of business in the City of Phoenix, Arizona, its successors and assigns, party of the first part, hereinafter called COMPANY and SALT RIVER VALLEY WATER USERS' ASSOCIATION, a corporation organized and existing under the laws of the State of Arizona, its successors and assigns, party of the second part, hereinafter called ASSOCIATION.

WITNESSETH:

WHEREAS there lies within the boundaries of the so-called Salt River Project, in Maricopa County, State of Arizona, a large area of land (hereinafter in paragraph 20 more particularly described), which has become to a large and injurious extent, saturated with water and which it is desirable for the best interests of the Association and the settlers and land owners within said project to have drained and un-watered; and

WHEREAS there lies in close proximity to the lands included within said project an area of land of approximately 35,000 acres which is without irrigation and which it is proposed by the Company to irrigate with water pumped from the lands within said project and from waste waters purchased from the Association; and

WHEREAS it is proposed to form said 35,000 acre tract into an irrigation district under the laws of the State of Arizona to which district this contract may be assigned and to irrigate said tract through the medium of said irrigation district and to meet the cost of putting said waters on the lands of said irrigation district and of such irrigation by the sale of irrigation district bonds; and

WHEREAS, in order to insure the payment of said bonds and the irrigation of said lands within said irrigation or conservancy district, it is necessary that said Company and said irrigation district be assured of an adequate supply of water.

NOW, THEREFORE, the said parties hereto, in consideration of the stipulation, covenants and agreements herein provided to be kept and performed, do hereby stipulate, covenant and agree with each other as follows:

1. The Association does hereby, insofar as it can, grant and release to the Company the right to sink wells, unlimited in number and in depth, upon said lands described in paragraph 20 hereof and to equip said wells

with pumps, casing, pipe and all other apparatus and equipment necessary for the efficient pumping of said wells, and to pump water therefrom and to own and convey the same from said wells to and upon the said lands within said proposed irrigation district.

2. The Association further grants and releases to the Company, insofar as it can, all waste and pumped waters that may flow to the end of canals, laterals or ditches of the Association or to the boundaries of the said Salt River Project within the area described in paragraph 20 hereof, which the Association cannot put to beneficial use within the present boundaries of the Reservoir District as defined by the Articles of Incorporation of the Association as amended in 1912 or under ditches of the Association through which water is now being delivered East of New River and Agua Fria River.

3. The Association further grants and releases to the Company insofar as it can the first call upon and the right to pump and use waters in other saturated areas within said project as described in paragraph 21 hereof to the extent only that the Company needs such waters and it can put same to beneficial use and grants and releases to the Company insofar as it can the right to drill wells and equip them with pumps and to pump said waters for use of the Company under same terms and conditions as herein provided for, the pumps and pumping plants to be installed by the Company upon said area described in said paragraph 20 hereof.

PROVIDED, that if the Company at any time desires to pump from the saturated area described in paragraph 21 it shall make written request showing location of wells, ditches, etc. Upon receipt of such request same shall be granted provided good faith has been shown by the Company in unwatering of lands described in paragraph 20. The right granted in this paragraph may be availed of by the Company at any time within 30 years from date hereof, provided, if at any time during the 30 year period aforesaid the Association finds it necessary to pump water for drainage purposes within the said area described in paragraph 21, the Company covenants and agrees to purchase such water as is pumped by the Association for such purposes not to exceed an amount of 15,000 acre feet per annum in excess of the herein after stipulated 70,000 acre feet minimum to be pumped upon same terms and conditions as provided for payment and delivery of waste water in paragraph 11 herein. Failure upon the part of the Company to purchase or pay for said water shall operate to relieve the Association of any obligation to grant pumping privileges within the area described in paragraph 21 hereof.

4. The Association covenants and agrees that the

rights herein granted to the Company shall be exclusive and that it will not, at any time, grant or release to any other party, any rights which it may be able to grant, to pump water from the said area described in said paragraph 20 or any rights whatsoever which will interfere with, or impair the rights granted and given to the Company.

