

#572642

AGREEMENT.

THIS AGREEMENT made and entered into, this 15 day of July 1920, by and between Draper Irrigation Company, a Utah corporation, party of the first part, and Sandy Canal Company, a Utah corporation, party of the second part, WITNESSETH:

I.

WHEREAS, the party of the first part has acquired and is now the owner of an undivided 65/200 interest in and to that certain application No. 2136, filed in the office of the State Engineer, of the State of Utah, and approved by him and now of record in his office, which interest so owned by the party of the first part purports to give to the party of the first part the right to divert sixty-five cubic feet of water per second of time from Utah Lake for the irrigation of certain lands on the east side of the Jordan River, to which record of said application reference is hereby made for a more particular description of said application and of the rights thereby acquired.

II.

WHEREAS, the party of the first part is now the owner of that certain canal formerly known as the Sandy Branch of the Utah Lake Irrigation Company, and hereafter referred to as the Sandy Branch, commencing at a point about two hundred thirty-five and 7/10 (235.7) west of the intersection of the center line of the said Utah Lake Irrigation Company's canal, and the west line of Section Fourteen (14), Township Four (4) South, Range One (1) West, Salt Lake Meridian, and continuing thence in a northerly direction past Draper, Utah, to a point north and east of Sandy, Utah, which canal is used for the conveyance of water for the irrigation of lands lying under said canal on the east side of the Jordan River, in Salt Lake County, Utah, together with the right of way for said canal, and including all of the appurtenances belonging to and now used in connection with said canal.

III.

WHEREAS, the party of the first part has acquired and now owns a sufficient interest in the pumping plant on the Utah Lake, commonly called the Associated Canal Company's Pumping Plant, and the works appurtenant thereto, and also in the East Jordan Canal and the appurtenances therewith connected, to provide for the perpetual diversion of a total of sixty-five cubic feet of water per second of time during the irrigation season of each and every year, from Utah Lake into the Jordan River, and to flow said water down said river to the intake of the said East Jordan Canal, and thence through said East Jordan Canal to a point near the head of the said Sandy Branch, at which point said water will be pumped into said Sandy Branch from the said East Jordan Canal, by means of the electrically driven pumps hereinafter referred to in this agreement.

IV.

NOW THEREFORE, in consideration of the sum of One Dollar, paid to the party of the first part by the party of the second part, receipt of which is hereby acknowledged, and of the covenants and agreements to be kept and performed by the party of the second part, as in this agreement set forth, the party of the first part does hereby agree with the party of the second part, as follows:

A. The party of the first part agrees that it will at its own expense, on or before the first day of May, 1921, construct, erect and complete at a suitable point near the east bank of the East Jordan Canal, and at the head of the said Sandy Branch, an adequate, modern and efficient electrically driven pumping plant, to be approved by the party of the second part, with all of the appurtenances necessary, capable of and adapted for pumping sixty-five second feet of water per second of time from said East Jordan Canal into said Sandy Branch Canal, at said point, and discharging the same into said Sandy Branch Canal in such manner so that said water will flow down said Sandy Branch Canal by gravity, and within said time the party of the first part at its own expense will acquire by purchase a good and marketable title to a sufficient amount of land upon which said pumping plant, with a discharge pipe, and with all necessary appurtenances may be erected and maintained.

B. The party of the first part agrees to sell, assign and transfer to the party of the second part the following undivided interest in and to its said rights to said application No. 2136, together with all of the rights and privileges therewith connected, that is to say, the proportion which a flow of 16.34 cubic feet of water per second of time, plus the loss by seepage and evaporation in delivering said 16.34 cubic feet of water per second of time from said Associated Pumps through the said Jordan River to the intake of the East Jordan Canal, thence through the said East Jordan Canal to a point where said canal passes the head of the said Sandy Branch, thence through the electrically driven pumps referred to in this agreement, thence into said Sandy Branch Canal, thence through said Sandy Branch Canal to Williams Weir, located at the south line of what is known as old Dry Creek, about midway between Draper and Sandy, thence to the various laterals along said canal to Highway No. 96 South, bears to a flow of sixty-five (65) cubic feet of water per second of time, and in as much as said measurements cannot be made at said Associated Pumps, it is agreed that such measurements may be made at the south line of said old Dry Creek. It is further agreed that the party of the first part will at its own expense as soon as it may be done prepare and file with the State Engineer of the State of Utah all final proofs on said Application No. 2136, to the end that a full, complete and final record may be made in the office of said State Engineer of the water involved in said application, and the party of the second part agrees that within the time provided by law and the rules and regulations of said State Engineer to apply its said portion of water under said application to a beneficial use upon the lands of its stockholders or on other lands located under said Sandy Branch Canal, and the party of the second part will do and perform every act and thing necessary to apply said water to a beneficial use under said application, except as otherwise provided, in this agreement, to the end that the party of the first part shall not be delayed in perfecting title to the water under said application.

