

INTERLOCAL AGREEMENT
BETWEEN
CACHE COUNTY
AND
CACHE WATER DISTRICT
FOR
FUNDING AND SERVICES

THIS AGREEMENT (the “Agreement”) is made and entered into as of the 16 day of OCTOBER, 2017, to be effective when all of the conditions identified in paragraph 6 of this Agreement have been satisfied, by and between the Cache Water District, a local district and political subdivision of the state of Utah (the “District”), and Cache County, a body corporate and politic and a legal subdivision of the state of Utah (the “County”). The District and the County may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. From April through June of 2016, Cache County and the municipalities of Cache County passed resolutions indicating a desire to establish a water conservancy district to serve all of Cache County. Subsequently, during the November 2016 general election, the voters of Cache County voted in support of the creation of the Cache Water District.

B. The Utah Lieutenant Governor issued a Certificate of Incorporation for the District on December 22, 2016 pursuant to Utah Code Ann. § 67-1a-6.5, and the Certificate of Incorporation and other required documents were duly recorded in the office of the Cache County Recorder on August 14, 2017.

C. As the newly formed District begins to operate and seeks to become more fully established, it is in need of certain funding, personnel, services, and assets, which the County is willing to provide to the District for a temporary period.

D. To provide an income stream that can be used by the District to pay for its administration and operation, the County proposes to provide to the District the revenues collected by the County which are budgeted by the County for water services. Additionally, the County has offered to provide personnel, facilities, and services for the District as provided in this Agreement during the temporary period while the District becomes more established.

E. Pursuant to the Interlocal Cooperation Act, Utah Code Ann. § 11-13-101 *et seq.* (the “Interlocal Cooperation Act”), the County and the District are authorized to enter into this Agreement pursuant to which the District may use specified County funds, personnel, services, and assets.

F. The Parties desire to enter into this Agreement to describe and delineate the scope of their mutual cooperation and to commit to funding and service levels for the benefit of both Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Overview and Funding**. Effective January 1, 2017, the County shall furnish: (a) Water Funds (as defined below) to or for the benefit of the District; and (b) personnel, services, and assets as set forth in this Agreement (the “Services”); for an initial term of one year, renewable as set forth in paragraph 6 (the “Term”). The County shall continue to budget revenues for water services, which are anticipated to be approximately \$250,000 annually, and designate them for the District’s use or benefit (the “Water Funds”). The Water Funds will be transferred from the County to the District to be expended by the District at its own discretion,

subject to its approved annual budget. Transfer of such funds from the County to the District will occur annually as soon as reasonably practical after the District's annual budget has been adopted by the Board of Trustees. It is the intent of the parties that the County will continue to budget revenues for water services as provided above until such time as the District Board of Trustees has satisfied statutory requirements and has established and begins collecting property tax to obtain the Water Funds. Concurrently with the establishment of the District's property tax, the County Council, in conformity with applicable statutory requirements, will reduce budgeted amount for water services by an equivalent amount, the intent being that the net impact on property owners in Cache County will be neutral. Upon the County no longer budgeting the Water Funds as part of the County's annual appropriations, the County may continue to provide Services as provided in this Agreement, with the District to pay for the same as invoiced by the County from the District's own funds.

2. **Services Provided by the County.** The following Services will be provided by the County to or for the District and, will be paid for directly by the District using the Water Funds, at the described rates. The District May contract for some or all of the referenced services, include such expenses in the annual District budget, and receive a remittance from the County to cover such expenditures as provided in this Agreement. The County will invoice the Water District for the following services:

a. **Clerical Staff.** A staff member to provide certain clerical and administrative duties for the District, including taking and preparing District board meeting minutes and any other duties determined by the District to be necessary or useful. The staff member shall keep track of his or her time spent on District matters. The County shall be paid from the Water District for this time at an appropriate rate.

b. **Office and Meeting Space.** The County will provide an office for full-time use by the District's water planner, including furniture, telephone services, and internet access. The County shall be paid by the Water District for this space and the appurtenant amenities at the rate of \$450.00 per month. Additionally, the County will provide a meeting space for District board meetings and public hearings, free of charge. The District is responsible for coordinating with County staff regarding available days and times for use of the meeting space.

c. **Creation Costs.** In addition to the foregoing services and expenses being paid from the Water Funds, the County shall be reimbursed from the Water Funds for costs incurred by the County in creating the District, including advertising and professional services, with such payment to be made within one (1) year after the effective date of the District's creation.

