

## WATER SUPPLY CONTRACT

THIS AGREEMENT (this "Agreement") is made this 28<sup>th</sup> day of March 2016, between the DUCHESNE COUNTY WATER CONSERVANCY DISTRICT, a water conservancy district organized under the laws of the State of Utah, in particular Section 17B-2a-1001, et seq., (the "Conservancy District"), and ROOSEVELT, a political subdivision of the State of Utah (the "City"). The Conservancy District and the City are herein sometimes referred to individually as a "Party" and collectively as the "Parties".

## RECITALS

A. The Conservancy District expects to have water available from the Central Utah Water Conservancy District, herein "CUWCD's" Duchesne Valley Water Treatment Plant ("DVWTP") on Starvation Reservoir and other sources for municipal, industrial and other uses. Subject to such availability, the Conservancy District is willing to make a portion thereof available for use by the City, and

B. The City has determined that it will be in the interest of the Conservancy District to construct the Victory Pipeline, replace and operate capital facilities required to divert, buy, contract for, store and deliver that water for the benefit of the City and its customers.

C. The City has filed a Petition with the Conservancy District for an allotment of water from the Conservancy District as required by §17B-2a-1007, Utah Code Annotated (the Water Conservancy District Act), requesting a lien on the lands within the boundaries of the City, which lands are described on Exhibit "C" attached hereto, and

D. The Conservancy District has approved the Petition and has determined that it is advantageous to it and its customers to enter into this agreement.

## AGREEMENT

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

## SECTION 1

## EFFECTIVE DATE - TERM - APPLICABILITY

Section 1.1 Effective Date - Term. This Agreement shall become effective upon its execution by both Parties after

approval of the governing body of each party. Unless previously terminated by the mutual written agreement of the parties, this Agreement shall remain in full force and effect thereafter for a period of thirty-two (32) years after the Conservancy District begins to deliver water to the location identified in Section 5.2. Thereafter, both parties agree to two (2) ten (10) year extensions each of which will be considered to be executed and in force for the duration of the respective extension period unless written notice is received by the Conservancy District prior to the effective dates of the respective extension renewals.

Section 1.2. Replaces Prior Agreements. This Agreement is intended to replace and supersede any and all prior agreements whether written or verbal dealing with the City's purchase of Victory Pipeline water from the Conservancy District and specifically the Contract dated May 11, 2015.

## SECTION 2 WATER SUPPLY

Section 2.1 Sale of Water. Subject to the terms and conditions of this Agreement, the Conservancy District shall sell to the City the right to use One Thousand (1,000) acre-feet of water per year, or 325,851,000 gallons per year. For the term of this agreement, but not thereafter, the City shall have flexibility in the delivery and receipt of this water, at no additional cost, and in order to accommodate the City's fluctuation in water demands, such that this fluctuation shall have a maximum ceiling of 6.164 acre feet (approximately 2 million gallons) per day flow rate during the months of May, June, July, August, and September.

## SECTION 3 CHARGES AND PAYMENTS

Section 3.1. Permanent Capacity Cost for Water. The City shall pay to the Conservancy District each month commencing with the month following the month the Victory Pipeline has water available to deliver to the location identified in Section 6.2, the sum of \$0.55 per each thousand gallons, which is Fourteen Thousand Nine Hundred and Thirty-Four Dollars and Eighty Four Cents (\$14,934.84) per month, which annualized is One Hundred Seventy Nine Thousand Two Hundred Eighteen Dollars and Five Cents (\$179,218.05), for the right to receive the quantity of water set forth in Section 2.1 above. The entities, listed on Exhibit "A" attached hereto, have previously or concurrently with the execution of this Water Purchase Contract, signed Water Purchase Contracts with the Conservancy District. The amount of water to be purchased by each entity and the payment to be made

by each entity is shown on Exhibit "A" attached hereto. The Capacity Cost is subject to modification on the fifth anniversary of the effective date hereof and each fifth anniversary date thereafter. Any cost modifications will be reviewed by all parties prior to implementation. The Conservancy District shall be responsible for collecting payments for Capacity Cost from each entity listed in Exhibit "A".

