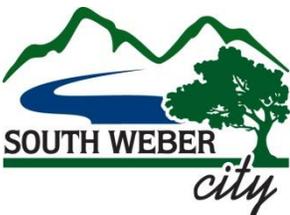


South Weber City Corporation

Culinary Water Impact Fee Facilities Plan



February 2017



Prepared by
JONES & ASSOCIATES
Consulting Engineers



CULINARY WATER
IMPACT FEE FACILITIES PLAN

for

SOUTH WEBER CITY



Prepared by

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LIST OF ACRONYMS

CCI	Construction Cost Index
CFP	Capital Facilities Plan
ERC	Equivalent Residential Connection
ERU	Equivalent Residential Unit
gal	gallon
gpd	gallons per day
gpm	gallons per minute
IFA	Impact Fee Analysis
IFFP	Impact Fee Facilities Plan
LOS	Level of Service
MG	million gallons
psi	pounds per square inch

UAC Utah Administrative Code
UDEQ Utah Department of Environmental Quality
WBWCD Weber Basin Water Conservancy District

1.0 Impact Fee Facilities Plan

1.1 Introduction

The Culinary Water System Impact Fee will be enacted as a means for new development to pay for their impact on the existing Culinary Water System. Utah state law requires that an Impact Fee Facilities Plan (IFFP) be prepared before an Impact Fee can be implemented. The law requires that the IFFP contains only the costs for short term (6-10 year) growth, and it must also not raise the existing level of service. This report will summarize information from the South Weber City Culinary Water Capital Facilities Plan (“CFP”) (Jones & Associates, June 2016) as it pertains to the enactment of the impact fee. A copy of this report can be obtained from South Weber City or the office of Jones and Associates.

Title 11, Chapter 36a, Part 3 of the Utah State Code outlines the requirements relating to Impact Fees. An Impact Fee Analysis is also required to be prepared before an Impact Fee can be implemented. The Impact Fee Analysis (“IFA”) will be performed by Zions Bank Public Finance and will be contained in a separate document.

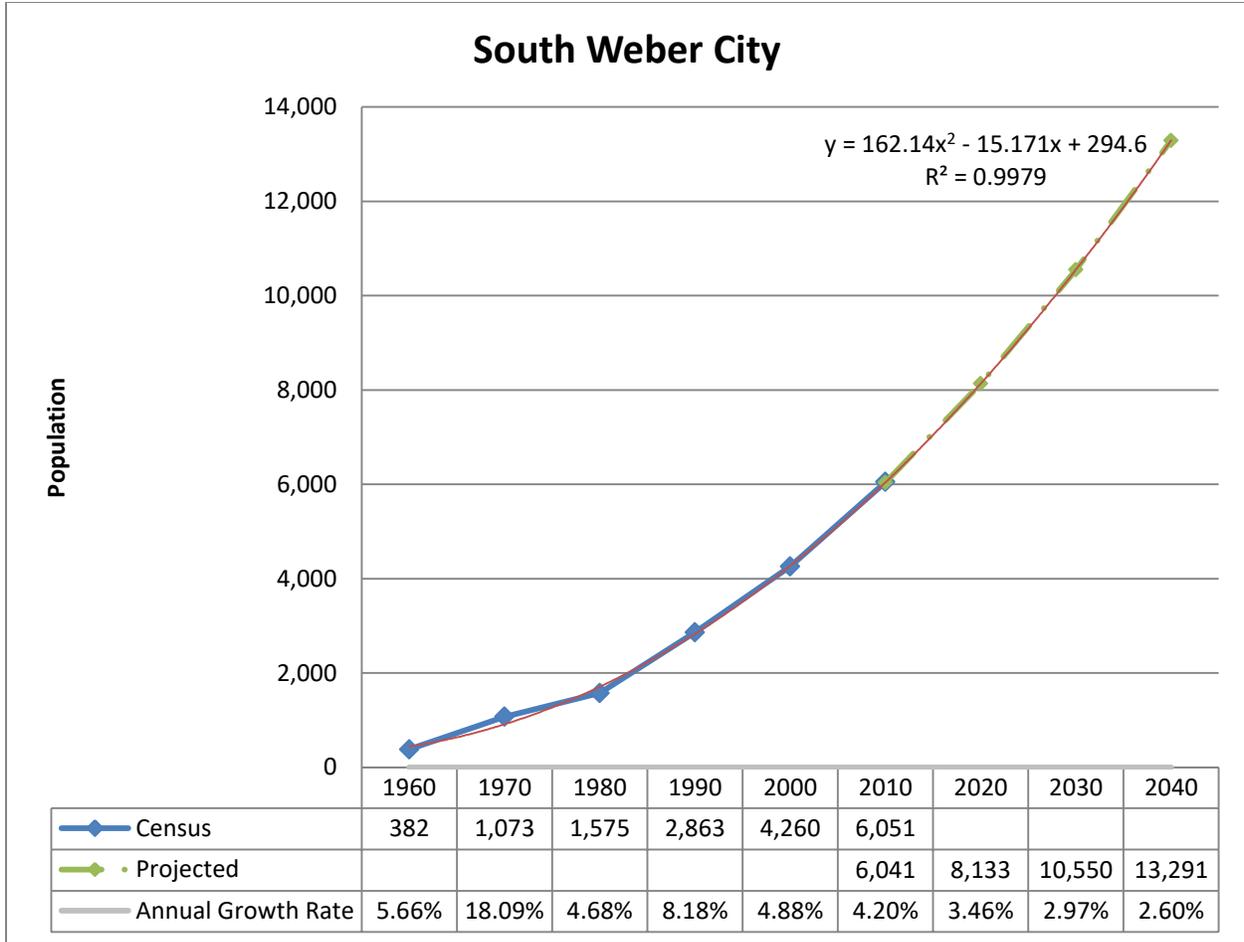
1.2 Growth Projections

Section 3.3 of the Capital Facilities Plan discusses the long term growth projections for South Weber City. This report will focus on the growth during the next decade.

The growth rate in South Weber City since 1880 has been very sporadic, bouncing between growth and decline. However, starting around 1960, the growth rate remained positive. A regression equation was applied to the population since 1960. The following equation emerged:

$$y = 162.14x^2 - 15.171x + 294.6$$

This equation has an associated R^2 value of 0.9979. The R^2 value represents how close the equation fits the data, with a value of 1.000 representing a perfect fit.



As described in the CFP, South Weber City is expected to reach a build-out population of about 12,700 around 2035. The Equivalent Residential Connection (ERC) growth is projected at the same growth rate as the population. (See the Capital Facilities Plan, Section 3.1 for further explanation of ERCs.)

Table 1.2.1 - Population and ERC Projections (IFFP)

Year	Population	ERCs	Increase from 2015
2015	7,046	2,252	-
2016	7,257	2,319	67
2017	7,471	2,388	136
2018	7,689	2,457	205
2019	7,909	2,528	276
2020	8,133	2,599	347
2021	8,360	2,672	420
2022	8,591	2,746	494
2023	8,824	2,820	568
2024	9,061	2,896	644
2025	9,301	2,973	721

1.3 Service Areas

1.3.1 Main Service Area

South Weber City is bounded by Layton City to the south, US Forest Service to the east, the Weber River to the north, and Hill Air Force Base and Riverdale City to the west. The City is traversed by US 89 and I-84. The culinary water system serves the majority of its customers from one, interconnected system. This main system includes multiple water sources and storage facilities.

1.3.2 Cottonwood Drive Area

Six (6) customers on Cottonwood Drive, located in between I-84 and the Weber River, are serviced via a separate connection to Weber Basin Water Conservancy District's transmission line. This area is not connected to the main distribution system and therefore does not benefit from the system's built-in redundancies and storage. An emergency connection to Uintah City's water system is located on Cottonwood Drive near the Weber River.

