

Account No. _____

Replacement Contract/District 3

CONTRACT AND LIEN BETWEEN
WEBER BASIN WATER CONSERVANCY DISTRICT
AND

FOR THE SALE AND USE OF UNTREATED WATER

THIS CONTRACT, made this _____, day of _____, 20____, by and between the Weber Basin Water Conservancy District, organized under the laws of the State of Utah, (herein "District"), and _____ of _____, Utah (herein "Purchaser") (the "Contract").

WITNESSETH:

WHEREAS, the Purchaser desires, by means of a well to divert or withdraw underground water for irrigation and domestic purposes, which diversion will intercept and withdraw water that will require replacement, and the District has water to sell to the Purchaser to replace the water so intercepted and withdrawn; and

WHEREAS, this Contract and Purchaser's obligation to pay for the water as set forth herein shall constitute a lien upon the real property described in Paragraph 1.

NOW, THEREFORE, in consideration of the mutual and dependent promises and covenants herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

1. SALE OF WATER. The District will sell to the Purchaser, and the Purchaser agrees to purchase from the District, the perpetual right to use in each calendar year as hereinafter specified untreated District water in amounts of _____ acre-foot for replacement of underground water to be diverted or withdrawn by means of a well for irrigation and domestic purposes in and upon the following described lands in _____ County, Utah:

Section _____, Township _____, Range _____, Acres _____

Tax I.D. No.(s): _____

See Attached “Exhibit A”

2. OBLIGATION TO PAY. In consideration of the use of the annual quantity of water which the District holds and will hold for the Purchaser as herein provided and upon condition that this Contract is approved by the District, the Purchaser agrees:

(a) To pay for the right to use the allotted water an amount annually which amount initially shall be 430.96 per acre-foot of water. A portion of the above payment amount is to be applied to the extent required on the District’s obligation under bonds or other government-District contracts or capital expenditures and is to be fixed from time to time by the District’s Board of Trustees. The remainder of the above payment amount is to apply to the District’s general operation, maintenance, and repair and replacement expenses, and other special expenses and costs incurred in operating, maintaining, repairing and replacing the separate facilities of the District used or required in servicing this Contract, hereinafter referred to as “OM&R”. Such fair OM&R amounts shall be estimated each year by the Board of Trustees of the District and any such determination shall be final and conclusive and binding on all parties. If such estimate is more than the actual cost thereof, an appropriate adjustment will be made in the annual OM&R amount for the year following the year for which the estimate was made.

(b) The amount so fixed shall be paid whether or not the Purchaser actually takes or uses the water allotted.

(c) The first payment of the amounts so fixed shall be paid by the Purchaser to the District concurrently with the presentation of this agreement to the District, and shall be in payment for water available for use by Purchaser in the 2016 calendar year. Succeeding annual payments shall be made by the Purchaser to the District on or before January 1 of each year thereafter. The Purchaser shall be bound by the rules and regulations of the District's Board of Trustees. Nothing contained herein shall be construed to exempt the Purchaser from paying the charges assessed by the District.

(d) Notwithstanding any of the forgoing, the District shall be entitled to change the charging structure of this Contract, including the amounts charged under this Contract, as determined from time to time by the District’s Board of Trustees. The District may, in its sole and absolute discretion, change the billing structure outlined herein, including but not limited to changing that billing structure so that the Purchaser is billed based on the amounts of water used (“bill for use”), such that the District may choose to charge by the unit or gallon delivered or used, and may institute tiers that provide for increasing charges for each such unit based on the total use. As outlined in this Contract, Purchaser is obligated to install appropriate metering and measuring devices. Purchaser agrees that any such meter will satisfy all requirements of the District and will properly measure water usage, which measurement may be used by the District in determining any overuse, as outlined below, and in determining the appropriate charge under any bill for use payment structure adopted by the District under this paragraph.

3. PENALTY FOR DELINQUENCY. Every installment or charge required to be paid to the District under this Contract, which shall remain unpaid after its due date, shall bear interest from date of delinquency at a rate of 18% APR.

4. REMEDIES IN CASE OF DEFAULT. The annual amount payable hereunder shall be and constitute a perpetual lien upon the lands herein above described. If the Purchaser shall fail to make any payment due hereunder on or before the due date, the District may refuse the delivery of water, or upon written notice to Purchaser, cancel this Contract in its entirety, but either or both of these remedies are not exclusive. The District may exercise any other remedy given by this Contract or by law to enforce collection of any payment due hereunder, and for the foreclosure of the lien hereby created.

