

RESOLUTION No. 11-01-2010

**A RESOLUTION TO ENTER INTO AN AGREEMENT WITH CENTRAL UTAH WATER CONSERVANCY DISTRICT FOR THE ACCEPTANCE AND USE OF GRANT PROCEEDS ON THE SANTAQUIN CITY WATER RECLAMATION FACILITY PROJECT**

**WHEREAS**, the governing body of the City of Santaquin, Utah, acknowledges a need to enhance the City's Sewer System to meet the current and future needs of the community; and

**WHEREAS**, the Membrane Bio-Reactor Treatment technology chosen to meet the City's sewer needs will produce Type I water that will be used in the City's Pressurized Irrigation System and for Aquifer Recharge; and

**WHEREAS**, reuse of this valuable resource will benefit the city for years to come by conserving water resources by reducing the city's water needs by approximately 5300 acre feet of water per year; and

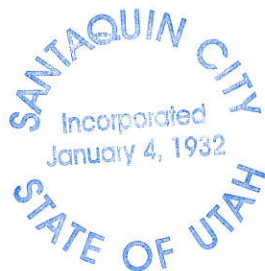
**WHEREAS**, The Central Utah Water Conservancy District commends said conservation efforts and desires to support said project with a \$500,000 grant; and

**WHEREAS**, when grant proceeds are extended by a branch of the Federal government certain reporting requirements are required necessitating a written agreement between both parties,

**NOW THEREFORE, BE IT RESOLVED** by the City Council of Santaquin, Utah, enters into an agreement with the Central Utah Water Conservancy District to provide funding for the Santaquin City Water Reclamation Facility Project.

(See attached)

ADOPTED AND PASSED by the City Council of Santaquin City, Utah, this 3<sup>rd</sup> day of November, 2010.



SANTAQUIN CITY

  
James E. DeGraffenried, Mayor

Attest

  
Susan B. Farnsworth, City Recorder

Original Sent to  
Cup 11/6/10

Agreement No. 843

CENTRAL UTAH WATER CONSERVANCY DISTRICT  
CENTRAL UTAH PROJECT COMPLETION ACT  
WATER CONSERVATION CREDIT PROGRAM

AGREEMENT BETWEEN THE CENTRAL UTAH WATER CONSERVANCY DISTRICT  
AND  
SANTAQUIN CITY CORPORATION  
TO PROVIDE FUNDING FOR THE SANTAQUIN CITY WATER RECLAMATION FACILITY PROJECT

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CENTRAL UTAH WATER CONSERVANCY DISTRICT  
CENTRAL UTAH PROJECT COMPLETION ACT  
WATER CONSERVATION CREDIT PROGRAM

AGREEMENT BETWEEN THE CENTRAL UTAH WATER CONSERVANCY DISTRICT,  
AND SANTAQUIN CITY CORPORATION  
TO PROVIDE FUNDING FOR THE  
SANTAQUIN CITY WATER RECLAMATION FACILITY PROJECT

THIS AGREEMENT is made this 3<sup>rd</sup> day of November, 2010, pursuant to Section 207 of the Central Utah Project Completion Act (Titles II through VI of Public Law 102-575, 106 Stat. 4605, October 30, 1992), hereinafter called the "CUPCA", between the CENTRAL UTAH WATER CONSERVANCY DISTRICT, hereinafter called the "District" and Santaquin City Corporation, hereinafter called the "Applicant", for the purpose of providing funding for the implementation of Santaquin City Water Reclamation Facility Project, hereinafter called "Project", and the opportunity to review activities undertaken with such funds.

WITNESSETH, THAT:

WHEREAS, the following statements are made by way of explanation:

WHEREAS, the District has adopted the Water Conservation Credit Program, hereinafter called the "Credit Program," to assist in achieving the purposes of CUPCA Section 207. The Credit Program document as it exists from time to time is hereby incorporated in this Agreement.

WHEREAS, as part of the Credit Program and pursuant to Section 207(e) of CUPCA, the District is authorized to finance, with federal monies, up to sixty-five percent (65%) of the cost of implementing selected water conservation measures. The District has elected to enter into agreements providing such financing to qualified, non-federal entities and individuals to achieve water savings/conservation. Such non-federal entities must obtain the remaining financing required to complete, operate and maintain the Project through private, state and/or local matching funds.

WHEREAS, Project compliance with the National Environmental Policy Act of 1969 ("NEPA") has been completed and approved in accordance with the District's NEPA Handbook. A Categorical Exclusion is on file with the District.

WHEREAS, a feasibility study on the Project has been approved by the District and United States Department of Interior (the "Feasibility Study").

WHEREAS, it is the intention of the parties that the District's role regarding implementation of the Project will be limited to providing funds under CUPCA and monitoring the expenditure of the funds so provided. The District's role may include financial review and construction monitoring.

