

**RESOLUTION No. 05-01-2010**

**A RESOLUTION OF THE SANTAQUIN CITY COUNCIL AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATION AGREEMENT BETWEEN SANTAQUIN CITY AND SOUTH UTAH VALLEY ELECTRIC SERVICE DISTRICT REGARDING ELECTRICAL SERVICES**

**WHEREAS**, the City of Santaquin, Utah (“Santaquin”) is a municipality of the state of Utah; and

**WHEREAS**, South Utah Valley Electric Service District (“SESD”) is an electric service district and provides electric services in south Utah County, including areas which are adjacent to Santaquin; and

**WHEREAS**, the boundaries of Santaquin have changed over time and are likely to change again in the future, which changes have recently and may again create overlap between the boundaries of Santaquin and SESD; and

**WHEREAS**, the Utah Interlocal Cooperation Act provides a procedure through which governmental entities may contract with one another in order to mutually cooperate in achieving their legitimate purposes; and

**WHEREAS**, the Santaquin City Council finds that it will be mutually beneficial and in the public interest to enter into an interlocal cooperation agreement regarding the delivery of electric services to certain parts of Santaquin City, and desires now to enter into an Interlocal Agreement in order to achieve such purpose.

**NOW THEREFORE, BE IT RESOLVED BY THE SANTAQUIN CITY COUNCIL THAT:**

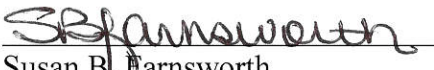
1. The Santaquin City Council approves and authorizes the Mayor to execute the INTERLOCAL COOPERATION AGREEMENT FOR ELECTRICAL SERVICES, a copy of which is attached hereto as “Exhibit A” and incorporated herein.

2. This Resolution shall take effect immediately upon its passage.

**PASSED AND APPROVED** this 5 day of May, 2010.

  
James E. DeGraffenried, Mayor

ATTEST:

  
Susan B. Farnsworth  
Santaquin City Recorder



Resolution 05-01-2010  
AGREEMENT NO. Resolution 2010-0511

**INTERLOCAL COOPERATION AGREEMENT  
FOR ELECTRICAL SERVICES**

THIS INTERLOCAL COOPERATION AGREEMENT, made and entered into this 5 day of May, 2010, by and between Santaquin City, a fifth class city of the State of Utah, (hereinafter referred to as "Santaquin" or "the City"), and South Utah Valley Electric Service District, a Utah Local Improvement Electric District (hereinafter referred to as "SESD").

**WITNESSETH:**

**WHEREAS**, SESD is an electric service district and provides electric services in south Utah County, Utah, including areas which are adjacent to Santaquin ("SESD Service Area"); and

**WHEREAS**, Santaquin is a municipality and has in the past, expanded its corporate boundaries and it is anticipated that the City's boundaries will expand in the future as well; and

**WHEREAS**, Such expansion of the City's corporate limits, has recently and may again from time to time result in areas of SESD's Service Area, including consumers served by SESD becoming a part of the corporate limits of the City ("Annexed SESD Service Area"). ; and

**WHEREAS**, City and SESD recognize that proper planning to provide electric services results in extensive long-term investment to assure reliable and service at reasonable rates; and

**WHEREAS**, For various reasons, including proper long-term planning, proper management of resources and otherwise, in the interest of providing reliable electric services to customers and residents, City and SESD have determined that with respect to any Annexed SESD Service Areas it is in the public interest for SESD to continue to serve all customers within such area at the time of annexation, as well as to provide all future electric service required in Annexed SESD Service Areas; and

**WHEREAS**, SESD and City wish to memorialize and confirm the present arrangement for the delivery of electric services by SESD in the parts of SESD's Service Area annexed into the City in 2009, and to assure one another of the future continuity of such arrangements in accordance with the terms of this Agreement since the City may not provide electric service in the Annexed SESD's Service Area unless SESD is first compensated for its facilities; and

**WHEREAS**, such agreements are authorized and provided for by the provisions of the Utah Interlocal Cooperation Act, Utah Code Ann. § 11-13-101 et seq., (“the Act”); and

**WHEREAS**, the governing body of each of the parties has by resolution agreed to adopt this Agreement with respect to furnishing electrical services;

**NOW, THEREFORE**, the parties hereto agree as follows:

**Section 1. EFFECTIVE DATE; DURATION**

This Interlocal Cooperation Agreement (“Agreement”) shall become effective and shall enter into force, within the meaning of the Act, upon approval and execution hereof by the governing bodies of Santaquin and SESD and the filing of executed copies of the Agreement with the official keeper of records of each of the parties, for a period of fifty (50) years from the date of this Agreement (“Initial Term”).

