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, June 26, 2025, 9:00 a.m.
435 North Main Street, La Verkin, UT

I. **Call to Order:**

II. **Approval of Minutes:** March 6, 2025, minutes

III. **Business:**

1 Discussion and Review with representatives from Washington County Water Conservation District regarding the Water Re-Use Exchange Agreement.

IV. **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 June 17,2025.
Nancy Cline
City Recorder

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LA VERKIN CITY WATER BOARD MINUTES
Thursday, March 6, 2025, 11:00 a.m.
435 North Main Street, La Verkin, UT

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

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

II. Approval of Minutes: November 21, 2024.
The motion was made by Mayor Wilson to approve November 21, 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. Council Reappointment of Board Members
1. Ken Cox

Nancy Cline swore in Ken Cox.

IV. Reports
A. Water Purchase- Kyle Gubler
Kyle Gubler reported that since February 2021, the city has bought 45.09 shares for $90,081.

B. Culinary Water Management update- Derek Imlay
Derek Imlay explained that the city used less culinary water before 2022. In 2022, the city used Cotton well water. In 2023-2024, construction broke the mainline, and Hurricane City back-fed La Verkin City during that time. He commented that it was good training for them. The city has three sources of water in case of emergencies. He informed them that water has gone up due to the construction of the Hot Springs and the Re-Use project with Ash Creek. He explained that construction projects cannot use irrigation water to keep the dirt down; they have to use potable water, and that's why the city use has increased.

Doug Wilson asked what the city's water loss number was.

Derek replied that he just finalized it yesterday with the division of water rights and posted it. He thought we were at 16, 19. 10 is preferable, but they expect 20, so we were in good shape.

C. Irrigation Water Management update- Derek Imlay
Derek reported that they started turning on the irrigation on the 5th. They reported many leaks, so they turned them off to fix those. He is hoping to turn it on slowly, fix the leaks, and then be able to turn it on for the entire city on March 14th.

Ken Cox agreed with the way he turned on the irrigation slowly so they could fix the leaks more efficiently.

Doug asked if there were leaks in the system or if the meters were wrong.

Derek explained that the meters are not 100% accurate. The public sometimes takes water from hydrants. When the pipes break or leak, they are replaced, not patched. They are about 85% replaced.

Mayor Wilson asked Blaine if there were any recommendations on the irrigation rates.

Blaine replied that he wasn't on the irrigation side because they were still trying to figure it out. The districts said that they're going to contribute to these projects. Still, they haven't informed us what that contribution is as far as any provisions. He heard it will be a loan that the city would get, and then the district would essentially pay that loan, or you'd pay some portion of interest. He didn't know the mechanism to determine how much money is coming from the city's funds.

Mayor Wilson asked Blaine to report to them how much the estimate is to replace the system.

Kyle suggested they talk more with the district to work out a deal to pay them back with water. The last time he spoke with them, they mentioned an interest-free loan, but he didn't know where they could find one. The loan would take months to receive, and he would like to pay it back with water.

Mayor Wilson added that that would be best for us. If they start getting federal money, that adds to the cost. It's not worth it to get federal money.

Doug added that there are some grants out there that may not have too many strings attached. We need all the numbers, totals, and everything before considering applying.

Blaine added that the district was looking for grants. There are agricultural grants, but they didn't know if the city would qualify.

Doug was concerned that the irrigation rates would be as high as the culinary rates and the citizens would no longer use the irrigation.

Blaine commented that even if the city got a loan, the study shows it would be half the culinary price.

Doug asked if they had the paperwork from the canal company and how the shares and prices should be for AG users.

Derek replied that the rate was based on property size.

Blaine added that the council will handle the rate increase. That's all it says. It treats it like any other utility.

Mayor Wilson, maybe there were some stipulations on how much you could charge the AG users instead of the individual homeowner users.

Derek added that the previous one didn't have any stipulation from residential to agricultural use; it all went according to property size, and the rate was adjusted to the land size. For example, if there was an acre, it was a loan rate acre, and half was another rate.

Blaine said he had a copy of the agreement and would check on the shareholder rates.

Mayor Wilson asked if there has ever been a raise for shareholders.

Ken Cox replied that there has been a slight increase.

Mayor Wilson added that the rate couldn't be too high, or people wouldn't want to use it.

