

INTERLOCAL COOPERATION AGREEMENT

AS OF February 28, 2008

FOR THE JOINT OWNERSHIP, CONSTRUCTION, USE, AND  
MAINTENANCE OF A WASTEWATER TREATMENT FACILITY

PERRY CITY, UTAH and WILLARD CITY, UTAH (collectively, the "Cities") enter into this Interlocal Cooperation Agreement as of the date written above pursuant to the provisions of the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the "Act").

RECITALS

WHEREAS, the Act permits local governmental units including cities and other political subdivisions of the State of Utah to make the most efficient use of their powers by enabling them to cooperate with other public agencies on the basis of mutual advantage and to more efficiently provide facilities, services, and improvements to the general public; and

WHEREAS, the City Council of Perry City has determined that entering into this Interlocal Cooperation Agreement will promote the general welfare of Perry City;

WHEREAS, the City Council of Willard City has determined that entering into this Interlocal Cooperation Agreement will promote the general welfare of Willard City;

WHEREAS, each of the Cities has determined that it is in the best interest of the respective Cities that the Cities jointly construct, use, and maintain a wastewater treatment facility (the "Facility"); and

WHEREAS, the Cities intend to work together in operating the Facility to provide wastewater treatment services for the residents of each of the Cities;

NOW, THEREFORE, in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Cities hereby agree as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATIONS

**Section 1.1 Definitions.** The terms defined in this section for all purposes of this Interlocal Cooperation Agreement, and any amendments hereto, shall have the meanings herein set forth:

(1) "Act" means the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended.

(2) "Annual Budget" means the annual budget for the use, operation and maintenance of the Facility for each fiscal year. The Annual Budget will specify the projected Operation and Maintenance Expenses for the relevant fiscal year.

(3) "Billing Period" means a monthly period commencing on the first day of each month during the term of the Interlocal Cooperation Agreement, through and including the last day of that month.

(4) "Capital Costs" means future costs and expenses incurred in any expansion of the facility, including without limitation all costs of construction, construction period interest costs, costs of architects and engineers, and other similar costs and expenses incurred by way of expansion to the facility.

(5) "City" or "Cities" means Perry City or Willard City respectively, or both of them in the plural.

(6) "Code" means the Utah Code Annotated, 1953 as amended.

(7) "Collection System" means the wastewater collector and interceptor pipeline system of each City that is owned and operated, or will be owned and operated, exclusively by that City, separate and apart from the Facility, including service laterals, manholes, pump stations, flow-measuring devices and related appurtenances.

(8) "Facility" means a wastewater treatment facility, including without limitation all screens, chambers, pumps, clarifiers, filters, digesters, basins, interconnecting pipes, outfall lines, transfer structures, and other related equipment and facilities, that the Cities will jointly construct, use, and maintain as directed by the terms of this Interlocal Cooperation Agreement.

(9) "Facility Site" means the real property on which the Facility is and will be located.

(10) "Fiscal Year" means a period of twelve (12) consecutive months commencing on July 1 and ending on June 30 of the following year.

(11) "Force Majeure" means acts of God, strikes, lockouts, or other industrial disturbances, an order from an authorized governmental entity, insurrections, riots,

epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms; floods, washouts, explosions, arrests, civil disturbances, accidents/breakage to machinery or the Facility, or the partial or complete inability of either City to properly operate the Facility on account of any other cause not reasonably within the control of either City.

(12) "Governing Body" means the duly elected mayor and city council for Willard City and/or Perry City. Governing Body may refer to the Governing Body of either City.

(13) "Interlocal Cooperation Agreement" means this Interlocal Cooperation Agreement and any amendments and supplements hereto.

(14) "Operation and Maintenance Expenses" means all expenses reasonably incurred in connection with the operation and maintenance of the Facility, including (a) costs incurred in repairing and replacing equipment, buildings, and facilities necessary to maintain the Facility in efficient operating condition; (b) costs incurred in preparing operating reports and other reports as may be required by this Interlocal Cooperation Agreement; (c) premiums on insurance for the Facility, as provided in this Interlocal Cooperation Agreement; (d) with respect to operation of the Facility, actual costs incurred by either City in carrying out the City's duties and responsibilities specified in this Interlocal Cooperation Agreement, including all wages, overtime, third-party contract expenses for equipment and other special services, employee benefits, general office overhead, administration expenses, and vehicle mileage reimbursements; and (e) generally all expenses, exclusive of depreciation, that under generally accepted accounting principles are properly allocated to the reasonable and necessary operation and maintenance of the Facility.