1.4 Level of Service

The Utah Administrative Code outlines minimum requirements for storage, supply, and system pressure. These requirements for the water supply, storage, and distribution are detailed in Sections 4, 5, and 6 of the Capital Facilities Plan, respectively. A summary is as follows:

Table 1.4.1 – Level of Service

Component	Measurement	DDW Requirement
Sources	<ul style="list-style-type: none"> Flowrate Volume 	<ul style="list-style-type: none"> 800 gpd/ERC for Peak Day Demand 146,000 gallons/ERC for Average Yearly Demand (0.448 ac-ft/ERC)
Storage Facilities	<ul style="list-style-type: none"> Volume 	<ul style="list-style-type: none"> 400 gallons/ERC
Distribution System	<ul style="list-style-type: none"> Pressure 	<ul style="list-style-type: none"> 20 psi during conditions of fire flow and fire demand experienced during peak day demand 30 psi during peak instantaneous demand 40 psi during peak day demand

Meeting the State's minimum requirements is the City's existing level of service.

The culinary water supply and storage currently meet all levels of service as outlined in these sections. The distribution system is lacking appropriate fire flows in some areas, as detailed in Section 6.3 of the CFP.

The City intends to maintain the existing level of service and meet all minimum requirements established in the Utah Administrative Code. Any deficiencies in meeting this level of service in the existing system are not part of this IFFP and will be corrected using funds from the City's Culinary Water Utility fund.

1.5 Excess Capacity

Future growth will utilize the excess capacity in existing facilities as well as the capacity in new projects contained in the Capital Facilities Plan. Water projects constructed using City funds were examined to determine each component's excess capacity.

Utah Code 11-36a-202 Prohibitions on impact fees states:

(1) A local political subdivision or private entity may not:

(a) impose an impact fee to:

(i) cure deficiencies in a public facility serving existing development;

(ii) raise the established level of service of a public facility serving existing development;

(iii) recoup more than the local political subdivision's or private entity's costs actually incurred for excess capacity in an existing system improvement; or

(iv) include an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with:

(A) generally accepted cost accounting practices; and

(B) the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement.

In this section, excess capacity, if any, will be determined and evaluated.

1.5.1 Sources

As discussed in detail in Section 4 of the Capital Facilities Plan, South Weber currently has just enough source capacity to cover its existing customers, and **no excess**. As new development occurs, additional water will need to be acquired from WBWCD. The recommended option in the Capital Facilities Plan explains how the City can enter into an agreement with WBWCD to acquire shares of contract water on a yearly basis, as developments occurs, rather than buying in bulk and paying for water not yet needed. The recommended option of purchase will initially cost the City only the costs of entering into this agreement. Once this agreement is in place, the developer or property owner will pay the applicable WBWCD impact fee, with the City thereafter paying the operations and maintenance fee portion of the contract water on an annual basis. See Appendix A for a copy of Weber Basin's 2013 IFFP and IFA and Appendix B for a sample Weber Basin Water Supply Agreement.

Note: After receiving and reviewing a sample of Weber Basin's Water Supply Agreement, the estimated project cost to negotiate this contract increased due to some questionable language in the sample agreement.

1.5.2 Water Storage

With 2.5 million gallons (MG) of functioning capacity¹ system-wide, South Weber City has about 1.4 MG more storage than it currently requires (1.11 MG), and 0.725 MG more than is required at build-out (1.775 MG). Due to the possibility of a high demand user in zone 1, additional storage may be beneficial

¹ Assuming the 100,000 gallon tank is permanently offline.

at the west end of the water system as discussed in Section 5.3 of the CFP. This would require expanding the capacity of the west end water tanks to 1.5 MG.

Table 1.5.2.1 – Excess Capacity - Storage

	Volume ¹ (gallons)	ERCs
Total Existing Storage (2015)	2,500,000	6,250
Total Existing Required Storage	1,110,800	2,252
Existing Required Storage (Indoor) 400 gal/ERC x 2,252 ERCs = 900,800 gal.		
Existing Required Storage (Fire Flow) (1,750 gpm x 120 minutes) = 210,000 gal.		
Existing Excess Storage	1,389,200	3,473

¹Calculated using regulatory requirement of 400 gallons/ERC.

Therefore, South Weber’s existing storage has enough excess capacity to support the estimated 721 additional ERCS anticipated in 2025, as well as enough excess capacity to support the projected build-out of 1,660 additional ERCs in 2035.

Costs are known for the most recent water storage project. This project included Reservoir #4 (1 MG), its access road, transmission lines, and a pump station. The entirety of this project can be considered excess capacity as the reservoir and source connection were located to be able to service all water pressure zones.

Reservoir #4 and Pump Station cost.....	\$751,001.87
Access Road to Reservoir #4 and associated infrastructure cost	919,587.58
Engineering, electrical, SCADA, survey, property acquisition, etc.....	<u>476,072.91</u>
Total Cost Attributable to Reservoir #4.....	\$2,146,661

1.5.3 Water Distribution

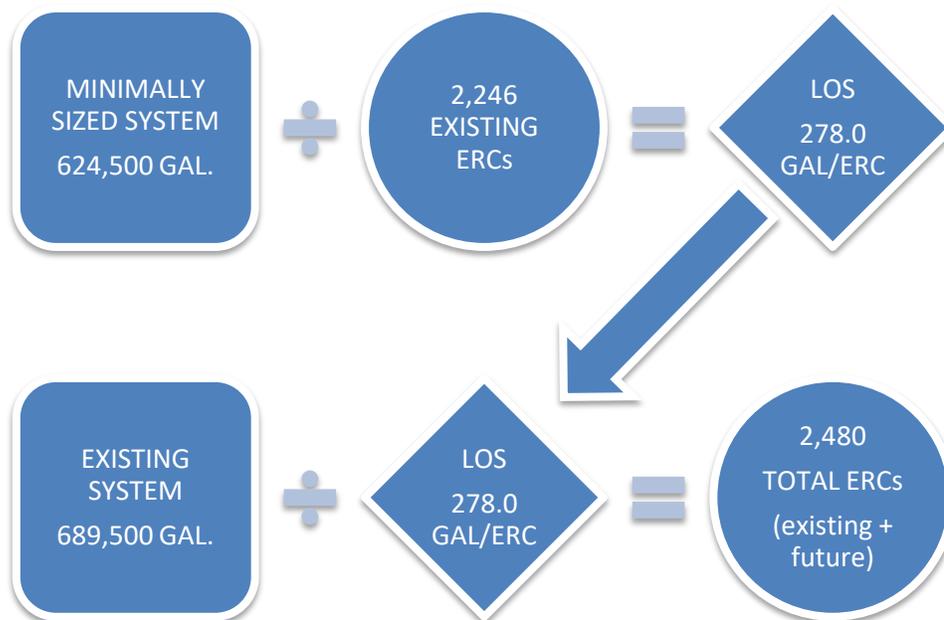
In preparation for future growth, South Weber City has upsized various distribution and transmission lines. The excess capacity in these lines will allow for developers to tie onto the existing system without causing the existing level of service to decline for the existing customers.

Water distribution systems are composed of interconnected and looped water lines. Identifying who, exactly, benefits from upsizing a water line is near impossible to determine. Therefore, the system was treated as a whole, minus the Cottonwood Drive area, and excess capacity of the system was determined as follows:

1. Recent projects (with known costs) that included intentionally upsized line were researched.
2. Using the water model for existing peak day demand, each segment of water line within each of project was downsized until the LOS flow rates and pressures for the existing customers was affected. This determined the minimum line size for that segment.