5. SECURITY. The District may, as a condition of this Contract, require security to be pledged and committed by the Purchaser in addition to that security required in this Contract, in order to insure and secure payments required in this Contract. The sufficiency and form of security shall be determined by the District. Purchaser hereby agrees to commit to the District sufficient security, as determined by the District, and to supply whatever documentation is required by the District prior to this Contract becoming effective, wherein such commitment and documentation shall be a condition precedent to this Contract.

6. USE OF WATER. The use of the water allotted hereby shall be solely for the replacement of underground water diverted, withdrawn or to be diverted or withdrawn by means of a well for irrigation and domestic purposes at a point located on the land hereinabove described, and for no other use or purpose.

7. OVERUSE. The amount of water to which the Purchaser is entitled annually shall not exceed the allotted amount as described above. In the event that Purchaser receives water in excess of the allotted amount in any given year, whether intentionally or unintentionally, the Purchaser will be billed for the excess water at a rate or rates fixed from time to time by the Board of Trustees of the District. Payment for use of water in excess of the allotted amount shall be paid within 30 days from notification by the District. Failure to make payment in full by the due date will result in the total amount being levied as a lien upon the lands herein described above, and, at the District's sole discretion, in the discontinuation of service until payment in full is received by the District.

8. UTAH STATE ENGINEER. Purchaser's use of the water hereby allotted as replacement water shall be subject to such rules and regulations as the Utah State Engineer may from time to time prescribe. The Purchaser shall not use the allotted water in any way, and the District will not be obligated to deliver water to the Purchaser as herein provided, until Purchaser first receives an approved exchange application from the Utah State Engineer. It is the responsibility of the Purchaser to obtain such approved exchange application.

9. DELIVERY OF WATER. Delivery of the water hereby allotted by the District shall be as directed by the Utah State Engineer or his representative at the outlet works of _____ Reservoir. The District shall have no obligation to provide works or facilities of any type to conduct the water hereby allotted from its point of delivery to its ultimate place of use.

10. WATER SHORTAGE. In the event there is a shortage of water caused by drought, inaccuracies in distribution not resulting from negligence, hostile diversion, prior or superior claims or other causes not within the control of the District, no liability shall arise

against the District or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom and the payments to the District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortage, allocations of drinking water for municipal and domestic use and treated and untreated water for industrial use shall have first priority.

11. WATER CONSERVATION. The Purchaser shall, at a minimum, take the following actions to conserve and protect water: (i) keep water use within the District's conservation goals (ii) follow all applicable water use restrictions for landscape watering; (iii) follow all applicable landscape ordinances.

12. FACILITIES. The Purchaser shall construct, operate and maintain, without cost to the District, the well and appurtenant facilities necessary to secure and accurately measure the Purchaser's water supply. The metering or other measuring device installed by the Purchaser shall be satisfactory to the Utah State Engineer. The District has no responsibility for the quality or quantity of water that the Purchaser is able to secure through the operation of its well.

13. BENEFICIAL USE OF WATER. The basis, the measure and the limit of the right of the Purchaser in the use of water shall rest perpetually in the beneficial application thereof, and the Purchaser agrees to put the water purchased by him hereunder to beneficial use in accordance with law. The Purchaser shall have no right to hold over or accumulate water from year to year, nor to sell or rent the water.

14. ACCOUNTING AND WATER SUPPLY RECORDS. The Purchaser shall maintain a set of books and records, satisfactory to the District, which shall keep and furnish suitable records of water supply and the disposition thereof. The Purchaser agrees to provide the above information and documentation to the District upon request, and within 30 days of any such request.

15. COMPLIANCE WITH LAW. The Purchaser agrees to comply fully with all applicable federal laws, orders and regulations and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts or other pollutants.

16. INDEMNIFICATION. Purchaser agrees to indemnify, protect, and save and hold the District harmless against and in respect of any and all claims, losses, liabilities, damages, costs, deficiencies or expenses (including attorney's fees) resulting from any claim for any rights under the Contract or from the non-fulfillment of any covenant or agreement on the part of Purchaser under or relating to this instrument, and any and all actions, suits, proceedings, demands, assessments, judgments, costs, legal and accounting fees and other expenses incident to any of the foregoing.

