

**INTERLOCAL AGREEMENT
FOR WASTEWATER TREATMENT SERVICES**

THIS AGREEMENT, entered into by and between TOOELE COUNTY ("County"), the DESERET PEAK SPECIAL SERVICE DISTRICT, ("District") and TOOELE CITY CORPORATION ("City") (individually and collectively a "Party" and the "Parties") as of February 1, 2017 (the "Effective Date").

RECITALS

WHEREAS, District, County, and City are public agencies of the State of Utah, and City is a Charter city of the State of Utah; and,

WHEREAS, County owns and operates public recreation and convention facilities called the Deseret Peak Complex (the "Complex") and a racetrack facility called Utah Motorsports Campus ("UMC") (collectively the "Combined Complex") that require wastewater treatment services (the "Services") (the words "sewer" and "wastewater" are equivalent for purposes of this Agreement); and,

WHEREAS, the Parties entered into an agreement, dated July 15, 2009, entitled "Interlocal Agreement Between Tooele County, Deseret Peak Special Service District, and Tooele City Corporation, Regarding Connection of Deseret Peak Facilities to Tooele City Sewer System" (the "2009 Interlocal Agreement"); and,

WHEREAS, the 2009 Interlocal Agreement expired under its terms on July 14, 2012; and,

WHEREAS, City continued to provide the Services to the Complex under an unwritten month-to-month agreement (the "Month-to-Month Agreement"), on the same payment terms as the 2009 Interlocal Agreement, which Month-to-Month Agreement expired on December 31, 2016, pursuant to a September 13, 2016, letter from City; and,

WHEREAS, Exhibit A to the 2009 Interlocal Agreement listed the facilities that comprised, and were anticipated to comprise, the Complex. The Complex was illustrated in Exhibit B to the 2009 Interlocal Agreement; and,

WHEREAS, City presently has a wastewater main line or interceptor known as "Interceptor B," located to the east of the Complex. The location of Interceptor B in relation to the Complex was illustrated in Exhibit C to the 2009 Interlocal Agreement; and,

WHEREAS, Interceptor B was installed, in part with federal Economic Development Administration (EDA) grant funds, to support development located on the excessed and realigned maintenance and upper administration areas of the Tooele Army Depot (TEAD); and,

WHEREAS, Interceptor B, at the present time, has the capacity to accept a limited quantity of wastewater flow from the Combined Complex; and,

WHEREAS, the City's water reclamation facility (the "Plant"), at the present time, has the capacity to accept a limited quantity of wastewater flow from the Combined Complex. The location of the Plant in relation to the Complex was illustrated in Exhibit C to the 2009 Interlocal Agreement; and,

WHEREAS, County and District acknowledge that, at some point in the future, the entire capacity of Interceptor B will be utilized by City customers, and that any use of Interceptor B and the Plant by County and District under this Agreement is strictly temporary, under the terms thereof; and,

WHEREAS, the Parties desire to set forth in this Agreement the terms upon which County and District will be allowed to convey wastewater from the Combined Complex, or any portion thereof, through Interceptor B to the Plant for treatment:

NOW, THEREFORE, in exchange for the mutual promises and performances described herein, District, County, and City hereby agree as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to set forth the terms and conditions upon which County and District will be allowed, on a strictly temporary basis, and subject to the limitations of this Agreement, to convey wastewater from the Combined Complex, or any portion thereof, through Interceptor B to the Plant for treatment. This Agreement shall not be construed to allow access to Interceptor B or the Plant from any public or private property that is not currently part of the Combined Complex.

SECTION 2. FEES AND CHARGES. County and District shall pay all of the following fees and charges to City.

(a) Impact Fees.

(A) Impact fees for Complex and UMC facilities existing as of the Effective Date were paid pursuant to Tooele City Code Chapter 4-15 and pursuant to the 2009 Interlocal Agreement.