C. The party of the first part agrees to sell, assign and transfer to the party of the second part, as hereinafter set forth, of its rights in said Associated Canal Company's Pumping Plant, together with the appurtenances, and also in said East Jordan Canal, with its appurtenances, and also in the pumping plant of the party of the first part before referred to, with the equipment and the appurtenances, and in and to said Sandy Branch Canal, from the head of said Sandy Branch Canal to Williams Weir, located on the south side of old Dry Creek, together with the equipment therewith connected, including a weir or measuring device at the head of the Sandy Branch Canal, except all other measuring devices and diverting works now installed, an undivided interest sufficient in capacity to pump at said Associated Pumps 16.34 cubic feet of water per second of time, plus the loss by seepage and evaporation in delivering said 16.34 cubic feet of water per second of time from said Associated Pumps through the said Jordan River to the intake of the East Jordan Canal; thence through the said East Jordan Canal to a point where said canal passes the head of said Sandy Branch, thence through the electrically driven pumps referred to in this agreement, thence into said Sandy Branch Canal, thence through said Sandy Branch Canal to Williams Weir, located at the south line of what is known as old Dry Creek, about midway between Draper and Sandy, thence to the various laterals along said canal to Highway No. 96 South, together with the right of way and the appurtenances connected with that portion of said canal; that the transfer of all of the interests by the party of the first part to the party of the second part, as in this agreement set forth, shall be made by the party of the first part to the party of the second part by good and sufficient conveyances in writing, on or before the day of 1921.

D. The party of the first part agrees to use diligent effort to acquire at once by purchase all stock of the Utah Lake Distributing Company which entitles the owner thereof to use water south of Dry Creek from the Sandy Branch Canal, and as fast as the party of the first part has purchased and received said stock, it will sell, assign and deliver said stock to the party of the second part at the rate of thirty-five dollars (\$35.00) per share for late water stock, and forty-five dollars (\$45.00) per share for full water stock, and the party of the second part agrees to receive and to pay for said stock at said price as fast as the same is delivered to it, but only on condition that all stock so acquired by the party of the first part shall be so delivered to the party of the second part on or before the 15th day of April, 1921.

E. The party of the first part will not sell or offer for sale, except to the party of the second part, any water, water stock, water rights, or any interest therein, for irrigation or culinary purposes to be used at any place north of said Dry Creek for a period of two years from the date of this agreement, or until such time within said two years as all of the water stock purchased by the party of the second part from the party of the first part, as in subdivision D set forth, has been sold or otherwise disposed of by the party of the second part, and will give to the party of the second part the right to purchase at a reasonable price all of the water, water stock, water rights or interest therein, which the party of the first part desires to sell, and which entitles the holder thereof to use water north of said Dry Creek.

F. That during the irrigation season of 1920, the party of the second part is to receive its proportion of water as heretofore from the Utah Lake Distributing Company, but in the year 1921, and at all times thereafter, the said party of the second part shall receive its said water in accordance with the terms of this agreement, and it is agreed by both parties hereto that they will receive their respective quantities of water each and every year during the irrigation season, commencing on April 15th and continuing to October 15th, and that each party hereto may determine when and to what extent it will use water between the dates last mentioned, subject, however, to the limitations in this contract set forth as to the quantities of water to which the parties to this agreement are respectively entitled to use, it being understood that the party of the first part is entitled to pump and carry through said canal system the remainder of said sixty-five cubic feet of water per second of time.

G. The loss of water in transit caused by seepage and evaporation in delivering all water to its destination, as in this agreement set forth, shall be determined from time to time by two competent engineers, one selected by the party of the first part, and the other selected by the party of the second part, and in the event that said engineers cannot agree as to the amount of such loss, then said two engineers shall select a third engineer, and a majority of said three engineers shall determine such loss, unless the parties to this agreement shall cause such loss to be determined in some other manner. The expense attending such investigation and determination shall be borne by the parties hereto in the proportion which 16.34 second feet of water, plus seepage and evaporation caused in delivering the same to its said destination as before set forth, shall bear to sixty-five second feet of water.

