

**WATER RIGHT PURCHASE AND SALE AND CONVEYANCE AGREEMENT  
BY AND BETWEEN  
CITY OF TUMWATER AND ANDERSEN WATER LLC**

**THIS AGREEMENT**, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021, is entered into by and between the City of Tumwater (“CITY”) and Andersen Water, LLC (“OWNER”), separately “PARTY” and collectively “PARTIES”.

**RECITALS:**

- A. The OWNER is a Washington Limited Liability Company that owns the Andersen Water System, a Group A water system (DOH ID# 04308R) (“ANDERSEN WATER SYSTEM”).
- B. The OWNER owns water rights that have been put to beneficial use by the ANDERSEN WATER SYSTEM for municipal water supply purposes as defined in RCW 90.03.015(4), specifically, Water Right Certificates No. G2-24079 and G2-24924 (“WATER RIGHTS”), which WATER RIGHTS are more particularly described in Exhibit A attached hereto and incorporated by reference herein.
- C. The CITY is a municipal corporation organized under the laws of the State of Washington.
- D. The CITY operates a Group A water system (DOH ID# 89700) (“CITY WATER SYSTEM”), whose service area includes the area served by the ANDERSEN WATER SYSTEM.
- E. The OWNER has notified the Washington State Department of Health of its intention to cease operations of the ANDERSEN WATER SYSTEM, a copy of which notice is attached hereto as Exhibit B and incorporated by reference herein.
- F. The ANDERSEN WATER SYSTEM is served by two public water supply wells authorized under the WATER RIGHTS located on Thurston County Tax Parcel No. 12704330101 (the “ANDERSEN WATER SYSTEM WELLS”). A third permit exempt well also exists on Thurston County Tax Parcel No. 12704330101 (the “EXEMPT WELL”). The ANDERSEN WATER SYSTEM WELLS and the

EXEMPT WELL are sometimes collectively referred to herein as the “EXISTING WELLS.”

- G. The ANDERSEN WATER SYSTEM, through the ANDERSEN WATER SYSTEM WELLS, currently provides water service to the Velkommen Mobile Home Park located at 2535 70th Avenue SW, Tumwater, WA and identified by Thurston County Tax Parcel No. 31560000100 owned by Tumwater 70th Ave LLC (the “MHP PROPERTY”). The owner of MHP PROPERTY is currently pursuing connection of the MHP PROPERTY to water service through the CITY.
- H. The ANDERSEN WATER SYSTEM, through the ANDERSEN WATER SYSTEM WELLS, also currently provides water service to two single family residential connections located on Thurston County Tax Parcel Nos. 12704330101 and 12704430801. The EXEMPT WELL provides water service to an additional single family residential connection located on Thurston County Tax Parcel Nos. 12704330101.
- I. The OWNER wishes to convey WATER RIGHTS to the CITY, subject to the terms and conditions set forth herein.
- J. The CITY wishes to acquire WATER RIGHTS from the OWNER to meet the needs of the CITY WATER SYSTEM.
- K. The CITY Council approved the purchase of the WATER RIGHTS at their meeting on \_\_\_\_\_ [date].

**NOW, THEREFORE**, in consideration of the terms, covenants, and conditions contained herein, the sufficiency of which is hereby acknowledged, the PARTIES mutually agree as follows:

1. WATER RIGHTS INFORMATION

The OWNER will provide to the CITY information reasonably requested by the CITY relating to WATER RIGHTS and other information that the OWNER believes may be useful in the evaluation of the WATER RIGHTS. In addition to written documentation, the OWNER will provide to the CITY its recollections and verbal information as to the history of water use and WATER RIGHTS, to the best of its recollection and belief. The OWNER understands that the CITY may need additional information after closing to support planning and permitting associated with the WATER RIGHTS; OWNER agrees to provide additional information reasonably requested by the CITY following conveyance of the WATER RIGHTS.

