

EXCHANGE AGREEMENT

This Exchange Agreement (the “Agreement”) is made and entered into by and between the LaVerkin Bench Canal Company, a not for profit corporation organized under the laws of Utah (the “Company”), and the City of LaVerkin, Utah, a municipal corporation and body politic of Utah (“City”).

RECITALS

- A. The City is a municipal corporation of Utah that provides among other services, water service to lands within the City’s boundaries.
- B. The City, from time to time, needs to acquire additional water rights and water diversion and delivery facilities to meet the growing demand for water by the City’s residents.
- C. Company is a nonprofit corporation organized to acquire and distribute waters to its shareholders and has acquired certain water rights, diversion, transportation and distribution facilities, and financial assets that the City desires to acquire and that Company desires to dispose of.
- D. Company is willing to exchange the Company’s water rights, diversion, transportation and distribution facilities, and financial assets to the City and the City is willing to acquire the Company’s water rights, diversion, transportation and distribution facilities, and financial assets from Company pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein the parties agree as follows:

1. Conveyance of Water System. Company agrees to convey and assign to the City, and the City agrees to accept from Company, the Company’s water rights, diversion, transportation and distribution facilities, and financial assets, consisting of the following:

1.1 All Company’s right, title, and interest in and to Water Right Nos. 81-2477 (1640.22 acre feet), 81-2481 (20.0 acre feet), and 81-4334 (990.0 acre feet) for a total of 2650.22 acre feet (the “Water Rights”), which shall be free and clear of all liens, claims and encumbrances and which shall be conveyed to the City by Quit Claim Deed.

1.2 All Company’s right, title, and interest in and to the existing diversion, transportation, and distribution facilities. The transportation and distribution facilities consist of the following approximate lengths of pipelines:

- a) 6,085 feet of 1-inch pipeline;
- b) 3,165 feet of 2-inch pipeline;

- c) 24,025 feet of 3-inch pipeline;
- d) 9,795 feet of 4-inch pipeline;
- e) 8,725 feet of 6-inch pipeline;
- f) 5,865 feet of 8-inch pipeline;
- g) 5,550 feet of 10-inch pipeline;
- h) 3,125 feet of 12-inch pipeline; and
- i) 9,905 feet of 15-inch pipeline.

These pipelines together with associated valves and other appurtenances, and all rights-of-ways and easements are referred to as the "Delivery System Assets." A map showing the location of the Delivery System Assets is attached as Exhibit A.

1.3 All Company's right, title, and interest in and to that certain contract with the Washington County Water Conservancy District, dated July 17, 1987, a copy of which is attached hereto as Exhibit B, the "District Contract."

1.4 All Company's right, title, and interest in and to its accounts receivable, cash on hand, and investments (including certificates of deposit in the amount of \$), the "Financial Assets."

1.5 The Water Rights, the Delivery System Assets, the District Contract, and the Financial Assets described in Subsections 1.1, 1.2, 1.3, and 1.4 above are collectively referred to in this Agreement as the "Company Property."

2. Consideration. In consideration for the Company's conveyance of the Company Property to City, City agrees to: (a) perform the Company's purposes, objects and obligations of water delivery to those entitled thereto; and (b) construct, operate, maintain, replace, and expand the Delivery System Assets to accomplish water delivery to those entitled thereto.

3. City's Obligations to Existing Stockholders. As the owner of the Company Property, the City agrees as follows:

3.1 To purchase the stock of those Company Stockholders who desire to sell their stock prior to, or contemporaneous with, the execution of this Agreement at a purchase price of \$2,000/share.

3.2 To deliver an executed Water Delivery Contract wherein the City agrees to deliver that quantity of water to which a Company Stockholder is entitled to receive under shares held in Company in exchange for the surrender and cancellation of the Company Stockholder's stock certificate(s) issued by Company. Each issued and

outstanding share in Company shall be equivalent to 1/600th of the water available to the Company under its Water Rights (approximately 4.4 AF/share under full supply conditions), a “Share Equivalent.” The Water Delivery Contract shall be substantially in the form attached as Exhibit C hereto. Each Company Stockholder that surrenders and cancels stock in the Company in exchange for a Water Delivery Contract shall be a “Contract Holder.”

3.3 To operate, maintain, repair, replace, and extend the Delivery System Assets in a reasonable and prudent manner to allow the delivery of water to those entitled to its use.