5. The Association further covenants and agrees that it will furnish and sell to the Company and the Company agrees to purchase during a period of 99 years, all electric power which may be necessary for pumping water from any of the wells mentioned in this contract for the irrigation of 35,000 acres of land contemplated in this contract at the following rates, to-wit:

(a) For a period of 10 years from date hereof all hydroelectric energy shall be sold by the Association to the Company at $\frac{3}{4}$ c per KWH at points of use as defined herein. It is understood and agreed that the hydroelectric power to be furnished under this contract shall be from the Association's present available supply and that when the same is not available the Association may supply power from other sources and that the Company will pay for same at cost in the same manner as provided in clause (b) hereafter.

(b) For the period beginning at the end of 10 years from date hereof and ending at the end of 30 years from date hereof, all electric energy shall be sold by the Association to the Company at points of use as defined herein at the actual cost of said power to the Association. The term "actual cost" as used herein shall be construed to mean the cost of producing and delivering such energy under whatever system the Association may be operating at the time and shall include interest on the investment made by the Association or the United States of America, operation and maintenance and proper allowance for depreciation.

(c) At the expiration of 30 years from date hereof the rate to be paid for said energy shall be the fair market value for similar service.

6. The Association covenants and agrees to use its best endeavors to assist the Company in obtaining rights-of-way for canals, ditches and pumping plants and other works to be constructed, maintained and operated by the Company hereunder, and also in obtaining and securing the conveyance of the areas of land necessary for the location and maintenance of said pumping plants and other works, and to obtain for the Company, the right to pump waters from said area described in paragraph 20 hereof, provided, however, that no financial assistance shall be required from or is to be furnished by the Asso-

ciation for such purposes, and provided further that the Association shall be reimbursed by the Company for all reasonable expense incurred by the Association in approving plans, specifications and locations of wells and in rendering aid in securing rights-of-way and other conveyances.

7. The Association covenants and agrees to sell and the Company agrees to purchase all pumps, wells and equipment appurtenant thereto which now are owned by the Association situated on any of the lands within the limits described in paragraph 20 hereof. The price to be paid for such wells and pumping plants shall be the cost of a like installation at the time of purchase.

8. The Company covenants and agrees to purchase from the Association, or drill and properly equip with pumps and other apparatus, fifty (50) wells, and to build and construct such canals, ditches and other works as may be necessary for carrying out the provisions of this contract, including the necessary engineering work. Said engineering work so to be done by the Company shall be commenced immediately upon the execution of this contract and the installation or purchase of wells and pumps and the building of said canals, ditches and other works necessary for the operation thereof shall be completed within the period of eighteen (18) months thereafter. Said fifty (50) pumps shall be operated at all times after the expiration of said eighteen months period continuously as far as practicable or sufficiently so to remove the minimum amount of water hereinafter provided. The period of six (6) months shall be allowed after the expiration of said eighteen (18) months period for determining whether or not any further installation of wells and pumps shall be necessary in order to remove from said lands the minimum amount of water herein prescribed, to-wit: 70,000 acre feet per annum, and if such additional installation is found necessary, a further period of six (6) months (during which all pumps theretofore installed shall be operated as provided hereinbefore for the fifty (50) pumps) shall then be allowed the Company in which to make such necessary additional installation. The rate of progress shall, at all times, be such as to insure the completion of the work within the time herein limited and the whole of said installation in order to pump said minimum amount of water, to-wit: said 70,000 acre feet per annum shall be completed within thirty (30) months from the date hereof, provided that is any delays shall be caused by war, strikes, financial panics or any causes not due to any act or neglect of the Company (failure to organize an irrigation district or inability to sell its bonds for any cause whatever, shall not be considered a reason for delay, unless in the judgment of the Board of Governors of the Association such

delay shall have been justifiable). The time lost by such delays herein provided for shall, upon written notice within thirty (30) days after the commencement thereof, be added to the time herein allowed. All plans and specifications for the work herein provided for and location of wells shall first be submitted to and approved by the Association, provided that no well shall be required to be placed where the right to install the same and the right-of-way for a ditch to carry the water produced thereby can not be reasonably obtained.