3. Once the minimum flow rates and pressures for the existing LOS were determined in the model, the volume of the system was used as the comparative unit in order to evaluate the excess capacity. The volume of a theoretically-determined, minimum-sized water distribution system was calculated by multiplying the linear footage of each size water line by its cross-sectional area. This total volume was divided by the total existing ERCs serviced to determine the minimum volume/ERC.
4. The existing water distribution system volume was determined, including the upsized lines. This volume was divided by the previously calculated level of service (minimum volume/ERC) to determine the total ERCs capable of being served while maintaining the existing level of service. Subtract the existing number of ERCs from this total numbers of ERCs to result in the excess ERCs.
5. The cost difference between the upsized line and the minimum line size was calculated.

Figure 1.5.3.1 – Water Distribution Excess Capacity Methodology



Applying this methodology to South Weber’s water system resulted in the following:

1. Total volume of minimally sized system – 624,500 gal.
2. Existing ERCs served – 2,246 (2,252 entire system minus 6 ERCs in Cottonwood Dr. service area)
3. Minimum volume/ERC – 278.0 gal./ERC
4. Total volume of existing system (including oversized lines) – 689,500 gal.
5. **Total ERCs able to be served by existing system** – 689,500 gal. ÷ 278.0 gal./ERC = **2,480 ERCs**
6. **Excess ERCs** – 2,480 – 2,246 = **234 excess ERCs**
7. **Upsize costs - \$122,243**

1.6 Future Development Needs

With so much ground that remains undeveloped, it is nearly impossible to predict where growth will happen over the next 10 years. The most active areas over the past few years have been the infill developments within the City where infrastructure is already available. Additionally, development is occurring adjacent to I-84 and near 475 East. Projects will be chosen, however, to serve the need when the development arises. Figure 7.1, Projects Map, in the CFP shows the planned project locations.

Table 1.6.1 shows the projects most likely to be constructed in the next 10 years. The column labeled "Impact Fee Eligible" are the portions of the projects that should be paid for through Impact Fees (i.e. System Improvements as defined in Utah Code 11-36a-102).

Table 1.6.1 – Most Likely Capital Improvement Projects

CFP Project Number	Project Description	Additional ERCs Served	Total Estimated Cost	Cost Breakdown	
				Replacement/ Deficiency	Impact Fee Eligible
1	Enter into contract with WBWCD for Impact Fee Pass-Through method of purchasing water	1,660	\$22,000	\$0	\$22,000
7	Connect Lincoln Lane and 2750 East; upsize to 8" 8075 South, 2575 East, and 2350 East (south of Deer Run Dr.); <u>upsized US 89 crossing at 8075 South to 12"</u> ; abandon existing 4" PSV and replace with new 8" PRV and line on Peachwood Dr.	45²	\$570,313	\$532,734	\$37,577
13	Construct Connection #4 to WBWCD's transmission line with pump station to pump to Zone 4	163³	\$820,000	\$0	\$820,000
		TOTALS	\$1,412,313	\$532,734	\$879,577

² Upsizing this crossing will directly affect the future development on the east side of US 89 (45 ERCs).

³ This project directly benefits the future development in future pressure zone 3 (163 ERCs).

2.0 Certification

Per Utah Code 11-36a-306 – Certification of impact fee analysis:

I certify that the attached impact fee facilities plan:

1. Includes only the costs of public facilities that are:
 - a. Allowed under the Impact Fees Act; and
 - b. Actually incurred; or
 - c. Projected to be incurred or encumbered within six years after the day on which each impact fee is paid;
2. Does not include:
 - a. Costs of operation and maintenance of public facilities;
 - b. Costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents; or
 - c. An expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement; and
3. Complies in each and every relevant respect with the Impact Fees Act.



Brandon K. Jones, P.E. – City Engineer

3.0 Bibliography

The Gordan Group. (n.d.). *Construction Cost Index-2016*. Retrieved August 1, 2016, from <https://www.rsmeans.com/products/books/2016-cost-data-books/construction-cost-indexes-2016.aspx>

Appendix A

Treated Water Impact Fee Facilities Plan (IFFP)

and Impact Fee Analysis (IFA)

July 2013

Weber Basin Water Conservancy District

TREATED WATER IMPACT FEE FACILITIES PLAN (IFFP) AND IMPACT FEE ANALYSIS (IFA)

JULY 2013



WEBER BASIN WATER
CONSERVANCY DISTRICT

PREPARED BY
WEBER BASIN WATER CONSERVANCY DISTRICT &
LEWIS YOUNG ROBERTSON & BURNINGHAM, INC.



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IMPACT FEE CERTIFICATION

IFFP CERTIFICATION

Lewis Young Robertson & Burningham, Inc. and Weber Basin Water Conservancy District jointly certify that the Impact Fee Facilities Plan (“IFFP”) prepared for treated water services:

1. includes only the costs of public facilities that are:
 - a. allowed under the Impact Fees Act; and
 - b. actually incurred; or
 - c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;
2. does not include:
 - a. costs of operation and maintenance of public facilities;
 - b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;
 - c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement; and
3. complies in each and every relevant respect with the Impact Fees Act.

LEWIS YOUNG ROBERTSON & BURNINGHAM, INC.
WEBER BASIN WATER CONSERVANCY DISTRICT

IFA CERTIFICATION

LYRB certifies that the Impact Fee Analysis (“IFA”) prepared for treated water services:

1. includes only the costs of public facilities that are:
 - a. allowed under the Impact Fees Act; and
 - b. actually incurred; or
 - c. projected to be incurred or encumbered within six years after the day on which each impact fee is paid;
2. does not include:
 - a. costs of operation and maintenance of public facilities;
 - b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;
 - c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;
 - d. offsets costs with grants or other alternate sources of payment; and
3. complies in each and every relevant respect with the Impact Fees Act.

LYRB makes this certification with the following caveats:

1. All of the recommendations for implementation of the IFFP made in the IFFP documents or in the IFA documents are followed by District Staff and elected officials.
2. If all or a portion of the IFFP or IFA are modified or amended, this certification is no longer valid.
3. All information provided to LYRB is assumed to be correct, complete, and accurate. This includes information provided by the District as well as outside sources.

LEWIS YOUNG ROBERTSON & BURNINGHAM, INC.

SECTION I: EXECUTIVE SUMMARY

The purpose of the Treated Water Impact Fee Facilities Plan (“IFFP”), with supporting Impact Fee Analysis (“IFA”), is to fulfill the requirements established in Utah Code Title 11 Chapter 36a, the “Impact Fees Act”, and help the Weber Basin Water Conservancy District (the “District”) plan necessary capital improvements for future growth. This document will address the future treated water infrastructure needed to serve the District through the next six to ten years, as well as the appropriate impact fees the District may charge to new growth to maintain the level of service (“LOS”).

The District has provided much of the information utilized in the analysis for the purposes of calculating impact fees. The majority of the District’s water is sold at wholesale pursuant to perpetual take-or-pay contracts. A portion of the District’s water is sold at retail to be used as secondary water for watering lawns, landscaping, etc. This IFFP and IFA only addresses treated water and does not include an analysis of secondary water. In addition, this document along with the recommended impact fee calculated herein, is only applicable to the creation of a District III water resource.

