Reasoning Behind Request for Removal of Capacity Fee Portion of Fire Agreement between Kanab City and VCSSD

Thank you to Kanab City for working with the district to provide fire response within the district. We recognize that your support and our shared partnership is vital to the greater community's sustainability, and that Kanab City has previously long-shouldered the burden, with little to no assistance from those outside the City. We desire the district to be equally good partners, and have accomplished considerable progress to that end. We, as Kane County, also continue to fund the exploration of countywide fire as a potential, long-range fix. Only one particular aspect of the contract is causing significant issues, which is the Service Capacity Fee. Please hear us out as to the matter:

The Vermillion Cliffs Special Service District (VCSSD) will provide **$315,000** to the Kanab City Fire Dept budget in the first year alone.

Unlike with Kanab City property owners, there is no year-over-year "truth in taxation" cap on this amount. So each year, the calculation will start fresh with .00135% of taxable assessed value of the properties within the district boundaries. It is reasonable to expect that amount would *go up every year* that there are new builds…as well as when property values increase, which they are almost certain to continue to do.

Additionally, the contribution is contractually structured to tack on an **extra 6%** each subsequent year.

For illustration, even with *no new builds and no increase in value* (an incredibly unlikely scenario), the contribution for next year would be **$333,900.** In reality, it is almost certain to be much more than that.

The Kanab City Fire Department operates currently with an annual budget of approximately $1.4 million. That means that the VCSSD's first annual contribution of $315,000 represents a disproportionate share of that total, and is only likely to continue to be a larger and larger portion of Kanab's fire budget in subsequent years.

For year 1, the VCSSD contribution accounts for roughly **22.5%** of the Fire Department's entire annual budget: $315,000 ÷ $1,400,000 ≈ 22.5%.

For context, only approximately **16% of the population** served by the Kanab City Fire Department lives within the boundaries of the VCSSD:

- VCSSD residents = 16% of population
- VCSSD funding = 22.5% of Fire Department budget

Because VCSSD contributes a disproportionately larger share of the fire budget compared to its population size, residents of the District are paying significantly more per capita for fire protection services than residents in the rest of the service area. Part of the reason for that is because Kanab is only counting the district residents' property tax percentage as valid contribution toward Kanab Fire Department, and not counting, due to the difficulty in calculating, the sales tax revenue which residents of the district create when they shop in Kanab.

Just to drive that home:

District residents pay to Kanab City .**00135% solely for fire response**

Kanab residents pay to Kanab City .**0017% for all services.**

The reason that we are pointing out all of this, is that we believe, after careful analysis from three different qualified attorneys, as well as self study, that it would be legally indefensible for the district to collect the "capacity fee" currently required in the agreement, and then to pass it along to Kanab City. This leaves the district in a very bad position when trying to come up with the service capacity fee. We hope that the other funding from the district will be considered sufficient.

We also believe that it would be very burdensome and financially untenable for the approximately 1000 residents within the district boundaries to have the capacity fees coming from the district's general fund.

We suggest that, instead, the funds being collected with the .00135 + 6% could be put by the City toward vehicular expenditures or any other aspects of fire response.

We request that the capacity fee, 8(d) and 8(e) be removed from the contract. Thank you for your consideration. This is a very big problem for us, or we wouldn't be coming back to try again to get it removed.

UTAH ASSOCIATION OF COUNTIES

Legal Opinion

October 29, 2025

To: Vermillion Cliffs Special Service District Administrative Control Board

From: Eric Clarke

EXECUTIVE SUMMARY

I have been asked to provide a legal opinion as to the legality of imposing a one-time fee for new residential and commercial development: $900 per lot and $3.26 per square foot of building space respectively (Capacity Fee). The fee would be assessed before a certificate of occupancy is issued and would be passed on to Kanab City (the City) within 30 days pursuant to a June 12, 2025 Interlocal Agreement (the Interlocal or the Agreement). I have several concerns with this fee and believe there is a high likelihood the Vermillion Cliffs Special Service District (the District or SSD) would have to refund the Capacity Fee if it were challenged in court. This is because (1) it is an impact fee masquerading as an SSD service fee, (2), as a service fee, it is not reasonably related to the costs of the service received, and (3) as an impact fee, the funds may be used for impermissible purposes. If the District were required to refund the Capacity Fee, there is no provision in the Interlocal that would require the City to refund the amount. So, the City could keep the funds and the District would have to come up with other funds to repay property owners. I recommend amending the Interlocal so the Capacity Fee is not required.

If the capacity fee is collected and later challenged, there is 2015 precedent where an SSD had to come up with funds to pay back all of the improperly collected fees, plus 10% interest, plus attorney fees for the people challenging the fee—and the door was left open for those that did not participated in the lawsuit to get reimbursement as well. This is especially troublesome because the Interlocal has no provision for the City refunding any illegal fees it has received. So, the District could charge and collect the fees, pay them to the City, have a judge order the fees

be refunded, and then need to come up with the funds to repay the property owners without using any of the actual fees collected because the City would not have to repay them.

BACKGROUND: THE DISTRICT'S CREATION AND THE INTERLOCAL AGREEMENT

Creating Resolution

The District was created by the County Commission on April 29, 2025, to provide municipal-level fire services to an unincorporated area in Kane County that has traditionally received fire services free of charge from the City. The District will be governed by a five-member elected board, but for now, the County Commissioners are the District's board.

Interlocal Agreement

The June Interlocal Agreement was approved by the City and the District. For purposes of this memo, there are two key aspects of the Interlocal: the fee structure and the lack of a firm commitment to provide services.

On its face, the Interlocal requires the District to collect an annual base fee, a fire inspection fee, and the problematic capacity residential and commercial fees that are the focus of this memo.

The residential capacity fee of $900 per newly constructed unit is to be paid to the City within 30 days of a certificate of occupancy (CO) being issued.[1] There are no restrictions on how the City can spend the money raised from this fee.