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Kyle added that there was a stipulation that if there isn't enough water, the shareholders get water before the people who lease it. He advised that the system has to start paying for itself; the city can't keep subsidizing the rate. He added that the maintenance cost will decrease once the system is replaced. Right now, the system needs a lot of repairs and maintenance.

Derek added that everything will be provided for hookups except the meters, when the system gets replaced.

V. Business:

1. Discussion regarding the Water Re-Use Agreement.

Mayor Wilson explained that this is the Water re-use exchange agreement, and the city is waiting for the lawyers to get back to them about the numbers.

Ken Cox asked if they had changed the language that they had recommended.

Mayor Wilson replied that they have made those changes. They will have another meeting once they get a new draft from the lawyers.

2. Discussion regarding the Culinary Water Report.

Blaine Worell explained that we took the system as it is now, analyzed it against existing conditions, and worked with the staff to get some growth projections for the 20-year horizon. We could see what the city will look like in 20 years. Now we're just looking at the lower bench for MOSIS analysis. We must know the capacity and requirements for water source, storage, and distribution systems. What will it be like in 20 years? And then, does the city have enough of each to have a solid system? The answer is yes, with source and water rights. There are agreements with the water district to get the additional source required in the 20 years. We will be relying on the district to provide water from the Cotton Well, but the city won't have any option in its own sources in the future, or at least solely from its sources. We also looked at the system at an operational level, the age of pipes, valves, hydrants, and locations. Quite a few pipes in the system are below the state's minimum size. The state requires all minimum pipes to be eight inches, for the most part, and the system has many six-inch lines. We've worked with the city to develop some little improvements to what should be done in the next 20 years to keep the system functioning and improve the system overall. It is vital to maintain its current level of service, but hopefully, it will increase the level of service to be an even better system. What's identified here is 15 million dollar's worth of improvements over the next 20 years. The main focus on the improvements is the Stowell's development, and that's just mainly because of the lead and copper rules. There's no lead there, so that's a priority, and there is an opportunity for some funding to help with that. The other is the subdivision 300 north of the west side, and the other is the SR 17 12-inch line replacement down the north end of town. That's the main one because it's in the middle of the road, super deep, and every time it breaks, it's $50,000 to repair. It's so deep that it's challenging to get down to it.

Ken Cox added that we discussed abandoning that current line and putting a new one so it's easier to access, and probably under the sidewalk.

Kyle commented that the road used to go to a big dip, and the state just leveled it out while they left the pipe where it was. They put the pipe down 18 feet. That depth creates a problem for repairing it.

Blaine continued that the other one is looking at replacing the old pipe. We have what's called West Water Improvements. It's a large, in-town replacement project that we've been anticipating over phases. It's at 300 West. Several of the 6-inch pipes, valves, and hydrants will be replaced. It's the start of a renewal and replacement plan for the city. Bring the 6-inch pipes up to 8 inches and then valves that are old and... may or may not work. Then we got some old hydrants, so we are just trying to get those up to modern standards and avoid breaks because they're well past their anticipated lifespan. We estimate it will be around a four-and-a-

half-million-dollar project. The expectation would be to include a portion of that in the user rates. We've made an annualized cost so that the city can either do a portion of that project every year or every three years and just kind of phase it in. It's estimated to be 15 million dollars, and then the question is, how do we pay for it? One thing we've looked at in the nearest projects is what kind of financing we'd be working with. In the Stowell project we discussed, there's likely some grant, we assumed about 50% grant, some self-participation just straight from the city's user rates, and then a loan from the Division of Drinking Water most likely. And we have a term here of 3% at 30 years. That could be a conservative estimate. We have seen some in the 2 to 2.5 range from the Division of Drinking Water. However, in our studies, we always try to be conservative because sometimes they are higher than 3%. We also have a pure drinking water loan for SR-17. A 12-inch line replacement puts an annual payment for Stowell's at almost $30,000 and a payment for the 12-inch line at $70,000. The existing user rate is $37.49 for the base rate. And then there are three tiers, so anything from $0 to $20,000 gallons is $1.38 per tier. We did see a report from the water district on this. La Verkin has some of the county's lowest, if not the lowest, cost of tier waters. That was alarming to the district.

Mayor Wilson asked if the other cities provide water with the base rate.

Blaine explained that no cities in the county provide water. Some, like Angel Springs, do, and some small systems do, but none of the cities do.