- ☞ **Impact Fee Service Area:** The service area for treated water impact fees includes all areas within the District. This document identifies capital projects that will help to maintain the same level of service enjoyed by existing residents into the future.
- ☞ **Demand Analysis:** The demand units utilized in this analysis are based on typical usage patterns measured in acre feet. As growth occurs within the District, additional acre feet of water will be required. The treated water capital improvements identified in this study are based on maintaining the current level of service.
- ☞ **Level of Service:** Since the district sells treated water through take-or-pay contracts, the level of service is considered to be one acre foot per year.
- ☞ **Excess Capacity:** This analysis calculates the impact fee for the creation of District III water resource. Thus, no excess capacity currently exists.
- ☞ **Capital Facilities Analysis:** A total of \$58,171,667 is identified as District-funded, growth related improvements over the next ten years. All of these costs are considered system improvements necessary to maintain the existing level of service.
- ☞ **Funding of Future Facilities:** Future growth related facilities will be funded utilizing impact fee revenue, utility fee revenue, and debt. However, the debt has not been included in the calculation of the impact fee since it has been included in the rate.

PROPOSED TREATED WATER IMPACT FEE

The tables below illustrate the fee associated with projects occurring within the next ten years. The proportionate share analysis determines the proportionate cost assignable to new development based on the proposed capital projects and the estimated acre feet served by the proposed projects.

TABLE I.1: IMPACT FEE PER ACRE FOOT

	TOTAL COST	COST TO GROWTH	ACRE FEET SERVED	FEE PER ACRE FOOT
Future Capital Facilities	\$58,171,667	\$58,171,667	6,000	\$9,695.28
Professional Expense	\$7,500	\$7,500	6,000	\$1.25
Total	\$58,179,167	\$58,179,167		\$9,697



TABLE I.2: IMPACT FEE PER EQUIVALENT RESIDENTIAL CONNECTION (ERC)

FEE PER ACRE FOOT	ACRE FEET PER ERC	IMPACT FEE PER ERC
\$9,697	0.45	\$4,363

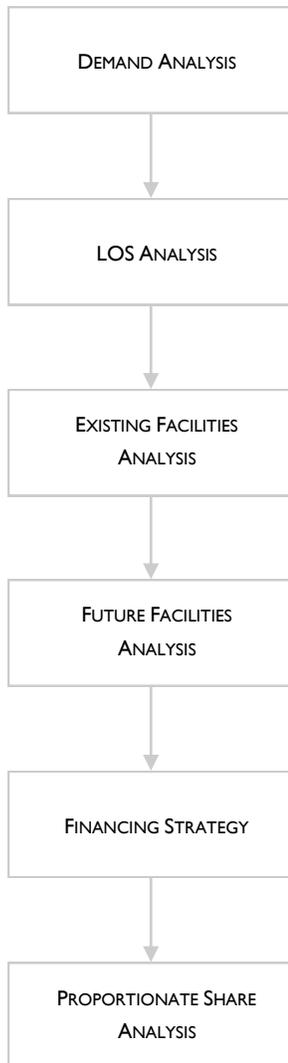
NON-STANDARD TREATED WATER IMPACT FEES

The District reserves the right under the Impact Fees Act to assess an adjusted fee that more closely matches the true impact that the land use will have upon public facilities.¹ This adjustment could result in a lower impact fee if the District determines that a particular user may create a different impact than what is standard for its land use.

¹ 11-36a-402(1)(c)

SECTION 2: GENERAL IMPACT FEE METHODOLOGY

FIGURE 2.1: IMPACT FEE METHODOLOGY



The purpose of this study is to fulfill the requirements of the Impact Fees Act regarding the establishment of an IFFP and IFA. The IFFP is designed to identify the demands placed upon the District’s existing facilities by future development and evaluate how these demands will be met by the District. The IFFP is also intended to outline the improvements which are intended to be funded by impact fees. The IFA is designed to proportionately allocate the cost of the new facilities and any excess capacity to new development, while ensuring that all methods of financing are considered. Each component must consider the historic level of service provided to existing development and ensure that impact fees are not used to raise that level of service. The following elements are important considerations when completing an IFFP and IFA.

DEMAND ANALYSIS

The demand analysis serves as the foundation for the IFFP. This element focuses on a specific demand unit related to each public service – the existing demand on public facilities and the future demand as a result of new development that will impact public facilities.

LEVEL OF SERVICE ANALYSIS

The demand placed upon existing public facilities by existing development is known as the existing “Level of Service” (“LOS”). Through the inventory of existing facilities, combined with the growth assumptions, this analysis identifies the level of service which is provided to a community’s existing residents and ensures that future facilities maintain these standards. Any excess capacity identified within existing facilities can be apportioned to new development. Any demand generated from new development that overburdens the existing system beyond the existing capacity justifies the construction of new facilities.

EXISTING FACILITY INVENTORY

In order to quantify the demands placed upon existing public facilities by new development activity, the Impact Fee Facilities Plan provides an inventory of the District’s existing system facilities. To the extent possible, the inventory valuation should consist of the following information:

- ☞ Original construction cost of each facility;
- ☞ Estimated date of completion of each future facility;
- ☞ Estimated useful life of each facility; and,
- ☞ Remaining useful life of each existing facility.

The inventory of existing facilities is important to properly determine the excess capacity of existing facilities and the utilization of excess capacity by new development.

FUTURE CAPITAL FACILITIES ANALYSIS

The demand analysis, existing facility inventory and LOS analysis allow for the development of a list of capital projects necessary to serve new growth and to maintain the existing system. This list includes any excess capacity of existing facilities as well as future system improvements necessary to maintain the level of service. Any demand generated from new development that overburdens the existing system beyond the existing capacity justifies the construction of new facilities.



FINANCING STRATEGY – CONSIDERATION OF ALL REVENUE SOURCES

This analysis must also include a consideration of all revenue sources, including impact fees, future debt costs, alternative funding sources and the dedication of system improvements, which may be used to finance system improvements.² In conjunction with this revenue analysis, there must be a determination that impact fees are necessary to achieve an equitable allocation of the costs of the new facilities between the new and existing users.³

PROPORTIONATE SHARE ANALYSIS

The written impact fee analysis is required under the Impact Fees Act and must identify the impacts placed on the facilities by development activity and how these impacts are reasonably related to the new development. The written impact fee analysis must include a proportionate share analysis, clearly detailing each cost component and the methodology used to calculate each impact fee. A local political subdivision or private entity may only impose impact fees on development activities when its plan for financing system improvements establishes that impact fees are necessary to achieve an equitable allocation to the costs borne in the past and to be borne in the future (UCA 11-36a-302).

² 11-36a-302(2)

³ 11-36a-302(3)

SECTION 3: SERVICE AREA, DEMAND, LOS, AND EXISTING FACILITIES

SERVICE AREAS

Utah Code requires the impact fee enactment to establish one or more service areas within which impact fees will be imposed.⁴ The impact fees identified in this document will be assessed to a single, district-wide service area.

It is anticipated that the growth projected over the next ten years, and through buildout, will impact the District's existing services. Water infrastructure will need to be expanded in order to maintain the existing level of service. Impact fees have become an ideal mechanism for funding growth-related infrastructure. The District's capital plan and this analysis are designed to accurately assess the true impact of a particular user upon the District's infrastructure and prevent existing users from subsidizing new growth. This analysis also ensures that new growth isn't paying for existing system deficiencies. Impact fees should be used to fund the costs of growth-related capital infrastructure based upon the historic funding of the existing infrastructure and the intent of the District to equitably allocate the costs of growth-related infrastructure in accordance with the true impact that a user will place on the system.

DEMAND UNITS

Assuming growth will increase as the District anticipates,⁵ estimated growth in demand would be approximately 600 acre feet of treated water annually. The total capacity of the District III water resource is expected to be 6,000 acre feet.⁶

TABLE 3.1: PROJECTIONS

YEAR	CUMULATIVE ACRE FEET	ANNUAL INCREASE IN ACRE FEET
2013		
2014	600	600
2015	1,200	600
2016	1,800	600
2017	2,400	600
2018	3,000	600
2019	3,600	600
2020	4,200	600
2021	4,800	600
2022	5,400	600
2023	6,000	600

Source: Weber Basin Water Conservancy District

LEVEL OF SERVICE STANDARDS

Since the district sells treated water through take-or-pay contracts, the level of service is considered to be one acre foot per year.