Section 3.2. Delivered Water Cost. Water delivered at the location identified in Section 5.2 shall be metered. The delivered water cost at this location shall be the actual cost of water to the Conservancy District for raw untreated water plus DVWTP treatment cost plus any other direct costs of water associated with the DVWTP treatment process. The present actual cost of delivered water at the location identified in Section 5.2 is as follows:

<u>Direct Cost Description</u>	<u>Cost per Acre Feet</u>	<u>Cost per K Gallon</u>
DVWTP Treatment Cost	\$ 190	\$0.583
Raw Water Lease Cost	\$ 50	\$0.153
Replacement	\$ 1	\$0.003
Total Direct Cost	\$ 241	\$0.740

The amount of the Delivered Water Cost may fluctuate and shall be determined annually by the Conservancy District based upon its actual direct costs of treated water, which may include, but is not limited to (i) cost of raw untreated water, ii) cost of water treatment and replacement charges, etc. of DVWTP, and (iii) any other direct costs of water associated with the DVWTP treatment process. The Conservancy District shall annually determine and inform the City of the amount of the Delivered Water Cost to be applicable for the next succeeding fiscal year of the Conservancy District.

Section 3.3. Billing and Payment.

Section 3.3.1. Charges. Monthly, before the 10th day of each month, the Conservancy District shall determine the amount of treated water delivered pursuant to this Agreement through the Conservancy District's water system to the City for the preceding month, and send an invoice to the City for Capacity Costs and Delivered Water Costs. The City shall pay all charges within thirty (30) days after the date of such statement.

Section 3.3.2 Security for Payments. 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 3.3.1 and sufficient to cover the City's other obligations, including, payments on bonded indebtedness. City

covenants to maintain its water system in good and workmanlike condition and provide annual operating reports to DCWCD.

Section 3.3.3. Payments to come from City's Water System Revenues. Notwithstanding anything in this contract elsewhere contained, the payments and interest, if any, called for in this Water Supply Contract shall be payable out of the revenues of the City's water fund. In no event shall the payments be deemed or construed to be a general indebtedness of the City or payable from any funds of the City other than those derived from the operation of City's water fund, except for the contract assessment agreed to by City in its Petition for water as authorized by §17B-2a-1007. The net revenues from City's water system are pledged to secure the payments and interest, if any.

The City shall only be obligated to make the payments hereunder for months when the Conservancy District can provide or deliver to the City the right to use water as provided in Section 2.1 herein, whether the City uses such water or not. In the event of circumstances, such as set forth in Section 7.1 herein, which would mean that the reason the Conservancy District cannot deliver water is because of circumstances beyond its control, then the City shall be required to make payments under Section 3.1. However, if the reason the Conservancy District cannot provide or deliver water is within the control of the Conservancy District, then the City would not be required to make payments in months when the Conservancy District cannot provide or deliver treated water.

Section 3.3.4. Meter Bypass. Should the meter measuring the quantity of water by the Conservancy District to City be bypassed or fail to operate for any reason beyond the reasonable control of the Conservancy District, the parties agree in good faith jointly 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 RESERVED WATER

Section 4.1 Additional Water. The City shall have a right of first refusal for the right to use up to one half of the annual right to use water found in Section 2.1 herein, which is an additional 500 acre feet of water per year. The City may exercise its right at any time after the date of this Agreement until notified as required in this Section, which notice will require the City to exercise its right of first refusal or lose its right to the additional 500 acre feet of water. Once the Conservancy District has one or more offers to purchase or lease

the unused capacity of the pipeline (non-purchased, non-optioned pipeline capacity), then the Conservancy District shall notify the City (and all other purchasers of the pipeline capacity of their right to use water from the Victory Pipeline) of any offer the Conservancy District may receive for the right to use water from the Conservancy District. This notice shall instigate the City's right to an additional 500 acre feet of water. The City shall have sixty (60) days from the date the Conservancy District informs City of an offer, to exercise its option and right of first refusal under this Section 4.1 and inform the Conservancy District of its desire, commitment and covenant to begin receiving such water. If the City does not inform the Conservancy District within 60 days of its intent to exercise its right of first refusal to purchase the use of an additional 500 acre feet of water, then the City shall forfeit the right to acquire use of such additional water, and the Conservancy District may sell such right to use water to any other person or entity.

The City agrees that if it desires any additional water through the Victory Pipeline, in addition to the amount set forth in Section 2.1 hereof, that the City shall only contract with the Conservancy District for such additional water. Additional water desired by City in the future, if any, from the Victory Pipeline in addition to the amounts set forth in Sections 2.1 and in the immediately preceding paragraph will be allocated by the Conservancy District by order of requests based upon water availability, pressures, overall Victory Pipeline water demand, and water rates established by the Conservancy District in effect at such future time. Final amounts of water allocations will be determined by the Conservancy District in accordance with its policies in effect at the time of the request for such additional water. The Conservancy District shall not sell any additional water to any entity at a rate or rates less than the rates applicable under Sections 3.1 and 3.2 as in effect at the time an offer is made to acquire such additional water.

