

After Recording Return to:  
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7227586  
01/20/99 2:19 PM 22.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
MARC WANGSGARD  
PO BOX 45678  
SLC UT 84145  
REC BY:V VEGA DEPUTY - WI

7227586

**AGREEMENT COVERING THE RELOCATION OF  
THE WELBY CANAL AND CONSTRUCTION OF  
RELATED WATER DELIVERY FACILITIES WITHIN  
THE WELBY MANUFACTURING PARK**

This agreement is entered into this 18 day of January, 1999, among the **Welby Jacob Water Users Company**, a Utah non-profit corporation (hereinafter referred to as the "Welby Jacob"), **Eagle Pacific Industries, Inc.**, a Minnesota corporation (hereinafter referred to as "Developer"), and **West Jordan City**, a municipal corporation (hereinafter referred to as the "City").

**RECITALS**

A. Welby Jacob is a mutual irrigation company which delivers and beneficially uses water primarily from Utah Lake and the Jordan River and occasionally from the Provo River. Welby Jacob owns an irrigation canal known as the Welby Canal which courses through Salt Lake County and across certain unimproved lands owned by the Developer.

B. The Developer's unimproved lands are situated in Section 31, Township 2 South, Range 1 West, Salt Lake Base and Meridian. The Developer would like to develop those lands in a manner that requires changing the alignment of the Welby Canal, replacing the Welby Canal with an underground box culvert, and constructing other improvements to protect the interests of Welby Jacob and its shareholders.

C. The Developer also needs to construct a storm drainage system to accept any flood waters discharged from the Welby Canal and a new irrigation weir to deliver water to the City. The City is a party to this agreement because the storm drain system improvements and the irrigation facilities connected to the new weir will be owned by the City.

D. The parties desire to enter into this agreement to set forth the terms and conditions for the development of the unimproved lands.

BOOK 8233 PAGE 1406

## AGREEMENT

NOW, THEREFORE, the parties mutually agree as follows:

1. Duties to Run With the Land. The duties and obligations imposed under this agreement upon the Developer shall run with the land included within the development known as the Welby Manufacturing Park and bind all successors in interest to the land. Record notice of this agreement shall be provided by recording a copy with the Salt Lake County Recorder's office. The legal description of the lands comprising the Welby Manufacturing Park follows:

[SEE EXHIBIT A]

2. Project Works. The Developer shall, at its expense, perform all work under this agreement in accordance with the specifications and drawings attached hereto as Exhibit B (the "Works"), which have been approved by the City and Welby Jacob. No changes to the Works shall be made without the written approval of the City and Welby Jacob. The Works to be constructed under this agreement can be generally described as follows:

- a. An inlet structure, bar grate and trash rack to provide a transition between the existing Welby Canal and a box culvert.
- b. A four-foot by three-foot reinforced concrete box culvert designed to convey 28 cubic feet per second of water, with clean-out man holes along the box culvert at 200 foot intervals.
- c. A 30-inch diameter overflow structure and 30-inch diameter storm drain pipeline to convey flood or overflow waters from the box culvert inlet into the City's storm drain system.
- d. Realignment of a section of the Welby Canal to parallel a dedicated public street to be constructed within the Welby Manufacturing Park at 4460 West (Welby Park Drive).
- e. Construction of an irrigation weir and pipeline capable of delivering water from the Welby Canal to the City.

3. Warranty of Works and Bonding Requirements. The Developer hereby warrants to Welby Jacob and the City for 18 months the Works constructed pursuant to this agreement against defective materials, workmanship and design. The Developer warrants that the modifications to the Welby Canal are designed to safely transport 28

cubic feet per second of water, with no overflow from the canal. If the Works do not function as contemplated, the Developer shall at its sole expense reconstruct or modify the Works to correct the design defect.

4. Right to Stockpile Debris. A trash clean-out structure has been constructed as a part of the Works at a point where the Welby Canal enters the southernmost portion of the property described in Exhibit A. Welby Jacob shall have the right to collect and stockpile debris removed from the Welby Canal at the trash rack on Developer's property adjacent to trash rack in the fenced area. Welby Jacob agrees to periodically burn or haul the debris away from the stockpile area as frequently as reasonably necessary.

5. Ownership of Works. Upon completion of construction, the Works used to convey, measure and apportion irrigation water to the Welby Jacob stockholders (described in paragraph 2a, 2b, and 2d) shall be owned and operated by Welby Jacob. The 30-inch diameter overflow structure, 30-inch diameter storm drain and the new irrigation weir and pipelines (described in paragraph 2c and 2e) shall be owned and operated by the City.

6. Welby Canal Corridor. The Welby Canal historically has been located within a real property corridor having a total width of three rods with two rods lying east of the centerline of the canal for operation and maintenance of a canal roadway and one rod lying west of the canal centerline. Sections of the canal property corridor are owned in fee title by Welby Jacob while other sections are covered by a prescriptive easement in favor of Welby Jacob. Welby Jacob owns fee title to that section of the canal situated in the north ½ of Section 31, Township 2 South, Range 1 West, SLB&M. Welby Jacob owns a prescriptive easement over that section of the canal situated in the south ½ of Section 31.