Doug explained that La Verkin is unique because we are a gravity-fed system and do not require a pump, which adds cost. We've done a pretty good job of maintaining and improving our system, and he thought there were a lot of reasons why we could keep our rate low.

Derek added that we were going through a drought before those two years when we had good moisture. The district reduced the amount of water they had lost to take out of Tocqueville Springs to 500 gallons a minute. We had to rely on everything else coming from Ash Creek Springs, which dumps out the coordinator and pumping costs. If we're going into a drought this year that continues, we'll have less and less to take out of that. And those costs will increase with the continued pumping and pouring costs.

Doug commented that they're charging us $1.80. We're absorbing quite a bit there—roughly 50 cents a gallon for the water we buy from them.

Blaine explained how we established a user rate: We have our inspection expenses, the existing bond payments, and the new bond payments. So that's Stowell's project, the 12-inch line, the renewal and replacement project, and the west water improvement. This is an annualized cost. We have a project for someone that will take 10 years to fund the project entirely. This is just one year of that. There is a total basic expense for the system at the end of the year, which is $1.8 million annually. To cover that, a portion of that comes from impact fees or connection fees, some things like that. That results in the existing number of ERUs in the system, with an average rate of $67.17. And what that average rate means is that it's, if you take the whole, all the water bills in the system, from the highest user to the lowest user, the average for the city to be in the black would be $67.17. Right now it is $45.96. Based on the current base rate, there's an average of 35% increase to maintain operation, get those two projects, and start a renewal and replacement plan.

Doug Wilson asked the mayor if he wanted to increase that over 3 years.

Mayor Wilson thought that, over three years, an increase of 15% every year would get us to 45%.

Kyle asked if that 15 % included the constant 2% rise in inflation every year.

Mayor Wilson replied that the inflation rate shouldn't be 2% but whatever the actual inflation rate was that year. Had we done that in 2017 and gone through the inflation we did, we would have probably been close to where we should be now.

Kyle commented that the council had concerns, especially regarding people on fixed incomes and the elderly. Blaine told us last night that some cities do something that allows for hardship cases, and they asked us to try and find out what those other towns do.

Doug commented that Iron County had an indigent/widow type program where if you couldn't afford your taxes, rather than get your house taken away, they would subsidize or help. They wrote those off. There were quite a few of them, but people had to apply. There's got to be some application process. He recommended looking at their IRS filings for two years.

Kyle agreed it was a good idea to tier the rate increase. He commented that if you want a loan from the state, they look to see if your rates are high enough to support the payment.

Blaine added that there are two things. One, you've got to have revenue to prove you can pay the loan. They use Medium gross income.

Doug asked if they could move money from the water fund into the general fund.

Kyle replied yes, you can move money. They need to have a public hearing, so everyone knows about it.

Doug suggested that as the water fund grows to pay for improvements, they never tap into it and move it into other parts of the budget.

Blaine continued to report that we are proposing a change to the tiers. The first tier was from 0 to 20,000. So to help with the state's big push in conservation, we recommend the first tier be 0 to 8,000 for those who don't use much water.

Mayor Wilson added that new developments now go to ultra-conservative landscaping.

Derek commented that the new construction standard for new homes is 8,000 gallons per month. Then, it is $10 per 1,000 gallons.

Blaine continued to say it helps with the Airbnb and that's the area we looked at because they do tend to use a significant amount more water and don't tend to pay their fair share on it, they'll use somewhere 80- 90 percent more water and their bill is somewhere around five to ten percent more. It does add some extra funds because we're not counting on having those revenue streams for the city's budget, which would be essentially extra money. On top of that, it could be used for conservation measures or to help fund some of these residents who can't afford it. There is some extra money there. But the tier is set up if everybody decides to conserve a ton of water and drops usage, it doesn't put the city in a bad spot.

Mayor Wilson asked if he could take that back to the council. Maybe 15% for the next three years would get us where we need to be, but maybe a bit higher at the end of three years. 15% plus the inflation rate for that year would be added.

Blaine suggested that after the 3 years, it would only increase by the inflation rate.

Kyle asked if that would be enough to help the subsided citizens.

Mayor Wilson commented that their rate would still have to go up but not as much as everyone else's.

Doug suggested that if they complain to the city or can only make partial payments, the city could have them apply for help.

Ken Cox suggested that if they knew citizens who wouldn't ask for help, they could suggest applying for help through the city.

