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WASHINGTON COUNTY WATER CONSERVANCY DISTRICT

REVISED REGIONAL WATER SUPPLY AGREEMENT

Dated as of ~~April 23~~ , ~~2006~~2018

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**WASHINGTON COUNTY WATER CONSERVANCY DISTRICT
REVISED REGIONAL WATER SUPPLY AGREEMENT**

THIS REVISED REGIONAL WATER SUPPLY AGREEMENT, dated as of ~~April 23, 2006*~~, 2018, is entered into by and among the WASHINGTON COUNTY WATER CONSERVANCY DISTRICT, a water conservancy district organized and existing under the Utah Water Conservancy District Act (“*District*”), and municipal and other governmental customers that are parties hereto as a result of execution of a counterpart of this Agreement (the “*Municipal Customers*”) which may consist of (a) initially, the CITIES OF ST. GEORGE, WASHINGTON, IVINS, HURRICANE, SANTA CLARA, TOQUERVILLE and LA VERKIN, UTAH, and the TOWNS OF VIRGIN, LEEDS, AND APPLE VALLEY, UTAH, each of which is a municipal corporation and a political subdivision of the State of Utah, and (b) any other Water Supplier that becomes a party to this Agreement pursuant to Section 6.2.

RECITALS

1. The District has been organized pursuant to the Conservancy Act for the purpose of providing for the conservation and development of water resources of the State of Utah and in furtherance of such purposes owns and operates various water supply, storage, treatment and transportation facilities that provide water supplies and services to the Municipal Customers and other entities located in Washington County.

2. Each of the Municipal Customers owns and operates a municipal water utility system which provides retail water services to consumers located within its service area.

3. Significant economic and population growth has occurred, is continuing and is expected to continue, in Washington County thereby creating additional demands for water supply, storage, treatment and transportation facilities necessary to protect and conserve scarce water resources, to enable the District and the Municipal Customers to provide water utility services necessary for the continued growth and development of Washington County and to protect and promote the public health, safety and welfare.

4. The District and the Municipal Customers desire to enter into this Agreement, providing for cooperative and coordinated action with respect to the planning, development,

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acquisition, construction, operation and management of water and related facilities and improvements and the provision of services necessary or desirable to better enable the parties to accomplish the objectives described above and to develop and provide water and related facilities and services efficiently and effectively for the continued growth and development of Washington County, to provide the operational capacity and flexibility necessary to meet the present and future demands for water of the residents of Washington County and the Municipal Customers, and to promote the utilization of natural resources for the overall promotion of the general welfare of the residents of Washington County and the Municipal Customers.

5. The District and the Municipal Customers 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.

6. ~~In 2006, the District Board of Trustees and each of the Municipal Customers have determined that it is in the best interests of the District and such Municipal Customer, respectively, to adopt~~ the 2006 Regional Capital Facilities Plan (“CFP”) ~~contemplated hereby~~ to provide for the water supply, storage, treatment and transportation facilities necessary to meet the ~~current and future~~ demands of new development activity among the Municipal Customers, Retail Customers, and Contract Users. The 2006 Capital Facilities Plan ~~will govern~~ the acquisition of ~~all~~ Capital Facilities servicing the Regional District Service Area from 2006 through 2017. In 2017, the District Board of Trustees adopted the 2017 Regional Impact Fee Facilities Plan (“IFFP”) pursuant to revisions to the Utah Impact Fees Act which replaces the 2006 CFP. Effective January 1, 2018, the IFFP, as updated periodically by the District Board of Trustees governs the acquisition of Impact Fee Facilities servicing the Regional District Service Area.

7. To the extent practicable, it is contemplated that ~~Impact Fees (referred to herein as a Water Availability Charge)~~ will be levied by the District to pay for the facilities provided for by the ~~Capital Impact Fee~~ Facilities Plan from time to time, and to pay the debt service on District Debt incurred to finance or refinance such facilities. In order for Municipal Customers to access to multiple facilities throughout the District, which benefit the Municipal Customers in the

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provision of water to their customers, the operation of their systems, and in emergencies, a uniform Regional Level of Service shall be established by the District Board of Trustees.

8. In order to provide an additional source of stable revenue to pay for such facilities and such debt service, together with certain other costs, each Municipal Customer will pay to the District a monthly Water Development Surcharge, as provided for in this Agreement.

9. In order to provide for the payment of a portion of the District's ~~Operation and Maintenance Costs, together with certain other costs~~ System Costs, each Municipal Customer will pay to the District the ~~Wholesale Delivery Charge~~ Wholesale Rate for each unit of water delivered to the Municipal Customer, as provided for in this Agreement.

10. In order to provide necessary and desirable reserves for the expansion, renewal and continuous operation of the System and for the continued economic strength of the District, thereby assuring the marketability of District Debt and other benefits, while minimizing economic and other consequences of disruptive events that may occur, a Rate Stabilization Account and a Capital Facilities Reserve Account will be established hereunder as part of the District's existing Revenue Fund, and the District's existing Operation and Maintenance Fund, and Renewal and Replacement Fund will be utilized with respect to the facilities of the District, including those constructed and acquired pursuant to the Capital Facilities Plan.

AGREEMENT

In consideration of the mutual promises, covenants, and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. Defined Terms. As used in this Agreement, the following terms have the following meanings:

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“2006 Regional Water Supply Agreement” means the Washington County Water Conservancy District Regional Water Supply Agreement, dated as of April 23, 2006, among the District and the Municipal Customers.

“Abandoned Connection” means any connection where the Impact Fee has been paid and where water service has been discontinued for a period exceeding ten years (120 months).

“Additional Contract” means any Contract entered into between the District and a Contract User after the date of this Agreement.

“Additional Contract User” means a Contract User that has entered into an Additional Contract with the District.

“Administration Advisory Committee” or “AAC” means the committee established pursuant to Section 13.1.

“Aggregate Debt Service” means, with respect to any date or period, the sum of all Debt Service for all District Debt during such period.

“Agreement” means this Washington County Water Conservancy District Revised Regional Water Supply Agreement, dated as of April 23, 2006*, 2018, among the District and the Municipal Customers.

“Annual Budget” means the annual budget for the System prepared by the District as provided in Section 8.8.

“Average Aggregate Debt Service” means, as of any date of calculation, the total Aggregate Debt Service computed for all fiscal years of the District during which any District Debt is scheduled to be outstanding, divided by the number of such fiscal years.

“Board” means the Board of Trustees of the District.

“Bond Document” means the document or documents in effect from time to time providing for the issuance of and security for the District’s revenue bonds. A Bond Document may be a master resolution, a master indenture or other similar document, as amended and supplemented from time to time. If all revenue bonds issued under a particular Bond Document have been paid or provision for payment has been made for such revenue bonds in accordance with the Bond Document, it shall no longer constitute a

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Bond Document for purposes of this Agreement. Initially, the Bond Document shall mean the District's Master Resolution Providing for the Issuance of Water Conservancy Revenue Bonds, adopted March 19, 1997, as amended and supplemented.

"*Capital Cost*" means all direct and indirect costs incurred or estimated to be incurred, by the District that are properly allocable to the acquisition, construction, replacement, or improvement of any Capital Facility ~~provided for in the CFP~~, including, without limitation, Finance Costs and costs for construction, materials, engineering and design, permitting, environmental compliance, administration, personnel, rent, and legal and consulting services.

"*Capital Facilities*" means facilities of a capital nature, including District Water Supplies, that are to be a part of the System and that relate to the supply, storage, treatment or transportation of water to the Municipal Customers under this Agreement. Capital Facilities include, but are not limited to, Impact Fee Facilities.

"*Capital Facilities Plan*" or "*CFP*" means the plan ~~established in 2006 and revised from time to time~~ pursuant to Title 11, Chapter 36, Utah Code Annotated 1953, as amended Article 3, providing that governed for the expansion and improvement of the System and governing the acquisition or construction of ~~all~~ Capital Facilities servicing the Regional District Service Area from 2006 through 2017.

"*Capital Facilities Reserve Account*" means the account established in the Revenue Fund pursuant to Section 10.3.

"*Conservancy Act*" means the Utah Water Conservancy District Act, Title ~~17A-17B~~, Chapter 2a, Part ~~1410~~, Utah Code Annotated 1953, as amended.

"*Contract*" means a contract, other than this Agreement, between the District and a Contract User pursuant to which the District agrees to provide water or related services to, or acquire, construct, or operate System facilities for the benefit of, a Contract User.

"*Contract User*" means any water user within Washington County which has entered into a contract with the District to receive water from the System. The District shall maintain a list of current Contract Users, which may be obtained by any party hereto upon request.

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“*Debt Service*” means the amounts actually payable by the District with respect to District Debt, including, without limitation, payments with respect to credit enhancement, liquidity support and interest rate exchange agreements.

“*Development Activity*” has the same meaning as provided in the Utah Impact Fees Act, Utah Code Annotated Section 11-36a-101 et seq., as amended.

“*District*” means the Washington County Water Conservancy District, a water conservancy district organized and operating under the Conservancy Act.

“*District Charges*” means, collectively, ~~Water Availability Charge~~Impact Fees, Water Development Surcharges and ~~Wholesale Delivery Charge~~Wholesale Rates.

“*District Debt*” means any bonds or other obligations heretofore or hereafter issued from time to time by, on behalf of, or at the request of the District to finance or refinance Capital Facilities ~~as part of the CFP and~~ for which the District is financially responsible, directly or indirectly.

“*District-Operated Facilities*” means any Capital Facilities owned by a Municipal Customer and operated by the District pursuant to ~~the Operating Plan and~~ an agreement between the District and such Municipal Customer.

“*District Water Supplies*” means any Water Supply or Water Right, or any interest therein, acquired by the District for the purpose of being delivered to one or more Municipal Customers, Retail Customers, or Contract Users.

“*Existing Contract*” means any Contract entered into between the District and a Contract User prior to the date of this Agreement, consisting of the Contracts listed in *Exhibit A* hereto, including any extension to Contract; *provided*, however, that any such extension shall not constitute an Existing Contract unless (i) the amount of water or capacity provided to the Existing Contract User under the extended Contract does not exceed the amount of water or capacity provided under the initial Existing Contract, and (ii) the terms of payment for water, capacity or related services shall be no more favorable to the Existing Contract User than such terms under the initial Existing Contract.

“*Existing Contract User*” means a Contract User that has entered into an Existing Contract with the District, consisting of the Contracts Users listed in *Exhibit A* hereto.

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“Equivalent Residential Connection” means the unit for calculating the amount of water required to be available for use per typical residence by the Utah Division of Drinking Water.

“Finance Costs” means Debt Service and all other costs incurred by the District in connection with the issuance of District Debt.

“Funds” means the Rate Stabilization Account, Capital Facilities Reserve Account, Operation and Maintenance Fund, Renewal and Replacement Reserve Fund, and any other fund or account established under Article 10 of this Agreement.

“Great Basin” means the Great Basin drainage region.

“Great Basin Facilities” means System facilities owned or operated, or to be hereafter owned or operated, to provide water supplies or related services within the Great Basin.

“Great Basin Facilities Contract” means any Additional Contract between the District and an Additional Contract User pursuant to which the District agrees to acquire, construct, or operate Great Basin Facilities.

“Great Basin Revenues” means (i) property tax revenues attributable to tax payers within the boundaries of the Great Basin, (ii) impact fees attributable to development activity in the Great Basin, or (iii) revenues received under a Great Basin Facilities Contract.

“Impact Fee” means the regional impact fee imposed by the District pursuant to Section 8.2.1.

“Impact Fee Act” means, collectively, Title 11, Chapter 36a, Utah Code Annotated 1953, as amended, and Section ~~17A17B-1-203111~~, Utah Code Annotated 1953, as amended.

“Impact Fee Facilities” means Capital Facilities, including District Water Supplies, that are financed in whole or part by Regional Impact Fees, that are to be a part of the System and that relate to the supply, storage, treatment or transportation of water to the Municipal Customers and Retail Customers under this Agreement to serve Development Activity.

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“Impact Fee Facilities Costs” means all direct and indirect costs incurred or estimated to be incurred, by the District that are properly allocable to the acquisition, construction, or improvement of any Impact Fee Facility that are permitted to be charged by the Impact Fee Act and provided for in the IFFP, including, without limitation, Finance Costs and costs for construction, materials, engineering and design, permitting, environmental compliance, administration, personnel, rent, and legal and consulting services.

“Impact Fee Facilities Plan” means the plan, established and revised from time to time pursuant to Title 11, Chapter 36a, Utah Code Annotated 1953, as amended, governing the acquisition or construction of Regional Impact Fee Facilities.

“Inactive Connection” means any connection where water service has been discontinued for more than one month and less than ten years (120 months).

“Level of Service” has the same meaning as provided in the Utah Impact Fees Act, Utah Code Annotated Section 11-36a-101 et seq., as amended.

“Municipal Customers” means (a) municipal and other governmental customers which have executed a counterpart of this Agreement, and (b) any other Water Supplier that becomes a party to this Agreement pursuant to Section 6.2, insofar as the provisions of this Agreement relate to the rights and obligations of such entities under this Agreement.

“Municipal Customer” shall not include any such entity in its capacity as a Contract User.

“Municipal System” means the water system of the related Municipal Customer.

“New Connection” means:

- (a) any connection that has not previously been connected; or
- (b) any connection that was not active on the date Municipal Customer executed either (1) the 2006 Regional Water Supply Agreement, or (2) this Agreement if the Municipal Customer did not execute the 2006 Regional Water Supply Agreement.

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~~(a) any connection for which the Impact Fee has been paid where water service has been discontinued for a period exceeding seven years (84 months).~~

“Notices” means all notices and other communications required by this Agreement.