Section 1.2 Constructions. This Interlocal Cooperation Agreement, except where the context by clear implication herein otherwise requires, shall be construed as follows:

- (a) definitions include both singular and plural;
- (b) pronouns include both singular and plural and cover both genders; and
- (c) the captions or headings of this Interlocal Cooperation Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision, article or section of this Interlocal Cooperation Agreement.

## ARTICLE II

### PURPOSE AND TERMS OF THIS INTERLOCAL COOPERATION AGREEMENT

**Section 2.1 Purposes.** The purposes of this Interlocal Cooperation Agreement are (i) to provide for the construction, use, operation and maintenance of the Facility for the mutual benefit of the Cities; (ii) to provide for an Sewer Facility Board to give recommendations regarding the construction, use, operation and maintenance of the Facility; and (iii) to provide for the establishment of a system for sharing the Operation and Maintenance Expenses of the Facility.

**Section 2.2 Agreement Term.** This Interlocal Cooperation Agreement shall be in full force and continue in effect for fifty (50) years from the date of execution hereof.

**Section 2.3 Disposition of Property Upon Termination.** Upon termination of this Interlocal Cooperation Agreement, title to the Facility and the Facility Site shall revert to the Cities according to each City's proportionate contributions to the Facility. All equipment purchased as a result of this Interlocal Cooperation Agreement will be divided in proportion to the respective contributions between the two Cities.

## ARTICLE III

### CONSTRUCTION, USE, AND OWNERSHIP OF THE FACILITY

**Section 3.1 Construction of the Facility.** Each of the Cities will be equally responsible for the total construction costs of the Facility; that is, Perry City will pay 66% of the total cost of constructing the Facility, and Willard City will pay 34% of the total cost of constructing the Facility.

**Section 3.2 Ownership of the Facility.** The Facility is and will at all times be fully owned proportionately based on the respective contributions by each of the Cities; that is, Perry City will own 66% of the Facility and Willard City will own 34% of the Facility initially, which proportions may be modified based on additional contributions by either City.

**Section 3.3 Ownership of the Facility Site.** The Facility Site is and will at all time be fully owned proportionately based on the respective contributions by each of the Cities; that is, Perry City will own 66% of the Facility Site and Willard City will own 34% of the Facility Site initially, which proportions may be modified based on additional contributions by either City.

**Section 3.4 Right to Use the Facility.** Both Cities shall have the equal right and power to connect their respective Collection Systems to the Facility and thereby cause the sewage and wastewater from their respective residents and customers to be transmitted to the Facility for treatment pursuant to the terms of this Interlocal Cooperation Agreement. Each of the Cities has the right and power to use its proportionate share of the total wastewater capacity of the Facility. In the event that use by either of the Cities exceeds its proportionate share of the total wastewater capacity of the Facility, that City may be required to reduce its flow to meet its proportionate share total wastewater capacity. If, however, the other City is not fully using its proportionate share of the total wastewater capacity, the City that is exceeding its proportionate share may continue do so upon payment for the additional capacity as long as the total wastewater capacity of the Facility is not exceeded; provided however, that the City that is using less than its proportionate share of the total wastewater capacity may at any time increase its use to its proportionate share of the total wastewater capacity of the Facility and the City using more than its proportionate share of the total wastewater capacity of the Facility will immediately decrease its use to no more than its proportionate share of the total wastewater capacity of the Facility. It is anticipated that other users may contract with the Cities to use the Facility. In that event, such use shall be evidenced by a written agreement (the "Use Agreement"). Such Use Agreement shall provide that use of the Facilities by other entities shall not diminish the respective capacities of the Cities. In the event use of the Facilities by other entities impinges upon the respective capacities of the Cities, then the Use Agreement shall require an expansion of the Facilities, which expansion shall be funded either through up front capital payments or through increased user fees, to increase the capacity of the Facilities so that the Cities have available the full original capacities. Such Use Agreement may contain other provisions and protections that the Cities deem necessary and appropriate.

It is the intent of the Cities to provide guidance for the Use Agreement without imposing unnecessary limitations on future use of the Facilities.

## ARTICLE IV

### "OPERATION AND MAINTENANCE OF THE FACILITY

**Section 4.1 Sewer Facility Board Created.** A Sewer Facility Board will be created for the purposes of monitoring the number of hookups allowed, monitoring each City's use of the total wastewater capacity of the Facility, discussing problems, policies, revenues, expenditures and any other matters affecting the operation of the Facility.

