

**5:30 p.m. – Work Session**

*No motions or decisions will be considered during this session, which is open to the public.*

**6:00 p.m. – Council Meeting (*Council Chambers*)**

**A. Welcome & Roll Call**

**B. Pledge of Allegiance – Bart Stevens, Councilmember**

**C. Invocation – TBA, by invitation**

**D. Public Comment**

*(This is an opportunity to address the City Council regarding your concerns or ideas. No action will be taken during public comment. Please try to limit your comments to three minutes.)*

**E. Presentations and Reports**

1. Mayor's Report
2. City Council Assignment Reports

**F. Consent Items**

1. Consideration to approve meeting minutes from:  
December 6, 2022 Council Work Session  
December 6, 2022 Council Meeting

**G. Action Items**

1. Consideration of adopting meeting schedule for 2023.
2. Consideration of Resolution #2023-01 for approval of a Third Addendum to a Development Agreement for property located approximately at 5000 South Weber River Drive, Riverdale, Utah 84405; as submitted by Bach Land and Development, LLC.
3. Consideration of Resolution #2023-02 for approval of a water contract between Riverdale City and Weber Basin Water Conservancy District.
4. Consideration and approval of Resolution #2023-03 declaring property as surplus and authorizing sale or disposition of the same.
5. Consideration of Resolution #2023-04 approving a Water Supply Agreement between Riverdale City and Shake Shack Utah, LLC.
6. Consideration of Resolution #2023-05 of a Development Agreement for property located approximately 4142 Riverdale Road, Riverdale, Utah 84405; as submitted by H & P Investments (Owner).

*All items presented by Steve Brooks, City Administrator/Attorney*

**H. Comments**

1. City Council
2. City Staff
3. Mayor

**J. Adjournment**

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In compliance with the Americans with Disabilities Act, persons in need of special accommodation should contact the City Offices (801) 394-5541 at least 48 hours in advance of the meeting.

**Certificate of Posting**

The undersigned, duly appointed City Recorder, does hereby certify that the above notice and agenda was posted within the Riverdale City limits on this 30<sup>th</sup> day of December 2022 at the following locations: 1) Riverdale City Hall Noticing Board 2) the City website at <http://www.riverdalecity.com/> 3) the Public Notice Website: <http://www.utah.gov/pmn/index.html> and 4) A copy was also provided to the Standard-Examiner.

Michelle Marigoni  
Riverdale City Recorder

\*\*The City Council meeting on January 3, 2023 is viewable electronically and may be accessed by clicking on the link below. The regular City Council Chambers will be available for in person participation with recommended social distancing followed. The Agenda for the meeting is also attached above. \*\*

[https://www.youtube.com/channel/UCegcYe-pIXSRZGd5llencvA/videos?view\\_as=subscriber](https://www.youtube.com/channel/UCegcYe-pIXSRZGd5llencvA/videos?view_as=subscriber)

Minutes of the **Work Session** of the **Riverdale City Council** held Tuesday December 6, 2022, at 5:30 p.m., at the Civic Center in the Council Chambers, 4600 S Weber River Dr., Riverdale City, Weber County, Utah.

**Present:**

City Council:

- Braden Mitchell, Mayor
- Alan Arnold, Councilmember
- Bart Stevens, Councilmember
- Steve Hilton, Councilmember
- Anne Hansen, Councilmember
- Karina Merrill, Councilmember

City Employees:

- Steve Brooks, City Administrator/Attorney
- Cody Cardon, Business Administrator
- Scott Brenkman, Police Chief
- Jared Sholly, Fire Chief (via Webex)
- Rich Taylor, Community Services Director
- Stacey Comeau, Human Resources
- Michelle Marigoni, City Recorder

Excused:

The City Council Work Session meeting began at 5:30 p.m. Mayor Mitchell welcomed all in attendance. It was noted for the record that all Councilmembers were present. Members of city staff were also present.

**Public Comment:**

Mayor Mitchell asked if there was any public comment.

**Presentations and Reports:**

**Mayor's Report**

**Council Assignment Reports**

Councilmember Stevens spoke about the various committees in legislature, and asked councilmembers to be vigilant of inappropriate legislative affairs and pay attention to announcements from the league, as they may not be good for cities. Mayor Mitchell agreed and said Riverdale is generally doing well when it comes to the Moderate Housing issues.

Mr. Brooks noted that almost every city was failed on the moderate-income housing reports, and that Riverdale's failures came down to language. The report is being updated and must be completed by February.

**Consent Items**

**Consideration to approve meeting minutes from:**

1. Consideration to approve meeting minutes from:
  - November 1, 2022 Council Work Session
  - November 1, 2022 Council Meeting

Mayor Mitchell asked if there were any changes to the minutes from November 1. There were no changes.

**Action Items**

1. **Consideration of Resolution #2022-36 amending Personnel Policies Handbook policy 6-5 Dress and Hygiene Standard**

Stacey Comeau asked if there were any questions from councilmembers. Mr. Brooks explained society has changed when it comes to tattoos, and many police and fire fighters have tattoos. Mrs. Comeau noted that many staff members have tattoos and currently cover them, but that people are wanting to express themselves in this way and it will make it easier for hiring.
2. **Discussion regarding proposed amendments and reallocations to the Riverdale City FY2023 budget**
3. **a. Public hearing to receive and consider comments regarding proposed amendment(s) to the Riverdale City FY2023 budget.**

**b. Consideration of Resolution #2022-37 adopting an amendment to the Riverdale City FY2023 budget.**

Mr. Cardon explained this is a change to add two fire fighters. Mayor Mitchell asked that Mr. Cardon explain before the public hearing opens.

**4. Consideration of Resolution #2022-38 adopting a contract with Roy City to provide water services to various Riverdale residences.**

Mr. Brooks explained this needs to be in place as soon as possible, but that Roy City has not had a chance to look over it much.

Mr. Stevens asked if this water would come from the same water source or will have any drop in quality. Mr. Brooks said it is Roy water, which is the same quality. Mayor Mitchell said he appreciates Roy City being willing to work with Riverdale on this.

**5. Consideration of Resolution #2022-39 creating a gym use policy and fees.**

Rich Taylor said this is in response to requests from citizens to have a process for reserving the gym and adding hourly fees to the fee schedule. Currently, there is open gym time which is paid per person. The new fees will be close to the same for teams renting the gym, but they will be able to play without everyone else in the gym. There will be a schedule created so both open gym time and reservations will be accommodated.

**Comments**

1. City Council
2. City Staff:
3. Mayor: Mayor Mitchell reminded council members about the council's Christmas dinner at Ruby River.

**Adjournment**

Having no further business to discuss, the Work Session was adjourned at 5:51 p.m.

**Date Approved:**

Minutes of the Regular Meeting of the Riverdale City Council held Tuesday, November 1, 2022, at 6:00 p.m., at the Civic Center, 4600 S Weber River Dr., Riverdale City, Weber County, Utah.

**Present:**

City Council: Braden Mitchell, Mayor  
Alan Arnold, Councilmember  
Bart Stevens, Councilmember  
Steve Hilton, Councilmember  
Anne Hansen, Councilmember  
Karina Merrill, Councilmember

City Employees: Steve Brooks, City Administrator/Attorney  
Cody Cardon, Business Administrator  
Scott Brenkman, Police Chief  
Jared Sholly, Fire Chief (via Webex)  
Michelle Marigoni, City Recorder

Visitors: Matt Hennessy  
Steven Whetton  
Colby Bailey  
Jake Stromberg  
Collin Reynolds  
Brooke Schmidt  
David Nielsen  
Paul Flaig  
Chris Stone  
Kristen Stone  
Brooklynn Stone

### **Welcome & Roll Call**

The City Council meeting began at 6:00 p.m. Mayor Mitchell called the meeting to order and welcomed all in attendance, including all Council Members, City Staff, and members of the public.

**Pledge of Allegiance** – Steve Hilton, Councilmember

**Invocation** – Karina Merrill, Councilmember

### **Public Comment**

Brooke Schmidt, Sr. President Bonneville High School, asked if council would help fund their senior graduation party. Mr. Brooks noted this is in the police budget and Bonneville could contact Chief Brenkman. Casey Warren said the Bonneville student government is amazing. They did Shop with a Hero recently and Bonneville students brought tons of Christmas spirit. They had about 100 kids and it was a great success.

### **Presentations and Reports**

#### **Mayor's Report**

Mayor Mitchell thanked Riverdale City and Council members for the Veteran's ceremony, and said he received a lot of positive feedback. He also thanked the police for helping with the senior dinner and staff and council for attending grand openings.

#### **Council Assignment Reports**

Mayor Mitchell said Councilor Merrill will now be assigned to the Youth City Council and Councilor Hansen will be assigned to the Veteran's Committee.

#### **City Administration Report**

- A. Department Reports October – Sales tax is down. Nation-wide online sales are up. Time will tell how this will affect the city.
- B. November/December Anniversaries Employee Recognition

Joan Dailey 17 years  
Matt Hennessy 17 years  
Nate Tracy 10 years  
Chris Stone 30 years

Chief Sholly expressed his gratitude for Captain Tracy and Mayor Mitchell presented him with an award. Captain Tracy thanked the Chief and city admin for their support.

Steve Brooks and Cody Cardon spoke about Chris Stone and how he is a "jack of all trades". He does so many different things and has been here for so long that he has been a great help for Mayor Mitchell. Mayor Mitchell presented Chris with an award. Chris thanked his wife and daughter for being present. He thanked the mayor, council members, and staff and said he has seen a lot of them come and go, but that Riverdale keeps employees around for a long time because of the support they receive. Chief Brenkman congratulated both Chris and Nate.

C. Staffing Authorization Plans

D. Community Development Report

Mr. Brooks went over the community development report, noting some businesses that aren't open yet are having a hard time getting supplies which is holding them up.

### **Swearing in of new police officers**

Chief Brenkman introduced the new officers, Chris Morreale, Eddie List and Juan Torres. Officer Torres was working and was not able to be present, but he worked for Riverdale before. Chris Morreale came from Davis County Corrections and just started last week. He is doing a great job so far. Eddie List came from Davis County Corrections as well and worked loss prevention at Riverdale Walmart years ago. He started mid-November and is also doing a great job.

Officer Morreale and Officer List were sworn in by Michelle Marigoni, City Recorder.

### **Consent Items**

#### **1. Consideration to approve meeting minutes from:**

November 1, 2022 Council Work Session  
November 1, 2022 Council Meeting

Mayor Mitchell asked if there were any changes to the minutes from the November 1 meetings. There were no changes.

Councilmember Arnold made a motion to approve the minutes from November 1. Councilmember Hilton seconded the motion. All were in favor and the minutes were approved.

### **Action Items**

#### **1. Consideration of Resolution #2022-36 amending Personnel Policies Handbook policy 6-5 Dress and Hygiene Standard.**

Stacey Comeau reported she has researched other cities' policies, and they are all allowing tattoos. She also pulled information from the Army, which has found 41% of 18–34-year-olds have at least one tattoo. This has become more acceptable in society, hence the change to the policy.

Mr. Stevens said the military rules include not being able to show tattoos when in uniform. He asked if the policy addresses gauges and said that could be a safety issue. Mrs. Comeau read the policy and said it states the piercings must not cause a safety hazard, which would be up to the department heads' discretion

Mr. Arnold stated he wouldn't vote for this with any facial piercings being allowed. He said he does not like them, and they are distracting. Riverdale's population is older. He said he does not have a problem with tattoos but would like to have the piercing stricken.

