

When Recorded Return To:
Wilkinson Water Company
4000 West Old Highway Road
Morgan, UT 84050

**AGREEMENT COVERING WATER SERVICE
TO THE FOX HOLLOW SUBDIVISION
AND THE COTTONWOOD COMMERCIAL PARK**

This agreement is entered into this 25th day of May, 1996, among the Wilkinson Water Company, a Utah corporation existing pursuant to the laws of the State of Utah ("Company"), Mike Babcock, an individual ("Babcock"), and the Wilkinson Family Trust.

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DEBBIE WEAVER, MORGAN COUNTY RECORDER
1996 MAY 28 14:17 PM FEE \$23.00 BY
REQUEST: BARCOCK MIKE

RECITALS

A. The Company is a Utah corporation operating as a public utility providing water service to customers within its franchise service area in Morgan County. Babcock is developing certain residential and commercial properties within the Company's service area, described as follows:

- A part of the NE 1/4 and the NW 1/4 of Section 30, T.5N., R.2.E., SLB&M, known as the Fox Hollow P.R.U.D. Estates.
- A part of the NW 1/4 of Section 30, T.5.N., R.2.E., SLB&M, known as the Cottonwood Commercial Park.

B. This agreement sets forth the terms upon which the Company will provide water service to Babcock's development. Morgan County is an approving party because the County will be involved in plat and permit approvals and will have control over the disbursement of the escrow funds.

C. This agreement will be recorded with the Morgan County Recorder's Office against the above two parcels to provide notice of the terms of water service to those who may acquire an interest in the residential and commercial properties.

AGREEMENT

1. Storage Tank. A 250,000 gallon water storage tank will be constructed by the Company. Babcock will reimburse the Company for 18 percent of the cost for the new storage tank. This covers Babcock's capital contribution for a maximum of 18 residential 3/4-inch and 21 commercial 3/4-inch connections. Babcock's capital contribution to storage includes the anticipated storage demands of the development for fire flow protection, culinary, and for incidental outside watering for 18 residential connections.

523.96 #70409 Agreement M120.447

The storage tank costs include the cost of acquiring easements for the pipeline, the tank site and other improvements, the acquisition and construction of the access road, design, construction, inspection, permits, and all other reasonably related costs.

The pipeline to connect the tank to the Company's existing water system will be located on property presently owned by the Wilkinson Family Trust ("Trust"). The Trust will grant a 20 foot wide easement along the alignment of the pipeline to the tank and a tank site, and will provide access across the Trust property for ingress and egress for the operation and maintenance of those improvements. The parties agree that payment to the Trust for the easement for the pipeline and the tank site will be based on \$4,000 per acre. The Trust will provide access free of charge.

The Company will obtain two bids from independent contractors for design and construction services and will select the lowest responsible bid.

Before the Company signs a contract with the contractor, Babcock and the Company must place in escrow with Morgan County 110 percent of their share of the then estimated costs. The escrow funds will be dispersed periodically to cover progress payments to the contractor and other project costs incurred by the Company. Disbursements must be approved by the Morgan County Engineer. Title to the land, easements, the tank, and all related improvements will be in the Company.

2. Fence Line Dispute. A boundary line dispute exists relative to the existing fence line located along the south boundary of the Fox Hollow Subdivision. The parties do not intend to resolve that dispute by this agreement and reserve their claims relative to that dispute. The parties agree that the pipeline to be constructed to connect the new tank to the Company's existing tank will be located on the Fox Hollow side of the existing fence line.

3. Well Cost. Babcock's participation in the existing wells will be \$3,900, which must be tendered to the Company on or before approval of the subdivision plat.

4. Other New Improvements. The Company will be obligated for 50 percent of the cost to supply 3-phase power to service the new pumps to be installed by Babcock. Babcock shall bear the total cost for design, construction, inspection and permits for the pumps and pipelines to deliver water to the new 250,000 tank; any pressure reducing stations, fire hydrants and all other improvements to serve the subdivision and the commercial property. With respect to the pipeline that will connect the new pumps to the new tank, Babcock will retain an engineer, at his cost, to design the size of pipe needed to meet the water use and fire flow demands for his 39 connections. The Company will have the option of increasing the size of the pipeline to the new tank to provide additional capacity for future demands on the

system, which are not related to his development. The Company will reimburse Babcock only for the increase in material costs due to increasing the size of the pipeline beyond Babcock's needs.

5. Approval of Design. The design and specifications for all improvements must first be approved by the Company and must comply with all applicable plumbing codes and local, state, and federal rules and regulations.

6. Power Costs. There will be power costs and ongoing operation and maintenance costs directly attributable to the pumps. Those costs will be included in the Company's rate base, which will be subject to review and modification by the Public Service Commission in the 1996 calendar year.

7. Water Rights. The Company's current policy requires developers to transfer title to one acre foot of water right for each new 3/4-inch connection onto its system. Babcock's 39 connections require 39 acre feet of water right. The Company holds title to 60 percent of water right Nos. 35-8191 and 35-8232 as a credit for Babcock under the terms of a Subordination Agreement, dated November 9, 1994, (recorded with the Morgan County Recorder's office as entry No. 67025). The number of acre feet of credit will be determined when a change application is approved to incorporate these two water rights into the Company's system. The State Engineer will fix the quantity that can be diverted under those rights, and his determination shall be conclusive as to Babcock's rights to a credit.

