### WATER SUPPLY CONTRACT

THIS AGREEMENT (this "Agreement") is made this 13th day of March, 2014, between the DUCHESNE COUNTY WATER CONSERVANCY DISTRICT, a water conservancy district organized under the laws of the State of Utah, in particular Section 17B-2a-1001, et seq., (the "Conservancy District"), and JOHNSON WATER DISTRICT,, a political subdivision of the State of Utah (the "Purchaser"). The Conservancy District and the Purchaser are herein sometimes referred to individually as a "Party" and collectively as the "Parties".

### **RECITALS**

- A. The Conservancy District expects to have water available from the Central Utah Water Conservancy District, herein "CUWCD's", Duchesne Valley Water Treatment Plant ("DVWTP") on Starvation Reservoir and other sources for municipal, industrial and other uses. Subject to such availability, the Conservancy District is willing to make a portion thereof available for use by the Purchaser.
- B. The Purchaser has determined that it will be in the interest of the Purchaser for the Conservancy District to construct the Victory Pipeline, replace and operate capital facilities required to divert, buy, contract for, store and deliver that water for the benefit of the Purchaser and its customers.
- C. The Purchaser has filed a Petition with the Conservancy District for an allotment of water from the Conservancy District as required by §17B-2a-1007, Utah Code Annotated (the Water Conservancy District Act), and
- D. The Conservancy District has approved the Petition, the Conservancy District and the Purchaser have determined that it is advantageous to them and their customers to enter into this agreement.
- E. The Conservancy District intends to construct the Victory Pipeline in two phases. The first phase will start at the DVWTP and extend to the Lake Boreham area (hereinafter, "Phase One"). The second phase will take the Victory Pipeline from the end of Phase One in the Lake Boreham area to the Roosevelt area (hereinafter "Phase Two"). Phase One will necessarily be oversized to accommodate not only the construction of Phase Two, but also extra capacity for future growth in both Phases One and Two.
- F. The water purchasers for Phase One will be the Johnson Water District, the East Duchesne Culinary Water Improvement District ("East Duchesne"), and the Duchesne County Special Service District #3 ("SSD #3"). SSD #3 will purchase extra capacity in both Phases One and Two for future growth.

#### **AGREEMENT**

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

#### SECTION 1

## EFFECTIVE DATE; TERM; APPLICABILITY

Section 1.1 Effective Date; Term. This Agreement shall become effective upon its execution by both Parties after approval of the governing body of each party. Unless previously terminated by the mutual written agreement of the parties, this Agreement shall remain in full force and effect thereafter for a period of forty (40) years.

### SECTION 2 WATER SUPPLY

Section 2.1 Sale of Right to Use Water. Subject to the then availability of water and the terms and conditions of this Agreement, beginning with the completion of Phase One, the Conservancy District shall sell to the Purchaser the right to use SEVEN HUNDRED (700) acrefeet of water per year, or 228,095,700 gallons per year. While only Phase One has been completed, the Conservancy District shall not be obligated to deliver more than the maximum instantaneous flow rate which shall not exceed 25% above the purchased pipeline capacity at any given time of 228,095,700 gallons per year, which maximum instantaneous flow rate is 542.465 gallons per minute. Beginning with the completion of Phase Two, the Conservancy District shall sell to the Purchaser the right to use an additional THREE HUNDRED (300) acre-feet of water per year, or an additional 97,755,300 gallons per year for a combined total for Phases One and Two of ONE THOUSAND (1,000) acre feet of water per year or 325,851,000, gallons per year. Upon the completion of Phase Two, the Conservancy District shall not be obligated to deliver more than the maximum instantaneous flow rate which shall not exceed 25% of the purchased pipeline capacity at any given time of 325,851,000 gallons per year, which maximum instantaneous flow rate is 774.950 gallons per minute. The maximum average daily flow rate (24 hours) shall be equal to the purchased pipeline capacity. The Conservancy District retains the right to restrict pipeline flows to this amount. The Conservancy District covenants and agrees that the water delivered hereunder shall meet all applicable federal and/or state drinking water regulations.