(a) **Number of Representatives.** The Sewer Facility Board will consist of five (5) members, two (2) of which will be representatives from Perry City and two (2) of which will be representatives from Willard City and one of which will be mutually selected by the Cities.

(b) **Selection of Sewer Facility Board Members.** The Governing Body of each City will select and approve that City's representatives to serve on the Sewer Facility Board. Each City will determine the duration of time for which its representatives will serve on the Sewer Facility Board.

(c) **Removal or Disability.** Each City may remove from the Sewer Facility Board any of that City's representatives with or without cause. Upon such removal or in the event of resignation, a successor shall be appointed by the City that appointed the member who is no longer serving.

**Section 4.2 Duties of Sewer Facility Board.** The conclusions, recommendations, and information emanating from a meeting of the Sewer Facility Board will govern the operation, maintenance and improvement of the Facility. The Sewer Facility Board is responsible for hiring qualified personnel to operate, maintain and improve the Facility. The Facility manager shall report directly to the Sewer Facility Board and may serve on the Sewer Facility Board in the event the Facility manager is mutually selected by the Cities under paragraph 4.1(a). The Sewer Facility Board shall be responsible for developing and adopting protocols and procedures to operate the Facility as well as rules and regulations for Facility employee's, etc. The Facility employees, including the Facility manager, shall be employees of Perry City. The Sewer Facility Board will establish policy for the Facility.

**Section 4.3 Operation of the Facility.** The Sewer Facility Board and Facility manager will be responsible for operating the Facility according to the terms of this Section.

(a) **Management of the Facility.** The Sewer Facility Board and Facility manager will have the responsibility for the day-to-day management of the Facility.

(b) **Operation and Maintenance.** The Sewer Facility Board and Facility manager will be responsible for the operation and maintenance of the Facility and will employ competent and experienced personnel, or train such personnel, for the operation and maintenance of the Facility, and will use its best efforts to operate and maintain the Facility at all times in good repair and condition and in such a manner that the operating

efficiency thereof complies at all times with the standards set by Federal, State or Local law and regulations.

(c) Compliance with Law. In operating and maintaining the Facility, the Sewer Facility Board and Facility manager will comply in all respects with each applicable Federal, State or Local law and regulation. The Sewer Facility Board and Facility manager will make every reasonable effort to prevent a shutdown or bypass of the Facility, or an imposition of penalty by a governmental authority because of a failure to comply with applicable Federal, State or Local laws or regulations. If the Sewer Facility Board and Facility manager have made such a reasonable effort, but notwithstanding that effort there is a penalty or requirement imposed by an governmental authority, the penalty or cost of compliance will be considered as part of the operation and maintenance expense of the Facility.

(d) Insurance. The Cities agree to obtain and maintain insurance on the Facility, including without limitation worker's compensation insurance and public liability insurance in such amounts and to such extent as is customarily carried by other operating facilities of the same type as the Facility. The cost of such insurance will be considered an Operation and Maintenance Expense. In the event of any loss or damage to any part of the Facility, insurance proceeds will be used to restore or replace the portion of the Facility that is lost or damaged.

(e) Expenditures. The Sewer Facility Board and Facility manager will use their best effort to keep the Operation and Maintenance Expenses within the amounts established in the Annual Budget, and will make no expenditures or incur any obligations in excess of the amounts established in the Annual Budget.

(f) Collections. Each month the Sewer Facility Board and Facility manager will collect from Perry City, on a monthly basis, 66% or Perry City's proportionate share of the Operation and Maintenance Expenses, and will apply those payments against the Annual Budget. Each month the Sewer Facility Board and Facility manager will collect from Willard City, on a monthly basis, 34% or Willard City's proportionate share of the Operation and Maintenance Expenses, and will apply those payments against the Annual Budget. In the event the actual use of one City exceeds its proportionate ownership share of the capacity of the Facility, then in that event the City whose use exceeds its ownership share shall pay a larger proportion of the Operation and Maintenance Expenses to coincide with its greater use for the month(s) that its use exceeds its proportionate ownership share.

(g) Records Maintenance. The Sewer Facility Board and Facility manager will maintain accurate and detailed records relating to the Facility, including without limitation flow-measuring records, materials, supplies, and payroll records for personnel employed in the operation and maintenance of the Facility. The Sewer Facility Board and Facility manager will make those records available for inspection at reasonable times to the Governing Body of each City.