By way of example, if the State Engineer fixes the quantity at 28.8 acre feet of water, the credits will be applied first to the 18 residential connections and second as a credit for ten 3/4-inch commercial connections. Babcock must then acquire water rights for 10.2 acre feet and transfer those to the Company before having a right to the additional 11 commercial connections. The Company reserves the right to review any water rights which are proposed to be transferred to the Company to complete the 39 acre foot dedication requirement and may refuse to accept those water rights if in its determination those rights are not valid, will in any way interfere with other vested water rights in the drainage area, or for other reasons would not be in the best interest of the Company and its rate payers to accept title to those water rights.

Change applications must be filed and approved authorizing the use of the 39 acre feet of water by the Company. Babcock will pay the costs incurred by the Company in preparing, filing and prosecuting the change applications to final approval including, but not limited to, filing fees, administrative fees, and fees for professional services such as engineers and legal counsel. This was addressed in the November 9, 1994, Subordination Agreement.

8. Warranty to Improvements and Transfer of Title. Upon completion and final inspection by the Company, title to all water distribution improvements will be transferred to the Company without cost by bill of sale. Babcock shall fully warrant the improvements to be free from defects in design and construction for a period of one year from the date of transfer. The parties agree that 10 percent of the cost of said improvements will be held in escrow by Morgan County for one year and may be withdrawn by the Company in the event of a defect during the warranty period. Babcock shall reimburse the Company, to the extent the escrow funds are not sufficient to cure the defect, and reimburse the Company for all damages and cost incurred as a result of said defect.

Fee title or easements for the full use, operation, maintenance and replacement and repair of all improvements must be conveyed to the Company free and clear of all liens and encumbrances. A title report must be issued at Babcock's cost for review by the Company prior to transfer of title.

9. Connection Fees. The Company will charge \$500 for each 3/4-inch meter and connection onto the system. This covers the cost of the meter and the labor to make the connection. Babcock shall provide written notice prior to closing to all purchasers of the lots in the subdivision of their responsibility to pay this connection fee as a condition of receiving water service.

This agreement covers certain capital and water right contributions required to serve up to 18 residential and 21 commercial 3/4-inch connections. The approval of larger connections will require additional capital contributions and water rights, and would be the subject matter of a separate agreement.

10. Pending Water Rights Application. The Company has filed protests to exchange application No. E3510 filed by Sheldon Young and exchange application No. E3483 filed by Babcock. The Company claims the two applications violate the terms of the Subordination Agreement dated November 9, 1994, which provides in part as follows:

The Company is a Utah corporation doing business as a public utility providing water service to customers situated within its franchise service area in Morgan County, Utah, and holds a certificate of convenience and necessity issued under the authority of the Public Service Commission. The Company has the exclusive right to deliver water to the customers situated within its franchised service area. It is agreed that the use of water by the Babcocks in competition with the Company is prohibited. Any sale, lease, or arrangement to make water available to persons or entities located within the franchised service area of the Company as it now exists or may be expanded in the future shall be void. The only exception to the restrictions contained in this paragraph shall be

that Babcocks may divert water under Change Application No. a16671 from a well located on their residential property for their own personal uses.

Babcock disputes the Company's claims. It is not necessary to resolve the parties' relative claims as to the Subordination Agreement because under this agreement the parties have agreed that water service to Babcock's development will be provided by the Company. Babcock agrees to cause the two exchange applications to be withdrawn within 10 days of the execution of this agreement. The parties reserve their claims relative to the correct interpretation of the Subordination Agreement.

WILKINSON WATER COMPANY

By Harry Wilkinson
Harry Wilkinson, President

By Wayne Wilkinson
Wayne Wilkinson, Manager

Mike Babcock
Mike Babcock

WILKINSON FAMILY TRUST

By Harry Wilkinson
Its Trustee

APPROVED BY:

Michael J. McMillian
Michael J. McMillian, Chair
Morgan County Planning
Commission

STATE OF UTAH)
) ss.
COUNTY OF Morgan)

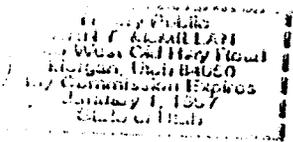
On this 25th day of May, 1996, personally appeared before me Harry Wilkinson, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he is the President of Wilkinson Water Company and that said document was signed by him in behalf of said company and acknowledged to me that said corporation executed the same.



Ann T. McMillan
Notary Public
Residing in: Morgan, Ut.

STATE OF UTAH)
) ss.
COUNTY OF Morgan)

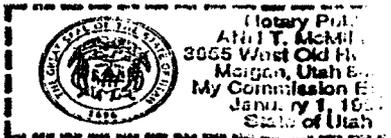
On this 25th day of May, 1996, personally appeared before me Wayne Wilkinson, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he is the Manager of Wilkinson Water Company and that said document was signed by him in behalf of said company and acknowledged to me that said corporation executed the same.



Ann T. McMillan
Notary Public
Residing in: Morgan, Ut.

STATE OF UTAH)
) ss.
COUNTY OF Morgan)

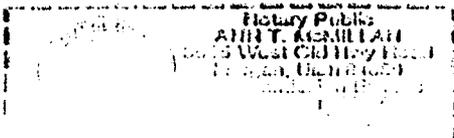
On this 25th day of May, 1996, personally appeared before me Mike Babcock, known to me to be the person who executed the within document and acknowledged to me that he executed the same of his own free will and for the purposes therein stated.



Ann T. McMillan
Notary Public
Residing in: Morgan, Ut

STATE OF UTAH)
) ss.
COUNTY OF Morgan)

On this 25th day of May, 1996, personally appeared before me Harry Wilkinson whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he/she is the Trustee of the Wilkinson Family Trust and that said document was signed by him/her in behalf of said Trust and acknowledged to me that said Trust executed the same.



Ann T. McMillan
Notary Public
Residing in: Morgan, Ut