



City of LaVerkin

435 North Main St., La Verkin, Utah, 84745
(435) 635-2581 Fax (435) 635-2104
www.laverkin.org

LA VERKIN CITY WATER BOARD AGENDA

Thursday, November 21, 2024, 11:00 a.m.

435 North Main Street, La Verkin, UT

- I. **Call to Order:**
- II. **Approval of Minutes:** October 31, 2024 minutes
- III. **Business:**
 1. Discussion regarding the Water Re-Use Agreement.
 2. Discussion regarding the Re-use Authorization Contract.
- IV. **Public Concerns for Board Consideration:** Identification of issues for consideration at future meetings.
- V. **Board member concerns**
- VI. **Adjourn**

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (Including auxiliary communicative aids and services) during this meeting should notify Nancy Cline, City Recorder (435) 635-2581, at least 48 hours in advance.

Certificate of Posting

The City Recorder does hereby certify that the agenda was sent to each member of the board, sent to the Spectrum newspaper, posted on the La Verkin City website www.laverkin.org, the Utah Public Meeting Notice website <http://pmn.utah.gov>, and the city office buildings at 435 N. Main and 111 S. Main on November 14, 2024.

Nancy Cline
City Recorder

City of La Verkin

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LA VERKIN CITY WATER BOARD MINUTES

Thursday, October 31, 2024, 11:00 pm.

111 South Main Street, La Verkin, UT

Present: Doug Wilson, Kelly Wilson, John Valenti, Kenneth Cox, Kris Gubler, Kyle Gubler, Derek Imlay, and Nancy Cline.

I. Call to Order:

The meeting was called to order by Doug Wilson at 11:00 am.

II. Approval of Minutes: June 27, 2024.

The motion was made by Mayor Wilson to approve June 27, 2024, minutes, second by Ken Cox. Kelly Wilson-yes, Imlay-yes, Valenti-yes, Cox-yes, Kris Gubler-yes, Doug Wilson-yes, Kyle Gubler-yes. The motion carried unanimously.

III. Reports:

A. Water Purchase

Kyle Gubler explained that this is the report he gives every year. The top report is a list of people willing to sell, and it might be outdated because he had contacted three of them, and they haven't been inclined to sell at this point. However, they didn't say to take their name off, so he will make another call and just say if you're willing to sell, the city will buy it, and if not, we'll take your name off the list.

The other report is from people who are not necessarily interested in selling but are past due at this point, so we've sent them a letter that states that they're in default. However, as per the old La Verkin Canal Company's rules, we must give them six months' notice, so they've got until March. We're in there before they must bring it current. At the end of the six months, they'll get a letter from our attorney, who will say that if they don't pay, the water will go to the city. Once it goes to the city, the city can't sell it.

The next page is just the water we purchased since 2021. In 2021, the city established that it's worth \$2,000 a share. People occasionally will come and say they want to turn the water back, and as you can see, the last time we did it was a little over a year ago. We bought some from the home company.

Ken Cox asked if the rule that they have six months is one of the canal company's bylaws.

Kyle explained that part of the deal was that we give people six months when it transferred to the city. They weren't aggressive about going out and collecting it. Every year, we send them late notices. And if they don't pay them, they receive a letter from our attorney that states the amount due and gives them the final date, and they have to pay that plus anything that's accrued, interest or, penalties, or if there's been another assessment or whatever. And at that point, if they don't do it, then the city will take the water back. Although when the city takes the water back, he thought there was a stipulation in there that if they want their shares back, they come back three years later and say they want their water, they can get that back from the city as long as they pay everything and the assessments that would have happened and all the fees. When we first started doing this ten years ago, a lot of the people who ended up going to the city attorney letter it was people that lost their house and just assumed the water was part of the house, which it's not, for those of you who don't know, it's its own entity, so if you have a share of water and you lose your house to the bank or whatever, the water does not go with the sell the house, you can keep the water. And you can use the water anywhere on the bench. It can only be used in La Verkin.

Ken Cox commented if he sells his house, can he still keep the water that is in his name?

Kyle responded yes, but it must be used in La Verkin.

Kyle continued to say the mayor will report on that, too. We've got to finally convince them to pay us for it, reimburse us for the water that we haven't been using and they've been getting.

Doug asked about the secondary water, the unpaid. How do we ensure that the shareholder, the person, or the representative receive notice? Is it certified?

Kyle answered the original letter that was sent out in the mail. The attorney's letter goes certified. So, they will get that. Most of these people, honestly, not all of them, but probably 70% are there every year, and then they just forget. They got that letter from the attorney.

B. Culinary Water Management update

Derek reported that he provided a chart this time. We participated with the Riverwood Master we had back in 2018 the Conservancy District had all the cities start to report their water use to them monthly, so at the end of every month, once we do a read, then we provide that information to the Conservancy District, and then those are the numbers that they use as they're anticipating current use as well as anticipated use. From 2018 to just the first of this year we transitioned down quite a bit from month to month, from year to year. So, our usage decreased in the amount of water we were taking out. And this is the springs, the Toquerville and Ash Creek Springs, which was a good sign because that meant that as this was transitioning down, our irrigation was going up, and that's what we wanted. We want more use of irrigation water, giving more use to culinary water. In the last three months of this, starting in April and March, you'll see the red line up above. You see that we're way higher than we have been on average over the last five years. That's because of our two big projects. So, the hot springs and the Ash Creek treatment facility cannot run irrigation water through the motors of their water trucks and so they have to use culinary water and so that's why they're putting down millions of gallons of water that's why you're seeing that transition being so steep over the last four to five months. We have 714-acre feet that historically have not come close to using. He believes that we could live 100% from our rights out of the springs and not touch the district's tank right now.

Doug asked if there was also a flow restriction.

Derek answered yes. It depends on the drought, and that will be regulated by the district, but most of the time, we're open fully. We've not been restricted to any flow for the last three years, and we haven't exceeded that. If we were restricted at Toquerville Springs, we'd pick up the other part off Ash Creek Springs, but the less we can stay off Ash Creek, the less we're getting charged the additional power.

Doug asked if this includes Toquerville and Ash Creek, 714.

Derek replied Yes, because we take this read right off the Riverwood meter, so after the two have joined together, we come down this way. It was surprising how well we were decreasing that amount of water, and he still thinks that we could run solely from our rights and not be impacted by the Conservancy District. We only use that upper tank because we're paying for it monthly, 4.425 million gallons. Once the topside gets developed, the more we can transfer up to the topside.

Kyle asked if 4.4 million gallons will go towards whatever happens up there once that gets developed.

Derek answered no because he thought that would be permanently charged down here because that was part of that 99-year agreement. We're paying for it, but I think it was for 295 connections down here is what that equals out to be. We still have technically 700 connections that can be transferred to the topside. The more we can live

within what we've already contracted out, because our contract rate is less under the agreement than the going rate is right now, the better off we'll be because once they surpass that, then they're going to be having to buy the water from the district at a higher rate. We've done well. We went through four weeks, during which the crew had to work on Saturdays and Sundays due to the number of leaks that were happening. We usually don't call the crew out unless it damages the road more than we want. We must make that decision whether it can wait or not. We went through quite a phase, but we're in pretty good shape right now as far as that's concerned.

C. Irrigation Water management

Derek reported that the irrigation chart is the black one. We started keeping track. We've kept records since we took over the company or since the city purchased the company. This chart goes from 2018 to 2024. You can see this year is yellow. Of course, October won't show until we do our reads tomorrow.

Kyle asked if they anticipated that being higher than normal because it was hot.

Derek replied, this read seems to be less, which is surprising. But that could be because we've got two major fields offline now. The park, which is always running, and what the hot springs have. He still thinks we'll be within the range that we normally have been. Over the past ten years, he still thinks we'll be around that 700 acre-feet that will continue to go downriver.

Doug asked what the total number of water rights is.

Derek answered 2,620.

Doug asked if the city had 2,600 acre-feet.

Mayor Wilson answered we have 1900.

Derek clarified we're using about 1,900 acre-feet, so 700 acre-feet are going downriver.

Doug asked if this acre foot correlates with our usage. So, then you add all those up to get our total? We've got 2,620, and we're averaging what we used last year.

Derek commented that we're averaging probably about 1,700, 1,800 because we've been about 713-acre feet, and we've been letting it go downstream on average over the last 10 years.

Kris asked where does that go? Does that go to the water distributor? Do they pay?

Kyle replied they hadn't paid us in years, but we would get them to pay for it.

Mayor Wilson added that they were going to make a proposal for us. We'll talk about it here in a minute.

Doug commented that Derrick and I are going to take a little field trip because, initially, the water district had planned to pump out of the diversion dam up there, and they have a pond site. And you could put a pump site and station, and there's power there already. You could run right up that road with a pipeline. And you could provide irrigation water for the topside. So, whatever agreement we want to get into, we don't want to commit to it for the long term.

Kyle added that the agreement is that whatever we give them, they pay for, and whatever we keep, we keep. But we can take it back at any time.

Mayor Wilson agreed they don't have any rights to it other than the excess they're willing to pay for, which they should have been paying all along.

Derek added that the last thing is that we technically shut off the irrigation on the 15th of November because that ends on a Friday, and we need a day to drain down and winterize. We will wait until the 18th on a Monday to do it because our crews are gone by 11 on Friday. We need to take the proper time to get everything drained out for the freeze. He will put that on the water bill.

Kyle reminded them to use the Yopify app.

Doug clarified that the irrigation will be off on November 18th.