9. The Company further covenants and agrees to operate said pumps, wells, equipment for power, canals, ditches and other works constructed and installed by it, for the term of ninety-nine (99) years,—the object of such operation being to pump and remove water from the area of land described in said paragraph 20 and to use said water to irrigate the said lands within the boundaries of the said irrigation district. Said Company does hereby undertake covenant and agree, in any event, to pump from said area described in said paragraph 20 hereof, water equivalent to seventy thousand (70,000) acre feet as a minimum during each calendar year following the completion of said work, provided, however, that the average depth of the underground water level over the entire area included within the limits described in paragraph 20 hereof shall not be lowered, without the consent of the Association, to a greater depth than 50 feet below the surface of such lands.

Provided further that the Company agrees it will operate all pumps purchased or installed by it an approximately equal number of hours during any one calendar year, whenever the Association shall so demand.

The provision for the drilling and equipment or purchase of said fifty (50) wells by the Company shall not be construed to limit or restrict the number of wells to be drilled and operated by the Company, but said requirement, it is understood and agreed, is merely a minimum requirement and said Company may drill, equip and operate as many wells within said area as it may desire.

10. The Company shall furnish the Association either as purchase price for wells, pumps and other equipment or as advances to be repaid in power furnished by the Association as hereinafter provided, a sum of money equal to the installed cost of a 5000 Horse Power capacity steam electric power plant, the money to be furnished in installments as hereinafter provided. This sum shall in no event exceed the sum of \$600,000.00 unless purchases from the Association exceed the sum of \$300,000.00 in which case the amount to be advanced shall be the cost of such equipment purchased plus \$300,000.00, nor shall the said sum to be advanced to the

Association for said 5000 Horse Power steam plant be less than \$300,000.00 exclusive of any sums paid to the Association for pumps, wells or other equipment. Said money shall be paid by the Company to the Association either as purchase price for wells, pumps and equipment appurtenant thereto or as advances under the terms hereof at the following times, time being of the essence to-wit:

\$ 50,000.00—on or before six months after the effective date hereof,

100,000.00—on or before four months thereafter,

150,000.00—on or before two months thereafter,
Balance necessary to complete said plant
on or before three months thereafter.

The Association covenants and agrees to repay so much of said cost of above mentioned steam electric power plant to the Company, which was advanced by the Company exclusive of any monies paid the Association for aforesaid wells, pumps or equipment appurtenant thereto, as follows: All sums becoming due and payable to the Association for power or water shall be applied to the repayment of monies advanced for (the) electric power plant and any other advances and expenditures as herein provided together with interest thereon at the rate of 7% per annum.

11. The Company covenants and agrees to pay the Association for all such waste and pumped water received by it hereunder as the Association may furnish and the Company can put to beneficial use from wells now installed or that may be installed by the Association within the area specified, the sum of seventy-five (75) cents per acre foot. The use of water for irrigation purposes shall be construed as beneficial use. All payments for power and water herein provided to be made shall become due and payable on September 1st and March 1st each year for all power and water furnished hereunder during the six months preceding.

12. It is covenanted and agreed that if the Company shall fail to advance the funds agreed to be advanced for the steam plant at the times provided in paragraph 10 of this agreement said Company shall at the option of the Association forfeit all property purchased from the Association, all work done installing pumps and equipments and rights-of-way therefore and all right under this contract and it is further covenanted and agreed that if said Company shall advance said funds for said steam plant as provided in paragraph 10 of this agreement, but shall fail to begin, proceed with or complete the construction of the pumps, wells and other works herein provided for at the rate or within the time, or times, herein provided, said Association may take over and complete the said work or portion of said work and