Chief Brenkman said half of the people interviewed for the police secretary had nose piercings (studs), and they were all very good candidates. He doesn't feel we should exclude good candidates for this common thing.

Ms. Hansen asked about the part addressing tattoos below the wrist. She said this is also very common with younger generations and doesn't feel a tattoo on a hand would have an effect on customer service and would be okay with the department heads having discretion.

Mr. Stevens asked where it was addressed that department heads would have discretion. Mrs. Comeau explained each department can have standard operating procedures, which allows for discretion within departments.

Mr. Arnold stated he does not like that policies are written and then brought in to be voted on with discretionary clauses that nullify the policies.

Chief Sholly reported he has had some applicants that have gone to other agencies where they were allowed to have tattoos. Chief Brenkman said he also finds it difficult to accept, but that there are a lot of good people that could be missed out on. He feels there should be a city-wide policy, staff have talked about it and are all in agreement that there should be a policy but that the appropriateness of the tattoos/piercings would be at department discretion. Mr. Brooks said this was a compromise.

Mr. Arnold suggested that the discretionary part should be added, and that he doesn't want to vote on a policy that has no weight due to too much discretion in departments.

Mrs. Comeau explained how different an office job is from a public works or police position as far as distractions and safety issues, which is why the departments have discretion. Mr. Stevens and Mr. Arnold asked for some clarification to be added to the policy on departmental discretion.

**Motion:** Councilmember Arnold made a motion to approve res 2022-36 with the change as noted.

**Second:** Councilmember Hilton

Councilor Arnold:	Yes
Councilor Merrill:	Yes
Councilor Stevens:	Yes
Councilor Hansen:	Yes
Councilor Hilton:	Yes

## 2. Discussion regarding proposed amendments and reallocations to the Riverdale City FY2023 budget.

Mr. Cardon explained this is technically a reallocation, but the public hearing is being held to be conservative. The budget is being adjusted to add two fire fighters and to change the part time shifts from 24 hours to 12 hours. The additional PPE can be covered in the current Fire Department budget. This would leave about \$130,000 of the tax increase revenue.

Mr. Arnold asked who decided to change the part time schedule. Mayor Mitchell said they all worked together and that Chief Sholly was good to give up that shift.

Matt Hennessy explained the part-time shifts would be either 8am-8pm or 8pm-8am, which allows one less person at night and one more during the day. Mr. Stevens asked various questions about the shift times, which were all answered by Captain Hennessy. Chief Sholly went over call volume times and explained 30% of call volume is after midnight and 70% is during the day.

Mayor Mitchell said Chief Sholly fought for his employees but was cooperative to fit the budget. Everyone gave a little and came up with something that will work. Mr. Brooks agreed and said there is a much smaller population within Riverdale during the night, so the department will still be in good shape with this plan.

Ms. Hansen said it was hard to raise taxes, but that Council supports the staff and appreciates the support between departments and the work they have done to look at the needs of the city and what will benefit the larger group. The Council will support in the future to make sure the residents have what they need to be safe. She thanked everyone for working together to accomplish this.

Chief Sholly said he is appreciative that they have been able to move forward with this, which will create some stability. The Fire Department will do whatever they need to get the job done.

## 3. a. Public hearing to receive and consider comments regarding proposed amendment(s) to the Riverdale City FY2023 budget

**Motion:** Councilmember Arnold made a motion to open the public hearing.

**Second:** Councilmember Hilton

All in favor.

**Public comment:** No public present.

**Motion:** Councilmember Arnold made a motion to close the public hearing.

**Second:** Councilmember Hilton

All in favor. Public hearing closed.

## b. Consideration of Resolution #2022-37 adopting an amendment to the Riverdale City FY2023 budget.

**Motion:** Councilmember Arnold made a motion to approve Resolution 2022-37 as written.

**Second:** Councilmember Hilton

Councilor Hansen: Yes  
Councilor Arnold: Yes  
Councilor Merrill: Yes  
Councilor Hilton: Yes  
Councilor Stevens: Yes

**Motion passes unanimously.**

**4. Consideration of Resolution #2022-38 adopting a contract with Roy City to provide water services to various Riverdale residences.**

Mr. Brooks explained this came about due to a water leak under I-15 when it was discovered that it would be cost-prohibitive to repair the line. There are only a handful of residences, so it makes more sense for Roy to provide the water. This contract came from Roy and is similar to the one they use to provide water to West Haven. He would like to have this done by the end of the year, but the price has not been worked out yet. He asked for some discretion to negotiate the price with Roy, even if the resolution needs to be tabled. He noted that the contract has been updated to correct two places where West Haven was still listed in the language.

Councilor Stevens asked if the residences have access to secondary water, or if this culinary water would be providing inside and outside water. Mr. Brooks said he was not sure. Mr. Stevens spoke about the possibility of development in that area and asked if that would be based on Roy or Riverdale zoning. Mr. Brooks explained Riverdale would be putting in a meter, and that any development would still be required to bring water shares.

Mr. Cardon cleared up which homes are on Riverdale water, and which are on Roy, and noted the flows would be better and this should resolve any issues there have been. He said Shawn Douglas, who was not able to be at the meeting, agreed that this would be the best solution.

**Motion:** Councilmember Arnold made a motion to approve 2022-38 and giving the city staff authorization to negotiate the price.

**Second:** Councilmember Hilton

Councilor Hilton: Yes  
Councilor Stevens: Yes  
Councilor Hansen: Yes  
Councilor Merrill: Yes  
Councilor Arnold: Yes

**Motion passes unanimously.**

**5. Consideration of Resolution #2022-39 creating a gym use policy and fees.**

Rich Taylor said he put this together in response to some residents who requested a way to reserve the gym for times. Ms. Hansen asked if Riverdale residents would have priority over outside people. Mr. Taylor said he hasn't gotten that far yet, but that priority scheduling could be worked out.

Councilor Stevens asked if two groups would be allowed to reserve half of the gym at the same time. Mr. Taylor said there is still time for open court time, and the schedule would be set up to fill in around open court time. These will only be available based on the Community Center's needs. There may be an application process.

Mr. Stevens asked what sports would be allowed. Mr. Taylor said if the proper equipment was being used and provided, it should be fine, but discussions would be had ahead of time and an application process would help.

Mr. Stevens asked how other cities handle this and if the new fees are in line with other cities which provide this service. Mr. Taylor reported the fees at some other cities and said this is comparable.

**Motion:** Councilmember Arnold made a motion to approve

**Second:** Councilmember Hilton

Councilor Stevens: Yes  
Councilor Merrill: Yes  
Councilor Arnold: Yes  
Councilor Hansen: Yes  
Councilor Hilton: Yes



Motion passes unanimously.

**Comments**

1. **City Council:**
2. **City Staff:** Mr. Brooks said there is nothing scheduled for the next meeting and told councilors there may be a cancellation.
3. **Mayor:**

**Adjournment**

Having no further business to discuss, Councilmember Arnold moved to adjourn the meeting. Councilmember Hilton seconded. The meeting was adjourned at 7:23 p.m.

Date Approved:

DRAFT



## CITY COUNCIL MEETINGS 2023 ANNUAL SCHEDULE

Regular meetings of the Riverdale City Council will be held the first and third Tuesdays of the month at 6:00 p.m. at the Riverdale Civic Center, 4600 South Weber River Drive. Additional meetings may be scheduled as necessary and pending proper legal notification.

January 3	July 5 *
January 17	July 18
February 7	August 1
February 21	August 15
March 7	September 5
March 21	September 19
April 4	October 3
April 18	October 17
May 2	November 8 **
May 16	November 21
June 6	December 5
June 20	December 19

\* The first meeting in July will be held on Wednesday, July 5<sup>th</sup> due to Independence day.

\*\* The first meeting in November will be held on Wednesday, November 8<sup>th</sup> due to Election day.

Strategic Planning Meetings are held on Tuesdays following City Council meetings at the Riverdale Civic Center. There will be 2 Strategic Planning Meetings during the 2022 year, likely to occur during the months of February and May.

Joint Strategic Planning Meeting with City Council and Planning Commission held at 4360 Parker Drive, Riverdale, UT 84405 This meeting has historically taken place in the fall. Date to be determined.

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Riverdale City is in compliance with the Americans with Disabilities Act, and provides special accommodations for all citizens in need of assistance.

Persons requesting accommodations should contact the City Offices (801) 394-5541 at least 48 hours in advance of the meeting.

**RIVERDALE CITY  
CITY COUNCIL AGENDA  
January 3, 2023**

**AGENDA ITEM: G2**

**SUBJECT:** Consideration of Resolution #2023-01 for approval of a Third Addendum to a Development Agreement for property located approximately at 5000 South Weber River Drive, Riverdale, Utah 84405; as submitted by Bach Land and Development, LLC.

**PRESENTER:** Steve Brooks, City Administrator

**INFORMATION:**

- a. [Executive Summary](#)
- b. [Resolution #2023-01](#)
- c. [Third Addendum to Development Agreement](#)
- d. [Bach-Unity Master Land Use Development Agreement](#)

**[BACK TO AGENDA](#)**



## City Council Executive Summary

For the Council meeting on: 1-3-2023

Petitioner: Bach Land and Development, LLC  
*As represented by Brandon Ames/Shawn Athey*

### Summary of Proposed Action

The petitioners of this agenda item, Bach Land and Development, LLC, have submitted a Third Addendum to Development Agreement to the City for review and proposal consideration. This Third Addendum focuses solely on the addition of language to pursue water opportunities for the project area in working with Weber Basin Water to acquire water access for the Bach (old Unity) property area.

This third development agreement amendment proposal does not have any requested alterations to current City Codes that are tied specifically to land use and, therefore, this update was not reviewed by the Planning Commission.

On February 15, 2022, the First Amendment to the Development Agreement was reviewed by the City Council for consideration of approving the development agreement amendment or approving an extension of the existing development agreement for six months. Following discussion in the matter, the City Council approved a motion to extend the existing development agreement for six months to allow the petitioner's more time to work on the proposed development agreement amendment documentation.

Later on July 5<sup>th</sup>, 2022, the Second Addendum to the Development Agreement was reviewed by the City Council for consideration to approve the development agreement amendments. Following the discussion in the matter, the Council approved the proposed amendment to the development agreement.

**A copy of the amended original development agreement tied to the old Unity properties (now owned by Bach Land and Development) has been included in the packet as a point of reference.**

Bach Land and Development, LLC worked with City staff to establish a development agreement document regarding the acceptable water policies for acquiring water through Weber Basin Water to transfer to Riverdale City for the future potential development. The attached Third Addendum to Development Agreement document provided in the Council packet is the resultant product of those conversations and efforts previously put forward by the participating individuals with this effort.

Bach Land and Development, LLC is represented by Shawn Athey and Brandon Ames, with Anthony Bake participating as their legal counsel in this matter.

Following the discussion of the development agreement proposal, the City Council may make a motion to approve the proposed Third Addendum to Development Agreement document, approve with suggested amendments, table the matter to a later date to allow for further discussions and revisions between the parties, or not approve the proposed Third Addendum to Development Agreement with the appropriate findings of facts. If the Council approved this development agreement amendment proposal, then this updated water program language would be added to the existing development agreement for the above noted properties.

The amended original development agreement documentation and the proposed Third Addendum to Development Agreement documentation have been provided in your packet for review and commentary.

