

Midway City Council
18 June 2019
Regular Meeting

Resolution 2019-15 /
Carriage Agreement



RESOLUTION 2019-15

A RESOLUTION APPROVING A WATER SYSTEM CARRIAGE AGREEMENT

WHEREAS, the City currently requires developers to turn in water shares for both culinary and irrigation needs of any proposed development in the City and to connect to both the city culinary system and the secondary irrigation system at the time of development; and

WHEREAS, prior to implementing that requirement, a limited number of property owners within the City boundaries were allowed to connect to the City culinary water system for both culinary and small-scale irrigation purposes; and

WHEREAS, as a result of that prior policy, there are a limited number of properties within the municipal boundaries that irrigate their lawns through the culinary system; and

WHEREAS, the Parties hereto agree that no additional irrigation deliveries of this type will be allowed by the City; and

WHEREAS, the Parties agree to work together to reduce the number of current connections using culinary water for irrigation as soon as possible, with the goal of having all irrigation water delivered through the secondary system, taking into account that there may be some situations where installing parallel lines would potentially damage other facilities and infrastructure belonging to both Midway City and Midway Irrigation Company, including existing pipelines, streets, sidewalks, etc.; and

WHEREAS, Midway Irrigation Company has delivered water through its irrigation system for the City's parks and cemetery; and

WHEREAS, the parties agree that the costs to the City to deliver irrigation water through the culinary system, and the costs to Midway Irrigation Company to deliver water to the City parks offset; and

WHEREAS, this Agreement documents the preexisting agreement that the City will deliver water irrigation water through its culinary system in exchange for Midway Irrigation Company delivering water to the City's parks and cemetery, and that neither party will charge the other for the delivery.

NOW THEREFORE, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The attached Water System Carriage Agreement is hereby approved.

Section 2: The Mayor of Midway City is hereby authorized to execute the agreement on behalf of the City.

PASSED AND ADOPTED by the Midway City Council on the _____ day of _____ 2019.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

WATER SYSTEM CARRIAGE AGREEMENT

This Water System Carriage Agreement (the “Agreement”) is made and entered into this ___ day of _____, 2019, by and between the CITY OF MIDWAY, UTAH, a political subdivision of the State of Utah (hereinafter called the “City”) and MIDWAY IRRIGATION COMPANY, a non-profit mutual irrigation company organized and existing pursuant to the laws of the State of Utah (hereinafter called the “Company”). The City and the Company are, from time to time, hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the City currently requires developers to turn in water shares for both culinary and irrigation needs of any proposed development in the City and to connect to both the city culinary system and the secondary irrigation system at the time of development; and

WHEREAS, prior to implementing that requirement, a limited number of property owners within the City boundaries were allowed to connect to the City culinary water system for both culinary and small-scale irrigation purposes; and

WHEREAS, as a result of that prior policy, there are a limited number of properties within the municipal boundaries that irrigate their lawns through the culinary system; and

WHEREAS, the Parties hereto agree that no additional irrigation deliveries of this type will be allowed by the City; and

WHEREAS, the Parties agree to work together to reduce the number of current connections using culinary water for irrigation as soon as possible, with the goal of having all irrigation water delivered through the secondary system, taking into account that there may be some situations where installing parallel lines would potentially damage other facilities and infrastructure belonging to both Midway City and Midway Irrigation Company, including existing pipelines, streets, sidewalks, etc.; and

WHEREAS, Midway Irrigation Company has delivered water through its irrigation system for the City’s parks and cemetery; and

WHEREAS, the parties agree that the costs to the City to deliver irrigation water through the culinary system, and the costs to Midway Irrigation Company to deliver water to the City parks offset; and

WHEREAS, this Agreement documents the preexisting agreement that the City will deliver water irrigation water through its culinary system in exchange for Midway Irrigation Company delivering water to the City’s parks and cemetery, and that neither party will charge the other for the delivery.

NOW, THEREFORE, in consideration of the mutual covenants stated in this Agreement, the Parties agree as follows:

TERMS

1. Delivery of Private Irrigation Water through Midway City Culinary Water System.

A. The City shall continue to allow the existing delivery of private irrigation water through the Midway municipal water system for those small number of residents or property owners within the City boundaries who were previously allowed to connect to the municipal system for both culinary and irrigation use without transferring irrigation shares to the City.

B. As set forth in Exhibit A, Midway Irrigation Company has provided to the City an accurate list of those properties within the City that are receiving such irrigation water through the municipal water system, including the property owner, the number of shares of Midway Irrigation Company stock owned by each property owner, and the amount and timing of water so delivered. This information shall be updated on an annual basis.

C. Those receiving irrigation water through the culinary system shall have no right to use more than their actual water right. An irrigation share of Midway Irrigation Company water represents a minimum of 3 acre feet in dryer years, and up to 4.5 acre feet in wetter years. Their water right shall be calculated using the following analysis (adjusted for the actual amount of irrigation water they own) as follows: 1) one acre foot of water is equal to 325,851 gallons of water; 2) the irrigation season goes from April 15 to September 15 of each year for a total of five months; 3) this means that in a normal year where the full water right is available for consumption, the holder of an acre foot of water is entitled to the delivery of 65,170 gallons per month during the irrigation season; 4) the City allows a normal culinary hook-up to receive 10,000 gallons per month; 5) this means that the holder of one acre foot of water would be entitled to 75,170 gallons of water per month during the irrigation season. These amounts are used for example only. If only a portion of a share is owned, or multiple shares are owned, the calculation shall be reduced or increased accordingly.

F. Those who exceed their water right shall be charged for the overage by the City at the then existing culinary rates. Billing and collection of these amounts shall be the responsibility of the City and will be kept by the City.

