

RESERVOIR STORAGE CAPACITY  
AGREEMENT  
(Wilkinson Reservoir)

THIS RESERVOIR STORAGE CAPACITY AGREEMENT (Wilkinson Reservoir) (this "Agreement"), is entered into this 17 day of July, 2014, by and between MOUNTAIN GREEN SECONDARY WATER COMPANY, a Utah nonprofit corporation ("Mountain Green"), and COTTONWOOD MUTUAL WATER COMPANY, a Utah nonprofit corporation ("CMWC"). Mountain Green and CMWC are sometimes referred to herein individually as a "party" and collectively as the "parties."

RECITALS

WHEREAS, Mountain Green is a valid and existing Utah nonprofit corporation that was established to provide irrigation/secondary water to its shareholders in a portion of Morgan County; and

WHEREAS, CMWC is a valid and existing Utah nonprofit corporation that was established to provide water service to its shareholders in a portion of Morgan County for municipal and industrial use; and

WHEREAS, CMWC is the owner of a reservoir located in the E1/2 of SW1/4 and W1/2 of SE1/4 of Section 30, T5N, R2E, SLBM, commonly referred to as the Wilkinson Reservoir (the "Reservoir"), and is also the owner of the parcel upon which the Reservoir is located, County Parcel ID No. 00-0004-8551 ("Reservoir Parcel"); and

WHEREAS, the Reservoir has a capacity of at least 250 acre-feet of water; and

WHEREAS, CMWC is, or may become, the owner of Exchange E1242 (evidenced by Water Right No. 35-8243), under which 50 acre-feet of water is allowed to be stored in and released from the Reservoir, and in exchange 50 acre-feet of water can be diverted from a well ; and

WHEREAS, CMWC is, or may become, the owner of additional water rights under which water would be allowed to be stored in and released from the Reservoir to compensate for the diversion of water from one or more wells; and

WHEREAS, there exist or may exist certain additional, undefined and unverified claims to the right to use capacity in the Reservoir by one or more third parties (the "Other Capacity Claimants"); and

WHEREAS, Mountain Green operates certain water storage facilities, and is in need of additional water storage facilities in order to provide irrigation/secondary water to its shareholders throughout the irrigation season; and



WHEREAS, CMWC is willing to provide storage capacity in the Reservoir to Mountain Green on a space available basis; and

WHEREAS, Mountain Green and CMWC desire to enter into a written agreement allowing Mountain Green to store water in the Reservoir and governing the relationship, including terms of use and payment, between the parties.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the sufficiency of said consideration being hereby acknowledged, the parties agree as follows:

### TERMS AND CONDITIONS

1. Storage Capacity in Reservoir. Pursuant to the terms of this Agreement, CMWC grants to Mountain Green the right to store up to one hundred and fifty (150) acre-feet of water in the Reservoir on a space available basis. Such right to store shall exist for any calendar year or portion thereof during the term of this Agreement unless, prior to the beginning of the calendar year, Mountain Green provides written notice to CMWC that Mountain Green does not wish to utilize any storage during the ensuing calendar year. Such election by Mountain Green shall not prejudice Mountain Green's right to utilize storage during the next following calendar year. Available storage capacity in the Reservoir shall be allocated in the following order of priority: First, to CMWC, up to the full available capacity in the Reservoir, for water rights now held, or in the future acquired by, CMWC; **Second, to Other Capacity Claimants to the extent the rights of such Other Capacity Claimants to utilize storage capacity owned by CMWC are established by court order, or through reasonable settlement of legal proceedings brought against CMWC;** and Third, to Mountain Green, up to 150 acre-feet of storage. **CMWC agrees not to settle any legal proceedings brought against CMWC by Other Capacity Claimants, which claims are being defended by Mountain Green under the terms of Section 8 hereof, without the reasonable consent of Mountain Green.** If there is no available storage capacity in the Reservoir for Mountain Green to utilize, Mountain Green may terminate this Agreement by providing written notice to CMWC. The rights granted by CMWC hereunder represent merely the right to utilize storage capacity in a privately owned facility, and CMWC in no way represents or warrants that Mountain Green's water rights have a "storage component" under applicable state law. Mountain Green represents that water under its water rights may be legally stored in the Reservoir, or that it will seek and obtain such right from the Utah Division of Water Resources.