3.4 To set water rates, charges and fees applicable to the Contract Holders in a manner consistent with the provisions of the Water Delivery Contracts, without influence from any other City fiscal consideration or City fund; and to deposit the water rates, charges, and fees received from Contract Holders into the enterprise funds described in paragraph 3.7, below. Water rates, charges and fees applicable to the Contract Holders shall not exceed the rates, charges, or fees required to operate, maintain, repair and replace the Delivery System Assets described in subsection 1.2. Financial resources derived from Contract Holders shall not be diverted to other City funds or for other City purposes.

3.5 Not to commit to the delivery of water under the Water Rights in amounts that will prevent the City from delivering to the Contract Holders those waters committed to be delivered under the Water Delivery Contracts.

3.6 Not to divert or utilize the Financial Assets to, or for, any City fund or purpose other than the enterprise funds established under paragraph 3.7 below. The Financial Assets shall be used exclusively for the operation, maintenance, repair, and replacement of the Delivery System Assets described in subsection 1.2.

3.7 To establish and maintain one or more independent enterprise funds into which the Financial Assets, revenues, charges, and fees derived from the Contract Holders shall be deposited. These funds shall be operated and maintained independent of, and autonomous from, all other City funds and purposes. No financial resources in these enterprise funds may be diverted from these funds to any other City fund or for any other City purpose. The financial resources of these funds shall be used exclusively for the operation, maintenance, repair or replacement of the Delivery System Assets described in subsection 1.2 and to satisfy any claims, actions, suits and other proceedings against Company, whether pending, threatened, or otherwise known to Company and for any obligation regarding tax reporting or payment and costs associated with their filings.

4. Dissolution of Company; Appointment of Contract Holders to Water Board. Within a reasonable time after Closing, Company officers, in cooperation with the City, will wind up the Company affairs and file Articles of Dissolution to dissolve the Company. Subsequent to the Company’s dissolution, City officials shall, through the applicable nomination and appointment process, maintain the composition of the LaVerkin City Water Board, the

“Board,” so that at all times a majority of the Board’s membership shall be Contract Holders. City officials or employees who are members of the Board and also Contract Holders shall be considered Contract Holders for the purposes of this provision.

5. Closing. The transaction contemplated by this Agreement shall be finalized in LaVerkin, Utah at the City office at a day and time to be agreed upon by the parties.

6. Items to be Delivered by Company at Closing. On or before the Closing Date, Company shall deliver into escrow the following in a form acceptable to the City:

6.1 A Quit Claim Deed conveying Company’s title to the Water Rights to the City, duly executed and acknowledged by Company.

6.2 A Quit Claim Deed conveying Company’s title to its easements and right-of-ways duly executed and acknowledged by Company;

6.3 A Bill of Sale conveying Company’s title to the Delivery System Assets to the City, duly executed and acknowledged by Company.

6.4 An attorney’s opinion or a water title insurance and report acceptable to the City, opining that upon executing and recording of the quit claim deed conveying title to the Water Rights to the City that title to the Water Rights will be vested in the City free and clear from all liens, claims and encumbrances.

6.5 A resolution in form acceptable to the City from Company’s board of directors indicating that Company has full authority to convey and transfer to the City the Company property, and that Company’s board of directors has followed all required procedures of Company’s articles of organization, operating agreement, bylaws and other operating documents for so doing, including but not limited to seeking input and obtaining permission from Company’s shareholders by vote, if necessary.

6.6 Such other documents as may be reasonably required by the City evidencing the authority of Company to consummate the transaction contemplated at the closing.

7. Items to be Delivered by Company at Closing. On or before the Closing Date, Company shall deliver into escrow the following in a form acceptable to the City:

7.1 A Quit Claim Deed conveying Company's title to the Water Rights to the City, duly executed and acknowledged by Company.

7.2 A Quit Claim Deed conveying Company’s title to its easements and rights-of-ways duly executed and acknowledged by Company;

7.3 A Bill of Sale conveying Company's title to the Delivery System Assets to the City, duly executed and acknowledged by Company.

7.4 An attorney’s opinion acceptable to the City opining that upon execution and recording of the quit claim deed conveying title to the Water Rights to the City that

title to the Water Rights will be vested in the City free and clear from all liens, claims and encumbrances.

