10/8/15

WATER EXCHANGE AGREEMENT

This Water Exchange Agreement ("Exchange Agreement") is entered into this 8 day of October, 2015, by and between Roosevelt City, a political subdivision of the State of Utah (hereinafter "Roosevelt"), the Duchesne County Water Conservancy District (the "Conservancy District"), and the Cedarview/Montwell Special Service District (hereinafter "Agency") (referred to **jointly** herein as "the PARTIES").

RECITALS

WHEREAS 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 Agency as a purchaser of such water;

WHEREAS, the Agency has determined that it will be in the interest of the Agency for the Conservancy District to construct the Victory Pipeline for the benefit of the Agency and its customers;

WHEREAS, the Conservancy District intends to construct the Victory Pipeline in two phases. The first phase will start at the DVWTP and extend to the Lake Boreham area (hereinafter, "Phase One"). The second phase will take the Victory Pipeline from the end of Phase One in the Lake Boreham area to the Roosevelt area (hereinafter "Phase Two"). Phase One will necessarily be oversized to accommodate not only the construction of Phase Two, but also extra capacity for future growth in both Phases One and Two;

WHEREAS Agency has executed or contemporaneously herewith shall execute a water supply contract with the Conservancy District dated ___ day of _____, 2015 (the "Agency's Water Supply Contract") (herein incorporated by reference) for delivery of Victory Pipeline water at approximately 40.30346 degrees North and 110.0806 degrees West or just north of the South Cove Road at approximately 4750 West (Victory Pipeline Tank Number One) which is the point of delivery of Victory Pipeline water pursuant to section 6.3 of the Agency's Water Supply Contract;

WHEREAS, the Conservancy District is not delivering Victory Pipeline water directly to the Agency, but as directed by and agreed to by the Agency the Conservancy District is delivering Victory Pipeline water for the Agency to Roosevelt at the location designated in the immediately prior paragraph;

WHEREAS Agency desires to have Victory Pipeline water exchanged for Roosevelt's water;

WHEREAS Roosevelt is the owner of certain improvements and systems capable of exchanging Victory Pipeline water (hereinafter "Roosevelt's Water System");

WHEREAS Roosevelt and the Agency have previously entered into a contract for Roosevelt to supply water to the Agency dated August 24, 2015 (the "Roosevelt Water Supply Contract"); and

WHEREAS Roosevelt and the Agency both prefer and desire that the Agency use Victory Pipeline Water supplied by the Conservancy District for the Agency under the Agency Water Supply Contract before any Roosevelt water is supplied to the Agency by Roosevelt pursuant to the Roosevelt Water Supply Contract; and

WHEREAS the PARTIES desire to enter into an agreement permitting Agency to exchange Victory Pipeline water delivered at approximately 40.30346 degrees North and 110.0806 degrees West or just north of the south cove road at approximately 4750 West (Victory Pipeline Tank Number One) with water supplied by Roosevelt's Water System to Agency at approximately 4580 N 2000 W (Existing Crescent Tank connection on Hwy 121) and approximately 4000 N & 3000 W (Existing Cedarview system connection);

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

AGREEMENT

1. Water Exchange Delivery. Exchange water to be delivered by Roosevelt to Agency at at approximately 4580 N 2000 W (Existing Crescent Tank connection on Hwy 121) and approximately 4000 N & 3000 W (Existing Cedarview system connection) shall be delivered through meter(s) capable of inspection and verification, which meter(s) shall be installed by, maintained by, and the responsibility of Roosevelt. Both Agency and Roosevelt shall ensure that a device or devices be installed so as to prevent any backflow occurrences.

2. Water Quality. Roosevelt shall use all due diligence to ensure that water delivered to approximately 4580 N 2000 W (Existing Crescent Tank connection on Hwy 121) and approximately 4000 N & 3000 W (Existing Cedarview system connection) complies with applicable federal and/or state drinking water regulations.

3. Quantity Supplied. Roosevelt shall be responsible to deliver to the at approximately 4580 N 2000 W (Existing Crescent Tank connection on Hwy 121) and approximately 4000 N & 3000 W (Existing Cedarview system connection) the amount of Victory Pipeline water, identified in Agency's Water Supply Contract with the Conservancy District dated ___ day of _____, 2015, as amended from time to time, which at this time is 100 acre feet of water per year or 32,589,286 gallons per year as identified in section 2.1 (Sale of Water) in the Agency's Water Supply Contract with the Conservancy District up to a maximum annual amount of 200 acre feet of water in the event the Agency's Water Supply Contract is amended to include additional water. In the event Roosevelt delivers more than the amount of water to be supplied by the Conservancy District for the Agency in Section 2.1 of the Agency's Water Supply Contract with the Conservancy District (which is presently 100 acre feet) then Roosevelt, the Agency and the Conservancy District Agree that the first 100 acre feet delivered (or the amount of water to be supplied by the Conservancy District in Section 2.1 of the Agency's Water Supply Contract with