(B) Impact fees for new or expanded facilities within the Complex and UMC shall be paid by County, District, or other party prior to the issuance of any building permit for any given facility within the Combined Complex, and will be based upon anticipated daily peak wastewater flows from each facility.

(b) Inspection Fees. Inspection fees shall be paid by County and District for City inspections of County or District wastewater facilities associated with the Combined Complex as deemed necessary by City for the protection of Interceptor B and the Plant, including, for example, grease interceptors, temporary storage tanks, manholes, and aerators. Inspection fees shall be at the rate of \$100 per hour per City inspector.

(c) Sewer User Fees. County and District shall be jointly and severally liable to pay sewer user fees to City upon invoice from City. Sewer user fees shall be those charged to regular City customers at the time of billing, based on City meter readings, plus 15%.

(d) Past Due Sewer User Fees. County and District shall be jointly and severally liable to pay to City all past due sewer user fees accrued under the 2009 Interlocal Agreement and Month-to-Month Agreement, totaling \$4,398.38, upon invoice.

(e) Sewer Premium. County shall pay to City a sewer premium of \$5,000 per month, beginning February 1, 2017, and ending upon termination of this Agreement, prorated for partial months. The sewer premium represents that portion of property, sales, and other taxes anticipated to be collected by Tooele County from the Combined Complex that would otherwise flow to City were the Combined Complex located within City's corporate limits.

SECTION 3. COUNTY AND DISTRICT WASTEWATER FACILITIES. County and District shall construct, operate, and maintain all wastewater facilities (the "Facilities") in conformance with the Tooele City Code and International Building Codes, American Public Works Association ("APWA") standards and specifications, and Tooele City amended APWA standards and specifications, each as enacted and adopted by Tooele City Code Title 4. The Facilities shall include lift stations, pipelines, holding tanks, aeration facilities, grease interceptors, sampling manholes, valves, connections, pumps, meters, etc. The Facilities shall not include Interceptor B and the Plant. County and District shall not increase the peak instantaneous pumping capacity of County and District Facilities beyond 120 gallons per minute. County and/or District shall own, operate, and maintain all the Facilities, and City shall have no ownership, operation, or maintenance obligation or liability associated with the Facilities.

SECTION 4. NEW INTERLOCAL AGREEMENT. County and/or District shall enter into a new interlocal agreement with Grantsville City, or another governmental entity capable of providing wastewater collection and treatment services, on or before March 15, 2017.

SECTION 5. WASTEWATER PRE-TREATMENT. County and District shall comply with City's wastewater pre-treatment regulatory program ("Pre-Treatment Program") and shall diligently take measures to prevent the discharge into Interceptor B and the Plant of any substances that are not permitted by, or that exceed the tolerances identified by, the Pre-Treatment Program. City may amend the Pre-Treatment Program from time to time as law or prudent Plant operations may warrant, in City's discretion.

SECTION 6. WATER RIGHTS. County shall obtain written consent from the owners of the parent water rights for water being utilized at the Combined Complex, which consent will allow City to treat and reuse all wastewater flows delivered to the Plant from the Combined Complex. The consent shall be delivered to the City within 45 days of the Effective Date of this Agreement. Should City's reuse of treated effluent from the Combined Complex wastewater flows be challenged in court or before the State Engineer, County shall indemnify and hold City harmless, and City shall have the right immediately both to terminate this Agreement and to cease accepting wastewater flows from any and all facilities at the Combined Complex.

SECTION 7. DURATION AND TERM; AUTOMATIC TERMINATION.

(a) This Agreement shall remain in full force and effect between the Effective Date and December 31, 2017 (the "Termination Date"), except that this Agreement shall terminate before the Termination Date:

- (1) upon termination by any Party under Section 8 (Voluntary Termination); or,
- (2) 30 days after the Third District Court rules against County's petition to disconnect the Combined Complex from the Grantsville City corporate limits.

(b) City's obligation to provide the Services under this Agreement shall cease automatically upon the Termination Date or upon earlier termination as provided herein.