D. Water District Irrigation Study

Mayor Wilson reported that the city is having an irrigation study done. The water district and the city have both paid for that. We got a grant to do the study. Half of it is paid for through the grant. Then, the other half is paid for by the water district and the city. We're paying a little more than half of that because it will benefit us. A little more than the water district, but they're doing it together. They will determine and recommend to us at the end of the study what our water rate should be for the irrigation water. Because right now, it's not paying for itself. The city has been subsidizing it to get us through the year. And they're also looking at a settling pond option.

1. Potential location for storage pond.

Mayor Wilson asked them to look at the map that they got in their packet, they proposed three different spots for a settling pond. Based on our discussion with them in the last meeting, we thought that Cottonwood Hollow would be the best spot for it. He asked Derek if he had met with the Strattons.

Derek commented yes, he met with Interstate Homes. They were actually very comfortable and approved of the spot. And they're already reworking the trails that go through there.

Kyle agreed that would be a good place to put the pond and a trail around it.

Derek commented that it's nine acres of land.

Mayor Wilson added that it would be a good little pond. For a park and they would build it so that part of its cement and they can go in and clean out. It would be a settling pond for the irrigation water.

Kyle asked if it would be high enough to have pressure in town.

Mayor Wilson answered he thought they calculated the total pressure that we're at now. It's not going to increase anything. It would meet what we had and then if you look on the yellow line there where they're building the treatment plant that's the lines for the reuse water that they're going to take on over to the way they've got it right now routed over to the Toker settling pond, that they use for their irrigation and eventually it will go from there, over to Chief Toker Reservoir. That's where the reused water goes and eventually it'll come back, possibly come back to us as irrigation water out of the Chief Toker Reservoir. We will trade our Virgin River water for Chief Toker water so that we have clean water for irrigation. And we'll keep the water rights, but we'll just trade water for water. We will have ownership in that reused water.

Doug asked where the tie-in would be to that system.

Mayor Wilson responded they haven't figured out where that's going to be. Maybe tie it down at the treatment plant to get to our system and maybe they can pump it in. That is part of the study they'll do. The whole idea behind the reuse is that we would save all that water and use it as secondary water and then start using Virgin River water. It is really good water for them to treat and make into culinary water.

Ken asked if this treatment plant treats Toquerville and La Verkin.

Mayor Wilson replied that it treats La Verkin, Toquerville, and a little of Hurricane. Across the bridge, that area right there, before you get to the top of the hill where the stoplight is, anything on this side flows back to the La Verkin pump station. That will flow back to the working pump station, and once the treatment plants are in, the pump station will go away. Everything will flow to that spot. Then, gravity will feed around the treatment plant.

Ken asked when the treatment plant would be online.

Mayor Wilson responded that they're anticipating the year from January.

Mayor Wilson reported it's a different process than what St. George City's using. They have the big cement basins that Virgin Cities water will go to, and possibly part of Leeds might. They're anticipating January 2026 for completion. And it has the capacity to be increased from what it is now to 3 million gallons a day. He thought it's a little over half a million gallons a day between the two cities currently. They'll treat it to what they call type 1. It can be used for irrigation, you don't want to drink it, but you can irrigate with it. We'll have more information when they are done with the study and make a recommendation to the city on what we do with our irrigation system. Hopefully we'll be able to improve the system. The districts talked a little bit about maybe giving us the 18-inch line that goes down Main Street all through town. If they would give us that we could get people to tie into that line and get a lot of those backyard lines out of our system. and they can come off the street and that would save us a ton of money.

Doug asked Fay to explain the re-use water contract.

Fay explained each community that's part of the regional water supply agreement, with the district has received the same agreement. For the water to be treated down here, stored, and then we're able to get that water back from Chief Toquer reservoir. Along with that, there's another agreement that's going to be specific to La Verkin that they're working on. The excess irrigation water. We're waiting for that agreement to be made so that we can consider both agreements at the same time. And when we get that other agreement in place, then I'm sure we'll have discussions with the water board, with the city council, and so forth, before we take any action on that. But that, in a nutshell, is what this does. It authorizes our water to be part of this re-use agreement.

Mayor Wilson added one of the canal companies in the county here is to trade their water, not their rights, trade their water for reuse water. Like Hurricane has a lot of rights out of the Virgin River for their irrigation, they would trade Hurricane's rights for reuse water. They could irrigate with re-use water, and then the Virgin River water would go down into the reservoirs, and they could treat it for drinking water. The canal companies below the Virgin Dam, their water's not that good, and it wouldn't work with us because we own the water. The city owns irrigation water. They're willing to trade with Hurricane water for water, and we don't have anything to trade with because we already own it. But they're now willing to pay us for the excess water that we don't use, and they don't want to just let us store it in their reservoirs and use it later, they want to just pay us and then they would have the water, they'll sell it back to us once they treat it, and when we need it. And if we need the irrigation water, for on the topside, if we want to use it up there, we can.

Ken clarified basically this agreement is we're just telling the district that we're tired of giving you the water so we're going to just stop or else you're going to pay us for it. That's the leverage we have. Comes from this

treatment plan goes up in there and gets treated and goes into the Chief Toquer reservoir and we put it into irrigation system. Does that solve the problem of us not having meters on the irrigation system that the Virgin River water will ruin once we get good clear water then we will then start metering our secondary water.

Mayor Wilson explained the State would require us to meter the water.

Kyle explained they already have it where it's mandatory, but we're an exception to it because of our water quality. And Hurricane is too, but Hurricane's opted to put the meters in anyway.

Doug replied but won't the Virgin River still be a backup in case we get some dry years?

Kyle explained we will never ever get rid of our water right in the Virgin River. We can't.

Doug asked if we could still run it through our filters. If we decide.

Mayor Wilson added if we get the settling pond, that will help as well. Hurricane right now settle their water in a settling pond before they put it into their irrigation system.

Kyle commented that Hurricane's irrigation is also year-round. Because our pipes are not buried properly, we leave it out for 3 months out of the year. But you could see in the future, which would also generate more revenue for us, because then we could start charging instead of just 9 months, we could charge for 12 months.

Mayor Wilson remarked eventually we want to get all those lines into the street and service them off the street, and out of the backyards. Because when they did the system, they just put it in the old existing ditches and they're behind people's houses.

Ken added realistically, with the grant they had, that's probably the only way they could do it. Because they didn't have to dig up the streets and fix the streets, they just went in ditches and put the pipes in, which saved them a whole lot of money putting the system in.

Mayor Wilson commented over time, we've been able to replace some of those lines, but we still have quite a few to do.

Doug's biggest concern with any of this would be that our irrigation rates, because of metering, because of re-use water agreement, because of whatever the case may be, that our irrigation rates begin to climb to the point where people don't see the benefit of connecting it. And I don't mean we should subsidize, but at the same time, we should profit from it.

Mayor Wilson commented that's going to happen. The rates right now haven't gone up for 10 years.

Kyle added it's based on how many shares you own.

Mayor Wilson responded we don't want to penalize the large users. That's the whole idea behind it is, but you have to pay enough to at least maintain your system. And you really should pay enough to maintain your system and replace it over time. That's what this study's going to do. They'll tell us what price it needs to be, and enough in there that you can, over time, start replacing it.

Doug added that we should stay on top of looking for grants for replacement. There are a lot of repair and replacement grants.

Kyle replied Zach is supposed to be doing that.

Mayor Wilson added he keeps telling us that they're looking for money for us to help us upgrade our system. And that's one of the things that we talk to them about as far as maybe using that line they have. They have an 18-inch line that goes right down Main Street that they're not using. He thought they had never ever used it, they can transport water back and forth, and that was the idea of taking it out of, I think, La Verkin Creek.

Doug commented when the district put that in he was the project manager over at the time, and Ron specifically said that was for La Verkin City, this could become their backbone, we need to replace that piece of junk pipe that's sitting in their ditch. He was doing it for us, 100%.

Mayor Wilson added if they would give that to us, we could tie off of that line, that would save us millions of dollars.

Kyle asked when the survey was supposed to be done. It should be done by March.

Mayor Wilson agreed in March. They'll have some recommendations for us and the districts.

Kyle commented it all comes to this board before it goes to the City Council.

Mayor Wilson added as far as the re-use, they want us to pass that re-use from the City Council. Is this board okay with us approving the re-use agreement with this water district?

Doug replied he wouldn't dare approve it yet.

Fay replied he had read it, and he had no concerns with the re-use agreement. He is awaiting the other agreement that they're going to be providing.

Doug suggested that everybody on this board read it before we approve it.

Mayor Wilson replied that he hadn't read through all of it, but he had read through most of it. He suggested meeting again before the end of the year to approve it.

Doug replied it's a significant enough agreement.

Ken recommended they meet again before the end of the year.

Mayor Wilson believed that part of it needed to be passed to receive the federal money that they received. He suggested a special meeting on November 21st at 11:00 a.m.

Fay commented that when we get this other supplemental agreement from the ministry, we can make that available for you.

Doug's main concerns are the metering issue and whether they're going to go through another round of grant money to help some of the cities that don't have cash.

Mayor Wilson agreed that is a concern for us, too; the state would provide 75% of the money to put the meters in if you did it the first two years, and then they cut back to 65, and it just kept going down. They wanted everybody to be metered within 10 years. And if after 10 years they won't pay anything for it, we've been

exempt. He thought once we get to where we have clear water that we can meter, they should give us 75% but he didn't know if they would.

Kyle commented that they say they won't and that's why Hurricane went in. If they come in 10 years from now and they tell us, okay, now you've got to put meters in and it's going to cost us four million dollars. and we don't have the money, what are they going to do? We can't charge that to the users, there's no way and he thought that the state's going to have to either make an exception, or we just don't put meters in.