shall charge the cost thereof to the Company, which cost the Company agrees to repay to the Association with interest at the rate of 7% per annum and if after said wells, pumps and other works shall have been installed, said Company shall fail to pump from said lands the said minimum amount of seventy thousand (70,000) acre feet per year, (unless such failure is due to the failure of the Association to furnish power) or if the Company shall fail to pay any bill for power or water within sixty (60) days after the same shall be due or payable the Association may proceed to collect the amount so due or at its option shut off all supply of power and water until such bill is paid, and the Association may, at its option, upon the expiration of ninety (90) days from due date of bill take over and assume the operation and management of said wells, pumps, canals, ditches and other instrumentalities, and may continue to operate and manage the same for its own purposes and without delivering the water produced thereby to the Company or the lands in said irrigation district until said bill is paid. And whenever said Company at any time within thirty-five (35) years from the date hereof shall remedy and correct said defects or omissions and shall pay the Association for the actual cost of pumping water not exceeding 70,000 acre feet per annum during such period of delinquency and said Association shall then turn back to said Company all said works and the control, operation and management thereof, upon the payment by the Company of all arrearages, due the Association for water and power, together with interest at the rate of seven per cent per annum.

13. The Company further covenants and agrees that all water received by it under this agreement shall be distributed and apportioned only in compliance with those provisions of the Act of Congress approved February 21, 1911, known as the "Warren Act" which limit the use of waters pumped from United States Reclamation Service Projects to 160 acres for any one land owner.

14. The electric power to be delivered will be three phase, 25 cycle, at approximately 11,000 volts.

15. The Company agrees to, at no expense to the Association, make necessary changes to the transmission lines lying within the area described in paragraph 20 hereof over which electric power for the Company will be transmitted, to increase the carrying capacity of said lines to the extent of one-third more than the power required by the Company. The Company further agrees to construct at no expense to the Association any and all transmission lines necessary to transmit said electric power from the project lines to the point or points of use. Point or points of use shall be considered to be at the

low side of the electric meter, which meter shall be placed on the high side of transformer at each installation for pumping. The reconstruction of the project lines and the construction of any and all transmission lines shall be in accordance with plans and specifications approved by and installed under the supervision of the Association. Upon completion of the said reconstruction and construction of transmission lines acceptable to the Association, they shall become the property of, and forever remain a part of the works of the Salt River Valley Water Users' Association, said transmission lines to become the property of the Salt River Valley Water Users' Association shall be considered to end at the point or points of use, as defined above.

One-third (1/3) of the monies expended by the Company in the reconstruction and construction of said transmission lines, as approved by the Association shall be refunded to the Company by allowing a credit on all money due the Association from the Company for the sale of electric power and delivery of water.

At all times during the progress of said construction of transmission lines and appurtenances, the Association shall have the right of access to the records and books of the Company for the purpose of determining the true cost and quality of said construction, and the Company shall lend every assistance to the representatives of the Association for that purpose.

16. Neither party hereto shall be held responsible or liable for any failure, default or delay caused by war, strikes, acts of God, unavoidable accidents or contingencies beyond its control and not due to its fault, negligence or omission, but the cause thereof shall be removed with the utmost diligence.

17. The Association may, when necessary and without recompense to the Company suspend service for the purpose of making alterations or repairs upon giving to the Company twenty-four (24) hours notice and when such suspension is necessary the Association will use every reasonable effort to renew its service with the least possible delay.

18. All transmission lines, transformer installations, switching apparatus, lightning arresters and wiring, which shall be the property of the Company shall be constructed and installed according to plans acceptable to the Association and the Secretary of the Interior, and the operation and maintenance, during the term of this contract, of the above mentioned apparatus shall be conducted in a manner satisfactory to the representatives of the Association and the Secretary of the Interior. If any defects develop during the term of this agreement after the said equipment is installed of such a character

as to interfere with the electric equipment of the Association on the Salt River Project, the representatives of the Association or the Secretary of the Interior may demand at any time that changes be made to eliminate such defects. The Association shall have the right to cease furnishing energy until such changes are made. The Association may, if it so desires, enter upon the property of the Company and make the necessary changes above referred to and to charge any expense so incurred to the Company, and collect the same in the manner provided for the collection of power and water charges.

The remedies herein provided for the Association, in case of failure of the Company to comply with this agreement shall be cumulative, and not exclusive, and shall not prevent the enforcement of this agreement by appropriate action of the Courts.

