

APN: 020-351-10  
020-193-12

## **ASSIGNMENT AND ASSUMPTION OF BENEFICIAL INTEREST IN WATER RIGHTS**

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This Assignment and Assumption of Beneficial Interest in Water Rights (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between Sione P. Otuafi and Finau Sepi Otuafi, hereinafter referred to as “Assignor”, and Robert C. Herrera and Donnia Herrera, hereinafter referred to as “Assignee”.

### **RECITALS**

- I. Assignor desires to convey a portion of its beneficial interest in a certain Water Rights to Assignee.
- II. Assignee desires to receive said property and formally assume the interest in said Water Rights and perform the applicable covenants and conditions contained in said Agreement.

NOW, THEREFORE, for and in consideration of the sum of Nineteen Thousand One Hundred Twenty Dollars (\$19,120.00) and in consideration of the mutual covenants contained herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto agree as follows:

1. Assignment: Assignor assigns, transfers and forever quitclaims, and does release unto the Assignee and to its heirs, successors and assigns forever, all of Assignor’s right, title and interest in and to the portion of its beneficial interest in the (1) Water Rights Deed #239970 by and between Assignor and the City of Fernley executed on 10/08/1999, (the “Dedication Deed”) with respect to (and solely with respect to) the following described water rights: TCID Serial No. 1052-J-3, APN 020-351-10 (Lyon County) (4.06 acre-feet), and (2) Water Rights Deed #239968 by and between Assignor and the City of Fernley executed on 10/08/1999, (the “Dedication Deed”) with respect to (and solely with respect to) the following described water rights: TCID Serial No. 1026-A-18, APN 020-193-12 (Lyon County) (0.72 acre-feet) (for a total of **4.78** acre feet) (the “Assigned Water Rights”). A copy of the Dedication Deeds conveying all of the water rights to the City of Fernley are attached hereto as Exhibit “A” and Exhibit “B” , respectively, and by this reference incorporated herein.

2. Assumption. Assignee expressly assumes the Assignor's interest in the Water Rights and agrees to perform all covenants, conditions, duties and obligations contained within the deeds conveying the water rights to the City of Fernley.
3. Warranties and Representations. Assignee warrants and represents as follows:
  - a. Assignee is not prohibited under any other agreement with any other person or any judgment or decree, from the execution and delivery of this Agreement;
  - b. No action has been brought or threatened which would in any way interfere with the right of Assignee to execute this Agreement and perform all of Assignee's obligations contained herein or any of the obligations in the conveyance deeds;
  - c. Assignee has full power and authority to consummate the transactions contemplated under this Agreement.
4. Acknowledgement. Assignee acknowledges that the conveyance deeds place certain conditions on the use of the Water Rights including that the ability to receive will-serve credits from the City of Fernley expires 25 years from the date of the conveyance;
5. Costs. Assignee shall pay all costs of the assumption made hereby, to include without limitation, attorneys' fees.
6. Paragraph Headings. The paragraph headings used herein are for convenience of reference only and shall not be used in the interpretation or construction hereof.
7. Governing Law and Venue. This Agreement shall be governed, interpreted and construed by, through and under the laws of the State of Nevada in the district courts of Lyon County, Nevada.
8. Attorneys' Fees. All costs incurred by the City of Fernley in enforcing this Agreement including, without limitation, reasonable attorneys' fees through any court proceedings shall be paid by Assignee.
9. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto as well as their successors and assigns, heirs and personal representatives.
10. Indemnification. Assignor and Assignee agree, jointly and severally, to

indemnify and hold harmless the City of Fernley with respect to any claims, damages, or losses (including, without limitation, attorney's fees and costs), whether known or unknown, disclosed or undisclosed arising from, by reason of, or in connection with any part or portion of this Agreement. Assignor hereby represents and warrants it has not sold, assigned, transferred, conveyed, hypothecated, pledged, or otherwise disposed of or encumbered the beneficial interest transferred herein, or the water right underlying said beneficial interest, except as provided in this Agreement. Assignee acknowledges and agrees that the City makes no representation or warranty as to the title of the water rights underlying the beneficial interest transferred herein, and that in the event that any claim or dispute relating to said title renders such water rights unusable within, or unavailable to, the City's water delivery system, the City may, at its sole discretion and in addition to any other remedies provided for by law, withhold the will-serve commitments provided for in the conveyance deeds. In the event that such will-serve commitments have already been issued, the City, in addition to any other remedies provided by law, may require Assignor and Assignee, jointly or severally, to immediately acquire and dedicate to the City the same quantity and quality of water rights as the water rights rendered unusable within, or unavailable to, the City's water delivery system and/or the City may assign any other banked or reserved water rights in which Assignor or Assignee have a beneficial interest, and that remain uncommitted to will-serve commitments, to the will-serve commitments already issued pursuant to this Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as follows:

ASSIGNORS.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2017 by:

\_\_\_\_\_  
Finau Sepi Otuafi

STATE OF \_\_\_\_\_)

) ss.

COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

Executed this \_\_\_\_ day of \_\_\_\_\_, 2017 by:

\_\_\_\_\_  
Sione P. Otuafi

STATE OF \_\_\_\_\_)

) ss.

COUNTY OF \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC



**CITY MANAGER**

Daphne Hooper  
Telephone: 775-784-9900

\_\_\_\_\_  
DAPHNE HOOPER  
DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**SPECIAL CITY ATTORNEY**

Paul Taggart, Esq.  
Telephone: 775-882-9900

I have reviewed this Assignment and Assumption Agreement and approve as to its legal form.

\_\_\_\_\_  
PAUL TAGGART  
DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY'S ORIGINATING DEPARTMENT:**

Department: City Engineer

\_\_\_\_\_  
DEREK STARKEY, P.E.  
DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ASSIGNMENT AND ASSUMPTION AGREEMENT ACCEPTANCE AND EXECUTION:**

The City Council of Fernley, Nevada, at their publicly noticed meeting of \_\_\_\_\_, 20\_\_\_\_, approved the acceptance of this Assignment and Assumption Agreement. Further, the City Council authorizes the Mayor of Fernley, Nevada to set his hand to this document and record his signature for the execution of this Contract in accordance with the action taken.

**FERNLEY:**

\_\_\_\_\_  
ROY EDGINTON, MAYOR  
DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ATTEST:**

\_\_\_\_\_  
KIM SWANSON, CITY CLERK  
DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.