

MIDVALE CITY, UTAH

RESOLUTION NO. 2017-R-25

**A RESOLUTION OF THE CITY COUNCIL OF MIDVALE CITY, UTAH,
APPROVING THE MIDVALE CITY WATER PURCHASE AGREEMENT
AND PETITION WITH THE JORDAN VALLEY WATER
CONSERVANCY DISTRICT**

WHEREAS, Midvale City is a member agency of the Jordan Valley Water Conservancy District (JWCD); and

WHEREAS, with the development of the Bingham Junction Project Area and the acquisition of the Union Jordan Water System; and

WHEREAS, the City has agreed in acquiring the Union Jordan Water System to purchase water from Sandy City until the year 2019; and

WHEREAS, Sandy City and Midvale has agreed to gradually reduce the amount of water purchased by Midvale over the next two years; and

WHEREAS, JWCD has the ability to increase the water supplied to Midvale and adjust their wholesale purchase water contract with the City to provide the additional water needed.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MIDVALE, UTAH:

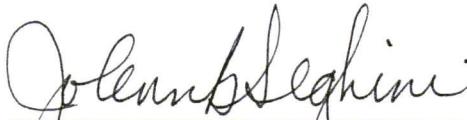
SECTION 1

That the Midvale City Council has determined that it would be in the best interests of the City and its residents to approve the Midvale City Water Purchase Agreement and Petition with the Jordan Valley Water Conservancy District and authorize the Mayor to sign on behalf of the City.

SECTION 2: Effective Date: This Resolution shall become effective upon passage.

APPROVED BY THE CITY COUNCIL OF THE MIDVALE CITY, UTAH, ON THIS

20th DAY OF June, 2017.

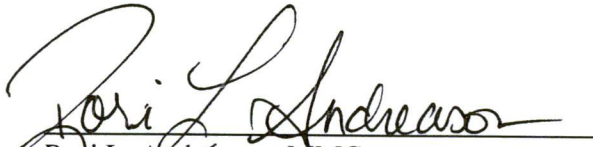


JoAnn B. Seghini, Mayor

Attest:

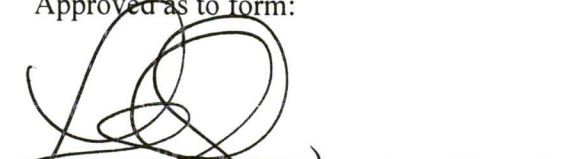
Vote by the City Council:

	Aye	Nay
Stephen Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Glover	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Hunt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Quinn Sperry	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wayne Sharp	<input checked="" type="checkbox"/>	<input type="checkbox"/>


Rori L. Andréason, MMC
City Recorder



Approved as to form:


Lisa Garner, City Attorney

MIDVALE CITY WATER PURCHASE AGREEMENT AND PETITION

This Agreement is made as of _____, _____, by and between the Jordan Valley Water Conservancy District, a water conservancy district organized under the laws of the State of Utah ("District"), and Midvale City, a municipality organized under the laws of the State of Utah ("Purchaser").

RECITALS:

- A. The District is a water conservancy district organized and existing under the laws of the State of Utah for the purposes, among others, of making water available to those inhabitants residing within its boundaries and of entering into contracts with public and private entities for the purchase and sale of water and its delivery;
- B. Purchaser is a municipality organized and existing under the laws of the State of Utah, which provides retail water service to its customers/inhabitants within its boundaries and which desires to purchase for them water from the District; and,
- C. The parties enter into this Agreement to provide for the purchase of water by, and for the delivery of water to, Purchaser to meet a portion of the needs of its customers/inhabitants.

TERMS:

The parties agree as follows:

1. (a) The District hereby agrees to sell and Purchaser hereby agrees to purchase annually, or in any event pay for annually, the minimum amount of water for the relevant years set forth on attached Exhibit A (the "Minimum Amount").

(b) Purchaser, at its discretion, may purchase annually additional water from the District in an amount not to exceed twenty percent (20%) of the then-current Minimum Amount, provided that the District first determines additional water is available.

(c) The Minimum Amount purchased by Purchaser shall be delivered by the District in accordance with the terms of this Agreement, and at the points of delivery and within the maximum daily flow rates (contract capacity) set forth on attached Exhibit B.

2. (a) Purchaser's commitment to pay for the Minimum Amount, among other considerations, insures a market for the sale of water by the District, allows the District to amortize the costs of facilities constructed to produce, store, and deliver water to Purchaser and all other customers of the District, and generates revenues for the repayment of indebtedness incurred by the District.

(b) The allotment of the Minimum Amount to Purchaser may serve, at the reasonable discretion of the District and pursuant to its interpretation and application of its policies, rules, and procedures as they may be amended periodically, to form the basis for the allocation of water among the District's various customers during water shortages. Should water allocation to the District's customers be necessary and should the District's contractual water sale commitments be used in determining that allocation, then Purchaser's ratable allocation may be based on its then-current Minimum Amount.

3. The District will provide water in accordance with standards for public drinking water set by applicable law, including the Utah Division of Drinking Water and/or the Utah Drinking Water Board of the Department of Environmental Quality, except the District shall not be liable, or in breach of this Agreement, for failure to meet those standards unless that failure is due to the District's willful misconduct or gross negligence.

4. The amount of water delivered to Purchaser depends in large part on water made available to the District and, for that reason, the District is not a guarantor of the delivery of any water to Purchaser against drought, adverse claims, acts of God, the acts or omissions of other water supply entities from whom the District purchases water, or all other matters beyond its reasonable control. The District acquires water from multiple water sources, some of which are under the control of third parties which own and/or operate their own water facilities, and their failure to deliver water to the District shall excuse the District's failure to deliver water to Purchaser.

5. The District's ability to deliver water to Purchaser depends, in part, on the capacity of available facilities, including, for example, reservoirs, pipelines, meters, and pump stations. Due to potential failures of equipment and infrastructure, the need of the District at its discretion to suspend service for construction, maintenance, inspection, and/or repairs, and due to limitations in water source and infrastructure capacities, the District is not a guarantor of delivery capacity to Purchaser. The allotment of contract capacity to Purchaser may serve, at the reasonable discretion of the District and pursuant to its interpretation and application of its policies, rules, and procedures as they may be amended periodically, to form the basis for the allocation of capacity among the District's various customers during capacity shortages. Should allocation of capacity among the District's customers be necessary, including peak demand periods and times of limited delivery capacity, and should the District's contractual capacity commitments be used in determining that allocation, then Purchaser's ratable allocation may be based on its then-current contract capacity as set forth on Exhibit B.

6. (a) The price(s) for water purchased by Purchaser under paragraph 1, and the cost of providing water service to Purchaser, including pumping charges and the Meter Base Charge, shall be determined annually by the District in accordance with its then-current rate methodology, policies, rules, and procedures. The District may choose periodically to change methodologies and/or to change its interpretation and implementation of any methodology it selects, and/or to adopt, amend, or abandon its policies, rules, and regulations.

(b) As of the execution of this Agreement, the District uses the Base-Extra Capacity Method of the American Water Works Association, as interpreted and implemented by the District, for pricing all water purchased under paragraph 1 of this Agreement.

(c) As of the execution of this Agreement, the District charges a monthly fee (the "Meter Base Charge") for each meter through which water purchased under this Agreement may be delivered to Purchaser. The charge recovers, in part, the District's expenses associated with the meters, including but not limited to meter reading, account billing, service and maintenance, repair, replacement, and other overhead items. The Meter Base Charge is charged monthly for each meter based on its diameter, regardless of the actual volume of water taken through the meter. For each meter identified on Exhibit B, Purchaser shall pay a Meter Base Charge as set periodically by the District pursuant to its interpretation and application of its policies, rules, and procedures as they may be amended.

(d) As of the execution of this Agreement, the District charges for pumping, if necessary, of water purchased under paragraph 1 of this Agreement. The cost of pumping includes the associated utility expenses.

(e) Based on subparagraphs 6(b) thru 6(d), but subject to change in the future as authorized by subparagraph 6(a), Purchaser shall pay to the District the sum of: (i) the price(s) set forth on Exhibit C per acre-foot of water sold to Purchaser under paragraph 1 of this Agreement and delivered between November 1 and April 30 each year ("Winter Rate"); (ii) the price(s) set forth on Exhibit C per acre-foot of water sold to Purchaser under paragraph 1 of this Agreement and delivered between May 1 and October 31 of each year ("Summer Rate"); (iii) the Winter Rate per acre-foot of water sold under paragraph 1, but not taken by Purchaser in each year; (iv) pumping costs; and, (v) the Meter Base Charge.

(f) Neither the price per acre-foot of water purchased under paragraph 1 of this Agreement nor the Meter Base Charge shall be increased before July 1, 2017. The District specifically reserves the right thereafter to increase, or otherwise change from time to time, the price per acre-foot of water purchased under paragraph 1 of this Agreement, pumping costs, and the Meter Base Charge as the District, in its sole and reasonable discretion, deems appropriate. The District shall provide written notice to Purchaser of a change in the price per acre-foot of water, pumping costs, and/or the Meter Base Charge.

7. (a) Purchaser hereby represents, warrants, and covenants to the District that:

(i) Purchaser is a “city”, “public petitioner,” and “public water user”, within the meaning of § 17B-2a-1007 of the Water Conservancy District Act (Utah Code Ann. (1953) §§ 17B-2a-1001 et seq. (the “Act”);

(ii) Within the meaning of § 1007 of the Act, the legislative body of Purchaser has duly authorized and directed its chief executive officer to petition the Board of Trustees of the District for an allotment of water, upon terms prescribed by the Board of Trustees, by delivering this Agreement to the Board; and,

(iii) Purchaser has found and determined that this Agreement constitutes a written petition on behalf of Purchaser to request the District to enter into a water contract within the meaning of § 1007 of the Act; provided, however, that assessments shall be levied only in accordance with the provisions of this paragraph 8 and applicable Utah law.

(b) The legislative bodies of the District and of Purchaser have found and determined, and it is hereby acknowledged, that:

(i) This is a petition which is in due and proper form and contains the information necessary for a lawful petition for water in conformance with the requirements of § 1007 of the Act;

(ii) The quantity of water petitioned for, when added to the present supply of water of Purchaser, makes an adequate supply for Purchaser;

(iii) It is in the best interest of the District that this petition be granted;

(iv) Purchaser and its customers/inhabitants will be benefitted thereby to an amount not less than the taxes which may be imposed by virtue of this petition;

(v) Purchaser's name is as set forth in this petition;

(vi) The quantity of water to be purchased or otherwise acquired by Purchaser is as set forth in this petition;

(vii) The water will be used on lands within the boundaries of Purchaser to the extent those lands are within the boundaries of the District (the "Lands");

(viii) The price per acre-foot or other unit of measurement, and the amount of any service, turnout, connection, distribution system charge, or other charges to be paid by Purchaser are as set forth in this petition;

(ix) Payments shall be made as set forth in this petition;

(x) The contract assessment as authorized and allowed by this petition and by the Act shall become a lien on the Lands; and,

(xi) Purchaser agrees to make payments for the beneficial use of such water together with annual maintenance and operating charges, and to be bound by the provisions of the Act and the rules and regulations adopted for the District by the Board of Trustees.

(c) To the extent permitted by law, Purchaser agrees that the District may accept and grant the petition represented hereby at any time after notice and hearing required by § 1007 of the Act, without regard to the amount of time which may have elapsed prior to the hearing or between the hearing and the acceptance and granting of

this petition. Purchaser hereby acknowledges that it is contemplated that years may elapse before the hearing or between the hearing and the acceptance and granting of this petition.

(d) If Purchaser fails to pay timely to the District any amount due under this petition, the District, with notice, may proceed to hearing and to act on this petition to levy a contract assessment on the Lands pursuant to this petition and the Act for the unpaid amounts and for any future amounts. The contract assessment, after recording of the instrument levying the assessment as required by the Act, shall be a perpetual lien on the Lands for all amounts owed as certified by the District pursuant to the Act.

(e) Collection of the levy, and further proceedings in connection with the levy of a contract assessment, shall be conducted as authorized or required by the Act.

8. It is mutually acknowledged that the District has petitions or contracts for water with the Central Utah Water Conservancy District for Central Utah Project water which require the District to pay annually for the water regardless of whether the water is called for, used, or is left unused. It is acknowledged that the District may elect to pay for this Central Utah Project water, in whole or in part, from water sales or from its own property tax levy as authorized by the Act and applicable law. It also is acknowledged that the District may elect to have all or part of any annual payment to the Central Utah Water Conservancy District paid for through the levy of a contract assessment by the Central Utah Water Conservancy District in accordance with the provisions of § 1007 of the Act, and/or in accordance with the provisions of paragraph 7 of this Agreement.

9. Purchaser shall not, outside the boundaries of the District, use, or deliver for use, or sell, or lease, or otherwise dispose of any water purchased under this Agreement.

10. (a) Amounts due from Purchaser under this Agreement, except as otherwise provided, will be billed monthly, and payments shall be due and payable within thirty (30) days of the date of the statement. A statement not paid by its due date will be considered delinquent. Delinquent amounts shall accrue simple interest of one percent (1%) per month (12% APR) until paid in full.

(b) In the event Purchaser defaults on any payment due under this Agreement, and Purchaser's default remains uncured for a period of thirty (30) days after Purchaser's receipt of written notice of its default, the District, at its sole discretion, shall be entitled to withhold delivery of water and/or terminate this Agreement and/or pursue all other remedies available to the District. No action taken by the District under this paragraph, however, shall relieve Purchaser of its obligation to pay any sum owed to the District.

11. The term of this Agreement shall be perpetual.

12. The parties may amend or terminate this Agreement at any time upon their mutual, written consent. No one other than the parties to this Agreement shall have any rights under this Agreement which would prohibit the parties from amending or terminating this Agreement if the parties mutually agree to do so.

13. (a) Purchaser shall be subject to and comply with the District's water rates, assessments, taxes, fees, policies, rules, and procedures as they may be adopted and/or amended. This Agreement and the parties are subject to the provisions of the Act, as amended.

(b) Beginning with 2017 and for each subsequent year during the term of this Agreement, Purchaser shall provide to the District an annual report of water use within

Purchaser's retail service area. The report shall be completed through the District's web portal at <jvwcd.org> by February 15 following the specific calendar year for which the report is made, and include the following information:

i. The monthly volume, in acre-feet, of municipal drinking water from each supply source, in aggregate, entering Purchaser's water delivery system, including drinking water from wells, other internal sources, other external sources, and the District; and,

ii. The monthly volume, in acre-feet, of secondary water and reuse water delivered for municipal purposes in Purchaser's retail service area. If the water is not metered, Purchaser shall provide an estimate of the monthly volume of secondary water and reuse water delivered, and a description of the method used to estimate such deliveries. Purchaser also shall include in its estimates any metered use (i.e., master metered use or metered end-use) of secondary water and reuse water delivered; and,

iii. The monthly volume, in acre-feet, of municipal drinking water delivered to Purchaser's retail customers, measured at the customer service connection, for each of the following user classes: combined residential use, combined commercial use, combined institutional use, and combined industrial use; and,

iv. Monthly estimates and the annual estimated total volume, in acre-feet, of non-revenue municipal drinking water within Purchaser's retail service area. Purchaser shall use its best efforts to account for, categorize, and provide a description of non-revenue water, including unmetered deliveries of municipal drinking water; and,

v. An estimate of the population served and a calculation of per capita water use. Purchaser shall include secondary water use and reuse water in its per capita water use calculation; and,

vi. A copy of Purchaser's annual water use data report as required by the Utah Department of Natural Resources.

(c) If records are available, Purchaser shall provide to the District, on or before September 1, 2017, the information requested in subparagraph 13(b) for each calendar year between 2000 and 2016.