Impact fees cannot be used to finance an increase in the level of service to current or future users of capital improvements. Therefore, it is important to identify the water level of service currently provided within the District to ensure that the new capacities of projects financed through impact fees do not exceed the established standard. Current contracts for other water sources are based upon the delivery of acre feet per year, which includes source, storage and transmission.

EXCESS CAPACITY

This analysis calculates the impact fee for the creation of a District III water resource. Thus, no existing facilities or excess capacity currently exist.

⁴ UC 11-36a-402(a)

⁵ Black & Veatch report

⁶ An additional 3,000 acre feet is allocated to untreated water.

SECTION 4: CAPITAL FACILITY ANALYSIS

Since the District III water resource is all attributed to new growth, all of the costs shown below will be included in the calculation of the impact fee. The list of future capital projects has been provided by the District. A table illustrating the year each facility will likely be funded is shown in Appendix A.

TABLE 4.1: ILLUSTRATION OF CAPITAL IMPROVEMENTS

CAPITAL FACILITIES	TREATED
Willard - Raising the Dam	\$6,666,667
36-inch parallel Weber Aqueduct	\$2,000,000
Misc Pipeline - New & Replacement	\$15,000,000
M&I Pipeline - 36-inch - Layton 1/2 cost for growth	\$3,380,000
Kaysville Area wells	\$2,500,000
North Salt Lake area wells	\$1,250,000
Washington Terrace Well	\$375,000
Davis North WTP - expansion	\$4,000,000
Weber South WTP - expansion	\$5,000,000
Weber West WTP - 20 MGD	\$14,000,000
Raw Water Storage - 1 max day volume	\$2,000,000
Storage Reservoir - 1-4 MG	\$2,000,000
TOTAL	\$58,171,667

The District has determined the projects included in this Impact Fee Facilities Plan using capital project and engineering data, planning analysis and other information. The accuracy and correctness of this plan is contingent upon the accuracy of the data and assumptions. Any deviations or changes in the assumptions due to changes in the economy or other relevant information used by the District for this study may cause this plan to be inaccurate and require modifications.

SYSTEM VS. PROJECT IMPROVEMENTS

System improvements are defined as existing public facilities designed to provide services to service areas within the community at large and future public facilities that are intended to provide services to service areas within the community at large.⁷ Project improvements are improvements and facilities that are planned and designed to provide service for a specific development (resulting from a development activity) and considered necessary for the use and convenience of the occupants or users of that development.⁸ This analysis only includes the costs of system improvements related to new growth within the proportionate share analysis.

FUNDING OF FUTURE FACILITIES

The IFFP must also include a consideration of all revenue sources, including impact fees and the dedication of system improvements, which may be used to finance system improvements.⁹ In conjunction with this revenue analysis, there must be a determination that impact fees are necessary to achieve an equitable allocation of the costs of the new facilities between the new and existing users.¹⁰

In considering the funding of future facilities, the District has determined the portion of future projects that will be funded by impact fees as growth-related, system improvements. Impact fees are an appropriate funding and repayment mechanism of the growth-related improvements. Where applicable, impact fees will offset the cost of future facilities. However, impact fees cannot be used to fund non-qualified expenses (i.e. the costs to

⁷ UC 11-36a-102(20)

⁸ UC 11-36a102(13)

⁹ 11-36a-302(2)

¹⁰ 11-36a-302(3)

cure existing deficiencies, to raise the level of service, to recoup more than the actual cost of system improvements, the cost to fund overhead cannot be included in the calculation of impact fees. Other revenues such as utility rate revenue, grants, or loans can be used to fund these types of expenditures, as described below.

UTILITY RATE REVENUES/WATER SALES

Utility rate revenues or water sales serve as the primary funding mechanism for the District. Rates are established to ensure appropriate coverage of all operations and maintenance expenses, debt service coverage, and capital project needs. Impact fee revenues are generally considered non-operating revenues and help offset future capital costs.

GRANTS AND DONATIONS

Grants and donations are not currently contemplated in this IFFP. However, the impact fees will be adjusted if grants become available to reflect the grant monies received. A donor will be entitled to a reimbursement for the value of the improvements funded through impact fees if donations are made by new development.

IMPACT FEE REVENUES

Impact fees have become an ideal mechanism for funding growth-related infrastructure. Impact fees are charged to ensure that new growth pays its proportionate share of the costs for the development of public infrastructure. Impact fee revenues can also be attributed to the future expansion of public infrastructure if the revenues are used to maintain an existing level of service. Increases to an existing level of service cannot be funded with impact fee revenues. Analysis is required to accurately assess the true impact of a particular user upon the District infrastructure and to prevent existing users from subsidizing new growth.

DEBT FINANCING

In the event the District has not amassed sufficient impact fees to pay for the construction of time sensitive or urgent capital projects needed to accommodate new growth, the District must look to revenue sources other than impact fees for funding. The Impact Fees Act allows for the costs related to the financing of future capital projects to be legally included in the impact fee. This allows the District to finance and quickly construct infrastructure for new development and reimburse itself later from impact fee revenues for the costs of principal and interest.

While the capital facilities shown in this analysis will likely be funded through impact fees, the costs associated with financing the facilities has been included in the calculation of the rate and has not been included in the calculation of the impact fee.

EQUITY OF IMPACT FEES

Impact fees are intended to recover the costs of capital infrastructure that relate to future growth. The impact fee calculations are structured for impact fees to fund 100% of the growth-related facilities identified in the proportionate share analysis as presented in the impact fee analysis. Even so, there may be years that impact fee revenues cannot cover the annual growth-related expenses. In those years, other revenues may be used to make up any annual deficits. Any borrowed funds are to be repaid in their entirety through impact fees.

NECESSITY OF IMPACT FEES

An entity may only impose impact fees on development activity if the entity's plan for financing system improvements establishes that impact fees are necessary to achieve parity between existing and new development. This analysis has identified the improvements to public facilities and the funding mechanisms to complete the suggested improvements. Impact fees are identified as a necessary funding mechanism to help offset the costs of new capital improvements related to new growth. In addition, alternative funding mechanisms are identified to help offset the cost of future capital improvements.

SECTION 5: TREATED WATER IMPACT FEE CALCULATION

The calculation of impact fees relies upon the information contained in this analysis. Impact fees are calculated based on many variables centered on proportionality and level of service. **As a result of new growth, the water system is in need of expansion to perpetuate the level of service that the District has historically maintained.** The District has proposed the creation of the District III water resource. The District has provided the recommended capital projects that will maintain the established level of service.

PROPOSED TREATED WATER IMPACT FEE

The IFFP must properly complete the legislative requirements found in the Impact Fee Act if it is to serve as a working document in the calculation of appropriate impact fees. The following paragraphs describe the methodology used for calculating impact fees in this analysis.

PLAN BASED (FEE BASED ON DEFINED CIP)

Impact fees can be calculated using a specific set of costs specified for future development. The improvements are identified in the IFFP, CFP or CIP as growth related projects. The total project costs are divided by the total demand units the projects are designed to serve. Under this methodology, it is important to identify the existing level of service and determine any excess capacity in existing facilities that could serve new growth. In the case of Weber Basin Water Conservancy District, no excess capacity exists.

TREATED WATER IMPACT FEE CALCULATION

The tables below illustrate the fee associated with projects occurring within the next ten years. The proportionate share analysis determines the proportionate cost assignable to new development based on the proposed capital projects and the estimated acre feet served by the proposed projects.

