

NOTICE AND AGENDA

March 2, 2021

“When you play, play hard; when you work, don’t play at all.” – Theodore Roosevelt

Notice is hereby given that the Roosevelt City Council will hold a work session on Tuesday, March 2, 2021, at the Roosevelt Municipal Building, 255 South State Street, Roosevelt, Utah, which meeting shall begin promptly at 5:30 p.m.

The agenda will be as follows:

- 1. Call to Order Page
- 2. Roll Call
- 3. Opening Ceremony *(Prayer and Pledge of Allegiance)*
- 4. **Public Comment Period** *(The comment period is limited to 15 minutes. Any person wishing to comment shall limit their comments to three (3) minutes. Any person wishing to comment during the comment period shall request recognition by the Mayor. Upon recognition, the citizen shall approach the front and state his/her name and address for the record. All comments shall be directed to the Mayor or entire Council. No person addressing the City Council during the comment period shall be allowed to comment more than once during that comment period. Speakers should not expect any debate with the Mayor, City Council or City Staff; however, the Mayor, City Council or City Staff may respond within the 15-minute period. During this time, citizens may address the Council on any subject.)*
- 5. Appointments
 - a. City Treasurer Appointment
 - b. City Recorder/Finance Director Appointment
 - c. XCL Resources Water Contract Approval..... 1-9
 - d. State Street Project Discussion – CIVCO Engineering
- 6. Closed Session (as needed)
- 7. Adjourn

SURPLUS CULINARY WATER PURCHASE AGREEMENT

This Surplus Water Purchase Agreement (“**Agreement**”) is entered into this ____ day of February 2021 (the “**Effective Date**”), by and between the Roosevelt City Corporation, a municipal corporation located in Duchesne County, State of Utah, with its principal place of business at 255 South State Street, Roosevelt, Utah 84066 (“**Seller**”), and XCL Resources, a Texas Corporation with its principal place of business at 600 North Shepherd Drive, Suite 390, Houston, Texas 77007 (“**Buyer**”). The Seller and Buyer are herein sometimes referred to individually as “**Party**” and collectively as the “**Parties**”.

RECITALS

WHEREAS, Seller owns or controls quantities of water and has a surplus which it is willing to deliver to Buyer for industrial and other uses, including use in oil and gas operations; and

WHEREAS, Buyer desires to purchase water from Seller, as set forth below.

NOW THEREFORE, for and in consideration of the promises and mutual covenants herein contained, Seller and Buyer do hereby stipulate and agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 “**Day**” means a period of twenty-four (24) consecutive hours, beginning at 8:00 AM MST.
- 1.2 “**Month**” means a period beginning at 8:00 AM MST on the first Day of the calendar Month and ending at 8:00 AM MST on the first Day of the next succeeding calendar month.
- 1.3 “**Delivery Point**” means the outlet flange of the meter located at the point described in Exhibit A.
- 1.4 “**Water**” means fresh water procured from any source to which Seller has legal access and provided by Seller to Buyer.
- 1.5 “**Water Delivery System**” means the pipeline system, pumps, processing facilities, and other related facilities or infrastructure owned, controlled, and used by Seller to provide Water to Buyer.

ARTICLE 2 WATER

- 2.1 **Tender of Water**. Seller shall deliver Water to Buyer at the Delivery Point during the Term. Seller shall deliver only Water which meets the specifications provided below in Section 2.2.

2.2 **Water Quality.** The quality of water to be delivered to Buyer shall be the same as that which is delivered to customers of the Roosevelt system in the vicinity of the delivery point. Buyer accepts said water “as is”, without the necessity of additional treatment or preparation by Seller. Seller makes no guarantee regarding water quality. Buyer is responsible for monitoring the quality of any water passing from the Roosevelt system to the Buyer.

2.3 **Water Quantity.** The quantity of water to be delivered to Buyer shall not exceed 1000 gallons per minute without the express consent of the Roosevelt City Water Director on any day desired delivery exceeds 1000 gallons per minute. Delivery may vary subject to the provisions herein, including but not limited to Article 4.

2. **Facilities.** Except as set forth herein, Seller shall not be obligated to add or to modify its facilities or other infrastructure to expand the capacity of the Water Delivery System in order to provide services to Buyer, including but not limited to providing conditioning and treating of the Water or other services or associated facilities in order to deliver Water at the specified Delivery Point.

