

CATHCART, J. W. CONTRACT FOR SALE (UNRECORDED) FRANKLIN CANAL

0023-0083-0040-00

OCT 1922

18-() Texas

NOT INDEXED - NOT RECORDED

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

Rio Grande PROJECT New Mexico-Texas

THIS AGREEMENT, made October 23, nineteen hundred
and twenty-two, in pursuance of the act of June 17, 1902 (32 Stat., 388), and
acts amendatory thereof and supplementary thereto, between THE UNITED STATES OF AMERICA
hereinafter styled the United States, by L. M. Lawson, Project Manager.

United States Reclamation Service, thereunto duly authorized, and subject to the approval of the proper
supervisory officer of the United States Reclamation Service; and J. W. Cathcart

Vendor,
hereinafter styled Kanawick, his heirs, executors, administrators, successors, and assigns.

WITNESSETH: The parties covenant and agree that—

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2. For and in consideration of the payments to be made by the United States, as hereinafter provided, and of the covenants herein contained, the Vendor does hereby sell, assign, transfer and set over to the United States free and clear of any lien or encumbrance, all buildings, fences, ditches, seedings, growing crops, trees, and shrubbery, and any and all other improvements of whatsoever kind or nature, upon, attached to, or growing upon that certain piece or parcel of land situated in the County of El Paso, State of Texas, particularly described as follows, to wit:

A tract of land located in the Southwest quarter of the Southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section eleven (11) and the North half of the Northwest quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$) of Section fourteen (14), Township thirty-three (33) South, Range seven (7) East, New Mexico Principal Meridian, United States Reclamation Service survey, and being also in Survey No. fifty-three (53) of the San Elizario Grant, and described as follows: Beginning at a point on the Northerly property line of land of the Vendor and from which point the South-west corner of said Section eleven (11) bears South thirty (30) degrees thirty-four (34) minutes West one thousand thirty-three and one-tenths (1033.1) feet; thence along said property line North fifty-one (51) degrees fifty-three (53) minutes East forty-two (42.0) feet to the center line of the Franklin Canal; thence along

said center line South thirty-eight (38) degrees forty-one (41) minutes East two thousand three hundred fifty-three and six tenths (2353.6) feet to a point on the westerly right of way line of a county road; thence along said right of way line South thirty-nine (39) degrees one minute (01) West forty-two and ninety-six hundredths (42.96) feet to a point from which the Northwest corner of said section fourteen (14) bears North sixty-four (64) degrees thirty-one (31) minutes West two thousand two hundred eighteen and three tenths (2218.3) feet; thence North thirty-eight (38) degrees forty-one (41) minutes West two thousand three hundred sixty-three and seventeen hundredths (2363.17) feet to the point of beginning; said tract of land containing two and twenty-seven hundredths (2.27) acres, more or less; one and sixty-one hundredths (1.61) acres of which is occupied by the Franklin Canal and is the property of the United States, and the remainder or sixty-six hundredths (0.66) acre being the land on which are located the improvements covered by this contract. The above described land is not homestead property.

3. The Vendor, on behalf of himself, his heirs and assigns, releases, acquits, and discharges the United States and its assigns from any and all liability for damages or compensation arising from the entry upon said parcel of land and from the construction, operation and maintenance thereof of works pertaining to the United States Reclamation Service.

4. In consideration whereof, the United States agrees to pay the Vendor the sum of Ninety-nine and no/100 (\$99.00)

Dollars, upon Government voucher, by Treasury warrant, or disbursing officer's check, as full purchase price of said improvements and as full payment for all damages by reason of the matters and things stated herein.

5. The Vendor hereby ratifies and confirms the grant to the United States of the right of way across lands herein referred to in stock-subscription contract with El Paso Valley Water Users' Association.

6. The Vendor will furnish, before payment, satisfactory evidence that he is the owner of said improvements, and the land on which the same are situated, and that the same are free from any lien or encumbrance, and for this purpose will submit any abstract or title papers which he may have in his possession, for examination; but the United States will at its own expense and for its own use procure such abstract as may be necessary for the investigation of the title to said land and improvements, and may make and retain copies of the abstract and title papers submitted by the Vendor for examination.

7. The Vendor, upon request by the proper officials of the Reclamation Service, will procure and have recorded, where proper for record, all deeds or other assurances of title, and affidavits and other evidences of title which in the opinion of Counsel for the Reclamation Service are necessary to show good title, unincumbered, in the Vendor to the property purchased.

8. Liens or encumbrances against the property purchased may, at the option of the United States, be discharged at the time of payment, or a sufficient amount for this purpose be retained from the purchase price and the same discharged with the money so retained; but this provision shall not be construed to give precedence of any lien or encumbrance over this agreement, nor as an assumption of the same by the United States.

9. The United States agrees to permit the Vendor to retain possession of the strip or parcel of land upon which said improvements are located and to use and enjoy the same, and remove crops therefrom that may mature thereon, until ten days after date hereof, unless prior thereto it becomes necessary to occupy said strip of land for ditch or canal purposes, in which event the Vendor will be duly notified by the proper Reclamation officials; and the Vendor agrees that whenever so notified he will immediately yield and deliver up the possession of said strip of land, together with the improvements thereon, without any claim for damage or compensation other than as herein provided.