TABLE 5.1: CALCULATION OF PROPORTIONATE IMPACT FEE

	TOTAL COST	COST TO GROWTH	ACRE FEET SERVED	FEE PER ACRE FOOT
Future Capital Facilities	\$58,171,667	\$58,171,667	6,000	\$9,695.28
Professional Expense	\$7,500	\$7,500	6,000	\$1.25
Total	\$58,179,167	\$58,179,167		\$9,697

A total of \$58.1 million is identified as the necessary future capital cost to maintain the level of service for new development activity. The professional expense includes costs to update the IFFP and IFA within the next ten years. The cost to growth for capital projects as well as the professional expense is applied to the acre feet projected over the planning horizon. The total fee per acre foot is estimated at \$9,697. The impact fee per connection is illustrated in the Table 6.2.

TABLE 5.2: IMPACT FEE PER ERC

FEE PER ACRE FOOT	ACRE FEET PER ERC	IMPACT FEE PER ERC
\$9,697	0.45	\$4,363

NON-STANDARD TREATED WATER IMPACT FEES

The District reserves the right under the Impact Fees Act¹¹ to assess an adjusted fee that more closely matches the true impact that the land use will have upon the District's treated water system. This adjustment could result in a different impact fee if evidence suggests a particular user will create a different impact than what is standard for its category.

¹¹ UC 11-36a-402(1)(c)

CONSIDERATION OF ALL REVENUE SOURCES

The Impact Fees Act requires the proportionate share analysis to demonstrate that impact fees paid by new development are the most equitable method of funding growth-related infrastructure. See Section 4 for further discussion regarding the consideration of revenue sources.

EXPENDITURE OF IMPACT FEES

Legislation requires that impact fees should be spent or encumbered within six years after each impact fee is paid. Impact fees collected in the next five to six years should be spent only on those projects outlined in the IFFP as growth related costs to maintain the LOS.

PROPOSED CREDITS OWED TO DEVELOPMENT

The Impact Fees Act requires that credits be paid back to development for future fees that will pay for growth-driven projects included in the Impact Fee Facilities Plan that would otherwise be paid for through user fees. Credits may also be paid to developers who have constructed and donated facilities to that District that are included in the IFFP in-lieu of impact fees. This situation does not apply to developer exactions or improvements required to offset density or as a condition of development. Any project that a developer funds must be included in the IFFP if a credit is to be issued.

In the situation that a developer chooses to construct facilities found in the IFFP in-lieu of impact fees, the decision must be made through negotiation with the developer and the District on a case-by-case basis.

GROWTH-DRIVEN EXTRAORDINARY COSTS

The District does not anticipate any extraordinary costs necessary to provide services to future development.

SUMMARY OF TIME PRICE DIFFERENTIAL

The Impact Fees Act allows for the inclusion of a time price differential to ensure that the future value of costs incurred at a later date are accurately calculated to include the costs of construction inflation. While an inflation component may be included in the impact fee analysis to reflect the future cost of facilities, it is not considered in the cost estimates in this study. The District may choose to include an annual inflation rate on projects or an annual inflation in the impact fee to account for the increase in capital costs over time.



APPENDIX A: TREATED WATER CAPITAL IMPROVEMENTS

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	TOTAL
Willard - Raising the Dam			3,333,333	3,333,333								
36-inch parallel Weber Aqueduct		2,000,000										
Misc Pipeline - New & Replacement	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	3,000,000	3,000,000	
M&I Pipeline - 36-inch - Layton 1/2 cost for growth	2,000,000	1,380,000										
Kaysville Area wells			500,000	1,000,000	1,000,000							
North Salt Lake area wells		500,000	750,000									
Washington Terrace Well	175,000	200,000										
Davis North WTP - expansion				4,000,000								
Weber South WTP - expansion						5,000,000						
Weber West WTP - 20 MGD								2,000,000	2,000,000	5,000,000	5,000,000	
Raw Water Storage - 1 max day volume										2,000,000		
Storage Reservoir - 1-4 MG					2,000,000							
Total Capital Projects	\$3,175,000	\$5,080,000	\$5,583,333	\$9,333,333	\$4,000,000	\$6,000,000	\$1,000,000	\$3,000,000	\$3,000,000	\$10,000,000	\$8,000,000	\$58,171,667

Appendix B

Sample Weber Basin

Water Supply Agreement

WATER SUPPLY AGREEMENT

BETWEEN THE WEBER BASIN WATER CONSERVANCY DISTRICT

AND _____ CITY

THIS AGREEMENT (this “Agreement”) is made this ____ day of _____, 20____, between the **WEBER BASIN WATER CONSERVANCY DISTRICT**, a water conservancy district organized under the laws of the State of Utah, with its principal place of business at Davis County, Utah, herein styled the “District”, and _____ **CITY**, a municipal corporation of the State of Utah, herein styled the “City”. The District and the City are herein sometimes referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

A. The District expects to have water available from the Weber River and other sources for irrigation, municipal, industrial and other uses and, subject to such availability, is willing to make a portion thereof available for use by the City.

B. The District and the City have determined that it is advantageous to the Parties and their customers to enter into this Agreement instead of entering into separate take-or-pay contracts or other arrangements with respect to the development of individual water resources and facilities and the supplying of water and related services.

C. The Impact Fees Act recognizes that political subdivisions may collect impact fees representing a “proportionate share” of the cost of water supply public facility improvements that are “owned or operated by or on behalf of a local political subdivision”. Utah Code Ann. § 11-36-102(12). The City is a political subdivision of the State of Utah. The City assesses and collects impact fees to cover the cost of capital improvements necessary to deliver water to new customers within the City. The City has determined that it will be more cost

effective and efficient to contract with the District to provide a portion of the water that will be delivered to the City's customers and for the District to construct, replace and operate capital facilities required to divert, treat, store and deliver that water for the benefit of the City and its customers.

D. The Parties intend that the City will collect an impact fee and remit to the District that portion of the fee to enable the District to recover its cost of acquiring and/or constructing from time to time the water supply, treatment and distribution facilities provided by the District as provided in this Agreement, the debt service on any debt incurred by the Conservancy District to finance or refinance such acquisition and/or construction, and other expenses properly allocable thereto, and that the Conservancy District's operation, maintenance and other expenses properly allocable thereto will be paid by the City, as provided for in this Agreement.

E. Each party has submitted this Agreement to its respective attorney for review as to proper form and compliance with applicable law, in satisfaction of Utah Code Ann. § 11-13-202.5(3).

AGREEMENT

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

SECTION 1

EFFECTIVE DATE; TERM; APPLICABILITY

Section 1.1 Recitals. The foregoing recitals are adopted by reference as part of this Agreement.

Section 1.2. Effective Date; Term. This Agreement shall become effective upon (i) its execution by both Parties, and (ii) the filing of an executed copy of this Agreement with the

keeper of records of each of the parties. Unless previously terminated by the mutual written agreement of the parties, this Agreement shall remain in full force and effect until the later of (i) forty (40) years from the effective date of the Agreement or (ii) such later date as may be agreed upon by the Parties.

Section 1.3 Applicability. The City shall modify and amend its capital facilities plan and to recalculate its impact fees to include water supply, treatment and distribution facilities that will be provided by the District pursuant to this Agreement. The City agrees, in good faith, to complete the legal requirements necessary to implement the new impact fees promptly. In this regard, the District agrees to cooperate with the City by providing such data and information as may be needed to identify and justify those facilities as part of the City's capital facilities plan and the inclusion of the same in the impact fee analysis, including, but not limited to, the amount of any debt service that the District expects to incur to finance or refinance the development, construction and replacement of such facilities. The City will remit to the District that portion of the impact fees collected by the City attributable to the water supply, treatment and distribution facilities to be provided by the District pursuant to this Agreement. The District will periodically conduct long term planning, as recognized in Section 2.1 of this Agreement, and changes in the District's long-term plan, and other factors, may cause it to change the Capital Charge allocable to the water supply, treatment and distribution facilities provided for the benefit of the City pursuant to this Agreement.