2. Operation of Reservoir. Mountain Green does not acquire any rights to operate, or direct the operation of, the Reservoir by virtue of the capacity rights in the Reservoir granted in this Agreement. All such rights of operation are retained by CMWC. CMWC shall not be required to operate and maintain the Reservoir in such condition as to maintain sufficient space available capacity for Mountain Green; provided, however, that CMWC shall not release water from the Reservoir attributable to Mountain Green's storage without reasonable cause. By way of example, and not limitation, releasing water for the purpose of providing capacity for anticipated runoff or flood flows, or in compliance with the orders of any judicial or administrative body with appropriate jurisdiction, would be considered to have been done with reasonable cause. CMWC shall have no responsibility to maintain pipelines, conduits, ditches, canals, intake facilities or similar equipment or facilities, except to the extent necessary to meet CMWC's own needs. Mountain Green represents that it controls adequate conveyance facilities to transport water to the Reservoir in sufficient quantities to meet its needs, and acknowledges that CMWC shall not be



responsible for assuring or maintaining the ability to fill the Reservoir.

3. Annual Maintenance and Operation Costs. Mountain Green agrees to pay a share of all costs for the annual maintenance and operation costs associated with the Reservoir, as calculated below, for each calendar year during the term hereof, except calendar years for which Mountain Green has opted not to utilize storage capacity by delivery a notice to CMWC in accordance with Section 1 above. Maintenance and operation costs shall include both direct and indirect costs associated with the Reservoir, including but not limited to maintenance and repairs associated with the Reservoir (excluding projects described in Section 4 of this Agreement), liability insurance costs, and a share of CMWC overhead. The portion of such annual costs payable by Mountain Green (the "Mountain Green Percentage"), shall be a fraction, the numerator of which is the lesser of 150 acre-feet, or the functional storage capacity in the Reservoir actually available to Mountain Green during the year, and the denominator of which is the total available capacity in the Reservoir during the year. In addition, Mountain Green shall pay 100% of direct costs, if any, incurred by CMWC solely by reason of Mountain Green's storage capacity. At the end of each irrigation season, CMWC shall calculate the amount owed by Mountain Green and shall provide such calculation to Mountain Green, along with supporting documentation reasonably necessary and/or requested by Mountain Green to verify the costs, the calculation of the Mountain Green Percentage, and the determination of the sum due. Mountain Green shall pay the costs as soon as practicable, but in any event not later than sixty (60) days after receipt of invoice. Any disputes regarding the calculation of amounts owed by Mountain Green shall be resolved as provided for in Section 12 of this Agreement.
4. Major Maintenance, Repair, or Replacement Projects. For any maintenance, repair, or replacement project that exceed \$10,000, calculated individually within each calendar year, the parties shall meet and confer regarding the project, including the necessity of the project, the timing of the project, the funding of the project, and other issues and considerations. If the parties agree to pursue the project together, Mountain Green agrees to pay the percentage of the costs of the project equal to the Mountain Green Percentage. If Mountain Green determines not to participate in the project, Mountain Green may terminate this Agreement and thereby forfeit any and all rights to store and/or divert water from the Reservoir.
5. Term. This Agreement shall remain in force and effect for an initial term of five (5) years starting with an effective date of June 1, 2014, and shall be subject to extension at the option of Mountain Green for four (4) additional five (5) year renewal terms by giving CMWC written notice of such extension at least sixty (60) days prior to the end of the then effective term; provided that such renewals may be conditioned by CMWC upon additional terms reasonably designed to address issues or concerns that may arise. This Agreement may be terminated by either party pursuant to the provisions herein. If during the initial term of this Agreement or any extension thereof, changed circumstances occur which make the performance by a party impractical, impossible, or illegal, the parties shall meet and exercise good faith efforts to modify or terminate this Agreement in light of the changed circumstances.
6. No Shareholder Rights or Ownership Interest: Mountain Green does not acquire any shareholder rights, including voting rights, in CMWC by virtue of its use of the Reservoir. Additionally, Mountain Green will have no ownership interest in the Reservoir or in other facilities, water rights, or assets or interests held by CMWC.



