

AGREEMENT NO. February 16, 2011

INTERLOCAL COOPERATION AGREEMENT
FOR ELECTRICAL SERVICES

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement"), made and entered into this _____ day of February, 2011, by and between Payson City, a fourth class city of the State of Utah, (hereinafter referred to as "Payson"), and South Utah Valley Electric Service District, a political subdivision of the State of Utah (hereinafter referred to as "SESD").

In consideration of the mutual covenants to be kept and performed, and whereas, the governing body of each of the parties has by resolution agreed to the Interlocal Cooperation Agreement:

NOW, THEREFORE, the parties agree as follows:

Section 1. FACTS AND OBJECTIVES.

This Interlocal Cooperation Agreement is made with respect to the following facts and objectives:

(a) SESD is an electric service district and provides electric services in south Utah County, Utah, including areas which are adjacent to Payson City ("SESD Service Area"). SESD electric service to the cities of Woodland Hills, Elk Ridge and a limited area of Santaquin.

(b) Payson City as a municipality and has in the past, expanded its boundaries, SESD also provides and it is anticipated that Payson's boundaries will expand in the future as well.

(c) Such expansion of Payson's boundaries, have in the past, and may from time to time in the future result in areas of SESD's Service Area, including consumers therein served by SESD becoming located within the corporate limits of Payson ("Annexed SESD Service Area").

(d) SESD has challenged certain annexations initiated by Payson, and presently believes that it shall be necessary to continue to do so unless this Agreement is implemented by the parties.

(e) Payson, SESD and others are signatories to an Agreement, dated March 25, 1998 ("1998 Contract"). Without prejudice to and reserving all of their respective rights against third parties, the parties agree that the 1998 Contract shall have no application to the "Covered Area" as defined in paragraph 1(f) of this Agreement.

(f) This Agreement is made in recognition that to adequately provide future electric services substantial long-term investment is necessary in order to assure availability and

adequate electric services at economical rates, The parties agree that it is in their mutual interest, as well as in the interest of those served to limit any duplication of services and/or facilities. Accordingly, SESD and Payson wish to memorialize and confirm the arrangements between the parties for the delivery of electric services in the areas of SESD's Service Area annexed into Payson from 2005 to the present, as well as any additional area annexed into Payson from SESD's Service Area during the term of this Agreement (collectively, "Covered Area"), and also to assure one another of the future continuity of the arrangements stated in accordance with the terms of this Agreement.

(g) Consistent with the stated objectives of the parties, SESD shall continue to serve the customers receiving electric services within the "Covered Area" as such term as defined herein, at the time of annexation. Notwithstanding, "new electrical connection(s)" as such term is defined herein, shall be serviced by the party that can most economically provide the electrical services. Such determination shall be made by consultation between SESD and Payson. If after consultation between the respective Power Superintendent for Payson or Manager for SESD (presently Ron Crump for Payson and Dan Ellsworth for SESD), the parties cannot agree as to which shall serve an electric connection(s), the assignment of service of a new electric connection shall be made by a majority vote of the advisory board established by the terms of this Agreement.

Section 2. DEFINITIONS.

The following terms, considered integral to this Agreement, are defined as follows:

(a) *City property* shall mean all properties, facilities or objects currently or in the future owned or operated by Payson within the present and/or future corporate limits of Payson, whether in Streets, or other property in which Payson has any interest or rights, that were annexed from SESD's Service Area from 2005 to the present, or that annexed at any time in the future from SESD's Service Area.

(b) *SESD facilities* shall mean all electric facilities owned or operated or otherwise controlled by SESD, whether within the Covered Area or otherwise.

(c) *Construction* or *Construct* shall mean, without limitation, constructing, acquisition, laying, maintaining, testing, operating, extending, renewing, relocating, removing, replacing, repairing, and using gas or electric facilities.

(d) *Consumer* shall mean any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency or other form of legal entity currently or potentially provided services by SESD or Payson, as the case may be. All consumers presently receiving Services within the Covered Area or receiving Services from SESD at the time any additional part of SESD's Service Area is lawfully annexed into Payson after this Agreement becomes effective are intended to be covered by this Agreement. All consumers constituting new electric connections and not simply substitution of existing hookups in the Covered Area or within additional lawfully annexed Areas of SESD Service Area from

any annexations completed after the effective date of this Agreement, shall mean "City Consumers." All present consumers in the foregoing areas shall mean "SESD Consumers."