H. The parties hereto agree that the party of the first part shall at its own expense, on or before May 15th, 1921, enlarge the said Sandy Branch Canal from the head thereof to Williams Weir on the south side of old Dry Creek to such capacity so that it will carry at all places with safety all water which it is agreed shall flow therein and be delivered to the party of the second part, that is to say, 16.34 cubic feet of water per second of time, plus all water lost by seepage and evaporation in delivering said water to said Highway No. 86 South, and also of sufficient capacity so that said canal will carry in addition thereto all water which the party of the first part shall flow therein, as in this agreement set forth, not exceeding, however, a total capacity of sixty-five cubic feet of water per second of time, and after the said canal shall be so enlarged, it is agreed that the cost and expense of maintaining said canal from the head thereof to the said Dry Creek, and the cost of maintaining the interests of the parties hereto in and to said Associated Pumps, and in and to said East Jordan Canal and the pumping plant of the parties to this agreement to be erected near the head of the Sandy Branch Canal before referred to, shall be borne and paid for by the parties hereto in proportion that a flow of 16.34 cubic feet of water per second of time, plus all water lost by seepage and evaporation in delivering said volume of water to said Williams Weir bears to a flow of sixty-five cubic feet of water per second of time, except that the cost for power and for oil shall be paid for by the parties hereto in proportion to the quantity of water actually pumped from time to time for the use and benefit of the parties hereto respectively, provided, however, that the party of the second part shall at its own cost and expense maintain all parts of said Sandy Branch Canal located north of the said Williams Weir.

I. It is understood and agreed that the party of the second part shall have the right at all times to inspect all of the work that is being done by the party of the first part in which the party of the second part shall be interested, pursuant to the terms of this agreement, and to ascertain all of the facts with respect to all matters and things set forth or referred to in this agreement, and at all reasonable times and upon demand the party of the first part will furnish to the party of the second part complete information with respect to said facts.

J. That in the management, regulation and control of the mutual interests of the parties hereto in and to said irrigating system, the respective boards of directors of the said parties shall confer together and shall make such provision, and shall designate, appoint, authorize and compensate such agents for the performance of the necessary duties in such management, regulation and control as the conditions and circumstances may from time to time require.

K. The parties hereto, as soon as the same becomes necessary, will install a standard and efficient measuring device, equipped with standard and accurate automatic recording gauges, at a point immediately south of the said Dry Creek on said canal, and shall likewise install a similar measuring device near the head of said Sandy Branch Canal, for the purpose of accurately measuring the flow of water flowing in said canal at said points; that the parties hereto will pay the cost of the construction and thereafter the maintenance of said devices in the proportion that a flow of 16.34 cubic feet of water per second of time, plus all water lost by seepage and evaporation in delivering said volume of water to said Williams Weir bears to a flow of sixty-five cubic feet of water per second of time.

L. The party of the first part agrees to pay all costs incurred in the distribution of its own water from said Sandy Branch, and the party of the second part agrees to pay all costs incurred in the distribution of its water from said Sandy Branch, except as otherwise provided in this agreement.

M. Whenever the cost or expense of any work is to be paid for by the terms of this agreement as the basis for determining the amount of any payment to be made by the parties hereto there shall be included as a part of such cost and expense all amounts paid out in settlement of claims for damage, loss, cost or expense caused by the doing of such work, or occurring in the carrying on of the same, besides all other expenses incident to the execution of such work, and in determining the annual cost of operating and maintaining the said pumps and canals with the fixtures or appliances therewith connected, including the appurtenances, there shall be included all amounts paid during such year, the amount paid in settlement of claims for damage, loss, cost or expenses caused in the operation and maintenance of said canal system, or of the flowing of water through the same, or by flooding or other damage from seepage therefrom, or breaks therein, and there shall also be included all amounts paid out for taxes or assessments thereon, or in payment of any other charge or expense necessary to secure and maintain any and all privileges and rights which may be required for the continued maintenance and use of all of said joint property, together with the appurtenances, provided, however, the party of the second part shall not be liable for any damage caused solely by the negligence of the party of the first part or solely by the negligence of its agents in the actual diversion of its water from said Sandy Branch Canal, and shall not be liable in any event for any damages arising in connection with the distribution of its said water after it has left said canal.

N. If either party to this agreement shall neglect to pay any amount by it to be paid, or to perform any act by it to be performed, as in this contract provided, then the other party not in default may pay said amount or may perform said act, and in that event the party in default shall pay to the party not in default the portion so due and payable on account of such transaction, with interest from the date of any such payment, at the rate of ten per cent per annum, from the date of maturity until paid. All obligations under this contract shall be paid by the parties hereto when the original obligation is incurred for which contribution is to be made.

This contract, with all of its terms, conditions and obligations, shall extend to and be binding upon the successors in interest and assigns of the respective parties.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed and their corporate names on their behalf by their undersigned officers, thereunto duly authorized, and their respective seals to be hereunto affixed, all on the day and year first above written.

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Draper Irrigation Company,
Salt Lake Co. Utah.
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DRAPER IRRIGATION COMPANY
BY Heber A. Smith
President.

W. W. Wilson
Secretary

Sandy Canal Company,
Utah.
Corporate Seal SEAL

SANDY CANAL COMPANY
BY D E Greenwood
President.