The commercial capacity fee is calculated as $3.26 per sq/ft for new commercial buildings. It is also to be collected and paid within 30 days of CO. This funding can only be used by the City for "capital investments in fire protection infrastructure." However, there is no commitment that the infrastructure will support fire services in the district.

In fact, the Interlocal repeatedly disclaims obligations from the City to the District for the provision of fire services. It is difficult to imagine a scenario where the District could compel the City to provide any service. Examples from the Agreement include the following.

- WHEREAS, the Parties agree the District and its residents would benefit from the City's support from time to time, resources permitting, in providing support on structural fires and initial wildland Fire responses in the District. (Page 2.)

[1] Paragraph 8.h says that the payments are due "by January 31st of the applicable contract year, or within 30 days of being assessed if January 31st has already passed." But Paragraphs 8.d and .e use the term "preceding contract year" rather than applicable year. If the fees are not due until the next year, then it appears impossible for the 30 days since assessment language to ever apply. So, the best reading is that the fees are due within 30 days of CO, but this may not have been the Parties' intent.

- This Agreement does not require the City to expand its current fire department personnel or resources. (Paragraph 5.)
- The City shall, based on available resources, provide initial wildland fire response . . . [and] respond to structural fires in the District . . . . (Paragraph 6.a.)
- When resources are unavailable or limited, or responding to a fire in the District would leave the incorporated area of the City at unreasonable risk, the City's fire department will either provide a limited response or not respond to dispatch callouts for fires in the District. (Paragraph 6.c.)
- At all times, the City will prioritize responding to and having sufficient fire protection coverage within the City's territory, before responding to a fire in the District. (Paragraph 6.g.)
- The District does not obligate the City to act or respond to fires in its territory . . . . (Paragraph 7.b.)
- The District shall allow the City to exercise its decision-making authority in whether to respond and the level, manner, and method of fire protection services to be rendered. (Paragraph 7.c.)
- The District shall hold City harmless against claims of inadequate fire protection or insufficient response . . . . (Paragraph 18.b.)

In short, the Interlocal obligates the District to collect what is presumably the equivalent amount of fees from each property owner and new construction that the City collects within its boundaries, but the City does not commit to provide equivalent fire services.

The District Board has not yet imposed the Capacity Fees because the county attorney has raised concerns about legal liabilities. However, the Interlocal requires those fees to be "implemented and assessed" based on occupancy permits issued after December 8, 2025.

Due Dates for Paying the City

The due date is confusing. Section 8.c, which immediately follows the base fee description, says the fees shall be paid to the City by January 31 each year except the final year of the contract, when the fee is due on March 1. Section 8.h, which is the last section in the fees and payment structure section, says the fees are due on January 31 "or within 30 days of being assessed if January 31st has already passed." I believe the best interpretation of these is that the base serice fees collected with the tax bill is due on January 31st, and then the capacity fees must be paid monthly as they are received. But this is not clear.

The due dates are further complicated by Section 7.e in the District's Commitments section. It says, "The District will pay the City the full annual fee, as delineated herein, prior to March 31 of

each year." This is the only reference in the Agreement to a "full annual fee," and it has a different due date than payments from the base service fees and the capacity fees.

STATE LAW ALLOWS THREE WAYS FOR AN SSD TO RAISE REVENUE: SERVICE FEES, PROPERTY TAXS, AND IMPACT FEES

Fees

The easiest way for an SSD to get revenue is to charge a service fee, defined as "an amount charged . . . to a customer for a service . . . that the district provides to the customer's property." UCA § 17B-1-904. The only substantive requirement for a fee is that it "bear a reasonable relationship to the services provided, the benefits received, or a need created by those who must actually pay the fee." *V-1 Oil Co. v. Utah State Tax Comm*, 942 P.3d 906, 911 (Utah 1996), *vacated in part on other grounds*. Another way to put the standard is that the fee must "reflect[] only the reasonably estimated cost of delivering the service for which the fee was paid." UCA § 17B-1-121 (statute discussing appeal process for a special district fee and applied to SSDs by UCA § 17D-1-106).

In addition to regularly charged service fees, districts can also charge one-time fees for one-time costs, such as hookup or connection fees. If adding a new user to a service area uses district resources, a fee can be charged to cover those. Examples include connecting a waterline to a new residence or the administrative cost of changing the contact information when a property is sold to a new owner. As with other fees, these must be reasonably related to the costs imposed on the district by the new residence or owner.

Taxes

SSDs can impose property taxes. While more procedurally difficult than fees, many SSDs prefer a property tax as a fairer way to raise revenue for their services. There are also some collection benefits to taxes, but legislative changes in the past 15 years have made it easier to collect fees. The largest procedural barrier to levying a property tax is that it must be approved by a majority of voters in an election. UCA § 17D-1-105.

Impact Fees

SSDs can also impose impact fees. Impact fees are the most commonly litigated type of revenue source available to SSDs. UCA § 17B-1-111(1) authorizes impact fees, has some noticing requirements, and then applies the Title 11 Impact Fee Act to special districts. Impact fees are "imposed upon new development activity as a condition of development approval to mitigate the impact of the development on public infrastructure." Impact fees are not permit or application fees. UCA § 11-36a-102(9). They are only permissible if they offset the impacts from

new growth and cannot be used to "cure deficiencies" in public infrastructure needed to serve existing development or provide a higher level of service. UCA § 11-36a-202(1)(a).

Unlike a service fee or tax, before imposing an impact fee, the district must complete a facilities plan and analysis which demonstrates those paying the fee will bear their proportionate share of the costs for new growth public infrastructure. UCA § 11-36a-301 to -306. It is also important that plans and analysis be kept up to date.

Interestingly, there is a provision in state code that warns against charging what is best described as an impact fee but is called something different by the governmental entity charging the fee.