(h) Annual Budget Preparation. On April 1st of each year the Sewer Facility Board will prepare an Annual Budget for the next fiscal year. The Sewer Facility Board will provide a copy of the Annual Budget to each City. If they deem it pertinent, each City and the Sewer Facility Board will make recommended changes to the Annual Budget. In the event the Cities and the Sewer Facility Board are unable to agree on the Annual Budget, then the unresolved Annual Budget will be submitted to a panel of three experts to consist of two experts, one each selected by each City, and a third expert to be mutually agreed upon by both Cities and the Cities and the Sewer Facility Board will be bound to abide by the Annual Budget agreed upon by this panel of three experts.

## ARTICLE V

### CHARGES FOR OPERATION AND MAINTENANCE EXPENSES

Section 5.1 Sharing of Expenses. All actual Operation and Maintenance Expenses will be shared proportionately by Willard City and Perry City in accordance with Section 4.3(f) above; that is, Willard City will be responsible for 34% of all Operation and Maintenance Expenses, and Perry City will be responsible for 66% of all Operation and Maintenance Expenses unless a different proportion is appropriate as set forth in Section 4.3(f).

Section 5.2 Payment to the Sewer Facility. The Sewer Facility will provide a bill to each City on a monthly basis for its share of all Operation and Maintenance Expenses for the relevant month. Each City will pay that bill within twenty (20) days of receipt. If a City fails to provide payment within ten (10) days of the due date of any bill, the unpaid balance of that bill will bear interest at a rate of one percent (1.0%) per month until paid in full, and all subsequent payments received will apply first to interest and then to principal.

Section 5.3 Expansion Fund. The Sewer Facility Board shall create a fund with subaccounts to be known as the "Willard Expansion Fund" and the "Perry Expansion Fund", respectively, to receive certain payments from the respective cities. Excess payments from Willard City shall be placed in the Willard Expansion Fund and excess payments from Perry City shall be placed in the Perry Expansion Fund. It is anticipated that the cities may place impact fees or a portion thereof into the respective expansion fund subaccount. Funds placed in the expansion fund shall be used to expand, upgrade or improve the Sewer Facilities in accordance with Utah law, including laws controlling impact fees.

## ARTICLE VI

### GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 6.1 Interlocal Cooperation Agreement to be Kept on File.** Each City covenants that this Interlocal Cooperation Agreement shall be filed with its keeper of records.

**Section 6.2 Willard City Representations.** Willard City represents and warrants that it is a political subdivision of the State of Utah and is authorized to enter into the transactions contemplated by this Interlocal Cooperation Agreement and to carry out its obligations hereunder. Willard City represents and warrants that its Governing Body has taken all actions required by law to approve and authorize the execution of this Interlocal Cooperation Agreement on behalf of Willard City.

**Section 6.3 Perry City Representations.** Perry City represents and warrants that it is a political subdivision of the State of Utah and is authorized to enter into the transactions contemplated by this Interlocal Cooperation Agreement and to carry out its obligations hereunder. Perry City represents and warrants that its Governing Body has taken all actions required by law to approve and authorize the execution of this Interlocal Cooperation Agreement on behalf of Perry City.

**Section 6.4 Joint Cooperation.** Each City agrees to cooperate with the other City in the planning of future capital improvements to the Facility and/or in the construction of new treatment facilities for the joint use of the Cities. Any such capital improvements or new construction will be subject to the provisions of a separate written agreement between the Cities.

**Section 6.5 Adoption of Ordinances.** Each City agrees to adopt and enforce such ordinances and/or resolutions as are necessary to accomplish the purposes of this Interlocal Cooperation Agreement, including a pretreatment ordinance substantially in the form attached hereto.

**Section 6.6 No Litigation Representation.** Each City represents and warrants that there is no litigation or legal or governmental action, proceeding, inquiry or investigation pending or threatened to which the City is a party or to which any of its property is subject which if determined adversely to the City, would individually or in the aggregate (i) affect the validity or the enforceability of this Interlocal Cooperation Agreement, or (ii) otherwise materially adversely affect the ability of that City to comply with its obligations under this Interlocal Cooperation Agreement or the transactions contemplated by this Interlocal Cooperation Agreement.

## ARTICLE VII

### GENERAL PROVISIONS CONCERNING THIS INTERLOCAL COOPERATION AGREEMENT

**Section 7.1 Assignment.** Neither City may assign any interest herein without consent of the other City that is a party to this Interlocal Cooperation Agreement. The terms of this Interlocal Cooperation Agreement shall inure to the benefit of and be binding upon the respective representatives and successors of each of the Cities.