2.5 **Custody, Title, and Risk of Loss.** Custody, control, responsibility for, and risk of loss of the Water will transfer from Seller to Buyer at the outlet flange of the Meter located at a Delivery Point.

ARTICLE 3 **METER; MEASUREMENT**

3.1 **Meter.** Seller shall provide, install, operate, and maintain a flow meter at the Delivery Point that complies with Applicable Law and conforms to industry standards (the “**Meter**”). Each Party shall have the right, but not the obligation, to install, at its sole cost and expense, a secondary meter to check the accuracy of the Meter (the “**Check Meter**”). For purposes of invoicing and payment, all volumes of Water will be measured at the Meter; provided, however, if at any time there is a discrepancy between the Meter and a Check Meter, the Parties agree to work together in good faith to identify and resolve the cause of the discrepancy and the Meter shall be adjusted accordingly.

3.2 **Calibration.** Seller shall inspect, test, and calibrate the Meter as necessary to ensure accurate measurement of Water volumes. The Meter will be deemed to measure accurately when a test results in an error equal to or less than four percent (4%).

3.3 **Inspection.** If Buyer has reasonable cause to doubt the accuracy of the Meter, Buyer shall have the right to request additional inspection, testing, and calibration; provided, however, the costs of such additional inspection, test, and calibration shall be borne by Buyer if the percentage of inaccuracy, if any, is found to be equal to or less than four percent (4%). The records from such measuring equipment shall remain the property of its owner, but upon request, either Party may review the records and charts together with calculations therefrom, subject to their return within fifteen (15) Days after receipt thereof. Records and charts shall be retained by each Party for a period of two (2) years.

3.4 **Remedial Action.** If any inspection, test, and calibration, results in an error greater than four percent (4%), Seller shall adjust, at its sole cost and expense, the Meter to read as accurately as practicable. Settlement for any period during which such error is greater than four percent (4%) shall be corrected at the rate of inaccuracy for any period of inaccuracy that is definitely known or agreed upon, but if the period of inaccuracy is not definitely known and not agreed upon, then for a period of one-half of the time since the date of the most recent prior calibration.

ARTICLE 4 **FEES; INVOICING AND PAYMENT**

4.1 **Base Rate.** Buyer shall pay a base rate of \$3,000.00 per month regardless of whether any water is used by buyer. Said base rate shall entitle Buyer to up to 2,000,000 gallons of water each month.

4.2 **Water Purchase Fee.** Buyer shall pay a fee for each thousand gallons of Water delivered by Seller and received by Buyer, in excess of 2,000,000 gallons per month, (the “**Water Purchase Fee**”) at the Delivery Point as follows:

(a) **XCL Myton Bench Pond.** For each thousand gallons of Water delivered by Seller and received by Buyer, in excess of 2,000,000 gallons per month, at the XCL Myton Bench Pond Delivery Point, the Water Purchase Fee shall be equal to three dollars and twenty-five cents (\$3.25).

4.2 **Invoicing.** Not later than the tenth (10th) Day of each Month during the Term, Seller shall tender to Buyer an invoice (the “**Invoice**”) setting forth the volume of Water delivered to Buyer during the prior month, expressed in thousand gallon increments, and multiplied by the applicable Water Purchase Fee, to establish the aggregate sum due from Buyer to Seller. Seller shall submit each invoice to Buyer through Buyer’s Open Invoice system.

4.3 **Payment.** Payment shall be made not later than forty-five (45) Days from the date of receipt by Buyer of the invoice in Buyer’s Open Invoice system. Buyer shall pay Seller the amount due in the form of immediately available federal funds by wire or electronic fund transfer to the bank account specified by Seller. Any payment shall not prejudice the right of the paying Party to an adjustment of any statement to which it has taken written exception, provided such Party’s written exception shall have been made before payment from the Buyer to Seller for any given Month. Late payments shall accrue interest at the rate of 1.5% per Month until paid.

4.4 **Right of Termination.** If Buyer fails to timely pay in accordance with Section 4.3 herein, then the Roosevelt City Recorder or Water Director shall give notice in writing of intent to discontinue the service. If payment is not received in full by the end of a five (5) day notice period then Seller may close any and all necessary valves to discontinue the transfer of water. If service is discontinued for failure to make timely payment Seller shall have no liability for any claimed or actual damages resulting from a shut off and/or interruption to the delivery of water to Buyer. In the event service is suspended for nonpayment, no provision of this agreement shall be binding upon Seller during the period of suspended service. Seller shall have seventy-two (72) hours to restore service, from the time payment is received in full, following a suspension of

service for failure to make timely payment. Upon a third default for non-payment, whether continuous or not, Seller may elect to terminate this agreement.

