

## SURPLUS WATER SALES AGREEMENT

This SURPLUS WATER SALES AGREEMENT (“**Agreement**”) is made and entered into by and between the City of Duchesne, a municipal corporation organized under the laws of Utah and Duchesne City Water Service District (collectively, “**City**”), and Johnson Water Improvement District (“**Johnson**”), a Utah corporation qualified to do business within the State of Utah, on this \_\_\_ day of \_\_\_\_\_, 2022 (“**Effective Date**”).

### RECITALS

A. WHEREAS, the City owns and operates a water distribution system and is empowered to acquire water and water rights and to construct the necessary facilities to produce, treat, store and distribute its water and enter into contracts with public and private entities for the purchase and delivery thereof; and

B. WHEREAS, Johnson operates a water distribution system but is currently in need of additional water supply to serve residences, businesses, industry, and other ultimate consumers of water within its service area, and therefore desires to purchase surplus water; and

C. WHEREAS, the City provides water service to its inhabitants, and has surplus water (as described in Utah Code Ann. § 10-8-14) from water sources within its ownership or control that is available for purchase by Johnson; and

D. WHEREAS, the City is willing to make surplus water available to Johnson for purchase and delivery to its users for domestic and other beneficial uses pursuant to the terms of this Agreement.

NOW, THEREFORE, for the mutual promises herein contained and other good and valuable consideration herein described the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. Termination of Any Prior Agreements for the Purchase and Sale of Water between the Parties. Any agreements for the purchase and sale of water by and between the Association and the City and the Association and Johnson are hereby terminated and superseded in their entirety by this Agreement.

2. Sale of Surplus Water. The City will annually make a maximum of 400 acre-feet of water surplus to the needs of the City, (“**Surplus Water**”) available to Johnson, and Johnson will purchase from the City a minimum of 200 acre-feet of Surplus Water annually to serve Johnson’s customers for domestic and other beneficial uses. Nothing in this Agreement shall be construed to preclude or limit the ability of the City to make additional Surplus Water, in excess of the amount stated above, available to Johnson.

3. Place of Delivery. The City diverts water from the Duchesne River at a point commonly referred to as the Knight Diversion Dam. The water is then conveyed into Starvation Reservoir; is treated at the Duchesne Valley Water Treatment Plant, which is owned and operated by Central Utah Water Conservancy District (“**Central Utah**”) and is then conveyed through the aqueduct that is also owned and operated by Central Utah to the point where Johnson takes the water from the aqueduct. The City will deliver the Surplus Water at the Knight Diversion Dam and will use reasonable efforts, in conjunction with Central Utah, to have the water treated and conveyed to Johnson through the system described above.

4. Water Quality. The City shall use reasonable efforts and endeavor to provide to Johnson Surplus Water that is the same quality as the water delivered by the City for municipal uses to its resident customers. However, Johnson acknowledges that Central Utah and not the City controls the treatment and physical delivery of the Surplus Water. Accordingly, the City shall have no responsibility or liability either the quantity or quality of Surplus Water delivered.

5. Measurement of Water Sold. The Surplus Water delivered to Johnson shall be measured at the point where Johnson takes its water from the aqueduct into Johnson’s pipeline. All water delivered to Johnson shall be measured through a meter installed and maintained by the City.

6. Terms of Payment.

- (a) Beginning on the Effective Date and for the 5-year term of this Agreement, Johnson shall pay to the City \$75 per acre foot for the first 300 acre-feet, plus all treatment costs and any storage or transportation costs that may be charged by Central Utah. Johnson shall pay to the City \$112.50 for any water used over the 300 acre-feet up to the 400 Acre-foot limit.
- (b) A minimum amount of water is provided to Johnson on a take-or-pay basis. Johnson will pay for 100 acre-feet of water annually whether or not this amount of water is taken or used by Johnson.
- (c) Johnson will also pay all the charges associated with the Warn act Billing, for all waters going through a federal facility.
- (d) All charges shall be billed monthly or quarterly, in the City’s discretion, and Johnson shall pay in full the undisputed portion of the charges within 30 days of the billing statement date. The City may assess interest or late payments at an annual interest rate of twelve percent (12%) (based on a 360-day year comprised of twelve 30-day months.) Should Johnson in good faith dispute the amount of any billing, Johnson shall notify the City of the disputed portion of the bill and of the basis for the dispute on or before the due date of the subject billing statement. The City and Johnson agree to attempt in good faith to resolve billing disputes and Johnson agrees to pay any unpaid amount due the City promptly after resolution of the disputed amount.

- (e) Should Johnson question the accuracy of the meter that measures the amount of water delivered to Johnson, the meter shall be tested by an expert that is mutually acceptable to the City and Johnson. If the meter is found to be inaccurate by more than 5%, bills for the current and the contested billing periods shall be adjusted accordingly and the meter shall either be repaired and retested, or replaced and the replacement meter tested, at the sole cost of the City. Before the repaired meter or the new meter may be placed into service, however, they must test to an accuracy of no more than plus or minus 3%. If the test shows the meter to be accurate within 5%, the cost of the test shall be paid by Johnson. If the test reflects that the meter is inaccurate by more than 5%, the cost of the test shall be paid by the City. Johnson may not request that the meter be tested more than twice during any calendar year. The City may, at its cost, test the accuracy of the meter as frequently as the City may desire.

7. Johnson's Water Delivery Facilities. Johnson shall purchase, construct, operate, maintain, and/or replace, and contract for, at its sole expense and without any cost or other obligation to the City, any delivery lines, appurtenant fixtures, or other facilities necessary to accept delivery of water at the point where Johnson takes the water from the aqueduct.

8. If Surplus Water No Longer Surplus. If the City determines, in its sole discretion, that any or all of the Surplus Water is surplus to the needs of the City, the City will provide Johnson with 180-day notice of the reduction or termination of the sale of Surplus Water. Johnson acknowledges that it is purchasing Surplus Water, and that City's use of its water for City's residents takes precedence over this Agreement, and that City may also temporarily reduce or suspend delivery of water to Johnson at any time if the City needs the water for its residents.

9. Change Applications. The City shall make any change application or other filing required by Utah law or the State Engineer concerning the water covered pursuant to this Agreement, and any Change Application or other filing made pursuant to this paragraph shall be in the City's name, and at the City's sole expense. Johnson shall cooperate with and support the City in filing and prosecuting such Change Applications. Such cooperation and support shall include, but not be limited to, not protesting the Change Applications, testifying in support of such Change Applications, and providing all information necessary to the City for the filing and prosecution of such Change Applications and associated proofs.

10. Use of Water. The water made available each year under this Agreement shall be used by customers of Johnson for municipal, domestic, and other beneficial uses.

11. Indemnification. SDCW shall be fully liable for the actions of its respective agents, employees, officers, and contractors, and shall, fully indemnify, defend, and hold harmless the City from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Johnson's use of the water of this Agreement to the extent caused by the intentional wrongful act or negligence of Johnson and its employees, agents, officers, and contractors; provided, however, Johnson shall not be required to indemnify that portion of any claim, loss, or



17. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by any party in connection with this Agreement shall be binding only if evidenced in writing signed by each party.

18. No Waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly provided herein. Either party may, by written notice delivered in the manner provided in this Agreement, but shall not be under obligation to, waive any of its rights or any conditions to its obligations hereunder, or any covenant or duty of any other party. No waiver shall affect or alter the remainder of this Agreement, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

19. Persons Bound by Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

20. Attorney Fees. In the event that any action is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called upon to pay, a reasonable sum for the prevailing party's attorney fees and costs.

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

22. Rights and Remedies. The parties shall have all rights and remedies provided under Utah law for a breach or threatened breach of this Agreement. Such rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

23. Time is of the Essence. Time is of the essence regarding the dates and time constraints set forth in this Agreement.

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

25. Execution of Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

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

IN WITNESS THEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

CITY OF DUCHESNE

JOHNSON WATER IMPROVEMENT DISTRICT

Title: Mayor

Title: President Chair

Attest: \_\_\_\_\_  
Kim Riggle, City Recorder

Attest: \_\_\_\_\_  
Drew Eschler, Vice President Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF UTAH )  
 )  
 :ss.  
COUNTY OF DUCHESNE )

On \_\_\_\_\_, 2022, personally appeared before me, a notary public, Rodney Rowley, the Mayor of the City of Duchesne (“**City**”), and Kim Riggle, the City Recorder, who acknowledged that they executed the above instrument for and on behalf of the City pursuant to a motion or resolution duly adopted by the City Council.

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

STATE OF UTAH )  
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 :ss.  
COUNTY OF DUCHESNE )

On \_\_\_\_\_, 2022, personally appeared before me, a notary public, - \_\_\_\_\_ of Johnson, and \_\_\_\_\_, the

Secretary of Johnson who acknowledged that they executed the above instrument for and on behalf of Johnson pursuant to a motion or resolution duly adopted by Johnson.

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Notary Public