STATE OF UTAH)
COUNTY OF SALT LAKE)^{ss}

On this 15 day of July 1920, personally appeared before me, Heber A. Smith and S.J. Mickelson, who, being by me duly sworn, did say that they are the President and Secretary, respectively, of Draper Irrigation Company, a Utah corporation, and that the foregoing instrument was signed by them on behalf of said corporation by authority of a resolution of its Board of Directors, and the said Heber A. Smith and S.J. Mickelson each acknowledged to me that said corporation executed the same.

My commission expires
Dec 23-1921.

William W. Wilson.
Notary Public. SEAL
Salt Lake County. Utah.

William W. Wilson
Notary Public.

STATE OF UTAH)
COUNTY OF SALT LAKE)^{ss}

On this 13th day of November 1920, personally appeared before me D.E. Greenwood and W.W. Wilson who, being by me duly sworn, did say that they are the President and Secretary, respectively, of Sandy Canal Company, a Utah corporation, and that the foregoing instrument was signed by them on behalf of said corporation, by authority of a resolution of its Board of Directors, and the said D.E. Greenwood and W.W. Wilson each acknowledged to me that said corporation executed the same.

My commission expires
February 25th 1923

Niels Thompson
Notary Public SEAL
Salt Lake Co. Ut.
Commission Expires
Feb_ _

Niels Thompson
Notary Public.

The foregoing contract is made and executed by the parties thereto, with the following qualification and understanding:

THAT WHEREAS the 16.34 cubic feet of water per second of time, plus seepage and evaporation lost in delivering said water to its destination, as in said contract set forth, was and is intended to supply water to all stockholders of the Utah Lake Distributing Company owning 1634 shares of the capital stock of said company, and entitling said stockholders to receive their respective quantities of water through the said Sandy Branch Canal; and,

WHEREAS, it is now ascertained that the following named stockholders of said company, to wit: J.W. Fitzgerald, B.F. Fitzgerald, A. Fitzgerald, Melvin Fitzgerald, Roy Fitzgerald, S.L. Jensen, W.B. Smith, A.B. Ennis, J.S. Mousley, and J.S. Nelson, and perhaps a few others, owning about 150 shares of stock of the said Utah Lake Distributing Company, are unwilling at this time to receive their water from the Draper Irrigation Company, party of the first part; and,

WHEREAS, the party of the first part is obligated to supply to said dissenting stockholders the proportion of said water to which they are respectively entitled through the said Sandy Branch Canal;

NOW THEREFORE, it is agreed that there shall at all times be deducted from said 16.34 cubic feet of water per second of time, plus seepage and evaporation, as detailed in the foregoing agreement, a sufficient quantity of water to enable the party of the first part to furnish the said dissenting stockholders with such water as they are entitled to receive through the said Sandy Branch Canal, in accordance with the articles of incorporation of said Utah Lake Distributing Company, and as fast as the stock of the said Utah Lake Distributing Company, owned by said dissenting stockholders, is acquired by the party of the first part, the party of the first part will give to the party of the second part the first right to purchase all of the stock so acquired, at the rate of thirty-five dollars (\$35.00) per share for low water stock, and forty-five dollars (\$45.00) per share for full water stock.

Dated this 23 day of July, 1920.

S J Mickelsen
Sec

Draper Irrigation Company,
Salt Lake Co. Utah. SEAL
Seal

DRAPER IRRIGATION COMPANY
By Heber A. Smith
President.

W. W. Wilson
Secretary

Sandy Canal Company,
Utah. SEAL
Corporate Seal

SANDY CANAL COMPANY
By D E Greenwood
President.

Recorded at the request of Sandy Canal Co. Nov. 15, 1926 at 4:00 P.M. in Bk. #13 of 1st, Pgs. 106-108 (Signed) Lillian Cutler, Recorder, Salt Lake County, Utah, by Zina W. Cummings, Deputy. D-16-213-40, Water Index #3865.

#572643

NOTICE OF LIEN

To Whom It May Concern:

Notice is hereby given that the undersigned PETER McNEILAN, CLYDE LOVE, and LLOYD LOVE, doing business as... and residing at Salt Lake City Utah, hereby claim and intend to hold and claim a lien upon that certain land and premises, owned and reputed to be owned by ~~James J. Green~~ and situate, lying and being in Salt Lake City, County of Salt Lake State of Utah, described as follows, to wit:

Commencing 149 ft. S. of N.E. corner of Lot 2 Block 3 Plat B. Salt Lake City Survey, South 20 ft North 20 ft E. 5 Rods West 5 Rods North 20 ft, East 5 Rods to beginning to secure the payment of the sum of Seventy and no/100 (\$70.00) Dollars, owing to the undersigned for work done in plastering the outside walls and the chimney of the house aforesaid, as a in, on and about the house on said land.