

MUTUAL WATER SUPPLY AGREEMENT
(LAST UPDATED ON 1/4/2024 BY CARL MACKLEY)

This MUTUAL WATER SUPPLY AGREEMENT (“**Agreement**”) is made and entered into by and between the Tremonton City, a municipal corporation organized under the laws of Utah (“**City**”), and Bear River Water Conservancy District (“**District**”), a water conservancy district organized under the laws of the State of Utah, on this ___ day of _____, 2024 (“**Effective Date**”). The City and District may also be referred to as “**Party**” or “**Parties.**”

RECITALS

A. WHEREAS, the City owns and operates a water distribution system and is empowered to acquire water and water rights; to construct the necessary facilities to produce, treat, store, and distribute its water; to exchange water rights or sources of water supply for other water rights or sources of water supply to meet the needs of its water service area; and to enter into contracts to purchase water from or supply surplus water to public and private entities; and

B. WHEREAS, the District operates a water distribution system and is empowered to acquire water and water rights; to construct the necessary facilities to produce, treat, store, and distribute water; and to enter into contracts with public and private entities to purchase, sell, or exchange water; and

C. WHEREAS, the City is currently in need of additional sources of water supply to serve customers within its service area, and therefore desires to purchase or exchange its source of water supply for water from the District’s water supply; and

D. WHEREAS, the District provides wholesale and retail water service within its service area, and is willing to sell or exchange water from sources within its ownership or control to the City; and

E. WHEREAS, the District desires to exchange its source of water supply for water from the City to better serve retail customers within its service area; and

F. WHEREAS, the City provides water service to its inhabitants, and has water from water sources within its ownership or control that it is willing to exchange with the District.

NOW, THEREFORE, for the mutual promises and other good and valuable consideration described herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Water Supplied.

- (a) District Water. The District shall annually make available for diversion by the City 350 acre-feet of water, diverted at a maximum flow rate of 500 gallons per minute (“**District Water**”). This flow rate limitation may be allowed to increase under temporary water emergency circumstances as such may exist and as system capacity is available. The first 150 acre-feet of the District Water shall be “**Block 1 Water**”, with the remaining 200 acre-feet constituting “**Block 2 Water**”. The City shall pay for the 150 acre-feet of Block 1 Water annually, regardless of the amount of Block

1 Water which is diverted by the City. If the City needs more water than is supplied in the Block 1 Water, it may purchase Block 2 Water on an as-needed basis. The City shall only be obligated to pay for the quantity of Block 2 Water it receives from the District. Nothing in this Agreement shall be construed to preclude or limit the ability of the District to make additional water, in excess of the Block 1 Water and Block 2 Water, available to the City for purchase.

- (b) City Water. The City shall annually make available for diversion by the District 200 acre-feet of water, diverted at a maximum rate of 285 gallons per minute (“**City Water**”), on an as-needed basis. The District shall only be obligated to pay for the quantity of City Water that it receives from the City. Nothing in this Agreement shall be construed to require or preclude the ability of the City to make additional water, in excess of the City Water, available to the District.
- (c) Surplus Water. For the purposes of determining the applicability of and compliance with Article XI, Section 6 of the Utah Constitution and associated statutes and regulations, the City Water shall be considered to be exchanged with the District Water if the total annual diversion of City Water by the District is less than the total annual diversion of District Water by the City. If the District diverts a greater total volume, the excess volume shall be considered part of the City’s surplus water.
- (d) Supplying and Receiving Parties. For the purposes of this Agreement, the Party making water available for diversion shall be referred to as the “**Supplying Party**”, and the Party diverting the water shall be referred to as the “**Receiving Party**”.

2. Water Delivery. The District shall make the District Water available to the City from three points located in the District’s Bothwell System shown in **Exhibit “A”**. The three locations are: 1.) UDOT Meter Station located approximately 11900 N. 8800 W. in Tremonton, 2.) Bypass 2 Meter Station located approximately 2660 W. 1000 N. in Tremonton and 3.) Bypass 3 Meter Station located approximately 12150 N. Harley Drive in Tremonton. The City shall make the City Water available to the District at the Tremonton Booster Station, located at approximately 5095 W. 12000 N. in Box Elder County as shown in **Exhibit “B”**. Each Party shall purchase, construct, operate, maintain, and/or replace, at its sole expense and without any cost or obligation to the other Party, any water meters, delivery lines, appurtenant fixtures, or other facilities necessary to divert water at the point where the Party takes the water from the other Party.

3. Water Quality. The Supplying Party shall use reasonable efforts and endeavor to provide water that is the same quality as the water used in the remainder of the Parties’ respective retail water systems.

4. Metering.

- (a) The water received by each Party shall be metered at the point where the Receiving Party diverts its water from the Supplying Party’s water system, as described in Section 2 of this Agreement. The volume diverted by the Receiving Party shall be metered and recorded monthly by the Supplying Party, with such records provided to the Receiving Party on a monthly basis.
- (b) Each Party shall be responsible for the installation, maintenance, testing, and replacement of its own meter(s). Each Party shall have the right to access and read the meter of the other Party.