10. The Vendor

The contractor expressly warrants that he has employed no third person to solicit or obtain this contract in his behalf, or to cause or procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement; and that he has not paid, or promised or agreed to pay, to any third person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by him hereunder; and that he has not, in estimating the contract price demanded by him, included any sum by reason of any such brokerage, commission, or percentage; and that all moneys payable to him hereunder are free from obligation to any other person for services rendered, or supposed to have been rendered, in the procurement of this contract. He further agrees that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the United States, and that the United States may retain to its own use from any sums due or to become due thereunder an amount equal to any brokerage, commission, or percentage so paid or agreed to be paid: *Provided, however*, It is understood that this covenant does not apply to the selling of goods through a bona fide commercial representative employed by the contractor in the regular course of his business in dealing with customers other than the Government and whose compensation is paid, in whole or in part, by commissions on sales made, nor to the selling of goods through established commercial or selling agents or agencies regularly engaged in selling such goods.

Where the operations of this contract extend beyond the current fiscal year it is understood that the contract is made contingent upon Congress making the necessary appropriation for expenditures thereunder after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made, the contractor hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

..... For and in consideration of the faithful performance of this contract, the Contractor shall be paid--

..... No interest in this agreement shall be transferred by the contractor to any other party, and any such transfer shall cause annulment of the contract so far as the United States is concerned; all rights of action, however, for breach of this contract are reserved to the United States, as provided by section 3737, Revised Statutes of the United States.

11. It is further stipulated and agreed that in the performance of this contract no persons shall be employed who are undergoing sentences of imprisonment at hard labor which have been imposed by courts of the several State or Territories or municipalities having criminal jurisdiction.

12. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Government, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in section 116 of the act of Congress approved March 4, 1909 (35 Stat. L., 1109).

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

THE UNITED STATES OF AMERICA,

By J. M. Lawson

Project Manager, U. S. R. S.

J. W. Gathcart
Vendor ~~Contractor~~

* By _____

P. O. Address El Paso, Texas.

† Approved: _____

(Date) _____, 19____

* See pars. 6 and 7, Instructions, over.

† Approval of this contract is not required when executed by the Chief of Construction, except in cases covered by regulations on pages 201-203 of the Manual.

G-6024

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

Rio Grande Project El Paso, Texas, October 24, 1922.
(Place) (Date)

Project Manager to District Counsel.

Subject: Forwarding for approval as to form, execution, and legal sufficiency contract dated October 23, 1922.

With J. W. Cathcart

Estimated amount involved, \$ 99.00

Accompanied by bond and copies.

(Insert "Yes" or "No" bond) No bond

Authority No. 4G-2
or Clearing Acct.

Purpose:

Purchase of improvements on 0.66 acre of land granted for canal purposes by stock-subscription contract with water users' association. Land required for Franklin Canal. Amount of \$99.00 is for above acreage at \$150.00 per acre.

Advise Project Manager at El Paso, Texas
(Post-office address)

of approval as to form, execution, and legal sufficiency of the above, using extra copies hereof.

NOTE.—Before submitting contract see that the instructions on reverse hereof have been FULLY complied with.

Inclosures as follows:

Original	and	4	copies	of	contract
"	"	2	"	certificate	of recommendation
"	"	2	"	possessory	certificate
"	"	3	"	f.l.t.	
"	"	2	"	certificate	as to title
3	blueprints				

L. H. Morgan

Project Manager

(Signature)

El Paso, Texas, October 24, 1922.
(Place) (Date)

The above-described contract and bond, if any, approved as to form, execution, and legal sufficiency by J. H. Hamilton

Clerk

on October 24, 1922.

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Inclosures as follows returned to Project Manager:

(Same as above)

CERTIFICATE

I HEREBY CERTIFY that the land described in the agreement dated October 23, 1922, with J. W. Cathoart, is required for purposes authorized by the Act of June 17, 1902 (32 Stat. 388), namely, as right of way for the Franklin Canal, a part of the Rio Grande Project; that the consideration to be paid thereunder, \$99.00, is reasonable and the lowest that could be obtained, and I recommend that the contract be approved.

L. M. Lawson
Project Manager.

El Paso, Texas, October 24, 1922.

POSSESSORY CERTIFICATE

I, Geo. W. Hoadley, Assistant Engineer, United States Reclamation Service, certify that I have personally examined the land sought to be acquired by the United States from J. W. Cathcart, in the Southwest quarter of the Southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section eleven (11), and the North half of the Northwest quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section fourteen (14), Township thirty-three (33) South, Range seven (7) East, New Mexico Principal Meridian, U. S. Reclamation Service survey, El Paso County, Texas, for the Rio Grande Project, and that the said proposed vendor was in actual, sole and exclusive possession of the land, claiming to be the owner thereof and of the improvements thereon, and no person claiming a right in such land adverse to the Vendor is in possession of any part of it.

Geo. W. Hoadley
Assistant Engineer.

El Paso, Texas, October 24, 1922.

CERTIFICATE AS TO TITLE

I HEREBY CERTIFY, with reference to the following described land:

A tract of land containing 0.66 acre, more or less, in the Southwest quarter of the Southwest quarter (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section eleven (11) and the North half of the Northwest quarter (NW $\frac{1}{4}$) of Section fourteen (14), Township thirty-three (33) South, Range Seven (7) East, New Mexico Principal Meridian, U. S. Reclamation Service survey, El Paso County, Texas, and more particularly described in agreement with J. W. Cathcart, dated October 23, 1922:

That I have made a personal examination of the tax and title records of El Paso County, Texas, and find that the said Vendor, who is the reputed owner, is the actual owner, and that there are no unpaid taxes, unsatisfied mortgages, or other liens outstanding against the said land, except the lien incident to unpaid taxes for the year 1922, and it is believed that the remaining land is of more than sufficient value to meet the 1922 taxes, in the event that the land is sold for taxes, without involving the interests of the United States;

That the land is not homestead property.

J. H. Hamilton
Clerk

El Paso, Texas, October 24, 1922.