Blaine continued his report that impact fees needed to be raised by $100. The biggest thing here is that the system is self-sufficient. The developers will pay for the upper bench.

VI. Public Concerns for Board Consideration:

No comment.

VII. Board Member Concern:

No Comment.

VIII. Adjourn:

The meeting ended at 12:07.

Minutes were taken by Nancy Cline.

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_____

Chairman

~~REUSE~~ WATER EXCHANGE AND SURPLUS WATER AGREEMENT

This ~~Reuse~~ Water Exchange and Surplus Water Agreement ("**Agreement**") is entered into this _____ day of _____, 202~~5~~4 ("**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, 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~~exchange with 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 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, farm, or industrial uses supplied by Secondary Water delivered through the City's Secondary Water System.

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

t. "Secondary Water Rights" means the City's water rights as identified in Exhibit A, which is attached and incorporated herein by this reference.

u. "Secondary Water System" means the portion of the City's m~~M~~unicipal water s~~S~~ystem 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.

v. "Secondary Water System Improvement Project" means ~~approved~~ improvements to the Secondary Water System, as approved by the City and any relevant Governmental Authority, and associated debts.

w. "Surplus Secondary Water ~~Rights~~" means the total volume of the Secondary Water Rights less the Designated Secondary Water Rights.

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.

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~~ that 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) the change application is protested, (B) approval of the change application is subject to a request for reconsideration or petition for judicial review, (C) the Utah State Engineer rejects the change application, or (D) the Utah State Engineer imposes conditions on approval of the change application that the District or the City deems unacceptable, the District and the City shall jointly decide whether or how to continue to prosecute the change application to a final, non-appealable Order that is satisfactory to the District and the City. If any of the events~~conditions~~ in this Section 4(d)(A)-(D) occur~~are met~~, the District or City 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. The District shall reimburse the City for 50% of the City's reasonable fees and costs incurred to prepare and file Extension Requests, Proof of Beneficial Use, and other documentation required to keep active and maintain the Change Application in good standing.

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 its Secondary Irrigation Area, which shall be determined based on the irrigated acres served by the Secondary Water System, water supply contracts, and other data available to the City; and (C) the quantity of the Surplus 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 Surplus Secondary Water ~~Rights~~ for the upcoming calendar year by taking ~~subtracting the quantity of the Designated Secondary Water Rights from~~ the total quantity of the Secondary Water Rights and subtracting (A) the quantity of the Designated Secondary Water Rights and (B) the quantity of the Secondary Water Rights that the City will divert from the Virgin River into its Secondary Water System to serve its Secondary Irrigation

Area. The quantity of the Surplus Secondary Water therefore represents the portion of the Secondary Water Rights that are in excess of the water needed for the City's designated water service area.

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 available to the District 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 flow 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)(iii)(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 Surplus Secondary Water ~~Rights~~.* In a calendar year, the District has the right, in its discretion, to divert up to the full quantity of the Surplus Secondary Water ~~Rights~~ identified in Section 5(a), provided that the District deliver to City an equivalent amount of District Water Supplies.

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. **Exchange and Payment**.

a. Exchange of Designated Secondary Water Rights for District Water Supplies. The District shall compensate the City for its use of the Designated Secondary Water Rights by delivering an equivalent quantity of District Water Supplies to the City. The Parties acknowledge and agree that this is an exchange of water rights or sources of water supply for other water rights or sources of water supply that the City has determined~~ds~~ will equally enable the City to meet the needs of its designated water service area as contemplated under the Utah Constitution, Article XI, Section 6(2)(c).

Commented [JG1]: How do we know if the District is diverting/using the City's water or the District's water? Maybe we need to add a provision that the first water taken by the District is the City's water.

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 deliver to City additional District Water Supplies~~reduce its diversion~~ the following calendar year in an ~~by the~~ amount equal to the~~of~~ excess diversions during the preceding calendar year (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 for the following calendar year allowing the District to increase its diversion by the amount of excess water received by the City during the preceding calendar year.

b. Payment for Surplus Secondary Water~~ Rights~~. The City is undertaking the Secondary Water System Improvement Project. ~~On a temporary basis, t~~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. *Payment for Use of Surplus Secondary Water~~ Rights~~*. The District shall pay the City _____ ($_____) United States dollars per year for a period of ___ (##) years for the District's ability to use the Surplus Secondary Water~~ Rights~~.