Staff would encourage the City Council to discuss this matter and then provide a motion to approve the proposed Third Addendum to Development Agreement document, approve with suggested amendments, table the matter to a later date to allow for further discussions and revisions between the parties, or not approve the proposed Third Addendum to Development Agreement with the appropriate findings of facts.

**General Plan Guidance (Section Reference)**

There is no General Plan guidance for this consideration regarding potential water opportunities for these properties.

**Legal Comments – City Attorney**

\_\_\_\_\_  
Steve Brooks, Attorney

**Administrative Comments – City Administrator**

\_\_\_\_\_  
Steve Brooks, City Administrator



**RESOLUTION NO. 2023-01**

**A RESOLUTION AUTHORIZING A THIRD AMENDMENT TO A PREVIOUSLY EXECUTED  
“DEVELOPER’S AGREEMENT”**

**WHEREAS**, the Riverdale City Council, on February 20, 2017, approved a Developers Agreement between Riverdale City and Unity Enterprises, LLC, concerning a proposed development, located at approximately 5100 South Weber River Drive, all of which is within Riverdale City; and

**WHEREAS**, the development was subsequently purchased by Eagles Landing Apartments, LLC, who is represented by developer Bach Land and Development, LLC, hereinafter referred to as “Developer”,

**WHEREAS**, DEVELOPER has requested that a certain terms or conditions of said original agreement be modified to accommodate the goals and aspirations of the development and those of the current Developer; and

**WHEREAS**, Riverdale City has reviewed the proposed third amended agreement, which includes the proposed changes, and believes that the requested change(s) does not significantly affect the rights and goals of the parties concerning the property, and desires to accommodate the request presented to the City, and finds that it would be in the best interest of the citizens of Riverdale City to amend the previous agreement as outlined hereby.

**NOW THEREFORE, BE IT HEREBY RESOLVED** by the City Council of the City of Riverdale that the Mayor, with the attestation of the City Recorder is hereby empowered to execute a “Third Amendment to the Developer’s Agreement” between Riverdale City and Developer, in the form and containing the terms as annexed hereto as Exhibit “A”.

This resolution shall take effect immediately upon its adoption.

**PASSED, ADOPTED AND ORDERED POSTED** this 3rd day of January, 2023.

\_\_\_\_\_  
Braden D. Mitchell, Mayor

Attest:

\_\_\_\_\_  
Michelle Marigoni, City Recorder

**VOTE:**

Alan Arnold	_____	Yes	_____	No	_____	Absent
Bart Stevens	_____	Yes	_____	No	_____	Absent
Steve Hilton	_____	Yes	_____	No	_____	Absent
Anne Hansen	_____	Yes	_____	No	_____	Absent
Karina Merrill	_____	Yes	_____	No	_____	Absent

## EXHIBIT A

THIRD ADDENDUM  
TO  
DEVELOPMENT AGREEMENT  
RIVERDALE CITY, UTAH

THIS THIRD ADDENDUM TO DEVELOPMENT AGREEMENT (this “**Amendment**”) is made effective as of December 6, 2022, by and between RIVERDALE CITY, a municipality and political subdivision of the State of Utah, by and through its City Council (the “**City**”); and BACH LAND AND DEVELOPMENT, LLC, a Utah limited liability company (“**Developer**”), together, the “**Parties**” and individually, a “**Party**.”

### RECITALS:

A. The City and Unity Enterprises, LLC (“**Unity Enterprises**”) previously entered into that certain Development Agreement approved by the City as of February 20, 2007 as Riverdale City Resolution No. 2007-6 (the “**Development Agreement**”). The Development Agreement sets forth certain terms for the development of a mixed use project consisting of a combination of single-family residential dwellings, townhouses and/or condominiums, and apartments and apartment building amenities, on approximately 69 acres of real property located in Riverdale City, Weber County, Utah (the “**Property**”). Capitalized terms used in this Amendment and not defined herein shall have the meanings given to such terms in the Development Agreement or a prior Amendment, the latest of which shall govern.

B. The Parties then entered into a First Addendum to Developer’s Agreement on February 25, 2022, which was approved by the City, wherein the Parties agreed to extend the term of the Agreement.

C. The Parties then entered into a Second Addendum to the Developer’s Agreement on July 5, 2022, which was approved by the City, wherein the Parties agreed to extend the term, clarify the extent and density of the Project, cooperate in good faith towards Developer obtaining water rights, and generally, cleaned up the Agreement.

### AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated by reference as part of this Amendment.

2. Amendments. The Development Agreement is amended as follows:

2.1. Section 10 to the Development Agreement is hereby deleted in its entirety and shall be as follows:

Project Water; Water Dedication. Developer shall convey to the City water shares or water rights as required by City code. If no water shares are available or acceptable to the

City, and the City determines that the Developer cannot provide the water shares needed (based upon reasonable efforts and availability), the City may accept that the Developer may purchase water from Weber Basin Water Conservancy District through the City at City's designated rate, as determined and established by the Weber Basin Water Conservancy District. In the event that the City allows Developer to pursue a water purchase from Weber Basin Water, the Developer will verify and guarantee that the Weber Basin water program allocation will be made available to this development in perpetuity. Further, Developer will be required to confirm with Weber Basin and ensure that the allocated water will be dedicated to Riverdale City in order to provide full watering services to all lots and areas within this approved development and plan.

3. Assignment. The City hereby approves of the assignment of Developer's rights under the Development Agreement from Unity Enterprises to Bach Land and Development, LLC.

4. Ratification. As modified and supplemented by this Amendment, the Agreement is ratified and confirmed and shall continue in full force and effect.

5. Counterparts. This Amendment may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument. Signature and acknowledgement pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document. Any signature on any counterpart of this Amendment delivered by "pdf" or other electronic means shall be deemed to be an original signature for all purposes and shall fully bind the party whose signature appears on such counterpart.

*[signatures on following page]*



IN WITNESS WHEREOF, this Amendment is effective as of the date and year first above written.

DEVELOPER:  
**Bach Land and Development, LLC**, a Utah limited liability company

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY:  
**Riverdale City**, a municipality and political subdivision of the State of Utah

By: \_\_\_\_\_  
Mayor: \_\_\_\_\_

STATE OF UTAH )  
 ) ss.  
County of Weber )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the Mayor of Riverdale City, on behalf of such city.

\_\_\_\_\_  
Notary Public

STATE OF UTAH )  
 ) ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the manager of Bach Land and Development, LLC, on behalf of such company.

\_\_\_\_\_  
Notary Public

**DEVELOPMENT AGREEMENT  
FOR THE UNITY ENTERPRISES PROJECT  
RIVERDALE CITY, UTAH**

This Development Agreement is entered into as of this 20<sup>th</sup> day of February, 2007, by and between **Unity Enterprises, LLC**, a privately held partnership company, as the owner and developer (“Developer”) of a project know as the “Unity Enterprises Project” (the “Project”), and **Riverdale City**, a municipality and political subdivision of the State of Utah, by and through its City Council (the “City”). Developer and the City are sometimes individually referred to herein as a “Party” or collectively as the “Parties.” [Per the terms of the Second Addendum to this Agreement, \*\*Bach Land and Development, LLC\*\*, a Utah limited liability company, is now the assigned owner and developer \(“Developer”\) of the Project.](#)

**RECITALS:**

A. Developer is the owner of approximately 93 acres of real property located in Riverdale City, Weber County, Utah, as more particularly described in Exhibit A, which is attached hereto and incorporated herein by this reference (the “Property”) on which it proposes the development of a mixed use project consisting of a combination of single-family residential dwellings, townhouses and/or condos, neighborhood retail, commercial, office/warehouse, and open space know as the “Unity Enterprises Project” all as more full described below. [Per the terms of the Second Addendum to this Agreement, the term “Property” now means the approximately 69 acres owned by Developer. Exhibit A of the Developer Agreement describing the Property is hereby deleted in its entirety with the new Exhibit A inserted and attached in lieu thereof.](#)

B. Developer is willing to design and develop the Project in a manner that is in harmony with and intended to promote the long-range policies, goals and objectives of the City’s general plan, zoning and development regulations, as more fully set forth below.

C. The City, acting pursuant to its authority under Utah Code Annotated, § 10-9a-101, *et seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms as more fully set forth below, Developer and the City hereby agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated by reference as part of this Agreement.

2. **Conditions Precedent to this Agreement.**

2.1 **Approval of zoning.** As a condition precedent to the obligations of the parties hereunder, this Agreement is contingent upon and will only become effective at such time, and in the event, that the Riverdale City Council, in the independent exercise of its legislative discretion, elects to approve the rezoning of the property on which development is proposed as part of the Project ("Project Area") as designated on Exhibit B hereto to the Mixed Use ("MU") zoning district of the City, following all necessary public hearings required for the approval of such rezoning and this Agreement. This Agreement is not intended to and does not bind the City Council in the independent exercise of its legislative discretion with respect to the proposed rezoning of the Property.

3. **Conditions of Approval.**

3.1 **Completion of traffic study.** As a condition of approval of any initial phase or development component of the Project, Developer shall cause to be prepared and presented to the City a traffic study at Developer's sole cost and expense, addressing and evaluating the appropriate location for all roads providing primary and secondary access to the Project including, but not limited to, the location of a bridge crossing over the Weber River. The traffic study shall include consultation and coordination with other interested third parties including, but not limited to, the Army Corps of Engineers, the Utah State Engineer, and the Federal Emergency Management Agency ("FEMA"). Once completed the Traffic study will be attached hereto and incorporated as a part of this agreement and labeled as Exhibit E.

3.2 **Extension of Weber River Drive and other transportation improvements.** As an integral part of this Agreement, Developer agrees to participate in the construction costs of a connecting road and water line which will extend the existing Weber River Drive across Riverdale City property to the property line of the Project. The Developer agrees to split these construction improvement costs, back of curb to back of curb on the connecting road along with the associated water line, on an equal basis with the City, with each party being responsible for fifty percent (50%) of those costs. After review and approval of the traffic study by Riverdale City, it shall be the responsibility of the Developer to fund all other transportation improvements in addition to the extension of Weber River Drive which are necessary in order to provide adequate access for the Project as recommended by the traffic study at Developer's sole cost and expense.

3.3 Wetlands study and delineation. As a condition of approval of any initial phase or development component of the Project, Developer shall arrange for the preparation of the engineering plans, associated wetlands study, and reasonable mitigation plans for wetlands located on the Property within the Project, at Developer's sole cost and expense, including seeking approval for the same from the United States Army Corps of Engineers and any other governmental body required to review and approve such a study. The parties shall cooperate in providing all necessary information to be submitted to the Army Corps of Engineers and other governmental entities, as required. Once completed the Wetlands study will be attached hereto and incorporated as a part of this agreement and labeled as Exhibit F. [Per the terms of the Second Addendum to this Agreement, Exhibit F of the Development Agreement regarding Wetland and Aquatic Resources Delineation is hereby deleted in its entirety with the new Exhibit F \("Aquatic Resources Delineation"\) inserted and attached to this Agreement in lieu thereof.](#)

3.4 Other offsite utilities and improvements. As an integral part of this Agreement, Developer agrees to participate in the construction of the Weber River Drive offsite utilities and improvements, as referenced in 3.2 above and as tentatively illustrated on Exhibit G attached. These improvements consist of a connecting road and water line both of approximately 1,900 lineal feet, which will extend the existing Weber River Drive across Riverdale City property to the property line of the Project.