(c) Except for termination under Section 8 (Voluntary Termination), no notice of termination shall be required for termination under this Section.

SECTION 8. VOLUNTARY TERMINATION.

(a) District and/or County may terminate this Agreement, with or without cause, upon 90 days written notice to City.

(b) City may terminate this Agreement for cause upon 30 days written notice to County. Cause shall include any of the following.

(1) Failure to pay all fees and charges under Section 2 (Fees and Charges).

(2) A determination made by City that the daily peak capacity of Interceptor B or the Plant has been or imminently will be consumed by sewer customers located within the City's corporate limits.

(3) Failure to enter into the agreement required by Section 4 (New Interlocal Agreement).

(4) Failure to deliver to City the written consent required by Section 6 (Water Rights) within 45 days of the Effective Date.

(5) Notice received by City of a challenge to City's reuse of treated effluent from Combined Complex wastewater flows.

(6) Allowing the placement of prohibited substances, or substances in excess of allowable tolerances, into the Facilities, Interceptor B, or the Plant, contrary to Section 5 (Wastewater Pre-Treatment) or the Pre-Treatment Program.

(7) Any increase beyond the 120-gallon-per-minute capacity established in Section 3 (County and District Wastewater Facilities).

(8) Failure to deliver any notice required by Section 10 (Notices).

(c) Upon termination of this Agreement, either under Section 7 (Duration) or pursuant to this Section 8 (Voluntary Termination), District and County shall have no right to receive a reimbursement or refund of any amounts paid pursuant to this Agreement.

SECTION 9. DISCONNECTION.

(a) Within 30 days of termination of this Agreement for any reason, County and District, at their cost, shall promptly disconnect the Combined Complex from Interceptor B in accordance with written instructions provided by City and with standard engineering and construction standards approved by City.

(b) County and District shall be jointly and severally liable for any damage to Interceptor B or the Plant resulting from District's or County's failure to follow the disconnection instructions or standards provided and approved by City.

SECTION 10. NOTICES.

(a) All notices provided under this Agreement shall be given by regular U.S. mail or by personal delivery to:

COUNTY / DISTRICT:

Board of County Commissioners

47 South Main

Tooele, UT 84074

CITY:
Tooele City Mayor
90 North Main
Tooele, Utah 84074

(b) Within 45 calendar days after the Effective Date, County shall deliver a copy of this Agreement to all tenants doing business at the Combined Complex.

(c) Within 5 business days after the date of termination of this Agreement, County shall sign and deliver a letter to all tenants doing business at the Combined Complex, the form of which letter is attached hereto as Exhibit A.

SECTION 11. INDEMNIFICATION. County and District shall each indemnify, release, and hold City harmless from and against any suit, claim, or liability resulting from, or otherwise arising out of, the provision of and the termination of the Services to all or any portion of the Combined Complex.

SECTION 12. CONTINUING OBLIGATIONS: SURVIVAL. The following provisions shall survive the termination of this Agreement:

(a) County's and District's obligations to be responsible for fees and charges under Section 2 (Fees and Charges).

(b) County's and District's obligations to comply with City's Pre-Treatment Program.

(c) County's and District's obligations to disconnect from Interceptor B under Section 9 (Disconnection).

(d) County's and District's obligations to deliver notice of termination of Services under Section 10c (Notices).

(e) County's and District's obligations to indemnify City under Section 11 (Indemnification).

(f) County's and District's waiver of jury trial under Section 13 (Waiver of Jury Trial).

(g) County's and District's limitation of remedies under Section 16 (Limitation of Remedies).

SECTION 13. WAIVER OF JURY TRIAL. The Parties expressly waive any and all right to trial by jury in any legal proceeding arising out of this Agreement or out of City providing or not providing the Services.

SECTION 14. CONSIDERATION. The Parties acknowledge the various considerations described in this Agreement, individually and in their aggregate, as being sufficient and acceptable for the agreements and promises contained in this Agreement.