(e) *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 Payson properties or within the Payson limits, within the Covered Area, whether the same be located above or below ground.

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

(g) *New electric connection(s)* shall mean the providing of services for the initial time that service has been provided to a location in the Covered Area.

(h) *Services* shall mean electric power provided by SESD and/or Payson, in the form of transmission services, distribution services and/or sales services; and/or in the form of marketing services.

Section 3. EFFECTIVE DATE; DURATION

Payson and SESD intend that this Interlocal Cooperation Agreement shall become effective and shall enter into force, within the meaning of the Interlocal Cooperation Act, upon approval and execution hereof by the governing bodies of Payson and SESD. Although by law, an Interlocal Cooperation Agreement is not effective until executed and filed with each of respective parties as established in Section 9 hereof, once effective this Interlocal Cooperation Agreement shall apply to the relationship of the parties as of January 1, 2011, shall remain effective until December 31, 2012, and shall automatically renew for further year periods unless otherwise terminated as provided for herein. It is the intention of the parties that this Agreement shall be a basis upon which the parties intend to proceed to establish a complete integration of their respective resources and responsibilities to provide Services to all of their customers and residents.

Section 4. ADMINISTRATION OF INTERLOCAL COOPERATION AGREEMENT

4.1. Payson and SESD neither contemplate nor intend to establish a separate legal or administrative entity under the terms of this Interlocal Cooperation Agreement. Payson and SESD agree that, pursuant to Section 11-13-207, Utah Code Annotated, 1953, as amended, the governing body of SESD shall act as the administrator responsible for the administration of this Interlocal Cooperation Agreement. The parties further agree that this Interlocal Cooperation Agreement neither anticipates nor provides for any organizational changes in the parties. SESD agrees to keep all books and records required by this Agreement in such form and manner as the SESD accountants shall specify and further agrees that said books shall be open for examination by Payson at reasonable times. All records created or received by Payson in accordance with this Agreement shall be SESD records. The parties agree that no joint real or personal property will be acquired, held, or disposed of as part of this Agreement. This Agreement is intended as

an interim agreement, with it being the intention of the parties to proceed to fully integrate their respective electric service responsibilities as explained in Section 3. Although no separate administrative entity shall be established, an Advisory Board shall be established.

4.2. The Advisory Board. The Advisory Board shall consist of seven (7) members. The seventh Board Member shall be deemed an Ex Officio Member of the Advisory Board. The Ex Officio Member's sole duty shall be to break any tie votes on any matters properly before the Advisory Board. The Ex Officio Member shall not be required to attend Advisory Board meetings, except when necessary to break a tie vote. Neither notice of meetings nor inclusion of the Ex Officio Member in determining whether a quorum is present or otherwise in procedural matters shall be required or permitted. Payson and SESD shall each appoint three members. After the selection of the six members, the seventh Member shall be selected by a unanimous vote of the six members. The Ex Officio Member may only be removed or replaced upon a unanimous vote of the other Advisory Board Members. The Ex Officio Member shall vote in case of a tie, but shall otherwise have no voting authority or right. In the event of a tie vote with the Ex Officio Member not present, the meeting shall be adjourned until a time convenient to the Ex Officio Member, where upon the meeting shall resume, whereupon each side shall present its views to enable the Ex Officio Member to make a determination and vote. The Ex Officio Member should be absolved of all liability of any kind and nature in so voting. The Advisory Board shall have authority to: (i) resolve any disputes pertaining to providing services to "new electric connection(s)," (ii) to establish the amounts to be charged for services in the Covered Area and the allocation of any "margin" for services in excess of the actual costs incurred in providing such services; and (iii) to facilitate the integration of services in accordance with the express intention stated herein. Payson and SESD have initially appointed the following persons as members of the Advisory Board:

1. Mayor Richard Moore – Payson
2. Ron Crump – Payson
3. Mike Hardy – Payson
4. Dan Ellsworth – SESD
5. Blair Hamilton – SESD
6. Ray Loveless – SESD

Each party shall have the sole and exclusive right to remove and appoint a successor to a board Member appointed by such party at any time, but shall provide notice of any such action within ten (10) days of any such action.

