

WATER TRANSPORTATION AGREEMENT (Between Virgin Town and WCWCD)

THIS WATER TRANSPORTATION AGREEMENT (“Agreement”) is made and entered into effective ~~September~~ November 9, 2022 by and between Virgin Town, a municipal corporation and political subdivision of the State of Utah (“the Town”), and Washington County Water Conservancy District, a water conservancy district and political subdivision of the State of Utah (“the District”). Throughout this Agreement the Town and the District may be referred to individually as a “Party” and collectively as “the Parties”.

RECITALS

WHEREAS, the District²² provides wholesale culinary water through its wholesale system to the Town, and the Town is the retail culinary water provider for areas within its municipal boundaries;

WHEREAS, the District owns and maintains the wholesale water system that delivers water to the Town and the Town owns and maintains the retail culinary water system that delivers water to its residents;

WHEREAS, due to contamination in a private well, several individuals located in the unincorporated areas of Washington County north of the Town (“Service Requesters”) have approached the Town and the District and requested culinary water service to their property and have offered to pay for the costs of constructing a water pipeline (“Proposed Pipeline”) connecting the Town’s retail culinary water system to their property which is described on the records of the Washington County Recorder as those parcels identified in *Exhibit “A”* which is attached hereto and incorporated herein by this reference (“Subject Property”);

WHEREAS, the Town and the District desire to help provide the Service Requesters access to culinary water that meets applicable standards for public culinary water systems;

WHEREAS, as the Town expands, the Proposed Pipeline would likely provide a benefit to the Town as well as adjacent District property;

WHEREAS, the Service Requesters do not reside within the service area of the Town and the Town and the District have determined that presently, the most effective manner of providing culinary water service to the Service Requesters, is for the Town to allow the District to transport water through the Town’s retail culinary water system to the Proposed Pipeline and for the District to provide retail culinary water service to the Service Requesters;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Town and the District agree as follows:

SPECIFIC TERMS

1. Term of Agreement. This Agreement shall continue until the later of: (i) the date the pipeline or its equivalent replacement is removed from service; or (ii) the date the Town annexes

the Subject Property, in which case, the Town shall become the retail service provider of the Subject Property.

2. Connection of Proposed Pipeline. The Town shall allow the Proposed Pipeline to be connected to the Town's retail culinary water system infrastructure at the Town's pipeline located at the intersection of the Pocketville Road and the Kolob Terrace Road ("Connection Location"). The District shall oversee and inspect the connection of the Proposed Pipeline to the Town's retail culinary water system infrastructure and ensure that it meets applicable standards and specifications. The District shall ensure that a meter is installed at the Connection Location to meter the amount of water transported through and out of the Town's retail culinary water system and into the Proposed Pipeline.

3. Construction of Proposed Pipeline. The District shall ensure that a water pipeline that meets the requirements of the Utah Division of Drinking Water and is a minimum of 8 inches in diameter is installed along the Kolob Terrace Road from the Connection Location to the Subject Property. The District shall oversee and inspect the construction of the Proposed Pipeline and ensure that it meets applicable standards and specifications. The District shall ensure that all necessary easements or rights-of-way for the construction of the Proposed Pipeline are acquired.

4. Water Transportation. The Town shall allow the District to transport water through the Town's retail culinary water system to the Connection Location. The District shall meter the water transported through the Town's retail culinary water system into the Proposed Pipeline. Prior to the District invoicing the Town for water provided under the Water Supply Agreement between the Town and the District dated June 24, 1997 ("Water Supply Agreement"), the District shall deduct the amount of water metered at the Connection Location from the amount of water metered at the point of delivery from the District's wholesale culinary system to the Town's retail culinary water system as defined in paragraph 7 and Exhibit 2 of the Water Supply Agreement.

5. Reserved Town Capacity in the Proposed Pipeline. The District shall secure an agreement with the Service Requesters that reserves twenty five percent (25%) of the excess capacity of the Proposed Pipeline for the Town for a period of twenty (20) years from the effective date of such agreement.

6. Ownership of the Proposed Pipeline. Upon installation, the Proposed Pipeline shall become the Property of the District. In the event that the Town annexes the Subject Property and thereby becomes the retail service provider of the Subject Property, the District and the Town will work in good faith to execute an agreement whereby the Proposed Pipeline is conveyed to the Town at no cost except for ~~possible~~ upgrade and replacement costs incurred by the District, if any (pro-rated by the Proposed Pipeline's remaining useful life).

~~7. District Cooperation with Pocketville Road. The Parties acknowledge that the Town is considering the feasibility and impacts of terminating Pocketville Road in a dead end turn around prior to its intersection with Kolob Terrace Road. In the event the Town, working in conjunction with the Hurricane Valley Fire District, determine that the dead ending of Pocketville Road is in the best interest of the health, safety and general welfare of the Town and its residents, the District agrees to cooperate with Town in working out all necessary details of such a road closure including the reservation of utility easements and possible easements on District property for appropriate~~

~~turning radius of vehicles and continued emergency response access thru Pocketville Road to Kolob Terrace Road.~~

~~8.7.~~ Effectiveness of Terms Conditions. The terms and conditions contained herein are conditioned on the following:

a. The Service Requesters agreeing to pay for all costs of constructing the Proposed Pipeline in accordance with applicable standards and specifications, reserving the excess capacity for the Town as described herein, and agreeing to the terms and conditions required by the District.

b. Approval from the Utah Division of Drinking Water that the capacity of the Town system meets all Division requirements, and that the connection and design of the system meet all requirements of the Division.

GENERAL TERMS

~~9.8.~~ Recitals. The Recitals contained in this Agreement are incorporated into the Agreement.

~~10.9.~~ Paragraph Headings. The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Agreement.

~~11.10.~~ Number and Gender. The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this Agreement in accord with the manifest intention of the Parties. Likewise, if either the feminine, masculine or neuter gender should be one of the other genders, it shall be so treated.

~~12.11.~~ Authorization. Each individual executing this Agreement does represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she so signs.

~~13.12.~~ Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

~~14.13.~~ Utah Law to Govern. This Agreement has been drawn and executed in the State of Utah. All questions concerning the meaning, intention and enforcement of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah. In any dispute jurisdiction and venue shall be in the Fifth District Court of the State of Utah.

~~15.14.~~ Inducement. The making and execution of this Agreement has not been induced by any representation, statement, warranty, or agreement other than those herein expressed.

~~16.15.~~ Integration. All agreements heretofore made in the negotiation and preparation of this Agreement between the Parties are superseded by and merged into this Agreement, no statement or representation not embodied herein shall have any binding effect upon the Parties and there shall be no amendments hereto except those in writing signed by the Parties.

~~17.16.~~ Time is of the Essence. Time is of the essence with regard to this Agreement as to each covenant, term, condition, representation, warranty and provision hereof.

~~18.17.~~ Necessary Acts and Cooperation. The Parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.

~~19.18.~~ Partial validity. If any portion of this Agreement shall be held invalid or inoperative, then insofar as is reasonable and possible:

- a. The remainder of this Agreement shall be considered valid and operative, and,
- b. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

~~20.19.~~ Ambiguities. This Agreement has been negotiated and drafted by both of the Parties and the general rule of contract construction that ‘ambiguities shall be construed against the draftsman’ shall have no application to this Agreement.

~~21.20.~~ No Third-Party Beneficiaries. This Agreement is not intended to be a third-party beneficiary contract for the benefit of any third parties, including but not limited to any customer of either Party, and no such persons shall have any right of subrogation or cause of action against either Party for any breach or default by any Party hereunder. In addition, no third parties shall have any rights hereunder that would, in any way, restrict the Party's right to modify or renew this Agreement at any time or in any manner. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement.

~~22.21.~~ Laws and Regulations. Any and all actions performed pursuant to this Agreement will comply fully with all applicable Federal, State and local laws and regulations.

~~23.22.~~ Equal Opportunity Clause. The Parties shall abide by applicable provisions of state and federal law, including executive orders, that prohibit discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, national origin, sex, age or disabilities and that prohibit sexual harassment in the workplace.

~~24.23.~~ Availability of Funds. Implementation of this Agreement shall be subject to the availability of appropriated funds. The District may cancel or suspend this Agreement without penalty if adequate funds are not appropriated or received.

~~25.24.~~ Binding on successors in interest. This Agreement shall bind the Parties and their successors, heirs, assigns and representatives.

~~26.25.~~ Assignment. No rights or obligations of either Party under this Agreement shall be assigned without the prior written consent of the other Party. This Agreement is voidable and subject to immediate cancellation by the either Party upon the other Party's becoming insolvent, or filing proceedings in bankruptcy or reorganization under Title XI, United States Code.

27.26. Notice. Any notice to be given or payment to be made hereunder shall have been properly given or made when received by the District or the Town, as the case may be, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

If to the District:

WASHINGTON COUNTY WATER
CONSERVANCY DISTRICT
Attn. General Manager
533 East Waterworks Drive
St. George, Utah 84770

If to the Town:

VIRGIN TOWN
Attn. Mayor
114 South Mill Street
Virgin, Utah 84779

28.27. Default. Except as specifically provided for herein, a default by any Party in an obligation set forth herein shall not result in, or be the basis for, the termination or rescission of this Agreement.

29.28. Waiver. The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this Agreement. Any waiver shall be in writing and signed by the waiving Party.

30.29. Rights and Remedies. The Parties shall have all rights and remedies provided under applicable Federal or State 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 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.

31.30. Sovereign Immunity. Nothing in this Agreement shall be construed to waive the sovereign immunity of the District or the Town.

32.31. Subordination to Regional Water Supply Agreement. Any water service to be provided by the District hereunder shall be subject and subordinate to the terms and conditions of the Revised Regional Water Supply Agreement dated January 1, 2019, by and between the District and various municipal customers.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement on the date first above written.

**WASHINGTON COUNTY WATER
CONSERVANCY DISTRICT**

VIRGIN TOWN

By: _____
Zachary Renstrom, General Manager

By: _____
Jean Krause, Mayor

Attest: _____

Attest: _____

EXHIBIT “A”
To Water Transportation Agreement
(Parcel Numbers of Subject Property)