WHEREAS, it is the intention of the parties that the Applicant's performance of this Agreement and implementation of the Project shall be in accordance with Section 207 of CUPCA and that the District and the United States shall not be liable for damages resulting from the implementation of the Project by the Applicant.

WHEREAS, the parties are willing to perform their respective obligations in accordance with the provisions of this Agreement.

NOW THEREFORE, for mutual consideration, including the recitals and covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:













(3) Recover the portion of Credit Program Funds that corresponds to any failure to attain the water conservation specified in Article 4. Such portion shall be calculated as the percentage difference between the amount of water conservation required under Article 4 and the amount of water conservation achieved, multiplied by the amount of Credit Program Funds provided under this Agreement, indexed to the Bureau of Reclamation Construction Cost Index. This amount is calculated to be approximately \$1,275 per acre-foot of water conservation not achieved (indexed as stated above). For example, if the Project achieves 80 percent of the water conservation stated in Article 4, the District may recover 20 percent of the Credit Program Funds provided (indexed as stated above); if the Project is not completed or otherwise fails to conserve any water, the District may recover 100 percent of the Credit Program Funds provided (indexed as stated above). In addition, all other reasonable costs and expenses incurred in enforcing this Agreement, including reasonable attorney fees may be recovered by the District.

The remedies set forth above are cumulative and are in addition to any other remedies available to the District under this Agreement, at law or in equity.

(b) The District shall be in default if (1) it has substantially failed to perform under this Agreement through no fault of Applicant; and (2) after ninety (90) days' written notice from Applicant of such substantial failure to perform, it has not commenced to cure the failure and diligently completed the cure thereafter. In the event of the District's default, the Applicant shall be entitled to immediately terminate this Agreement and pursue any other remedies available to it under this Agreement, at law or in equity.

#### 16. RECORDS RETENTION

Applicant shall retain all financial records, supporting documents, records documenting amount of water conservation, and all other records pertinent to this Agreement and the work performed with Credit Program Funds, until three (3) years after the date of written declaration from the District that the Project is substantially complete as provided in Article 2; provided, however, that if any litigation, claim, or audit is commenced or raised before the expiration of such three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, or until the 3-year period expires, whichever occurs first.

#### 17. COVENANT AGAINST CONTINGENT FEES

The Applicant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Applicant for the purpose of securing business. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability or in its discretion to subtract from Credit Program Funds to be advanced under this Agreement the full amount of such commission, percentage brokerage or contingent fee.

#### 18. APPLICANT'S REPRESENTATIONS AND WARRANTIES

As an inducement for the District to enter into this Agreement, Applicant represents and warrants as follows:

(a) Prior Representations. All written representations of Applicant submitted to CUWCD in connection with the Project or this agreement including the Feasibility Study, and NEPA Document, on which the District has relied in extending financing under this Agreement, are true and correct to the best of Applicant's knowledge and belief.

(b) Capability. Applicant has the lawful authority, capability, including all necessary manpower and facilities, to implement, maintain and operate the Project and otherwise timely perform its obligations under this Agreement.

(c) Title. Applicant holds and shall maintain during the term of this Agreement title to, or the legal and equitable right to use, all water rights, land, easements and facilities necessary to construct, implement, operate and maintain the Project. At its own expense, Applicant shall take all actions necessary to preserve all such property rights, including the timely payment of all applicable taxes, assessments and fees. The construction, implementation and operation of the Project will not interfere with existing water rights or other property rights.

(d) Authorization. The person who signs this Agreement on Applicant's behalf has been duly authorized to do so.



For Applicant:

Trevor Lindley, P.E.  
J-U-B Engineers  
466 North 900 West  
Kaysville, UT 84037

The authorized representatives shall have full power to bind the District and Applicant in decisions not requiring approval of their respective boards. All written notices required to be given under this Agreement shall be hand delivered, or sent via facsimile or United States mail, postage prepaid, to the parties' respective authorized representatives identified above. Notice shall be deemed to be received upon actual receipt or three (3) days after mailing, whichever occurs first.

#### 27. ASSIGNMENT

Applicant shall not assign its interest in this Agreement, the Project, or the land, facilities and water rights associated with the Project, without the prior written consent of the District. Any successor in interest or assignee of Applicant shall be required to enter into an agreement with the District substantially similar to this Agreement and to operate and maintain the Project throughout the remainder of the term of this Agreement, including preparation and submission of Project Annual Reports. Subject to this limitation on assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and assigns.