4.3. Mayor Richard Moore and Mr. Blair Hamilton shall be appointed co-chairmen of the Advisory Board. Meetings held in Payson will be conducted by Payson Chairman and meetings held at SESD will be conducted by SESD Chairman. Special meetings of the Advisory Board may be held in person or telephonically at such time and place as established by resolution of the Board or at the request of not less than three Advisory Board members, and shall be held not later than three (3) weeks following such request. Regular meetings of the Advisory Board

shall be held at least monthly on a consistent date and time as established by resolution of the Advisory Board.

4.4. Notice of the time and place of meetings shall follow the Open and Public Meetings Act, pursuant to Title 52, Chapter 4, Utah Code Annotated, 1953 (as amended). Quorum. A majority of the number of Advisory Board Members (excluding the Ex Officio Member), shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the Advisory Board Members present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors.

4.5. Adjournment. A quorum of the Advisory Board Members may adjourn any Advisory Board Members' meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the Advisory Board Members present at any Advisory Board Members' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular or special meeting of the Board.

4.6. Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all of the Advisory Board Members shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the Minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same force and effect as the unanimous vote of such Advisory Board Members.

4.7. Meeting by Telecommunication. Members of the Board of Directors, or any committee designed by the Board of Directors, may participate in a meeting of the Board or committee by any means of communication by which all persons participating in the meeting can hear each other during the meeting, and participation in a meeting under this Section shall constitute presence in person at the meeting.

4.8. Officers. The officers of the Advisory Board shall only be the Co-Chairman with one Co-Chairman designated by Payson and one by SESD, respectively.

4.9. Co-Chair of the Board. The Co-Chair shall alternate presiding at all meetings of the Board of Directors and shall jointly have general supervision, direction and control of the Advisory Board in discharging its duties. In the event of a dispute between the respective Co-Chair concerning the cooperative performance of their respective duties, the subject matter of the dispute shall be submitted to the Ex Officio Member, and resolved by the Ex Officio Member. The Co-Chair shall have the general powers and duties of management usually necessary to fulfill implementation of the stated intent of the Advisory Board, and shall have such other powers and duties as may be prescribed by any future amendment to this Agreement properly effected by Payson and SESD.

4.10. Ex Officio Secretary. An Ex Officio Secretary shall be appointed by SESD as necessary to attend all meetings of the Advisory Board Members and take minutes, with the time and place of holding, whether regular or special, and if special, how authorized, the notice

thereof given, the names of those present at Directors' meetings, and the proceedings thereof. The Secretary will be appointed by mutual agreement of the Advisory Board.

4.11. Committees. The Advisory Board may form a committee or committees from time to time. Committees shall consist of no fewer than three (3) members nor more than nine (9) members, as deemed necessary to address specific needs from time to time. The term of such Committee shall be deemed to have expired on the shorter of: (1) the date on which their final report is tendered to the Advisory Board, or (2) on the first day of the second year after the creation of same unless otherwise extended by the Board by specific resolution. Minutes shall be kept of all committee meetings. Members of the Board shall be allowed to serve on any Committee or Committees.

4.12. Rules of Procedure. The Advisory Board shall establish its rules of procedure. A majority of the members of any committee may fix its rules of procedure. All action by any committee shall be reported to the Advisory Board at a meeting succeeding such action and shall be subject to revision, alteration, and approval by the Advisory Board; provided that no rights or acts of third parties shall be affected by any such revision or alteration.

Section 5. PURPOSES AND DESCRIPTION OF SERVICES

5.1. This Interlocal Cooperation Agreement has been established and entered into between Payson and SESD for the purpose of establishing the basis for SESD and Payson to provide Services to the Covered Area as set forth in Exhibit A (map) to this Agreement, attached hereto and incorporated herein, as well as to all other areas presently within SESD's Service Area, that are lawfully annexed by Payson into its municipal boundaries during the term of this Agreement.

5.2. Except to the extent provided under 1(f)&(g) of this Agreement, SESD shall provide all Electrical Services required in the Covered Area, as well as all Electrical Services within any of SESD's present service area lawfully annexed by Payson in the future. All current Consumers presently in the Covered Area shall continue to be Consumers of SESD. All new Consumers after this Agreement becomes effective shall be considered Consumers of Payson, but SESD shall nonetheless provide Services to them subject to the approval of the Advisory Board. SESD shall establish a rate structure for City Consumers, paralleling the rate structure of Payson for its other Consumers. SESD shall remit to Payson on a monthly basis such amount from revenue actually collected from City Consumers as established by the Advisory Board taking into consideration the respective rates charged by SESD and Payson. SESD shall also provide to Payson a monthly report of revenue received from new consumers in the Covered Area. Such amount is deemed and agreed by the parties to be as equivalency for the mutual accommodations made allowing SESD to continue to provide Services in annexed areas while assuring that Payson residents receive services at a rate equivalent to the rate charged other Payson residents.