## SECTION 3 CHARGES AND PAYMENTS

Section 3.1. Permanent Capacity Cost for Water. The Purchaser shall pay to the Conservancy District each month commencing with the month following the month the Victory Pipeline has water available to deliver to the Purchaser, the estimated sum of \$0.55 per each thousand gallons, which for the 700 acre feet of water per year for Phase One is Ten Thousand Four Hundred and Fifty-Four Dollars and Thirty-Nine Cents (\$10,454.39) per month, which annualized is \$125,452.68, for the right to receive the quantity of water set forth in Section 2.1 above for Phase one of 700 acre feet of water per year, and which for the 1,000 acre feet of water per year for both Phase One and Phase Two is Fourteen Thousand Nine Hundred and Thirty-Four Dollars and Eighty-Four cents (\$14,934.84) per month, which annualized is \$179,218.05 (not taking into account rounding on the monthly amount). The Phase One entities, listed on Exhibit "A" attached hereto, have concurrently with the execution of this Water Purchase Contract, signed Water Purchase Contracts with the Conservancy District. The amount of water to be purchased by each Phase One entity and the payment to be made by each Phase One entity is shown on Exhibit "A" attached hereto. The Capacity Cost is subject to modification on the fifth anniversary of the effective date hereof and each fifth anniversary date thereafter, or at anytime the Conservancy District incurs additional debt related to the Victory Pipeline.

Section 3.2. Delivered Water Cost. Water delivered at each location identified herein shall be metered. The delivered water cost at each location shall be the actual Conservancy District cost of water to the District for raw untreated water plus DVWTP cost plus any other direct costs of water associated with the DVWTP treatment process. The present DVWTP cost is \$190.00 per treated acre foot of water for the year 2014. The amount of the Delivered Water Cost shall be determined at least annually by the Conservancy District based upon its actual cost

of treated water, which may include, but is not limited to (i) cost of raw untreated water, (ii) cost of water treatment and replacement charges, etc. of DVWTP, and (iii) any other impacts to the operation and maintenance of the Victory Pipeline. The Conservancy District shall annually determine and inform the Purchaser of the amount of the Delivered Water Cost to be applicable for the next succeeding fiscal year of the Conservancy District.

Section 3.3. Billing and Payment.

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

Section 3.3.2 Security for Payments. The Purchaser shall sell the right to use the water subject to this Agreement at rates sufficient to enable it to make the payments as provided in Section 3.3.1. and sufficient to cover the Purchaser's other obligations, including, payments on bonded indebtedness. Purchaser covenants to maintain its water system in good and workmanlike condition and provide annual operating reports to DCWCD. The rates for all water service supplied by the Purchaser's water system charged to the Purchaser and its inhabitants and to all customers within or without the boundaries of the Purchaser shall be sufficient to make the payments as provided in Sections 3.3.1 and 3.2 and shall be sufficient for the retirement and/or redemption of any and all outstanding bonds or other long term debts or other obligations pledging the net revenues of the Purchaser's water system, provided such rates must be reasonable rates for the type, kind, and character of the service rendered. There shall be no free service and there shall be charged against all users of the Purchaser's water system, including the Purchaser, such rates and amounts as shall be adequate to meet the payments as provided in Sections 3.3.1 and on all bonds or other long term debts or other obligations pledging the net revenues of the Purchaser's water system and any future obligations or commitments pledging the net revenues of the Purchaser's water system when due. The rates charged for water services provided by the Purchaser's water system shall be sufficient to produce net revenues that are equal to 125% of the annual debt service on all the obligations hereunder and on all bonds or other long term debts or other obligations pledging the net revenues of the Purchaser's water system.

Section 3.3.3. Payments to Come From Purchaser's Water System Revenues. Notwithstanding anything in this contract elsewhere contained, the payments and interest, if any, called for in this Water Supply Contract shall be payable out of the revenues of the Purchaser's water system. In no event shall the payments be deemed or construed to be a general indebtedness of the Purchaser or payable from any funds of the Purchaser other than those derived from the operation of Purchaser's water system. The net revenues from Purchaser's water system are pledged to secure the payments and interest, if any.

The Purchaser shall have no obligation to make any payments, except in months the Conservancy District is capable of providing to the Purchaser the right to use water as provided in Section 2.1 herein. The Purchaser shall only be obligated to make the payments hereunder for months when the Conservancy District can provide or deliver to the Purchaser the right to use water as provided in Section 2.1 herein, whether the Purchaser uses such water or not. In the event of a circumstances, such as set forth in Section 8.1 herein, which would mean that the reason the Conservancy District cannot deliver water is because of circumstances beyond its control, then the Purchaser shall be required to make payments hereunder. However, if the

reason the Conservancy District cannot provide or deliver water to the Purchaser is within the control of the Conservancy District, then the Purchaser would not be required to make payments in months when the Conservancy District cannot provide or deliver water.