the Conservancy District) shall be deemed to be exchanged for Victory Pipeline Water, and any amounts of water delivered above that amount shall be deemed to be delivered pursuant to the Roosevelt Water Supply Contract between the Agency and Roosevelt. In the event section 2.1 of the Agency's Water Supply Contract is amended, Roosevelt still shall not be required to deliver more than 200 acre feet of water in a year. This means that if the Agency amends its Agency Water Supply Contract to the maximum of 200 acre feet that the Agency will be entitled to receive up to 300 acre feet of water per year from Roosevelt under both the Agency Water Supply Contract and the Roosevelt Water Supply Contract. Roosevelt shall not be obligated to deliver more than the maximum instantaneous flow rate of 300 gallons per minute. Roosevelt retains the right to restrict pipeline flows to a maximum instantaneous flow rate of 300 gallons per minute for all points of diversion.

4. Delivery Location. Roosevelt shall be responsible to deliver Agency's Victory Pipeline water from approximately 40.30346 degrees North and 110.0806 degrees West or just north of the South Cove Road at approximately 4750 West (Victory Pipeline Tank Number One) identified in Agency's Water Supply Contract with the Conservancy District at Agency 4580 North 2000 West (Crescent Tank) and 4000 North 3000 West (Cedarview turnout) only and pursuant to the terms of this Agreement. The Agency may identify one additional destination which may be requested of Roosevelt. Roosevelt shall be given the option to approve or disapprove the requested destination, however, Roosevelt shall not unreasonably withhold its approval. The Parties acknowledge and agree that it will be impracticable to determine whether Victory Pipeline water received by Roosevelt at approximately 40.30346 degrees North and 110.0806 degrees West or just north of the South Cove Road at approximately 4750 West (Victory Pipeline Tank Number One) is delivered to Agency at at approximately 4580 N 2000 W (Existing Crescent Tank connection on Hwy 121) and approximately 4000 N & 3000 W (Existing Cedarview system connection), which is why the first 100 acre feet ((or the amount of water to be supplied by the Conservancy District in Section 2.1 of the Agency's Water Supply Contract with the Conservancy District) shall be deemed to be exchanged for Victory Pipeline Water, and any amounts of water delivered above that amount shall be deemed to be delivered pursuant to the Roosevelt Water Supply Contract between the Agency and Roosevelt). The Agency further agrees that it will not sell any water from the Roosevelt Water Supply system to any entity outside of the Agency's current exterior boundaries at the time of this Agreement, without the express written permission from Roosevelt. In the event the Agency does sell water from the Roosevelt Water Supply system outside of the Agency's boundaries, then Roosevelt is entitled to suspend the delivery of water under that same Roosevelt Water Supply Contract to ensure that only Agency customers within the Agency boundaries receive water deemed to be delivered pursuant to the Roosevelt Water Supply Contract.

5. Rates and Fees. Agency agrees to pay Roosevelt for exchanging Agency's water as follows:

a. Agency shall pay one dollar ($1) per thousand gallons of Victory Pipeline water that passes out of Roosevelt's water system. Agency further agrees that the amount of one dollar ($1) per thousand gallons shall be increased in the same ratio or proportion as the capacity cost found in Section 3.1 of the Agency's Water Supply Contract may increase. For example, if the capacity cost in Section 3.1 of the Agency's Water Supply Contract

increases by ten percent (10%), then the Agency's cost per thousand gallons of Victory Pipeline water that passes out of Roosevelt's water system to Agency under this Section 5.a shall also increase by ten percent (10%)

b. The Conservancy District shall submit a combined bill to Agency and copy Roosevelt for all water billed to the Agency through Roosevelt's Water System that passes through the metered locations at the approximately 40.30346 degrees North and 110.0806 degrees West or just north of the South Cove Road at approximately 4750 West (Victory Pipeline Tank Number One) at monthly or other convenient intervals, and include therein a statement of the amount of water delivered under this Agreement during the billing period. The quantity of water included in the billing shall first be billed to Agency at the rates identified in the Agency's Water Supply Contract with the Conservancy District dated ___ day of _____, 2015, as amended from time to time. The quantity of water included in the billing that is greater than the prorated water identified in the Agency's Water Supply Contract with the Conservancy District dated ___ day of July, 2015, as amended from time to time, shall then be billed to Agency at the rates identified in the existing Roosevelt Water Supply Contract with the Agency. Said bill shall be payable by Agency to Roosevelt within 30 days of billing date or as reflected on the billing statement. The Conservancy District shall calculate the amount Agency owes Roosevelt under this Agreement and credit Roosevelt for that amount against any amounts Roosevelt may owe to the Conservancy District under a Water Supply Contract dated August 24, 2015, between the Conservancy District and Roosevelt.