#### 28. MISCELLANEOUS PROVISIONS

(a) Entire Agreement. This Agreement and the attached exhibit constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and they supersede all previous or contemporaneous representations or agreements of the parties regarding the subject matter of this Agreement.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, except to the extent those laws are preempted or superseded by applicable laws of the United States. Applicant hereby consents to the jurisdiction of the courts of the State of Utah, or the courts of the United States located in the State of Utah, as the sole forum for any proceeding arising out of any difference, dispute, claim or controversy relating to this Agreement or its enforcement.

(c) Modification. No modification of this Agreement shall be valid or binding, unless made in writing and signed by both parties.

(d) Waiver. Acceptance by either party of any performance less than that required by this Agreement shall not be deemed to be a waiver of that party's rights under this Agreement. No waiver of any provision of this Agreement shall be deemed to be a waiver of any other provision, nor shall any waiver constitute a continued waiver. Any waiver of any provision of this Agreement shall be in writing and shall be signed by the party waiving the provision.

(e) No Third-Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than the parties and has no third-party beneficiaries.

(f) Severability. The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

IN WITNESS WHEREOF, the parties execute this Agreement on the date first written above.

CENTRAL UTAH WATER  
CONSERVANCY DISTRICT

SANTAQUIN CITY

By: \_\_\_\_\_  
Don A. Christiansen

By:   
James E. DeGraffenried

Its: General Manager


Its: Mayor



ATTEST:

\_\_\_\_\_  
Betty Bolander  
Assistant to the General Manager

ATTEST:

  
\_\_\_\_\_  
Susan B. Farnsworth  
City Recorder

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WCCP.843.B

printed: October 29, 2010

EXHIBIT A

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## PROJECT ANNUAL REPORT GUIDELINES

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In accordance with the requirements of the Water Conservation Credit Program a Project Annual Report is required of the applicant for the life of the water conservation project, as stated in the Feasibility Study. The Project Annual Report is to include:

- X General administrative information about the project
- X An assessment of the project documenting results to date
- X Any changes in the project affecting amount of water conservation
- X Problems since last Project Annual Report and proposed solutions
- X Outlook for the next year (i.e. any planned alterations to the project and any other pertinent information)
- X A detailed description of the implementation performed during the past year and to be performed in the ensuing year, and an itemized breakdown of the Credit Program Funds, Local Cost Share funds, and any other funds expended for projects funded over more than one year

The applicant is required to submit two (2) copies of the Project Annual Report to CUWCD by **November 30** of each year after initiation of the Contract. The Report must contain information on the previous calendar-year or portion thereof. For example, reports due on November 30, 1999 shall cover the 1999 Water Year (approximately April 1 through October 15).

A **cover page** is required as a preface to the actual report. This cover page shall be clearly labeled "PROJECT ANNUAL REPORT for *name-of-project*" and shall include the application number, and the date of submittal. Once submitted, the report will be reviewed by CUWCD.

The following sections describe specific information and an outline of the format required for the Project Annual Report:

### I. Administrative Information

#### A. Project Information

List the project name or title; the application number originally assigned to the project; the contact person, address, telephone, and fax number.

#### B. Signature and Date

The Director, Chairman or other responsible person authorized by the applicant shall sign and date the Project Annual Report.

### II. Detailed Project Schedule and Expected Future Costs

Indicate if the implementation of the project was completed by the end of the reporting period. If implementation of the project was not completed during the reporting period then provide a

timetable or schedule for project completion. Include planning tasks; design and construction tasks; interagency coordination requirements; and, environmental/regulatory requirements remaining. In addition, provide an itemized breakdown of the Credit Program Funds, Local Cost Share funds, and any other funds to be expended for project in the coming year.

### **III. Water Conservation**

#### **A. Water Conservation Realization**

Provide documentation for the method of measurement for water conserved by implementation of the project. This method of assessment must be in accordance with the methodology provided in the Final approved Feasibility Study. Provide a record of actual water conserved for the water-year or the indicated portion thereof.

#### **B. Water Conservation Projection**

If the water conservation project, or portion thereof, was not implemented within the water-year, discuss any changes to any previous water conservation projections provided. Discuss any changes in the methodologies used to assess water conserved. If necessary, provide an update of the water conservation schedule for the life of the project; including provisions for phased implementation.

### **IV. Issues and Solutions**

Indicate any issues or concerns encountered with the implementation of the project as it relates to the water conserved and provide possible solutions or alternatives. This should include information on any changes to the financial requirements for completing, operating, or maintaining the project; problems with constructing, implementing, operating, or maintaining the water conservation project; decreases or increases in actual water conserved if different than originally projected.

### **V. Outlook**

Provide a description of the progress of the project for the next year. Discuss such topics as new information on portions of the project yet to be implemented; or opportunities for increased water conservation with this project; or ideas for reducing operation and maintenance costs. Present changes or alterations to the water conservation project that are different from that agreed to in the Contract.