> (1) A fee that meets the definition of impact fee under Section 11-36a-102 is an impact fee subject to this chapter, regardless of what term the local political subdivision or private entity uses to refer to the fee.
>
> (2) A local political subdivision or private entity may not avoid application of this chapter to a fee that meets the definition of an impact fee under Section 11-36a-102 by referring to the fee by another name. UCA § 11-36a-204.

Additionally, there is an impact fee restriction unique to fire services. Residential impact fee revenue may not be used to purchase a fire engine, but impact fees from commercial development may be used to purchase a fire engine that costs more than $500,000. UCA § 11-36a-202(2)(a)(i).

ANALYSIS OF FEES DESCRIBED IN THE INTERLOCAL AGREEMENT

The potential liabilities for inappropriately collecting a fee or tax are significant. If a fee is not reasonably tied to the cost of service, or if a tax or impact fee fail to clear the respective procedural hurdles, then the money must be refunded not only to the individual challenging the fee, but potentially, to everyone that paid it. Attorney fees are also a potential liability. The worst-case scenario would be as follows: the District collects the capacity fee on both residential and commercial development for several years, then a large commercial project comes along and successfully challenges the fees, requiring the district to refund the fees plus interest. At that point, the District would need to impose new fees to cover the lost revenue from the Capacity Fees as well as paying down the debt owed to the residents and businesses that challenged the fees.

Capacity Fee Concerns

I believe it highly unlikely that a court would uphold the capacity fees. They are not service fees because the property owners will still have to pay the basic service fee. They are also not a connection or new user fee because they are not related to the costs of administratively getting

the property onto the District's service system. The Agreement specifically describes the residential fee as paying for "new growth or an expansion of service fee." That does not describe a service fee.

Instead, the Capacity Fees fit the statutory definition of an impact fee: they are imposed on new development, as a condition of development (in order to obtain the CO), and are intended to support the "new growth or expansion of services." In this analysis, I agree with the Utah Property Rights Ombudsman's informal opinion given to the District on this issue. Section 11-36a-204 clearly prohibits avoiding the impact fee requirements and restrictions by calling a fee on new growth something other than an impact fee.

I strongly recommend the District renegotiate the Agreement and eliminate the fee.

ARGUMENTS PUT FORWARD BY KANAB CITY ARE LARGELY UNPERSUASIVE

The City makes two arguments in favor of the Agreement. (1) It is a contract for services, and the District can follow the terms of a contract that requires specific fees because that makes them reasonable. (2) The agreement does not require the capacity or service fee, and the District has discretion in how it raises the revenue required by the Agreement. While each argument has some legitimacy, I am not confident either argument would hold up in court. The district would be taking on significant liability—which the City disclaims any portion of—by accepting the City's arguments.

Government Subdivisions Cannot Contract for Things They Are Not Otherwise Authorized to Do

For the first argument to be true, any governmental subdivision could commit to do things, via contract, they otherwise would not be authorized to do. While Utah political subdivisions have broad authority to enter into contracts, they cannot contract around statutory requirements. *Wallingford v Moab City*, 2020 UT App 12 ¶ 28 ("Given that a public hearing was therefore required (by statute) prior to passage of the resolution adopting [an amendment to a development agreement] . . . the City was not in a position—despite its relatively broad power to enter into contracts—to enter into a contract that would allow it to circumvent those public hearing requirements.") In this instance, state statute places significant restrictions on the District's ability to levy a tax or impact fee. I was not able to find any support for an argument that the District could contract around those requirements that are meant to protect people and entities from unpopular or unfair taxes and fees.

The Contract Calls for the Specific Fees

The second argument has two key weaknesses. First, a plain reading of the agreement calls for each of the fees to be charged. The title to the Section is Fees and Payment Structure, and the section never discusses adding the various "fees" together into a total annual payment from the

District to the City. Instead, each "fee" is described in detail in a way that describes the action the District is obligated to take. Also, immediately following the service fee description is a due date (January 31). Then, following the capacity fee and the fire inspection fee description is a due date that differs from the service fee date (January 31 or 30 days after the fee accrues if January 31 has passed in the calendar year). The best reading of the Agreement is for the specific base fee to be collected with property taxes and then paid, and for the capacity and inspection fees to be paid monthly.

Admittedly, this reads the March 1 total annual fee language out of the Agreement as a typo. An alternative reading would be what the City proposes: ignore the payment schedule sections 8.c and 8.h, and allow the District to collect the equivalent amount that the described fees would have raised in a legal way—likely by charging a large service fee and the fire inspection fee and have that single payment be due on March 1. But this understanding must read the due dates immediately following the fees out of the Agreement. Furthermore, the term used is "fees" and a total annual payment is never discussed in the Fee and Payment Structure section.

Collecting Fees for City Impact Fee Purposes Creates Unjustified Liability

Even if the District agreed to interpret the Agreement as the City proposes and charged a high enough service fee to cover the base and capacity fees amounts, the District would still be taking on unjustified liability. The Agreement makes it clear that the City is not obligated to use the fees for infrastructure of expansion of service capacity to better serve the properties located in the District. Therefore, the capacity fee amount would be in excess of the actual cost of service to the current users, but the district can only charge a fee that is reasonably related to the cost of service. The purpose of the Base Fee is to cover that actual cost—as clearly described in the Agreement. The Capacity Fees have several legal issues with their relation to the actual cost of providing services: they could be used solely to benefit the City; they would not be used to expand services to the District; and they are the equivalent of a city surcharge in excess of what it costs the City to provide services to existing properties in the District.

CONCLUSION

I do not believe the Capacity Fees would be upheld if challenged in court. They are either is an impact fee or are a fee in excess of the actual cost of service. The Agreement specifically states that those funds are not obligated to be used for expansion of services to the new growth in the District, so it is tough to justify collecting them.