## SECTION 5 ADDITIONAL OBLIGATIONS OF THE PARTIES

Section 5.1 Beneficial Use of Water. The basis, the measure, and limit of the right of the City to the use of Conservancy 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 5.2. Point of Delivery of Conservancy District Water. The Conservancy District will construct a storage tank within the five-acre parcel identified in Exhibit "B". The

Conservancy District will construct, own and maintain the water storage tank which will be a component of the pipeline. The City will have full access to the water stored in the tank for its use. The City will accept water from the pipeline after the meter and will be responsible for operation of their system from the meter onward. The meter shall be placed on the inflow side of the storage tank identified in Exhibit "B". The District will install a check valve between the meter and the tank.

The Conservancy District does not guarantee pressures once water passes the meter and is not responsible for fluctuations in pressure, whether or not caused by the failure of devices regulating pressure.

Section 5.2.1. Water Storage Tank on Five Acre Parcel. The Conservancy District has acquired a five acre parcel and will be constructing a water storage tank in connection with the construction of the Victory Pipeline. The water storage tank is located within Roosevelt service area and is used by both the Conservancy District and Roosevelt City to store and regulate water delivery. There may come a time when the Conservancy District decides to transfer the water storage tank to Roosevelt City. The consideration for that transfer would be Roosevelt City payments under this Water Supply Agreement. In the event the Conservancy District decides to transfer the tank, it will convey the water storage tank with the five acre parcel of land upon which it is located, free and clear of liens.

Section 5.3. Cross - Connection Flow Prevention Program. The City shall be responsible to conduct and enforce an ongoing cross-connection control program throughout the City's service area. This is required so as to ensure good quality water is delivered to the City, as well as to other Conservancy District customers. The program must comply with applicable State regulations and include back- flow prevention.

Section 5.4. Accounting and Record Keeping.

Section 5.4.1. By the City. The City shall maintain a standard set of books consistent with requirements for loans from the Utah Drinking Water Board and the Utah Permanent Community Impact Fund Board.

Section 5.4.2. By the Conservancy District. The Conservancy District shall maintain a standard set of books consistent with requirements for loans from the Utah Drinking Water Board and then Utah Permanent Community Impact Fund Board.

Section 5.5. Purchase of 16" PVC 905 pipe. The Conservancy District shall purchase and provide to the City enough quantity of 16" PVC 905 culinary grade water line to allow the City to

install this pipe to secure connection into the City's existing well and pump house identified on Exhibit "B" (not to exceed 600 linear feet of pipe). The City shall install the pipe and make all the required connections to their existing service lines at their expense.

## SECTION 6 DEFAULT

Section 6.1. Interest Penalties. In the event City fails to make any payment hereunder on or before the date it is due, City agrees to pay interest at the rate of eighteen (18%) percent per annum on the amount past due. The interest shall be paid on the next succeeding payment.

Section 6.2. Default and Notice. If either party believes the other to be in default as to any of the obligations set forth in this Agreement, written notice of the same shall be provided to the other party. The parties' representatives shall meet to discuss the alleged default or failure to perform and, to the extent the parties can agree, a time period will be agreed upon to cure the default. If no agreement can be reached, the parties will submit the dispute to mediation. If mediation cannot resolve the dispute, either party may take whatever legal action, if any, is available to it to enforce this Agreement.

Section 6.3. Remedies. Failure of the City to perform any covenant or requirement of the City under this agreement within thirty (30) days after having been notified in writing by the Conservancy District of such failure shall constitute an event of default hereunder and shall allow the Conservancy District to take enforcement remedies including, but not limited to, the following:

- a) impose the eighteen (18%) percent interest charge provided for in Section 6.1 above, and
- b) appoint a trustee to act as a receiver of revenues of the Purchaser's water system for purposes of applying the revenues toward the payments required in this agreement, and in general, protecting and enforcing the rights of the Conservancy District, in which case all administrative costs of the receiver in performing that function shall be paid by the Purchaser.
- c) terminate on thirty (30) days notice delivery of water provided for by this agreement.
- d) exercise its right to require a levy as provided in §17-2a-1007.