**Section 2. ADMINISTRATION OF INTERLOCAL COOPERATION AGREEMENT**

Santaquin and SESD neither contemplate nor intend to establish a separate legal or administrative entity under the terms of this Interlocal Cooperation Agreement. However, the parties agree to establish a two (2) member Joint Governance Committee (the “Committee”) comprised of the following individuals: (a) the Santaquin City Mayor, or his/her designee; and (b) the SESD Manager, or his/her designee. This Committee shall meet as necessary and shall, in addition to any other duties and responsibilities set forth in this Agreement, administer the terms and conditions of this Agreement. In the event that the Committee members cannot agree on any issue concerning this Agreement, then either party may file an action to resolve the deadlock in the courts of Utah County, State of Utah. Each party shall bear its own costs, expenses, and attorneys’ fees arising from the resolution of a deadlock.

**Section 3. PURPOSES AND DESCRIPTION OF SERVICES**

3.1 This Interlocal Cooperation Agreement has been established and entered into between Santaquin and SESD for the purpose of providing electrical service in the SESD Service Area as the same is described herein and as the same may be amended from time to time. The parties agree that this Agreement shall govern and apply to all future annexations by the City of any part of the SESD Service Area, as well as all annexations of SESD Service Area which occurred in 2009 (2009 annexations in the Spring Lake District of SESD Service Area).

3.2 The parties acknowledge and confirm the previous and present construction, operations and maintenance of electric light and power distribution and transmission lines and all other electric facilities within the parts of SESD’s Service Area annexed to the City in

2009 are the property of SESD, but subject to the rights, if any, of third parties.

Section 4. DEFINITIONS. The following terms, considered integral to this Agreement, are defined as follows:

4.1 “*City property*” shall mean all properties, facilities or objects currently or in the future owned or operated by the City within the present and/or future corporate limits of the City, whether in Streets, or other property in which the City has any interest or rights, that were annexed from SESD’s Service Area in 2009, or that annexed at any time in the future from such Service Area that are within such annexed Service Area (“Annexed SESD Service Area”).

4.2 “*SESD facilities*” shall mean all electric facilities owned or operated or otherwise controlled by SESD.

4.3 “*Construction*” or “*Construct*” shall mean, without limitation, constructing, acquisition, laying, maintaining, testing, operating, extending, renewing, relocating, removing, replacing, repairing, and using electric facilities.

4.4 “*Consumer*” shall mean any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency or other form of legal entity currently or potentially provided electrical services by SESD.

4.5 “*Electric facilities*” shall mean poles (with or without cross-arms), wires, lines, conduits, cables, communication and signal lines, electric lights, braces, guys, anchors, vaults and all necessary or convenient facilities and appurtenances thereto located within City properties or within the City limits, within Annexed SESD Service Area, whether the same be located above or below ground, which are or are intended to be used in connection with the provision of electrical Services.

4.6 “*Maintenance*”, “*maintaining*”, or “*maintain*” shall mean, without limitation, relaying, repairing, replacing, relocating, examining, testing, inspecting, removing, digging and excavating, and restoring operations incidental thereto.

4.7 “*Services*” shall mean electric power provided by SESD, in the form of transmission services and/or sales services; and/or in the form of marketing services.

**Section 5. POWERS GRANTED SESD.** In addition to confirmation of SESD’s previous rights as stated in Section 3, the City grants SESD the following powers:

5.1 Right to construct, maintain and operate. SESD shall have the right, privilege, authority and franchise to construct, maintain and operate all necessary electric facilities to provide Services to all Consumers within Annexed SESD Service Area, so long as such activities are performed in compliance with this Agreement. SESD shall have the right to the continued utilization of City property as necessary to permit SESD to provide electric Services to Consumers under this Agreement, providing the City may reasonably restrict the specific location on City property where reasonably necessary to avoid unnecessary interference with other approved use of the same property.