I recommend the Agreement be amended and the Capacity Fees eliminated. This amendment does not need to be lengthy or complicated. But it would strengthen the agreement and the District's ability to defend its fees if:

- The Capacity Fees are eliminated;
- The due dates for payments from the District to the City are clarified; and
- The City commits to provide equivalent fire protection to the District's area as it is does the City's. This would prevent a potential challenge to the District's fees based on the City charging the District too much because it provides a lower level of service to the District than it does the City, but everyone pays a similar rate.

Thanks for the opportunity to work on this project, and I am happy to discuss my opinions at your convenience. My phone number is 435-632-5549, and my email address is eric@utahcounties.org.

Gmail

Jeffrey Stott <jstott@kane.utah.gov>

Fire District new resident fee analysis request

Marcie Jones <marciejones@utah.gov> Thu, Aug 21, 2025 at 3:29 PM
To: Jeffrey Stott <jstott@kane.utah.gov>
Cc: Cyndy Nelson <cwnelson@utah.gov>

Jeff,

Thank you for the opportunity to weigh in. I have reviewed the New Resident Fee Memo submitted on August 6, 2025 and provide the following informal opinion. I note that I have not received input presenting opposing facts or legal analysis; accordingly, my opinion is preliminary only.

Under Utah law, an impact fee is defined as "(1) a payment of money (2) imposed upon new development activity as a condition of development approval to (3) mitigate the impact of the new development on public infrastructure." UTAH CODE § 11-36a-102(8)(a) (emphasis added). The statute further provides that "[a] fee that meets the definition of impact fee under Section 11-36a-102 is an impact fee subject to this chapter regardless of what term the local political subdivision or private entity uses to refer to the fee. A local political subdivision or private entity may not avoid application of this chapter to a fee that meets the definition of an impact fee … by referring to the fee by another name." UTAH CODE § 11-36a-204.

Accordingly, the determinative question is whether the New Resident Fee meets the statutory definition.

1. Payment of money. The fee is a payment of money—$900 per residential unit and $3.26 per commercial square foot.
2. Imposed upon new development activity as a condition of development approval. The contract expressly conditions collection of the fee on issuance of a certificate of occupancy. "Development activity" is broadly defined as "any construction or expansion of a building, structure, or use … that creates additional demand and need for public facilities." UTAH CODE § 11-36a-102(3). New residential and commercial construction falls squarely within this definition.
3. Mitigating the impact of new development on public infrastructure. The contract language states that the fee supports "capital investments in fire protection infrastructure" and "expansion of services," which is precisely the type of mitigation contemplated by the statute.

Because the New Resident Fee satisfies all three elements, it meets the statutory definition of an impact fee under UTAH CODE § 11-36a-102(9)(a).

Nothing in the statute suggests that the Impact Fees Act can be avoided by contractual arrangement. The law applies regardless of the label attached to the fee or whether the fee is collected or expended through a third party. *See* UTAH CODE § 11-36a-204.

Thus, if the District imposes the New Resident Fee, it must comply with the procedural and substantive requirements of the Impact Fees Act, including proper adoption, accounting, and expenditure.

In conclusion, the New Resident Fee functions as an impact fee under Utah law, even though it is labeled a service fee in the contract. Because it is imposed on new development to fund expansion of fire protection infrastructure, it must comply with the requirements of the Impact Fees Act, and

the District cannot avoid those obligations through its agreement with the City.

I welcome the opportunity to hear the City's perspective.

Best,

Marcie

On Wed, Aug 6, 2025 at 4:49 PM Jeffrey Stott <jstott@kane.utah.gov> wrote:

[Quoted text hidden]

FIRE PROTECTION AGREEMENT
BETWEEN KANAB CITY AND
VERMILLION CLIFFS SPECIAL SERVICE DISTRICT

This Fire Protection Agreement ("Agreement") is entered into by and between Kanab City, a municipal corporation and political subdivision of the State of Utah (the "City"), and Vermillion Cliffs Special Service District, a political subdivision of the State of Utah (the "District" or "Vermillion Cliffs SSD"), on this 12th day of June, 2025 ("Effective Date"). Each of the foregoing are a "Party," and collectively are referred to herein as the "Parties."

RECITALS

WHEREAS, Kane County has established the Vermillion Cliffs SSD for the purpose of providing fire protection services, as defined in Utah Code § 17D-1-201(9), for the property within the District boundaries;

WHEREAS, Utah Code § 17D-1-103 authorizes special service districts to enter into contracts considered desirable to carry out special service district functions;

WHEREAS, Utah Code § 11-7-1 authorizes municipalities to cooperate with all contiguous fire districts to maintain adequate fire protection within their territorial limits;

WHEREAS, the City has elected to maintain and support a fire-fighting force or fire department for its own protection;

WHEREAS, the District is committed to providing long-term solutions to ensure adequate fire protection to areas within the District boundaries, but has not yet established its own fire-fighting force or fire department for its own protection;

WHEREAS, the total cost to provide adequate fire protection goes beyond fire suppression and includes fire prevention measures, training, infrastructure and equipment, and day-to-day operation costs;

WHEREAS, the Parties value an investment in fire prevention including inspections, public education, and employee training;

WHEREAS, the City estimates approximately $1,500,000 from the General Fund will be budgeted in the 2026 fiscal year for fire department expenditures (which budgeted amount varies and routinely increases each year);

WHEREAS, the Parties jointly affirm that funding fire protection services solely through a per-use rate or similar charging mechanism is not a sustainable nor equitable approach;

WHEREAS, the City has and desires from time to time to contribute toward the support of wildland and structural fire protection, defined herein, in the District as resources allow;

WHEREAS, the District does not have a full-time fire-fighting force for providing fire protection for structural fires and an "Initial Attack" for wildland fires (as defined further herein) in the areas within the

