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E# 2945002 PG 1 OF 10  
LEANN H KILTS, WEBER COUNTY RECORDER  
03-OCT-18 9:18 AM FEE \$0.00 DEP DC  
REC FOR: WEBER BASIN WATER CONSERV DIST

Account No. 79110

~~Replacement Contract~~

Previous Owners: 3

Previous Contract: 41574

**ASSUMPTION OF CONTRACT**

THIS ASSUMPTION OF CONTRACT is made and entered into this 30 day of August, 2018, by and between the Weber Basin Water Conservancy District (herein "District") and Wolf Creek Water & Sewer Improvement District (herein "Successor Purchaser").

WITNESSETH

WHEREAS, under date of November 15, 2004, Wolf Creek Properties, LLC, as Purchaser, entered into a certain contract (herein "Original Contract") with the District for the purchase of 300.00 acre-feet of water for replacement purposes, which Original Contract was thereafter recorded in the office of the County Recorder of Weber County, Utah, as Entry No. 2095223; and

WHEREAS, under date of March 11, 2009, Wolf Creek Properties LLC, assigned and transferred to Wolf Creek Water Company Inc., all of the right, title and interest in and to 300.0 acre-feet of the Original Allotment, which assignment was thereafter recorded in the office of the County Recorder of Weber County, Utah, as Entry No. 2426954; and

WHEREAS, under date of June 18, 2010, the Wolf Creek Water Company Inc., contract was terminated and all of the right, title and interest in and to 300.0 acre-feet of the Original Allotment was cancelled, which cancellation order was thereafter recorded in the office of the County Recorder of Weber County, Utah, as Entry No. 2791293; and

WHEREAS, Wolf Creek Water Company Inc. is no longer in existence; and

WHEREAS, Successor Purchaser is the company responsible to provide water to the lands described in the Contract, and Successor Purchaser desires to reinstate and assume the rights and obligations of the purchaser under the Original Contract; and

WHEREAS, no payments were made under the Original Contract for the years 2010 through 2018, and the Original Contract has amounts in due and owing for the years 2010-2018, including interest, totaling \$609,014.25, as specifically detailed in Exhibit B (the "Past Due Amounts").

WHEREAS, as part of the reinstatement of the Original Contract, under this Assumption of Contract, Successor Purchaser is willing to pay the Past Due Amounts in full, which Past Due Amounts will be paid in full by Successor Purchaser making 15 annual payments to the

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District of \$45,241.00, as outlined in Exhibit B. All Past Due Amounts will continue to accrue interest at the rate of 3.5% per annum until the Past Due Amounts have been paid in full.

WHEREAS, the parties agree that, if any terms contained in this Assumption of Contract (hereinafter the "Contract") are inconsistent with any of the terms contained in the Original Contract, the terms of this Contract shall govern; and

NOW, THEREFORE, in consideration of the approval of such assumption by the District, the payment in full of the Past Due Amounts, and the continued performance of its obligations under the Original Contract, and under the terms of this Contract, Successor Purchaser does hereby agree as follows:

1. ASSUMPTION. Successor Purchaser does hereby assume responsibility for and agrees and undertake to perform and discharge all of the terms, conditions and obligations of the purchaser under the Original Contract, and Successor Purchaser agrees and undertakes to perform and discharge all of the terms, conditions and obligations this Contract respecting the purchase of the 300.0 acre-feet of water for replacement of underground water to be diverted or withdrawn by means of a well for irrigation and domestic and miscellaneous uses in and upon the following described lands in Weber County, Utah:

**WITHIN THE WOLF CREEK WATER AND SEWER IMPROVEMENT DISTRICT'S  
SERVICE AREA**

2. OBLIGATION TO PAY. In consideration of such assumption and upon condition that this assumption is granted by the District, Successor Purchaser hereby agrees:

(a) To pay for the right to use the allotted water an amount annually, which amount initially shall be \$68,844.00. A portion of the above payment amount is to be applied to the extent required on the District's obligations 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 Successor Purchaser actually takes or uses the water allotted.