#### 4. Property Exchange Providing Open Space and Trails.

4.1 Open space. As an integral part of this Agreement, Developer voluntarily agrees to donate, dedicate, and convey to the City, at no cost to the City, a minimum of 23.2 acres of the Property as generally depicted on Exhibit C as "Open Space". The conveyance of the Open Space to the City will be accomplished through a special warranty deed as a condition of the approval of the first phase of the Project.

4.2 Trails. As an integral part of this Agreement, Developer voluntarily agrees to donate, dedicate, and convey to the City, at no cost to the City, for recreational use by members of the public, the right-of-way for "Trails" as generally depicted on Exhibit C. The parties further acknowledge and agree some flexibility shall be allowed to shift the final alignment of the Trails to conform to the final design of the Project and that conveyance of the right-of-way for the Trails to the City shall be accomplished by special warranty deed as a condition of the approval of the first phase of the Project. Other than the obligation to convey the right-of-way for the Trails, the Developer shall not be required to participate in the construction costs to develop the Trails or any other facilities or improvements within the area delineated on the attached Exhibit C as the

“River Parkway”. The cost for improvement of the trails shall be the sole responsibility of the City.

4.3 Conveyance of City Parcel and Vacation of Easement. As an integral part of the consideration for this Agreement, the City agrees, if not accomplished previously under a separate agreement, to convey to Developer by quit-claim deed the approximately two (2) acres of the Weber Canal property located within the Project, and to vacate the associated easement, as more fully depicted on Exhibit D (the “City Parcel”) at the time of the conveyance of the Open space and Trails.

5. **Vested Rights and Reserved Legislative Powers.**

5.1 Vested rights. Developer shall have the vested right to develop and construct the Project in accordance with the mixed use (“MU”) zoning designation after approval of the City Council, subject to compliance with the terms and conditions of this Agreement and any other applicable ordinances and regulations of the City, State or Federal government. [Per the terms of the Second Addendum to this Agreement, additionally, Developer shall have the right to construct and develop apartments, apartment buildings, and apartment complex amenities within this Project, in accordance with all applicable Mixed Use \(MU\) zoning requirements and subject to compliance with the terms and conditions of this Agreement and any other applicable ordinance or regulation of the City, State, or Federal government.](#)

5.2 Reserved legislative powers. Nothing in this Agreement shall limit the City’s future exercise of its police power in enacting generally applicable land use laws after the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Developer under this Agreement based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in the City; and, unless the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public policy exception to the vested rights doctrine. [Per the terms of the Second Addendum to this Agreement, the City reserves the right to request the upsizing of utility lines for the Project in order to accommodate future growth or additional development by the City or third parties, provided, that the City or certain third parties will be required to pay the incremental cost increase for such upsizing.](#)

6. **Requirement of Compliance with All Other Applicable City Regulations**

**Governing Development Approval.** Developer expressly acknowledges and agrees that it shall be necessary to comply with all of the other applicable requirements of Riverdale City for approval of preliminary and final subdivision plats, commercial site plans, building permits, and any other development aspects of the Project, including the payment of fees and compliance with the City's design and construction standards, and nothing in this Agreement shall be deemed to relieve Developer from the obligation to comply with all such applicable laws and requirements of the City. In the event of a conflict between the provisions of other City regulations and this Agreement, the more specific provisions of this Agreement shall govern.

7. **Phasing.** Developer may develop and construct the Project in phases as market conditions dictate, as long as each phase provides for a logical extension of the road system, infrastructure and other utilities necessary to service the Project, as approved by the City, in compliance with the terms and conditions of this Agreement and all other applicable ordinances and regulations of the City. *Per the terms of the Second Addendum to this Agreement, the Concept Plan for the Project has been provided with the Second Addendum document. The parties hereby agree that the overall density for the project is 13 per acre, for an aggregate number of 897 residential units for the Project ("Overall Density"). The Project will permit the residential ratio of density use on the property to be increased in a targeted format on said lot as long as the minimum lot area density requirement is still adhered to in all cases. This will allow for a single phase of the Project to exceed the permitted general density per acre for the MU zone; provided, however, in no event may the aggregate residential units for the Project exceed the Overall Density for the Project. After receiving approval from the City Council, the City hereby grants fully vested entitlements and rights to develop the Property in accordance with the terms and conditions of this Agreement and the MU zoning designations for the Property. Further, Exhibit B of the Development Agreement regarding the Project area is hereby deleted in its entirety with the new Exhibit B ("Concept Plan") inserted and attached to this Agreement in lieu thereof.*

8. **Successors and Assigns.**

8.1 **Binding effect.** This Agreement shall be binding upon the City and Developer, as well as on the successors and assigns of Developer in the ownership and development of any portion of the Project.

8.2 **Assignment and transfer of development rights and obligations.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the City, which consent shall not be unreasonably withheld. The review by and approval of the City is intended to verify the ability of the proposed transferee or assignee to assume all

of the obligations of the Developer under the terms of this Agreement with respect to the applicable portion of the Property or Project. Any such request for assignment may be made by letter addressed to Riverdale City and prior written consent of the City may also be evidenced by letter from the City to Developer. This restriction on assignment is not intended to prohibit or impede the sale of parcels of fully or partially improved or unimproved land by Developer prior to construction of building improvement on the parcels, so long as the Developer retains all rights and responsibilities under this Agreement. [Per the terms of the Second Addendum to this Agreement, the City hereby approves of the assignment of Developer's rights under this Agreement from Unity Enterprises to Bach Land and Development, LLC.](#)

9. **General Terms and Conditions.**

9.1 **Term of Agreement.** The term of this Agreement shall be for a period of fifteen (15) years following the date of its adoption by the City Council unless the Agreement is earlier terminated or its term modified by written amendment to this Agreement. [Per the terms of the First Addendum to this Agreement, this Agreement shall be extended to the date of August 20, 2022. Per the terms of the Second Addendum to this Agreement, the new terms of this Agreement shall be for a period of fifteen \(15\) years following the Effective Date of the Second Addendum to this Agreement. Thereafter, Developer shall have the option to extend the term for an additional ten \(10\) years if \(a\) the Developer has substantially complied with the terms of the Development Agreement, and \(b\) the Developer is proceeding with reasonable diligence in the development of the Project as contemplated under this Amendment, and then upon City Council approval.](#)

9.2 **Agreement to run with the land.** The legal description of the Property contained within the Project boundaries is attached and specifically described in Exhibit A. No additional property may be added to this description for the purposes of this Agreement except by written amendment to this Agreement executed and approved by the parties hereto. This Agreement shall be recorded in the office of the Weber County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on all successors in the ownership of any portion of this Property. The benefits of this Agreement shall ensure to successors-in-interest and/or subsequent owners only if the Agreement is assigned in accordance with the terms of this Agreement as set forth herein.

9.3 **Construction of Agreement.** This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling countervailing public interest while providing reasonable assurances of continuing vested development rights.

9.4 State and federal law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

9.5 Relationship of parties and no third-party rights. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto nor any rights or benefits to third parties.

9.6 Laws of general applicability. Where this Agreement refers to laws of general applicability to the project, this Agreement shall be deemed to refer to other laws of Riverdale City.

9.7 Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto.

9.8 Applicable law. This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with the laws of the State of Utah.

10. Project Water; Water Dedication. ~~(Per the Second Addendum to the Agreement) In connection with the Project, the City hereby agrees to cooperate in good faith with Developer to assist Developer in (i) purchasing water rights for the benefit of the Project, as required under Title 8 of the current City Code. The amount of water will be determined by the City Code, Title 8, Chapter 6. Such water rights required for the Project area referred to herein as the "Project Water"; (ii) work in connection with the Developer to obtain approval for the necessary connection points and diversion points for the Project Water; and (iii) provide for the water storage if the City has available capacity or allow the Developer to provide the required storage and infrastructure capacity.~~ (Per the Third Addendum to the Development Agreement) Developer shall convey to the City water shares or water rights as required by City Code. If no water shares are available or acceptable to the City, and the City determines that the Developer cannot provide the water shares needed (based upon reasonable efforts and availability), the City may accept that the Developer may purchase water from the Weber Basin Water Conservancy District through the City at the City's designated rate, as determined and established by the Weber Basin Water Conservancy District. In the event that the City allows Developer to pursue a water purchase from Weber Basin Water, the Developer will verify and



guarantee that the Weber Basin water program allocation will be made available to this development in perpetuity. Further, Developer will be required to confirm with Weber Basin Water and ensure that the allocated water will be dedicated to Riverdale City in order to provide full watering services to all lots and areas within this approved development and plan.

DATED as of the day and year first written above.

UNITY ENTERPRISES, LLC

BY \_\_\_\_\_

Managing Member

RIVERDALE CITY

Attest:

\_\_\_\_\_

Riverdale City Recorder

BY \_\_\_\_\_

Mayor

**RIVERDALE CITY  
CITY COUNCIL AGENDA  
January 3, 2023**

**AGENDA ITEM: G3**

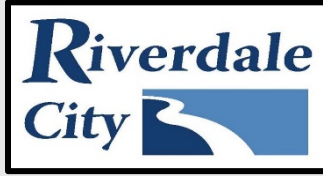
**SUBJECT:** Consideration of Resolution #2023-02 for approval of a water contract between Riverdale City and Weber Basin Water Conservancy District.

**PRESENTER:** Steve Brooks, City Administrator

**INFORMATION:**

- a. [Executive Summary](#)
- b. [Resolution #2023-02](#)
- c. [Water Supply Agreement](#)

**[BACK TO AGENDA](#)**



## City Council Executive Summary

For the Council meeting on:  
January 3, 2023

Petitioner:  
Steve Brooks, City Admin/Attorney/ Shawn Douglas

### Summary of Proposed Action

Consideration of Resolution 2023-02 approving a contract between Riverdale City and Weber Basin for surplus water.

### Summary of Supporting Facts & Options

As part of the allotment of extra water from Weber Basin, they have requested that we enter into a contract outlining the terms and conditions of the program. Both Shawn Douglas and I have been working on this with Weber Basin and we feel it is good to go at this point.

With the contract, the City is able to buy additional water from Weber Basin and pass that cost on to Developers and not affect the supply to current customers and the resources the city currently has making it a win-win situation and code compliant.

### Legal Comments – City Attorney

\_\_\_\_\_  
Steve Brooks, Attorney

### Fiscal Comments – Business Administrator/Budget Officer

\_\_\_\_\_  
Cody Cardon,  
Business Administrator

### Administrative Comments – City Administrator

\_\_\_\_\_  
Steve Brooks,  
City Administrator



**RESOLUTION NO. 2023-02**

**A RESOLUTION OF RIVERDALE CITY APPROVING A CONTRACT BETWEEN RIVERDALE CITY AND WEBER BASIN WATER CONSERVANCY DISTRICT, TO PROVIDE ADDITIONAL CULINARY WATER TO AND FOR NEW DEVELOPMENT WITHIN RIVERDALE CITY BOUNDARIES; AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, recently the Riverdale City passed an Ordinance that requires all new development to bring water with them as a condition of developing in Riverdale City; and

**WHEREAS**, because of the recent shortages of water in the state of Utah, obtaining water shares has become difficult, if not impossible, for Developers to find or obtain water shares; and

**WHEREAS**, in meetings with the Weber Basin Water Conservancy District (herein WBWCD), the City became aware of additional water that the WBWCD had obtained and were willing to sell to Cities that they could in turn then use in situations like this where the City could then sell that water to the Developers in order to comply with our Code concerning bringing water rather than taking away from what the city currently has available for its residents; and

**WHEREAS**, the Public Works Department has reviewed the matter and concluded that the process is a fair way of meeting both the City needs and providing a way for Developers to obtain water needed for a project without depleting City water resources; and

**WHEREAS**, WBWCD requested that a contract be entered into between them, and the City and a Resolution passed to outline the plan and intentions of this process; and

**WHEREAS**, the City Council of Riverdale City, Utah has reviewed the attached Agreement between Riverdale City and Weber Basin Water Conservancy District and agrees to all the terms and conditions contained therein and finds it to be in the best interests of the City; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE RIVERDALE CITY, UTAH:**

Section 1: That the City Council of Riverdale City does hereby approve the contract between Riverdale City and WBWCD, attached hereto as Exhibit A.

Section 2: That the Council hereby authorizes the Mayor, or his designee, to execute the appropriate and necessary documents.

Section 3: This Resolution shall become effective immediately upon its passage.

**RESOLVED AND ADOPTED** by the City Council of Riverdale City, Utah, on the 3rd day of January, 2023.

\_\_\_\_\_  
Braden D. Mitchell, Mayor

Attest:

\_\_\_\_\_  
Michelle Marigoni, City Recorder

**VOTE:**

Alan Arnold	_____	Yes	_____	No	_____	Absent
Bart Stevens	_____	Yes	_____	No	_____	Absent
Steve Hilton	_____	Yes	_____	No	_____	Absent
Anne Hansen	_____	Yes	_____	No	_____	Absent
Karina Merrill	_____	Yes	_____	No	_____	Absent

**Exhibit A**

**WATER SUPPLY AGREEMENT**

**BETWEEN THE WEBER BASIN WATER CONSERVANCY DISTRICT**

**AND RIVERDALE CITY**

**THIS AGREEMENT** (this “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2022, between the **WEBER BASIN WATER CONSERVANCY DISTRICT**, a water conservancy district organized under the laws of the State of Utah, with its principal place of business at Davis County, Utah, herein styled the “District”, and **RIVERDALE CITY**, a municipal corporation of the State of Utah, herein styled the “City”. The District and the City are herein sometimes referred to individually as a “Party” and collectively as the “Parties”.

**RECITALS**

A. The District expects to have water available from the Weber River and other sources for irrigation, municipal, industrial and other uses and, subject to such availability, is willing to make a portion thereof available for use by the City.

B. The District and the City have determined that it is advantageous to the Parties and their customers to enter into this Agreement instead of entering into separate take-or-pay contracts or other arrangements with respect to the development of individual water resources and facilities and the supplying of water and related services.

C. The City is a political subdivision of the State of Utah. The City assesses and collects fees (including development fees, impact fees, and other fees) to cover the cost of capital improvements necessary to deliver water to new customers within the City. The City has determined that it will be more cost effective and efficient to contract with the District to provide a portion of the water that will be delivered to the City’s customers and for the District to construct, replace and operate capital facilities required to divert, treat, store and deliver that water for the benefit of the City and its customers.

D. The Parties intend that the City will collect a fee (development fee, impact fee, or other fee) and remit to the District that portion of the fee to enable the District to recover its cost of acquiring and/or constructing from time to time the water supply, treatment and distribution facilities provided by the District as provided in this Agreement, the debt service on any debt incurred by the Conservancy District to finance or refinance such acquisition and/or construction, and other expenses properly allocable thereto, and that the Conservancy District's operation, maintenance and other expenses properly allocable thereto will be paid by the City, as provided for in this Agreement.

E. The City will ensure that the fee, to be collected by the City, as outlined in Paragraph D., above, will be collected in full compliance with any and all state law and requirements relating to such fees.

F. Each party has submitted this Agreement to its respective attorney for review as to proper form and compliance with applicable law, in satisfaction of Utah Code Ann. § 11-13-202.5(3).

## **AGREEMENT**

In consideration of the mutual and dependent covenants and agreements herein contained, it is hereby agreed by and between the Parties hereto as follows:

### **SECTION 1**

#### **EFFECTIVE DATE; TERM; APPLICABILITY**

*Section 1.1 Recitals.* The foregoing recitals are adopted by reference as part of this Agreement.

*Section 1.2. Effective Date; Term.* This Agreement shall become effective upon (i) its execution by both Parties, and (ii) the filing of an executed copy of this Agreement with the keeper of records of each of the parties. Unless previously terminated by the mutual written agreement of the parties, this Agreement shall remain in full force and effect until the later of (i) forty (40)

years from the effective date of the Agreement or (ii) such later date as may be agreed upon by the Parties.

***Section 1.3 Applicability.*** The City agrees, in good faith, to complete the legal requirements necessary to implement the new fees promptly. In this regard, the District agrees to cooperate with the City by providing such data and information as may be needed to identify and justify those facilities as part of the City's capital facilities plan and the inclusion of the same in the fee analysis, including, but not limited to, the amount of any debt service that the District expects to incur to finance or refinance the development, construction and replacement of such facilities. The City will remit to the District that portion of the fees collected by the City attributable to the water supply, treatment and distribution facilities to be provided by the District pursuant to this Agreement. The District will periodically conduct long term planning, as recognized in Section 2.1 of this Agreement, and changes in the District's long-term plan, and other factors, may cause it to change the Capital Charge allocable to the water supply, treatment and distribution facilities provided for the benefit of the City pursuant to this Agreement.

## **SECTION 2**

### **WATER SUPPLY**

***Section 2.1 Long-Term Plan.*** Within sixty (60) days after execution of this Agreement and annually thereafter, the City shall submit to the District a written projection of its anticipated water needs over the ensuing thirty (30) years. The District will use such projections, to the extent that the District expects to have water available to meet such needs as well as the needs of the District's other customers, in developing a plan ("Plan") contemplating the expansion and improvement of the District's water system and governing the anticipated acquisition, construction and/or replacement of facilities necessary to supply water within the City's service area (as well as to other customers of the District), with a planning horizon of approximately



thirty (30) years or more. The District shall maintain the Plan in effect and update and revise it from time to time as the District deems necessary or advisable. The District shall maintain a copy of the Plan on file at its principal office, available for public inspection during the District's business hours. Upon request, a copy of the Plan shall be provided to the City, which may use the Plan in developing its own capital facilities plan and establishing impact fees to be charged by the City from time to time, and for any other purpose as otherwise deemed necessary or advisable by the City in authorizing and imposing the fees and/or assessments that it will collect in order to meet its obligations to pay the District hereunder.

***Section 2.2. Sale of Water.*** To the extent consistent with the Plan (as amended from time to time by the District as above provided) and subject to the then availability of water and the terms and conditions of this Agreement, the District shall sell to the City the right to use that number of acre-feet of water for which the City has paid the Capital Charge required by paragraph 3.1 below. The water delivered hereunder shall meet current standards for drinking water as established by the Department of Environmental Quality of the State of Utah, the United States Environmental Protection Agency and any other governmental jurisdiction having authority effective on the date of delivery.

### **SECTION 3**

#### **CHARGES AND PAYMENTS**

***Section 3.1. Capital Charge.*** The District shall from time to time, with advance written notice of at least six (6) months, determine and inform the City of the amount of the fee or assessment ("Capital Charge") per acre-foot of water subject to this Agreement, that the District has determined to be necessary to pay for the capital facilities that the District will develop, construct and replace from time to time to supply, treat and distribute said water, the debt service on any debt that it may incur to finance or refinance the development, construction and replacement of such facilities, and other capital expenses properly allocable thereto. The District agrees that

all capital facilities on which the Capital Charge will be based will have a life expectancy of ten (10) or more years. The City shall levy said Capital Charges pursuant to existing legal requirements as a precondition of approving any development, granting any building permit, and providing water service to its customers, and shall use every reasonable effort to collect all such Capital Charges and pay them to the District. The City agrees that it will not approve any development activity (including, but not limited to, final plat approval), issue any building permit, or allow a connection to its water system until the applicable Capital Charge has been paid to the District. The City shall have no right to demand and receive water from the District pursuant to this Agreement except to the extent the City has levied said Capital Charges pursuant to existing legal requirements as part of the City's fees, is prepared to remit the same to the District pursuant to Section 3.4.1 below and has substantially complied with all other material requirements of this Agreement. The City agrees that it will not deliver any water received from the District pursuant to this Agreement to a connection to its water system until the applicable Capital Charge has been collected and received by the City to be paid to the District pursuant to Section 3.4.1 below.

***Section 3.2. O&M Charges.*** The City shall pay to the District an O&M fee to cover the District's operation, maintenance and other expenses properly allocable to making the water which is the subject of this Agreement available to the City, without regard to whether or not the City uses such water. The amount of the O&M Charge shall be determined by the District based upon its annual operation, maintenance and replacement budget, which may include, but is not limited to (i) cost of water treatment, (ii) cost of water delivery, (iii) electrical charges and pumping costs, (iv) cost of maintaining the Weber Basin Project facilities, (v) the most current projections of deliveries by the District to its customers, (vi) any other impacts to the operation and maintenance of the District, and (vii) recovery of any amount by which Capital Charges hereunder are insufficient to cover the District's actual costs and expenses referred to in Section 3.1 above. The District may also review and readjust the O&M Charge rate whenever shortfalls in the District's

collections have caused or are reasonably expected to cause its operation and maintenance funds to be unduly depleted. The District shall give the City not less than six (6) months advance written notice of any increase in the O&M Charge resulting from the application of clause (vii) above.

***Section 3.3. Security for Payments; Delinquency.*** The City shall sell the right to use the water subject to this Agreement at rates sufficient to enable it to make the payments as provided in Section 3.4 below, and hereby grants to the District a first lien upon the proceeds of each such sale to secure said payments. To the extent that the proceeds of such water sales are not adequate to pay the annual amounts due the District under Section 3.4 hereof, the Board of Trustees of the City shall annually levy such taxes and assessments as are allowed by law upon the property within the boundaries of the City as may be required to meet such deficit. The District may withhold, in whole or in part, delivery of water to the City if it is delinquent in the payment of any funds payable to the District under this Agreement. Any charge imposed by this Agreement is deemed delinquent if not made when due. All delinquent payments shall bear interest from the date the payment was due at eighteen per cent (18%) per annum. The District may also impose late charges to be paid by the City if it is delinquent by more than sixty (60) days in the payment of any funds due under this Agreement. Each payment by the City to the District shall be credited first to interest and late charges then owing and then to the delinquent balance.

***Section 3.4. Billing and Payment.***

***Section 3.4.1. Capital Charges.*** The City shall collect the Capital Charges for all new platted subdivision lots and new connections within the City's jurisdiction as set forth in Section 3.1 above. Within thirty (30) days after the end of each calendar quarter during the term of this Agreement, the City shall compile a report detailing the total number of acre-feet of water for which it has collected a Capital Charge for that quarter and submit the report to the District, along with the payment of all applicable Capital Charges.

**Section 3.4.2. O&M Charges.** No more frequently than each calendar quarter during the term of this Agreement, the District shall determine the amount of treated water delivered pursuant to this Agreement through the District's water system to the City for the preceding calendar quarter and shall send a statement to the City for the Variable O&M Charge due to the District with respect to such deliveries, as well as the Fixed O&M Charge due hereunder for that calendar quarter. The City shall pay said Variable O&M Charge and Fixed O&M Charge within thirty (30) days after the date of such statement.