District's boundaries—the District shall act in good faith to expeditiously enter into a cooperative agreement with the State of Utah, Division of Forestry, Fire, and State Lands, or "FFSL," as an eligible entity to receive compensation therefrom for any fire response following a Delegation of Fire Management Authority;

WHEREAS, the Parties agree the District and its residents would benefit from the City's support, from time to time, resources permitting, in providing support on structural fires and initial wildland fire response in the District;

WHEREAS, the Parties wish to memorialize their understanding, agreement, services, and delegation of authority from the District to the City to provide fire protection under specific terms;

WHEREAS, the District will compensate the City for the fire protection services outlined herein, calculated as a flat annual rate for services, which amount is anticipated to be calculated using a formula with a rate akin to a mill levy (comparable to what City residents pay for similar services), plus fees for new growth or other additions to existing fire protection services;

WHEREAS, the Parties wish to enter into an agreement for services using a formula that takes into account assessed property values, the District shall be at liberty to assess and collect a fee from its constituents in the amount and method they deem appropriate;

WHEREAS, the Parties intend for this Agreement to last five (5) years unless terminated earlier pursuant to the terms in this Agreement, and which Agreement may be renewed or modified only by a further signed written agreement or amendment hereto;

WHEREAS, the City and District are public agencies as defined in the Utah Interlocal Cooperation Act, Utah Code § 11-13-101, et seq. (the "Act"), and, as such, are authorized by the Act to each enter into an interlocal agreement to act jointly and cooperatively on the basis of mutual advantage;

WHEREAS, the Parties are committed to promoting the health and welfare of the residents of their respective political subdivisions;

WHEREAS, the terms of the foregoing service agreement will promote the common general health, safety, and welfare of City and District residents; and

WHEREAS, this agreement does not create an interlocal entity.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals, incorporated forthwith, the mutual covenants and agreements herein set forth, the mutual benefits to the Parties to be derived, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Purpose of the Agreement. The purpose of this Agreement is outlined in the Recitals, which are incorporated herein by reference.

2. Duration. This Agreement shall commence on the Effective Date (June 12, 2025) and shall terminate on June 11, 2030, constituting a five-year term, unless terminated earlier as outlined herein. Thus, a "contract year" shall run from June 12th to June 11th of each year. This Agreement may be amended by mutual written consent of the Parties.

3. Termination. This Agreement may be terminated by a Party by providing sixty (60) days' notice of the intent to terminate.

a. Buyout Provision for Early Termination by the District. The District may terminate this Agreement prior to the end of the five-year term under the following conditions:
    i. Termination must occur on or before the end of a contract year (i.e., on or before June 11th), thereby requiring notice of termination on or before the preceding April 12th.
    ii. Prior to termination, the District shall pay all amounts due for services rendered through the current contract year regardless of the date noticed for termination (i.e., paying the amount due through the end of the then contract year regardless of the date upon which the service is actually noticed to be terminated);
    iii. The District shall pay 50% of the total remaining amount due for the remainder of the full contract term beyond the then current contract year;
        1. The District may terminate this Agreement upon completion of the first two (2) years without incurring the obligation to pay 50% of the total remaining amount due for the remainder of the full contract term beyond the then current contract year, if one or more of the following apply:
            a. The District has constructed a fire station to service the District;
            b. The District has set up an independent firefighting force; or
            c. A county-wide firefighting force/department is established to which the District is joining, or the District is being dissolved as a result thereof.
    iv. Upon receipt of payment, the City will continue to provide services through the end of the then-contract year.
b. Termination by the City. The City may terminate this Agreement before the end of the five-year term under the following conditions:
    i. After January 31st of any contract year, and once full payment has been received for that year, the City may not unilaterally terminate the Agreement for that current contract year except in cases of non-funding or force majeure as described in Subsection (c) below.
    ii. If the City elects to terminate the Agreement before the end of the five-year term, then the District shall pay the City a pro-rated amount for the months of fire protection service rendered through the termination date if, by the termination notice, it is intended for the Agreement to be terminated before the end of the then-current contract year, or, if the notice provides for termination on April 30th, then the District shall pay the full amount for the then contract year in which the Agreement is terminated.
c. Non-Funding Clause and Force Majeure. If a Party responsible for financing the fire-fighting force makes all reasonable efforts in fulfilling its obligations under this Agreement, and, through no fault of the individual Party, or due to force majeure, or due to a third party's failure to appropriate necessary funding, and is therefore unable to reasonably bear the operational costs or to acquire the necessary financing for the fire-

fighting source, then this Agreement may be terminated by written notice to the other Party, and there will be no obligation for the Parties to move forward with the terms of this Agreement. Any payment due a Party shall be prorated and immediately due on or before the following March 1st.

4. Representatives. The individuals listed below are authorized to act as the Representative for their respective Party in all matters related to this Agreement. Either Party may change its Representative by giving written notice to the other Parties' Representatives.

Kanab City	Vermillion Cliffs Special Service District
Name: Kyler Ludwig (City Manager) Telephone: 435-644-5234 Email: citymanager@kanab.utah.gov	Name: _____ Telephone: _____ Email: _____

5. Limitations. This Agreement constitutes an obligation for the City to respond to wildland and structural fires in the unincorporated areas of the District, within the limits of the City's reasonably available resources. This Agreement does not require the City to expand its current fire department personnel or resources. This Agreement delegates authority for the City's fire department to act under the District's fire authority as it pertains to responding to wildland and structural fires in the unincorporated areas of the District. This Agreement does not supersede, terminate, nor override any prior, concurrent, or future agreements related to other fire protection or emergency services, or other forms of mutual aid, including, but not limited to those agreements related to wildland fire protection agreements. This Agreement does not supersede any responsibilities, regulations, and/or requirements imposed by state laws and local ordinances. This Agreement does not obligate the City to undertake nor assume any statutory or legal responsibilities or obligations of the District. This Agreement does not create any additional obligations or responsibilities of the District except as set forth in section 7.