“Operation and Maintenance Costs” means all actual operation and maintenance costs related to the System incurred by the District to provide water to the Municipal Customers or Retail Customers in any particular fiscal year or period to which said term is applicable or charges made therefor during such fiscal year or period, including amounts reasonably required to be set aside in reserves for items of Operation and Maintenance Costs, the payment of which is not then immediately required.

“Operation and Maintenance Fund” means the fund referred to in Section 10.4.

“Operating Plan” means the operation plan for the System, ~~that may be established and revised from time to time pursuant to Article 4, including any operation plan or agreement for the operation of District-Operated Facilities.~~

“Other District Revenues” means any revenues that are available to the District from any source whatever, other than District Charges.

“Rate Stabilization Account” means the account established in the Revenue Fund pursuant to Section 10.2.

“Raw Water” means water that has not been treated for purposes of making it potable ~~that may include but is not limited to untreated secondary water for agricultural use, domestic use, or industrial use.~~

~~“Regional District Service Area” means any area within Washington County that is served by a party to the Revised Regional Water Service Agreement.~~

~~“Regional Municipal-Owned Facility” means a facility that is owned by two or more Municipal Customers.~~

~~“Regional Level of Service” means the Level of Service established to serve the Regional District Service Area, as determined by the Board.~~

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“*Reimbursement Obligation*” means the obligation of a Water Supplier to the existing Municipal Customers, and further described in Section 6.2, as a condition precedent to becoming a party to this Agreement.

“*Renewal and Replacement Reserve Fund*” means the fund referred to in Section 10.5.

“*Repair and Replacement Costs*” means all repair and replacement costs related to the System incurred by the District to repair or replace a Capital Facility or any component thereof in any particular fiscal year or period to which said term is applicable or charges made therefor during such fiscal year or period, including amounts reasonably required to be set aside in reserves for items of Repair and Replacement Costs, the payment of which is not then immediately required.

“*Retail Customer*” means any customer to whom the District directly supplies water on a retail basis.

“*Revenue Fund*” means the fund by that name established and maintained pursuant to the Bond Document.

“*Revenues*” means, collectively, revenues from District Charges and Other District Revenues.

“*State*” means the State of Utah.

“*System*” means all water collection, conservation, development, storage, treatment, supply, transportation and distribution facilities, hydroelectric generating, transmission and distribution facilities, and related facilities, (i) currently owned or operated by the District, (ii) to be hereafter owned or operated by the District, unless specifically excluded from the System by resolution of the Board, and (iii) District-Operated Facilities, *provided, however*, that any of the Great Basin Facilities shall not be deemed to be a part of the System unless specifically included by resolution of the Board.

“*System Costs*” means all costs related to the System, including but not limited to Capital Costs, Finance Costs, Operation and Maintenance Costs, and Repair and Replacement Costs.

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“*Tax Code*” means the Internal Revenue Code of 1986, as amended, and the U.S. Treasury regulations thereunder.

“*Tax-Exempt Obligations*” means, collectively, (i) District Debt and (ii) obligations issued by a Municipal Customer to finance District-Operated Facilities, the interest on which is not includible in gross income of the owners thereof for federal income tax purposes.

“*Technical Advisory Committee*” or “*TAC*” means the committee established pursuant to Section 13.2.

“*Total Cost of the ~~CFPIFFP~~*” means the sum of (i) the actual Capital Cost of all facilities constructed pursuant to the ~~CFPIFFP~~, plus (ii) the estimated Capital Cost, including contingencies, of all facilities remaining to be constructed pursuant to the ~~CFPIFFP~~.

“*Treated Water*” means potable water, including water that has been treated for the purpose of rendering it potable.

“*Uncontrollable Forces*” means (i) any cause beyond the reasonable control of the party affected, including but not limited to inadequate supply of water, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, accident, unlawful actions or omissions by others, and restraint by court or public authority, which, by exercise of due diligence and foresight, the party could not reasonably have been expected to avoid, and (ii) with respect to the District, the inability to acquire for any particular facility the necessary (A) financing, (B) environmental permits, (C) land use and other required authorizations ~~from the United States~~, or (D) other permits or authorizations.

~~“*Water Availability Charge*” means the impact fee imposed by the District pursuant to Section 8.2.1.~~

“*Water Capacity*” means source capacity sufficient to meet the requirements as set forth in the rules and regulations of the Utah Department of Environmental Quality Division of Drinking Water, ~~including which currently includes~~ but is not limited to 800

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gallons per day per residential unit and 4.9 gallons per minute per irrigated acre, which shall be calculated in accordance with the ~~Capital Impact Fee~~ Facilities Plan.

“*Water Development Surcharge*” means the monthly charge payable by each Municipal Customer to the District pursuant to Section 8.2.2.

“*Water Right*” means any entitlement to the beneficial use of Water Supplies, whether such entitlement exists by contract, by interest in real property, or by rights granted by the State or other governmental entity.

“*Water Supplier*” means a governmental entity or other public water system operator that provides water to retail or wholesale customers.

“*Water Supplies*” means surface water, groundwater, and any other water capable of being put to beneficial use through the System.

“~~Wholesale Delivery Charge~~ *Wholesale Rate*” means the charge paid by each Municipal Customer pursuant to Section 8.3 for each unit of water delivered to the Municipal Customer by the District pursuant to this Agreement.

ARTICLE 2

AUTHORITY; TERM; EXTENSION; SCOPE

Section 2.1. Authority. This Agreement is entered into pursuant to the Conservancy Act.

Section 2.2. Initial Term; Extension. This Agreement becomes effective upon (i) its execution by at least one Municipal Customer, (ii) the filing with the District of opinions of counsel to each Municipal Customer which has executed the Agreement as to the validity and enforceability of this Agreement as against such Municipal Customer, and (iii) the St. George Water Treatment Facilities Management Agreement becoming final and effective. This Agreement shall remain in full force and effect until the earlier of (a) a written agreement executed by all parties, terminating this Agreement, or (b) the later of (i) 50 years from the effective date of this Agreement or (ii) such later date as may be agreed upon by the parties to this Agreement.

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If all or part of the System remains in service at the time of the expiration of the term of this Agreement, the District agrees that it will offer to enter into a replacement agreement with the Municipal Customers. Unless otherwise agreed to by the District and the Municipal Customers, any such replacement agreements will be on substantially the same terms and conditions as this Agreement.

ARTICLE 3
CAPITAL-IMPACT FEE FACILITIES PLAN

Section 3.1. Maintenance of Capital-Impact Fee Facilities Plan.

Section 3.1.1. In General. The District shall maintain in effect, and revise as ~~provided in this Article~~required-, an CIFFP in accordance with Impact Fees Act and which shall ~~provide for the expansion and improvement of the System and shall govern~~ the acquisition or construction of ~~all Capital-Impact Fee~~ Facilities ~~within a the District's~~ planning horizon ~~of thirty years~~. The District shall maintain a copy of the Capital-Impact Fee Facilities Plan on file at its principal office, available for public inspection during the District's business hours. Upon request, a copy of the Capital-Impact Fee Facilities Plan shall be provided to any Municipal Customer.

Section 3.1.2. Capacity-Related Impact Fee Facilities. The ~~CFP-IFFP~~ shall provide for and govern ~~(i) the acquisition of all District Water Supplies, (ii) the acquisition, and construction, replacement, and improvement of all Capital-Impact Fee Facilities. When transporrelating or incidental to (1) the development, conveyance, and treatment of water by or for the District, irrespective of whether such facilities are to be owned by the District, and (2) the provision of water to the Municipal Customers, Retail Customers, and Contract Users, and (iii) the construction and acquisition of improvements, additions and extensions to the System.~~

Section 3.1.3. CFP-IFFP Objectives. The Capital Facilities provided for in the CIFFP shall be located and sized, and the construction of such facilities shall be timed, so as to achieve a balance among the following objectives:

- (1) Provide adequate water to meet the ~~current and future~~ needs of the Municipal Customers to serve Development Activity and Retail Customers;
- (2) Ensure that the addition of new Impact Fee Facilities does not hinder ~~able~~ the District ~~to~~ in ~~maximiz~~ inge the flexibility of the System and the utilization

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of System operational capacity for the benefit of all Municipal Customers, Retail Customers, and Contract Users;

(3) ~~Ensure that the addition of new Impact Fee Facilities does not~~able hinder each Municipal Customer to maximize utilization of its Municipal System for the benefit of its customers;

(4) ~~Minimize~~Maximize the cost effectiveness of the ~~the~~ Impact Fee Facilities' effect on operating costs of the System;

(5) ~~Minimize~~Maximize the cost effectiveness of the ~~the~~ Impact Fee Facilities' effect on operating costs of each Municipal System;

(6) ~~Minimize~~Maximize the cost effectiveness of the ~~necessity for construction~~number of additional District facilities constructed so as to reduce the construction costs of the System as a whole and to minimize the District Charges to Municipal Customers; and

(7) ~~Minimize~~Maximize the cost effectiveness of the ~~necessity for construction~~number of additions to the Municipal Systems constructed or changes in the Municipal Systems for purposes of connecting to the System.

Section 3.1.4. Water Quality Related Facilities. The ~~CFP~~IFFP shall, in addition to the other Capital Facilities specified in the CFP, provide generally for the acquisition and construction of ~~all facilities~~Impact Fee Facilities that may become necessary to enable the District, in its operation of the System, to comply with ~~all~~ requirements of law pertaining to water quality to serve Development Activity. The ~~EIFFP~~ may, but is not required to, provide for the acquisition and construction of other facilities for the maintenance or improvement of the quality of District Water Supplies or of water which is a source of District Water Supplies serving Development Activity.

Section 3.1.5. Additional District-Operated Facilities and Regional Municipal-Owned Facilities. Subject to Article XI, Section 6 of the Utah Constitution and other applicable provisions of law, the CFP-IFFP and ~~the any~~ Operating Plan may provide for the operation or acquisition by the District of District-Operated Facilities or Regional Municipal-Owned Facilities. Before the District acquires or commences operation of any District-Operated Facility or Regional Municipal-Owned Facility, the District and the Municipal Customer(s) that own(s) such District-Operated Facility or Regional Municipal-Owned Facility will enter into an operating agreement with respect to the facility.

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Commented [A8]: Article XI, Section 6. [Municipalities forbidden to sell waterworks or rights.]

No municipal corporation, shall directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights, or sources of water supply now, or hereafter to be owned or controlled by it; but all such waterworks, water rights and sources of water supply now owned or hereafter to be acquired by any municipal corporation, shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges: Provided, That nothing herein contained shall be construed to prevent any such municipal corporation from exchanging water-rights, or sources of water supply, for other water-rights or sources of water supply of equal value, and to be devoted in like manner to the public supply of its inhabitants.

Commented [A9]: 10/1 Provided that the Constitution allows for it, this section now allows for both District-Operated Facilities and Regional Municipal-Owned Facilities to be acquired and/or operated by the District.

Section 3.1.6. General Information Respecting ~~Capital~~ the Impact Fee Facilities Plan. The CFP-IFFP shall comply with the Impact Fees Act and any other applicable law. The IFFP, as approved by the Board, shall establish the Regional Level of Service which shall be a uniform level of service for all parties to this Agreement. The Impact Fee shall be based on the Regional Level of Service, include at least the following elements with respect to each asset to be acquired or facility to be constructed:

- ~~_____ (1) A general description of the Capital Facility, including the size of any diversion, treatment, conveyance, delivery, and related facility;~~
- ~~_____ (2) A map showing the general location of the Capital Facility;~~
- ~~_____ (3) The date the asset is to be acquired or schedule on which construction of each facility is to be started and completed;~~
- ~~_____ (4) The estimated cost of the asset or facility;~~
- ~~_____ (5) The estimated capital cost of the Capital Facility and the anticipated Revenues that will be used to pay the Capital Cost directly or any related Finance Costs;~~
- ~~_____ (6) The Total Cost of the CFP; and~~

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~~(7) Any other elements required by law.~~

Section 3.1.7. District Water Supplies. The ~~CFP~~IFFP shall provide for the acquisition by the District of Water Supplies as needed to meet anticipated demand of the Municipal Customers, Retail Customers and Contract Users to serve Development Activity.

Section 3.1.8. Capacity. The ~~CFP~~IFFP may, but shall not be required to, provide that any facility have a capacity greater than that required to meet the aggregate demand then projected to be served by the facility in question if such greater capacity will reasonably provide greater flexibility and reliability in the System.

Section 3.2. Review of and Revisions to ~~CFP~~IFFP.

Section 3.2.1. Plan Effective Until Revised. The initial ~~CFP~~IFFP and each revision thereto shall remain in effect until revised ~~as provided in this Agreement~~ pursuant to the Impact Fee Act.

Section 3.2.2. Revisions to Plan. The District shall review the ~~CFP~~IFFP and reaffirm or, ~~subject to the approval by~~ in consultation with the Municipal Customers pursuant to Article 14, revise, the ~~CFP~~IFFP at least annually as needed so that the plan will continue to meet the requirements of this Article, and otherwise as the District deems appropriate to serve the Municipal Customers, Retail Customers and Contract Users. In aid of such review, the District shall regularly consult with the AAC concerning, among other things, (i) the then existing and projected demand of each Municipal Customer for deliveries of water at its delivery point, and (ii) any revisions proposed in writing by a Municipal Customer or by the AAC.

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ARTICLE 4

OPERATING PLAN; PRIORITIZATION OF DELIVERIES

Section 4.1. Operating Plan; Administrator. The District, in consultation with the Municipal Customers, ~~shall may~~ formulate, adopt, maintain in effect, and revise ~~at least annually as needed, the an~~ Operating Plan, ~~which shall provide an accounting of the amount of water which has been reserved as a result of the payment of Water Availability Charges and shall govern that describes the~~ operation of the System and the delivery of water to Municipal Customers, Retail Customers and Contract Users. ~~The District shall operate and administer the System in accordance with the Operating Plan. The District shall maintain a copy of the Any~~ Operating Plan ~~will be maintained~~ on file ~~by the District~~ at its principal office, ~~available for public inspection during the District's business hours.~~ Upon request, a copy of the Operating Plan shall be provided to any Municipal Customer.