Mayor Wilson added, and then they said that if you don't do it, you won't be eligible for any. But we're meeting with our legislature people next Wednesday; that should be a topic that we bring up.

Doug wondered if we could still have an exemption because we still have to filter and occasionally if there's an issue, we could run water back through our system and it could be too dirty. He would hate to put meters in and ruin them.

Kyle agreed the mayor made a good point, even with that re-use water, and the settling pond, if the meter companies included it in their warranty, they could.

Doug asked everybody to read this water reuse agreement.

John commented that it seemed like they even put some enforcement mechanism in this contract. We're not up to standard; it seemed like there's an enforcement mechanism through the water district. At the end of the agreement, it has a catch-all phrase that talks about being able to enforce. And that's what concerned him because it looked like some of the impacts of that agreement were already on the first of January of this coming year.

Kyle replied he would argue that the city was already metered. There's a great big meter and when water comes into town everything that goes through that is metered. It's just the whole town.

Doug asked if we have a master meter.

Mayor Wilson replied that we have a master meter, and some people don't even have meters on their system.

Kyle added that we're metered and know how much water we use. That's where you get all the water. It's just one meter for the whole city.

Doug commented that the small meters are the problem because as soon as you get up to four inches or above, you can use a magnetor.

Mayor Wilson replied that even the small meters and the magnetors are not warranted. Our big magnetor on this system here is hooked up to power, and most of the magnetors are powered by power. There are some now that have battery-operated ones that are good for about 10 years, but they're just way expensive. However, the smaller ones now that will meter this still won't give you a warranty. They have small meters now that have nothing inside; they'll just meter it with water going straight through. It's similar to what they are, and they're run by a battery, and the batteries are good for 10 years.

Doug commented that one of his deals was putting in all the meters. They put in hundreds, and they used some cell phone signal; he thought they had been working well.

Mayor Wilson commented they would. That's good clean water. But because you're coming off a settling pond up there, the warranty on those is not good.

Doug added they may run into an issue where we need to run it off the river, and he would hate to destroy a bunch of meters because that's what has happened before.

Derek replied that they have some test meters in our system. They will pull them after they get the water out and test them. They have five or six of them in the system.

Mayor Wilson commented that the reason we have the exemption is the quality of our water.

E. Ash Creek Sewer District meeting.

Mayor Wilson reported that we did a plant tour for our meeting at the end of August. They're moving right along on that.

Ken asked what the pipeline that was going down along the river was.

Mayor Wilson answered that it was the sewer line to the plant. They've run two 10-inch lines to the little working pump station near where we live. In Confluence, they're running it down the old steel line, inside of the steel line that goes down to the power plant. Two lines, two 10-inch lines, and they're running it all the way around to the treatment plant. Everything in La Verkin will be fed by gravity to the treatment plant. Also, part of Hurricane and Tocqueville will feed to it as well.

IV. Business:

1. Discussion regarding irrigation shut off on November 15, 2024

This was already discussed earlier in the meeting.

2. Discussion regarding the Water Re-Use Agreement.

Doug concluded they would meet again on the 21st to discuss the water re-use contract and the other contract specific to La Verkin.

Fay said he would get a copy of the agreement and probably send out a copy of both agreements. He would make sure it was the updated version.

Mayor Wilson added that the cities on the west side are out of water. Regarding water rights for the city, they rely on the district for all their excess water.

Doug added that La Verkin, of course, we're constrained by land and how much building we can do. However, the Topside could put a strain on all of our resources if we don't plan ahead, so everything we do, we need to keep that in mind.

Mayor Wilson reported on the topside that we do have the application in, the water district does, for the water tank up there on the BLM land, and he told him yesterday that they hit a little snag on it. They're saying that that was a munition dump from the test site up there,

Doug replied that they're saying there's some potential live munitions in that area below the Mesa.

Mayor commented that was something he said they've got to look at that before they can move forward.

V. Public Concerns for Board Consideration:

No Comment.

VI. Board Member Concerns:

No Comment.

VII. Adjourn:

The meeting closed at 12:07

Minutes were taken by Nancy Cline.

Chairman

DRAFT

REUSE WATER EXCHANGE AGREEMENT

This Reuse Water Exchange Agreement (“**Agreement**”) is entered into this _____ day of _____, 2024 (“**Effective Date**”), by and between Washington County Water Conservancy District (the “**District**”), a water conservancy district organized and existing under the Utah Water Conservancy District Act, and La Verkin City, a municipal corporation and political subdivision of the State of Utah (“**City**”). The District and the City may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

- A. The City has entitlements to the beneficial use of water, whether by contract, interest in real property, or rights granted by the State or other governmental entity.
- B. The District diverts Water Rights and delivers District Water Supplies to Municipal Customers, Retail Customers, and Contract Users.
- C. The City desires to provide the Secondary Water Rights to the District in exchange for District Water Supplies, consistent with the terms and conditions of this Agreement.
- D. The District desires to provide District Water Supplies to the City in exchange for the Secondary Water Rights, consistent with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. **Recitals.** The above-referenced recitals are incorporated into this Agreement by this reference.
- 2. **Definitions.**
 - a. “Agreement” has the meaning set forth in the introductory paragraph of this Agreement.
 - b. “Change Application” has the meaning set forth in Sections 3(a) and 4 of this Agreement.
 - c. “City” has the meaning set forth in the introductory paragraph of this Agreement.
 - d. “Delivery Point” means each point of delivery under this Agreement from the District Reuse Facilities to the City’s Secondary Water System (collectively, “**Delivery Points**”).
 - e. “Designated Secondary Water Rights” means the volume of the Secondary Water Rights designated for use by the District in a calendar year, determined in accordance with Section 5(a).

f. "District" has the meaning set forth in the introductory paragraph of this Agreement.

g. "District Reuse Facilities" includes all water, collection, conservation, development, storage, treatment, supply, transportation, and distribution facilities, hydroelectric generating, transmission and distribution facilities, and related facilities used to receive, convey, store, treat and deliver Reuse Water that are (i) currently owned or operated by the District; or (ii) to be hereafter owned or operated by the District.

h. "Effective Date" has the meaning set forth in the introductory paragraph of this Agreement.

i. "Exchange" means: (a) the City's delivery to the District of Secondary Water under the Secondary Water Rights in exchange for either payment from the District or delivery of District Water Supplies from the District; or (b) the District's delivery of District Water Supplies to the City in exchange for delivery of Secondary Water under the Secondary Water Rights from the City.

j. "Governmental Authority" means any federal, state, regional, municipal, local, or other government or governmental body and any division, agent, official, agency, commission, board, or authority of any government, governmental body, quasi-governmental, or private body exercising any statutory, regulatory, expropriation, or taxing authority under the authority of any of the foregoing, or any judicial, quasi-judicial, or administrative court, tribunal, commission, board, panel, or arbitrator acting under the authority of any of the foregoing.

k. "Law" means all laws, statutes, codes, ordinances (including zoning), decrees, rules, guidelines, codes, regulations, by-laws, notices, judicial, arbitral, administrative, ministerial, departmental, or regulatory judgments, injunctions, orders, decisions, settlements, writs, assessments, arbitration awards, rulings, determinations, or awards, decrees or other requirements of any Governmental Authority having the force of law and any legal requirements arising under the common law or principles of law or equity.

l. "MRC Water Rights" means entitlements to the beneficial use of water, whether by contract, interest in real property, or rights granted by the State or other governmental entity held by Municipal Customers, Retail Customers, Contract Users, and Non-RWSA Users.

m. "Non-RWSA User" means any water user that is not a party to the RWSA and has entered into a Reuse Authorization Contract with the District that permits the District to divert and use the Non-RWSA User's MRC Water Rights or provides for delivery of Reuse Water from the District to the Non-RWSA User.

n. "Party" or "Parties" has the meaning set forth in the introductory paragraph of this Agreement.

o. "Proceeding" means any pending or threatened court, administrative, regulatory or similar proceeding (whether civil, quasi-criminal or criminal), arbitration or other

dispute settlement procedure, formal (or, to the Company's knowledge, informal) investigation or inquiry before or by any Governmental Authority, or any claim, action, suit, demand, arbitration, charge, indictment, hearing, demand letter or other similar civil, quasi-criminal or criminal, administrative or investigative matter or proceeding, including by any third party whatsoever.

p. "Reuse Act" means Utah Code § 73-3c-101 through -401, as it may be amended from time to time. The following capitalized terms shall have the meaning set forth in the Reuse Act: Domestic Wastewater; Reuse Authorization Contract; and Reuse Water.

q. "RWSA" means the Regional Water Supply Agreement dated as of January 1, 2019 by and among the District and various Municipal Customers. The following capitalized terms shall have the meaning set forth in Section 1.1 of the RWSA, as it may be amended from time to time: Contract Users; District Water Supplies; Municipal Customers; Retail Customers; Water Rights; and Water Supply.

r. "Secondary Irrigation Area" means irrigated landscape, garden, or agriculture areas associated with residential, commercial, or industrial uses supplied by Secondary Water delivered through the City's Secondary Water System.

s. "Secondary Rate" has the meaning set forth in Section 6(b) of this Agreement.

t. "Secondary Water" means untreated, unfiltered water that is used for the irrigation of outdoor residential landscaping, gardening, or agriculture.

u. "Secondary Water Rights" means the City's water rights as identified in Exhibit A, which is attached and incorporated herein by this reference.

v. "Secondary Water System" means the portion of the City's Municipal System used to receive, convey, store, and deliver Secondary Water that is (i) currently owned or operated by the City; or (ii) to be hereafter owned or operated by the City.

w. "Secondary Water System Improvement Project" means approved improvements to the Secondary Water System, and associated debts.

x. "Uncontrollable Forces" means (i) any cause beyond the reasonable control of the Party affected, including inadequate supply of water, failure of facilities, flood, drought, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, accident, unlawful actions or omissions by others, and restraint by court or public authority, which, by exercise of due diligence and foresight, the Party could not reasonably have been expected to avoid, and (ii) the inability to acquire for any particular facility the necessary (A) financing, (B) environmental permits, (C) land use and other required authorizations, or (D) other permits or authorizations.

y. "Undesignated Secondary Water Rights" means the total volume of the Secondary Water Rights less the Designated Secondary Water Rights.