**Section 7.2 Counterparts.** This Interlocal Cooperation Agreement may be executed in several counterparts, any one of which shall be regarded for all purposes as one original. Each City agrees that it will execute any and all deeds, instruments, documents and resolutions or ordinances necessary to give effect to the terms of this Interlocal Cooperation Agreement.

**Section 7.3 Entire Contract.** This Interlocal Cooperation Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof and constitutes the entire contract between the Parties concerning the use, operation and maintenance of the Facility.

**Section 7.4 Amendment.** This Interlocal Cooperation Agreement shall not be modified or amended except in writing, which writing will be signed by the duly authorized representatives of each of the Cities.

**Section 7.5 Breach/Attorney Fees.** In the event of a dispute that the Cities cannot amicably resolve, a court of competent jurisdiction in Utah, may be used to resolve the dispute. The prevailing City in any litigation, or any other alternative dispute resolution method, to interpret and/or enforce the provisions of this Interlocal Cooperation Agreement shall be entitled to an award of reasonable attorney's fees and costs, in addition to other available relief. Other than as expressly provided in this Interlocal Cooperation Agreement, no breach of this Interlocal Cooperation Agreement shall entitle any City to unilaterally cancel, rescind or terminate this Interlocal Cooperation Agreement; but such limitations shall not affect in any manner any other rights or remedies which either City may have by reason of any such breach.

**Section 7.6 Severability.** Whenever possible each provision of this Interlocal Cooperation Agreement shall be interpreted in such a manner as to be valid; but, if any provision of this Interlocal Cooperation Agreement is held by a court of competent jurisdiction, in a final judicial determination, to be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Interlocal Cooperation Agreement. Notwithstanding the foregoing, however, should such judicially determined invalidity of any provision of this Interlocal Cooperation Agreement frustrate the intended purpose of the member entities, as expressed herein, such invalidity will cause this Interlocal Cooperation Agreement to be terminated, with the Cities, to the extent possible, to

be restored to the status quo as though this Interlocal Cooperation Agreement had not been signed.

**Section 7.7 Force Majeure.** In the event that by reason of force majeure either City is rendered unable to wholly or in part carry out its obligations under this Interlocal Cooperation Agreement, other than the obligation of each City to make payments required hereunder, such City shall give notice of the details and effect of such force majeure in writing to the other City within a reasonable time after the occurrence of the event or cause relied on, and the obligations of the City giving such notice, so far as they are affected by such force majeure, will be suspended during the continuance of the inability then claimed, and such City will use its best efforts to remove and overcome such force majeure.

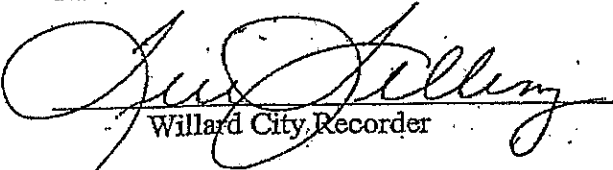
**Section 7.8 Governing Law.** This Agreement shall be governed by the laws of the State of Utah.

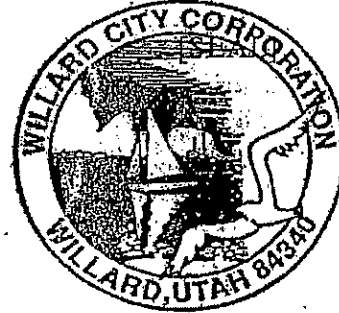
IN WITNESS WHEREOF, the parties have caused this Interlocal Cooperation Agreement to be executed by their duly authorized representatives as of the date written above.

WILLARD CITY, UTAH


By   
Willard City Mayor

Attest:

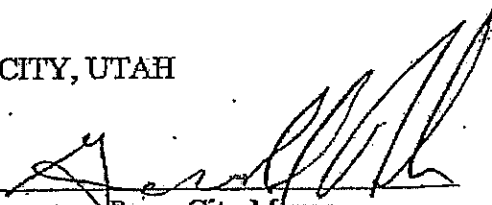
  
Willard City Recorder




Approved as to form and compliance with State law:

By   
Willard City Attorney

PERRY CITY, UTAH

By   
Perry City Mayor

Attest:

  
Perry City Recorder



Approved as to form and compliance with State law:

By   
Perry City Attorney