SECTION 15. RECITALS. The above Recitals are incorporated into and made a part of this Agreement.

SECTION 16. LIMITATION OF REMEDIES. Except as otherwise specifically provided in this Agreement, County's and District's sole and exclusive remedy for any City non-performance or breach of the express or implied covenants of this Agreement is declaratory relief construing

this Agreement's rights and obligations and specific performance of this Agreement. Under no circumstances shall City be liable to County or District for any monetary damages, including, but not limited to, costs, fees, special, general, direct, indirect, delay, compensatory, expectancy, consequential, reliance, out-of-pocket, restitution, or other damages.

SECTION 17. NO WAIVER. The failure by City to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy consequent upon a failure to perform thereof, shall not constitute a waiver of any such failure to perform or any other covenant, agreement, term, or condition.

SECTION 18. AUTHORITY. The individuals executing this Agreement represent and warrant that they possess the legal authority to execute this Agreement pursuant to its terms, such authority being granted and evidenced by duly adopted Resolutions of each Party.

SECTION 19. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended for the benefit of any party except for the named Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to, any person or entity other than to each other.

SECTION 20. ATTORNEYS' FEES. If any formal action or proceeding (e.g., law suit, arbitration) is brought by any Party to enforce this Agreement, the prevailing Party shall be entitled to recover its related costs and reasonable attorneys' fees, whether such sums are expended at trial, at arbitration, or on appeal.

SECTION 21. ENTIRE AGREEMENT. This Agreement constitutes the final expression of the Parties as to the terms of this Agreement and the subject matter hereof, and supersedes all prior agreements, understandings, negotiations, and discussions between the Parties and/or their respective counsel with respect to the subject matter covered hereby. Except as expressly stated in this Agreement, no Party hereto has made any statement or representation to any other Party hereto regarding the facts relied upon by said Party in entering into this Agreement, and each Party hereto specifically does not rely upon any statement, representation, or promise of any other party hereto in executing this Agreement, except as expressly stated in this Agreement. Each Party and their attorneys, if the Party so chose, had the opportunity to make such investigation of the facts pertaining to this Agreement, and all of the matters appertaining thereto, as they deemed necessary.

SECTION 22. EXECUTION. The Parties shall execute three originals of this Agreement, in accordance with the requirements of applicable state law, with one original being delivered to each of the Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date indicated with the signatures pursuant to proper Resolutions duly passed and adopted by each party in accordance with their applicable law.

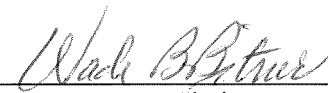
DATED this 1st day of February, 2017.

ATTEST:

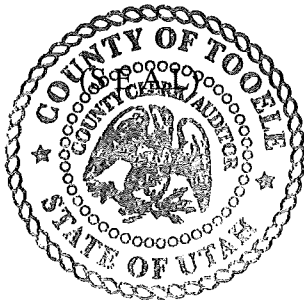
COUNTY:



MARILYN K. GILLETTE, County Clerk



WADE BITNER, Chair
Board of County Commissioners




DISTRICT:



WADE BITNER, Board Member

APPROVED AS TO FORM:



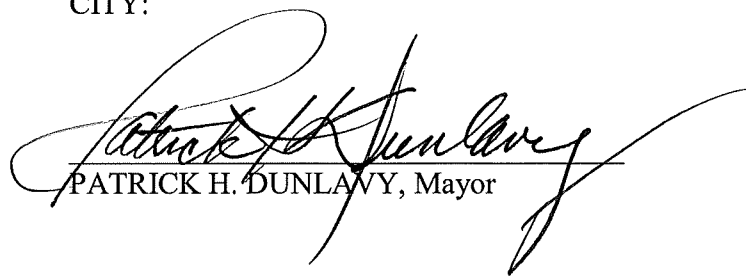
SCOTT BROADHEAD, Attorney for District and County

ATTEST:


MICHELLE Y. PITT, City Recorder



CITY:


PATRICK H. DUNLAVY, Mayor

APPROVED AS TO FORM:

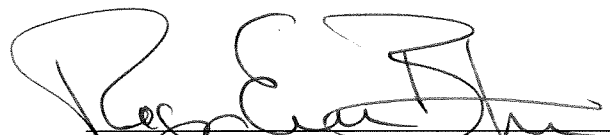

ROGER EVANS BAKER, City Attorney

Exhibit A

[Tooele County letterhead]

[Tenant name]
[Tenant address]

Dear [Tenant]:

The purpose of this letter is to notify you that the agreement between Tooele County and Tooele City under which you have received sewer service has been terminated, effective _____. Beginning _____, you will receive sewer service from _____ at the following rate: _____.

Your continued business operation at the Deseret Peak Complex or the Utah Motorsports Campus is important to us, and we will make every effort to see that your utility services are uninterrupted.

Please contact _____ at Tooele County at this phone number _____ with any questions.

Sincerely,

Tooele County Commission

TOOELE CITY CORPORATION

RESOLUTION 2017-09

A RESOLUTION OF THE TOOELE CITY COUNCIL APPROVING AN INTERLOCAL AGREEMENT WITH TOOELE COUNTY FOR WASTEWATER TREATMENT SERVICES FOR DESERET PEAK COMPLEX AND UTAH MOTORSPORTS PARK.

WHEREAS, on February 1, 2017, the City Council approved Resolution 2017-07, authorizing a letter to be sent to the Tooele County Commission and others giving notice of termination of Tooele City wastewater treatment services to the Deseret Peak Complex and the Utah Motorsports Park, or, in the alternative, allowing the services to continue to be provided subject to specified terms and conditions; and,

WHEREAS, the Tooele County Commission provided notice of its decision to continue to receive wastewater treatment services under the terms and conditions prescribed in Resolution 2017-07, which notice is attached as Exhibit A; and,

WHEREAS, the terms and conditions of continued Tooele City wastewater treatment services are contained and expanded in the Interlocal Agreement attached hereto as Exhibit B; and,

WHEREAS, the recitals and exhibits of Resolution 2017-07 are incorporated herein by this reference in their entirety; and,

WHEREAS, this Resolution is in the best interests of the people of Tooele City and Tooele County:

NOW, THEREFORE, BE IT RESOLVED BY THE TOOELE CITY COUNCIL that the Interlocal Agreement attached hereto as Exhibit B is hereby approved, and that the Mayor is authorized to sign the same.

This Resolution shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Resolution is passed by the Tooele City Council this ____ day of _____, 2017.

TOOELE CITY COUNCIL

(For)

(Against)

ABSTAINING: _____

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, City Attorney

Exhibit A

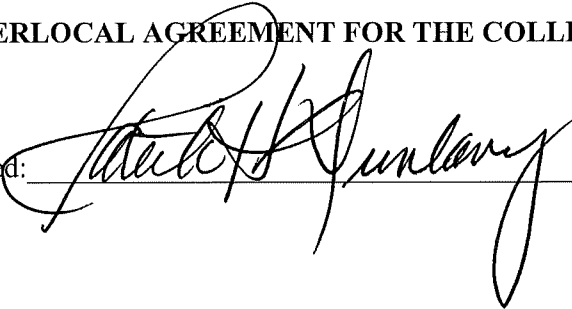
Interlocal Agreement



Date: March 08, 2017

On behalf of Tooele City I received a copy of the following agreement:

INTERLOCAL AGREEMENT FOR THE COLLECTION AND TREATMENT OF WASTE WATER

Signed:  Date: 03/08/2017

Wade Bitner
Chairman

Myron E. Bateman

Shawn Milne

TOOELE COUNTY COMMISSION

Tooele County Office Bldg. 47 South Main Street Suite# 300 Tooele, Utah 84074
[Office] 435-843-3150 [fax] 435-843-3400 [toll free] 866-704-3443 www.co.tooele.ut.us