6. City's Intent and Commitments. The City commits to working in good faith with the District.
   a. The City shall, based on available resources, provide initial wildland fire response (i.e., "Initial Attack" for wildland fire, prior to a Delegation of Fire Management Authority by the State of Utah, Division of Forestry, Fire, and State Lands, or "FFSL") and shall respond to structural fires in the District when notified by Kane County's dispatch. If responding to a structural or wildland fire in the District, the City's fire department personnel shall determine the level of fire protection service to be rendered, as well as the manner and method in which the service is to be provided.
   b. When the City provides a wildland fire response within the District, the City shall be entitled to any compensation received pursuant to a Delegation of Fire Management Authority by the State of Utah, Division of Forestry, Fire, and State Lands, or "FFSL," whether payment is received directly by the City from the FFSL or if payment is made to the District and thereafter issued by the District to the City. The City shall provide reasonable assistance, including providing necessary information and documentation, in order for the District to comply with the requirements of a cooperating agreement with the FFSL.
   c. When resources are unavailable or limited, or responding to a fire in the District would leave the incorporated area of the City at unreasonable risk, the City's fire department

will either provide a limited response or not respond to dispatch callouts for fires in the District. However, when the City fire department does respond, the City's fire personnel will act reasonably and in accordance with its adopted policies and procedures.

d. The City will bill the District for requested fire inspections, within ninety (90) days of completion of the inspection.
e. The City will use a standard and reasonable rate schedule to determine fire inspection costs; a 2-hour minimum inspection time will be charged on all inspections.
f. Upon request by the District the City will provide a summary report of fire responses within the District.
g. At all times, the City will prioritize responding to and having sufficient fire protection coverage within the City's territory, before responding to a fire in the District.

7. District's Intent, Commitments, and Delegation of Authority. The District commits to working in good faith with the City.

a. As the fire authority for the properties within the District, the District hereby delegates authority to the City, and particularly the Kanab Fire Department, to respond to structure fires in the District and authority to handle the "Initial Attack" and continued response for any wildland fire, as may be necessary.
b. The District does not obligate the City to act or respond to fires in its territory when the City's reasonably available personnel or equipment are unavailable or limited, or responding would unreasonably leave Kanab residents unprotected or at unreasonable risk.
c. The District shall allow the City to exercise its decision-making authority in whether to respond and the level, manner, and method of fire protection services to be rendered.
d. From the effective date of this Agreement through termination, the District authorizes the City to bill the District for fire protection services and fire inspections within the District. The City shall not be responsible for billing or collecting costs from property owners or those believed to have caused the need for the fire protection response.
e. The District will pay the City the full annual fee, as delineated herein, prior to March 31 of each year.
f. The District will pay fees as described in Section 8, *Fees and Payment Structure*.
g. The District will provide detailed financial information on the Fire Apparatus restricted funds provided through this contract.
h. The District shall act expeditiously and in good faith to enter into a cooperative agreement with the Utah Division of Forestry, Fire, and State Lands ("FFSL"), coordinating with the City in advance of entering into the cooperative agreement, and sufficiently informing the City of the requirements of the cooperating agreement with which the City may be required to assist the District. The District shall file any reports or provide any required information to the FFSL, pursuant to the cooperating agreement, and act in good faith to comply with the other terms thereof. Any remuneration received by the District from the FFSL as a result of a wildland fire response provided by the City shall be tendered to the City within thirty (30) days of receipt. The City shall be authorized to act on behalf of the District upon any Delegation of Fire Management Authority by the FFSL, including the Initial Attack and thereafter. *See* Utah Code, Title 65A, Chapter 8, *Management of Forest Lands and Fire Control*.
i. Upon request by the City, the District shall initiate civil action to recover fire suppression costs incurred by the City on non-federal land within the District's boundaries and jurisdiction for fires caused negligently, recklessly, or intentionally. Counsel for the City

will provide assistance with these civil actions. Any costs recovered may reduce the annual fee due to be paid by the District to the City, after costs for litigation, damaged or destroyed fire apparatus, injuries, and other expenses of the fire response are satisfied.

j. The District shall implement structure and wildfire prevention and mitigation measures throughout the District area, to reduce the number of human-caused fires and eliminate the risks to persons, property, or natural resources. Annually, the District shall coordinate with the Kanab City Fire Department and propose measures for structure and wildfire prevention and mitigation measures. The City may request that the District provide structure and wildfire prevention measures in a written proposal, followed up with the District providing a written report by the end of each contract year.

8. Fees and Payment Structure. The District agrees to compensate the City for fire protection services in accordance with the following structure:

a. Annual Base Fee. The Annual Base Fee is calculated annually. The District shall pay the City a fee for service equal to 0.00135 of the certified taxable value of all properties within the District, as determined by the Kane County Assessor's Office, based on the most recent values assessed. [Initial contract year fee payable by the District to the City = the Annual Base Fee.]

b. Annual Escalator. The Annual Base Fee described in Subsection 8(a) shall increase by six percent (6%) annually during the term of the Agreement to reflect inflation and increasing service costs. [The annual fee payable by the District to the City for each of the contract years 2 through 5 = Annual Base Fee plus the Annual Escalator (0.06 times the Annual Base Fee). *But see* below for the addition of fees for residential and commercial growth, if applicable.]

c. Payment Schedule. The first payment for the initial contract year (June 12, 2025, through June 11, 2026) shall be due and paid on or before January 31, 2026, and on or before January 31st of each year thereafter during the term of this Agreement, with the last payment being due March 1, 2030.