3. **County's Duties Generally.** The County shall provide the Services in a professional, reasonable, and responsive manner in compliance with all applicable laws, ordinances, rules and regulations (including but not limited to all applicable environmental and safety regulations), requirements, and standards of performance. Subject to the foregoing, the exact nature of how the Services are to be provided, the discipline of County personnel, and any other matters incidental to providing the Services shall remain with the County. The County agrees that its provision of the Services pursuant to this Agreement includes use of County personnel, equipment, buildings, supplies, assets, and support services necessary to provide such Services, as set forth herein. Except as otherwise specifically provided in this Agreement, the County and the District acknowledge and agree that the District Board of Trustees shall retain all

policy decision-making authority with regard to the type, scope, and quality of the Services provided under this Agreement. The Parties agree to cooperate with each other to bring costs in line with estimated budgeted amounts and available funds.

4. **Use of County Personnel; Independent Contractors.** In performing the Services, the County shall furnish and supply all necessary labor, supervision, equipment communication facilities, uniforms, badges, and other items necessary and incident to the provision of the subject Service in compliance with all requirements of the Americans with Disabilities Act and all rules and regulations adopted or promulgated in furtherance thereof, as understood by the County and as directed by the District. As provided herein, the Services shall be provided and supervised by County employees. County employees shall remain County employees for all legal purposes, including salary, rights, and benefits, and shall retain their respective seniority, merit status, and all other conditions of County employment. Except as specifically provided herein, the District shall not have any obligation or liability for the payment of any salaries, wages, or other compensation to the persons providing Services hereunder. The relationship of the County, and of any County employee, with the District under this Agreement shall be that of an independent contractor. The County has the entire responsibility to discharge all of the obligations of an independent contractor under federal, state, and local laws, including, but not limited to, those obligations relating to employee supervision, benefits and wages, taxes, unemployment compensation and insurance, social security, workers' compensation, and disability pensions and tax withholdings, including the filing of all returns and reports and the payment of all taxes, assessments, and contributions, and other sums required of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship between the District and the County, or the County's employees, of employer and employee,

partners, or joint ventures. Should the District have any criticism, concern, or recommendation regarding any County employee, specifically or generally, the District may raise it directly with the head of the County department or division under which the employee operates. The County shall diligently and appropriately address any issue raised by the District.

5. **Use of County Buildings and Assets.** As provided herein, the provision of the Services shall include the use of all necessary County equipment, buildings, supplies, assets, and other resources (the “Buildings and Assets”) necessary to provide the Services. The County shall at all times retain management authority and control over the Buildings and Assets. The responsibilities to insure, maintain, and repair the Buildings and Assets shall at all times remain obligations solely of the County.

6. **Effective Date and Term.** This Agreement shall be effective upon the last of the following events to occur (but with retroactive application to the date stated in paragraph 1 above if that date is earlier): (i) approval of the Agreement as provided in the Utah Code Ann. § 11-13-202.5(1) and (2), (ii) delivery of the Agreement to an attorney representing the County and an attorney representing the District for review as to proper form and compliance with applicable law, and (iii) the filing of the signed Agreement with the keeper of records of each of the Parties, and shall continue in full force and effect until December 31, 2018, provided, however, that this Agreement will automatically renew for additional one (1) year terms unless either Party gives at least three (3) month’s advance written notice of its desire to terminate, and further provided that under no circumstance shall the term, including renewals, extend beyond December 31, 2020. References to the “term” of this Agreement shall include the renewal periods, if any.

7. **Communications and Notices.** For purposes of communicating and maintaining ongoing contract management, written notices may be provided to the Parties at the following addresses and contact persons, or to such other address or to such other contact person as shall be specified in any notice given:

DISTRICT: Cache Water District
Jeannie F. Simmonds
Chair, Board of Trustees
199 North Main
Logan, Utah 84321

With a copy to Fabian VanCott
Attn: Mark H. Anderson
215 South State Street, Suite 1200
Salt Lake City, UT 84111
E-Mail: mhanderson@fabianvancott.com

COUNTY: Cache County
Craig W Buttars
Cache County Executive
199 North Main
Logan, Utah 84321

With a copy to Cache County Attorney
Civil Deputy
199 North Main
Logan, Utah 84321

A written notice shall be effective immediately upon delivery as noted above or on the third business day after deposit in the United States mail, first class postage pre-paid, addressed as stated above.