17. NUMBER AND JOINT LIABILITY. In this instrument, the singular number includes the plural and the plural number includes the singular. If this instrument is executed by

more than one person, firm, partnership or corporation, the obligations of each such person, firm, partnership or corporation hereunder shall be joint and several.

18. **NO THIRD-PARTY BENEFICIARIES.** Nothing herein shall be interpreted or construed to confer any right or remedy upon, or any duty, standard of care, liability or inference of liability to or with reference to, any person other than the District and the Purchaser and their respective successors and permitted assigns.

19. **GOVERNING LAW; JURISDICTION.** This instrument shall be governed by and construed in accordance with the domestic laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah. Purchaser submits to the jurisdiction of the Second Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this instrument and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Purchaser waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the District with respect thereto.

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

21. **WAIVER.** No failure or delay in exercising any right, power or privilege under this instrument, whether intentional or not, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of a right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

22. **SUCCESSION AND ASSIGNMENT.** The Contract shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. The Purchaser may not assign the Contract or any of its rights, interests, or obligations thereunder without the prior written approval of the District.

23. **FURTHER ACTS.** The parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of the Contract.

24. INCORPORATION OF RECITALS. The recitals set forth in this instrument are incorporated herein by reference and made a part hereof.

25. INTEGRATION. This instrument sets forth the entire understanding of the parties with respect to the subject matter hereof, and all prior negotiations, correspondence, proposals, discussions, understandings, representations, inducements and agreements, whether oral or written and whether made by a party hereto or by any one acting on behalf of a party, shall be deemed to be merged in and superseded by this instrument and shall be of no further force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as set forth herein, and no party has relied upon any representation, promise, assurance, covenant, omission or agreement not included in the terms hereof in making the decision to enter into this instrument. This instrument may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements among or between the parties.

26. AMENDMENTS. This instrument may not be modified, amended or changed by any oral agreement, either express or implied. No amendment, modification or change in this instrument shall be valid or binding unless reduced to writing and signed by both the District and the Purchaser. The provisions of this and the immediately preceding sentence themselves may not be amended or modified, either orally or by conduct, either express or implied, and it is the declared intention of the parties that no provisions of this instrument, including said two sentences, shall be modifiable in any way or manner whatsoever other than through a written document signed by both the District and the Purchaser.

27. EXPENSES OF ENFORCEMENT. In any proceeding to enforce, interpret, rescind or terminate this instrument or in pursuing any remedy provided hereunder or by applicable law, the prevailing party shall be entitled to recover from the other party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "prevailing party" shall include, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

28. EFFECTIVE DATE. This Contract shall become effective upon approval hereof by the District, as indicated by its endorsement herein below.

29. REUSE. The reuse of water delivered pursuant to this contract shall not be allowed without permission of the District. The waste, seepage, or return flow from water delivered pursuant to this Contract shall belong to the United States or the Weber Basin Water Conservancy District for the use and benefit of the District.

30. NOTICE. Any notice herein required to be given to the Purchaser shall be sufficiently given if sent by mail addressed to the Purchaser at the address listed below, or if sent by electronic mail addressed to the Purchaser at the email address listed below, if any such email

address is listed, or through public notice, and to the District office if delivered to 2837 East Highway 193, Layton, Utah 84040.

31. AUTHORIZED EXECUTION. The individuals signing below each represent and warrant (i) that they are authorized to execute this instrument for and on behalf of the party for whom they are signing; (ii) that such party shall be bound in all respects hereby; and (iii) that such execution presents no conflict with any other agreement of such party.

IN WITNESS WHEREOF, the parties have caused this contract to be executed and signed the day and year first above written.

PURCHASERS:

Address: _____

Email Address: _____

STATE OF _____)

: ss.

COUNTY OF _____)

On the _____ day of _____, 20____, personally appeared before me

_____ the signer(s) of the above instrument, who
duly acknowledged to me that he executed the same.

Notary Public

(SEAL)

Approved: _____

WEBER BASIN WATER CONSERVANCY DISTRICT

Kyle R. Stephens, President

Tage I. Flint, Secretary

(SEAL)

Exhibit A

Description of Lands: