RESOLUTION NO. 2019-R-17

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A WATER STORAGE LEASE AGREEMENT BETWEEN MIDVALE CITY AND THE JORDAN VALLEY WATER CONSERVANCY DISTRICT (JVVCD)

WHEREAS, Midvale City has taken over the culinary water service in the Union Jordan and the JVVCD 10th East Retail Service areas; and

WHEREAS, the State of Utah Division of Water Quality requires public water systems to maintain minimum water storage to meet the service area needs; and

WHEREAS, the City and JVVCD have a MOU which included a provision for the City to lease storage from the District; and

WHEREAS, the City has determined that the storage required by this service area in 4.8 MG; and

WHEREAS, the JVVCD has evaluated their storage facilities in this area and have determined that they have capacity to provide the City with 4.8 MG of water storage.

NOW THEREFORE BE IT RESOLVED, based on the foregoing, the Midvale City Council does hereby approve the water storage lease agreement between Midvale City and the JVVCD and authorizes the Mayor to sign the same.

APPROVED AND ADOPTED this 21st day of May 2019.

Robert M. Hale, Mayor

ATTEST:

Rori L. Andreason, MMC
City Recorder

<table>
<thead>
<tr>
<th>Voting by the City Council</th>
<th>“Aye”</th>
<th>“Nay”</th>
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<tbody>
<tr>
<td>Bryant Brown</td>
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<td>Paul Glover</td>
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<td>Quinn Sperry</td>
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<td>Paul Hunt</td>
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<td>Dustin Gettel</td>
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WATER STORAGE LEASE AGREEMENT

THIS WATER STORAGE LEASE AGREEMENT ("Agreement") is made this 5th day of June, 2019 ("Effective Date"), between Midvale City, a municipal corporation organized and existing under Utah law ("City"), and the Jordan Valley Water Conservancy District, a local district organized under the laws of the State of Utah ("District").

RECITALS:

A. The District is a water conservancy district organized and existing under Utah law, for the purposes, among others, of conserving, acquiring, appropriating, developing, storing, selling, leasing, distributing, and stabilizing supplies of water for domestic, manufacturing, and other beneficial uses;

B. The City is a municipality organized under the laws of the State of Utah, which provides retail water service to residents within its boundaries and to other customers;

C. The City purchases wholesale water from the District;

D. The City and the District have a beneficial and cooperative relationship, and they voluntarily coordinate operations of certain features of their water systems for their mutual benefit;

E. The City and the District entered into a Memorandum of Understanding in 2014, which defined the parties' intent to supply the Union and Jordan area in Salt Lake County with increased water deliveries from the District and for the provision of interim water storage by the District for the City's benefit;
F. The City desires to lease four and eight tenths (4.8) million gallons of finished water storage capacity for a period of ten (10) years;

G. The District is willing: (i) to lease four and eight tenths (4.8) million gallons of finished water storage capacity from its storage tank facilities at 2800 East 9400 South and at 2300 East 9800 South, Salt Lake County, Utah, to fulfill the City's need for interim water storage capacity; and, (ii) to provide the City peak hour demand credits on water purchases in recognition of the downstream location of the City's meter stations; and,

H. The City is willing to pay the District Ninety Six Thousand and 00/100 Dollars ($96,000.00) per year for the lease of the storage capacity, all in accordance with the terms and conditions of this Agreement.

TERMS:

The parties agree as follows:

1. The City shall lease three (3) million gallons of finished water storage capacity at the District's 2800 East 9400 South storage tank facility and one and eight tenths (1.8) million gallons of finished water storage capacity at the District's 2300 East 9800 South storage tank facility (collectively, the "City Storage").

2. This Agreement shall commence on the Effective Date and shall terminate on the first to occur of the following: (i) the written agreement of the parties; or, (ii) ten (10) years after the Effective Date.

3. (a) In consideration for the District's cost to construct, operate, and maintain its storage tank facilities, and as payment for the City Storage, the City shall pay
the District Ninety Six Thousand and 00/100 Dollars ($96,000.00) each year during the
term of this Agreement, with the first payment due on the Effective Date and subsequent
annual payments on the anniversary of the Effective Date.

(b) Any payment under this Agreement not made when due shall bear
simple, annual interest at the Utah Public Treasurer's Investment Fund Rate,
commencing the day after the due date and accruing until paid in full.