The Purchaser may in its sole discretion, but without obligation and subject to the constitution, laws and budgetary requirements of the State of Utah, make available funds to defray any insufficiency of revenues to make the payments called for in this agreement; provided, however, the Purchaser has not covenanted and cannot covenant to make those funds available and has not pledged any of such funds for the payments called for under this Agreement.

Section 3.3.4. Meter Bypass. Should the meter measuring the quantity of water by the Conservancy District to Purchaser be bypassed or fail to operate for any reason beyond the reasonable control of the Conservancy District, the parties agree in good faith jointly to attempt to estimate the length of time the meter was out of service and the amount of water delivered to the Purchaser during that period and the Purchaser shall pay for water based upon that estimate. Should the parties be unable to agree to an estimate within thirty (30) days, the parties agree, within forty-five (45) days after the end of the said thirty (30) day period, to attempt in good faith to resolve the dispute through mediation before either party may take the dispute to court.

# SECTION 4 RESERVE ACCOUNT

Section 4. Reserve Account.

Section 4.1. Capital Facilities Replacement Reserve Account. The Purchaser shall establish a capital facilities replacement reserve account. Deposits to that account shall be made at least annually in the amount of five percent (5%) of its water system revenue. Failure to maintain the reserve account will constitute a technical default on the reserve account and may result in the imposition of the remedies described in Section 7 below. This reserve account shall be maintained and replenished until the termination of this contract.

Section 4.2. <u>Payment Security Reserve Account</u>. The Purchaser will establish a payment reserve account. Deposits to that account shall be made monthly in the amount of five (5%) percent of each payment of the fixed charge for water until such account is sufficient to make twelve (12) full monthly fixed charges for water. This amount may be prefunded.

## SECTION 5 ADDITIONAL RESERVED WATER

Section 5.1 Additional Water. Purchaser shall have a right of first refusal for the right to use up one half of the annual right to use water found in Section 2.1 herein, which on Phase One is an additional 350 acre feet of water per year and after the completion of Phase Two is an additional combined amount of 500 acre feet of water per year. The Purchaser may exercise its right at any time after the date of this Agreement until notified as required in this Section 5.1, which notice will require the Purchaser to exercise its right of first refusal or lose its right to the additional 350 or 500 acre feet of water, depending on whether Phase Two is complete and in service. The Conservancy District can sell or lease the right to use up to 736 acre feet (to the Purchaser or others) of water before the Purchaser's right of first refusal must be exercised. Once the Conservancy District has one or more offers to purchase or lease 736 acre feet or more of water from the Conservancy District, then the Conservancy District shall notify the Purchaser (and all other purchasers of right to use water from the Victory Pipeline) of any offer the

Conservancy District may receive for the right to use water from the Conservancy District. This notice shall instigate the Purchaser's right to an additional 350 or 500 acre feet of water, depending on whether Phase Two is complete and in service. The Purchaser shall have 60 days from the date the Conservancy District informs Purchaser of an offer, to exercise its option and right of first refusal under this Section 5.1 and inform the Conservancy District of its desire, commitment and covenant to begin receiving such water. If the Purchaser does not inform the Conservancy District within 60 days of its intent to exercise its right of first refusal to purchase the use of an additional 350 or 500 acre feet of water (depending on whether Phase Two is complete and in service), then the Purchaser shall forfeit the right to acquire use of such additional water, and the Conservancy District may sell such right to use water to any other person or entity.

Purchaser agrees that if it desires any additional water through the Victory Pipeline, in addition to the amount set forth in Section 2.1 hereof, that the Purchaser shall only contract with the Conservancy District for such additional water, unless Purchaser obtains the prior written consent of the Conservancy District. Additional water desired by Purchaser in the future, if any, from the Victory Pipeline in addition to the amounts set forth in Sections 2.1 and in the immediately preceding paragraph in Section 5.1 will be allocated by the Conservancy District by order of requests based upon water availability, pressures, overall Victory Pipeline water demand, and water rates established by the Conservancy District in effect at such future time. Final amounts of water allocations will be determined by the Conservancy District in accordance with its policies in effect at the time of the request for such additional water. The Conservancy District shall not sell any additional water to any entity at a rate or rates less than the rates applicable under Sections 3.1 and 3.2 as in effect at the time an offer is made to acquire such additional water.

# SECTION 6 ADDITIONAL OBLIGATIONS OF THE PARTIES

Section 6.1. Operations. The Purchaser shall operate and maintain, without cost to the Conservancy District, all of its facilities necessary to take and utilize its water, including the water the use of which is purchased under this Agreement.

Section 6.2 Beneficial Use of Water. The basis, the measure, and limit of the right of the Purchaser to the use of Conservancy District water shall rest perpetually in the beneficial application thereof. The Purchaser agrees to put the water purchased hereunder to beneficial use in accordance with law.