7. Liability Insurance: Mountain Green shall be covered by any liability insurance policy purchased by CMWC, as such insurance relates to the Reservoir, and Mountain Green shall be specifically listed as an additional insured on any such policy.
8. Indemnity: Mountain Green agrees to indemnify, defend (with counsel acceptable to CMWC) and hold harmless CMWC, and its officers, directors, employees, managers, members, agents, servants, successors, and assigns from and against any and all liens, encumbrances, costs, demands, claims, judgments, causes of action, and/or damage, including personal injury or death, caused by or arising out of: (i) the execution of this Agreement by CMWC; (ii) the storage capacity rights granted to Mountain Green herein, and the use thereof by Mountain Green and its agents, servants, employees, and/or contractors, (iii) acts and omissions of Mountain Green and its agents, servants, employees, and/or contractors; (iv) the use of the Reservoir and any CMWC property associated with the Reservoir by Mountain Green and its agents, servants, employees, and/or contractors; and (v) any work performed on any CMWC property associated with the Reservoir by Mountain Green and its agents, servants, employees, and/or contractors. The terms and conditions of this provision shall remain effective, notwithstanding the expiration or termination of this Agreement. The indemnity provided by this Section is not intended in any way to preclude, limit, or affect any insurance coverage or protection of CMWC and/or Mountain Green.
9. Termination: If either party is in breach of any term of this Agreement, the non-breaching party may send the breaching party written notice of the breach and a demand that the breaching party remedy the breach within thirty (30) days after the notice. If the breach is not remedied within thirty (30) days, the non-breaching party may send the breaching party written notice of termination of this Agreement. The notice of termination shall state the effective date of the termination, which shall be at least ninety (90) days from the notice of termination.
10. Integration: This Agreement constitutes the entire agreement between the parties and may not be amended except in writing, and must be signed by both parties.
11. Remedies for Breach: In addition to any other remedies allowed under law or equity, including termination under Section 8 above, the parties shall be entitled to specific performance of the terms and conditions of this Agreement.
12. Mediation: If any dispute or claim in law or equity arises out of this Agreement, the parties agree to proceed in good faith to the resolution of such dispute or claim, including submitting the matter to mediation. A mediator shall be selected by mutual agreement of the parties, and the parties will divide equally the cost of mediation. If such mediation is not successful in resolving the dispute or claim, then such dispute or claim shall be litigated in the Second Judicial District Court in and for Morgan County, State of Utah. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah.
13. Attorney Fees: In the event of any action or suit by a party against the other party for breach of the terms of this Agreement or for other cause of action arising out of this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney fees, from the other party.
14. No Assignment: This Agreement may not be assigned by either party.

15. Severability: If any term, covenant, or condition of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and the remainder of the Agreement shall remain in full force and effect.

16. Warranty of Authority: Each signatory to this Agreement warrants that they have full authority to sign this Agreement, and by signing this Agreement do bind the parties thereto.


17. Time of the Essence: Time is of the essence in the performance of all obligations under this Agreement.

18. Further Assurances: After the execution of this Agreement, the parties agree to execute and deliver such documents, and to take or cause to be taken all such other actions, as any party may reasonably deem necessary or appropriate in order to carry out the intents and purposes of this Agreement.

19. Construction: The language of this Agreement shall be construed as a whole, according to its fair meaning and intent. This Agreement has been prepared after extensive discussions between and among the parties and the opportunity for each party to review the Agreement with and obtain advice from their respective legal counsel. In construing this Agreement, the fact that one party or the other may have drafted its various provisions shall not affect the interpretation of such provisions.


**[Signatures Follow on Next Page]**

MOUNTAIN GREEN SECONDARY WATER COMPANY

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Attest: Secretary

COTTONWOOD MUTUAL WATER COMPANY

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Attest: Secretary





**Mountain Green**  
Secondary Water Company

Mike Johanson  
CMWC  
4001 West Old Highway Road  
Mountain Green, Utah, 84050

Re: Silverleaf Reservoir

March 12, 2019

Dear Mike,

This letter acts as notification to extend our Reservoir Storage Capacity agreement lease between Mountain Green Secondary Water Company (MGSWC) and Cottonwood Mutual Water Company (CMWC) dated July 17, 2014 for the sole purpose as outlined in the agreement.

Thank you for your consideration in this matter. If there are any questions of concerns please let us know.

Sincerely,

Rulon C. Gardner President MGSWC