Section 4.1.1. Operating Plan Effective Until Revised. Once adopted, the Operating Plan shall remain in effect until revised as provided in this Agreement, and each revision of the Operating Plan similarly shall remain in effect until further revised.

Section 4.1.2. Annual Review of Operating Plan. ~~Once in effect, The~~ Operating Plan shall be reviewed and revised ~~at least annually as needed, and more frequently if necessary so that it will conform to the requirements of Sections 4.2, 4.3, and 4.4.~~ The District shall, in connection with such review, request proposed revisions from the Municipal Customers. During each such review, the District shall consider any revisions proposed in writing by a Municipal Customer.

Section 4.2. Deliveries to Municipal Customers. The District shall, subject to the provisions of Section 4.5, operate the System to the maximum extent practicable to meet the projected requirements of each Municipal Customer, as set forth in the Operating Plan.

Section 4.3. Specifications Respecting Deliveries. The Operating Plan and each revision to the Operating Plan ~~shall may~~ cover at least a three-year period and ~~shall may~~ specify

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at least the following with respect to the period covered by the Operating Plan, distinguishing between Treated Water and Raw Water where appropriate:

(1) Each delivery point from the System into the Municipal System of each Municipal Customer, each delivery point for Retail Customers and Contract Users, and the Water Supplies capable of being delivered to each delivery point to each Municipal Customer, the Retail Customers and the Contract Users;

(2) Maximum peak rate at which water can be delivered at each delivery point;

(3) Delivery schedules showing: (i) the annual projected delivery to each Municipal Customer for each year covered by the Operating Plan; (ii) the average daily rate by month at which water will be delivered to each Municipal Customer at each delivery point for the period covered by the Operating Plan;

(4) Target hydraulic grade lines at each point of delivery;

(5) Target chlorine concentrations at each point of delivery;

(6) Allocation of responsibility for providing blue-staking services;

(7) Scheduled training to be jointly pursued with the Municipal Customers to establish and coordinate emergency shutdown and operation procedures for the System; and

(68) Other matters pertinent to the operation of the System.

Section 4.4. Accommodation of Competing Objectives. When, and in the event that delivery of Water Supplies to a Municipal Customer's ~~at the~~ preferred points and rates of delivery ~~specified in the Operating Plan~~ creates conflict with another Municipal Customer's preferred points and rates of delivery, the points and rates of delivery for each Municipal Customer shall be selected and modified as appropriate, so as to achieve a balance among the CFP objectives set forth in Section 3.1.3, and subject to the provisions of Section 4.5.

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Section 4.5. Existing and Additional Contracts; Prioritization of Water Allocation and Deliveries.

Section 4.5.1. Existing and Additional Contracts.

(a) The District will continue to provide the Water Supplies required to be provided to Existing Contract Users under the Existing Contracts in accordance with the terms thereof, and the rights of the Municipal Customers to receive Water Supplies and related services under this Agreement shall be subject to the rights of the Existing Contract Users under the Existing Contracts.

(b) Except as provided in paragraph (c) or as otherwise agreed by the District and each of the Municipal Customers, the District shall not enter into any Additional Contract unless (i) in the reasonable determination of the District, the terms relating to payments by the Additional Contract User for Water Supplies or related services under the Additional Contract shall be no more favorable to the Additional Contract User than the payment terms applicable to the Municipal Customers under this Agreement, and (ii) the Additional Contract shall expressly provide that the rights of the Additional Contract User to receive Water Supplies under such Contract shall be subject to the availability of Water Supplies after delivery of Water Supplies to the Existing Contract Users in accordance with the Existing Contracts and to the Municipal Customers and Retail Customers in accordance with this Agreement.

(c) Notwithstanding paragraph (b), the District may enter into a Great Basin Facilities Contract, provided that Capital Costs, Finance Costs, and Operation and Maintenance Costs of the Great Basin Facilities acquired, constructed or operated pursuant to such Contract shall not be paid from revenues received by the District pursuant to this Agreement.

Section 4.5.2. ~~FWF provision~~ Prioritization of Water Allocation. The fees and charges set forth herein take into account the resources available to the District resulting from the

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payment of property tax, impact fees and water rates as authorized in UCA 17B-A-2a Part 4410. Accordingly, no water shall be sold to any ~~tax-tax~~-exempt property owner or subsequent purchaser who has not obtained from the District an approved water reservation and paid in full the total amount due as required by the District's Water Reservation Rate Schedule, as established under the District's then current Water Allocation Priority resolution.

Section 4.5.3. Prioritization of Water Deliveries.

(a) In the event that the District Water Supplies are insufficient to satisfy the demands of all Municipal Customers, Retail Customers, and Contract Users, the District shall, to the maximum extent practicable, provide Water Supplies in the following order of priority:

(i) *First*, to satisfy the water requirements of the Existing Contract Users under the Existing Contracts;

(ii) *Second*, to satisfy the demands of the Municipal Customers and Retail Customers for Treated Water, in accordance with this Agreement and the Operating Plan as applicable;

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(iii) *Third*, to satisfy the demands of the Municipal Customers and Retail Customers that can be satisfied with Raw Water, in accordance with this Agreement and the Operating Plan as applicable; and

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(iv) *Fourth*, to satisfy the water requirements of any Additional Contract User under an Additional Contract; *provided, however*, that the District shall deliver water under any Great Basin Facilities Contract in accordance with the terms thereof.

(b) If the capacity of one or more System facilities is, for any reason, insufficient to satisfy the aggregate demands of the Municipal Customers and Retail Customers, the District or the Municipal Customers, as applicable, shall take the

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following actions in the following order of priority in order to give effect to the priorities set forth in paragraph (a):

(i) *First*, the operations of the System shall be modified to the maximum extent practicable to provide, through alternate System facilities, for the full delivery of Water Supplies to the Municipal Customers and Retail Customers; ~~(as set forth in the Operating Plan~~ if applicable);

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(ii) *Second*, each Municipal Customer shall, to the maximum extent practicable, modify operation of its Municipal System to maximize output of water production and treatment systems that it owns or operates, if such action will allow the District to increase deliveries to the Municipal Customers and Retail Customers of (A) Treated Water or, (B) if the demands of the Municipal Customers and Retail Customers for Treated Water have been satisfied, Raw Water; and

(iii) *Third*, the District Water Supplies and capacity of such facilities shall be allocated by the District in accordance with paragraph (c).

(c) In the event that District Water Supplies are insufficient to satisfy the full water requirements of the Municipal Customers and Retail Customers after taking the actions described in paragraph (b)(i) and (b)(ii) of this Section, the District shall (i) apportion Water Supplies among the Municipal Customers in accordance with a shortage sharing plan adopted by the Municipal Customers, or (ii) if such a plan has not been adopted, reduce deliveries of District Water Supplies proportionately, based on the Municipal Customers' and Retail Customers' existing demand relative to the aggregate demand of the Municipal Customers and Retail Customers.

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ARTICLE 5

CONSTRUCTION AND FUNDING OF FACILITIES

Section 5.1. Requirement to Construct and Fund. The District shall use, and continue to use, every reasonable effort to (i) acquire, construct, and operate ~~all Capital Impact Fee~~ Facilities provided for in, and in accordance with, the ~~CFP-IFFP~~ then in effect, using proceeds from the appropriate revenues as determined by the Board, and (ii) issue District Debt in amounts and at frequencies necessary to fund the acquisition and construction of Capital Facilities in accordance with the ~~CFP-IFFP~~ then in effect to the extent such construction or acquisition is not funded from other sources.

ARTICLE 6

ACQUISITION OF DISTRICT WATER SUPPLIES

Section 6.1. Acquisition of Water Supplies for Municipal Customers. Any Water Supply or Water Right, or any interest therein, may be acquired and distributed by the District pursuant to this Agreement.

Section 6.2. Participation by Water Supplier. Any Water Supplier not a party to this Agreement shall be ineligible for distribution of any District Water Supplies or Water Rights acquired by the District, except insofar as such Water Supplier is a Contract User. ~~A-The District, in its sole discretion, may allow a~~ Water Supplier ~~may-to~~ become a party to this Agreement and be eligible to receive delivery of any Water Rights and Water Supplies (including any District Water Supplies) acquired by the District prior to the Water Supplier's execution and delivery of this Agreement to the extent such have not been allocated to other Municipal Customers ~~under the current Operating Plan~~ and subject to the Water Supplier's Reimbursement Obligation.

Section 6.2.1 Reimbursement Obligation. The Reimbursement Obligation payable by a Water Supplier pursuant to Section 6.2.2 shall be equal to the amount the Water Supplier would have paid as the Water Development Surcharge had it been a party to the 2006 Regional Water Supply Agreement from its original effective date (April 23, 2006), plus interest at the rate of five per cent (5%) per annum, and, in the event the

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Water Supplier does not have sufficient developed Water Capacity to serve all connections for which building permits were issued prior to the effective date upon which such Water Supplier becomes a party to this Agreement, an amount equal to the ~~Water Availability Charge~~ Impact Fee for that number of connections for which sufficient Water Capacity was not available. The Reimbursement Obligation paid by the Water Supplier shall be credited to the existing Municipal Customers pro rata according to the fraction that each Municipal Customer's previous payments of Water Development Surcharge bears to the total Water Development Surcharge paid by all Municipal Customers during the applicable period, and, insofar as ~~Water Availability Charge~~ Impact Fees are paid for insufficient Water Capacity, to the District. Within 90 days of any notice by a Water Supplier of its desire to become a party to this Agreement, the Water Supplier and the District shall meet to jointly determine the amount of the Reimbursement Obligation, which determination shall be incorporated into a separate agreement between the Water Supplier and the District.

Section 6.2.2 Conditions Precedent. ~~The~~ If permitted by the District, the Water Supplier shall become a Municipal Customer and be eligible for delivery of water from the Water Rights and Water Supplies upon (a) adoption of a resolution by the governing authority of the Water Supplier authorizing the Water Supplier to enter into this Agreement, (b) adoption of a resolution by the Board authorizing the execution and delivery of an amendment to this Agreement adding the Water Supplier as a Municipal Customer under this Agreement, (c) execution and delivery of such amendment by the District and the Water Supplier in accordance with Section 20.2, (d) filing the opinion described by Section 2.2(ii) with respect to such amendment, (e) payment in full of the Reimbursement Obligation and (f) compliance with applicable provisions of law.

Section 6.3

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ARTICLE 7

DELIVERY AND TREATMENT OF WATER

Section 7.1. Delivery Requirement. The District shall operate the System and deliver the Water Supplies to each Municipal Customer in accordance with ~~the any~~ Operating Plan then in effect.

Section 7.2. Water Quality. The District shall comply with all applicable laws relating to the treatment and quality of water.

ARTICLE 8

CHARGES AND PAYMENTS

Section 8.1. In General. The District shall establish, revise as necessary, and use every reasonable effort to collect the District Charges provided for in this Article. Such District Charges, in the aggregate, shall have the purpose of funding, and shall be set at levels sufficient to fund: (i) reserves authorized or required by this Agreement or required by any bond or other instrument relating to District Debt, and (ii) the payment when due of all of the Finance Costs, Capital Costs and other System ~~e~~Costs of the District not otherwise funded.

Section 8.2. ~~Water Availability Charge~~Impact Fee. ~~and Water Development Surcharge.~~

~~Section 8.2.1. Water Availability Charge.~~ The District is authorized to impose impact fees pursuant to the Impact Fee Act and shall impose the ~~Water Availability Charge~~Impact Fees on ~~d~~Development ~~a~~Activity pursuant to this Agreement in accordance with and to the extent permitted by the Impact Fee Act. The Impact Fee shall be used as provided in the Impact Fees Act.

Section 8.2.1 Impact Fee Collection. In order to obtain the availability and use of the Capital Facilities developed and operated pursuant to this Agreement and other benefits contemplated by this Agreement, each Municipal Customer agrees that it will cooperate with and assist the District in collecting the District's ~~Water Availability Charge~~Impact Fees in connection with the approval

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of ~~d~~Development ~~a~~Activity within the Municipal Customer's jurisdiction as provided in Section 8.79.1. To that end, each Municipal Customer agrees that it will not approve and release for recording any ~~d~~Development ~~a~~Activity (including, but not limited to, final plat approval, amended plat approval, site plan approval or changes in permitted or conditional uses) or issue any building permit until the Municipal Customer receives written confirmation that the applicable charge~~Impact Fee~~ has been paid to the District ~~or to the related Municipal Customer for the account of the District~~ or arrangements have been made for the Impact Fee to be paid at the appropriate time. An adjustment to the Impact Fee may be requested in accordance with the Impact Fees Act. The Municipal Customer shall not permit a New Connection to its water system without payment of the Impact Fee. If the Municipal Customer approves and releases for recording Development Activity before the Impact Fee has been paid or arrangements have been made for the Impact Fee to be paid at the appropriate time, or if the Municipal Customer permits a New Connection to its water System without payment of the Impact Fee, the Municipal Customer shall be liable for payment of the Impact Fee. Subject to the requirements of the Impact Fee Act, the ~~Water Availability Charge~~Impact Fee shall be separately determined for connections of different types and on such basis as will, in the District's judgment, equitably apportion the ~~Capital Impact Fee~~ Facilities Costs as set forth in the ~~CFPIFFP~~. In establishing the ~~Water Availability Charge~~Impact Fee, the District may consider meter size, ~~residential equivalents~~Equivalent Residential Connections and such other characteristics as the District may determine to achieve an equitable allocation of costs. To assist the District in charging the appropriate Impact Fee, the Municipal Customer shall use a methodology approved by the District to determine the Equivalent Residential Connections for commercial, industrial, institutional, governmental and non-typical residential development.