5.2 Right to market Electric Services. SESD shall have the right, privilege, authority and franchise to market electric Services to all Consumers located within the Annexed SESD Service Area. With prior consent of the City, SESD may also utilize its delivery system for the providing of additional services provided that the same can occur without interference with the providing by SESD with electrical Services.

5.3 Exclusivity. The City hereby grants to SESD an exclusive right to provide services within the Annexed SESD Service Area. Therefore, as long as this Agreement shall remain in effect, this right is granted upon the express agreement that the City will not grant other or further rights for electric Services of any kind or nature for the Annexed SESD Service Area.

5.4 All employees of Santaquin shall remain solely employees of Santaquin for purposes of payment of salaries, wages, withholdings, and benefits; personnel policies and procedures; training; and hiring and firing. All employees of SESD shall remain solely employees of the SESD for purposes of payment of salaries, wages, withholdings, and benefits; personnel policies and procedures; training; and hiring and firing.

## **Section 6. DUTIES OF SESD**

6.1 SESD shall comply with all laws and obtain all necessary permits. SESD shall at all times be subject to all laws, statutes, ordinances, codes, rules, regulations, standards, and procedures regarding the construction, operation or maintenance of SESD's facilities, whether Federal, State or local, now in force or which, hereafter, may be promulgated (including, but not limited to, zoning, land use, historic preservation ordinances, safety standards, and other applicable requirements). SESD shall obtain all necessary permits or approvals for construction, maintenance and operations. City acknowledges that SESD presently has all required permits or authorizations from City to operate and maintain its presently existing SESD facilities within the Annexed SESD Service Area.

6.2 Coordination with City. To the maximum extent possible, SESD will continue to utilize existing utility rights-of-way and existing utility poles, conduits, and other facilities where practicable. SESD construction, maintenance or operations under this franchise arrangement shall not unduly burden or interfere with present or future normal uses of any



City property, except for periods expressly approved by the City. No City property shall be obstructed longer than necessary during the work of construction or maintenance. SESD shall coordinate with the City's plans for street construction, rebuilding, resurfacing and repair to minimize multiple disturbances of the same area. SESD shall leave City property in as good and safe condition as it was before the commencement of work by SESD, its agents and contractors, and shall repair and restore any City property which is disturbed, damaged or injured by construction, maintenance or operations of SESD.

6.3 Record of all SESD facilities. SESD shall maintain records and shall mark (or otherwise clearly identify ownership of) all SESD facilities in a manner acceptable to the City. The City confirms that SESD is granted a permanent easement for all of its present and future electric facilities located on City property as well as the right to permanently locate all additional electrical facilities on City properties as reasonably required in the future in order that SESD will fulfill its duties under this Agreement and/or to reasonably provide services to Consumers.

6.4 Maintain and operate company facilities in a safe manner.

6.4.1 SESD shall have the obligation under this Agreement to maintain and operate its facilities at all times in a safe and careful manner. No City property shall be obstructed longer than necessary during SESD's construction, maintenance and operations. SESD shall cause no damage or injury to any City property; however, if any such damage or injury shall occur, SESD shall repair the same as promptly as possible.

6.4.2 SESD is authorized to cut and trim, in a careful and prudent manner, at its own expense, any trees which are overhanging or extending into any street, alley, or city property so as to prevent limbs or branches from coming into contact with or interfering with SESD's facilities which are above ground. SESD shall minimize the trimming of trees only to those essential to maintaining the integrity and safety of its facilities. The authority to do such cutting and trimming, however, does not extend to trees which are designated by the City as having special status; prior express approval for such cutting and trimming is required.

6.4.3 If the City elects to repave or construct new streets, roads and alleys, the City may require SESD to extend its underground system through the area of the pavement construction or repaving.