Seller may suspend its obligations herein immediately for Buyer's violation of any of the terms and conditions hereof and may terminate this agreement if such violation is not rectified within ninety (90) days. Furthermore, Seller may suspend its obligations hereunder (and terminate this agreement after ninety (90) days if Buyer fails to cure) for the violation of any relevant federal or state laws, Roosevelt City watershed ordinances, or any applicable ordinances, rules, or regulations of TriCounty Health Department and/or state and federal regulatory agencies concerning sanitation incidental to the uses and developments within Buyer's control, provided Roosevelt has reasonable cause to believe such violation would cause or result in Seller being charged with a violation or render Roosevelt's system disapproved or down-graded.

Pursuant to Article XI, Section 6, Utah State Constitution, Seller has primary obligations to deliver water to the residents, firms and corporations in Roosevelt City. This agreement pertains only to surplus water in excess of Seller's other needs and obligations. If, at any time or for any reason, in Seller's sole judgement, it is unable to both comply with Article XI, Section 6 of the Utah State Constitution and furnish the water provided for in this Agreement, it may suspend and/or terminate this agreement. However, Seller shall make a good faith effort to exercise any reasonable alternative that does not result in termination of this agreement and/or discontinuation or reduction in service. Roosevelt may also terminate this agreement if continuation of the agreement would stifle growth within Roosevelt City. Seller must give as much notice as reasonably practical regarding its intent to terminate this agreement for reasonably foreseeable growth. Reduction of surplus water due to emergency, drought, unforeseeable drop in well production or any other failure affecting the Roosevelt system shall also justify suspension of service until surplus water is available. Notice of any unanticipated discontinuation of service will be provided as soon as reasonably practical.

4.5 **Audit.** Either Party, on thirty (30) Days prior written notice, shall have the right at its expense, at reasonable times during business hours, to audit the books and records of the other Party to the extent necessary to verify the accuracy of any statement, measurement, computation, charge, or payment made under or pursuant to this Agreement. The scope of any audit shall be limited to transactions affecting the Water during the Term of this Agreement.

ARTICLE 5 **NOTICES**

5.1 **Notices.** All notices to Seller shall be served upon the Roosevelt City Recorder subject to all Utah State laws and legally recognized procedures.

Any notice to Buyer provided for in this agreement shall be in writing and shall be considered as duly delivered by electronic mail, and/or when mailed by regular mail, certified or registered mail to the address of the Buyer as follows:

SELLER:

ROOSEVELT CITY CORPORATION

255 S. State Street
Roosevelt, UT 84066
Attn: Kurt Mower

BUYER:

XCL RESOURCES

600 North Shepherd Drive
Suite 390
Houston, TX 77007

Either Party may change its address or listed contact by giving written notice of such change to the other Party within ten (10) Days of said change.

ARTICLE 6
TERM

6.1 **Term.** This Agreement shall commence on the Effective Date and shall terminate approximately one (1) year from the Effective Date on June 30, 2022(the “**Primary Term**”). Buyer, in its sole discretion, shall have the option to extend the Term for additional one (1) year periods (the “**Extended Term**”) under the existing terms of this Agreement (the Primary Term and Extended Term collectively, the “**Term**”). Buyer shall provide Seller with its election to exercise the Extended Term option thirty (30) Days prior to expiration of the Primary Term. Upon expiration of the Extended Term, if Buyer exercises the foregoing option, the Term of this Agreement will be automatically extended for successive one (1) year periods until terminated by either Party at the end of any one (1) year period, as applicable, upon at least thirty (30) Days prior written notice to the other Party.