The Developer will convey an easement to Welby Jacob over the realigned section of the Welby Canal in the south ½ of Section 31. At the location where the Welby Canal will parallel the public dedicated street (Welby Park Drive), the canal property will be reduced to a width of two rods by Welby Jacob conveying a one-rod wide strip of land to the Developer. After the exchange of deeds, the property interests of Welby Jacob will vest as follows:

a. Segment A. From the point where the Welby Canal enters the Welby Manufacturing Park to the point of intersection with Industry Circle, Welby Jacob will own an exclusive easement three rods wide. The Developer will have the right to construct improvements on the surface of the property which do not interfere with Welby Jacob's exclusive easement, and the Developer will retain the right to cross over the property.

b. Segment B. From the point of intersection with Industry Circle and thence commencing parallel along Welby Park Drive to the point where the Welby Canal intersects with the southern edge of the north ½ of Section 31, Welby Jacob will own an easement two rods wide.

c. Segment C. From the southern edge of the north ½ of Section 31, thence northerly parallel to Welby Park Drive to the downstream end of the realigned segment of the Welby Canal, Welby Jacob will own fee title to a strip of land two rods wide.

d. Segment D. The remaining canal corridor from the downstream end of the realigned segment of the Welby Canal to the point where the canal intersects with the new Bingham Highway, Welby Jacob will own fee title to a strip of land three rods wide.

The above segments are depicted on the plat map attached as Exhibit C. The deeds to implement the conveyances are attached as Exhibit D. Upon execution of this agreement, the Developer will pay Welby Jacob \$5,376 in consideration for the one-rod wide strip of fee title land conveyed to the Developer.

7. Public Utilities Encroachment. The Developer intends to construct utilities such as municipal water, sewer and public telecommunications beneath the Welby Canal corridor. These encroachments have been reviewed and are approved by Welby Jacob. The encroachments shall, at all times, be subject to the superior right of Welby Jacob to operate and maintain its facilities. The Welby Jacob will not be responsible for damage or destruction of the public utilities resulting from the operation and maintenance of the Welby Jacob facilities. Welby Jacob will use its best efforts not to damage or destroy utilities constructed within the Welby Canal corridor. If for any reason the location of the public utilities interferes with the flow of water or increases the burden of operating and maintaining the Welby Jacob facilities, the public utilities will be relocated off of the Welby Canal corridor at the Developer's expense.

8. Welby Jacob Easements Remain Paramount. All work performed by the Developer shall be performed at times and in a manner so as to avoid interfering with the delivery of water through the Welby Canal. All structures constructed within easements shall be subject to the paramount rights of Welby Jacob to operate, maintain and repair its facilities. In the course of operating, maintaining or repairing its facilities, Welby Jacob shall have no obligation to repair or replace any improvements within the Welby Canal corridor except repairs and emplacements required as a result of Welby Jacob's negligence.

9. Welby Jacob Ingress and Egress Rights. Welby Jacob shall have the right to unlimited ingress and egress to and from its facilities for the purpose of exercising, enforcing and protecting its rights to operate, maintain and repair the Welby Canal and all related facilities. The Developer agrees to provide reasonable access across any portion of the property described in Exhibit A to the extent necessary for Welby Jacob. The Developer agrees not to construct any fence along any portion of the Welby Canal without the written approval of Welby Jacob. The Developer shall convey to Welby Jacob a 15-foot wide right-of-way for vehicular ingress and egress from 8200 South Street to the box culvert inlet in the form attached hereto as Exhibit E.

10. Indemnity and Hold Harmless. The Developer agrees to defend, indemnify and hold harmless Welby Jacob and the City, their officers, agents, and employees, from any action, claims or demands related to injury or damage to any person or property that in any manner results from the construction activities contemplated under this agreement or from any of the privileges herein conferred upon the Developer.

11. Integration. This agreement constitutes the entire agreement among the parties and cannot be altered except through a written instrument signed by the parties. This agreement supersedes all prior agreements, whether written or oral among the parties or their predecessors related to the subject matter of this agreement. This agreement shall be binding on the heirs, successors and assigns of the parties.

12. Jurisdiction and Attorney's Fees. If any legal action is brought for the enforcement of this agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this agreement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action in addition to any other relief to which they may be entitled.

13. No Third-Party Rights. This agreement is intended to create rights, duties and obligations among only the parties and shall not be deemed to create any rights or liabilities in favor of any person or entity not a party to this agreement.

WELBY JACOB WATER USERS COMPANY

By Jack McKee  
Jack McKee, President

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STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On the 12<sup>th</sup> day of January, 1999, personally appeared before me Donna Evans, the Mayor for the City of West Jordan and the signer of the within instrument, who duly acknowledged to me that she executed the same on behalf of said City and with the authority of the West Jordan City Council.

*Rori Andreason*  
Notary Public