3. **Conditions Precedent to the Exchange.** The respective obligations of the Parties to complete the Exchange are subject to the satisfaction or mutual waiver by the Parties of each of the following conditions, each of which are for the mutual benefit of the Parties and which may be waived, in whole or in part, by the mutual consent of the Parties at any time:

a. Change Application. A permanent change application authorizing the District to use the Secondary Water Rights in the District's water system and service area (the "**Change Application**") shall be approved by the Utah State Engineer (Utah Division of Water Rights), and all applicable appeal periods shall have run with respect to the Change Application approval.

b. No Change in Law. No Law shall have been enacted, issued, promulgated, enforced, made, entered, issued or applied and no Proceeding will otherwise have been taken, or be pending or be threatened under any Laws by any person or by any Governmental Authority (whether temporary, preliminary or permanent) to make this Agreement illegal or unenforceable.

c. No Termination. This Agreement shall not have been terminated by either Party.

d. Compliance. Each Party shall have complied in all material respects with its obligations, covenants, and agreements in this Agreement to be performed and complied with on or before the Effective Date.

e. Representations and Warranties. The representations and warranties of the Parties in Section 12 of this Agreement shall be true and correct as of the Effective Date.

4. **Change Application.**

a. Filing Change Application. The District will prepare a draft Change Application and deliver it to the City for review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The Change Application shall request authorization for the use of all the Secondary Water Rights in the District's water system and service area. Both Parties shall sign the Change Application. The District will, at its sole cost, file the change application and prosecute it.

b. Title and Ownership. Title and ownership of the Secondary Water Rights which are the subject of the Change Application shall remain in the name of the City. The filing of the Change Application shall not affect title or ownership, but shall allow the District to put the Secondary Water Rights to use consistent with the terms and conditions of this Agreement.

c. Responsibility for Change Application Approval. The District shall be primarily responsible for filing, prosecuting, and defending the Change Application in the name of the City in the administrative proceedings before the Utah State Engineer. The City shall provide reasonable support to the District in such effort if required, including attending hearings or otherwise participating in the administrative proceedings to support approval of the Change Application as filed. If a request for reconsideration or judicial review action

is filed to challenge a decision on the Change Application by the State Engineer, the City will be a necessary party.

d. Approval of Change Application. The Change Application shall be approved by the Utah State Engineer on terms and conditions consistent with this Agreement. In the event that (A) a change application is protested, (B) approval of a change application is subject to a request for reconsideration or petition for judicial review, (C) the Utah State Engineer rejects a change application, or (D) the Utah State Engineer imposes conditions on approval of a change application that the District deems unacceptable, the District shall decide whether or how to continue to prosecute the change application to a final, non-appealable Order that is satisfactory to the District. If any of the conditions in this Section 4(d)(A)-(D) are met, the District may elect to withdraw the change application or stop prosecuting it.

e. Maintaining the Change Application in Good Standing. The City shall comply with the Utah State Engineer's reporting requirements and file all subsequent applications, requests, reports, or other documents necessary to keep active and maintain the Change Application in good standing. The District will provide documents and information in its possession, and otherwise cooperate, to help the City comply with the requirements.

f. Costs. Each Party shall bear all their own costs incurred in the submission and/or defense of the change application.

5. Water Diversions and Deliveries.

a. Annual Coordination.

i. *Planning Meeting*. Prior to January 1st of each calendar year, the District and the City shall meet to coordinate regarding the following estimated quantities for the upcoming calendar year: (A) the quantity of District Water Supplies the District anticipates that it can deliver to the City; (B) the quantity of water that the City anticipates it will need to serve Secondary Irrigation Area, which shall be determined based on the irrigated acres served by the Secondary Water System; and (C) the quantity of the Undesignated Secondary Water Rights.

ii. *Estimation of Quantity*. The Parties shall estimate the quantity of the Designated Secondary Water Rights for the upcoming calendar year based on the lesser of the amounts identified in Sections 5(a)(i)(A) and 5(a)(i)(B). The Parties shall calculate the quantity of the Undesignated Secondary Water Rights for the upcoming calendar year by subtracting the quantity of the Designated Secondary Water Rights from the total quantity of the Secondary Water Rights.

b. District's Water Delivery Obligations to City.

i. *District's Delivery of Water to the City*. In a calendar year, the District shall deliver District Water Supplies to the City in an amount equal to the

quantity of Designated Secondary Water Rights identified in Section 5(a). Delivery of District Water Supplies shall be subject to and contingent upon the hydrology of the Virgin River and availability of the Secondary Water Rights. If, during a calendar year, the City identifies Secondary Irrigation Area demand for water in excess of the quantity identified in Section 5(a), the City may request delivery of additional water from the District. The District may, in its discretion, deliver additional District Water Supplies to the City. The quantity of Designated Secondary Water Rights shall increase in proportion to the quantity of additional District Water Supplies delivered to the City.

- ii. *Rate and Timing of District's Delivery of Water.* Subject to the physical capacity of the District Reuse Facilities, maintenance, and emergency conditions, the District shall make the quantity of water identified in Section 5(a) available to the City at the rates and times required for the City to supply its customers' daily Secondary Irrigation Area demand.
- iii. *Delivery Location.* The District shall deliver District Water Supplies to the Delivery Points. The District's deliveries shall be metered at or near the Delivery Points. The Parties agree to cooperate in good faith to (A) define each Delivery Point and (B) distinguish between the end of the applicable District Reuse Facilities and the beginning of the Secondary Water System. The Parties shall agree upon the information required by Section 5(b)(iv)(A)-(B) and include a description and depiction of this information as part of Exhibit B, which is attached and incorporated herein by this reference.

c. District's Diversions and Use of Secondary Water Rights.

- i. *District's Diversion of Designated Secondary Water Rights.* In a calendar year, the District may divert the Designated Secondary Water Rights identified in Section 5(a).
- ii. *District's Diversion of Undesignated Secondary Water Rights.* In a calendar year, the District has the right, in its discretion, to divert up to the full quantity of the Undesignated Secondary Water Rights identified in Section 5(a).
- iii. *District's Use of Secondary Water Rights.* The District shall have the right to use the Secondary Water Rights anywhere throughout its drinking water system, as approved by the Change Application.

6. **Payment.**

- a. Payment for Designated Secondary Water Rights. The District shall pay the City for its use of the Designated Secondary Water Rights by delivering an equivalent quantity of District Water Supplies to the City.

- i. *Excess Water to District.* If, at the end of the calendar year, it is determined that the District diverted a quantity of Designated Secondary Water Rights in excess of its delivery of District Water Supplies to the City during that calendar year, the District shall pay the City for the excess diversions during that calendar year at the rate specified in Section 6(b)(i) (District's excess diversions equal the District's diversion of Designated Secondary Water Rights less the District's delivery of District Water Supplies to the City).
- ii. *Excess Water to City.* If, at the end of the calendar year, it is determined that the District diverted a quantity of Designated Secondary Water Rights less than its delivery of District Water Supplies to the City, the District shall receive a credit towards the amount owed for its use of Undesignated Secondary Water Rights based on its excess deliveries.

b. Payment for Undesignated Secondary Water Rights. On a temporary basis, the District will contribute up to a total amount of ten million dollars (\$10,000,000) or the cost of the City's Secondary Water System Improvement Project, whichever is lower, subject to the following terms and conditions:

- i. *Secondary Rate.* The District shall pay the City \$12.22 (the "**Secondary Rate**") for each acre foot of the Undesignated Secondary Water Rights that the District actually diverts.
- ii. *Payment Timing.* Within thirty (30) days after the end of each year, the District shall send the City a statement identifying the quantity of Undesignated Secondary Water Rights that the District diverted during the applicable year and the total amount owed. The District shall include payment for the total amount owed with its statement. Payment by the District under this Section 6(b) shall be subject to and contingent upon the hydrology of the Virgin River and actual water deliveries, and the District shall have no obligation to pay for water that is not delivered to the District where it can be measured due to drought or other Uncontrollable Forces affecting hydrology or the availability of water.
- iii. *Use of Funds.* Payments from the District to the City under this Section 6(b) must be used by the City on the Secondary Water System Improvement Project, and for no other purpose. The District shall have the right to verify whether the City has complied with this provision at all times. If the District discovers that the City has not complied with this provision, it may, in its sole discretion, terminate future payments towards the Secondary Water System Improvement Project.
- iv. *Cessation of Payment Obligation.* Once the District has paid to the City the total amount identified in this Section 6(b), or if the Secondary Water System Improvement Project ceases, or if the District has terminated future payments pursuant to Section 6(b)(iii), the District shall have no

further obligation to make any payment to the City. Notwithstanding the cessation of payments from the District for the Undesignated Secondary Water Rights, the District and the City shall at all times during the term of this Agreement have the obligation to complete the Exchange as contemplated by this Agreement.