Section 6.3. Point of Delivery of Conservancy District Water. Water furnished under this Agreement shall be delivered and measured to the Purchaser for Phase One at approximately 9000 South 12000 West in Bridgeland and approximately at 9000 West and the new Lake Boreham Road. For Phase Two additional turnout locations may be identified in Phase Two subject to delivery pressures. In the event the water is to be delivered to any point other than one at which deliveries can be made at the time of execution of this Agreement, the Purchaser shall construct, at its own expense, any new facilities necessary to effect such new point(s) of delivery, including without limitation any costs to connect to existing facilities. The Conservancy District will not charge the Purchaser any fee to connect such new facilities to existing facilities, but such new connections (including complete construction of the meter station) must be reviewed and approved by the Conservancy District and constructed according to the Conservancy District's design requirements, as ensured by inspection by the Conservancy District. The Conservancy

District will own, operate and be responsible for the meter station at the point of delivery, all facilities within the meter station which are upstream of the meter station, and the meter station and related structural appurtenances. The Purchaser will own, operate and be responsible for all facilities within the meter station which are downstream of the meter station. It shall not be the responsibility of the Conservancy District to provide facilities to convey water from the above-mentioned point of delivery to the place of use unless otherwise agreed in writing by the Conservancy District and the Purchaser. The Conservancy District does not guarantee pressures and is not responsible for fluctuations in pressure, whether or not caused by the failure of devices regulating pressure. The Purchaser shall provide sufficient storage, at its own expense, to maintain a near constant rate of flow from the Conservancy District

Section 6.4. Back-Flow Prevention Program. The Purchaser shall be responsible to conduct and enforce an ongoing cross-connection control program throughout the Purchaser's service area. This is required so as to ensure good quality water is delivered to the Purchaser residences, as well as to other Conservancy District customers. The program must comply with applicable State regulations and include back-flow prevention. Pressure reducing vault shall be constructed as part of the pipeline, but subsequent to construction will be turned over to the Purchaser to be maintained by the Purchaser, which maintenance shall be consistent with the operations and maintenance policies of the Conservancy District. The Conservancy District reserves the right of inspecting pressure reducing vaults and the Purchaser shall make repairs and provide maintenance of such vaults as requested in writing by the Conservancy District.

Section 6.5. Accounting and Record Keeping.

Section 6.5.1. By the Purchaser. The Purchaser shall maintain a standard set of books consistent with requirements for loans from the Utah Drinking Water Board.

Section 6.5.2. By the Conservancy District. The Conservancy District shall maintain a standard set of books consistent with requirements for loans from the Utah Drinking Water Board.

### SECTION 7 DEFAULT

Section 7.1. Interest Penalties. In the event Purchaser fails to make any payment hereunder on or before the date it is due, Purchaser agrees to pay interest at the rate of eighteen (18%) percent per annum on the amount past due. The interest shall be paid on the next succeeding payment date until the default is cured by the Purchaser.

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

Section 7.3. Remedies. Failure of the Purchaser to perform any covenant or requirement of the Purchaser under this agreement within thirty (30) days after having been notified in writing by the Conservancy District of such failure shall constitute an event of default hereunder and shall allow the Conservancy District, after complying with Section 7.2, to take enforcement remedies including, but not limited to, the following:

- (a) impose the eighteen (18%) percent interest charge provided for in Section 7.1 above, and
- (b) appoint a trustee to act as a receiver of revenues of the Purchaser's water system for purposes of applying the revenues toward the payments required in this agreement, and in general, protecting and enforcing the rights of the Conservancy District, in which case all administrative costs of the receiver in performing that function shall be paid by the Purchaser.
  - (c) terminate on 30 days notice delivery of water provided for by this agreement.

### SECTION 8 WATER SHORTAGE

Section 8.1. General. In the event there is a shortage of Conservancy District water caused by drought, inaccuracy in distribution not resulting from negligence, hostile diversion, prior or superior claims, or other causes not within the control of the Conservancy District, no liability shall accrue against the Conservancy District, or any of their officers, agents or employees or either of them for any damage, direct or indirect, arising there from and the payments to the Conservancy District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortage allocation of municipal water shall have first priority. If there should ever be any shortage of municipal water, deliveries to the Purchaser shall be reduced in the proportion that the number of acre-feet of such shortage as determined by the Conservancy District bears to the total number of acre-feet allocated for municipal use in the Victory Pipeline.