**Section 3.4.3. Meter Bypass.** Should the meter be bypassed or fail to operate for any reason beyond the reasonable control of the District, the parties agree in good faith jointly to attempt to estimate the length of time the meter was out of service and the amount of water delivered to the City during that period and the City shall pay for water based upon that estimate.

## SECTION 4

### ADDITIONAL OBLIGATIONS OF THE PARTIES

**Section 4.1. Operations.** The City shall operate and maintain, without cost to the District, all of its facilities necessary to take and utilize its water, including the water the use of which is purchased under this Agreement.

**Section 4.2 Beneficial Use of Water.** The basis, the measure, and limit of the right of the City to the use of District water shall rest perpetually in the beneficial application thereof. The City agrees to put the water purchased hereunder to beneficial use in accordance with law.

**Section 4.3. Point of Delivery of District Water.** Water furnished under this Agreement shall be delivered and measured to the City at a point approx. 2643 feet West from the South East corner of Section 28, Township 5 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah or at such other point or points as may be mutually agreed upon by the Parties. In the event the water is to be delivered to any point other than one at which deliveries can be made at the time of execution of this Agreement, the City shall construct, at its own expense, any new

facilities necessary to effect such new point(s) of delivery, including without limitation any costs to connect to existing facilities. The District will not charge the City any fee to connect such new facilities to existing facilities, but such new connections (including complete construction of the meter vaults) must be approved by the District and constructed according to the District's design requirements. The District will own, operate and be responsible for the meter at the point of delivery, all facilities within the meter vault which are upstream of the meter, and the meter vault and related structural appurtenances. The City will own, operate and be responsible for all facilities within the meter vault which are downstream of the meter. It shall not be the responsibility of the District to provide facilities to convey water from the above-mentioned point of delivery to the place of use unless otherwise agreed in writing by the District and the City. The District does not guarantee pressures and is not responsible for fluctuations in pressure, whether or not caused by the failure of devices regulating pressure. The City shall provide sufficient storage, at its own expense, to maintain a near constant rate of flow from the District. The City shall take and use water under this and all other contracts between the City and the District in accordance with normal annual demand patterns not to exceed a summer daily peaking factor of 2.0, which is determined by the maximum daily flow rate divided by the average daily flow rate. The average daily flow rate is the total annual contracted water under this and all other contracts between the City and the District divided by 365. If such demand pattern is exceeded, a capacity surcharge will be added to the Fixed and Variable O&M Charge for each acre-foot of water contracted for or delivered. The surcharge will be calculated at forty percent (40%) of the total water rate per acre foot of all contracted water multiplied by the difference between the actual daily summer peaking factor and the allowed daily summer peaking factor of 2.0. For example, if the actual daily summer peaking factor is 2.8, and the then total Fixed and Variable O&M rate is \$81.00, the surcharge will be \$25.92 per acre foot ( $.40 \times \$81.00 \times [2.8 - 2.0]$ ).

***Section 4.4. Back-Flow Prevention Program.*** The City shall be responsible to conduct and enforce an ongoing cross-connection control program throughout the City. This is required so as to ensure good quality water is delivered to the City residences, as well as to other District customers. The program must comply with applicable State regulations.

***Section 4.5. Sale of District Water Limited.*** The City agrees not to sell the use of District water purchased under this Agreement to any person outside the boundaries of the City, as now or hereafter fixed, either on a permanent or temporary basis, without the advance consent in writing of the District.

***Section 4.6. Accounting and Recordkeeping.*** The City shall maintain a standard set of books to account for (a) all acre-feet of water the right to use which is purchased under this Agreement; (b) all money received and expended as provided by law; and (c) the disposition of all water delivered pursuant to this Agreement. The District shall have the right to inspect and copy such books and records during normal business hours from time to time during the term of this Agreement.

***Section 4.7. Compliance with Federal and State Regulations on Pollution.*** Both the City and the District agree to comply fully with all applicable Federal laws, orders and regulations, and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants.

## **SECTION 5**

### **WATER SHORTAGE**

***Section 5.1. General.*** In the event there is a shortage of District water caused by drought, inaccuracy in distribution not resulting from negligence, hostile diversion, prior or superior claims, or other causes not within the control of the District, no liability shall accrue against the District,

or any of its officers, agents or employees, for any damage, direct or indirect, arising therefrom and the payments to the District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortage allocation of municipal water shall have first priority. If there should ever be any shortage of municipal water, deliveries to the City shall be reduced in the proportion that the number of acre-feet of such shortage as determined by the District bears to the total number of acre-feet allocated for municipal use.

## SECTION 6

### WATER CONSERVATION

**Section 6.1. Water Conservation and Secondary Systems.** The City shall, at a minimum, take the following actions to conserve and protect water: (i) prepare and maintain a current water conservation plan which shall meet the requirements of, and any standards set forth by, the Utah Division of Water Resources; (ii) enact a water conservation rate structure for water use throughout its retail system; (iii) enact a time of day water use ordinance; (iv) enact appropriate landscape ordinances; and (v) evaluate and promote the use of secondary irrigation systems and water conservation measures within its jurisdiction.

## SECTION 7

### EXISTING CONTRACTS

**Section 7.1. Existing Contracts.** This Agreement is separate and distinct from and is for an allotment of water in excess of and in addition to, the following described contract(s) entered into between the Parties prior to the date of this Agreement (the “Existing Contracts”):

<u>Acre-feet</u>	<u>Contract Date</u>	<u>District Approved</u>
300	August 13, 1954	December 31, 1954
200	June 24, 1966	August 26, 1966
50	September 16, 1969	September 26, 1969
75	October 21, 1969	November 21, 1969
90	February 8, 1973	March 30, 1973
5	May 18, 1977	June 24, 1977

99	March 19, 1980	April 24, 1980
81	February 19, 2002	March 22, 2002
200	May 8, 2003	May 30, 2003
65	February 28, 2008	March 27, 2008

The District will continue to provide water to the City pursuant to the terms of the Existing Contracts. In the event the City uses more water than is provided for under the terms of the Existing Contracts and this Agreement, the amount of such overuse shall be allocated to the most recent of the Existing Contracts and shall be subject to the District's overuse policy then in effect.

## SECTION 8

### ADMINISTRATION

*Section 8.1. Administration and Representatives.* The District appoints Scott W. Paxman, its General Manager, as its representative and initial contact for all matters relating to the District's participation in this Agreement. The City appoints Steve Brooks, its City Administrator, as its representative and initial contact for all matters relating to the City's participation in this Agreement. Should either of the representatives named above cease to be employed by the represented Party, unless the said Party otherwise notifies the other party to this Agreement in writing, the employee who replaces the prior representative (e.g., the City's new City Administrator) shall become the new representative of that Party for purposes of this Agreement. Either Party may, at any time, change the designation of its representative by providing written notice to the other Party. No separate legal entity is created by this Agreement and there shall be no joint acquisition or ownership of property and it will not be necessary to dispose of property on the termination of this Agreement. The District is a wholesale provider of culinary water to municipalities, local districts and other wholesale customers. All capital facilities which are developed, constructed and replaced to supply, treat and distribute the water which is the subject of this Agreement will be owned and operated by the District, and the



proportionate part of those facilities for which the City pays a Capital Charge as provided in this Agreement will be used to supply, treat and distribute such water for the use and benefit of the City. To the extent that any administration of this Agreement becomes necessary, then the Parties' representatives just named, or their designated designees or successors, shall constitute a joint board for such purpose.

**Section 8.2. Personnel Status.** The District and the City employees providing services pursuant to or consistent with the terms of this Agreement are solely the officers, agents or employees of the employing entity. Each Party shall assume any and all liability for the payment of salaries, wages or other compensation due or claimed to be due its employees, including worker's compensation claims, and each Party shall hold the other harmless therefrom. The District shall not be liable for compensation or indemnity to any City employee and the City shall not be liable for compensation or indemnity to any District employee for any injury or sickness arising out of his or her employment, and each Party hereby agrees to hold the other Party harmless against any such claim.

**Section 8.3. No Joint Venture.** This Agreement shall not constitute a joint venture between the District and the City. Neither Party is nor shall be the legal representative or agent of the other Party for any purpose and a Party shall have no power to assume or create, in writing or otherwise, any obligation or responsibility of any kind, express or implied, in the name of or on behalf of the other Party, and neither Party shall have any obligation with respect to the other Party's debts and other liabilities.

**Section 8.4. Personnel and Equipment.** Each Party, to the extent needed, shall supply at its own cost all personnel, equipment, supplies and materials necessary to perform its obligations and intended actions as set forth in this Agreement.

**Section 8.5. Financing.** The financial aspects of this Agreement are specified in Section 3. Each party will be responsible for maintaining its own financial budget for both income and

expenditures arising under this Agreement.

## SECTION 9

### MISCELLANEOUS PROVISIONS

***Section 9.1. Water Conservancy District Act of Utah.*** This Agreement, and any amendments thereto, shall be governed by and subject to Title 17B, Chapter 2a, Part 10, Utah Code Ann. 1953, as amended, Water Conservancy District Act, and the rules and regulations of the Board of Trustees of the District, as the same have been and may hereafter be supplemented or amended.

***Section 9.2. Assignment Limited - Successors and Assigns Obligated.*** The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any part hereof or interest herein shall be valid until approved in advance by the Board of Trustees of the District.

***Section 9.3. Interpretation.*** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah. In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include the masculine, feminine and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by applicable law.

**Section 9.4. Effect.** The provisions of this Agreement shall bind and inure to the benefit of the Parties hereto and their respective permitted successors and assigns. The Parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of this Agreement.

**Section 9.5. Amendments.** This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, understandings, representations, inducements and agreements, whether oral or written and whether made by a Party hereto or by anyone acting on behalf of a Party, shall be deemed to be merged in this Agreement and shall be of no further force or effect. No amendment, modification, or change in this Agreement shall be valid or binding unless reduced to writing and signed by all of the Parties hereto.

**Section 9.6. Expenses of Enforcement.** In any proceeding to enforce, interpret, rescind or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding.

**Section 9.7. Resolution Required.** This Agreement shall not be effective until approved by a resolution of the governing body of each Party. The individuals signing this Agreement on behalf of the District represent and warrant, through their signatures, that the execution of this Agreement has been approved by a resolution duly adopted by the governing authority of the District. Similarly, the individuals signing this Agreement on behalf of City represent and warrant, through their signatures, that the execution of this Agreement has been approved by a resolution duly adopted by the governing authority of the City. Each party agrees that a signed copy of this Agreement will be filed with the keeper of public records of the said Party.

**Section 9.8. Notices.** Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when personally delivered or sent by certified or registered United States mail to the respective addresses of the District or the City as set forth below or delivered by confirmed telefax to the telephone numbers listed below:

If to the District	Weber Basin Water Conservancy District Attention: General Manager 2837 East Highway 193 Layton, UT 84040
--------------------	---

If to the City:	RIVERDALE City Attention: Steve Brooks 4600 So. Weber River Drive Riverdale, Utah 84405
-----------------	--

Each party may change its address or telefax number by written notice in accordance with this paragraph.

**Section 9.9. Rights and Remedies.** The parties shall have all rights and remedies provided under Utah law for a breach or threatened breach of this Agreement. Such rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach 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.