ARTICLE 7
INDEMNIFICATION

7.1 Buyer agrees to defend, indemnify and hold Seller, its parent, subsidiary and affiliate companies, its subcontractors, their agents, employees, directors, officers, servants, and invitees (the “**Seller Group**”), harmless from and against any and all losses, claims, demands, liabilities or causes of action of every kind and character, in favor of any person or party, for any Buyer Group’s property casualty, and for injury to or illness or death of any employee of Buyer Group, which casualty, injury, illness or death relates to, arises out of or is incident to the work or services performed under this Agreement, and regardless of the cause of such casualty, injury, illness or death, even though caused in whole or in part by a pre-existing defect, indemnitees’ negligence or strict liability, or other legal fault of indemnitees, whether sole, joint or concurrent; excluding, however, such liability, claims losses, damages, or expenses arising from Seller’s sole negligence, willful misconduct, or fraudulent conduct. Buyer shall fully defend any such claim, demand or suit at its sole expense, even if the same is groundless. Buyer’s indemnification of Seller Group hereunder includes any contractual liability under indemnity agreements that Seller may have with third parties concerning property casualty, bodily injury or death to any employee of Buyer Group. This indemnity shall be limited to the extent necessary for compliance with applicable State and Federal laws.

7.2 Seller agrees to defend, indemnify and hold Buyer, its joint interest owners, their parent, subsidiary and affiliate companies, its other contractors of every tier, agents, employees, directors, officers, servants, invitees (the "Buyer Group") harmless from and against any and all losses, claims, demands, liabilities or causes of action of every kind and character, in favor of any person or party, for any Seller Group property casualty, and for injury to or illness or death of any employee of Seller or any employee of Seller Group, which casualty, injury, illness or death relates to, arises out of or is incident to the work or services performed under this Agreement, and regardless of the cause of such casualty, injury, illness or death, even though caused in whole or in part by a pre-existing defect, indemnitees' negligence or strict liability, or other legal fault of indemnitees, whether sole, joint or concurrent. Seller shall fully defend any such claim demand or suit at its sole expense, even if the same is groundless. Seller's indemnification of Buyer Group hereunder includes any contractual liability under indemnity agreements that Buyer may have with third parties concerning property casualty, bodily injury or death to any employee of Seller Group. This indemnity shall be limited to the extent necessary for compliance with applicable State and Federal laws.

7.3 EXPRESS NEGLIGENCE / CONSPICUOUS MANNER. WITH RESPECT TO THIS SECTION, BOTH PARTIES AGREE THAT THIS STATEMENT COMPLIES WITH THE REQUIREMENT KNOWN AS THE EXPRESS NEGLIGENCE RULE, TO EXPRESSLY STATE IN A CONSPICUOUS MANNER TO AFFORD FAIR AND ADEQUATE NOTICE THAT THIS SECTION HAS PROVISIONS REQUIRING ONE PARTY (THE INDEMNITOR) TO BE RESPONSIBLE FOR THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF ANOTHER PARTY (THE INDEMNITEE).

AS AN "INDEMNIFYING PARTY", SELLER REPRESENTS TO BUYER, AS THE "INDEMNIFIED PARTY" (1) THAT IT, CONTRACTOR, HAS CONSULTED AN ATTORNEY CONCERNING THIS SECTION OR, IF IT HAS NOT CONSULTED AN ATTORNEY, THAT IT WAS PROVIDED THE OPPORTUNITY AND HAD THE ABILITY TO SO CONSULT, BUT MADE AN INFORMED DECISION NOT TO DO SO, AND (2) THAT IT FULLY UNDERSTANDS ITS OBLIGATIONS UNDER THIS SECTION. AS AN "INDEMNIFYING PARTY", BUYER REPRESENTS TO SELLER, AS THE "INDEMNIFIED PARTY" (1) THAT IT, BUYER, HAS CONSULTED AN ATTORNEY CONCERNING THIS SECTION OR, IF IT HAS NOT CONSULTED AN ATTORNEY, THAT IT WAS PROVIDED THE OPPORTUNITY AND HAD THE ABILITY TO SO CONSULT, BUT MADE AN INFORMED DECISION NOT TO DO SO AND (2) THAT IT FULLY UNDERSTANDS ITS OBLIGATIONS UNDER THIS SECTION.

7.4 Each party shall notify the other party immediately of any claim, demand, or suit that may be presented to or served upon it by any party arising out of or as a result of work performed pursuant hereto, affording such other party full opportunity to assume the defense of such claim, demand, or suit and to protect itself under the obligations of this Section 7. A party assuming control of defense of such claim may not later dispute its indemnification obligation as to that claim.