d. Residential Fire Protection Service Capacity Fee. The District shall pay a one-time fee of nine hundred dollars ($900.00) for each new residential unit constructed within the District boundaries during the preceding contract year (i.e., fee for residential new growth, or an expansion of services fee). The implementation and assessment of this fee shall not occur for the first 180 days following the Effective Date. This fee shall be assessed to the District upon each new residential unit receiving a certificate of occupancy.

e. Commercial Fire Protection Service Capacity Fee. The District shall pay a one-time fee for each new commercial unit constructed within the District boundaries during the preceding contract year. The full amount of the Commercial Fire Protection Service Capacity Fee of three dollars and twenty-six cents ($3.26) per square foot, shall be paid to the City for purposes of supporting capital investments in fire protection infrastructure as the City deems reasonable and necessary. The implementation and assessment of this fee shall not occur for the first 180 days following the Effective Date. This fee shall be assessed to the District upon each new commercial unit receiving a certificate of occupancy.

f. Apparatus Contribution Incentive. If, during any contract year of the Agreement, the District maintains ten (10) or more active volunteer firefighters who possess current Firefighter I and Firefighter II certifications and meet the City's minimum volunteer service standards, the City shall contribute $50,000 to the District's Restricted Apparatus Fund, a

fund for the exclusive purpose of acquiring fire apparatus. "Fire Apparatus" shall include fire engines, ladder trucks, brush trucks, water tenders, or other fire response-related infrastructure, apparatus, or equipment for which the District receives written authorization from the City.

g. Fire Inspection Fees. By this Agreement, the District grants the City authority to perform fire inspections, upon request and the availability of the City's resources to perform the same. Fire inspections requested to be performed within the District shall be billed separately at actual costs, with a minimum charge of two (2) hours per inspection. Inspection fees shall not be credited toward the annual base fee or any other portion of the payment structure described in this Section.

h. Payment Schedule and Interest. All payments due under this Section shall be paid in full by January 31st of the applicable contract year, or within 30 days of being assessed if January 31st has already passed. Late payments shall accrue interest at the current interest rate paid by the Utah Public Treasurer's Investment Fund (PTIF) until paid in full.

9. Reporting, Information Sharing, and Record Keeping. As necessary and requested by a Party, the other Party shall comply with any reporting requests and requirements. The Parties agree to maintain their books and records in such a manner that any funds received from another Party will be shown separately on the receiving Party's books. The Parties' respective records shall be maintained sufficiently to identify the use of funds for the purposes outlined in this Agreement. The Parties shall make their respective books and records available to the other Parties upon reasonable request at reasonable times.

10. Entire Agreement; Amendments. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by any Party or agents of any Party that are not contained in this Agreement shall be binding or valid. Alterations, extensions, supplements, or modifications to the terms of this Agreement shall be agreed to in writing by the Parties, incorporated as amendments to this Agreement, and made a part hereof.

11. Severability. If any provision of this Agreement is adjudged to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired, and the Parties will use their best efforts to substitute a valid, legal, and enforceable provision which, insofar as practical, implements the purposes of this Agreement.

12. Third Party Beneficiaries. There are no intended third party beneficiaries to this Agreement. It is expressly understood that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any claim or right of action by any third person under this Agreement. It is the express intention of the Parties that any person, other than the Party who receives benefits under this Agreement, shall be deemed an incidental beneficiary only.

13. Choice of Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah.

14. No Assignment. The rights and obligations under this Agreement are not assignable in whole or in part.

15. Privileged Communications. Documentation of or pertaining to pre-decisional analysis or deliberations shall be treated as privileged interagency communication and managed as protected records to the extent allowed under federal and state law.

16. Interlocal Cooperation Act. In satisfaction of the requirements of the Interlocal Cooperation Act in connection with this Agreement, the Parties agree as follows:

a. This Agreement shall be authorized as provided in Utah Code § 11-13-202.5.
b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with Utah Code § 11-13-202.5.
c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party, pursuant to Utah Code § 11-13-209.
d. The term of this Agreement shall not exceed five (5) years, pursuant to Utah Code §§ 11-7-2 and 11-13-216.
e. Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.
f. No separate legal entity is created by the terms of this Agreement, and no facility or improvement will be jointly acquired, jointly owned, or jointly operated by the Parties.
g. Pursuant to Utah Code § 11-13-207, the Representatives designated by each Party are hereby designated as the joint administrative board for all purposes under the Interlocal Cooperation Act.

17. Agency.
a. No officer, employee, or agent of the City or District is intended to be an officer, employee, or agent of the other Party.
b. None of the benefits provided by each Party to its employees, including, but not limited to, workers' compensation insurance, health insurance, and unemployment insurance, are available to the officers, employees, or agents of the other Party.
c. The Parties will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of the activities anticipated under this Agreement.
d. Appropriate officials of the Parties may promulgate such written operational procedure in implementation of this Agreement as to them appear desirable, provided that such are acceptable to the other Party they effect.

18. Governmental Immunity, Liability, and Indemnification.

a. Governmental Immunity. The Parties are governmental entities under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 et seq. (the "Immunity Act"). None of the Parties waive any defenses or limits of liability available under the Immunity Act and other applicable laws. All Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable laws.
b. Liability and Indemnification. The Parties agree to be liable for their own negligent acts or omissions, or those of their authorized employees, officers, and agents while engaged in the performance of the obligations under this Agreement, and none of the Parties will have any liability whatsoever for any negligent act or omission of another Party, its

employees, officers, or agents. An individual Party shall indemnify, defend, and hold harmless another Party, its officers, employees and agents (the "Indemnified Parties") from and against any and all actual or threatened claims, losses, damages, injuries, debts, and liabilities of, to, or by third parties, including demands for repayment or penalties, however allegedly caused, resulting directly or indirectly from, or arising out of (i) the Party's breach of this Agreement; (ii) any acts or omissions of or by the Party, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; or (iii) the Party's use of public funds. The Parties agree that their respective duty to defend and indemnify the Indemnified Parties under this Agreement includes all attorney's fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against a Party for the defense of any claim or to satisfy any settlement, arbitration award, debt, penalty, or verdict paid or incurred on behalf of another Party to this Agreement. The Parties agree that the requirements of this paragraph will survive the expiration or sooner termination of this Agreement. The District shall hold the City harmless against claims of inadequate fire protection or insufficient response or measures used in the service provided, or claims of a similar nature.

c. This clause shall survive the expiration or termination of this Agreement.