## SECTION 7

## WATERSHORTAGE

Section 7.1. General. In the event there is a shortage of Conservancy 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 Conservancy District, no liability shall accrue against the Conservancy District, or any of their officers, agents or employees or either of them for any damage, direct or indirect, arising there from and the payments to the Conservancy 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 Conservancy District bears to the total number of acre-feet allocated for municipal use in the Victory Pipeline.

## SECTION 8 ADMINISTRATION

Section 8.1. Administration and Representatives. The Conservancy District appoints its General Manager, as its representative and initial contact for all matters relating to the Conservancy District's participation in this Agreement. The City appoints the Manager as its representative and initial contact for all matters relating to the City's participation in this Agreement. The Parties may appoint a new representative at any time by providing written notice to the other party.

Section 8.2. No Separate Entity Created. 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. 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 Conservancy District. To the extent that any administration of this Agreement becomes necessary, then the parties' representatives named in Section 8.1, or their designated designees or successors, shall constitute a joint board for such purpose.

Section 8.3. Personnel Status. The Conservancy 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.

Section 8.4. No Joint Venture. This Agreement shall not constitute a joint venture between the Conservancy District and the City.

Section 8.5. 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 8.6. 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  
RESERVE ACCOUNT

Section 9. Reserve Account.

Section 9.1. Capital Facilities Replacement Reserve Account. The Purchaser shall establish a capital facilities replacement reserve account. Deposits to that account shall be made at least annually in the amount of five percent (5%) of its water system revenue. Failure to maintain the reserve account will constitute a technical default on the reserve account and may result in the imposition of the remedies described in Section 6 above. This reserve account shall be maintained and replenished until the termination of this contract.

Section 9.2. Payment Security Reserve Account. The Purchaser will establish a payment reserve account. Deposits to that account shall be made monthly in the amount of five (5%) percent of each payment of the fixed charge for water until such account is sufficient to make twelve (12) full monthly fixed charges for water. This amount may be prefunded.

SECTION 10  
MISCELLANEOUS PROVISIONS

Section 10.1. Water Conservancy 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 by Title 10, Utah Code Ann. 1953, as amended (the Utah Code Provisions controlling municipalities), and the rules and regulations of the Board of Trustees of the Conservancy District and of the City, as the same have been and may hereafter be supplemented or amended.

Section 10.2. 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 Conservancy District and by the governing body of the City.

Section 10.3. Interpretation. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

Section 10.4. 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 10.5. 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 10.6. 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 10.7. Resolution Required. This Agreement shall not be effective until approved by a resolution of the governing body of each party. Each party agrees that a signed copy of this Agreement will be filed with the keeper of public records of the said party.

Section 10.8. 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 Conservancy District or the City as set forth

below or delivered by electronic means to the addresses listed below:

Conservancy District:                   DUCHESNE COUNTY WATER  
CONSERVANCY DISTRICT  
ATTN: General Manager  
275 West 800 South  
Roosevelt, Utah 84066  
Phone: (435) 722-4977

Roosevelt City:                         ROOSEVELT CITY  
ATTN: City Manager  
255 South State 36-8  
Roosevelt, Utah 84066  
Phone: (435) 722-5001

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

Section 10.9. 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 10.10. 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 10.11. 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. By signing this Agreement, the City petitions the Conservancy District under Section 17B-2a-1007 for an allotment of water consistent with this Agreement.

Section 10.12. 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 10.13. Waste Water Seepage Water and Return Flow.  
The reuse of water delivered pursuant to this Agreement is allowed. The waste and seepage flow from water delivered pursuant to this Contract shall belong to the City.

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

ROOSEVELT CITY

By: Vaughn P. Ryan  
Mayor

Date: March 23, 2016

ATTEST:

Carolyn Kilbom  
Recorder

DUCHESNE COUNTY WATER  
CONSERVANCY DISTRICT

By: Morgan Henderson  
DCWCD, Chairman

ATTEST:

Clyde Watkins  
General Manager

Date: 3-28-16



Exhibit A

WATER SUPPLY CONTRACTS FOR VICTORY PIPELINE

Water Purchasers	Annual Amount	Annual Payment
Johnson Water District	1000 acre feet	\$179,218.05
Duchesne County Special Service District No. 3	2084 acre feet	\$498,000.00
East Duchesne Culinary Water Improvement Dist	200 acre feet	\$ 35,843.52
Cedarview / Montwell Special Service District	100 acre feet	\$ 17,924.10
Roosevelt City	1000 acre feet	\$179,218.05
Duchesne City	65 acre feet	\$ 11,649.20
Myton City	65 acre feet	\$ 11,649.20