14. Purchaser shall not assign this Agreement or any of its rights under it without the prior written consent of the District. The District may assign this Agreement and/or any of its rights under this Agreement.

15. All of the grants, covenants, terms, provisions, and conditions in this Agreement shall be binding upon and inure to the benefit of the successors or permitted assigns of the parties.

16. This Agreement is not intended to be a third-party beneficiary contract for the benefit of anyone, including the individual customers or constituent members of the District or of Purchaser.

17. (a) This Agreement, including exhibits, constitutes the entire agreement of the parties and supersedes all prior undertakings, representations, or agreements of the parties regarding the subject matter in this document.

(b) This Agreement supersedes and replaces the parties' prior Agreement, dated January 16, 1986, and all amendments, if any.

18. Each individual executing this Agreement does hereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities identified.

19. The District and Purchaser each represent and warrant that it has authority to enter into this Agreement.

20. Notices given by or to the parties shall be in writing and may be served personally or served by depositing them in the United States mail, postage prepaid, certified or registered mail with return receipt requested, addressed to the parties at the addresses set forth below, or at such other addresses as the parties may designate in writing.

"District":

Jordan Valley Water Conservancy District

Dated: _____

By: _____

Its Chair

Address: 8215 South 1300 West
West Jordan, UT 84088

ATTEST:

Richard P. Bay, Clerk

"Purchaser":

Midvale City

Dated: June 24, 2017

By: John B. Segher

Its: Mayor

Address: 7505 So. Housen St.
Midvale, UT 84047

ATTEST:
Keri L. Anderson



EXHIBIT A

MINIMUM AMOUNT OF WATER

YEAR	MINIMUM AMOUNT (AF)
2017 and 2018	400
2019, and each year thereafter	2,200

EXHIBIT B

POINTS OF DELIVERY, CAPACITY, AND FLOW RATES

ADDRESS	METER INFORMATION	CONTRACT CAPACITY
	DIAMETER (INCHES)	MAXIMUM DAILY FLOW RATES ^(a) (GPM)
NON-PUMPED:		
175 East 7500 South (East)	6"	50
175 East 7500 South (West)	6"	0
175 West 7500 South	10"	50
7613 South 700 East	16"	1,064
1200 East 9400 South	12"	200
2019 and thereafter TOTAL:		1,364 GPM

Notes:

- (a) Maximum average flow rate over twenty-four (24) hours (GPM) for each meter station. If there are multiple meters at one (1) address, the maximum flow rate limit will apply to the combined total of all meters at a specific meter station address.

EXHIBIT C

WATER RATES EFFECTIVE THROUGH JUNE 30, 2017

PRESSURE ZONE	SUMMER RATE (\$/AF)	WINTER RATE (\$/AF)
Non-pumped	\$416.99	\$339.59
<u>Notes:</u>		

MIDVALE CITY, UTAH

RESOLUTION NO. 2017-R-26

**A RESOLUTION ADOPTING AMENDMENTS TO THE
MIDVALE CITY POLICIES AND PROCEDURES MANUAL**

WHEREAS, the City Council adopted the most recent version of the Midvale City Policies and Procedures Manual by Resolution in September 2016; and

WHEREAS, periodic reviews of the City's policies and procedures are conducted by City Staff and the City Council in order to update policies and be consistent with legislative changes; and

WHEREAS, the City Council finds the revisions to the Midvale City Policies and Procedures Manual to be in the best interest of the City,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MIDVALE CITY, UTAH:

Section 1. The City Council hereby desires to approve the proposed Midvale City Policies and Procedures Manual (Exhibit A).

Section 2. This Resolution shall take effect immediately upon passage.

APPROVED AND ADOPTED this 20th day of June 2017.

JoAnn B. Seghini, Mayor

ATTEST:

Rori L. Andreason, MMC
City Recorder

Voting by the City Council	"Aye"	"Nay"
Stephen Brown	_____	_____
Paul Glover	_____	_____
Quinn Sperry	_____	_____
Paul Hunt	_____	_____
Wayne Sharp	_____	_____