6.4.4 No SESD facilities shall be abandoned without prior approval from the City. In the event that this Agreement is not renewed at the end of its term or is terminated by forfeiture or breach, SESD shall continue to provide services to Consumers affected until SESD is compensated in accordance with Utah law.

6.5 Operate as marketer of services. As a marketer of services, SESD shall not impair, obstruct, or attempt to control any City property. Where possible, SESD shall at all

times utilize the existing equipment owned and operated by an authorized public utility under a franchise with the City. If SESD requires additional facilities in order to provide its services, such facilities shall be constructed, maintained and operated in a manner entirely consistent with this Agreement.

6.6 Obtain and maintain insurance. SESD shall maintain, at its sole expense, during the entire term of this Agreement, general comprehensive liability insurance coverage for property damage and bodily injury, including coverage for construction, operations, products, maintenance, relocation, and repair. Such policy(ies) shall be with an insurer authorized to do business in the State of Utah and shall provide that the City (including all officers, employees, and volunteers) is specifically covered as an additional insured with respect to any activities performed by or on behalf of SESD. To fulfill this obligation, SESD may self insure in such amounts as are consistent with good utility practice. SESD shall provide to the City evidence of such insurance policy(ies) or self-insurance on an annual basis. A copy of the policy(ies) or other proof of self-insurance satisfactory to the City shall be provided by SESD to the City's reasonable request. Nothing in this agreement shall be construed to waive or limit the protections provided in the Governmental Immunity Act of Utah. Utah Code Ann. § 63G-7-101 et seq. (1953 as amended).

6.7 File and maintain emergency response plan. SESD shall prepare and file with the City an emergency management plan for responding to any emergency condition. The plan shall designate responsible officials and emergency 24-hour on-call personnel and shall describe the procedures to be followed when responding to an emergency. After being notified of an emergency by the City, SESD shall cooperate with the City and make every effort to respond as quickly as possible with actions to minimize damage and to protect the health and safety of the public and/or property.

6.8 Provide safe and efficient services to the City.

6.8.1 During the term of this Agreement, SESD shall provide services (electric) to meet the reasonable demands of the Annexed SESD Service Area as the same shall be modified from time to time. SESD shall acquire, construct, maintain, equip, and operate all necessary SESD facilities to provide such services as set forth in this Section.

6.8.2 SESD promptly shall make any extension of SESD facilities as may be necessary to service one or more current or potential consumers, provided that if the anticipated revenues to be derived from such extension shall not afford a reasonable return of the cost of providing and rendering service by SESD, SESD may decline to make such extension unless the Consumer(s) to be served by such an extension submit(s) cash advances, minimum guarantees, service guarantees or other arrangements as will enable SESD to earn a reasonable return of its costs of providing such services. SESD's obligations to extend shall also be subject to applicable Utah State Public Service Commission's regulations.



6.8.3 SESD shall be entitled to charge Consumers within the Annexed SESD Service Area of the City for services at rates and under terms approved by SESD in accordance with SESD's rights as an electric service district and which rates are filed as a matter of notification only with the Utah Public Service Commission.

**Section 7. DUTIES OF THE CITY.**

7.1 Maintain City property. The City shall maintain its property in a sufficient condition that does not prevent SESD from performing its duties and obligations under this Agreement. If any City property is causing substantial adverse impact on SESD facilities covered by this Agreement, upon written notice from SESD, the City will take reasonable steps to resolve such adverse impact.

7.2 Payment by City of charges for SESD services. The City shall pay all reasonable charges for Electrical services provided to the City as a Consumer by SESD.

7.3 The City shall provide prompt documentation and recordation of SESD's rights as SESD may reasonably require.

**Section 8. PAYMENT BY SESD**

8.1 Municipal Energy Sales and Use Tax Ordinance.

8.1.1 SESD agrees to collect from Consumers to which SESD provides services: commencing with the services provided following the effective date of this Agreement and continuing during the term of this Agreement, an amount up to the maximum percentage of the delivered value of the taxable energy permitted under the provisions of any duly enacted municipal energy sales and use tax ordinance by the City, and for the benefit of the City. SESD shall pay such amount in monthly installments to the State Tax Commission for distribution as currently provided for by the State.