7.5 A list of all pending, threatened, or contemplated claims, actions, suits, or other proceedings against the Company, known to, or of which, Company may be aware, and to which the Company Property may be subject to satisfy.

7.6 Such other documents as may be reasonably required by the City evidencing the authority of Company to consummate the transaction contemplated at the closing.

8. Items to be Delivered by the City at Closing. On or before the Closing Date the City shall deliver or cause to be delivered into escrow the following in a form acceptable to Company:

8.1 An executed Water Delivery Contract for each Company Stockholder that elects to retain Equivalents represented by the number of shares the Company Stockholder surrenders to the City for cancellation.

8.2 An assumption by the City of the pending, threatened, or contemplated claims, actions, su

9. Company's Representations and Warranties. Company hereby makes the following representations and warranties pertaining to the Company Property and agrees that such representations and warranties shall be applicable as of the Closing Date.

9.1 Company shall convey title to the Water Rights and the Delivery System Assets to the City free and clear of all liens, claims, security interests, encumbrances or adverse interests of any kind whatsoever subject to any exceptions that may be approved by the City.

9.2 That except for those claims, actions, suits and other proceedings identified in paragraph 7.5 above, the Company has not received any notice or is otherwise aware of any claims, actions, suits or other proceedings either pending, threatened or, to the best of its knowledge, contemplated by any governmental agency, entity or person that might constitute a claim against the Company Property or interfere with the contemplated transaction.

9.3 Company shall have the full capacity, right, power and authority to enter into this Agreement and to make the transactions contemplated herein.

9.4 This Agreement constitutes a valid and legally binding obligation of Company, enforceable in accordance with its terms.

9.5 Company is not in default in any respect of any judgment, order, writ, injunction, decision, law, ordinance or regulation of any court or governmental authority

14. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

15. Entire Agreement. This Agreement shall constitute the entire agreement between the parties and supersedes any prior understanding, representation, or agreement of the parties regarding the subject matter hereof.

16. Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

17. No Third Party Beneficiaries. Except for Company stockholders that exchange their shares in Company for a Water Delivery Contract, this Agreement is not intended to be a third party beneficiary contract for the benefit of any third parties, and no such persons shall have any cause of action against Company or the City for any breach or default by any party hereunder, or shall have any rights hereunder that would, in any way, restrict the parties' right to modify this Agreement at any time or in any manner.

18. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

19. No Waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly provided herein. Either party may, by notice delivered in the manner provided in this Agreement, but shall not be obligated to, waive any of its rights or any conditions to its obligations hereunder, or any covenant or duty of any other party. No waiver shall affect or alter the remainder of this Agreement, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

20. Rights and Remedies. The parties shall have all rights and remedies provided under Utah law for a breach or threatened breach of this Agreement, these 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.

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

22. Authorization. Each individual executing this Agreement does thereby represent and warrant to each other so signing that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she signs.

23. 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.

IN WITNESS THEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

City of LaVerkin

LaVerkin Bench Canal Company

By:

By:

Its:

Its: _____

Date:

Date:

EXHIBIT C
CITY OF LaVERKIN, UTAH
WATER DELIVERY CONTRACT
in Exchange for Stock in
LaVerkin Bench Canal Company

THIS WATER DELIVERY CONTRACT is issued in conformance with the terms and conditions of that certain Exchange Agreement, the “Agreement,” entered into by and between LaVerkin Bench Canal Company and the City of LaVerkin, dated _____, 2006, the “Agreement,” a copy of which is affixed hereto and incorporated by reference herein. All capitalized terms herein shall have the meaning set forth in the Agreement.

NOW, THEREFORE, THE UNDERSIGNED, City of LaVerkin, the “City,” in consideration of the mutual covenants contained in the Agreement, hereby certifies as follows:

1. Delivery of Water. In exchange for the surrender and cancellation of Stock Certificate No. _____ for _____ shares of stock issued by LaVerkin Bench Canal Company to _____, City hereby commits to deliver to and its legal successors-in-interest, the “Contract Holder,” one Share Equivalent for each full share in LaVerkin Bench Canal Company surrendered by Contract Holder and cancelled, subject to the terms and conditions contained in this Water Delivery Contract.