5.3. The employees of each entity shall remain solely employees of each entity for purposes of payment of salaries, wages, withholdings, and benefits; personnel policies and procedures; training; and hiring and firing. All such purposes shall be handled exclusively by, and at the sole discretion of both parties.

5.4. All SESD facilities and all additions thereto shall remain the sole and separate property of SESD and SESD shall have the right to construct additional facilities as it deems necessary. Likewise, all City facilities and all additions thereto shall remain the sole and separate property of City and City shall have the right to construct additional facilities as it deems necessary. Each party shall have the right to utilize the other parties electric facilities in providing Services under this Agreement in the most economically way possible, upon coordination with the other party and subject to the approval of the Advisory Board.

5.5. Each party shall maintain all Electric facilities at or above prudent utility standards, at least consistent with NESC requirements..

Section 6. METHOD OF TERMINATION

This Interlocal Cooperation Agreement shall be effective for a period of two (2) years, and will automatically renew for an additional one year term on each anniversary date, pursuant to the provisions of section 3 of this Agreement. The parties agree that either party shall have the right to terminate this Agreement on any anniversary thereof, by delivering written notice to the other party, by certified mail, no later than 60 days prior to said anniversary date, or at any other time mutually agreed to by the parties. In the event of termination, other than upon the integration of the Services, the parties shall negotiate a mutually acceptable method to compensate SESD. Payson shall grant SESD a limited franchise agreement to enable SESD to continue to serve for an additional period of ten (10) years following termination of this Agreement. SESD shall be entitled to compensation for its electric facility in accordance with applicable Utah law as determined by an independent appraisal if the parties cannot otherwise agree. In circumstances of such termination, partial compensation for its electrical facilities in the Covered Area shall be paid through issuance of the above-referenced limited franchise agreement authorizing SESD to continue to serve the Covered Area.

Section 7. INSURANCE AND INDEMNIFICATION

Each party shall instruct its insurance carrier to add the other party to its liability insurance as additional insureds for purposes of the services described herein, and deliver to the other a certificate, or certificates of insurance to that effect, along with copies of each applicable policy or coverage agreement. The cost of such additions to the insurance coverage shall be the separate responsibility of each party. In the event that either party desires additional insurance coverage, or different limits of coverage, such shall be obtained and paid for separately by such party.

Each of the parties shall indemnify and save harmless the other, including its officers, and employees from all suits, actions, or claims of any character related in any manner to injuries or damage received or sustained by any person, persons, or property arising out of its negligent errors or omissions committed while providing the facilities, equipment and supplies agreed upon herein. Neither party shall indemnify the other for intentional torts committed by its officers or employees. Nothing in this Agreement shall be construed to waive or limit the protections provided in the Governmental Immunity Act of Utah. Utah Code Ann. § 63-30d-101 et seq. (1953 as amended).

Section 8. REVIEW BY APPROVED ATTORNEY

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

Section 9. FILING OF INTERLOCAL COOPERATION AGREEMENT

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

Section 10. 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 11. 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 12. GOVERNING LAW

All questions with respect to 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 WHEREOF, the parties have signed and executed this Interlocal Cooperation Agreement, after resolutions duly and lawfully passed, on the dates listed below:

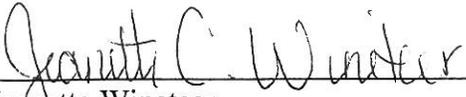
PAYSON CITY

Authorized and passed on the 9 day of March, 2011.



Richard Moore
Mayor of Payson City

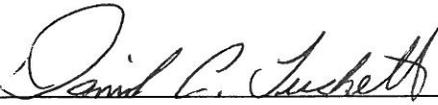
ATTEST:



Jeanette Wineteer
Payson City Recorder



APPROVED AS TO FORM:



David Tuckett
Pay City Attorney

**SOUTH UTAH VALLEY ELECTRIC
SERVICE DISTRICT**

Authorized and passed on the 4th day of March, 2011.



Blair R. Hamilton
Its: Chairman

ATTEST:



Mary Ann James
Its Clerk

APPROVED AS TO FORM:



Michael R. Carlston
Snow, Christensen & Martineau