Commented [JG2]: Do we need a more clear provision that surplus water ends if City determines that there is no surplus water (i.e., that the Secondary Water Rights are needed for the use of its designated water service area).

ii. *Payment Timing*. The District shall make the payment identified in Section 6(b)(i) within thirty (30) days after the end of each year~~.~~, together with a statement indicating the year for which the payment is being made. 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 Surplus Secondary Water ~~Rights~~, (a) 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; and (b) the City and the District shall have the rights listed in Section 5 of this Agreement.

Commented [JG3]: This language is vague. What if the District gets some surplus water, but not as much as it was expecting? Does the District pay some of the Payment or none of the Payment? Maybe something like:
If during a calendar year there is no Surplus Secondary Water available for diversion and use by the District, then District shall have no obligation to make the payment identified in Section 6(b)(i) for that calendar year.

Commented [JG4]: Concern that the District could make a unilateral "determination" that the City did not use some of the payments for the Project, and then District would get to keep using the surplus water but not pay for it.

Commented [JG5]: Constitutional concern. The way I read this provision, the District pays for the surplus water for 20-30 years, and then gets the surplus water free for 970-980 years.
Maybe we structure it so that the lump sum payment is made until the loan is repaid, and then the payment switches to a per acre-foot basis for xx years?

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 divert and use the~~its~~ Designated Secondary Water Rights and the Surplus Secondary Water ~~Rights~~. Neither Party shall be in default under this Agreement if such water is not available because of drought or other Uncontrollable Forces, or because of the priority~~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. Each Party shall be responsible for all costs associated with installing its respective measuring devices.

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.

Commented [JG6]: This should be less (50 years?). See comment above about switching from lump sum to per acre-foot basis for xx years after loan is paid off.

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, and the City shall have the right to withdraw the Change Application and/or change its Secondary Water Rights to no longer allow for use in the District's water system and service area.

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, except that the City may pledge the Secondary Water Rights to the extent necessary under Utah law to obtain grant money or other funding from the Utah Division of Water Resources or the Utah Board of Water Resources for the Secondary Water System Improvement Project.

Commented [JG7]: Do we need to make this more broad to include other government agencies / funding sources?

iv. *Beneficial Use*. ~~To the City's knowledge, the City has put the Secondary Water Rights to full beneficial use or has made the necessary filings with the Division of Water Rights to be deemed a public water supplier under Utah law.~~ To the City's knowledge, 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. The City is not aware of any claims of 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, except that the City may pledge the Secondary Water Rights to the extent necessary under Utah law to obtain grant money or other funding from the Utah Division of Water Resources or the Utah Board of Water Resources for the Secondary Water System Improvement Project.

Commented [JG8]: Same note as above

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:
Attn: Mayor and City Manager
435 North Main Street

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: Kelly Wilson
Its: Mayor

ATTEST:

_____
City Recorder

APPROVED AS TO FORM:

By: _____
Name: Fay Reber
Its: City Attorney

Exhibit A
Secondary Water Rights

1. Water Right No. 81-2477, Change Application No. a13530 (Certificated), 1,630~~40.22~~ acre feet, Priority: 1890.

Commented [JG9]: Is it 1640.22 af or 1630 af? Both numbers listed on database, but I believe 1630 is correct.

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)(iii). The description and depiction will distinguish between the District Reuse Facilities and Secondary Water System.]

SURPLUS WATER AGREEMENT

This Surplus Water Agreement ("**Agreement**") is entered into this _____ day of _____, 2025 ("**Effective Date**"), by and between Washington County Water Conservancy District (the "**District**"), a water conservancy district organized under the Utah Water Conservancy District Act and a political subdivision of the State of Utah, 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 several water rights from the Virgin River that the City currently uses to serve its irrigation service area.

B. The infrastructure that is used by the City to deliver Virgin River water to the City's irrigation service area is aging and in need of repair or replacement to minimize water loss.

C. The District is willing to provide financial assistance to the City in making necessary improvements to its irrigation system consistent with the terms and conditions of this Agreement.

D. In exchange for receiving such financial assistance, the City is willing to allow the District to use the water savings realized from the improvements made to the City's irrigation system and from future changes in water use, so long as the City receives an equivalent number of New Connections from the District.