2. CONVEYANCE OF WATER RIGHTS

- a. At the CITY's request, the OWNER agrees to convey all of its interests in WATER RIGHTS, without limitation, to the CITY by Statutory Warranty Deed at closing.
- b. Closing shall be on a date agreed to by the PARTIES at the offices of Thurston County Title, Olympia Branch, 105 East 8<sup>th</sup> Avenue, Olympia, Washington 98501 or at the offices of Cascadia Law Group PLLC, 606 Columbia Street NW, Suite 212, Olympia, Washington 98501, or such other or differing locations as agreed by the PARTIES.
- c. The CITY agrees to pay any fees associated with closing.
- d. The CITY will prepare and submit documents and pay for recording as necessary with the Thurston County Auditor's Office.
- e. Closing shall occur no later than 30 days after the later occurring of the following events:
  - i. Execution of this AGREEMENT; or
  - ii. Connection of the MHP property to water service through the CITY.

3. CONSIDERATION FOR CONVEYANCE OF WATER RIGHTS

- a. At closing, the CITY will pay to the OWNER \$27,500 in a lump sum by warrant issued by the CITY.
- b. The CITY agrees to pay taxes due, if any, associated with conveyance of WATER RIGHTS.

4. LIMITATIONS, CONDITIONS AND RESERVATIONS

- a. Water Rights Only. For the avoidance of doubt, this AGREEMENT pertains only to the WATER RIGHTS. Nothing in this AGREEMENT is intended to or should be construed as agreeing to convey any interest in the existing water supply wells, pump houses, water system, or other real or personal property associated with the ANDERSEN WATER SYSTEM, or otherwise.
- b. Obligations Conditioned on MHP PROPERTY Disconnection. OWNER'S obligation to convey the WATER RIGHTS to the CITY and proceed with CLOSING shall be conditioned on connection of the MHP PROPERTY to the CITY WATER SYSTEM and disconnection from the ANDERSEN WATER SYSTEM.

Reserved Well Rights. The PARTIES recognize and acknowledge that the owners of Thurston County Tax Parcel Nos. 12704330101 and 12704430801 intend to or may intend to continue to rely on the EXISTING WELLS for water service associated with the three existing connections located on those parcels, and the PARTIES consent to the same. It is the PARTIES' understanding that such EXISTING WELLS following closing are intended to be exercised under the permit exemption authorized by RCW 90.44.050 as permit exempt wells, subject to any contrary determination by ECOLOGY.

5. REPRESENTATIONS AND WARRANTIES

The OWNER hereby makes the following representations and warranties to the CITY, and such warranties shall be applicable and in full force and effect throughout the entire Term of this AGREEMENT and shall survive the closing, that to the best of OWNER'S knowledge and belief:

- a. There is no suit, action, or arbitration, or legal or other proceedings or governmental investigation pending that affects the WATER RIGHTS or that would interfere with the OWNER'S ability to enter into this transaction, and to consummate the same;
- b. The OWNER has the authority to enter into this AGREEMENT and to consummate the transaction contemplated herein;
- c. The OWNER represents that during the period this AGREEMENT is in force, the OWNER has not entered into and will not enter into any other agreement, lease, contract or other obligation regarding the WATER RIGHTS other than this AGREEMENT, and that title to the WATER RIGHTS is and shall remain free and clear of any claims or encumbrances arising by, through, or under the OWNER, provided that the continued use of the EXISTING WELLS described in Section 4(c) above is acknowledged by the PARTIES and such use shall not constitute any breach of this representation and warranty.

If any representation or warranty of the OWNER is hereafter found to be untrue or incorrect, the OWNER shall refund all monies paid to the OWNER by the CITY.

6. TERM; TERMINATION

- a. This AGREEMENT shall commence upon the date of mutual execution (the "EFFECTIVE DATE") and shall continue in force until closing, unless earlier terminated pursuant to the terms hereof, or by written agreement of the PARTIES.
- b. In the event of such termination, this AGREEMENT shall be deemed null and void and all further performance by the PARTIES under this AGREEMENT will be excused.

7. HOLD HARMLESS AND INDEMNIFICATION

- a. The OWNER shall indemnify and hold the CITY and its agents, employees, elected officials and/or officers, harmless from, and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the CITY arising out of, in connection with, or incident to the following:
  - i. The OWNER's performance of its duties and obligations under this AGREEMENT;
  - ii. The OWNER's failure to perform any required aspect of its duties and obligations under this AGREEMENT.

In the event, however, that such claims referred to above are caused by or result from the concurrent negligence of the CITY, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the CITY; and provided further, that nothing herein shall require the OWNER to hold harmless or defend the CITY, its agents, employees, elected officials and/or officers from any claims arising from the sole negligence of the CITY, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this AGREEMENT.