7. **City's Obligation to Make Water Available.** The City shall be obligated, during the term of this Agreement, to use commercially reasonable efforts to cause sufficient Secondary Water under the Secondary Water Rights to be sent down the Virgin River in order for the District to use its Designated and Undesignated Secondary Water Rights. Neither Party shall be in default under this Agreement if such water is not available because of drought or because of the superiority of other water rights on the Virgin River.

8. **Costs.** Each Party shall bear all their own costs incurred in preparing, executing, and carrying out this Agreement, including constructing or maintaining water system infrastructure, facilities, measurement devices, and diversion works.

9. **Measurement.** The Parties shall agree on the type, installation, location, or use of appropriate measuring devices to account for all water exchanged under this Agreement. Each Party shall make records available to the other Party to ensure quantities of water are provided in accordance with this Agreement.

10. **Diligence.** The District shall have thirty (30) days from the Effective Date to review and verify the City's ownership of and title to Water Rights No. 81-2477 and 81-4334. The District may, in its sole discretion, terminate this Agreement based on the results of such review.

11. Term and Termination.

a. Duration of Agreement. This Agreement shall remain in full force and effect of 1,000 years from the Effective Date; provided, however, that the Parties may
(a) terminate this Agreement early through written agreement signed by each Party or
(b) extend the term of this Agreement through a written agreement signed by each Party.

b. Termination. If this Agreement is terminated early as set forth in Section 11(a), the Parties shall execute any necessary documents to restore each other's respective ownership in the respective Water Rights.

12. Representations and Warranties.

a. District's Representations and Warranties. The District hereby represents, warrants, and covenants to the City as of the Effective Date and throughout the Term of this Agreement the following:

i. Authority to Enter Agreement. The District is a duly organized entity that has the full right, power, and authority to enter into this Agreement, and to perform all actions and obligations contemplated under this Agreement.

- ii. *Formalities.* All formalities and approvals necessary to enter into this Agreement have been taken or received by the District.
- iii. *Delivery.* The District has authorization to deliver District Water Supplies to the City under current approvals, or will obtain such approvals prior to delivering such water to the City under this Agreement.
- iv. *Beneficial Use.* After approval of the Change Application, the District will put the Secondary Water Rights to beneficial use consistent with the Change Application approval.
- v. *No Actions Pending.* There are no actions, claims, or proceedings pending or, to the District's knowledge, threatened against the District that would affect the District's ability to fulfill obligations in this Agreement.
- vi. *Commission.* No commission is due to any broker or agent in connection with this Agreement.

b. The City's Representations and Warranties. The City hereby represents, warrants, and covenants to the District as of the Effective Date and throughout the Term of this Agreement the following:

- i. *Authority to Enter Agreement.* The City is a duly organized entity that has the full right, power, and authority to enter into this Agreement, and to perform all actions and obligations contemplated under this Agreement.
- ii. *Formalities.* All formalities and approvals necessary to enter into this Agreement have been taken or received by the City.
- iii. *Ownership of Water Rights.* The City has all right, title, estate, and interest in and to the Secondary Water Rights, free and clear of all liens or encumbrances.
- iv. *Beneficial Use.* The City has put the Secondary Water Rights to full beneficial use. The City has not taken, has not failed to take, and will not take any action which shall cause forfeiture of the Secondary Water Rights.
- v. *Defense of Water Rights.* The City shall defend against any action, claim, or proceeding challenging title to the Secondary Water Rights.
- vi. *Encumbrance.* The City shall not encumber, or permit any encumbrance on, the Secondary Water Rights.
- i. *No Actions Pending.* There are no actions, claims, or proceedings pending or, to the City's knowledge, threatened against the City that would affect the City's ability to fulfill obligations in this Agreement.

- i. *Commission.* No commission is due to any broker or agent in connection with this Agreement.

13. **Default.**

a. Subject to Section 13(b), if a Party fails to perform its obligations hereunder, or comply with the terms and provisions hereof, and such failure remains uncured for a period of thirty (30) days ("**Cure Period**") after receiving written notice of default from the non-breaching Party, then the non-breaching Party may, in its discretion, pursue all rights and remedies which it may have at law and in equity, including but not limited to injunctive relief, specific performance, damages, and/or termination of the Agreement;

b. If a default described in Section 13(a) cannot reasonably be cured within the Cure Period, and the defaulting Party has commenced to cure such default within the Cure Period and thereafter uses reasonable efforts to cure the default, then the Cure Period shall be extended to one hundred eighty (180) days (including the original period of thirty (30) days), so long as the defaulting Party continues diligently pursuing cure of the default. If, however, the default remains uncured for a period of one hundred eighty (180) days in the aggregate, then the non-defaulting Party may, in its discretion, pursue all rights and remedies which it may have at law and in equity, including but not limited to injunctive relief, specific performance, damages, and/or termination of the Agreement.

14. **Remedies.** The Parties shall have all rights and remedies provides under applicable Laws for a breach or threatened breach of this Agreement. These 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 or a threatened 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.

15. **Mutual Indemnity.** The Parties are "governmental entities" as defined in the Utah Governmental Immunity Act (Utah Code § 63G-7-101 et. seq.). Nothing in this Agreement will be construed as a waiver by either or both Parties of any rights, limits, protections, or defenses provided by the Utah Governmental Immunity Act. Nor shall this Agreement be construed, with respect to third parties, as a waiver of any governmental immunity to which a Party to this Agreement is otherwise entitled. Subject to and consistent with the Utah Governmental Immunity Act, each Party (as the "**Indemnifying Party**") shall indemnify, defend and hold harmless the other Party and its board, managers, members, agents, and employees (collectively, the "**Indemnified Party**") from and against all claims and liabilities (including reasonable attorney's fees and court costs) caused by or arising out of any third-party claim alleging: (a) a negligent or more culpable act or omission of the Indemnifying Party, including any reckless or willful misconduct, in connection with the performance of its obligations under this Agreement, (b) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable act or omission of the Indemnifying Party, including any reckless or willful misconduct, or (c) violation of Applicable Laws by the Indemnifying Party, except to the extent a claim or liability under Section 14(a) and (b) results from the gross negligence, recklessness, or willful misconduct of the Indemnified Party.

16. **Notice.** Any and all notices, demands, or other communications required pursuant to this Agreement must be in writing and shall have been properly given and effective when received by the Party to be noticed, or when deposited in the United States mail, certified or registered, or when deposited with a nationally recognized overnight delivery service which keeps receipts of delivery, to the following addresses:

To the District at:
Washington County Water Conservancy District
Attn: General Manager
533 East Waterworks Drive
St. George, Utah 84770

With a required copy to:
Parr Brown Gee & Loveless
c/o Kassidy J. Wallin
101 South 200 East, Suite 700
Salt Lake City, Utah 84111

To the City at:
[]
La Verkin, Utah

Either Party may change its address for the purpose of receiving notices, demands, and other communications set forth in this Agreement by providing written notice in the manner set forth above.

17. **Governing Law and Venue.** The laws of the State of Utah shall govern this Agreement and the transactions contemplated by this Agreement, without giving effect to the choice of law rules thereof. The Parties agree that any judicial action associated with this Agreement shall be taken in the St. George District Court of the Fifth Judicial District of the State of Utah.

18. **Assignment.** Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement and any such purported assignment or other transfer shall be void.

19. **Binding Effect.** This Agreement shall bind and benefit the respective successors and assigns of the Parties.

20. **Modification.** No modification of this Agreement shall be valid unless made in writing and duly executed by both Parties.

21. **Interpretation.** The Parties hereto acknowledge and agree that: (i) each Party has had a full and fair opportunity to have counsel review and to negotiate the terms of this Agreement; and (ii) the terms and provisions of the Agreement shall be construed fairly to all Parties hereto and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement. The paragraph and subparagraph headings

used herein are for convenience only and shall not be considered in the interpretation of this Agreement.

22. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a final decision of a court of competent jurisdiction, any enforceable portion thereof, and the remaining provisions of this Agreement, shall continue in full force and effect.

23. **Further Assurances.** The Parties to this Agreement agree to do such further acts, take such action, and to execute and deliver to each other such additional agreements, certificates, documents, and instruments as may reasonably be required or deemed advisable to effect the purposes of this Agreement.

24. **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, contains the entire agreement by and between the Parties with respect to the subject matter hereof, and supersedes any prior promises, representations, warranties, inducements or understanding between the Parties which are not contained herein.

25. **No Relationship.** Nothing in this Agreement creates, or is intended to create, any interlocal entity, partnership, joint venture, or fiduciary relationship between the Parties.

26. **No Third-Party Rights.** The obligations of the District and the City set forth in this Agreement shall not create any rights in or obligations to any other persons or parties not a party to this Agreement.

27. **No Waiver.** Any Party's failure to enforce any of the provisions of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions of this Agreement may be waived only in writing by the Party intended to be benefitted by the provision, and a waiver by a Party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provision.

28. **Counterparts.** This Agreement may be signed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. The Parties intend that fax or emailed .pdf signatures constitute original signatures and that a faxed or emailed agreement containing the signatures (original, .pdf, or faxed) of all the Parties is binding on the Parties.

29. **Force Majeure.** If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction, or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood, drought, pandemic, or other casualty or accident; strikes or labor disputes; war, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any governmental authority having jurisdiction; or any other act or condition beyond the reasonable control and without the fault or negligence of the Party claiming Force Majeure.

IN WITNESS THEREOF, the District has caused this Agreement to be executed by its duly authorized representative(s) as of the Effective Date.

**WASHINGTON COUNTY WATER CONSERVANCY
DISTRICT**, a Utah water conservancy district

By: _____
Name: Ed Bowler
Its: Chair, Board of Trustees

ATTEST:

Secretary, Board of Trustees

APPROVED AS TO FORM:

By: Jodi Richins, WCWCD's Counsel

IN WITNESS THEREOF, the City has caused this Agreement to be executed by its duly authorized representative(s) as of the Effective Date.