**Section 9.10. Necessary Acts and Cooperation.** The parties hereby agree to do any act or thing and to execute any and all instruments reasonably required by this Agreement that are necessary and proper to make effective the provisions of this Agreement.

**Section 9.11. Execution of Agreement.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. An executed version of this Agreement which has been signed and transmitted by facsimile or other electronic or mechanical means shall be deemed an original.

**Section 9.12. Severability.** In the event that any provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision herein contained. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be valid to the extent of the scope or breadth permitted by law.

**Section 9.13. Waste Water, Seepage Water and Return Flow.** The reuse of water delivered pursuant to this Agreement is not allowed except upon the prior written authorization of the District and, if applicable, the United States. The waste, seepage, or return flow from water delivered pursuant to this Contract shall belong to the District or the United States for the use and benefit of the Weber Basin Project.

[Remainder of Page Intentionally Blank]

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Parties hereto have signed their names the day and year first above written.

**RIVERDALE CITY**

\_\_\_\_\_  
Braden Mitchell, Mayor

**ATTEST:**

\_\_\_\_\_  
City Recorder

Approved as to form: \_\_\_\_\_  
City Attorney

**WEBER BASIN WATER CONSERVANCY  
DISTRICT**

\_\_\_\_\_  
Marlin K. Jensen, President

**ATTEST:**

\_\_\_\_\_  
Scott W. Paxman, Secretary

Approved as to form: \_\_\_\_\_  
District Attorney

**RIVERDALE CITY  
CITY COUNCIL AGENDA  
January 3, 2023**

**AGENDA ITEM: G4**

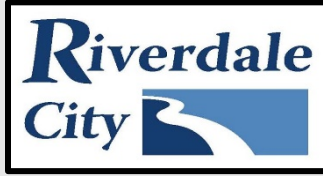
**SUBJECT:** Consideration and approval of Resolution #2023-03 declaring property as surplus and authorizing sale or disposition of the same.

**PRESENTER:** Steve Brooks, City Administrator

**INFORMATION:**

- a. [Executive Summary](#)
- b. [Resolution #2023-03](#)

**[BACK TO AGENDA](#)**



## City Council Executive Summary

For the Council meeting on:  
January 3, 2023

Petitioner:  
Steve Brooks, City Admin/Attorney

### Summary of Proposed Action

Consideration of Resolution 2023-03 declaring property as surplus and authorizing the sale of the same.

### Summary of Supporting Facts & Options

City Council action is required to declare property as surplus and authorizing the sale or disposition of the same (see attached list, Exhibit A).

### Legal Comments – City Attorney

\_\_\_\_\_  
Steve Brooks, Attorney

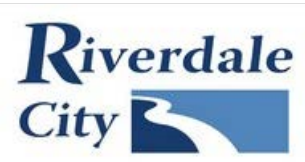
### Fiscal Comments – Business Administrator/Budget Officer

\_\_\_\_\_  
Cody Cardon,  
Business Administrator

### Administrative Comments – City Administrator

\_\_\_\_\_  
Steve Brooks,  
City Administrator





**RESOLUTION NO. 2023-03**

**A RESOLUTION DECLARING PROPERTY HELD BY THE CITY AS SURPLUS OR OTHERWISE NO LONGER VIABLE FOR CITY USE OR PURPOSES AND AUTHORIZING THE USE OR SALE OF THE SAME.**

**WHEREAS**, from time to time, the life of certain city property has expired or its usefulness to the city no longer exists or necessitates its replacement; and

**WHEREAS**, Utah Code (UCA) 77-24a-5 and Riverdale City Code (RCC) 1-9-6, et. seq. and 1-9-7, determines the process for qualifying and disposition of city-owned property; and

**WHEREAS**, the City has complied with all state and local ordinances concerning the disposition and sale of police held or other city surplus property; and

**WHEREAS**, this resolution expresses the Council’s intent to declare the property, now held by the City, as surplus or for public use; and

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the City Council of Riverdale City, Utah:

**Section 1:** That the property listed in Exhibit A, attached hereto and incorporated herein, is found and declared as city surplus;

**Section 2:** That the City administration is authorized to use, sell, convert or otherwise dispose of any unclaimed or other surplus property that is currently in the custody of the City in accordance with state and local rules and regulations;

**Section 3:** That this Resolution repeals all legislation previously enacted inconsistent with the terms and conditions contained herein and shall be in full force and effect from and after the earliest period allowed by law.

**PASSED, ADOPTED AND ORDERED POSTED** this 3rd day of January, 2023.

\_\_\_\_\_  
Braden D. Mitchell, Mayor

Attest:

\_\_\_\_\_  
Michelle Marigoni, City Recorder

**VOTE:**

Alan Arnold	_____	Yes	_____	No	_____	Absent
Bart Stevens	_____	Yes	_____	No	_____	Absent
Steve Hilton	_____	Yes	_____	No	_____	Absent
Anne Hansen	_____	Yes	_____	No	_____	Absent
Karina Merrill	_____	Yes	_____	No	_____	Absent

## EXHIBIT A

January 3, 2023

### Riverdale City Owned Property for surplus

#### Community Development Vehicles

2020 CHEVY TAHOE 1GNSKFKCXHR198297

2020 CHEVY TAHOE 1GNSKFKC4LR198232

#### Police Department Vehicle

2020 CHEVY SILVERADO 1GCUYDED3LZ129671

#### Fire Department Vehicle

1992 PIERCE HEAVY RESCUE FIRE TRUCK 4P1CT02D6NA000341

**RIVERDALE CITY  
CITY COUNCIL AGENDA  
January 3, 2023**

**AGENDA ITEM: G5**

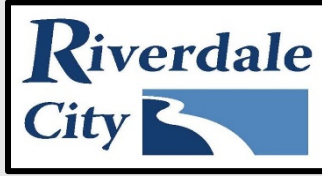
**SUBJECT:** Consideration of Resolution #2023-04 approving a Water Supply Agreement between Riverdale City and Shake Shack Utah, LLC.

**PRESENTER:** Steve Brooks, City Administrator

**INFORMATION:**

- a. [Executive Summary](#)
- b. [Resolution #2023-04](#)
- c. [Water Supply Agreement](#)

**[BACK TO AGENDA](#)**



## City Council Executive Summary

For the Council meeting on:  
January 3, 2023

Petitioner:  
Steve Brooks, City Admin/Attorney/ Shawn Douglas

### Summary of Proposed Action

Consideration of Resolution 2023-04 approving a contract between Riverdale City and Shake Shack for the purchase of water for their development at 4142 Riverdale Road.

### Summary of Supporting Facts & Options

We initially were led to believe that we had to have all requests for surplus water into Weber Basin by the end of the year so we rushed this one through because Shake Shack wanted to get the current rate and not the higher rate that will likely come in 2023. That has since been delayed by Weber Basin until February. (That is why we never called a special meeting in 2022) But we wanted the Council to see and approve the contract and know what we have been working on.

This is the contract that we intend to use on all developments concerning water from now on. There will be some minor amendments to each one but the core of these contracts will look like this one. I feel it's a good protection to the city and gets done what we need to in order to obtain new water at the cost being passed on to the developer and not affect our current supply or customers.

### Legal Comments – City Attorney

\_\_\_\_\_  
Steve Brooks, Attorney

### Fiscal Comments – Business Administrator/Budget Officer

\_\_\_\_\_  
Cody Cardon,  
Business Administrator

### Administrative Comments – City Administrator

\_\_\_\_\_  
Steve Brooks,  
City Administrator



**RESOLUTION NO. 2023-04**

**A RESOLUTION OF RIVERDALE CITY APPROVING A CONTRACT BETWEEN RIVERDALE CITY AND SHAKE SHACK, FOR THE PURCHASE OF CULINARY WATER FOR THEIR ESTABLISHMENT AT 4142 RIVERDALE ROAD; AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Riverdale’s recent code changes concerning water require that a developer must bring with them or find water as a condition of further development within the City in order to not take away from current users or drain city resources; and

**WHEREAS**, Shake Shack has begun the process of developing land located at 4142 Riverdale Road and wanted to ensure that water was available prior to any further development; and

**WHEREAS**, the City through an agreement with Weber Basin Water Conservancy District, has been able to obtain additional water that the City could then in turn sell to Developers that would meet the requirements of the code; and

**WHEREAS**, the water rate through this process is likely to increase and in an effort to obtain the best rate available at this time, Shake Shack requested and paid for a purchase of the quantity of water needed in order to comply with our code; and

**WHEREAS**, the parties desire to enter into a contract between Riverdale City and Shake Shack, to provide treated water to the development located at 4142 Riverdale Road; and

**WHEREAS**, the City Council of Riverdale City, Utah has reviewed the attached Agreement between Riverdale City and Shake Shack and agrees to all the terms and conditions contained therein and finds it to be in the best interests of the City; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE RIVERDALE CITY, UTAH:**

Section 1: That the City Council of Riverdale City does hereby approve the contract between Riverdale City and Shake Shack, attached hereto as Exhibit A.

Section 2: That the Council hereby authorizes the Mayor, or his designee, to execute the appropriate and necessary documents.

Section 3: This Resolution shall become effective immediately upon its passage.

**RESOLVED AND ADOPTED** by the City Council of Riverdale City, Utah, on the \_\_\_\_ day of January, 2023.

\_\_\_\_\_  
Braden D. Mitchell, Mayor

Attest:

\_\_\_\_\_  
Michelle Marigoni, City Recorder

**VOTE:**

Alan Arnold	_____	Yes	_____	No	_____	Absent
Bart Stevens	_____	Yes	_____	No	_____	Absent
Steve Hilton	_____	Yes	_____	No	_____	Absent
Anne Hansen	_____	Yes	_____	No	_____	Absent
Karina Merrill	_____	Yes	_____	No	_____	Absent

## **Exhibit A**

### **PUBLIC WATER SUPPLY AGREEMENT [SHAKE SHACK UTAH, LLC]**

This Public Water Supply Agreement (this “**Agreement**”) is made by and between SHAKE SHACK UTAH, LLC, a limited Liability Corporation under the state of Utah (“**Developer**”) and RIVERDALE CITY, a Utah municipal corporation (“**City**”). Developer and City are sometimes individually referred to herein as a “**Party**” and sometimes collectively as the “**Parties.**”

#### **RECITALS**

A. The City has entered or will enter into a series of agreements (collectively the “**WBWCD Agreements**”) with the Weber Basin Water Conservancy District (herein **WBWCD**), a water conservancy district organized under the laws of the State of Utah (the “**District**”), for the purchase of certain water (the “**WBWCD Water**”) as part of the Weber Basin Water Conservancy District Water Development Plan.

B. Pursuant to the WBWCD Agreements, the City is entitled to purchase a certain quantity of WBWCD Water from the District for public use, including the water that is the subject of this Agreement.

C. In accordance with Riverdale City Municipal Code Title 8 Chapter 6, all persons desiring to connect to the City’s water system must either purchase WBWCD Water from the City or convey to the City title to viable water rights.

D. The premises referred to in this agreement (“**Project/Property**”) is defined as parcel # 060310051 located at 4142 Riverdale Road. The property/project is approximately 1.21 acres and is leased, in its entirety, to Shake Shack Utah LLC.

E. Developer desires to contract with the City to purchase a certain amount of the WBWCD Water, that the City is entitled to purchase from WBWCD, on the terms and conditions set forth in this Agreement, to satisfy building and development approval requirements in connection with Developer’s existing property/project.