(c) The first payment of the amounts so fixed shall be billed by the District. The Successor Purchaser shall be bound by the rules and regulations of the District's Board of Trustees. Annual payments shall be made by the Successor Purchaser to the District on or before January 1 of

each year. Nothing contained herein shall be construed to exempt the Successor Purchaser from paying the charges as 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 Successor Purchaser is billed based on the amounts of water used ("bill for use"), such that they 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, Successor Purchaser is obligated to install appropriate metering and measuring devices. Successor 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.

(e) The Successor Purchaser shall pay upon the execution of this Contract the 2018 water assessment of \$68,844.00. The Successor Purchaser shall also pay the Past Due Amounts due under the Original Contract, in the total of \$609,014.25, by making 15 annual payments to the District of \$45,241.00, plus interest, as outlined in Exhibit B. The first such annual payment shall be due on or before January 1, 2019. All remaining annual payments shall be due on or before January 1 of each subsequent year, until all 15 required annual payments have been paid in full.

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 the date of delinquency at a rate of 18% APR.

4. REMEDIES IN CASE OF DEFAULT. If the Successor Purchaser shall fail to make any payment due hereunder on or before the due date, or in the event that the Purchaser shall violate any of the terms of this Contract, the District may refuse the delivery of water, or upon written notice to Successor 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.

5. SECURITY. The District may, as a condition of this assumption, require security to be pledged and committed by the Successor Purchaser in addition to that security required in this Contract in order to insure and secure payments so required in this Contract. The sufficiency and form of security shall be determined by the District. In order to secure the annual payments called for by this contract, Successor Purchaser agrees to impose and collect such fees or charges, including penalties and interest for delinquencies for any water, services, or facilities provided by it as shall always be sufficient to meet its annual operating and maintenance expenses and its obligations to the District in accordance with this contract. In the event of a shortage of revenue for such obligations, Successor Purchaser agrees to pay the District first out of revenues received. If the proceeds of water sales are not adequate to pay the annual amounts due the District under this contract, the Purchaser shall annually levy such taxes and assessments as are provided by law upon the property within the boundaries of the Purchaser as may be required to meet such deficit.

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 and miscellaneous 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 Successor Purchaser is entitled annually shall not exceed the allotted amount as described above. In the event that Successor Purchaser receives water in excess of the allotted amount in any given year, whether intentionally or unintentionally, the Successor 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, at the District's sole discretion, in the discontinuation of service until payment in full is received by the District.

8. UTAH STATE ENGINEER. Successor 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 Successor Purchaser shall not use the allotted water in any way, and the District will not be obligated to deliver water to the Successor Purchaser as herein provided, until Successor Purchaser first receives an approved exchange application from the Utah State Engineer. It is the responsibility of the Successor 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 Pineview 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 to Successor Purchaser and the payments to the District provided for herein shall not be abated or 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 Successor 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 Successor Purchaser shall construct, operate and maintain, without cost to the district, the well and appurtenant facilities necessary to secure and accurately measure Successor Purchaser's water supply. The metering or other measuring device installed by Successor Purchaser shall be satisfactory to the Utah State Engineer. The District has no responsibility for the quality or quantity of water that Successor Purchaser is able to secure through the source of Successor Purchaser's well.

13. **BENEFICIAL USE.** The basis, the measure and the limit of the right of the Successor Purchaser in the use of water shall rest perpetually in the beneficial application thereof, and the Successor Purchaser agrees to put the water allotted Successor Purchaser hereby to beneficial use in accordance with law. The Successor 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 Successor 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 Successor 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 Successor Purchaser agrees to fully comply 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.** Successor 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 by any prior purchaser under the Contract or from the non-fulfillment of any covenant or agreement on the part of Successor 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 Successor 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. Successor 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. Successor 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 the assigned Contract or 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 assigned Contract and this Assumption of Contract shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. Successor Purchaser may not assign either the assigned contract or this Assumption of 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 assigned contract and this Assumption of 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 Successor 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 Successor 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 Assumption of 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 Successor Purchaser shall be sufficiently given if sent by mail addressed to the Successor Purchaser at the address listed below, or if sent by electronic mail addressed to the Successor 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 Assumption to be executed and signed the day and year first above written.