LA VERKIN CITY, a municipal corporation and political subdivision of the State of Utah

By: _____
Name: _____
Its: _____

ATTEST:

City Recorder

APPROVED AS TO FORM:

By: _____
Name: _____
Its: City Attorney

Exhibit A
Secondary Water Rights

1. Water Right No. 81-2477, Change Application No. a13530 (Certificated), 1,640.22 acre feet, Priority: 1890.
2. Water Right No. 81-4334, No change application, 990 acre feet, Priority: 1900.

Exhibit B
Delivery Points

[Before the District delivers water to a Delivery Point pursuant to the terms of this Agreement, the Parties will identify, describe, and provide a depiction of the Delivery Point under Section 5(b)(iv). The description and depiction will distinguish between the District Reuse Facilities and Secondary Water System.]

[CITY] REUSE AUTHORIZATION CONTRACT

This Reuse Authorization Contract (“**Agreement**”) is entered into as of _____, 2024 (“**Effective Date**”), by and between Washington County Water Conservancy District, a water conservancy district organized and existing under the Utah Water Conservancy District Act (“**WCWCD**”) and [City’s Name], a municipal corporation and political subdivision of the State of Utah (“**City**”). WCWCD and the City may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

A. Capitalized terms that do not have a definition in the Recitals are defined in Section 2 of this Agreement.

B. WCWCD is a Public Agency as defined in Section 73-3c-102(5) of the Utah Wastewater Reuse Act (Utah Code Ann. § 73-3c-101 to -401) (“**Reuse Act**”).

C. WCWCD diverts Water Rights and delivers District Water Supplies to Municipal Customers, Retail Customers, and Contract Users.

D. WCWCD and the City are parties to the Revised Regional Water Supply Agreement dated January 1, 2019, as it may be amended and/or renumbered from time to time (“**RWSA**”). The City is a Municipal Customer under the RWSA.

E. WCWCD, in cooperation with the City, other municipal partners, and regional publicly owned treatment works operated by Ash Creek Special Service District (“**ACSSD**”) and St. George City, is designing, permitting, and constructing the Regional Reuse Purification System. The Regional Reuse Purification System will be a Water Reuse Project as defined in Section 73-3c-102(9) of the Reuse Act.

F. WCWCD has, or will, enter into Reuse Authorization Contracts for each water reclamation facility that will receive Domestic Wastewater and generate Reuse Water in connection with the Water Reuse Project (“**Water Reclamation Facilities**”).

G. The City has entitlements to the beneficial use of water, whether by contract, interest in real property, or rights granted by the State or other governmental entity; these entitlements are identified in Exhibit A, which is attached and incorporated herein by this reference (“**City Water Rights**”).

H. The City is a Public Agency, it owns the City Water Rights, and it supplies retail water to its residents.

I. The City uses its Municipal System to divert the City Water Rights, or receive delivery of them, and to then deliver the City Water Rights to its retail customers. The City will use the Municipal System to receive delivery of Reuse Water from WCWCD at the Delivery Points and to then deliver the Reuse Water to its retail customers.

J. The City may construct, own, and operate a Wastewater Collection System or it may contract with a third party to own and operate all or a portion of the Wastewater Collection System.

K. Municipal Customers (other than the City), Retail Customers, Contract Users, and Non-RWSA Users may have entitlements to the beneficial use of water, whether by contract, interest in real property, or rights granted by the State or other governmental entity ("**MRC Water Rights**").

L. WCWCD has, or will, enter into Reuse Authorization Contracts with each Municipal Customer, Retail Customer, Contract User, or Non-RWSA User whose MRC Water Rights will be used in the Water Reuse Project or who will receive delivery of Reuse Water from the Water Reuse Project.

M. Delivery and beneficial use of the City Water Rights, District Water Supplies, and MRC Water Rights for culinary use generates Domestic Wastewater. Domestic Wastewater generated from beneficial use of the City Water Rights, District Water Supplies, and MRC Water Rights will be collected and conveyed to one or more Water Reclamation Facilities for treatment. WCWCD's planned Regional Reuse Purification System will receive Reuse Water generated from the Water Reclamation Facilities; convey the Reuse Water using the WCWCD Reuse Facilities; and then deliver it for beneficial use by the City, other Municipal Customers, Retail Customers, Contract Users, and Non-RWSA Users.

N. The City will deliver the Reuse Water it receives from WCWCD to the City's retail customers.

O. WCWCD desires to receive and deliver Reuse Water, as permitted by the Reuse Act. The City desires to authorize WCWCD to use the City Water Rights in connection with the Regional Reuse Purification System and to receive Reuse Water deliveries from WCWCD.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The above-referenced recitals are incorporated into this Agreement by this reference.

2. **Definitions.**

a. "Applicable Law(s)" means applicable local, state, and federal laws, regulations, rules, and orders of any public authority, as the same may be amended and/or renumbered from time to time.

b. "Delivery Points" means each point of delivery under this Agreement from the WCWCD Reuse Facilities into the Municipal System ("**Delivery Points**").

c. “Non-RWSA User” means any water user that is not a party to the RWSA and has entered into a Reuse Authorization Contract with WCWCD that permits WCWCD to divert and use the Non-RWSA User’s MRC Water Rights or provides for delivery of Reuse Water from WCWCD to the Non-RWSA User.

d. “Regional Reuse Purification System” is a Water Reuse Project, as defined in the Reuse Act, and includes all water collection, conservation, development, storage, treatment, supply, transportation, and distribution facilities, hydroelectric generating, transmission and distribution facilities, and related facilities that are used to receive, convey, store, treat, and deliver Reuse Water.

e. “Reservoirs” means above or below ground water storage facilities that are (i) currently owned, jointly owned, operated, or jointly operated by WCWCD, including Sand Hollow Reservoir, Sand Hollow Aquifer Storage and Recovery, Quail Creek Reservoir, Gunlock Reservoir, Kolob Reservoir, Ivins Reservoir, and Chief Toquer Reservoir; or (ii) to be hereafter owned, jointly owned, operated, or jointly operated by WCWCD.

f. Reuse Act. The following capitalized terms shall have the meaning set forth in the Reuse Act, as it may be amended and/or renumbered from time to time: Domestic Wastewater; POTW; Public Agency; Reuse Authorization Contract; Reuse Water; and Water Reuse Project.

g. RWSA. The following capitalized terms shall have the meaning set forth in Section 1.1 (Definitions) of the RWSA, as it may be amended and/or renumbered from time to time: Contract Users; District Water Supplies; Existing Contract User; Municipal Customers; Municipal System; Raw Water; Retail Customers; Treated Water; Water Right; Water Supplies; and Wholesale Rate.

h. “Uncontrollable Forces” means (i) any cause beyond the reasonable control of the Party affected, including inadequate supply of water, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, accident, unlawful actions or omissions by others, and restraint by court or public authority, which, by exercise of due diligence and foresight, the Party could not reasonably have been expected to avoid, and (ii) the inability to acquire for any particular facility the necessary (A) financing, (B) environmental permits, (C) land use and other required authorizations, or (D) other permits or authorizations.

i. “Wastewater Collection System” means all collection, transmission, and related facilities, used to collect Domestic Wastewater from the City’s retail customers and convey it to a Water Reclamation Facility.

j. “WCWCD Reuse Facilities” includes all water collection, conservation, development, storage, treatment, supply, transportation, and distribution facilities, hydroelectric generating, transmission and distribution facilities, and related facilities used to receive, convey, store, treat and deliver Reuse Water that are (i) currently owned or operated by WCWCD; or (ii) to be hereafter owned or operated by WCWCD.

3. Term and Termination. This Agreement shall remain in full force and effect for fifty (50) years from the Effective Date; provided, however, that the Parties may (a) terminate this Agreement early through a written agreement signed by each Party or (b) extend the term of this Agreement through a written agreement signed by each Party.

4. Reuse Authorization. This Agreement shall constitute a Reuse Authorization Contract for purposes of Sections 73-3c-202(1) and 73-3c-102(7)(a) of the Reuse Act. The City consents to WCWCD's receipt of Reuse Water generated from the City Water Rights and delivery of that Reuse Water through the WCWCD Reuse Facilities and the Regional Reuse Purification System for beneficial use. In addition, the City, as owner of the City Water Rights, an entity that will engage in retail sale of Reuse Water from the Regional Reuse Purification System, and an entity that supplies retail water that will be replaced by Reuse Water, consents to receive delivery of Reuse Water from WCWCD. WCWCD acknowledges that that reuse must be consistent with the underlying City Water Rights, or a change application must be approved by the Utah State Engineer.

5. Permitting.

a. Permits.

i. The City, at its sole cost, shall obtain all local, state, and federal permits and approvals required by Applicable Laws to construct and operate the Municipal System.

ii. If the City owns or operates all, or a portion, of the Wastewater Collection System, it shall, at its sole cost, obtain all local, state, and federal permits and approvals required by Applicable Laws to construct and operate the Wastewater Collection System.

iii. WCWCD, at its sole cost, shall obtain all local, state, and federal permits and approvals required to construct and operate the WCWCD Reuse Facilities.

b. Reporting.

i. The City shall comply with all reporting requirements of the Utah State Engineer, Utah Division of Water Quality, and Applicable Laws for the City Water Rights, Municipal System, and, if the City owns or operates all, or a portion, of the Wastewater Collection System, the Wastewater Collection System.

ii. WCWCD shall comply with all reporting requirements of the Utah State Engineer, Utah Division of Water Quality, and Applicable Laws for the District Water Supplies and WCWCD Reuse Facilities.

c. Good Standing. Each Party agrees to file all subsequent applications, requests, reports, or other documents necessary to keep active and maintain in good standing the permits it obtained pursuant to this Section 5.