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. **Exchange.** The Parties acknowledge and agree that this is an exchange of water rights or sources of water supply for other water rights or sources of water supply that the City determines will equally enable the City to meet the needs of its designated water service area as contemplated under the Utah Constitution, Article XI, Section 6(2)(c).

3. **District Obligations**. Subject to the City fulfilling its obligations under this Agreement, the District shall have the following obligations under this Agreement:

   a. *District Financial Assistance*. The District will contribute up to a total amount of thirteen million six hundred sixty-four thousand five hundred dollars ($13,664,500) to the City's Secondary Water System Improvement Project (defined below), subject to and consistent with the terms and conditions of this Agreement, including the following:

i. *Payment*. The District shall make reimbursement payments to the City for the Secondary Water System Improvement Project. For purposes of this agreement, "**Secondary Water System Improvement Project**" means improvements to the Secondary Water System (defined below) mutually agreed to by the Parties and associated debts.

ii. *Use of Funds*. Payments from the District to the City under this Section 3(a) must be used by the City to pay for necessary improvements to 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..

iii. *Cessation of Payment Obligation*. Once the District has paid the total amount identified in this Section 3(a), or if the Secondary Water System Improvement Project ceases, or if the District has terminated future payments pursuant to Section 3(a)(ii) the District shall have no further payment obligation.

iv. *Perpetual Use*. The District shall have the right to use the water savings realized from the Secondary Water System Improvement Project and from future changes in water use in perpetuity.

b. *Delivery of New Connections to City*. The District shall provide to the City New Connections from the District's System, subject to and consistent with the terms and conditions of this Agreement, including the following:

i. *Surplus Secondary Water Rights*. The Surplus Secondary Water Rights identified in Exhibit A, which is attached and incorporated herein by this reference, shall not be reduced and represents a full and fair exchange of water between the City and the District. For purposes of this Agreement, "**Surplus Secondary Water Rights**" means the difference between the total amount in acre-feet of Secondary Water Rights minus the amount used for the Secondary Irrigation Area, or the amount identified in Exhibit A, whichever is greater. For purposes of this Agreement, "**Secondary Water Rights**" means the City's water rights as identified in Exhibit B, which is attached and incorporated herein by this reference. For purposes of this Agreement, "**Secondary Irrigation Area**" means the current amount of irrigated landscape, garden, or agriculture areas associated with residential, commercial, or industrial uses that can be reliably and regularly supplied by the City's Secondary Water System as of the Effective Date of this Agreement, taking into account leakage and other system losses. For purposes of this Agreement, "**Secondary Water**

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

ii. *Secondary Irrigation Area.* After completion of the Secondary Water System Improvement Project, the City shall not expand the geographical boundaries of its Secondary Irrigation Area as identified in Exhibit C, which is attached and incorporated herein by this reference.

iii. *Number of New Connections.* The number of New Connections available to the City shall be based on the Surplus Secondary Water Rights and the Level of Service for each New Connection at the time of Impact Fee payment. To illustrate, given the Surplus Water Rights at buildout as identified in Exhibit A, the District would provide to the City two thousand three hundred and five (2,305) New Connections based on the Level of Service at the Effective Date of this Agreement, three thousand four hundred eighty-seven (3,487) New Connections based on the ultra water efficient Level of Service at the Effective Date of this Agreement, or an amount of New Connections in between the two. The City and the District acknowledge that the Level of Service is determined by the State of Utah. The City and the District acknowledge and agree that the number of New Connections represents a substantially equivalent volume of water to the City in consideration of the Surplus Secondary Water Rights being provided to the District.

iv. *Ledger of New Connections.* The Parties shall work together in good faith to establish a system, such as a ledger, to account for the total number of New Connections provided by the District to the City pursuant to this Agreement. Upon the Effective Date, the City shall immediately draw upon the New Connections as the City approves building permits. The City shall not reserve the New Connections for future use.

v. *Impact Fee.* The Impact Fee shall be paid for each New Connection.

vi. *Delivery Location.* The District shall deliver water for the New Connections to the point(s) of delivery from the District's System to the City's Secondary Water System (collectively, "**Delivery Points**"). Exhibit D, which is attached and incorporated herein by this reference, identifies (A) each Delivery Point and (B) distinguishes between the end of the District's System and the beginning of the Secondary Water System.