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Section 8.2.2. Alternative Mechanisms for Payment of Impact Fee.

The District ~~shall~~may provide alternative mechanisms for paying the ~~Water Availability Charge~~Impact Fees in connection with subdivision plat and related approvals, ~~as follows:~~

~~(a) Subdivision Plats~~

~~(i) For For a subdivision plat which received final approval by the St. George City Council prior to April 23, 2006, or in the case of Municipal Customers who later execute this Agreement for subdivision plats, site plans or conditional uses which receive final approval by that Municipal Customer prior to the date the Municipal Customer executed the 2006 Regional Water Supply Agreement and which were recorded within ninety (90) days of the Municipal Customer's execution of the 2006 Regional Water Supply Agreement, the Water Availability Charge Impact Fee for each residential lot shall be paid on the earlier of following events in connection with prior to the issuance of a building permit by the Municipal Customer for construction on the lot.~~

- ~~○ Upon sale of lot(s) by developer,~~
- ~~○ In connection with the issuance of a building permit by the Municipal Customer for construction on the lot,~~
- ~~○ Three years after the date of recording the final plat.~~

~~(ii) For all subdivision plats which received final approval by the St. George City Council prior to April 23, 2006, but which are not recorded prior to July 23, 2006, or which receive final approval after April 23, 2006, or in the case of Municipal Customers who later execute this Agreement for subdivision plats, site plans or conditional uses which receive final approval by that Municipal Customer prior to the date the Municipal Customer executes this Agreement but which are not recorded within ninety (90) days from the date of execution of this Agreement or which receive final approval after the execution of this Agreement, the terms in section 3a(1), above, shall apply and, in addition, the developer will be required to provide~~

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~~a subordination agreement to ensure all other encumbrances on the lot are subordinated to the obligation to pay the Water Availability Charge.~~

~~(b) Building Permits. For all building permits prior to issuance of the building permit.~~

~~(c) Collection. The District will collect the Water Availability Charges in accordance with its applicable impact fee resolution and will provide the building permit applicant or developer with a receipt showing payment of the Water Availability Charge for all lots or subdivision plats where fees have been collected, which will be relied upon by the City for issuing the building permit or recording the final plat. No building permit shall be issued or final plat recorded without the City receiving an original receipt and, where applicable, promissory note and security agreement executed by the District.~~

~~(d) Reporting. The City will provide a monthly report to the District showing the total number of Equivalent Residential Units which will be the basis for the Water Development Surcharge.~~

Section 8.2.23. Water Development Surcharge. In order to obtain the availability and use of the Capital Facilities developed and operated pursuant to this Agreement and other benefits contemplated by this Agreement, each Municipal Customer shall pay to the District a Water Development Surcharge equal to (i) One and 75/100 Dollars (\$1.75) per ~~equivalent~~ Equivalent residential Residential unit Connection per month ~~and 05/100 Dollars (\$0.05) on each 1,000 gallons used per each Equivalent Residential Connection.~~ or (ii) such greater or lesser rate per equivalent residential ~~unit~~ connection as the District shall determine from time to time in accordance with the provisions of this Article 8; provided, however, that the Water Development Surcharge shall not exceed the rate set forth above unless the District determines such greater rate to be necessary to provide revenues that are sufficient, together with Revenues derived from ~~Water Availability Charge~~ Impact Fees, to (i) achieve the purposes set forth in Section 8.3.2.3, (ii) satisfy any rate requirement or debt service coverage requirement with respect to District Debt, or (iii) maintain any rating on District Debt. The Water Development Surcharge shall be

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payable monthly as provided in Section 8.7.2. The equivalent residential ~~unit connection~~ baseline is _____, based upon the number of equivalent residential ~~units connections~~ served by the Municipal Customer on the date this Agreement was executed by the Municipal Customer and is specified for each Municipal Customer in Exhibit B hereto.

~~Section 8.3.2 Payment of Water Development Surcharge Required for Service to Resume. For any connection where service has been discontinued for up to seven years (84 months), an amount equal to the Water Development Surcharge that would have accrued in the period of discontinuation shall be paid to the District prior to resuming service. The Water Development Surcharge shall not be required for New Connections.~~

Section 8.23.3. Use of ~~Water Availability Charge and Water Development Surcharge.~~ The ~~Water Availability Charge and the~~ Water Development Surcharge shall be used for the following purposes:

- (1) Payment of the Capital Cost of Capital Facilities ~~to the extent provided in the CFP;~~
- (2) Payment of Finance Costs on District Debt;
- (3) ~~To the extent provided in the CFP,~~ Payment of District obligations to any Municipal Customer in connection with District-Operated Facilities;
- (4) Maintenance of the Funds ~~(other than the Operation and Maintenance Fund and the Renewal and Replacement Fund)~~ at the levels, if any, established under Article 10;
- (5) Capital improvements required to meet existing and anticipated water quality standards which are required to be met before the ~~CFP-IFFP~~ can be revised to address such requirements, *provided, however*, that such improvements will ultimately be addressed in revisions to the ~~CFPIFFP~~; and

Commented [A18]: 10/18 Pay the difference in the impact fee and the surcharge unless the total is greater than the new impact fee then they can pay the impact fee. Divide--before 10 years just pay surcharge; after 10 years pay both surcharge and difference in impact fee.

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- (6) Payment of District staff time allocated to Capital Facilities.

The District shall set the ~~Water Availability Charge and the~~ Water Development Surcharge at levels ~~at least sufficient~~ to ensure that, ~~at all times,~~ District Revenues are sufficient for the purposes specified in this Section.

Section 8.4 Payments Required to Resume Service.

~~For any Abandoned Connection or Inactive Connection, an amount equal to the Water Development Surcharge that would have accrued in the period of discontinuation shall be paid to the District prior to resuming service. In addition, for any Abandoned Connection, the difference in the amount of the Impact Fee when it was paid for the Abandoned Connection, and the amount of the Impact Fee at the time the Abandoned Connection resumes service shall be paid to the District prior to resuming service. For any Abandoned Connection, in the event that the charges for the Water Development Surcharge and the difference in the Impact Fee exceed the new Impact Fee being charged at the time service is resumed, the new Impact Fee may be paid in the alternative.~~

Commented [A20]: 10/18 Pay the difference in the impact fee and the surcharge unless the total is greater than the new impact fee then they can pay the impact fee. Divide--before 10 years just pay surcharge; after 10 years pay both surcharge and difference in impact fee. See also definitions for "Abandoned Connection" and "Inactive Connection."

Section 8.345. Wholesale Delivery Charge Wholesale Rate.

Section 8.345.1. Purpose and Level of ~~Charge~~ Wholesale Rate. The District shall impose ~~a Wholesale Delivery Charge~~ Wholesale Rate for the purposes of providing for the payment of the Operation and Maintenance Costs, ~~and~~ to fund the Renewal and Replacement Fund, ~~to fund the Capital Facilities Reserve Account to the extent determined by the District, and to fund other System Costs as determined by the District.~~ The ~~Wholesale Delivery Charge~~ Wholesale Rate shall be paid by each Municipal Customer for each unit of water delivered to it by the District. The amount of the ~~Wholesale Delivery Charge~~ Wholesale Rate shall be determined by the District based upon the considerations set forth in Section 8.34.2, and shall be adjusted from time to time so that the revenues received from the ~~Wholesale Delivery Charge~~ Wholesale Rate, together with Other District Revenues, will ensure that the District will have sufficient moneys at all times to pay the Operation and Maintenance Costs (including the

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maintenance of any necessary reserves), to fund the Capital Facilities Reserve Account to the extent determined by the District, and to fund other System Costs as determined by the District. The ~~Wholesale Delivery Charge~~Wholesale Rate may have separate components for Treated Water and for Raw Water.

Section 8.345.2. Considerations in Setting Charge. In setting the ~~Wholesale Delivery Charge~~Wholesale Rate, the District shall consider and appropriately take into account, among any other factors the District considers relevant, (i) the Annual Budget, (ii) differences in cost between Treated Water and Raw Water, (iii) trends in surpluses and shortfalls in revenue derived from the ~~Wholesale Delivery Charge~~Wholesale Rate in prior fiscal years, (iv) amounts on deposit in the Operation and Maintenance Fund, (v) amounts needed to maintain the Renewal and Replacement Fund, (vi) amounts needed to maintain the Capital Facilities Reserve Account, (vii) System Costs, (viii) the most current projections of future deliveries by the District of Treated Water and Raw Water to Municipal Customers, and ~~(viii)~~ any Other District Revenues available to the District for payment of ~~the Operation and Maintenance Costs~~System Costs.

Section 8.345.3. Uniform Application. Unless otherwise agreed by the parties to this Agreement, (i) the Treated Water component of the ~~Wholesale Delivery Charge~~Wholesale Rate shall be applied uniformly to all Municipal Customers; and (ii) the Raw Water component of the ~~Wholesale Delivery Charge~~Wholesale Rate shall be applied uniformly to all Municipal Customers. The Raw Water component may be broken down into categories with different Wholesale Rates based on the type of Raw Water delivered.

Section 8.456. Allocation of Other District Revenues. The District may, but except to the extent specified by law shall not be required to, allocate Other District Revenues among any of the purposes described in Section 8.2.3.2 and Section 8.34.1. All such allocations shall be made on such basis as the District determines appropriate.

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Section 8.57. Periodic Review of Charges. The Board shall annually review and make a five-year projection for each of the District Charges. Upon each review, the Board shall affirm or revise the rates for each charge. To the maximum extent practicable, the rates for each of the District Charges shall be set at constant levels (adjusted for inflation) for such periods as the District may determine from time to time. Notwithstanding the foregoing, the Board shall review and readjust the rates for District Charges whenever shortfalls in collections of District Charges have caused or are reasonably expected to cause the Funds to be unduly depleted.

Section 8.68. Delinquencies by Municipal Customers.

Section 8.68.1. Withholding of Water Deliveries. The District may withhold in whole or in part, delivery of water to any Municipal Customer that is delinquent in the payment of any District Charges or other amounts payable to the District under this Agreement. Any charge imposed by this Agreement is deemed delinquent if not made when due.

Section 8.68.2. Late Charges. The District shall have the right to establish late charges to be paid by any Municipal Customer which is delinquent by more than 60 days in any charge or other payment due under this Agreement. The District shall send a monthly statement to delinquent Municipal Customers for any such late charges which shall be due within 30 days after such statement is sent as provided in Article 21.

Section 8.68.3. Crediting of Payments. Payments by any Municipal Customer which is delinquent in any District Charge or other payment due under this Agreement shall be credited first to interest and late charges then owing and then to the delinquent balance.

Section 8.79. Billing and Payment.

Section 8.79.1. ~~Water Availability Charge~~ Impact Fees. The District shall collect the ~~Water Availability Charge~~ Impact Fees for all new platted subdivision lots and ~~new~~ New connections-Connections (where an ~~Water Availability Charge~~ Impact Fee has not

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been paid in connection with plat approval) within such Municipal Customer's jurisdiction as set forth in Section 8.2.1. Where a subdivision plat is approved in connection with commercial, industrial, institutional or governmental uses which are not specified at the time of plat approval, the ~~Water Availability Charge~~Impact Fee may be paid at the time of issuance of building permit approval. Where a building permit is approved in connection with commercial, industrial, institutional or governmental uses which are not specified at the time of building permit approval, the Impact Fee may be paid at the time of tenant improvement building permit approval. Within 30 days after the end of each month, each Municipal Customer shall compile a report detailing the number and type of all plat, site plan and building permit approvals (including tenant improvement building permit approvals) for the particular month and remit the report to the District. In addition, in the event the Municipal Customer does not have sufficient Water Capacity to serve all connections for which building permits were issued prior to either (1) the Municipal Customer's execution of the 2006 Regional Water Supply Agreement, or (2) the Municipal Customer's execution of this Agreement if the Municipal Customer did not execute the 2006 Regional Water Supply Agreement~~the effective date of this Agreement~~, the Municipal Customer shall pay an amount equal to the ~~Water Availability Charge~~Impact Fee for the number of connections for which sufficient Water Capacity is not available within six (6) months of execution of this Agreement.

Section 8.79.2. Water Development Surcharges. Payment of the Water Development Surcharges by each Municipal Customer shall be due by the first day of each month. The Water Development Surcharge shall begin to accrue on July 1, 2006. Within 30 days after the end of each month, each Municipal Customer shall compile a report detailing the total number of Equivalent Residential Connections and the amount in per 1,000 gallons used across all Equivalent Residential Connections for the particular month and remit the report to the District.

Section 8.79.3. Wholesale Delivery Charge/Wholesale Rate. Each month the District shall determine the amount of Treated Water and Raw Water delivered through

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the System to each Municipal Customer for the preceding ~~one month~~one-month period and shall send a statement to each Municipal Customer for the ~~Wholesale Delivery Charge~~Wholesale Rate due to the District with respect to such deliveries. Payment shall be due from each Municipal Customer within 30 days after the date of the statement.

Section 8.79.4. Place of Payment. Municipal Customers shall transmit their payments under this Agreement to such banks and such accounts, and by such means, as specified in a notice given by the District.

Section 8.79.5. Interest. All delinquent payments shall bear interest from the date the payment was due at twelve per cent (12 %) per annum.

Section 8.810. Annual Budget; Billing of Amount Not Paid by Other Municipal Customers. On or before 30 days prior to the beginning of each fiscal year, the District shall deliver to the Municipal Customers an Annual Budget prepared by the District. Each Annual Budget shall show, for each month of the following fiscal year the estimated monthly Operation and Maintenance Costs, Capital Costs, and other ~~costs relating to the System~~Costs.