NOW, THEREFORE, in consideration of the foregoing recitals, payment by the Developer under the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **TERMS**

1. Reservation of WBWCD Water. The City hereby agrees to purchase from the District, and to allocate and use to meet the development standards of the City for the

property/project now proposed by the Developer, the amount of three (3.5) acre feet of WBWCD Water (the “**Purchased Water**”). The Parties acknowledge and agree that the Purchased Water represents development credits in favor of Developer against the City’s requirement to dedicate water rights or purchase WBWCD Water, and Developer acknowledges and agrees that the Purchased Water may not be used for any other purpose.

Said acre feet is a combination of projected water usage submitted by the Developer plus a small percentage for loss and delivery charge as a result of delivering water to the site.

2. WBWCD Water Cost. Developer shall pay the amount of:

Twenty-Nine Thousand Nine Hundred and Ninety-One Dollars (\$29,091.00) (“**Purchase Price**”), for 3.0 acre feet, for the Purchased Water. Developer shall pay the Purchase Price to the City within forty-five (45) days of execution of this Agreement. The final 3.0 acre feet are a result of a .5 acre feet credit given to the Developer for previously paid water paid usage on the lot under the City statute.

As noted in paragraph 1 above, this base rate is set because of projected numbers and information submitted from the Developer. Should the actual water usage be consistently higher as defined in Riverdale City Code 8-6, than the projections set forth by the Developer, the City reserves the right to charge an additional amount using the same process and water costs available to the City at that time, to cover the difference between the projected use and the actual use, and Developer agrees to timely pay said amount once the Developer has received notice.

If Developer fails to timely pay the Purchase Price or any overage amounts, the City may terminate this Agreement.

3. Infrastructure and Other Fees. Developer recognizes and agrees that the price of the WBWCD Water does not include the price of the certain portions of the infrastructure necessary to deliver the water on to the actual development job site. Developer shall be responsible for the construction of all infrastructure to deliver water to the actual development job site from the existing City system, as expanded and modified from time to time, and/or payment of all City fees for water system infrastructure on the same basis as any other developing party in the City would be required to install infrastructure to deliver water from the existing City system and/or pay all other legally assessed City fees.
4. Assignment Limited. Developer may not assign the rights granted under this Agreement without the written consent of City.
5. Availability of WBWCD Water. Developer shall not be entitled to receive or use the Purchased Water to meet development requirements until Developer has paid for the Purchased Water in accordance with paragraph 2 above.
6. Developer further acknowledges and agrees that the WBWCD Agreements allow the City



to reserve or purchase water at a future date. The City has not reserved or purchased any water under this Agreement, or for this purpose, at the time of drafting of this Agreement. Water will only be reserved and/or purchased once this Agreement is finalized and payment has been received by the City. Developer understands that if the Developer pays for the water within 15 days of the execution of this agreement (but no later than December 30, 2022), that the water will be secured by the City at the rate contemplated in this agreement (Section 2). Developer further understands that if the water is not purchased within that time frame, the City and Developer shall meet and discuss the next expected date and cost of WBWCD water availability to the City under the WBWCD Agreements and, if requested by Developer, the City shall in good faith take reasonable steps to reserve adequate WBWCD water for the Developer out of the next allotment of water reservation or purchase that the City is entitled to under the WBWCD Agreements.

If the next expected availability of WBWCD water for purchase or reservation by the City is unacceptable to Developer, Developer shall notify the City in writing and the City shall immediately terminate this Agreement and refund Developer within 30 days thereafter all amounts paid by Developer to City but not previously expended through a previous allocation of water under this Agreement, without interest from or penalties to the City.

7. Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement.
8. Construction. This Agreement is the result of negotiations between the Parties, neither of whom has acted under any duress or compulsion, whether legal, economic, or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Each Party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or who's attorney) prepared the executed Agreement or any earlier draft of the same. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require. This Agreement may be specifically enforced.
9. Further Action. The Parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.
10. Business Relationship. This Agreement neither acknowledges the existence of, nor is it intended, nor shall it be construed to establish, create, or organize any principal-agent relationship, partnership, joint venture, or any other legal entity or form of business relationship between the Parties, and is limited solely to the purposes and interests expressed herein.

11. Entire Agreement. This Agreement, including its exhibit, constitutes the entire agreement of the Parties and supersedes all prior undertakings, representations, or agreements of the Parties regarding the subject matter hereof. This Agreement may not be amended or supplemented except by an instrument in writing signed by both Parties.
12. Warranty of Authority. Each individual executing this Agreement does hereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities identified herein. City and Developer each represent and warrant that it has full legal right and authority to enter into this Agreement.
13. Notices. Notices given by or to the Parties shall be in writing and shall be served personally or served by depositing them in the United States mail, postage prepaid, certified, or registered mail with return receipt requested, addressed to the Parties at the addresses set forth below, or at such other addresses as the Parties may designate in writing:

DEVELOPER:

Shake Shack Utah, LLC.  
c/o Shake Shack Enterprises, LLC  
225 Varick St. Ste. 301  
New York, NY 10014

CITY:

RIVERDALE CITY  
Michelle Marigoni, City Recorder  
4600 So. Weber River Drive  
RIVERDALE CITY, UT 84405

14. Rules and Regulations Governing Service. The Parties agree that all water service to the Property is subject to the ordinances, rules and regulations of the City and the City reserves the right to adopt rules and regulations governing the cost, supply and delivery of water generally applicable throughout the City, and to exercise its full statutory powers, including specifically the right to amend its rates, fees, charges, and its rules and regulations in the future, and the right to exercise its statutory powers, as they now exist or are amended or enacted in the future; but in the event of any conflict between the provisions of this Agreement and such ordinances, rules, regulations, powers and amendments, the provisions of this Agreement shall control. It is expressly agreed that the City, by signing this Agreement, does not waive or surrender any of its rights to make, amend or enforce any of its rules and regulations for water service but the City does agree that any rules and regulations for water service promulgated by the City shall be equally applicable as to all parties seeking to develop in the City.
15. Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Utah.

16. Binding Effect. Subject to any contrary provisions listed above, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

17. Execution. This Agreement may be executed in multiple counterparts, which taken together shall constitute one and the same document. This Agreement may be executed and delivered by facsimile, email, or other electronic means.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**DEVELOPER:**

SHAKE SHACK UTAH, LLC

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_

**CITY:**

RIVERDALE CITY

\_\_\_\_\_  
Braden Mitchell, Mayor

ATTEST:

\_\_\_\_\_  
Michelle Marigoni, City Recorder

**RIVERDALE CITY  
CITY COUNCIL AGENDA  
January 3, 2023**

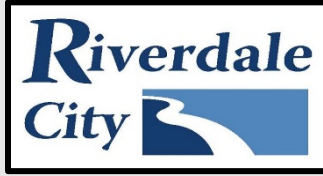
**AGENDA ITEM: G6**

**SUBJECT:** Consideration of Resolution #2023-05 of a Development Agreement for property located approximately 4142 Riverdale Road, Riverdale, Utah 84405; as submitted by H & P Investments (Owner).

**PRESENTER:** Steve Brooks, City Administrator

**INFORMATION:** a. [Executive Summary](#)  
b. [Resolution #2023-05](#)

**[BACK TO AGENDA](#)**



## City Council Executive Summary

For the Council meeting on:  
January 3, 2023

Petitioner:  
Steve Brooks, City Admin/Attorney

### Summary of Proposed Action

Consideration of Resolution 2023-05 approving a development agreement between Riverdale City and H & P Investments for the development of land at 4142 Riverdale Road (Old Farmers Insurance Building – Shake Shack).

This is part of a requirement from Weber Basin to have both a Development Agreement in place and a contract, both covering the terms of water purchase. This Development agreement would be very basic with anticipation of at least another agreement down the road as development is further along.

### Summary of Supporting Facts & Options

This is part of a requirement from Weber Basin to have both a Development Agreement in place and a contract both covering the terms of water purchase. This Development agreement would be very basic with anticipation of at least another agreement down the road as development is further along.

As of the date of putting this packet together, we have not received back a final copy of this. Given that Monday is a holiday, we may not be able to get it to you until the day of the meeting. This item is not as time sensitive as we initially anticipated given the Weber Basin Board meeting change but I will leave it on for now in case it comes through. Like I said above, it will be a very basic agreement.

### Legal Comments – City Attorney

\_\_\_\_\_  
Steve Brooks, Attorney

### Fiscal Comments – Business Administrator/Budget Officer

\_\_\_\_\_  
Cody Cardon,  
Business Administrator

### Administrative Comments – City Administrator

\_\_\_\_\_  
Steve Brooks,  
City Administrator



**RESOLUTION NO. 2023-05**

**A RESOLUTION OF RIVERDALE CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT BETWEEN RIVERDALE CITY AND H & P INVESTMENTS, CONCERNING THE DEVELOPMENT OF PROJECT LOCATED AT APPROXIMATELY 4142 RIVERDALE ROAD, RIVERDALE, UTAH**

**WHEREAS**, Riverdale City, acting pursuant to their authority under Utah Code Annotated §§ 10-9a-101, et seq., as amended, §§ 17C-1-101, et seq., and the Municipal Code for the City of Riverdale (the “City Code”), and in furtherance of their land use policies, goals, objectives, ordinances, resolutions, and regulations, have made certain determinations with respect to the proposed development of the Property located at approximately 4142 Riverdale Road, in exercise of its legislative discretion, and has elected to enter into this Agreement.

**WHEREAS**, OWNER, H & P Investments, is the owner of certain real property commonly known as the old Farmers building location, located on the east side of Riverdale Road at approximately 4142 Riverdale Road, Riverdale, Utah, legally described in the attached Exhibits (the “Property”) and desires to develop said property to allow for its development consistent with the terms of this Agreement.

**WHEREAS**, the Owner contemplates, and the City understands that the development of the Property shall be consistent with the Concept Plan, when submitted, of the development, all laws and ordinances and including the list of essential elements identified therein or any future Development Agreements.

**WHEREAS**, the Riverdale City Council has fully reviewed the attached Agreement between the City and H & P Investments, and agrees to all the terms and conditions contained therein; and

**NOW THEREFORE**, the Riverdale City Council hereby approves the attached Development Agreement (Attached hereto as Exhibit 1 and incorporated hereby) as written and authorizes the Mayor of Riverdale City to execute this Agreement on behalf of the City.

RESOLVED this \_\_\_\_ day of January, 2023.

---

Mayor Braden Mitchell  
Riverdale City

Attest:

---

Michelle Marigoni, City Recorder

VOTE:

Alan Arnold	<input type="checkbox"/>	Yea	<input type="checkbox"/>	Nay	<input type="checkbox"/>	Absent
Bart Stevens	<input type="checkbox"/>	Yea	<input type="checkbox"/>	Nay	<input type="checkbox"/>	Absent
Steve Hilton	<input type="checkbox"/>	Yea	<input type="checkbox"/>	Nay	<input type="checkbox"/>	Absent
Anne Hansen	<input type="checkbox"/>	Yea	<input type="checkbox"/>	Nay	<input type="checkbox"/>	Absent
Karina Merrill	<input type="checkbox"/>	Yea	<input type="checkbox"/>	Nay	<input type="checkbox"/>	Absent

[Remainder of Page Intentionally Blank]

[Attachment Page(s) Follows]

Exhibit 1

**DEVELOPMENT AGREEMENT**

(To be forthcoming)