2. Transfer of Interest. This Water Delivery Contract may be transferred, assigned, or exchanged, in whole or in part, pursuant to a written assignment, in the form attached as Exhibit 1 hereto, the “Assignment,” which shall set forth the name and address of the transferor, the name and address of the transferee, and the number of Share Equivalents to be transferred pursuant to the Assignment. The Assignment shall be signed by the Contract Holder (transferor) and the transferee, acknowledged before a notary public, and shall be authorized by signature of the City’s Mayor thereon. A copy of this Water Delivery Contract shall be affixed to the Assignment at the time of delivery thereof by the transferor to the transferee. No assignment of any ownership interest herein in excess of the total number of Share Equivalents authorized herein shall be effective. The original of the duly executed and acknowledged Assignment shall be retained by the transferee, and a copy thereof shall be delivered by the transferee to the City for purposes of accounting as set forth herein.

3. Withholding Delivery; Termination. In the event Contract Holder defaults in any payment due under this Water Delivery Contract, and Contract Holder’s default remains uncured for a period of 180 days after Contract Holder’s receipt of written notice of its default, the City at its sole discretion shall be entitled to withhold delivery of water and terminate this Water Delivery Contract and/or pursue all other remedies available to the City. In collecting the charges owed, no action taken by the City under this paragraph shall relieve Contract Holder of its obligation to pay any sum owed to the City.

4. Water Rates and Assessments. City shall, on a monthly, quarterly, semi-annual, or annual basis, charge Contract Holder for the water delivered under this Water Delivery Contract those charges adopted by City's legislative body consistent with the Agreement.

5. Use of Water. The waters to be delivered under this Water Delivery Contract shall be used on the LaVerkin Bench more particularly described as those lands bounded on the south by the Virgin River, on the north and west by LaVerkin Creek and on the east by the Hurricane cliffs.

The Contract Holder may rent or lease waters under this Water Delivery Contract for use on lands within the LaVerkin Bench, but shall be required, prior to the rent or lease to notify the City. Rented or leased water will be assessed an annual fee of \$25.00 for administrative and related costs to City and charged to the renter. The amount of this administrative fee may be increased from time to time upon recommendation of the Water Board and adoption by the City's legislative body. However, the Contract Holder is ultimately responsible for payment of all water charges and for any fees, fines or assessments relating to the use or misuse of water under this Water Delivery Contract, regardless of whether the water is used by the Contract Holder, or rented to others.

All water use shall be reasonable and made with care to conserve and utilize the available water effectively. After delivered by the City, water use is the sole and exclusive responsibility of the Contract Holder.

6. Extensions. In the event the Contract Holder desires water service at a location within the LaVerkin Bench not presently served by the Delivery System Assets, the Contract Holder shall be responsible for the costs of labor and materials to extend the required service lines as set out in City ordinances and regulations.

7. Capital Facilities. The city shall develop a capital facilities plan for the Delivery System Assets and charge impact fees as appropriate.

8. New Development. The City will require that all new irrigation lines be installed in the streets and that they comply with the City's design standards set out in its ordinances and regulations.

9. Force Majeure. The City is not a guarantor of the delivery of any water, or water under a given pressure, to Contract Holder as against drought, adverse claims, acts of God, the acts or omissions of other water supply entities from whom the City acquires water or any other matters beyond the City's reasonable control.

ISSUED this ____ day of _____, 2006.

City of LaVerkin

By

Mayor

Exhibit 1

**ASSIGNMENT OF OWNERSHIP INTEREST
IN CITY OF LAVERKIN, UTAH
WATER DELIVERY CONTRACT**

_____, whose address is _____
("Transferor"), hereby transfers, and assigns to
whose address is _____ ("Transferee"), all
transferor's right, title, estate and interest in _____ Share Equivalents under
that certain Water Delivery Contract issued by the City of LaVerkin, Utah to
dated _____, 2006, a copy of which is attached hereto.

TRANSFEROR (Contract Holder):

(Print Name)

(Sign Name)

TRANSFEEE:

(Print Name)

(Sign Name)

(ACKNOWLEDGMENTS ON NEXT PAGE)

ACKNOWLEDGMENTS

STATE OF UTAH)

..... : ss.

County of _____)

On the ____ day of _____, 20____, personally appeared before me _____ personally known to me, or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument as the Transferor, and who acknowledged that he executed the same.

Notary Public

STATE OF UTAH)

: ss.

County of _____)

On the ____ day of _____, 20____, personally appeared before me _____ personally known to me, or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument as the Transferee, and who acknowledged that he executed the same.

Notary Public