19. Required Insurance Policies. All Parties to this Agreement shall maintain insurance or self-insurance coverage sufficient to meet their respective obligations hereunder and consistent with applicable law.

20. Interpretation. This 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;
c. The captions and headings of this 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 Agreement;
d. Where applicable, reference to a Party, such as the City or District, shall also include the fire authority or fire department of that entity; and
e. "Structural fire" as referenced herein includes any habitable and non-habitable structure fires, fires that occur within a residential subdivision or on any private or public land that would not yet be considered wildland fire, vehicular and debris fires, hazmat response, extractions, and any other fire that would otherwise commonly be referred to as a "structural fire." The Parties acknowledge this is a broader definition for "structural fire" than may be customary.

21. Limited Scope/Boundary.

a. This Agreement is limited to the fire protection services outlined herein and is limited to providing a fire response to wildland and structure fires *within the boundaries of the District alone* (as permissible and authorized by the District) as depicted in **Exhibit A** and those parcels listed in **Exhibit B**, and further described by the following legal description:

~~Those portions of Township 42 South, Ranges 3, 4.5, and 5 West; Township 43 South, Ranges 3, 4, 4.5, 5, and 6 West; Township 44 South, Ranges 4, 5, and 6 West; Salt Lake Base and Meridian, more particularly described as follows:~~

~~All of the following sections: Section 36, of said Township 43 South, Range 6 West; Sections 1 and 12, of Township 44 South, Range 5 West; Sections 31, 32, 33, 34, 35, 36, 25, 26, 23, 24, 13, 12, 11, 2, and 1, of Township 43 South, Range 5 West; Sections 36, 35, 34, 33, 28, 27, 26, 25, 23, 22, 15, 14, 10, and 11, of Township 42 South, Range 5 West; Sections 6, 5, 4, 3, 2, 1, 12, 10, 9, and 7, of Township 44 South, Range 5 West; Sections 31, 32, 33, 27, 28, 29, 30, 19, 20, 21, 22, 17, 18, and 5, of Township 43 South, Range 4.5 West; Sections 32 and 31, of Township 42 South, Range 4.5 West; Sections 2 and 3, of Township 44 South, Range 4 West; Sections 36, 35, 34, 32, 31, 30, 29, 20, and 19, of Township 43 South, Range 4 West, all being located in the Salt Lake Base and Meridian.~~
~~EXCEPT therefrom all Bureau of Land Management and Grand Staircase-Escalante National Monument lands.~~ **[SEE ATTACHED LEGAL DESCRIPTION FOLLOWING EXHIBIT B.]**

b. No duty or obligation shall be established beyond the scope of services outlined in this Agreement nor beyond the boundaries of the District. Outside of new residential or commercial growth within the District boundaries, the addition of fire protection services beyond the scope of this Agreement or the annexation of one or more properties to the District shall require further written agreement or written amendment to this Agreement before such fire protection services shall be rendered or obligated.
c. The boundaries of the District and the areas and parcels to which fire protection services are delegated, authorized, or otherwise to be covered may be further limited, based upon the District's enactment documents approved by the Office of the Lieutenant Governor for the State of Utah. If the legal description, parcels, or map of the approved enactment document is more restrictive, those enactment documents depicting the boundaries of the District shall supersede the legal description contained herein and Exhibits A and B.
d. The primary purpose of this Agreement is to provide fire protection services within the District area. It does not specifically provide for fire prevention or mitigation services by the City. However, fire prevention and mitigation services are an important element in ensuring the health and safety of the District's residents and their property. The City will provide input and, from time to time, may, at its discretion, offer assistance in fire prevention and mitigation, subject to available time and resources. The District may, on its own or through a third party, undertake prevention and mitigation efforts and is encouraged to do so in the event the City's time and resources are insufficient.
e. Nothing in this Agreement shall be construed as either limiting or extending the lawful jurisdiction of either Party hereto other than as expressly set forth herein.

22. Default. Failure by a Party to perform any of the Party's obligations under this Agreement within a thirty (30) day period (the "Cure Period") after written notice thereof from the other Party shall constitute a default ("Default") by such failing Party under this Agreement; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing Party commences its efforts to cure within the initial thirty (30) day period and thereafter diligently proceeds to complete the cure. Said notice shall specify the nature of the alleged Default and the manner in which said Default may be satisfactorily cured, if possible. Upon the occurrence of an uncured Default under this Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of this Agreement or may terminate this

Agreement. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action. In any legal proceedings, the Parties shall bear their own costs.

23. Waiver. No waiver of any provision of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding on the City or the District unless executed in writing by the waiving Party.

24. Execution in Counterparts. This Agreement may be executed in counterpart originals, all such counterparts constituting one complete executed document.

25. Authorization. By signature below, the following individuals certify that they are authorized to act on behalf of their respective Parties to give effect to this Agreement.

[*Signatures on the following page(s).*]

THE PARTIES HERETO have executed this Agreement.

KANAB CITY

Approved as to form:

Troy Colten Johnson
MAYOR
Dated: June 10, 2025

Kent A. Burggraaf
CITY ATTORNEY
Dated: June 10, 2025

VERMILLION CLIFFS SPECIAL SERVICE DISTRICT

Approved as to form:

Its: _____
Dated: 6-12-, 2025

SSD ATTORNEY
Dated: 6/12/25, 2025

[Exhibits A and B attached hereafter]