SUCCESSOR PURCHASER: Wolf Creek Water & Sewer Improvement District

BY: Kary McBride

ITS: BOARD SECRETARY

ADDRESS: Wolf Creek Water & Sewer Improvement District

PO Box 658

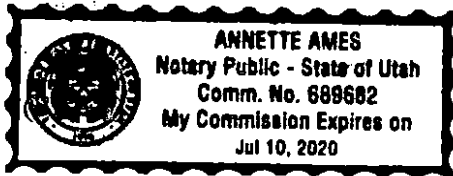
Eden UT 84310

EMAIL ADDRESS: aames@wccwsid.com

STATE OF )  
                  : ss.  
COUNTY OF )

On the 27 day of August, 2018, before me Annette Ames a notary public, personally appeared Larry McBride, proved on the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.

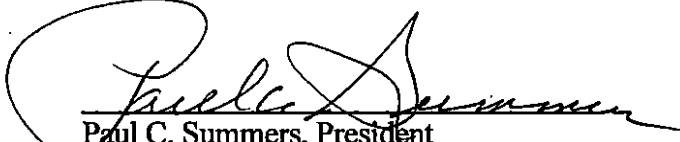
Annette Ames  
NOTARY PUBLIC SIGNATURE

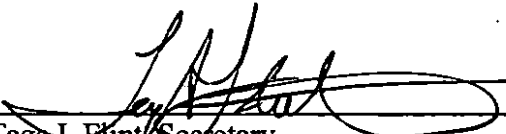




Approved: August 30, 2018

WEBER BASIN WATER CONSERVANCY DISTRICT

  
Paul C. Summers, President

  
Tage I. Flint, Secretary

(SEAL)



**Exhibit B**

As a condition to entering into this Contract, Purchaser agrees to pay at time of submittal the 2018 water assessment of \$68,844.00. Future annual payments will be paid in full on or before January 1<sup>st</sup> of each year, together with a minimum payment of \$45,241.00 to be applied to the unpaid 2010-2017 assessments until balance is paid in full. If payments are not made as scheduled, Purchaser will be in default of this Contract. All Past Due Amounts will continue to accrue interest at the rate of 3.5% per annum until the Past Due Amounts have been paid in full. Payments will be applied first to interest accrued.

Year	Dist. 1 \$/AF	Total for 300 AF	3.5% Interest	Yearly Total
2010	\$179.46	\$53,838.00	\$1,884.33	\$55,722.33
2011	\$179.46	\$53,838.00	\$3,768.66	\$57,606.66
2012	\$182.04	\$54,612.00	\$5,680.08	\$60,292.08
2013	\$184.30	\$55,290.00	\$7,615.23	\$62,905.23
2014	\$188.53	\$56,559.00	\$9,594.80	\$66,153.80
2015	\$191.20	\$57,360.00	\$11,602.40	\$68,962.40
2016	\$198.06	\$59,418.00	\$13,682.03	\$73,100.03
2017	\$204.53	\$61,359.00	\$15,829.59	\$77,188.59
2018	\$229.48	\$68,844.00	\$18,239.13	\$87,083.13
<b>Total Amount Owing in Arrears</b>				<b>\$609,014.25</b>

The 2019 water assessment will be broken down as follows:

Annual water charge for 300 acre-feet of District 1 Replacement Water	\$68,844.00
Minimum payment for 2010-2017 assessments and interest accrued through 2018	\$45,241.00
Minimum payment due by January 1, 2019	\$114,085.00