3. Delivery of Irrigation Water to the City Parks and Cemetery. Midway Irrigation Company currently delivers irrigation water through its system to certain City parks and the City cemetery. Midway Irrigation Company agrees to continue to deliver water through its system for Midway City in exchange for the City delivering irrigation water through its system.

4. Method of Reimbursement.

A. The parties agree that the costs to the City to deliver irrigation water through the culinary system, and the costs to Midway Irrigation Company to deliver water to the City parks offset. For so long as this agreement remains in effect, neither party will charge the other for delivery of the water covered by this Agreement.

4. Term of Agreement. The term of this Water System Carriage Agreement shall be for ten (10) years from the date of this Agreement. Ninety days before the termination of this Agreement, the Parties shall meet to discuss either the termination or extension of this Agreement.

5. Miscellaneous Terms.

A. Irrigation shares or Lease Agreement required. It shall be the responsibility of Midway Irrigation Company to insure that the private property owners or residents receiving irrigation water deliveries through the culinary system pursuant to this Agreement are the actual owners of the appropriate number and type of irrigation shares to support the irrigation water delivery, or an appropriate lease of water. No private irrigation water shall be delivered through the City's municipal water system unless the recipient, at all times during the delivery, is the actual owner of the water shares so delivered, or has a valid lease. Midway Irrigation Company agrees to immediately notify the City if the person or property receiving the irrigation water deliveries pursuant to this Agreement at any time cease to be owners of the shares. The right to receive irrigation water deliveries pursuant to this Agreement is tied to the property receiving the deliveries of irrigation water. The amount, timing, or right to receive irrigation water cannot be transferred to any other property.

B. City's right to terminate or interrupt service. The City operates its municipal water system primarily for the delivery of culinary and irrigation water owned by the City to its customers. Deliveries provided for under this Agreement are incidental to the primary purposes of the City. From time to time, the City may have to interrupt or reduce the delivery of irrigation water under this Agreement to perform repairs, maintenance and / or replacement of portions of the municipal water system. City makes no specific guarantee of deliveries of private irrigation water under this Agreement but shall endeavor to treat deliveries under this Agreement in the same manner as deliveries of irrigation water owned by the City.

C. No enlargement of amount or number of irrigation connections described herein. It is the policy of the City to require all future irrigation water rights necessary for development within the City to be deeded to the City as part of the subdivision approval process. The Parties hereto agree that no additional private connections of the type described herein shall be allowed by the City or encouraged by Midway Irrigation Company. No additional amounts of private irrigation water, above and beyond the amount historically delivered to property owners

described herein, shall be delivered through the City's municipal water system without the express, written agreement of the City.

D. Transfer of private irrigation shares to City by private owners if desired. In the event the private irrigation water owner desires to transfer the private irrigation water shares to the City to avoid paying the costs described herein, the City and Midway Irrigation Company shall cooperate to allow such transfer, provided the owner of the private irrigation shares bears the full cost associated with the transfer.

E. Indemnity. The City is allowing the continued delivery of private irrigation water as a concession to Midway Irrigation Company and to the City residents or property owners that are described herein. Midway Irrigation Company agrees to indemnify the City, and to hold the City harmless, from any and all losses, damages or liabilities incurred due to delivery, or the interruption of delivery, of the private irrigation water described herein.

F. Force Majeure. The City shall not be liable for their failure to fulfill any term or condition of this Agreement if fulfillment has been delayed, hindered or prevented by an event of force majeure including, but not limited to, Act of God or act of terrorism.

G. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual written consent of the Parties.

H. Waiver. No action taken by any Party shall be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach or default of any condition of this Agreement shall not operate or be construed as a waiver by such Party of any subsequent breach or default.

I. Remedies. The City shall have the unilateral right to terminate this Agreement if, at any time, delivery of the private irrigation water described herein is deemed by the City to be detrimental to the operation of the City's municipal water system.

J. Utah Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

K. Attorney's Fees. In the event of litigation or arbitration between the Parties regarding an alleged breach of this Agreement, neither Party shall be entitled to any award of attorney's fees.

L. Covenant of Good Faith and Fair Dealing. Each Party shall use its best efforts and take and employ all necessary actions in good faith consistent with this Agreement and

Applicable Law to ensure that the rights secured to the other Party through this Agreement can be enjoyed.

M. No Third-Party Beneficiaries. This Agreement is between the City and the Company. No other Party, including but not limited to the owners of the private irrigation water rights described herein, shall have any cause of action of any kind against Midway City, its employees or agents, nor shall they be deemed a third-party beneficiary or have any rights under this Agreement.

6. Termination.

A. Absent a determination by the City that delivery of the irrigation water described herein is detrimental to the City's municipal water system, the City may only terminate this agreement prior to the end of the term set forth herein in the event of non-payment of the amounts due hereunder, or for failure on the part of Midway Irrigation Company to accurately report the ownership and delivery information required to be reported by this Agreement.

IN WITNESS HEREOF, this Agreement has been entered into by and between the Company and the City as of the date and year first above written.

Signature Page Follows

CITY OF MIDWAY

Attest:

Celeste Johnson, Mayor

Brad Wilson, City Recorder

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Celeste Johnson, who executed the foregoing instrument in her capacity as the Mayor of Midway City, Utah, and by Brad Wilson, who executed the foregoing instrument in his capacity as Midway City Recorder.

NOTARY PUBLIC

MIDWAY IRRIGATION COMPANY

By: Steve Farrell
Its: President

STATE OF UTAH)
 :SS
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Steve Farrell, who executed the foregoing instrument in his capacity as the President of the Midway Irrigation Company.

NOTARY PUBLIC