At the end of each quarter during each fiscal year and at such other times as the District shall deem desirable or as may be required by any change in facts and circumstances, the District shall review the then-current Annual Budget. In the event such review indicates that the Annual Budget does not or will not substantially correspond with actual receipts or expenditures, or if at any time during such fiscal year there are, or the District expects there will be, extraordinary receipts, credits or expenditures of costs which the District determines will substantially affect such Annual Budget, the District shall prepare, adopt and deliver to the Municipal Customers a revised Annual Budget incorporating adjustments to reflect such receipts, credits or expenditures which shall supersede the previous Annual Budget as a basis for the District Charges hereunder for the balance of that fiscal year.

The Municipal Customers acknowledge and agree that the provisions of this Section 8.8 require that, if any Municipal Customer fails to pay all or part of its share of District Charges, the District may amend the Annual Budget to reflect such non-payment and the need to increase

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~~Wholesale Delivery Charge~~Wholesale Rates to reflect the amount of any such non-payment to all the Municipal Customers (including the defaulting Municipal Customer) proportional to the amounts the Municipal Customers would have paid if such delinquency had not occurred. Such increase in ~~Wholesale Delivery Charge~~Wholesale Rates to any non-defaulting Municipal Customer shall not be more than twenty-five percent (25%) of the ~~Wholesale Delivery Charge~~Wholesale Rates that would have been paid by the Municipal Customer if such delinquency had not occurred.

Section 8.911. Investment of Funds. The District may invest all Revenues and amounts on deposit in any funds created hereunder in accordance with the State Money Management Act, Title 51, Chapter 7, Utah Code Annotated 1953, as amended, and any other applicable law.

ARTICLE 9

OBLIGATIONS OF MUNICIPAL CUSTOMERS

Section 9.1. Operation of Municipal Customer Systems. Subject to the provisions of Section 17.1, Uncontrollable Force, each Municipal Customer shall use every reasonable effort to maintain and operate, to the fullest extent practicable, its Municipal System so as to (i) allow the District to deliver water to all Municipal Customers, Retail Customers and Contract Users in a manner that provides optimum benefit to each Municipal Customer in accordance with ~~the any~~ Operating Plan, and (ii) avoid the necessity for the District to construct additions to the System. Each Municipal Customer shall construct, operate and maintain its Municipal System in compliance with all applicable laws relating to design, construction, operation, maintenance, treatment and water quality.

Section 9.2. Payment of Charges; Obligation Absolute. Each Municipal Customer shall pay when due all charges and other amounts imposed by this Agreement. The Municipal Customer's obligation to make such payments from the amounts described in Section 9.4 is absolute and unconditional. No Municipal Customer is entitled to (i) set off any amounts due under this Agreement against any other obligations due to it by the District or other Municipal Customer; (ii) delay making any payments due under this Agreement for any reason; or (iii)

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withhold any payment to the District under this Agreement on account of any breach or alleged breach of this or any other agreement by the District or any other Municipal Customer or for any other reason whatever. If a Municipal Customer determines prior to the due date that any charge or amount billed is in error, it shall immediately notify the District in writing of the disputed charge or amount due and the basis therefore. Such notice shall not defer the Municipal Customer's obligation to make payment as set forth in this paragraph. If the parties are unable to resolve the disputed matter prior to the due date, the Municipal Customer may institute proceedings under Article 16.

Section 9.3. Municipal Customer Rates. The District Charges are charges by the District to be paid by the Municipal Customers (or, with respect to the ~~Water Availability Charge~~~~Impact Fees~~, collected by the District). Each Municipal Customer shall be solely responsible for setting rates and charges to its customers. Except as set out in Section 9.5, nothing in this Agreement shall be construed as governing or affecting how any Municipal Customer sets such rates and charges.

Section 9.4. Special Obligation; Payments as Operating Expenses. Each Municipal Customer covenants and agrees that its obligation to make payments under this Agreement is a special obligation of that Municipal Customer, payable as a first charge from (i) the gross revenues of the Municipal System of that Municipal Customer, which for purposes of this Agreement shall be deemed to include all fees, charges, income and other revenue derived from the Municipal Customer's Municipal System; and (ii) revenues from other sources that are legally available and specifically designated and authorized to be used for such purpose. Each Municipal Customer covenants and agrees that all payments to be made by it under this Agreement shall constitute operating expenses of its Municipal System and that all such payments shall constitute operating expenses under any and all indentures, resolutions or other instruments securing the Municipal Customer's bond issues payable from revenues derived from the operation of its Municipal System. The effect of this covenant is that each Municipal Customer's obligation to make payments under this Agreement from the gross revenues of its Municipal System has priority over its obligation to make payments of the principal of and interest on any and all of such outstanding

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bonds. The Municipal Customer's obligation to make payments under this Agreement shall not be construed as giving rise to a general obligation debt within the meaning of any constitutional or statutory limitation.

Section 9.5. Maintenance of Revenues by Municipal Customers. Each Municipal Customer agrees to establish charges and fees for its water utility services that produce gross revenues from its Municipal System which, when combined with other legally available funds specifically designated or authorized to be used for such purposes, are sufficient to make all payments to be paid from such sources in each fiscal year, including all payments due under this Agreement.

Section 9.6. Fees and Charges by Municipal Customers. Each Municipal Customer agrees not to charge any franchise or use fee to the District for any water delivered within its municipal boundaries.

ARTICLE 10

FUNDS

Section 10.1. Funds Generally. To the extent required by debt instruments for District Debt, the District shall, and otherwise the District may, establish and maintain in connection with the System, the Funds specified in this Article and such other Funds as the District may deem appropriate.

Section 10.2. Rate Stabilization Account. The District shall establish and maintain a Rate Stabilization Account (including any subaccounts that the District determines to establish therein) in the Revenue Fund for the purpose of providing, and in amounts reasonably necessary to provide, sufficient funds for the purpose of maintaining, to the extent practicable, Revenues from the ~~Water Availability Charge~~Impact Fee and the Water Development Surcharge at constant levels for such periods as the District may determine from time to time. Consistent with the foregoing, moneys in the Rate Stabilization ~~Fund~~Account may be used by the District (i) for the payment of Finance Costs on District Debt to the extent that District Charges and any Other District

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Revenues allocated for the purposes specified in Section 8.2.3 are insufficient for such purpose, (ii) for such other purposes related to District Debt as the District determines appropriate, and (iii) the acquisition, construction or replacement of Capital Facilities ~~provided for in the CFP~~. The total of the amounts held in the Rate Stabilization Account pursuant to this Section 10.2 shall not exceed, during any fiscal year, 500% of the Average Aggregate Debt Service, calculated as of the first day of such fiscal year (or, if the interest on any District Debt cannot be determined as of such date, 500% of the Average Aggregate Debt Service estimated by the District on a reasonable basis as of such date).

Section 10.3. Capital Facilities Reserve Account. The District shall establish and maintain a Capital Facilities Reserve Account (including any subaccounts that the District determines to establish therein) in the Revenue Fund for the purpose of providing, and in amounts reasonably necessary to provide, sufficient funds for (i) the acquisition, construction or replacement of Capital Facilities, including Impact Fee Facilities provided for in the ~~CFFP~~, (ii) for the payment of Finance Costs on existing and planned District Debt to the extent Revenues allocated for the purposes specified in Section 8.2.3 are insufficient for such purpose and (iii) for such other purposes related to District Debt as the District determines appropriate. Accordingly, moneys in the Capital Facilities Reserve Account shall be used by the District for such purposes.

Section 10.4. Operation and Maintenance Fund. Pursuant to the Bond Document, the District has established the Operation and Maintenance Fund. The District shall maintain the Operation and Maintenance Fund (including any accounts or subaccounts the District determines to establish therein) for the purpose of paying Operation and Maintenance Costs. The District shall maintain reserves in the Operation and Maintenance Fund (i) for the purpose of maintaining, to the extent practicable, the ~~Wholesale Delivery Charge~~ Wholesale Rate at a constant level for such periods as the District may determine from time to time, and (ii) for such other purposes related to operation and maintenance of the System as the District determines; *provided, however*, that the minimum amount required to be on deposit in the Operation and Maintenance Fund shall be established in accordance with any applicable provisions of the Bond Document and that the amount held in the Operation and Maintenance Fund during any fiscal year shall not exceed twelve

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months of estimated Operation and Maintenance Costs, unless otherwise required by the Bond Document.

Section 10.5. *Renewal and Replacement Reserve Fund.* Pursuant to the Bond Document, the District has established the Renewal and Replacement Reserve Fund. The District shall maintain the Renewal and Replacement Reserve Fund (including any accounts or subaccounts the District determines to establish therein) for the purpose of providing, and in amounts reasonably necessary to provide, sufficient funds for the payment of (i) Repair and Replacement Costs, (ii) extraordinary Operation and Maintenance Costs and contingencies, including the prevention or correcting of any unusual loss or damage to the System to the extent not covered by proceeds of insurance or other moneys recoverable as a result thereof, and (iii) and other costs, expenses and obligations permitted by the Bond Document. The minimum amount required to be on deposit in the Renewal and Replacement Reserve Fund shall be established in accordance with any applicable provisions of the Bond Document; *provided, however*, that the amount held in the Renewal and Replacement Reserve Fund during any fiscal year shall not exceed the amount that the District shall determine, in consultation with an engineer qualified in engineering matters relating to the construction and maintenance of municipal water and hydroelectric systems, to be necessary, consistent with prudent water utility practice, for the purposes for which the Renewal and Replacement Reserve Fund has been established.

Section 10.6. *Fund Levels.* The District shall periodically (not less than annually) review and determine the amount of money that is to be on deposit in each of the Funds and any other requirements that the District deems appropriate with respect to the investment and expenditure of such Funds. In the event monies in any Fund exceed such amounts or any limitations specifically set forth in this Agreement or in the Bond Resolution, the District shall consider such excess and make appropriate adjustments to the various District Charges and the amounts on deposit in the Funds, as applicable, to eliminate such excess.

Section 10.7. *Funds Owned by District.* During the term of this Agreement, the District shall own and control all Funds established under this Agreement, subject to the provisions of this

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Agreement. Thereafter, the District shall continue to own and control all the Funds without regard to this Agreement.

ARTICLE 11

BONDS AND OTHER OBLIGATIONS

Section 11.1. Tax Covenants. Each party hereby covenants that:

(i) it will at all times comply with the provisions of any tax agreement entered into by such party in connection with Tax-Exempt Obligations and, if applicable, the rebate requirements contained in Section 148(f) of the Tax Code;

(ii) it will not take any action or omit to take any action with respect to Tax-Exempt Obligations that would cause any such obligation to be classified as “arbitrage bonds” within the meaning of Section 148 of the Tax Code;

(iii) it will not sell, dispose of or use the capacity of the Capital Facilities in such manner that such sale, disposition or use would cause any Tax-Exempt Obligation to be a “private activity bond” described in Section 141 of the Tax Code; and

(iv) it will not take any action that will adversely affect the exemption from federal income taxation of interest on any Tax-Exempt Obligation, nor will it omit to take any action necessary to preserve the exclusion from federal gross income of interest on any Tax-Exempt Obligation.

Section 11.2. Further Assurances. The parties to this Agreement agree to do such further acts, take such action, and to execute and deliver to each other such additional agreements, certificates, documents, and instruments as may reasonably be required or deemed advisable to effect the purposes of this Agreement. The Municipal Customers shall execute all agreements, consents, certificates, and other documents, including any instruments reasonably requested in order that any District Debt be issued in compliance with the applicable rules and regulations of the Internal Revenue Service and the Securities Exchange Commission, and shall provide whatever

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additional information is reasonably requested by the District in connection with complying with those rules and regulations.

ARTICLE 12

EXCHANGE OF INFORMATION

Section 12.1. Information Regarding Plans, Charges. The District shall make available to each Municipal Customer all reports, studies, and other information used by the District in connection with adoption of (i) the ~~CFP-IFFP~~ and ~~the any~~ Operating Plan, (ii) revisions to the ~~CFP-IFFP~~ and ~~the any~~ Operating Plan, and (iii) the establishment of, and changes to, the District Charges by the District pursuant to this Agreement.

The District shall make available to each Municipal Customer information regarding (i) the status of construction of facilities provided for in the ~~CFP-IFFP~~, and (ii) any matters respecting the District's operation of the System that would affect the ability of the District to deliver water to any Municipal Customer in accordance with ~~the any~~ Operating Plan.

Section 12.2. Books and Records. The District shall make available to the Municipal Customers, and the Municipal Customers shall make available to the District, all books and other records maintained by such party with respect to matters pertaining to this Agreement. The District and the Municipal Customers may conduct an audit of any such books and records to ensure compliance with the terms of this Agreement.

ARTICLE 13

DISTRICT ADVISORY COMMITTEE

Section 13.1. Administration Advisory Committee Established. The Administration Advisory Committee ("AAC") is hereby established, consisting of the City Manager ~~or and~~ Mayor (or designee of the City Manager or Mayor) of each Municipal Customer and the General Manager of the District. The AAC shall meet at least quarterly and shall adopt such rules and procedures as it shall determine for holding meetings and otherwise conducting its business. The AAC at its

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election may consider, consult with the District and the Municipal Customers about, and provide advice to the District respecting any matter pertaining to the administration, operation, maintenance, repair and replacement, and construction of the System and respecting implementation of Article 18. In the event a recommendation of the AAC is not implemented by the District, and a majority of the Committee requests that the matter be reconsidered, the District Board shall hold a meeting with the AAC to address the matter before taking action inconsistent with the recommendation of the AAC.

Each Municipal Customer shall notify the District whenever it designates a representative to the AAC.