8. **Liability/Insurance.**

a. **Governmental Immunity Act.** The District and the County are governmental entities under the Governmental Immunity Act of Utah, Utah Code Ann. § 63G-7-101, *et seq.* the (“Governmental Immunity

Act”). Consistent with the terms of the Governmental Immunity Act, as provided therein, it is mutually agreed that each Party is responsible for its own wrongful or negligent acts which are committed by its agents, officials, or employees. Neither Party waives any defense otherwise available under the Governmental Immunity Act nor does either Party waive any limit of liability currently provided by the Governmental Immunity Act. Each Party agrees to notify the other of the receipt of any notice of claim under the Governmental Immunity Act for which one Party may have an obligation to defend, indemnify, and hold harmless the other Party within thirty (30) days of receiving the notice of claim. The Parties also agree to notify each other of any summons and/or complaint served upon the said Party, if the other Party may have an obligation to defend, indemnify, and hold harmless the first Party, at least ten (10) days before an answer or other response to the summons and/or complaint may be due.

- b. **Indemnifications.** The County shall defend, indemnify, save and hold harmless the District including, without limitation, its elected and appointed officers, and its employees and consultants, from and against any and all demands, liabilities, claims, damages, actions, and/or proceedings in law or equity, including reasonable attorney’s fees and costs of suit, relating to or arising from the County providing Services to the District except for such demands, liabilities, claims, damages, actions or proceedings as may result from the negligence or misconduct of the

District, its elected or appointed officers or employees. Similarly, the District shall defend, indemnify, save and hold harmless the County including, without limitation, its elected and appointed officers, and employees, from and against demands, liabilities, claims, damages, actions, and/or proceedings in law or equity, including reasonable attorney's fees and costs of suit, relating to or arising from actions of the District's agents, officers or employees, except such demands, liabilities, claims, damages, actions or proceedings as may result from the negligence or misconduct of the County, its elected or appointed officers or employees.

- c. **Insurance.** The County shall be responsible for insuring all of its employees, Buildings and Assets, and activities including, but not limited to, comprehensive all risk insurance, commercial general liability insurance, worker's compensation insurance, motor vehicle liability coverage for owned and non-owned vehicles, and umbrella liability insurance, in such amounts as may be prudent or legally required to protect against any and every risk, loss, cost, damage and/or liability respecting the provision of the Services, the County's employees, the Buildings and Assets as described above, etc. Notwithstanding the foregoing, the District acknowledges that the County may be self-insured as deemed prudent by the Cache County Council. The District may carry such additional insurance as may be deemed prudent by the District's Board of Trustees.

9. Interlocal Cooperation Act. The Parties enter into this Agreement pursuant to the Interlocal Cooperation Act. For the purpose of satisfying specific requirements of the Interlocal Cooperation Act, the Parties agree as follows:

- a. The Parties do not, nor intend to, create an interlocal entity by this Agreement.
- b. Each Party has submitted this Agreement to an attorney authorized to represent the said Party for review as to proper form and compliance with applicable law.
- c. The duration of this Agreement is as set forth in paragraph 6 above.
- d. The District shall initially be funded by the County transferring the Water Funds to the District or designating the Water Funds for the District's benefit and use. The District shall be responsible for formulating and approving its annual budget and the County shall be responsible for formulating and approving its annual budget.
- e. Each Party will acquire, hold, and dispose of its own real and personal property and there will be no jointly owned property upon the partial or complete termination of this Agreement, including the termination of any Service to be provided hereunder.
- f. To the extent necessary to administer the cooperative undertaking set forth in this Agreement, the Chair of the Board of Trustees of the District shall have the full authority and responsibility to administer the cooperative undertaking on behalf of the District, and the Executive Officer of the

County shall have the full authority and responsibility to administer the cooperative undertaking on behalf of the County. Although it is not anticipated that voting will be required, to the extent that voting is required, voting shall be on the basis of one vote per Party, and not weighted.

- g. Since this Agreement cannot take effect under the Interlocal Cooperation Act until it is approved, signed, and filed with the keeper of records of each of the Parties, each Party agrees, immediately upon approval and execution of this Agreement, to file the signed Agreement with the keeper of records of the said Party.
- h. Notwithstanding anything herein to the contrary, in the event that this Agreement does not satisfy any requirement of the Interlocal Cooperation Act, which failure would cause this Agreement to fail to be effective under the Interlocal Cooperation Act, this Agreement shall nevertheless be fully binding upon and enforceable by the Parties pursuant to law outside of the application of the Interlocal Cooperation Act.