## SECTION 9 ADMINISTRATION

Scott Wilson, its General Manager, as its representative and initial contact for all matters relating to the Conservancy District's participation in this Agreement. The Purchaser appoints the Chairperson of its Board of Trustees, as its representative and initial contact for all matters relating to the District's participation in this Agreement. The Parties may appoint a new representative at any time by providing written notice to the other party.

Section 9.2. No Separate Entity Created. No separate legal entity is created by this Agreement and there shall be no joint acquisition or ownership of property and it will not be necessary to dispose of property on the termination of this Agreement. All capital facilities which are developed, constructed and replaced to supply, treat and distribute the water which is the subject of this Agreement will be owned and operated by the Conservancy District. To the extent that any administration of this Agreement becomes necessary, then the parties' representatives just named, or their designated designees or successors, shall constitute a joint board for such purpose.

Section 9.3. Personnel Status. The Conservancy District and the Purchaser employees providing services pursuant to or consistent with the terms of this Agreement are solely the officers, agents or employees of the employing entity.

Section 9.4. No Joint Venture. This Agreement shall not constitute a joint venture between the Conservancy District and the Purchaser.

Section 9.5. Personnel and Equipment. Each party, to the extent needed, shall supply at its own cost all personnel, equipment, supplies and materials necessary to perform its obligations and intended actions as set forth in this Agreement.

Section 9.6. Financing. The financial aspects of this Agreement are specified in Section 3. Each party will be responsible for maintaining its own financial budget for both income and expenditures arising under this Agreement.

## SECTION 10 MISCELLANEOUS PROVISIONS

Section 10.1. Water Conservancy Act of Utah. This Agreement, and any amendments thereto, shall be governed by and subject to Title 17B, Chapter 2a, Part 10, Utah Code Ann. 1953, as amended, Water Conservancy District Act, and by Title 17B, Chapter 2a, Part 4 Utah Code Ann. 1953, as amended (the Utah Code Provisions controlling county improvement districts), and the rules and regulations of the Board of Trustees of the Conservancy District and of the Purchaser, as the same have been and may hereafter be supplemented or amended.

Section 10.2. Assignment Limited-Successors and Assigns Obligated. The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any part hereof or interest herein shall be valid until approved in advance by the Board of Trustees of the Conservancy District and by the governing body of the Purchaser.

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

Section 10.4. Effect. The provisions of this Agreement shall bind and inure to the benefit of the Parties hereto and their respective permitted successors and assigns. The Parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of this Agreement.

Section 10.5. Amendments. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, understandings, representations, inducements and agreements, whether oral or written and whether made by a Party hereto or by anyone acting on-behalf of a Party, shall be deemed to be merged in this Agreement and shall be of no further force or effect. No amendment, modification, or change in this Agreement shall be valid or binding unless reduced to writing and signed by all of the Parties hereto.

Section 10.6. Expenses of Enforcement. In any proceeding to enforce, interpret, rescind or terminate this Agreement or in pursuing any remedy provided hereunder or by applicable law, the prevailing Party shall be entitled to recover from the other Party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding.

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

Section 10.8. Notices. Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when personally delivered or sent by certified or registered United States mail to the respective addresses of the Conservancy District or the Purchaser as set forth below or delivered by confirmed telefax to the telephone numbers listed below:

Conservancy District:

Duchesne County Water Conservancy District Attn: General Manager

275 W. 800 S. Roosevelt, Utah 84066 435-722-4977 435-722-4827 fax

Purchaser:

Johnson Water District Attn: Chair Route 3 Box 3188 Roosevelt, Utah 84066 435-722-2620 435-722-2622 fax

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

Section 10.9. Rights and Remedies. The parties shall have all rights and remedies provided under Utah law for a breach or threatened breach of this Agreement. Such rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

Section 10.10. Necessary Acts and Cooperation. The parties hereby agree to do any act or thing and to execute any and all instruments reasonably required by this Agreement that are necessary and proper to make effective the provisions of this Agreement.

Section 10.11. Execution of Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. An executed version of this Agreement which has been signed and transmitted by facsimile or other electronic or mechanical means shall be deemed an original.

Section 10.12. Severability. In the event that any provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other provision herein contained. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be valid to the extent of the scope or breadth permitted by law.

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

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

JOHNSON WATER DISTRICT

Chair

(

District Clerk

(SEAL OF PURCHASER)

ATTEST: , ) (

Date: 6-16-2014

District Clerk

(SEAL OF CONSERVANCY DISTRICT)

DUCHESNE COUNTY WATER CONSERVANCY DISTRICT

DCWCD, Chair