SECTION 2

WATER SUPPLY

Section 2.1 Long-Term Plan. Within sixty (60) days after execution of this Agreement and annually thereafter, the City shall submit to the District a written projection of its anticipated

water needs over the ensuing thirty (30) years. The District will use such projections, to the extent that the District expects to have water available to meet such needs as well as the needs of the District's other customers, in developing a plan ("Plan") contemplating the expansion and improvement of the District's water system and governing the anticipated acquisition, construction and/or replacement of facilities necessary to supply water within the City's service area (as well as to other customers of the District), with a planning horizon of approximately thirty (30) years or more. The District shall maintain the Plan in effect and update and revise it from time to time as the District deems necessary or advisable. The District shall maintain a copy of the Plan on file at its principal office, available for public inspection during the District's business hours. Upon request, a copy of the Plan shall be provided to the City, which may use the Plan in developing its own capital facilities plan and establishing impact fees to be charged by the City from time to time, and for any other purpose as otherwise deemed necessary or advisable by the City in authorizing and imposing the fees and/or assessments that it will collect in order to meet its obligations to pay the District hereunder.

Section 2.2. Sale of Water. To the extent consistent with the Plan (as amended from time to time by the District as above provided) and subject to the then availability of water and the terms and conditions of this Agreement, the District shall sell to the City the right to use that number of acre-feet of water for which the City has paid the Capital Charge required by paragraph 3.1 below. The water delivered hereunder shall meet current standards for drinking water as established by the Department of Environmental Quality of the State of Utah, the United States Environmental Protection Agency and any other governmental jurisdiction having authority effective on the date of delivery.

SECTION 3

CHARGES AND PAYMENTS

Section 3.1. Capital Charge. The District shall from time to time, with advance written notice of at least six (6) months, determine and inform the City of the amount of the fee or assessment (“Capital Charge”) per acre-foot of water subject to this Agreement, that the District has determined to be necessary to pay for the capital facilities that the District will develop, construct and replace from time to time to supply, treat and distribute said water, the debt service on any debt that it may incur to finance or refinance the development, construction and replacement of such facilities, and other capital expenses properly allocable thereto. The District agrees that all capital facilities on which the Capital Charge will be based will have a life expectancy of ten (10) or more years. The City shall levy said Capital Charges pursuant to existing legal requirements as a precondition of approving any development, granting any building permit, and providing water service to its customers, and shall use every reasonable effort to collect all such Capital Charges and pay them to the District. The City agrees that it will not approve any development activity (including, but not limited to, final plat approval), issue any building permit, or allow a connection to its water system until the applicable Capital Charge has been paid to the District. The City shall have no right to demand and receive water from the District pursuant to this Agreement except to the extent the City has levied said Capital Charges pursuant to existing legal requirements as part of the City’s impact fees, is prepared to remit the same to the District pursuant to Section 3.4.1 below, and has substantially complied with all other material requirements of this Agreement. The City agrees that it will not deliver any water received from the District pursuant to this Agreement to a connection to its water system until

the applicable Capital Charge has been collected and received by the City to be paid to the District pursuant to Section 3.4.1 below.

Section 3.2. O&M Charges. The City shall pay to the District a fee (“Fixed O&M Charge”) to cover the District’s operation, maintenance and other expenses properly allocable to making the water which is the subject of this Agreement available to the City, without regard to whether or not the City uses such water, and a reasonable fee (“Variable O&M Charge”) to cover the District’s operation, maintenance and other expenses properly allocable to providing the water which is used by the City under this Agreement. The Variable O&M Charge shall be imposed on the basis of the number of acre-feet of water delivered to the City by the District. The amount of the Fixed O&M Charge and the Variable O&M Charge shall be determined by the District based upon its annual operation, maintenance and replacement budget, which may include, but is not limited to (i) cost of water treatment, (ii) cost of water delivery, (iii) electrical charges and pumping costs, (iv) cost of maintaining the Weber Basin Project facilities, (v) the most current projections of deliveries by the District to its customers, (vi) any other impacts to the operation and maintenance of the District, and (vii) recovery of any amount by which Capital Charges hereunder are insufficient to cover the District’s actual costs and expenses referred to in Section 3.1 above. The District shall annually determine and inform the City of the amount of the Fixed O&M Charge and rate of the Variable O&M Charge to be applicable for the next succeeding calendar year. The District may also review and readjust the Fixed O&M Charge and/or the Variable O&M Charge rate whenever shortfalls in the District’s collections have caused or are reasonably expected to cause its operation and maintenance funds to be unduly depleted. The District shall give the City not less than six (6) months advance written notice of

any increase in the Fixed O&M Charge and/or the Variable O&M Charge resulting from the application of clause (vii) above.

Section 3.3. Security for Payments; Delinquency. The City 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 3.4 below, and hereby grants to the District a first lien upon the proceeds of each such sale to secure said payments. To the extent that the proceeds of such water sales are not adequate to pay the annual amounts due the District under Section 3.4 hereof, the Board of Trustees of the City shall annually levy such taxes and assessments as are allowed by law upon the property within the boundaries of the City as may be required to meet such deficit. The District may withhold, in whole or in part, delivery of water to the City if it is delinquent in the payment of any funds payable to the District under this Agreement. Any charge imposed by this Agreement is deemed delinquent if not made when due. All delinquent payments shall bear interest from the date the payment was due at eighteen per cent (18%) per annum. The District may also impose late charges to be paid by the City if it is delinquent by more than sixty (60) days in the payment of any funds due under this Agreement. Each payment by the City to the District shall be credited first to interest and late charges then owing and then to the delinquent balance.

Section 3.4. Billing and Payment.

Section 3.4.1. Capital Charges. The City shall collect the Capital Charges for all new platted subdivision lots and new connections within the City's jurisdiction as set forth in Section 3.1 above. Within thirty (30) days after the end of each calendar quarter during the term of this Agreement, the City shall compile a report detailing the total number of acre-feet of water

for which it has collected a Capital Charge for that quarter and submit the report to the District, along with the payment of all applicable Capital Charges.

Section 3.4.2. O&M Charges. No more frequently than each calendar quarter during the term of this Agreement, the District shall determine the amount of treated water delivered pursuant to this Agreement through the District's water system to the City for the preceding calendar quarter, and shall send a statement to the City for the Variable O&M Charge due to the District with respect to such deliveries, as well as the Fixed O&M Charge due hereunder for that calendar quarter. The City shall pay said Variable O&M Charge and Fixed O&M Charge within thirty (30) days after the date of such statement.

Section 3.4.3. Meter Bypass. Should the meter be bypassed or fail to operate for any reason beyond the reasonable control of the 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 City during that period and the City shall pay for water based upon that estimate.

SECTION 4

ADDITIONAL OBLIGATIONS OF THE PARTIES

Section 4.1. Operations. The City shall operate and maintain, without cost to the 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 4.2 Beneficial Use of Water. The basis, the measure, and limit of the right of the City to the use of District water shall rest perpetually in the beneficial application thereof. The City agrees to put the water purchased hereunder to beneficial use in accordance with law.