4. If an unusual circumstance, as reasonably determined by the District, such
as, for example, a natural disaster, premature structural failure, joint sealant failure, or
coating failure, that requires an extraordinary capital expense to repair or replace part or
all of the District's storage tank facilities located either at 2800 East 9400 South or at 2300
East 9800 South in Salt Lake County, Utah, the City shall reimburse its pro-rata portion
of the extraordinary capital expenditures incurred by the District: 100% for the 2800 East
9400 South storage tank facility, and 30% for the 2300 East 9800 South storage tank
facility.

5. (a) The District shall operate, maintain, repair, and replace the City
Storage in a manner consistent with this Agreement for the benefit of the City.

(b) The operations of the City Storage may be suspended temporarily,
in whole or in part by the District, for operation, maintenance, repair, and replacement
work, as reasonably determined by the District. The District shall make good faith efforts
to coordinate and schedule such work based on the City's reasonable requests.

6. (a) The parties acknowledge that the City's meter stations are at
locations where the effects of storage moderating the City's peak demands from the
District cannot be measured accurately.
(b) The City shall be given a total demand credit of Four Thousand Thirty-Two (4,032) gallons per minute on the peak hourly demands of its flows measured at the following meter stations: at 7613 South 700 East and at 987 East 7800 South in Salt Lake County, Utah.

(c) The adjusted peak hourly demands, as calculated in subparagraph 5(b), shall be used by the District to calculate the City’s annual water rate in accordance with the District’s then-current rate methodology, policies, rules, and procedures. On the Effective Date, the District used the Base-Extra Capacity Method of the American Water Works Association, as interpreted and implemented by the District. 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, and, as a consequence, the demand credit may provide different rate benefits to the City or none at all.

7. This Agreement, including exhibits, attachments, and references to incorporated documents, constitute the entire agreement between the parties and supersedes all prior understandings, representations, or agreements of the parties regarding the subject matters contained in this Agreement.

8. The parties shall perform those acts and/or sign all documents required by this Agreement or which may be reasonably necessary to effectuate the terms of this Agreement.

9. Neither party may assign this Agreement, or any of its rights, duties, or obligations under this Agreement, without the prior written consent of the other, which consent shall not be unreasonably withheld, except that either party may make an
assignment to its successor-in-interest. Any assignment made in violation of this paragraph or in violation of law shall be void.

10. This Agreement does not create any kind of joint venture, partnership, agency, or employment relationship between the parties.

11. The parties shall comply with all applicable federal, state, and local laws and ordinances in the performance of this Agreement. Any terms which the parties as governmental entities are mandated by law to include in this Agreement shall be considered part of this Agreement.

12. This Agreement cannot be amended except by a written instrument signed by the parties.

13. If any legal action is brought to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs incurred in that action, in addition to any other relief to which it may be entitled.

14. In the event a court, governmental agency, or regulatory agency with proper jurisdiction determines that any provision of this Agreement is unlawful, that provision shall terminate. If a provision is terminated, but the parties can legally, commercially, and practically continue to perform this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

15. Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations by reason of earthquakes or other natural disaster; strikes or other labor unrest; power failures; civil or military emergencies; acts of legislative, judicial, executive, or administrative authorities; or any other circumstances which are not within its reasonable control.
16. Any notice, communication, or payment required or allowed by this Agreement shall be mailed or hand-delivered to each party as follows:

If to the District, to:

Jordan Valley Water Conservancy District  
Attn: Engineering Department Manager  
8215 South 1300 West  
West Jordan, UT 84088

If to the City, to:  

Midvale City  
Attn: Glen Kennedy, Public Works Director  
8196 South Main Street  
Midvale, UT 84047

With a copy to:

Midvale City  
Attn: Kane Loader, City Manager  
7505 South Holden Street  
Midvale, UT 84047

Each party may change the designation of the addressee or the address for that party by providing written notice of the change.

17. 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 entity identified.

18. The parties intend that this Agreement benefit only them, and they do not intend there to be any third-party beneficiaries.
"City":
MIDVALE CITY
By:  
Its Mayor

"District":
JORDAN VALLEY WATER CONSERVANCY DISTRICT
By:  
Its Chair

ATTEST:  
City Recorder

ATTEST:  
District Clerk
STATE OF UTAH )

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 22nd day of
May, 2019, by Robert M. Hale, the Mayor of Midvale City, a Utah
municipality, on its behalf.

[Signature]

My commission expires:

11-01-2020

STATE OF UTAH )

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 5th day of
June, 2019, by Corey L. Rushton, the Chair of the Jordan Valley Water
Conservancy District, a water conservancy district organized under the laws of the State
of Utah, on its behalf.

[Signature]

My commission expires:

02-20-2023