Section 13.2. Technical Advisory Committee Established. The Technical Advisory Committee (“TAC”) is hereby established, consisting of the water supervisor of each Municipal Customer and the General Manager of the District. The TAC shall meet at least quarterly and shall adopt such rules and procedures as it shall determine for holding meetings and otherwise conducting its business. The TAC at its election may consider, consult with the District and the Municipal Customers about, and provide advice to the District respecting any matter pertaining to the operation, maintenance, repair and replacement, and construction of the System. The TAC shall also consider any matter presented to it by the AAC.

Each Municipal Customer shall notify the District whenever it designates a representative to the TAC.

ARTICLE 14

ACTIONS REQUIRING APPROVAL BY MUNICIPAL CUSTOMERS

Section 14.1. Approval of ~~CFP~~ Projects Included in the IFFP. In addition to the requirements of Section 3.2.2, ~~the CFP in effect at the time of execution of this Agreement and any revision project added~~ to the ~~CI~~FFP which would ~~change-increase~~ the Total Cost of the ~~CFP~~ IFFP as last approved by the governing authorities of the Municipal Customers, shall require approval by the majority vote of the Board and the affirmative vote of the governing authorities of

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a majority of all Municipal Customers, other than Municipal Customers in default under this Agreement, ~~provided, however, that increases due solely to inflation do not require such approval.~~

ARTICLE 15

ENFORCEMENT BY DISTRICT

Section 15.1. Remedies Not Limited By Agreement. Nothing in this Agreement is intended to limit, or shall be construed as limiting, any right or remedy, at law or in equity, available to the District against a Municipal Customer under this Agreement, and all such rights and remedies shall be cumulative. No failure of the District to exercise, and no delay by the District in exercising, any right shall operate as a waiver of that right or of any other right provided under this Agreement or otherwise available at law or in equity. No single or partial exercise of any right by the District shall preclude any further exercise of such right or any other right available to the District under this Agreement or at law or in equity.

ARTICLE 16

CLAIMS BY MUNICIPAL CUSTOMERS; DISPUTE RESOLUTION

Section 16.1. Claims Seeking Performance by District.

Section 16.1.1. Maintainable Claims Against District. The following claims by a Municipal Customer under this Agreement, and no others, may be maintained against the District:

~~(1) A claim that the District has not revised the Operating Plan as required by Article 4;~~

(2) A claim that the District is not using every reasonable effort to construct or fund the Capital Impact Fee Facilities as required by Section 5.1;

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(3) A claim that the District has not revised the ~~CFPIFFP~~ then in effect as required by Section 3.2.2 to serve the demand of the Municipal Customer asserting the claim;

(4) A claim that the District is not delivering water to that Municipal Customer as required by Article 7; and

(5) A claim that the District has added a project that increases~~d~~ the Total Cost of the ~~CFPIFFP~~ without satisfying the requirements set forth in Article 14.

A Municipal Customer may maintain, or seek redress respecting, such a claim only by instituting the procedures specified in this Section 16.1, instituted in the order in which they are set forth and within the periods specified, subject to extension pursuant to Section 17.1.

Section 16.1.2. Notice to the District of Claim.

Section 16.1.2.1. Requirement for Notice. Any Municipal Customer asserting a claim against the District under Section 16.1 must first give the District notice of its claim. Such notice must be adopted by vote of the governing authority of the Municipal Customer and specify the action the Municipal Customer claims the District is required to take, the schedule for taking such action, and the provisions of this Agreement, the ~~CFPIFFP~~, or the Operating Plan that require such action. If the claim relates to revisions in the ~~CFIFFP~~ sought by the Municipal Customer, the notice must contain or be accompanied by the following information:

(1) If applicable, data supporting the Municipal Customer's claim that, even if all facilities are constructed in accordance with the ~~CFPIFFP~~, the System would not have the operational capacity, or would not have the operational capacity in sufficient time, to enable the District to meet demand within a particular part of the District Municipal Customer's service area;

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(2) If applicable, data supporting the Municipal Customer's claim that demand in the parts of the Municipal Customer's service area to be served by the facility the Municipal Customer seeks to have added to the ~~CFPIFFP~~, or the construction of which the Municipal Customer seeks to have begun on an accelerated schedule, cannot otherwise be served by the Municipal Customer consistent with an appropriate balance among the objectives set forth in Section 3.13;

(3) If relevant, population, demand, engineering and other studies, conducted reasonably contemporaneously with the notices; and

(4) Other information to enable the District to reach an informed judgment about the merits of the claim.

Section 16.1.2.2. District Response to Municipal Customer Notice. The District shall respond in writing to a notice given pursuant to Section 16.1.2.1 within the following periods:

(1) For notices of a claim that the ~~CFPIFFP~~ must be revised, 120 days; and

(2) For notices of all other claims, 60 days.

Section 16.1.3. Mediation.

Section 16.1.3.1. Mediation Notice. No Municipal Customer may institute litigation on any claim pursuant to Section 16.1 without first giving written notice to the District demanding mediation. Any notice demanding mediation must be given within the earlier of (i) 30 days after the date of the District's response to the claim under Section 16.1.2.2 or (ii) in the absence of a timely response by the District, 60 days after the date by which such response is due pursuant to Section 16.1.2.2.

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Section 16.1.3.2. Selection of Mediator. If a Municipal Customer gives a timely mediation notice pursuant to Section 16.1.3.1, the District and the Municipal Customer shall select a single independent mediator experienced in the subject matter of the claim within 20 days after the mediation notice. The initial mediation session shall be held within 40 days after the mediation notice. The specific format of the mediation shall be left to the discretion of the mediator and may include the preparation of agreed upon statements of fact or the preparation of written statements of position furnished to the mediator and all other parties to the mediation. If a single mediator is not selected within 20 days after the mediation notice or the claim is not resolved within 90 days after the mediation notice, the Municipal Customer may, but is not obligated to, institute litigation pursuant to Section 16.1.4. Each party shall bring to any mediation session, unless excused from doing so by the mediator, its chief executive officer or designee. In addition, each party may bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered a settlement negotiation for the purpose of all state rules protecting disclosures made or documents prepared during such a negotiation from later discovery or use in evidence; provided that evidence otherwise subject to discovery is not excluded from discovery or use in evidence by virtue of having been used in mediation. The costs of the mediator shall be shared equally by the parties to the mediation, except as provided otherwise in Section 16.1.4.3 in the event litigation ensues.

Section 16.1.4. Litigation.

Section 16.1.4.1. Limitations on Litigation. No action may be brought against the District by any Municipal Customer pursuant to Section 16.1 unless each of the procedures specified in Sections 16.1.2 and 16.1.3 have been timely instituted, and such action is brought within 120 days after the mediation notice given pursuant to Section 16.1.3.1, subject to extension pursuant to Section 17.1 or agreement by the District

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Section 16.1.4.2. Burden of Proof. The parties agree that, in any action brought by a Municipal Customer against the District pursuant to Section 16.1, the Municipal Customer shall have the burden of proving its claim or claims against the District by clear and convincing evidence.

Section 16.1.4.3. Remedies. The only remedy that a Municipal Customer shall be entitled to in any action brought against the District pursuant to Section 16.1 is an order of the court requiring the District to perform an action which is required by this Agreement to be performed by the District. The prevailing party in any such action shall be entitled to its costs of mediation, litigation, and appeal, including the fees of attorneys, expert witnesses, and other consultants, in such amount as the court determines is reasonable.

Section 16.2. Claims for Erroneous Statements.

Section 16.2.1. Nature of Maintainable Claim. Notwithstanding the provisions of Section 16.1, a Municipal Customer may maintain a claim against the District for the refund of:

(1) ~~Wholesale Delivery Charge~~ Wholesale Rates paid by such Municipal Customer on either of the following grounds and no other: (i) the deliveries to which such charges relate were less than reflected on the District statement for the period to which such payments relate, or (ii) the ~~rate amount~~ of the applicable ~~Wholesale Delivery Charge~~ Wholesale Rate is other than the ~~rate amount~~ then in effect or provided for in a final order of a court of competent jurisdiction in an action brought pursuant to Section 16.1; and

(2) Late charges and interest which the Municipal Customer claims were assessed incorrectly against it.

Section 16.2.2. Conditions Precedent to Litigation. No action may be brought against the District pursuant to Section 16.2 unless (i) the Municipal Customer has paid

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all charges and interest in dispute, (ii) within 18 months after the date such payment was due, the Municipal Customer has given the District notice, adopted by vote of the legislative body of the Municipal Customer, of the claim stating the amount of and reasons for the claim, and (iii) the action is brought within 120 days after such notice, subject to extension pursuant to Section 17.1 or agreement by the District. The prevailing party in any action by a Municipal Customer pursuant to Section 16.2 shall be entitled to its costs of litigation and appeal, including the fees of attorneys, expert witnesses, and other consultants, in such amount as the court determines is reasonable.

Section 16.2.3. Interest. All payments recovered by a Municipal Customer pursuant to Section 16.2 shall bear interest from the date the payment was made by the Municipal Customer until the date the payment was made to the Municipal Customer by the District at the rate of twelve per cent (12 %) per annum.

Section 16.3. Court. Any action arising out of this Agreement shall be brought in the Utah State District Court situated in St. George, Utah, the jurisdiction of which court is hereby agreed to by each party hereto.

ARTICLE 17

UNCONTROLLABLE FORCES

Section 17.1. Excuse from Performance. No party shall be considered to be in default with respect to any obligation herein and no party shall forfeit any right provided herein if the defaulting party was prevented from fulfilling such obligation or exercising such right by reason of Uncontrollable Forces. A party rendered unable to fulfill any obligation or exercise any right by reason of Uncontrollable Forces shall use every reasonable effort to remove such inability with all reasonable dispatch.

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ARTICLE 18

CONSERVATION

Section 18.1. Water Conservation, Septic Densities, Secondary Systems and Reuse.

The Municipal Customers 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 AAC; (ii) enact a water conservation rate structure for water use through its Municipal System, time of day water use ordinance and appropriate landscape ordinances; (iii) comply with the Determination of Recommended Septic System Densities for Groundwater Protection report issued on July 20, 1998, by Hansen Allen & Luce; (iv) evaluate and promote the maximum use of secondary irrigation systems within their jurisdictions; and, (v) if requested, shall participate in a planning process to ensure maximum use of the St. George Water Reuse Project water. Municipal Customers shall use secondary water on all municipal facilities for which such use is feasible. With the concurrence of the AAC, the Board may impose penalties and offer incentives to encourage actions to conserve and protect water.

ARTICLE 19

REPRESENTATIONS

Section 19.1. Representations of the Municipal Customers. Each Municipal Customer hereby represents and warrants as follows with respect to such Municipal Customer:

- (1) The Municipal Customer is a political subdivision and a body corporate of the State, duly organized and existing under the laws of the State.
- (2) The Municipal Customer has duly authorized and approved the execution and delivery of, and the performance by the Municipal Customer of its obligations contained in this Agreement and the consummation by the Municipal Customer of all other transactions contemplated by this Agreement.
- (3) This Agreement constitutes the legal, valid and binding obligation of the Municipal Customer, enforceable in accordance with its terms.

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(4) The Municipal Customer has lawful authority to own or operate its Municipal System and to fix and collect rates, fees and other charges in connection with the Municipal System in accordance with the Impact Fee Act and the laws of the State.

(5) The Municipal Customer has valid legal title to the property and interests in property necessary to own and operate its Municipal System.

(6) The Municipal Customer's Municipal System, including any District-Operated Facilities, is in compliance with all applicable laws relating to the treatment and quality of water.

(7) The Municipal Customer's Municipal System contains sufficient Water Capacity to serve all water connections for which building permits have been issued and/or subdivision plats have been approved prior to the effective date of either (1) the Municipal Customer's execution of the 2006 Regional Water Supply Agreement, or (2) the Municipal Customer's execution of this Agreement if the Municipal Customer did not execute the 2006 Regional Water Supply Agreement~~this Agreement~~ or, if not, the number of connections for which an amount equivalent to the ~~Water Availability Charge~~Impact Fee must be paid under Section 8.7.1.

(8) The Municipal Customer is in compliance with all existing Bond covenants under the document or documents in effect providing for and securing its water revenue bonds.

Section 19.2. Representations of the District. The District hereby represents and warrants as follows:

(1) The District is a political subdivision and a body corporate of the State, duly organized and existing under the laws and Constitution of the State.

(2) The District has duly authorized and approved the execution and delivery of, and the performance by the District of its obligations contained in this Agreement and the consummation by the District of all other transactions contemplated by this Agreement.

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(3) This Agreement constitutes the legal, valid and binding obligation of the District, enforceable in accordance with its terms.

(4) The District has lawful authority to own or operate its System and to fix and collect rates, fees and other charges in connection with the System in accordance with the Conservancy Act and the Impact Fee Act.

(5) The District has valid legal title to the rights-of-way necessary to own and operate the System.

(6) The System is in compliance with all applicable laws relating to the treatment and quality of water.

(7) The District is in compliance with all existing covenants under the Bond Document.

Section 19.3. Defense of Municipal Customers. To the extent permitted by law, the District agrees to defend any Municipal Customer from and against any claims, suits, proceedings, expenses and other liabilities arising under the Impact Fees Act from claims pertaining to the collection of the ~~Water Availability~~ Impact Fee by such Municipal Customer pursuant to this Agreement (other than claims, suits, proceedings, expenses and other liabilities resulting from the negligence or misconduct of such Municipal Customer's officers, employees or agents) provided that such Municipal Customer shall promptly notify the District in writing of any such claim, suit, proceeding, expense or other liability and the District shall have the right to assume the investigation and defense thereof. The District and such Municipal Customer shall use reasonable efforts to cooperate in such defense.

ARTICLE 20

MISCELLANEOUS PROVISIONS

Section 20.1. Third Party Beneficiaries.

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Section 20.1.1. Municipal Customers. The provisions of this Agreement which obligate Municipal Customers to make payments of Water Development Surcharges, and ~~Wholesale Delivery Charge~~ Wholesale Rates to the District are made for the express benefit of each of the other Municipal Customers, in addition to the District, and to that extent each of the Municipal Customers shall be a ~~third party~~ third-party beneficiary of such provisions of this Agreement and entitled to enforce them. A Municipal Customer may report a violation of this Agreement to the District and request the District to enforce the Agreement.

Section 20.1.2. No Other ~~Third-Third-Party~~ Beneficiaries. This Agreement is not intended to confer any rights on any person or entity other than the District and; the Municipal Customers, ~~the Retail Customers, and the Contract Users~~ insofar as expressly set forth herein.

Section 20.1.3. Assignments Prohibited. Except as provided in Section 20.1.4 or as otherwise agreed by the parties to this Agreement, neither the District nor any Municipal Customer may assign or otherwise transfer any of its rights or obligations under this Agreement, and any such purported assignment or other transfer shall be void.

Section 20.1.4. Certain Assignments by District. The District may assign any of its rights and obligations under this Agreement in connection with District Debt.

Section 20.1.5. Disposition of Capital Facilities. If this Agreement is terminated, the District shall retain its interests in the Capital Facilities owned by the District, and each Municipal Customer shall retain its interest in any District-Operated Facilities owned by such Municipal Customer, unless otherwise agreed by the parties.

Section 20.1.6. Binding Effect. This Agreement shall bind and benefit the respective successors and assigns of the parties hereto.

Section 20.2. Integration; Amendment. This Agreement contains the entire Agreement of the parties hereto regarding the subject matter hereof and supersedes any prior written or oral

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agreements, representations, conditions, or understandings between them regarding the subject matter hereof. Any amendment to this Agreement solely for the purpose of adding a Water Supplier as a Municipal Customer under this Agreement pursuant to Section 6.2, shall take effect upon delivery of a written instrument executed by the District and such Water Supplier. This Agreement may otherwise be amended only by a written instrument executed by each of the parties hereto.

Section 20.3. Governing Law. This Agreement is entered into and is to be performed within the State and shall be governed by the laws of the State.

Section 20.4. Captions. All captions are for reference only and shall not be considered in interpreting or enforcing the provisions of this Agreement.

Section 20.5. Drafting Considerations. This Agreement has been drafted, negotiated, and revised by each of the parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains, and no specific party shall be considered to have drafted this Agreement.

Section 20.6. Severability. If any provision of this Agreement should be deemed invalid or unenforceable by a final decision of any court of competent jurisdiction, then the remaining provisions of this Agreement shall remain in effect and shall not be affected by any such decision.

Section 20.7. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed to be an original instrument.

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ARTICLE 21

NOTICES

Section 21.1. Notices.

Section 21.1.1. Method of Giving Notice. All notices, statements and other communications required by this Agreement shall be in writing and shall be given by one of the following methods:

- (1) By personal delivery, the notice being effective on delivery;
- (2) By first class mail, the notice being effective four mail delivery days after deposit, postage ~~pre-paid~~pre-paid, in a United States Postal Service office or mailbox;
- (3) By certified mail, the notice being effective on delivery if confirmed by a return receipt;
- (4) By overnight delivery service, the notice being effective on delivery if delivery is confirmed by the delivery service; or
- (5) By facsimile transmission, the notice being effective on receipt, provided that (i) either (A) a duplicate notice is promptly given by one of the other methods permitted by this Article, or (B) the receiving party delivers a written confirmation of receipt, and (ii) any notice given by facsimile transmission shall be deemed received on the next business day if it is received after 4:30 p.m. Mountain Time or on a nonbusiness day.

Section 21.1.2. Addresses for Notices. Notices shall be given to parties who have executed counterparts of this Agreement at the following addresses and facsimile numbers:

DRAFT

Washington County Water Conservancy District

~~136 North 100 East~~ 533 East Waterworks Drive

St. George, UT 84770

Attention: General Manager

~~Fax: (435) 673-4971~~

City of St. George

175 East 200 North

St. George, UT 84770

Attention: City Manager

~~Fax: (435) 674-4261~~

~~City of~~ Washington City

111 North 100 East

P.O. Box 23

Washington, UT 84780

Attention: City Manager

~~Fax: (435) 628-8024~~

City of Santa Clara

~~2721-2603~~ Santa Clara Drive

Santa Clara, UT 84765

Attention: City Manager

~~Fax: (435) 628-7338~~

~~City of~~ Ivins City

55 North Main

Ivins, UT 84738

Attention: City Manager

~~Fax: (435) 674-5486~~

City of Hurricane

147 North 870 West

Hurricane, UT 84737

Attention: City Manager

~~Fax: (435) 635-4284~~

~~City of~~ Toquerville

P.O. Box 27

Toquerville, UT 84774

Attention: Mayor

~~Fax: (435) 635-2826~~ 5761

DRAFT

City of La Verkin City
~~111 South Main~~ 435 North Main Street
La Verkin, UT 84745
Attention: City Manager
~~Fax: (435) 635-2104~~

Town of Leeds
218 North Main Street
P.O. Box 460879
Leeds UT 84746
Attention: Mayor
~~Fax: (435) 879-6905~~

Town of Virgin
~~101-114~~ South Mill Street
P.O. Box 790008
Virgin, UT 84779
Attention: Mayor
~~Fax: (435) 635-0265~~

Town of Apple Valley
~~6802-1777~~ East Meadowlark Drive
Apple Valley, UT 84737
Attention: Mayor
~~Fax: (435) 877-1192~~

Any party may change its address ~~or facsimile number~~ by giving the other parties notice of the change in any manner permitted by this Article. Any Water Supplier that becomes a party to this Agreement shall provide the other parties with notice of its address in any manner permitted by this Article.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

WASHINGTON COUNTY WATER CONSERVANCY
DISTRICT

By _____
Chairman, Board of Trustees

ATTEST:

By _____
Secretary, Board of Trustees

[SEAL]

The undersigned is the attorney for the Washington County Water Conservancy District and hereby certifies that the agreement is binding, effective, valid and enforceable against the District in accordance with its terms.

~~Barbara G. Hjelle~~, District Counsel

DRAFT

CITY OF ST. GEORGE, UTAH

By _____
Mayor

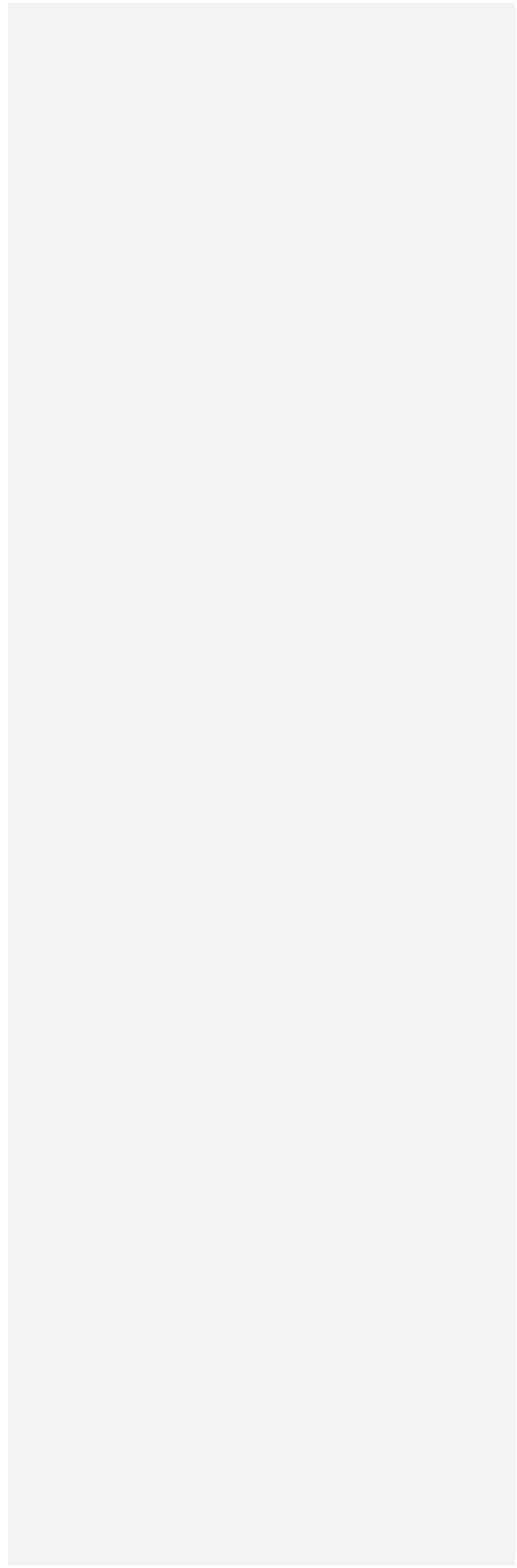
ATTEST AND COUNTERSIGN:

By _____
City Recorder

[SEAL]

The undersigned is the attorney for the City of St. George and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

Shawn Guzman, City Attorney



DRAFT

~~CITY OF~~ WASHINGTON CITY, UTAH

By _____
Mayor

ATTEST AND COUNTERSIGN:

By _____
City Recorder

[SEAL]

The undersigned is the attorney for the City of Washington and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

~~Paul Christensen~~ Jeff Starkey, City Attorney

DRAFT

CITY OF IVINS, UTAH

By _____
Mayor

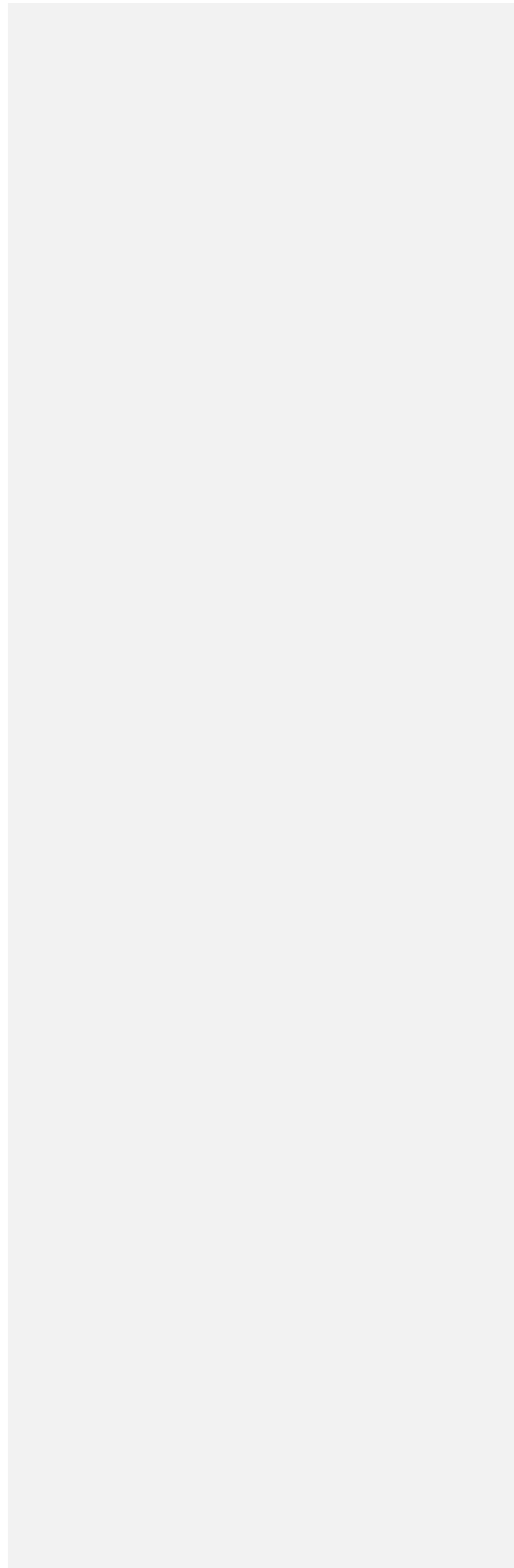
ATTEST AND COUNTERSIGN:

By _____
City Recorder

[SEAL]

The undersigned is the attorney for the City of Ivins and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

Dale Coulam, City Attorney



DRAFT

CITY OF HURRICANE, UTAH

By _____
Mayor

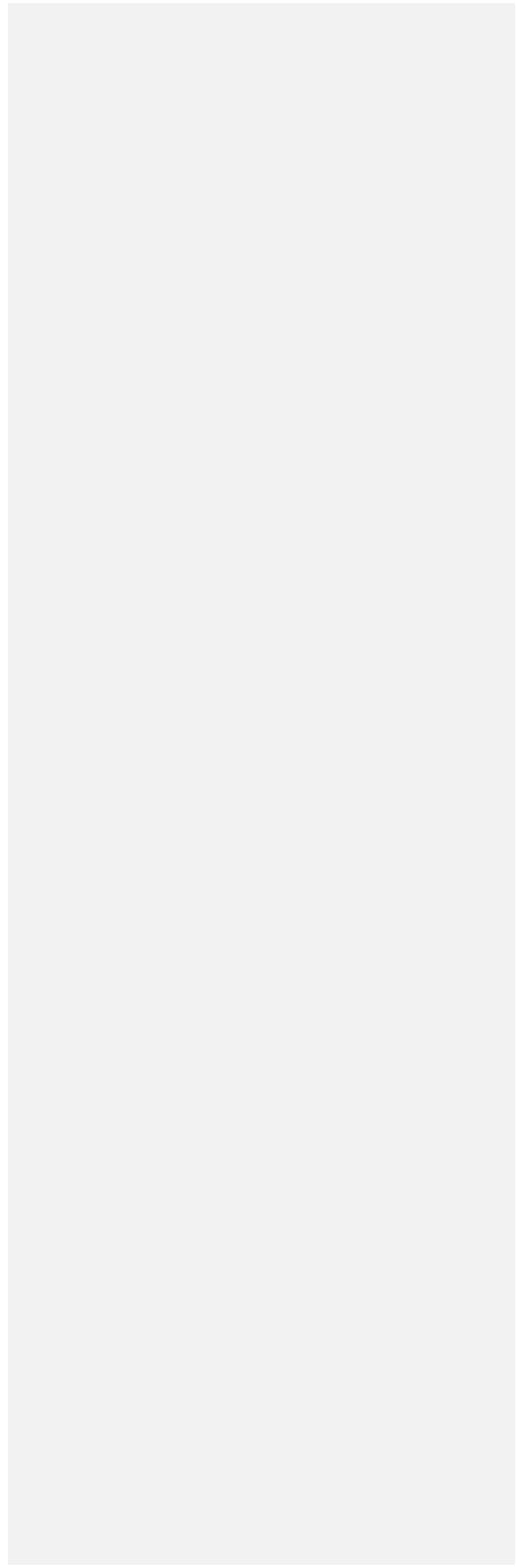
ATTEST AND COUNTERSIGN:

By _____
City Recorder

[SEAL]

The undersigned is the attorney for the City of Hurricane and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

Faye Reber, City Attorney



DRAFT

CITY OF SANTA CLARA, UTAH

By _____
Mayor

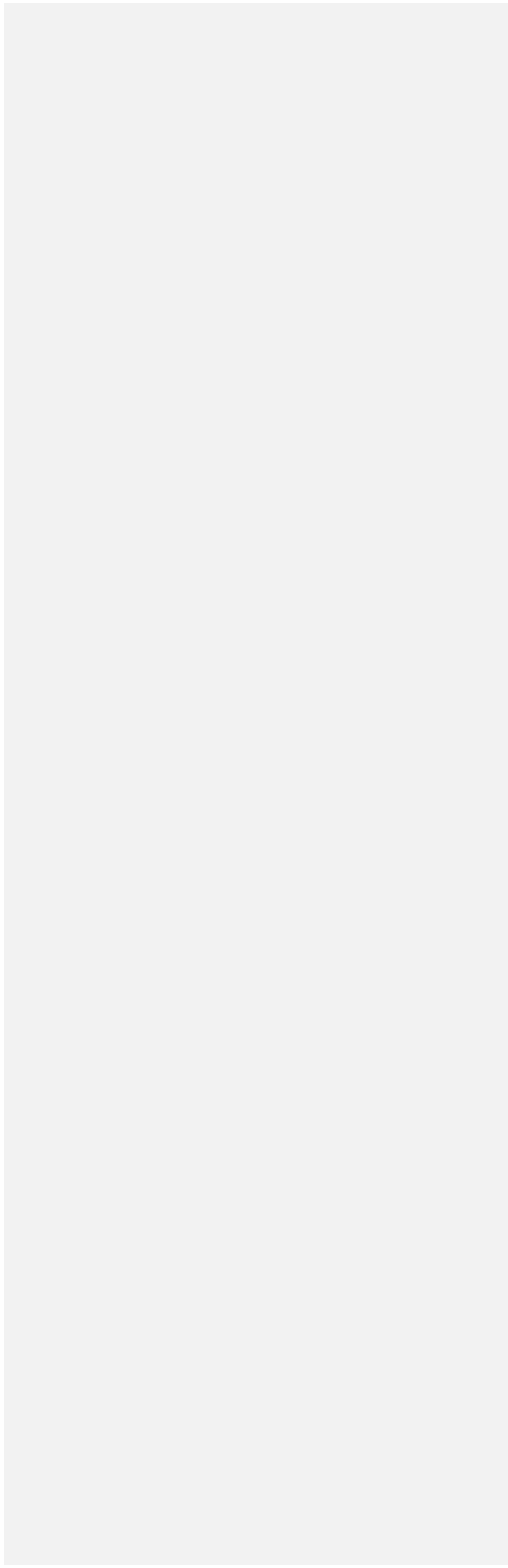
ATTEST AND COUNTERSIGN:

By _____
City Recorder

[SEAL]

The undersigned is the attorney for the City of Santa Clara and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

~~Russell J. Gallian~~ Matthew Ence, City Attorney



DRAFT

CITY OF TOQUERVILLE, UTAH

By _____
Mayor

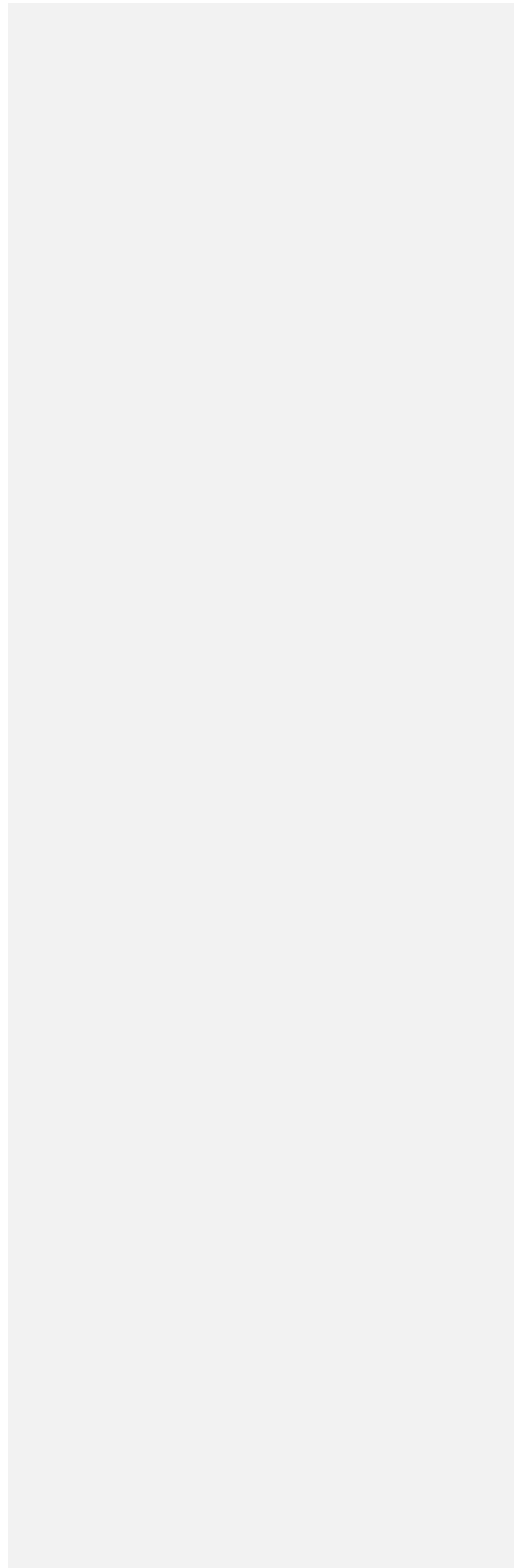
ATTEST AND COUNTERSIGN:

By _____
City Recorder

[SEAL]

The undersigned is the attorney for the City of Toquerville and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

~~D. William Rennow~~Heath Snow, City Attorney



DRAFT

CITY OF LA VERKIN, UTAH

By _____
Mayor

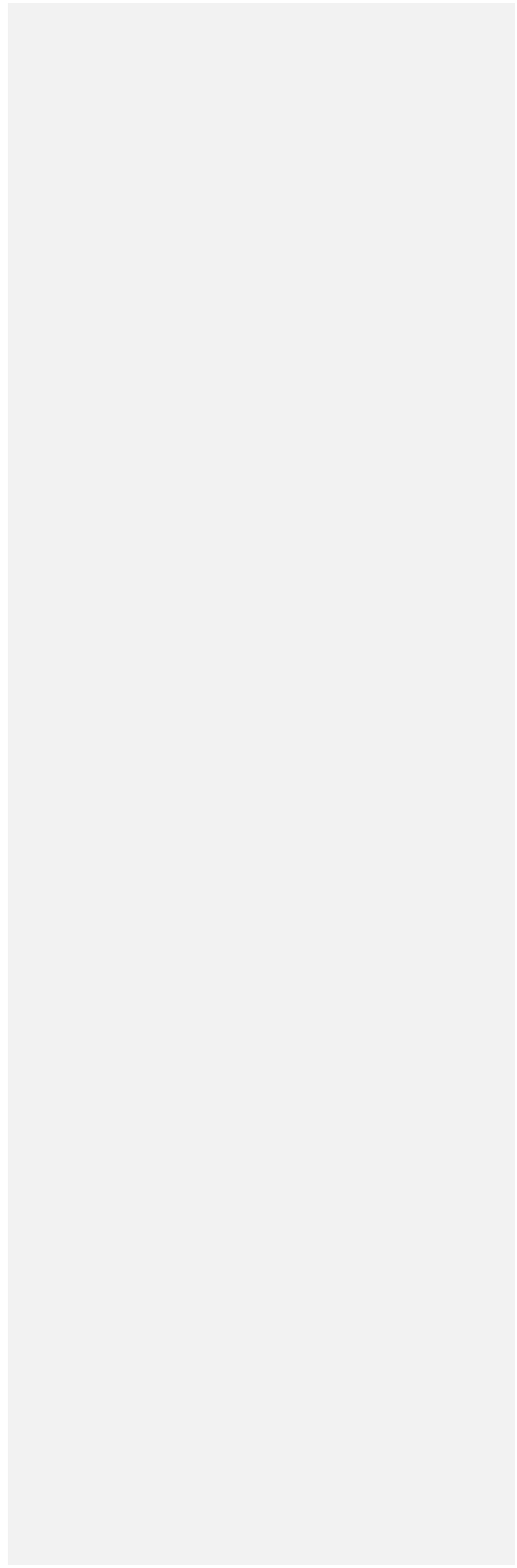
ATTEST AND COUNTERSIGN:

By _____
City Recorder

[SEAL]

The undersigned is the attorney for the City of La Verkin and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

~~Greg Hardman~~Kevin Bennett, City Attorney



DRAFT

TOWN OF VIRGIN, UTAH

By _____
Mayor

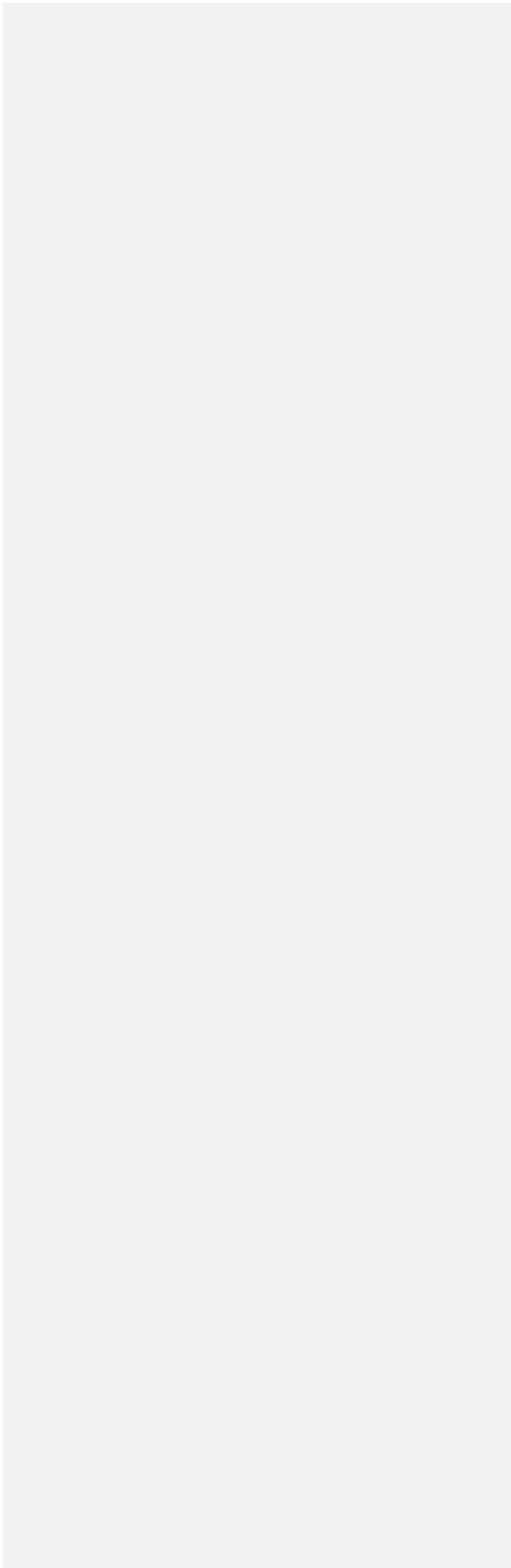
ATTEST AND COUNTERSIGN:

By _____
Town Recorder

[SEAL]

The undersigned is the attorney for the Town of Virgin and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

~~Russell J. Gallian~~ Heath Snow, Town Attorney



DRAFT

TOWN OF LEEDS, UTAH

By _____
Mayor

ATTEST AND COUNTERSIGN:

By _____
Clerk/Recorder

[SEAL]

The undersigned is the attorney for the Town of Leeds and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

~~Heath Snow~~²², Town Attorney

DRAFT

TOWN OF APPLE VALLEY, UTAH

By _____
Mayor

ATTEST AND COUNTERSIGN:

By _____
Town Clerk

[SEAL]

The undersigned is the attorney for the Town of Apple Valley and hereby certifies that the agreement is binding, effective, valid and enforceable against the City in accordance with its terms.

~~Jonathan Wright~~, Town Attorney