- b. The CITY shall indemnify and hold the OWNER and its agents, employees, and/or officers, harmless from, and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the OWNER arising out of, in connection with, or incident to the following:
  - i. The CITY's performance of its duties and obligations under this AGREEMENT;
  - ii. The CITY's failure to perform any required aspect of its duties and obligations under this AGREEMENT.

In the event, however, that such claims referred to above are caused by or result from the concurrent negligence of the OWNER, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the CITY; and provided further, that nothing herein shall require the CITY to hold harmless or defend the OWNER, its agents, employees and/or officers from any claims arising from the sole negligence of the OWNER, its agents, employees, and/or officers. The provisions of this section shall survive the expiration or termination of this AGREEMENT.

8. ASSIGNMENT OR DELEGATION

The OWNER shall not assign rights or delegate duties under this AGREEMENT or any portion of this AGREEMENT without the written consent of the CITY, which consent shall not be unreasonably withheld.

9. CHANGES AND TERMINATION

Either PARTY may request changes to this AGREEMENT; however, no change or addition to this AGREEMENT shall be valid or binding upon either PARTY unless such change or addition be in a writing signed by the PARTIES. Any such amendments shall be attached to and made part of this AGREEMENT.

10. NOTICE

Notice provided for in this AGREEMENT shall be delivered in person or sent by Certified U.S. Mail to the address provided in this AGREEMENT or to the last known mailing address.

CITY: City of Tumwater  
Attn: Dan Smith, Director, Water Resources and Sustainability  
555 Israel Road SW  
Tumwater, WA 98501  
Telephone: (360) 754-4140

OWNER: Andersen Water, LLC  
Attn: Jim Andersen  
5710 McLane Creek Ct. SW  
Olympia, WA 98512  
Telephone: (360) 790-5129

11. ATTORNEYS FEES AND COSTS

If any legal proceeding is brought by either PARTY against other PARTY for the enforcement of this AGREEMENT, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this AGREEMENT, the prevailing PARTY shall be entitled to recover from the other PARTY reasonable attorney's fees and other costs incurred in that action or proceeding in addition to any other relief to which such PARTY may be entitled.

12. JURISDICTION AND VENUE

This AGREEMENT has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each PARTY hereto that this AGREEMENT shall be governed by laws of the State of Washington, both as to interpretation and performance.

Any action of law, suit in equity, or judicial proceeding for the enforcement of this AGREEMENT or any provisions thereof shall be instituted and maintained in a court of competent jurisdiction in Thurston County, Washington.

13. SEVERABILITY

If any part, term or provision of this AGREEMENT is held by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected; the rights and obligations of the PARTIES shall be construed and enforced as if this AGREEMENT did not contain the particular provision held to be invalid; and this AGREEMENT shall be deemed modified to conform to such holding.

14. ENTIRE AGREEMENT

The PARTIES agree that this AGREEMENT is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded.

15. TIME OF THE ESSENCE

The PARTIES recognize that time is of the essence in the performance of the provisions of this AGREEMENT.

16. FAILURE OF PERFORMANCE

Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. It is agreed by the PARTIES that the forgiveness of the nonperformance of any provision of this AGREEMENT does not constitute waiver of the other provisions of this AGREEMENT.

17. GOOD FAITH EFFORTS BY BOTH PARTIES

The OWNER and the CITY agree to make efforts to perform under the terms of this AGREEMENT in good faith and in a timely manner.

**IN WITNESS WHEREOF**, the PARTIES hereto have caused this AGREEMENT to be executed on the day and year first written above,

By:

ANDERSEN WATER, LLC

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Address:

STATE OF WASHINGTON

COUNTY OF THURSTON

I certify that I know or have satisfactory evidence that \_\_\_\_\_(name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_(title) of \_\_\_\_\_(company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:\_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
My appointment expires:\_\_\_\_\_.



CITY OF TUMWATER  
555 Israel Road SW  
Tumwater, WA 98501

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PETE KMET, Mayor

ATTEST:

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Melody Valiant, City Clerk

APPROVED AS TO FORM:

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Karen Kirkpatrick, City Attorney