8.1.2 For the purpose of confirming the amounts to be paid under this subsection, SESD shall provide to the City documentation, upon the City's request, supporting its record of charges for electric services. The City shall have the right to conduct an independent review of the books and records of SESD relating to the calculation of the charges, and shall have the right to require an audit of SESD's books and records if the City has any question about the calculations performed by SESD.

8.2 Business license tax. SESD shall not be obligated to pay any business license or similar tax in addition to the amounts payable under 8.1.1 above.

**Section 9. FINANCING**

Santaquin and SESD agree that each entity shall be solely responsible for the costs that it incurs in providing the services described herein and shall not seek reimbursement for any portion of the same from the other party. No real property shall be acquired or dispersed for purposes of this Agreement.

**Section 10. METHOD OF TERMINATION**

Following the Initial Term, unless terminated pursuant to the provisions of the section, this Interlocal Cooperation Agreement will automatically renew for an additional one year term on each Anniversary. The parties agree that following the Initial Term either party may terminate this Agreement, by delivering written notice to the other party, by certified mail, no later than 90 days prior to the expiration of the Initial Term or any subsequent one year term, or at any other time mutually agreed to by the parties.

**Section 11. NOTICES**

11.1 All notices, including communications and statements which are required or permitted under the terms of this Agreement, shall be in writing and evidenced by receipt. Service of a notice may be accomplished by facsimile, personal service, registered or certified mail (postage prepaid), or reputable daytime or overnight courier service.

11.2 Notices shall be sent to the parties at the following addresses:

City:	Santaquin City 45 West 100 South Santaquin, UT 84655 Telephone: (801) 754-3211 Facsimile: (801) 754-3526
SESD:	South Utah Valley Electric Service District P.O. Box 349 803 North 500 East Payson, UT 84651 Telephone: 801-465-8020 Facsimile: 801-465-8017

11.3 The City or SESD may designate a new address for itself for purpose of notice

hereunder by written notice to the other duly given as provided herein.

**Section 12. REVIEW BY APPROVED ATTORNEY**

Each of the parties hereby certify that, pursuant to the requirements of Section 11-13-202.5, Utah Code Annotated (1953 as amended), it has submitted this agreement to an attorney authorized to represent it for review as to proper form and compliance with applicable law.

**Section 13. FILING OF AMENDED INTERLOCAL COOPERATION AGREEMENT**

Executed copies of this Interlocal Cooperation Agreement shall be placed on file with the official keeper of records of each of the parties within twenty-four hours of its execution and shall remain on file for public inspection during the term of this Interlocal Cooperation Agreement.

**Section 14. AMENDMENTS**

This Interlocal Cooperation Agreement may not be amended, changed, modified or altered except by an instrument in writing which shall be (a) approved by Resolution of the governing body of each of the parties, (b) executed by a duly authorized official of each of the parties, (c) submitted to an authorized attorney for review as required by Section 11-13-202.5, Utah Code Annotated (1953 as amended) and (d) filed in the official records of each party.

**Section 15. SEVERABILITY**

If any term or provision of this Interlocal Cooperation Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Interlocal Cooperation Agreement, or the application of such term or provision to circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and shall be enforced to the extent permitted by law. To the extent permitted by applicable law, the parties hereby waive any provision of law which would render any of the terms of this Interlocal Cooperation Agreement unenforceable.

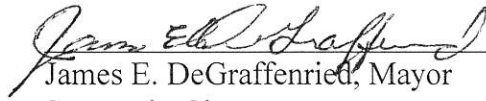
**Section 16. GOVERNING LAW**

The construction of this Interlocal Cooperation Agreement, and the rights and liability of the parties hereto, shall be governed by laws of the State of Utah.


IN WITNESS THEREOF, the parties have signed and executed this Interlocal Cooperation Agreement, after resolutions duly and lawfully passed, on the dates listed below:

**SANTAQUIN CITY**

Authorized by Resolution No. 05-01-2010, authorized and passed on the 5 day of May, 2010.

  
James E. DeGraffenried, Mayor  
Santaquin City

ATTEST:

  
Susan B. Farnsworth  
Santaquin City Recorder



**SOUTH UTAH VALLEY ELECTRIC SERVICE DISTRICT**

Authorized by Resolution No. 240-0511, authorized and passed on the 11/16 day of May, 2010.