4. **City Obligations**. Subject to the District fulfilling its obligations under this Agreement, the City shall have the following obligations under this Agreement:

a. *Delivery of Surplus Secondary Water Rights to District*. The City shall make available to the District the full quantity of the Surplus Secondary Water Rights in perpetuity, in consideration of the District's obligations herein. The Surplus Secondary Water Rights shall be in addition to any water provided under the separate Reuse Water Exchange Agreement.

i. *District's Diversion of Surplus Secondary Water Rights*. In a calendar year, the District has the right, in its discretion, to divert up to the full quantity of the Surplus Secondary Water Rights.

ii. *District's Use of Surplus Secondary Water Rights*. The District shall have the right to use the Surplus Secondary Water Rights anywhere throughout its drinking water system, as approved by the Change Application as that term is defined in the separate Reuse Water Exchange Agreement between the Parties.

5. **Coordination**. Prior to April 1st of each calendar year, the District and the City shall meet to coordinate regarding the terms of this Agreement, including balancing the ledger of New Connections.

6. **Reasonable Efforts**. The City shall use commercially reasonable efforts to cause sufficient water under the Secondary Water Rights to be delivered for the District to use its Surplus Secondary Water Rights. Neither Party shall be in default under this Agreement if such water is not available due to physical or legal water availability such as drought; weather and climate conditions; administrative action by a Governmental Authority, including priority-based curtailment; senior diversions; hostile diversions; or other, similar causes.

7. **Reuse Water Exchange Agreement**. The terms and conditions of the separate Reuse Water Exchange Agreement of even date herewith are hereby incorporated by this reference into this Agreement and made a part hereof.

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. **Term and Termination**. This Agreement shall have a perpetual term unless the Parties terminate this Agreement through written agreement signed by each Party. If this Agreement is terminated, the Parties shall execute any necessary documents to restore each other's respective ownership in their respective Water Rights.

11. **Miscellaneous**

a. **Default**.

i. 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;

ii. 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.

b. **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.

c. **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.

d. **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

To the City at:
La Verkin City
Attn: Mayor
435 N Main St.
La Verkin, Utah 84745

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.

e. **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.

f. **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.

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

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

i. **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.

j. **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.

k. **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.

l. **Regional Water Supply Agreement Definitions**. Unless otherwise defined in this Agreement, capitalized terms shall have the meaning set forth in Section 1.1 of the Regional Water Supply Agreement dated as of January 1, 2019 by and among the District and various Municipal Customers, as it may be amended from time to time.

m. **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.

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

o. **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.

p. **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.

q. **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.

r. **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.

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
Surplus Secondary Water Rights

The City will experience a consistent surplus of secondary water under normal operating conditions, with surplus volumes expected to increase due to reductions in agricultural usage and system efficiency gains. The table below summarizes projected Surplus Water Rights under Secondary Water System Improvement Project implementation, 10-year, 20-year, and full buildout conditions.

[illegible]	[illegible]
Secondary Water System Improvement Project	976
10-Year (2035)	956
20-Year (2045)	1,052
Build Out	1,360

Exhibit B
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 C
Secondary Irrigation Area Geographical Boundary

[To be inserted]

Exhibit D
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 3(b)(vi). The description and depiction will distinguish between the District's System and the Secondary Water System.]

REUSE WATER EXCHANGE AGREEMENT

This Reuse Water Exchange Agreement ("**Agreement**") is entered into this _____ day of _____, 2025 ("**Effective Date**"), by and between Washington County Water Conservancy District (the "**District**"), a water conservancy district organized under the Utah Water Conservancy District Act and a political subdivision of the State of Utah, 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 several water rights from the Virgin River that the City currently uses for irrigation water.

B. The City and the District desire to exchange the City's water from the Virgin River for other water provided by the District, 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. **Exchange**. The Parties acknowledge and agree that this is an exchange of water rights or sources of water supply for other water rights or sources of water supply that the City determines will equally enable the City to meet the needs of its designated water service area as contemplated under the Utah Constitution, Article XI, Section 6(2)(c).