Section 4.3. Point of Delivery of District Water. Water furnished under this Agreement shall be delivered and measured to the City at a point _____

_____ or at such other point or points as may be mutually agreed upon by the Parties. 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 City 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 District will not charge the City any fee to connect such new facilities to existing facilities, but such new connections (including complete construction of the meter vaults) must be approved by the District and constructed according to the District's design requirements. The District will own, operate and be responsible for the meter at the point of delivery, all facilities within the meter vault which are upstream of the meter, and the meter vault and related structural appurtenances. The City will own, operate and be responsible for all facilities within the meter vault which are downstream of the meter. It shall not be the responsibility of the 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 District and the City. The 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 City shall provide sufficient storage, at its own expense, to maintain a near constant rate of flow from the District. The City shall take and use water under this and all other contracts between the City and the District in accordance with normal annual demand patterns not to exceed a summer daily peaking factor of 2.0, which is determined by the maximum daily flow rate divided by the average daily flow rate. The average daily flow rate is the total annual contracted water under this and all other contracts between the City and the District divided by 365. If such demand pattern is exceeded, a capacity surcharge will be added to the Fixed and Variable O&M Charge for each acre-foot of water contracted for or delivered.

The surcharge will be calculated at forty percent (40%) of the total water rate per acre foot of all contracted water multiplied by the difference between the actual daily summer peaking factor and the allowed daily summer peaking factor of 2.0. For example, if the actual daily summer peaking factor is 2.8, and the then total Fixed and Variable O&M rate is \$81.00, the surcharge will be \$25.92 per acre foot (.40 x \$81.00 x [2.8 – 2.0]).

Section 4.4. Back-Flow Prevention Program. The City shall be responsible to conduct and enforce an ongoing cross-connection control program throughout the City. This is required so as to ensure good quality water is delivered to the City residences, as well as to other District customers. The program must comply with applicable State regulations.

Section 4.5. Sale of District Water Limited. The City agrees not to sell the use of District water purchased under this Agreement to any person outside the boundaries of the City, as now or hereafter fixed, either on a permanent or temporary basis, without the advance consent in writing of the District.

Section 4.6. Accounting and Recordkeeping. The City shall maintain a standard set of books to account for (a) all acre-feet of water the right to use which it has purchased under this Agreement; (b) all money received and expended as provided by law; and (c) the disposition of all water delivered pursuant to this Agreement. The District shall have the right to inspect and copy such books and records during normal business hours from time to time during the term of this Agreement.

Section 4.7. Compliance with Federal and State Regulations on Pollution. Both the City and the District agree to comply fully with all applicable Federal laws, orders and regulations, and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to

thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants.

SECTION 5

WATER SHORTAGE

Section 5.1. General. In the event there is a shortage of 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 District, no liability shall accrue against the District, or any of its officers, agents or employees, for any damage, direct or indirect, arising therefrom and the payments to the District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortage allocation of municipal water shall have first priority. If there should ever be any shortage of municipal water, deliveries to the City shall be reduced in the proportion that the number of acre-feet of such shortage as determined by the District bears to the total number of acre-feet allocated for municipal use.

SECTION 6

WATER CONSERVATION

Section 6.1. Water Conservation and Secondary Systems. The City shall, at a minimum, take the following actions to conserve and protect water: (i) prepare and maintain a current water conservation plan which shall meet the requirements of, and any standards set forth by, the Utah Division of Water Resources; (ii) enact a water conservation rate structure for water use throughout its retail system; (iii) enact a time of day water use ordinance; (iv) enact appropriate landscape ordinances; and (v) evaluate and promote the use of secondary irrigation systems and water conservation measures within its jurisdiction.

SECTION 7

EXISTING CONTRACTS

Section 7.1. Existing Contracts. This Agreement is separate and distinct from and is for an allotment of water in excess of and in addition to, the following described contract(s) entered into between the Parties prior to the date of this Agreement (the “Existing Contracts”):

<u>Acre-feet</u>	<u>Contract Date</u>	<u>District Approved</u>
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The District will continue to provide water to the City pursuant to the terms of the Existing Contracts. In the event the City uses more water than is provided for under the terms of the Existing Contracts and this Agreement, the amount of such overuse shall be allocated to the most recent of the Existing Contracts and shall be subject to the District’s overuse policy then in effect.

SECTION 8

ADMINISTRATION

Section 8.1. Administration and Representatives. The District appoints Tage I. Flint, its General Manager, as its representative and initial contact for all matters relating to the District’s participation in this Agreement. The City appoints _____, - _____, as its representative and initial contact for all matters relating to the City’s participation in this Agreement. Should either of the representatives named above cease to be employed by the represented Party, unless the said Party otherwise notifies the other party to this Agreement in writing, the employee who replaces the prior representative (e.g., the City’s new _____) shall become the new representative of that Party for purposes of this Agreement. Either Party may, at any time, change the designation of its representative by

providing written notice to the other Party. 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. The District is a wholesale provider of culinary water to municipalities, local districts and other wholesale customers. 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 District, and the proportionate part of those facilities for which the City pays a Capital Charge as provided in this Agreement will be used to supply, treat and distribute such water for the use and benefit of the City. 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 8.2. Personnel Status. The District and the City employees providing services pursuant to or consistent with the terms of this Agreement are solely the officers, agents or employees of the employing entity. Each Party shall assume any and all liability for the payment of salaries, wages or other compensation due or claimed to be due its employees, including worker's compensation claims, and each Party shall hold the other harmless therefrom. The District shall not be liable for compensation or indemnity to any City employee and the City shall not be liable for compensation or indemnity to any District employee for any injury or sickness arising out of his or her employment, and each Party hereby agrees to hold the other Party harmless against any such claim.

Section 8.3. No Joint Venture. This Agreement shall not constitute a joint venture between the District and the City. Neither Party is nor shall be the legal representative or agent of the other Party for any purpose and a Party shall have no power to assume or create, in writing

or otherwise, any obligation or responsibility of any kind, express or implied, in the name of or on behalf of the other Party, and neither Party shall have any obligation with respect to the other Party's debts and other liabilities.

Section 8.4. 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 8.5. 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 9

MISCELLANEOUS PROVISIONS

Section 9.1. Water Conservancy District 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 the rules and regulations of the Board of Trustees of the District, as the same have been and may hereafter be supplemented or amended.

Section 9.2. 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 District.

Section 9.3. Interpretation. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah. 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 Agreement. 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 Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement 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.

Section 9.4. 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 9.5. 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 any one 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 9.6. 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 9.7. Resolution Required. This Agreement shall not be effective until approved by a resolution of the governing body of each Party. The individuals signing this Agreement on behalf of the District represent and warrant, through their signatures, that the execution of this Agreement has been approved by a resolution duly adopted by the governing authority of the District. Similarly, the individuals signing this Agreement on behalf of City represent and warrant, through their signatures, that the execution of this Agreement has been approved by a resolution duly adopted by the governing authority of the City. Each party agrees that a signed copy of this Agreement will be filed with the keeper of public records of the said Party.

Section 9.8. 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 District or the City as set forth below or delivered by confirmed telefax to the telephone numbers listed below:

If to the District

Weber Basin Water Conservancy District
Attention: General Manager
2837 East Highway 193
Layton, UT 84040
Telefax (801) 544-0103

If to the City:

_____ City
Attention: _____

Telefax: (____) _____

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

Section 9.9. 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 9.10. 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 9.11. 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 9.12. 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 9.13. Waste Water, Seepage Water and Return Flow. The reuse of water delivered pursuant to this Agreement is not allowed except upon the prior written authorization of the District and, if applicable, the United States. The waste, seepage, or return flow from water delivered pursuant to this Contract shall belong to the District or the United States for the use and benefit of the Weber Basin Project.

[Remainder of Page Intentionally Blank]

[Signature Page Follows]

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

_____ **CITY**
_____, Mayor

ATTEST:

City Recorder

Approved as to form: _____
City Attorney

**WEBER BASIN WATER CONSERVANCY
DISTRICT**

Charlene M. McConkie, President

ATTEST:

Tage I. Flint, Secretary

Approved as to form: _____
District Attorney