c. The Conservancy District shall have the right to terminate or suspend service hereunder, without terminating this Agreement, upon thirty (30) days' notice to Agency should a bill to Agency for water service remain unpaid beyond thirty (30) days from its date, and shall, in such event, also have the right to terminate this Agreement as provided herein. In such event, the Conservancy District shall not be obligated to Agency or its customers for any damages that may occur as a result of terminated water exchange services; provided, however, the Conservancy District shall not terminate or suspend service if Agency, in good faith, disputes a portion of a bill and has provided written notice to the Conservancy District within ten (10) days following the date of the bill, and said notice describes in detail the portion of the bill that is in dispute, and provided Agency pays the undisputed portion within thirty (30) days from the date of the bill.

6. Agency's facilities. Except as otherwise expressly set forth herein, Agency is responsible for the ownership, operation, and maintenance of its improvements, and shall indemnify Roosevelt and its respective directors, trustees, officers, and employees from any claims for liability arising from Agency's ownership and operation of its improvements, and shall hold Roosevelt and its respective directors, trustees, officers, and employees harmless from any such claims, including attorneys' fees and other costs of defense, other than with respect to claims arising from the negligence or willful misconduct of Roosevelt and/or its respective directors, trustees, officers, and/or employees.

7. Roosevelt's Facilities. Except as otherwise expressly set forth herein, Roosevelt is responsible for the ownership, operation, and maintenance of its water system, and shall

indemnify Agency and its respective directors, trustees, officers, and employees from any claims for liability arising from Roosevelt's ownership and operation of its improvements, and shall hold Agency and its respective directors, trustees, officers, and employees harmless from any such claims, including attorneys' fees and other costs of defense, other than with respect to claims arising from the negligence or willful misconduct of Agency and/or its respective directors, trustees, officers, and/or employees.

8. Losses of Water. Agency shall only be responsible to pay Roosevelt for water placed in the Roosevelt water system that thereafter exits the Roosevelt water system at approximately 4580 N 2000 W (Existing Crescent Tank connection on Hwy 121) and approximately 4000 N & 3000 W (Existing Cedarview system connection), and Roosevelt accepts the potential for loss, accidents or other causes resulting in waste or loss of water during exchange.

9. Liability for Accidental Discharge. To the extent a Party would otherwise have liability for damages to any person or property arising from the accidental discharge or release of water by such Party as a result of a main break or otherwise from any facility under its ownership or control, such Party shall retain sole liability for any damages to any person or property arising from accidental discharge or release of water by main break or otherwise from any facility under its ownership or control.

10. Non-liability and Indemnity to Consumers. Notwithstanding any provision of this Agreement to the contrary, Roosevelt shall not be liable to Agency or any person or entity served by Agency, or to any other person for any interruption or failure of water service or for any water supplied for any reason other than Roosevelt's own negligence and/or willful misconduct, and Agency shall indemnify Roosevelt and its respective directors, trustees, officers and employees from any such claimed liabilities, and hold them harmless from all such claims, including all attorneys' fees and other costs of defense.

11. Force Majeure. In the event there is a shortage of Victory Pipeline 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 for the Agency 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. The Agency shall have no obligation to pay for water capacity at any time the Conservancy District is unable to deliver water. Similarly, if Roosevelt is unable to deliver water to the Agency under the Roosevelt Water Supply Contract for any of the reasons set forth in this paragraph, then Roosevelt and its agents shall not incur any liability and the Agency shall have no obligation to pay for water under the Roosevelt Water Supply Contract.

12. Termination. In the event of any breach of this Agreement by any Party, including, but not limited to, any failure to timely pay sums due under the terms of this Agreement, the other Party

shall have the right to terminate this Agreement by providing written notice to the breaching Party and such breach shall have not been corrected within thirty (30) days of such notice. Upon any such termination, no Party shall have any further rights or obligations hereunder, except that Agency shall continue to be obligated for all unpaid bills and except the Parties shall continue to remain obligated for their respective obligations arising under this Agreement prior to such termination. The Agency may terminate this Agreement prior to the termination of the Agency's Water Supply Contract with the Conservancy District upon 90 days prior written notice from the Agency to Roosevelt, if the Agency and Conservancy District agree to deliver Victory Pipeline Water directly to the Agency.

13. Term. Unless terminated sooner under any other provision in this Agreement, this Agreement shall continue for the duration of the Agency's Water Supply Contract with the Conservancy District dated ___ day of _____, 2015, as amended from time to time. Thereafter, this Agreement shall continue from year to year, with the year commencing on the date this Agreement is executed, unless and until any Party shall terminate it by giving written notice of intent to do so to the other Party not less than one (1) year in advance of the termination date. In the event the Agency is able to connect directly to the Victory Pipeline or otherwise receive Victory Pipeline Water without a water exchange with Roosevelt, then the Agency may terminate this agreement at any time after giving ninety (90) day prior written notice to Roosevelt. Notwithstanding the foregoing, the Parties hereby agree to re-evaluate the terms of this Agreement set forth in paragraphs 3, 4 and 5 on the fifth anniversary of this Agreement and every ten years thereafter. The purpose of this re-evaluation is to determine how well this Agreement meets the expected needs of the Parties, especially in light of the fact that the Victory Pipeline and water system of the Agency do not have any operating history at the time this Agreement is executed. If the Parties do not agree to a written amendment signed by all Parties, then the terms set forth herein shall continue until such time as a written amendment is signed by all Parties.

14. Assignment. A Party's interests and obligations in this Agreement may be assigned to a third party only with the express written authorization of the other Party to this Agreement. A Party may assign its interests in this Agreement as collateral only upon the express written authorization of the other Party to this Agreement, and any such assignment shall not relieve the assigning Party from its obligations hereunder. This Agreement shall remain binding upon the successors of the Parties.

15. Entire Agreement. This Agreement, together with any addenda and any attached exhibits, constitutes the entire agreement between the parties relating to the transaction contemplated herein and supersedes all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, which are expressly merged herein.

16. Modifications to be in Writing. No modification, waiver, or discharge of this Agreement shall be valid unless and until the same is in writing and signed by the party against which the enforcement of such modification, waiver, or discharge is or may be sought.

17. Severability. If any paragraph of this Agreement, or portion thereof, is declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will

not be affected and each paragraph of this Agreement will be valid and enforceable to the fullest extent permitted by law.

18. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah. All disputes arising under this Agreement must be litigated in the Eighth Judicial District Court in and for Duchesne County, Utah, and the parties consent to the jurisdiction and venue of such court.

19. Attorneys' Fees. If either party commences litigation for the judicial interpretation, reformation, enforcement, or rescission of this Agreement or any addenda or attachments, the prevailing party will be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court and other costs incurred. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for the purposes of determining whether a party is entitled to recover its costs or attorneys' fees.

20. Electronic Transmission and Counterparts. Electronic transmission (including email and fax) of a signed copy of this Agreement, any addenda, and any exhibits, and the retransmission of any signed electronic transmission, shall be the same as delivery of an original. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but only all of which together shall constitute one instrument and execution.

21. Effective Date. This Agreement shall be effective as of the date of execution by all Parties.

THE UNDERSIGNED HAVE READ AND SOUGHT THE ADVICE OF COUNSEL WITH RESPECT TO THE FOREGOING, AND HEREBY ACKNOWLEDGE AND AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

Roosevelt City

Vaun D. Ryan — Oct. 8, 2015

Vaun Ryan, Mayor — **DATE**

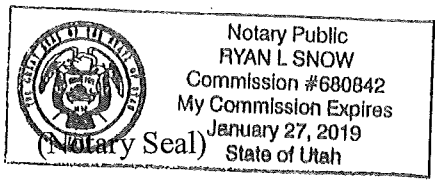
Attest

Carolyn Wilcken

Carolyn Wilcken, City Recorder

STATE OF UTAH)
: ss
COUNTY OF DUCHESNE)

The foregoing Water Exchange Agreement was duly acknowledged before me this 8th day of October, 2015 by Vaun Ryan and Carolyn Wilcken, respectively Mayor and City Recorder, who personally appeared before me and signed and executed the foregoing document.



(Notary Seal)

Notary Public

Agency

_____ _____

Signature – authorized representative **DATE**

_____

PRINTED NAME – authorized representative

STATE OF UTAH)
: ss
COUNTY OF DUCHESNE)

The foregoing Water Exchange Agreement was duly acknowledged before me this _____ day of _____, 2013 by _____, who personally appeared before me and signed and executed the foregoing document.

_____
Notary Public

(Notary Seal)

DUCHESNE COUNTY WATER CONSERVANCY DISTRICT

_____ _____

Signature – authorized representative **DATE**

_____

PRINTED NAME – authorized representative

STATE OF UTAH)
: ss
COUNTY OF DUCHESNE)

The foregoing Water Exchange Agreement was duly acknowledged before me this _____ day of _____, 2013 by _____, who personally appeared before me and signed and executed the foregoing document.

_____
Notary Public

(Notary Seal)