3. **Water Diversions and Deliveries**.

a. *District's Diversion and Use of Secondary Water Rights*. In a calendar year, the District shall have the right to divert and use up to the full amount of the City's water rights as identified in Exhibit A, which is attached and incorporated herein by this reference ("**Secondary Water Rights**"), as approved by the Change Application (defined below).

b. *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 up to the quantity of water the City anticipates it will need to serve its Secondary Water System (defined below). Delivery of District Water Supplies shall be subject to and contingent upon physical and legal water availability. If it is determined that an excess amount has been delivered to either the District or the City, the Parties shall work in good faith to resolve any imbalance.

c. *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 water available to the City, at the flow rates and times determined mutually by the Parties, for the City to supply its customers' daily secondary water demand. For purposes of this Agreement, "**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.

d. *Delivery Location.* The District shall deliver District Water Supplies to the point(s) of delivery from the District Reuse Facilities to the City's Secondary Water System (collectively, "**Delivery Points**"). The District's deliveries shall be metered at or near the Delivery Points. Exhibit B identifies (A) each Delivery Point and (B) distinguishes between the end of the applicable District Reuse Facilities and the beginning of the Secondary Water System. For purposes of this Agreement, "**Secondary Water System**" means the portion of the City's municipal water system used to receive, convey, store, and deliver water under the Secondary Water Rights that is (i) currently owned or operated by the City; or (ii) to be hereafter owned or operated by the City.

e. *Reasonable Efforts.* The City shall use commercially reasonable efforts to cause the Secondary Water Rights not diverted as a result of the exchange to be delivered for the District's use. Neither Party shall be in default under this Agreement if such water is not available due to physical or legal water availability such as drought; weather and climate conditions; administrative action by a Governmental Authority, including priority-based curtailment; senior diversions; hostile diversions; or other, similar causes.

f. *Coordination.* Prior to April 1st of each calendar year, the District and the City shall meet to coordinate regarding the terms of this Agreement, including resolving any water delivery imbalances.

4. **Change Application.**

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

b. 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 the full volume of the Secondary Water Rights in the District's water system and service area. Both Parties shall sign the Change Application. The District will pay the filing fee for the change application and will be primarily responsible to prosecute it.

c. 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.

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) the change application is protested, (B) approval of the Change Application is subject to a request for reconsideration or petition for judicial review, (C) the Utah State Engineer rejects the Change Application, or (D) the Utah State Engineer imposes conditions on approval of the Change Application that the District or the City deems unacceptable, the District and the City shall jointly decide whether or how to continue to prosecute the Change Application to a final, non-appealable Order that is satisfactory to the District and the City. 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.

5. **Surplus Water Agreement**. The terms and conditions of the separate Surplus Water Agreement of even date herewith are hereby incorporated by this reference into this Agreement and made a part hereof.

6. **Costs**. Except for the filing fee for the change application which shall be paid by the District, 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. Specifically:

a. The City shall perform all operations, maintenance, repair, and replacement ("**O&M**") on its Municipal System and its appurtenant facilities in a safe, good, and workmanlike manner; in compliance with Applicable Law; in conformance with industry standards; and consistent with the terms of this Agreement and Section 9.1 (Operation of Municipal Customer Systems) of the Revised Regional Water Supply Agreement dated January 1, 2019, as it may be amended and/or renumbered from time to time.

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

7. **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.

8. **Term and Termination.** This Agreement shall have a perpetual term unless the Parties terminate this Agreement through written agreement signed by each Party. If this Agreement is terminated, the Parties shall execute any necessary documents to restore each other's respective ownership in their respective Water Rights.

9. **Miscellaneous**

a. **Default.**

i. Subject to Section 9(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;

ii. If a default described in Section 9(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.

b. **Remedies.** The Parties shall have all rights and remedies provided under applicable law 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.

c. **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 law by the Indemnifying Party, except to the extent a claim or liability under Section 9(a) and (b) results from the gross negligence, recklessness, or willful misconduct of the Indemnified Party.

d. **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, with delivery confirmation, 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

To the City at:
La Verkin City
Attn: Mayor
435 N Main St.
La Verkin, Utah 84745

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.

e. **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.

f. **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.

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

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

i. **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.

j. **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.

k. **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.

l. **Regional Water Supply Agreement Definitions**. Unless otherwise defined in this Agreement, capitalized terms shall have the meaning set forth in Section 1.1 of the Regional Water Supply Agreement dated as of January 1, 2019 by and among the District and various Municipal Customers, as it may be amended from time to time.

m. **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.

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

o. **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.

p. **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.

q. **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.

r. **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.

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 Points under Section 3(d). The description and depiction will distinguish between the District Reuse Facilities and Secondary Water System.]