19. This agreement shall not be assigned by the Company without the written consent of the Association first had and obtained, but the Association hereby agrees to consent to any assignment the Company may desire to make to any irrigation district formed and organized under the laws of the State of Arizona the territory within which can, in a feasible and practicable manner, such fact to be certified by a responsible and competent engineer approved by the General Superintendent and Chief Engineer of the Association, be irrigated by use of the water removed from said lands described in paragraph 20 hereof as herein provided.

20. The lands and district to be drained and unwatered by party of the first part by means of pumps, wells and ditches, as herein stated, are in Maricopa County, and located as follows:

Bounded on the north by the south line of Sections Twenty-one (21) and Twenty-two (22), Township Three (3) North, Range One (1) East, and by Grand Avenue Highway; on the East by Grand Avenue Highway and a line running North and South through the middle of Townships One (1) and Two (2) North of Range Two (2) East from Grand Avenue Highway to the Northeast corner of Section Sixteen (16) in Township One (1) North of Range Two (2) East, and by the West line of said Section Sixteen (16), on the South by the Buckeye Road (So called) along the North line of said Section Sixteen (16) and by the "Lower Buckeye Road" (So called) from the Southwest corner of said Section Sixteen (16) to the Southwest corner of Section Eighteen (18) in Township One (1) North of Range One (1) East,

and by the North line of the Northeast quarter of Section Twelve (12) in Township One (1) North of Range One (1) West; and on the West by the East line of Section Twelve (12) and Thirteen (13) and a line running North and South through the middle of Section One (1) in Township One (1) North of Range One (1) West; and by the Agua Fria and New Rivers. All of the above townships and ranges stated are North East and West of the Gila and Salt River Base and Meridian.

21. In addition to lands described in paragraph 20 hereof subject to the provisions in paragraph 3 hereof, the Company shall have the first call at all times on the right to pump from any other lands within the following boundaries, to-wit: Central Avenue on the East, Grand Avenue on the North, Agua Fria River on the West and Salt River on the South.

22. The Company agrees to keep its wells, pumps, equipment appurtenant thereto and canals ditches and rights-of-way, situated within the Salt River Project in a reasonably good state of repair, and if it fails to do so the Association shall have the right to do whatever may be necessary to make such repairs and charge the cost thereof to the Company and collect the same from the Company.

23. Nothing contained in this agreement shall be construed so as to give the Company or the proposed irrigation district herein provided for or the lands receiving the waters referred to in this agreement any right whatever in or to any of the water stored in the Roosevelt Reservoir or any of the natural flow or flood waters of the Salt of Verde Rivers or any of the water pumped or developed on the Salt River Project by the Association, it being understood that the rights of the Company or said irrigation district and the lands included within the same shall be limited to the pumping rights and right to receive waste water herein expressly provided for.

24. Nothing herein contained shall be construed to limit the rights of the Association or any of its members or land owners to pump water for domestic purposes or for irrigation purposes upon lands within the boundaries of the reservoir district as defined by the Articles of Incorporation of the Association as amended in 1912 or now located under ditches of the Association through which water is now being delivered East of New River and the Agua Fria River.

This agreement is executed by the President and Secretary of the party of the second part by virtue of the authority conferred upon them by the Board of Gover-

nors at a meeting duly called and held on the day of, 1921, and by the President and Secretary of the party of the first part thereunto duly authorized by the resolutions of its Board of Directors duly adopted at a meeting of said Board lawfully held on the day of, 1921. It shall not become effective until it shall have been submitted to and approved by the Secretary of the Interior of the United States of America and when so approved it shall become effective as of the date of such approval.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective corporate names by their duly authorized officers the day and year first above written.

CARRICK AND MANGHAM AGUA
FRIA LANDS AND IRRIGATION
COMPANY

By
President.

By
Secretary.

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

By
President.

By
Secretary.

Approved:

.....
Genl. Supt. and Chief Engr.
Approved as to form:

.....
Legal Advisor,

Approved, 1921.

.....
Secretary of the Interior.