6. Construction.

a. Subject to Section 6(c), the City shall design, permit, construct, and install, at its sole cost, improvements and upgrades to, or future phases of, the Municipal System (i) in a safe, good, and workmanlike manner and in conformance with its designs and Applicable Law and (ii) as necessary to receive delivery of Reuse Water or District Water Supplies at the Delivery Points and deliver the Reuse Water or District Water Supplies to its retail customers in quantities contemplated by, and in accordance with the terms of, this Agreement.

b. Subject to Section 6(c), WCWCD shall, at its sole cost, design, permit, construct and install the WCWCD Reuse Facilities in a safe, good, and workmanlike manner and in conformance with relevant designs and Applicable Law.

c. The Parties shall cooperate in good faith during design of future improvements, upgrades, and phases of the Municipal System and WCWCD Reuse Facilities to ensure that the infrastructure is designed and constructed in a manner that allows each Party to fulfill its obligations under this Agreement.

7. Inspection.

a. During any period of construction on portions of the Municipal System in reasonable proximity to the Delivery Points, WCWCD's staff and consultants shall have the reasonable right of access to inspect, test, and observe any work thereon.

b. During any period of construction on portions of the WCWCD Reuse Facilities in reasonable proximity to the Delivery Points, the City's staff and consultants shall have the reasonable right of access to inspect, test, and observe any work thereon.

8. Operation and Maintenance.

a. The City shall perform all operations, maintenance, repair, and replacement ("O&M") on the Municipal System and its appurtenant facilities consistent with the terms of this Agreement and Section 9.1 (Operation of Municipal Customer Systems) of the RWSA; in a safe, good, and workmanlike manner; in compliance with Applicable Law; and in conformance with industry standards.

b. WCWCD shall perform all O&M on the WCWCD Reuse Facilities consistent with the terms of this Agreement; in a safe, good, and workmanlike manner; in compliance with Applicable Law; and in conformance with industry standards.

9. Delivery Points and Parties' Facilities. The Parties agree to cooperate in good faith to (a) define each Delivery Point and (b) distinguish between the end of the applicable WCWCD Reuse Facilities, which will be owned and operated by WCWCD in accordance with Section 8(b), and the beginning of the Municipal System, which will be owned and operated by the City in accordance with Section 8(a). The Parties shall agree upon the information required by Section 8(a)-(b) and include a description and depiction of this information as part of Exhibit B, which is attached and incorporated herein by this reference.

10. Reuse Water Treatment Standards. Reuse Water delivered by WCWCD through the WCWCD Reuse Facilities to the City may be Raw Water or Treated Water. At a minimum, all Reuse Water will be treated to permit Type I uses of Reuse Water, as set forth in Rule R317-3-11.4(A) of the Utah Administrative Code and Applicable Law, as these authorities may be amended and/or renumbered from time to time.

11. Water Right Ownership and Reuse Authorization Contracts.

a. WCWCD is the owner of all Water Rights held by WCWCD on the Effective Date, or subsequently acquired by WCWCD.

b. The City is the owner of all City Water Rights held by the City on the Effective Date, or subsequently acquired by the City. The City grants WCWCD the right to use Reuse Water attributable to the City Water Rights and deliver it for beneficial use within WCWCD's service area.

c. The MRC Water Rights are owned by the applicable Municipal Customer, Retail Customer, Contract User, or Non-RWSA User. WCWCD will enter into a separate Reuse Authorization Contract with each other Municipal Customer, Retail Customer, Contract User, and Non-RWSA User that grants WCWCD the right to use and deliver Reuse Water attributable to the applicable MRC Water Rights. The City acknowledges that WCWCD will have the right to use Reuse Water attributable to applicable MRC Water Rights pursuant to Reuse Authorization Contracts entered with Municipal Customers, Retail Customers, Contract Users, and Non-RWSA Users.

d. WCWCD's rights to use Reuse Water generated from the City Water Rights and MRC Water Rights shall be part of the District Water Supplies.

12. Water Deliveries.

a. City Water Rights.

i. *Minimum Delivery.* WCWCD will make available to the City a quantity of the District Water Supplies equal to the quantity of Reuse Water generated from the City Water Rights, less depletions, as calculated in accordance with Section 12(a)(ii) ("**Minimum Delivery**"). WCWCD may deliver District Water Supplies, other than Reuse Water generated from the City Water Rights, to satisfy the Minimum Delivery under this Section 12(a)(i).

ii. *Depletion Accounting.* The District's annual Minimum Delivery to the City under Section 12(a)(i) shall be calculated using the procedure set forth in Exhibit C, which is attached and incorporated herein by this reference.

iii. *Rate and Timing of Delivery.* Subject to the physical capacity of, and transit time through, the WCWCD Reuse Facilities, WCWCD will make the Minimum Delivery available to the City at the rate and times that Reuse Water generated from the City Water Rights is discharged from a Water Reclamation Facility.

iv. *Delivery Location.* WCWCD shall deliver the Minimum Delivery to the Delivery Points. WCWCD's deliveries shall be metered at or near the Delivery Points.

v. *Unused Minimum Delivery.* At the end of each calendar year, the City's entitlement to receive Minimum Delivery generated during that calendar year will expire.

vi. *Reservoir Storage.* If WCWCD has unused capacity available in one of the Reservoirs, it may, in its discretion, agree to store portions of the Minimum Delivery to facilitate the City's use of the Minimum Delivery. If WCWCD agrees to store portions of the Minimum Delivery, the Parties shall agree upon the timing, rate, and volume at which WCWCD will release the stored Minimum Delivery from the Reservoir to the City. This Agreement does not entitle the City to storage capacity in any of the Reservoirs.

b. Other Water Rights. When delivering water to the City pursuant to this Agreement and the RWSA, WCWCD will deliver District Water Supplies and, in its discretion, may deliver Reuse Water generated from District Water Rights or MRC Water Rights.

c. Non-RWSA Users. The City acknowledges that WCWCD may deliver Reuse Water, including Reuse Water generated from the City Water Rights, to Non-RWSA Users for the purpose of acquiring separate Water Supplies from the Non-RWSA Users, as needed to meet anticipated demand of Municipal Customers, Retail Customers, and Contract Users.

13. Water Right Applications.

a. Reuse Act Requirements. Because it may satisfy its delivery obligations under Section 12(a)(i) using District Water Supplies and it may acquire unused portions of the Minimum Delivery under Section 12(a)(v), WCWCD may want to deliver Reuse Water generated from the City Water Rights to areas within WCWCD's service area but outside the City's service area. Section 73-3c-202(2) of the Utah Code requires WCWCD's delivery of Reuse Water to be consistent with the underlying City Water Rights. If the City Water Rights do not permit beneficial use within WCWCD's service area, a change application may be required. To help fulfill its delivery obligations under this Agreement, WCWCD may want to file one or more change applications to authorize delivery of the City Water Rights within WCWCD's service area. WCWCD acknowledges and agrees that any change application filed under this Section 13 does not alter the City's ownership of the City Water Rights or the Minimum Delivery under Section 12(a)(i).

b. Change Applications.

i. To the extent that WCWCD desires to file a change application to modify one or more of the City Water Rights by authorizing delivery of Reuse Water within WCWCD's service area, it will prepare a draft change application and deliver it to the City for review and approval, which approval shall not be

unreasonably withheld, conditioned, or delayed. Upon approval, the City shall return a signed copy of the change application to WCWCD. WCWCD will then, at its sole cost, file the change application and prosecute it. In the event that (A) a change application is protested, (B) approval of a change application is subject to a request for reconsideration or petition for judicial review, (C) the Utah State Engineer rejects a change application, or (D) the Utah State Engineer imposes conditions on approval of a change application that WCWCD deems unacceptable, WCWCD shall decide whether or how to continue to prosecute the change application to a final, non-appealable Order that is satisfactory to WCWCD. If any of the conditions in this Section 13(b)(i)(A)-(D) are met, WCWCD may elect to withdraw the change application or stop prosecuting it.

ii. WCWCD may, in accordance with the procedures set forth in this Section, (A) file one or more change applications to modify the City Water Rights and (B) file a new change application to replace a previously approved change application that WCWCD filed under this Section.

iii. The City agrees to cooperate with WCWCD, at WCWCD's request, in the preparation, filing, and prosecution of any change application permitted by this Section.

c. Reporting, Good Standing.

i. Consistent with Section 5(b)(i), the City shall comply with the Utah State Engineer's reporting requirements for any change application filed and approved pursuant to this Section.

ii. Consistent with Section 5(c), the City shall file all subsequent applications, requests, reports, or other documents necessary to keep active and maintain in good standing any change application filed and approved pursuant to this Section.

iii. WCWCD will provide documents and information in its possession, and otherwise cooperate, to help the City comply with its obligations under Sections 13(c)(i)-(ii).

14. Rates. The City shall pay the Wholesale Rate for all water deliveries from WCWCD to the City made pursuant to this Agreement. The Wholesale Rate will be set and revised, and invoiced, paid, and collected, in accordance with Article 8 (Charges and Payments) of the RWSA, as it may be amended and/or renumbered from time to time. The Wholesale Rate may have separate components for Treated Water and Raw Water, as provided in Sections 8.5.1 (Purpose and Level of Wholesale Rate) and 8.5.2 (Considerations in Setting Charge) of the RWSA. WCWCD will periodically update the Wholesale Rate using the procedure set forth in Section 8.7 (Periodic Review of Charges) of the RWSA.