  
Blair R. Hamilton  
Chairman, Board of Trustees

ATTEST:

  
Mary Ann James, Clerk

RESOLUTION NO. 2010 - 0511

A RESOLUTION AUTHORIZING AND APPROVING A  
SOUTH UTAH VALLEY ELECTRIC SERVICE DISTRICT  
AGREEMENT FOR ELECTRIC SERVICE WITHIN SANTAQUIN CITY LIMITS

WHEREAS, South Utah Valley Electric Service District ("District") is authorized to provide electric service within certain areas of Utah County, Utah ("District's Service Area");

WHEREAS, limited areas of such District Service Area were annexed into the corporate limits of Santaquin City in 2009, and additional similar annexations may be made on occasion in the future (collectively "Annexed District Service Area");

WHEREAS, Santaquin City has requested and the District has agreed to continue to provide electric services with the Annexed District Service Area;

WHEREAS, the District and Santaquin City wish to enter into an Interlocal Cooperation Agreement for electrical services, and it is in the interest of both parties to enter into such an agreement, but not to create a separate entity;

WHEREAS, the entering into the Interlocal Cooperation Agreement will serve the public interest with various public purposes, including providing electric services to consumers at economical rates;

WHEREAS, the District now desires to authorize and approve the Interlocal Cooperation Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of South Utah Valley Electric Service District, as follows:

*Section 1. Definitions.* In addition to the terms defined in the recitals, capitalized terms used and not otherwise defined in this resolution have the meanings assigned to them in the Interlocal Cooperation Agreement.

*Section 2. Approval of Interlocal Cooperation Agreement; Acknowledgement; Appointment of Representative.*

(a) The Interlocal Cooperation Agreement in substantially the form attached hereto as *Annex A* is hereby authorized and approved, and the Chairman is hereby authorized, empowered and directed to execute and deliver the Interlocal Cooperation Agreement on behalf of the District, and the Clerk is hereby authorized, empowered and directed to attest and countersign such execution and to affix the corporate seal of the District to the Interlocal Cooperation Agreement, with such changes to the Interlocal Agreement from the form attached hereto as *Annex A* as shall be necessary to correct any minor irregularities or ambiguities therein



and as are approved by the Chairman, his execution thereof to constitute conclusive evidence of such approval.

(b) Pursuant to Section 1 of the Interlocal Cooperation Agreement, the Board hereby agrees to acknowledge, agrees to and accepts all of the terms and conditions of the Interlocal Cooperation Agreement.

(c) Pursuant to Section 2 of the Interlocal Cooperation Agreement establishing a Joint Governance Committee, Dan Ellsworth is hereby appointed as the District's representative to the Joint Governance Committee.

*Section 3. Effective Date of Interlocal Cooperation Agreement.* This Interlocal Cooperation Agreement shall become effective upon approval and execution by the District and by Santaquin City, and the filing of executed copies of the Interlocal Cooperation Agreement with the official keeper of records of each party, which requires that the District place a copy of the executed Interlocal Cooperation Agreement on file with its Clerk, pursuant to Section 11-13-209 of the Act, and the attorney for the District having reviewed the Interlocal Cooperation Agreement and provided the District with an opinion that the Interlocal Cooperation Agreement is in proper form and compliance with applicable law.

*Section 4. Miscellaneous; Effective Date of Resolution.*

(a) All previous acts and resolutions in conflict with this resolution or any part hereof are hereby repealed to the extent of such conflict.

(b) In case any provision in this resolution shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) This resolution shall take effect immediately upon its adoption and approval.

ADOPTED AND APPROVED this 11<sup>th</sup> day of May, 2010.

SOUTH UTAH VALLEY ELECTRIC SERVICE  
DISTRICT

By: Blair R. Hamilton  
Chairman

ATTEST:

Mary Ann James  
Clerk  
[Seal]



RESOLUTION 04-02-2010,  
“A RESOLUTION TO SURPLUS A  
PARCEL OF CITY OWNED PROPERTY”  
WAS TABLED