If a meter is found to be inaccurate by more than 5%, the meter shall be repaired or replaced by the Party owning the meter as soon as is practicable. Until the meter is replaced, the amount of water delivered in that calendar year shall be adjusted by the accuracy factor measured by the expert. If the Parties agree that a meter is failing or has

failed, whether temporarily or permanently, the meter readings from the same dates in the previous calendar year shall be used until the failure is remedied. If the inaccuracy or failure of a meter is contested by the Parties, an expert that is mutually acceptable to the Parties may be hired to test the allegedly failing meter. If the meter is accurate within 5%, the cost of the test shall be paid by the Party that alleged the failure. If the meter fails the test, the cost of the test shall be borne by the Party that owns the meter.

5. Terms of Payment.

(a) Payments Due.

- i. Block 1 Water. The City shall pay the District for the Block 1 Water in quarterly installments, assessed on January 15, April 15, July 15, and October 15 of the calendar year in which the District Water is supplied.
- ii. Block 2 Water and City Water. No later than January 31 each year, the City and the District shall compare the amounts of Block 2 Water and City Water diverted by each respective Party in the previous calendar year. The Party diverting the larger quantity of water shall pay the other Party for the difference in the Parties' respective diversions. Such payment shall be due and payable no earlier than fifteen (15) days following the cooperative calculation by the Parties of the amount due.
- iii. Penalties. Each Party shall pay in full the amount due within 30 days of receiving a written invoice from the other Party. The Parties may assess interest on late payments at an annual interest rate of twelve percent (12%) (based on a 360-day year comprised of twelve 30-day months).

(b) Water Rates.

- i. Block 1 Water. The City shall pay the District's current wholesale price per acre-foot for the District Water, as set by the District's Board of Directors for the District's wholesale water customers (the "**Wholesale Rate**"). Beginning on the Effective Date and for the term of this Agreement, the City shall pay to the District the Wholesale Rate for the Block 1 Water. The amount due for the Block 1 Water shall be calculated on the Effective Date until January 2 for the first year of this Agreement and recalculated on January 2 of each subsequent year this Agreement is in effect, prorated for partial calendar years.
- ii. Block 2 Water. If the City has diverted a larger quantity of water than the District diverted from the City's system in a calendar year, the City shall pay the District the difference in diverted water. Specifically, the City shall pay the District the Wholesale Rate for the quantity of Block 2 Water used in a calendar year, which shall be calculated on the basis of meter readings taken on December 31 and the Wholesale Rate in effect on January 2 of the calendar year in which the Block 2 Water is diverted.

The initial meter reading for Block 2 Water shall be made on the Effective Date of this Agreement. If Block 2 Water is used by the City in calendar year 2023, the Wholesale Rate shall be the rate as of the Effective Date.

- (c) City Water. If the District has diverted a larger quantity of water than the City diverted from the District's system in a calendar year, the City shall pay the District the difference in diverted water.

11. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

12. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties and supersedes any prior understanding, representation, or agreement of the Parties regarding the subject matter hereof.

13. Incorporation of Recitals and Exhibits. The recitals and exhibits contained in this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

14. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by any Party in connection with this Agreement shall be binding only if evidenced in writing signed by both Parties.

15. No Waiver. No delay or failure by either Party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly provided herein. Either Party may, by written notice delivered in the manner provided in this Agreement, but shall not be under obligation to, waive any of its rights or any conditions to its obligations hereunder, or any covenant or duty of any other Party. No waiver shall affect or alter the remainder of this Agreement, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

16. Persons Bound by Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

17. Attorney Fees. In the event that any action is filed in relation to this Agreement, the unsuccessful Party in the action shall pay to the successful Party, in addition to all the sums that either Party may be called upon to pay, a reasonable sum for the prevailing Party's attorney fees and costs.

18. Authorization. Each individual executing this Agreement does thereby represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth for which he or she signs.

19. Rights and Remedies. The Parties shall have all rights and remedies provided under Utah law for a breach of this Agreement. Such rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each Party confirms that damages at law may be an inadequate remedy for a breach of any provision hereof and the respective rights and obligations of the Parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

20. Time is of the Essence. Time is of the essence regarding the dates and time constraints set forth in this Agreement.

21. Necessary Acts and Cooperation. The Parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement that are necessary and proper to make effective the provisions of this Agreement.

22. Severability. In the event that any provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision herein contained. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be valid to the extent of the scope or breadth permitted by law.

[Signatures on following page]

DRAFT

IN WITNESS THEREOF, each Party to this Agreement has caused it to be executed on the date indicated below.

CITY OF TREMONTON

**BEAR RIVER WATER
CONSERVANCY DISTRICT**

Mayor

Chairman

Attest: _____
City Recorder

Attest: _____
Vice Chairman

Date: _____

Date: _____

STATE OF UTAH)
)
) :ss.
COUNTY OF BOX ELDER)

On _____, 2024, personally appeared before me, a notary public, _____, the Mayor of the City of Tremonton (“**City**”), and _____, the City Recorder, who acknowledged that they executed the above instrument for and on behalf of the City pursuant to a motion or resolution duly adopted by the City Council.

Notary Public

STATE OF UTAH)
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) :ss.
COUNTY OF BOX ELDER)

On _____, 2024, personally appeared before me, a notary public, _____, the _____ of Bear River Water Conservancy District (“**District**”), and _____, the Secretary of the District, who acknowledged that they executed the above instrument for and on behalf of the District pursuant to a motion or resolution duly adopted by the Board of Directors.

Notary Public

EXHIBIT A

Locations of District Water Delivery to City



EXHIBIT B

Location of City Water Delivery to District