10. Non-Funding. Each Party operates pursuant to a calendar year fiscal year. The Parties acknowledge that the obligation of either Party to perform as provided in this Agreement is conditioned and dependent upon the appropriation of funds required for any payment due hereunder or to finance the provision of any Service as provided in this Agreement. Funds are not presently available for the performance of this Agreement beyond the end of each Party's current fiscal year, which is December 31. Each Party's obligation beyond the end of any calendar year during the term of this Agreement, including any renewal or extension thereof,

may be contingent upon renewal or extension of this Agreement as provided above and is contingent upon funds being appropriated annually for payments due for the provision of the Services to be provided under this Agreement. If no funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriations due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement then, unless the Parties mutually agree in writing to reduced Services and/or reduced payments that are in line with available and budgeted funding, this Agreement shall create no obligation on either Party as to such fiscal year (or any succeeding fiscal year) other than the County's obligation to remit the Water Funds to the District, which obligation shall be specifically enforceable until such time as the District adopts and begins collecting property taxes as provided in paragraph 1, but instead shall terminate and become null and void on the first day of the fiscal year for which funds are not budgeted and appropriated or, in the event of a reduction in appropriation, on the last day before the reduction becomes effective (except as to those reduced Service(s) and/or portions of payments required to perform hereunder as agreed upon by the Parties for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payment, or other charge of any kind whatsoever to the Parties, and no right or action for damages or other relief shall accrue to the benefit of the other Party to this Agreement. Notwithstanding anything stated above in this paragraph 11 or elsewhere in this Agreement, no termination of this Agreement shall excuse the County from providing the Water Funds to the District, or for its direct benefit as approved by the District Board of Trustees, until such time as the District has established and is collecting property taxes as provided in paragraph 1 above, and such commitment and obligation of the County shall survive the termination of this

Agreement. In no year shall the District collect property tax revenue from its own tax levy and receive a transfer of Water Funds from the County.

11. **Applicable Law**. The provisions of this Agreement shall be governed by and be construed in accordance with the laws of the state of Utah.

12. **Integration**. This Agreement constitutes the entire agreement between the Parties regarding those subjects that are the subject matter of this Agreement, and this Agreement supersedes all prior agreements and understandings between the Parties pertaining thereto.

13. **Waiver**. No failure by either Party to insist upon strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of any other covenant, agreement, term, or condition of this Agreement. Either Party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any condition to its obligations hereunder, or any duty, obligation or covenant of the other Party. No waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

14. **Amendment**. The Parties may amend this Agreement in a writing duly signed by both Parties.

15. **No Agency**. Agents, employees, or representatives of either Party shall not be deemed to be agents, employees, or representatives of the other Party.

16. **Rights and Remedies.** The rights and remedies of the Parties hereto shall not be mutually exclusive, and the exercise of one or more of the rights or remedies provided in this Agreement shall not preclude the exercise of any other right or remedy.

17. **Titles and Captions.** All paragraph and subparagraph titles and captions herein are for convenience only. Such titles and captions shall not be deemed to be part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

18. **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter form, and the singular form of nouns, pronouns and verbs shall include the plurals, and vice versa.

19. **Claims and Disputes.** In the event of a dispute between the Parties regarding a Service, the Parties agree (without limiting any and all other legal and equitable remedies) that a representative of the District will meet as soon as practical with a representative of the County to discuss and attempt to resolve such dispute. If a resolution is not forthcoming, then the aggrieved party may file a discrepancy report with the District Board Chair or the Executive Officer of the County (as the case may be). The discrepancy report shall be in writing and shall contain a detailed description of the dispute and the aggrieved Party's proposed resolution of the dispute. The other Party (i.e., the Party receiving the discrepancy report) shall then have ten (10) days to notify the aggrieved Party in writing of its agreement or disagreement with the proposed solution of the dispute described in the discrepancy report. Claims, disputes, and other issues between the Parties arising out of or related to this Agreement which cannot otherwise be resolved by the Parties through mediation or arbitration shall be decided by litigation in the First Judicial District Court of Cache County, Utah. Unless the provision of any or all of the Services

which are the subject of this Agreement is otherwise terminated pursuant to the provisions hereof or as otherwise agreed to by the Parties in writing, during litigation of any such dispute the County shall continue to provide Services and funding and the District shall continue to make payments to the County for Services actually provided in accordance with the terms of this Agreement.

20. Severability. In the event that any condition, covenant, or other provision hereof is held to be invalid, void, or unenforceable, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant, condition, or other provision herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

21. Time. Time is the essence hereof.

22. Survival. All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

23. Litigation Expenses. If any action, suit, or proceeding is brought by either Party with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing Party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the non-prevailing Party.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have subscribed their names hereon and caused this Agreement to be duly executed effective as provided in Paragraph 6 hereof.

CACHE WATER DISTRICT

CACHE COUNTY

By: 

By: 

Its: CHAIR

Its: COUNTY EXECUTIVE

Date: 12/28/17

Date: 10/16/17

APPROVED AS TO PROPER FORM AND COMPLIANCE WITH APPLICABLE LAW:

APPROVED AS TO PROPER FORM AND COMPLIANCE WITH APPLICABLE LAW:


Attorney representing Cache Water District


Deputy Cache County Attorney