7.5 Seller advises that it is a governmental entity in the State of Utah and is bound by the provisions of the Utah Governmental Immunity Act (Title 63G, Chapter 7, Utah Code Annotated, 1953, as amended) and does not waive any procedural or substantive defense or benefit provided or to be provided by the Governmental Immunity Act or comparable legislative enactment,

including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. Any indemnity and insurance obligations incurred by Seller under this contract are expressly limited to the amounts identified in the Act to the extent and only to the extent the Act applies to this Agreement.

ARTICLE 8 **FORCE MAJEURE**

8.1 With the exception of Buyer's duty to make timely payment for services provided prior to the commencement of the event of force majeure, each party hereto shall be excused from the performance of any of the obligations herein imposed, for the time and extent such failure is occasioned by, whether foreseeable or unforeseeable, the acts of God, or federal, state or municipal order, rule, legislation, or regulation, or by war, acts of the public enemy, strikes, lockouts, insurrection, rebellion, riots, floods, hurricanes, fire, storm, explosion, destruction from any involuntary cause of the facilities involved herein, or any other cause or causes of any kind or character reasonably beyond the control of the Party failing to perform (each, an "**Event of Force Majeure**"). Neither Party shall be required to settle or resolve any type of labor disturbances.

ARTICLE 9 **REPRESENTATIONS AND WARRANTIES**

9.1 Buyer represents and warrants that it has, or will have, the financial capacity to meet the financial obligations imposed by this Agreement at the time required.

9.2 Buyer represents and warrants that it has obtained any necessary permission(s), authorization(s) and approval from its corporate officers and/or board of directors, that it is legally authorized to enter into this Agreement and to fulfill any and all obligations imposed hereby, and that this Agreement constitutes the legal, valid and binding Agreement of Buyer; Buyer represents and warrants that the individual signing this agreement for Buyer is fully authorized to enter into this Agreement in the name of Buyer, and that he or she suffers no incapacity or infirmity which would invalidate the commitments herein.

9.3 Seller represents and warrants that it has the authority to sell surplus water, and capacity to deliver, water to Buyer pursuant to this Agreement.

9.4 Seller represents and warrants that it has obtained any necessary permission(s), authorization(s) and approval from its corporate officers and/or governing body, that it is legally authorized to enter into this Agreement and to fulfill any and all obligations imposed hereby, and that this Agreement constitutes the legal, valid and binding Agreement of Seller; Seller represents and warrants that the individual signing this agreement for Seller is fully authorized to enter into this Agreement in the name of Seller, and that he or she suffers no incapacity or infirmity which would invalidate the commitments herein.

ARTICLE 10
MISCELLANEOUS

10.1 **Successors and Assigns.** The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto.

10.2 **Governing Law.** This Agreement is governed by the laws of the state of Utah.

10.3 **Attorney Fees.** In the event action is brought by either party to enforce any terms of this agreement the prevailing party shall recover from the other party reasonable attorney fees.

10.4 **Validity/Severability.** If any provision of this agreement is held to be invalid, such invalidity shall not affect the validity or enforceability of any other provision of this agreement.

10.5 **Independent Entity.** Nothing in this agreement shall be construed to create the relationship of partner, agent, employer, employee, assignee, licensee, invitee or any other relationship other than independent parties to this agreement.

10.6 **Amendment.** This Agreement constitutes the entire understanding between the Parties with respect to the information contained herein. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and executed on behalf of each party by its duly authorized representative.

10.7 **Execution.** Each party represents that it has caused this Agreement to be executed on its behalf as of the date written below by a representative empowered to bind that Party with respect to the undertakings and obligations contained herein.

10.8 **Further Assurances.** The Parties shall provide cooperation and assistance to each other in order to implement and carry out the intent and water operations required under this Agreement.

10.9 **Entire Agreement.** This contract contains the entire agreement between the parties hereto. **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date written below, but effective for all purposes as of the Effective Date.

BUYER:

XCL RESOURCES

by its authorized agent

By: _____

Name: Coby Denham

Title: Completions Superintendent

Date: _____

SELLER:

ROOSEVELT CITY

Attest:

By: _____

Name: Roddie I. Bird JR

Title: Mayor

Date: _____

By: _____

Kurt Mower

Roosevelt City Recorder

Date: _____

EXHIBIT A
DELIVERY POINT

XCL Myton Bench Pond

Section 4, Township 3 South, Range 1 West
Lat. 40 deg. 15' 21" North
Long. 110 deg. 00' 38" West