15. Secondary Metering.

a. The City shall comply with the requirements of Section 73-10-34 of the Utah Code, as it may be amended and/or renumbered from time to time. If the City obtains an exemption from meter installation requirements pursuant to Section 73-10-34(10) of the Utah Code, as it may be amended and/or renumbered from time to time (“**Section 34(10)**”) the City shall:

i. For any new secondary water connection, for which the City’s design review began after January 1, 2025, install and maintain (or require the installation of) a meter box and meter set capable of accommodating a secondary water meter and AMI unit.

ii. If an existing secondary water connection does not have a meter box and meter set, and either the City or customer replaces a portion of the secondary water service lateral, or a portion of the secondary water pipeline supplying the secondary water service lateral, as part of the replacement project, install (or require the installation of) a meter box and meter set capable of accommodating a secondary water meter and AMI unit for each secondary water connection on a secondary water service lateral that is (A) replaced in connection with the replacement project or (B) connected to the portion of the secondary water pipeline that is replaced as part of the replacement project.

b. For any secondary water connection that is no longer subject to an exemption under Section 34(10), within six months of the date on which the secondary water connection stops qualifying for an exemption, install and maintain (or require the installation of) a water meter and AMI unit at the applicable secondary water connections.

c. The term “secondary water connection” has the meaning set forth in Section 73-10-34(1)(j) of the Utah Code.

16. Mutual Indemnity. The Parties are “governmental entities” as defined in the Utah Governmental Immunity Act (Utah Code § 63G-7-101 et. seq.). Nothing in this Agreement will be construed as a waiver by either or both Parties of any rights, limits, protections, or defenses provided by the Utah Governmental Immunity Act. Nor shall this Agreement be construed, with respect to third parties, as a waiver of any governmental immunity to which a Party to this Agreement is otherwise entitled. Subject to and consistent with the Utah Governmental Immunity Act, each Party (as the “**Indemnifying Party**”) shall indemnify, defend, and hold harmless the other Party and its Board, City Council, managers, members, agents, and employees (collectively, the “**Indemnified Party**”) from and against all claims and liabilities (including reasonable attorney’s fees and court costs) caused by or arising out of any third-party claim alleging: (a) a negligent or more culpable act or omission of the Indemnifying Party, including any reckless or willful misconduct, in connection with the performance of its obligations under this Agreement, (b) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable act or omission of the Indemnifying Party, including any reckless or willful misconduct, or (c) violation of Applicable Laws by the Indemnifying Party, except to the extent a claim or liability under Section 16(a) and (b) results from the gross negligence, recklessness, or willful misconduct of the Indemnified Party.

17. Default.

a. Subject to Section 17(b), if a Party fails to perform its obligations hereunder, or comply with the terms and provisions hereof, and such failure remains uncured for a period of thirty (30) days ("Cure Period") after receiving written notice of default from the non-breaching Party, then the non-breaching Party may, in its discretion, pursue all rights and remedies which it may have at law and in equity, including but not limited to injunctive relief, specific performance, damages, and/or termination of the Agreement;

b. If a default described in Section 17(a) cannot reasonably be cured within the Cure Period, and the defaulting Party has commenced to cure such default within the Cure Period and thereafter uses reasonable efforts to cure the default, then the Cure Period shall be extended so long as the defaulting Party continues diligently pursuing cure of the default.

18. Force Majeure. No Party shall be considered to be in default with respect to any obligation herein and no Party shall forfeit any right provided herein if the defaulting Party was prevented from fulfilling such obligation or exercising such right by reason of Uncontrollable Forces. A Party rendered unable to fulfill any obligation or exercise any right by reason of Uncontrollable Forces shall use every reasonable effort to remove such inability with all reasonable dispatch.

19. Notice. Any and all notices, demands, or other communications required pursuant to this Agreement must be in writing and shall have been properly given and effective when received by the Party to be noticed, or when deposited in the United States mail, certified or registered, or when deposited with a nationally recognized overnight delivery service which keeps receipts of delivery, to the following addresses:

To WCWCD at:
Washington County Water Conservancy District
Attn: General Manager
533 East Waterworks Drive
St. George, Utah 84770

To City at:
[City's Name]
[City's Address]

Either Party may change its address for the purpose of receiving notices, demands and other communications set forth in this Agreement by providing written notice in the manner set forth above.

20. Further Assurances.

a. The Parties to this Agreement agree to do such further acts, take such action, and to execute and deliver to each other such additional agreements, certificates, documents, applications, and instruments as may reasonably be required or deemed advisable to effect the purposes of this Agreement.

b. Each Party (as the “**Non-Financing Party**”) acknowledges that the other Party (as the “**Financing Party**”) may finance or refinance design, construction, and operation of the WCWCD Reuse Facilities (in the case of WCWCD) or the Municipal System or portions of the Wastewater Collection System owned by the City (in the case of the City) from time to time with bonds, loans, grants, and other financial instruments (“**Instruments**”). The Non-Financing Party shall execute all agreements, consents, certificates, and other documents reasonably requested in order that any Instruments be issued in compliance with Applicable Laws, and shall provide whatever additional information is reasonably requested by the Financing Party in connection with complying with Applicable Laws. The Non-Financing Party agrees to comply with requirements set forth by bondholders, lenders, or similar parties as necessary for the Financing Party to secure and maintain the Instruments.

21. Assignment. Except as provided in Section 22, or as otherwise agreed to by the Parties in writing, neither WCWCD nor City may assign or otherwise transfer any of its rights or obligations under this Agreement and any such purported assignment or other transfer shall be void.

22. Permitted Assignments. A Financing Party may assign any of its rights and obligations under this Agreement in connection with the Instruments.

23. Binding Effect. This Agreement shall bind and benefit the respective successors and assigns of the Parties.

24. No Relationship. Nothing in this Agreement creates, or is intended to create, any interlocal entity, partnership, joint venture, or fiduciary relationship between the Parties.

25. No Third-Party Rights. The obligations of WCWCD and the City set forth in this Agreement shall not create any rights in or obligations to any other persons or parties not a party to this Agreement.

26. Entire Agreement. This Agreement, together with the Exhibits attached hereto, and the RWSA collectively contain the entire agreement by and between the Parties with respect to the subject matter hereof, and supersede any prior promises, representations, warranties, inducements, or understanding between the Parties which are not contained herein. If there is any conflict or inconsistency between this Agreement and the RWSA, the RWSA shall control.

27. No Waiver. Any Party’s failure to enforce any of the provisions of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions of this Agreement may be waived only in writing by the Party intended to be benefitted by the provision, and a waiver by a Party of a breach hereunder by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provision.

28. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a final decision of a court of competent jurisdiction, any enforceable portion thereof, and the remaining provisions of this Agreement, shall continue in full force and effect.

29. Governing Law and Venue. The laws of the State of Utah shall govern this Agreement and the transactions contemplated by this Agreement, without giving effect to the choice of law rules thereof. The Parties agree that any judicial action associated with this Agreement shall be taken in the St. George District Court of the Fifth Judicial District of the State of Utah.

30. Amendment. This Agreement may only be amended, modified, or supplemented by a written agreement signed by WCWCD and the City.

31. Interpretation. The Parties hereto acknowledge and agree that: (i) each Party has had a full and fair opportunity to have counsel review and to negotiate the terms of this Agreement; and (ii) the terms and provisions of the Agreement shall be construed fairly to all Parties hereto and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

32. Paragraph Headings. The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Agreement.

33. Counterparts. This Agreement may be signed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. The Parties intend that fax or emailed .pdf signatures constitute original signatures and that a faxed or emailed agreement containing the signatures (original, .pdf, or faxed) of all the Parties is binding on the Parties.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their respective, duly authorized representatives as of the Effective Date.

**WASHINGTON COUNTY WATER CONSERVANCY
DISTRICT**, a Utah water conservancy district

By: _____
Name: Ed Bowler
Its: Chair, Board of Trustees

ATTEST:

Secretary, Board of Trustees

APPROVED AS TO FORM:

By: Jodi Richins, WCWCD's Counsel

[CITY'S NAME], a municipal corporation and political
subdivision of the State of Utah

By: _____
Name: _____
Its: _____

ATTEST:

City Recorder

APPROVED AS TO FORM:

By: _____
Name: _____
Its: City Attorney

Exhibit A
[To City Reuse Authorization Contract]

City Water Rights

Exhibit B
[To City Reuse Authorization Contract]

Delivery Points

[Before WCWCD delivers water to a Delivery Point pursuant to the terms of this Agreement, the Parties will identify, describe, and provide a depiction of the Delivery Point under Section 9. The description and depiction will distinguish between the WCWCD Reuse Facilities and Municipal System.]

Exhibit C
[To City Reuse Authorization Contract]

Procedure for Depletion Accounting

WCWCD's Minimum Delivery to the City under Section 12(a)(i) shall be calculated by identifying the quantity of the City Water Rights diverted and delivered for indoor use and subtracting (A) depletions and losses that occur between the City Water Rights' points of diversion and the outfall of the applicable Water Reclamation Facility, calculated based on Utah State Engineer's Orders approving Reuse Applications and supporting documentation; and (B) 17% for depletions and losses between the outfall of the applicable Water Reclamation Facility and the Delivery Points, including depletions and losses associated with transit loss and evaporation ("**Depletion Estimate**"). WCWCD may amend the Depletion Estimate based on its future analysis of depletions and losses. If WCWCD amends the Depletion Estimate, it shall provide written notice to the City with a brief explanation of the basis for the change.

