

INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT (the “Agreement”) is made and entered into pursuant to the Interlocal Cooperation Act, Utah Code Ann. §11-13-101 et seq., by and between BLUFF SERVICE AREA (“BSA”) and BLUFF WATER WORKS SPECIAL SERVICE DISTRICT (“BWW”), herein individually referred to as “Party” and collectively referred to as “Parties.” The Parties agree as follows:

RECITALS

1. BSA is a political subdivision of the State of Utah organized pursuant to the provisions of the Service Area Act, Title 17, Chapter 29 of the Utah Code (now Part 9, Chapter 2a of Title 17B of the Utah Code) with the purpose to operate and exercise all powers conferred and allowed by law and its organizational documents and, more specifically, with the purpose of providing, among other services, services related to water systems (storm, flood, culinary, irrigation, and sewage).

2. BWW is a political subdivision of the State of Utah organized pursuant to Title 17D, Chapter 1 of the Utah Code with the purpose to operate and exercise all powers conferred and allowed by law and its organizational documents and, more specifically, with the purpose of providing culinary water service.

3. The water rights pertaining to this Agreement are designated as Utah Water Right Numbers 09-217, 09-357, 09-1853, and 09-2327 (collectively, the “Water Rights”) as, further referenced in **Exhibit A**. Also subject to this Agreement are the Water Infrastructure and Water Easements, which are defined below in Section Three of this Agreement.

4. The Parties desire to efficiently and effectively protect, manage and administer the Water Rights, Water Infrastructure and Water Easements.

5. The Parties desire to enter into this Agreement for joint and cooperative action in accordance with Utah Code Ann. §11-13-202.

6. The Parties desire to enter into this Agreement to provide a legal means for the Parties to own, hold, protect, manage and administer the Water Rights, Water Infrastructure and Water Easements identified herein, in accordance with Utah Code Ann. §11-13-211 to §11-13-214.

7. The Parties further desire to enter into this Agreement to identify and stipulate to the rights, responsibilities and obligations of each Party in furthering collaborative and effective governance as more fully described herein, in accordance with Utah Code Ann. §11-13-206 and §11-13-207.

8. BSA and BWW are authorized to enter into interlocal cooperation agreements such as this Agreement pursuant to the provisions of the Interlocal Cooperation Act, Utah Code Ann. §11-13-101 et seq. No Interlocal entity or separate legal or administrative entity is created by this Agreement. This Agreement is entered into in accordance with the terms and provisions of the Interlocal Cooperation Act which is incorporated herein by reference insofar as any terms or provisions thereof may be pertinent or applicable.

9. BSA and BWW are not parties to any prior Interlocal Agreement that conflicts with the subject matter referred to herein.

10. All of the above and foregoing Recitals are incorporated into and made a part of this Agreement.

NOW, THEREFORE, for and in consideration of the covenants, agreements, mutual promises, and conditions contained herein, and other good and valuable consideration, it is hereby agreed by and between the Parties as follows:

AGREEMENT

Section One: Effective Date and Duration.

(a) This Agreement shall become effective and shall enter into force, within the meaning of the Interlocal Cooperation Act, upon the satisfaction of all statutory requirements and the requirements agreed upon herein and set forth in Section Seven, and shall continue and remain in full force and effect for a term of not to exceed 50 years, in accordance with Utah Code Ann. §11-13-216, unless terminated sooner by the mutual consent of the Parties, or as otherwise provided by law or this Agreement.

(b) Notwithstanding the foregoing Subsection (a) of Section One, this Agreement shall terminate if:

- (i) Bluff is incorporated;
- (ii) BWW is dissolved or becomes insolvent; or
- (iii) The term of 50 years has passed.

(c) In the event this Agreement is terminated under Subsection (b)(i) of Section One, BWW shall transfer the Water Rights, Water Infrastructure and Water Easements to incorporated Bluff, absent a mutual agreement of the Parties to the contrary or if otherwise ordered by a court of competent jurisdiction.

(d) In the event this Agreement is terminated under Subsection (b)(ii) or (b)(iii) of Section One, the Water Rights, Water Infrastructure and Water Easements shall revert and be conveyed back to BSA, absent a mutual agreement of the Parties to the contrary.

Section Two: Conveyance of Water Rights.

(a) BSA shall transfer to BWW up to 689.93 acre-feet of water—more specifically, the Water Rights defined above. These Water Rights and related and referenced Water Infrastructure and Water Easements shall be held as agreed to herein.

(i) BSA shall either be listed as an interested party on all filings made with the Division of Water Rights pertaining to the subject Water Rights, or it shall sign up for email notifications on the Division of Water Rights' website, in order to receive copies of all notifications dealing with the administration of the Water Rights.

(b) BWW shall own, hold and administer the Water Rights for the exclusive benefit of the Bluff community, sufficient to fully satisfy its existing and future water needs in furtherance of fulfilling its purpose to operate and exercise all powers conferred and allowed by law. Under the current water rights certificates issued by the Division of Water Rights, the Water Rights may not be used outside of the Bluff service area (the "Service Area"), which is described in attached **Exhibit B**. The Parties agree that use of the Water Rights outside of the Service Area is only be allowed for municipal purposes or as otherwise mutually agreed by both Parties, and subject to the approved of the Division of Water Rights, if such approval is necessary.

(i) BWW shall convey to BSA the necessary water in the event a need arises in the Bluff community for BSA to fulfill its stated purpose to do one of the following: operate a system, or one or more components of a system, including but not limited to the collection, storage, retention, control, conservation, treatment, supply, distribution, or reclamation of water, including storm, flood, sewage, irrigation and culinary water; operate parks or recreation facilities and services; operate a sewage system; provide garbage collection and disposal; provide planning and zoning service with the consent of San Juan County; abate or control mosquitoes and other insects; and exercise all powers conferred by law upon local districts in general and service areas in particular.

(c) BSA shall provide copies to BWW of any and all documentation in its possession relating to the chain of title, beneficial use, water quality, environmental reviews, regulatory

actions, or any other relevant information relating to the Water Rights, Water Infrastructure and Water Easements.

(d) All necessary change applications, certificates, and extensions to qualify the Water Rights and to meet the State of Utah's requirements shall be prepared and timely filed by BWW at its sole cost and expense. The parties must agree to any changes to the Water Rights.

(e) BWW shall be responsible for reporting all water uses under these Water Rights to the Division of Water Rights.

Section Three: Conveyance of Infrastructure.

(a) BSA shall transfer to BWW, all existing and related wells and surface points, pipelines and conduits, and facilities functionally related or appurtenant to the foregoing, currently used or useful in connection with the provision of culinary water service to and within the Service Area (collectively, the "Water Infrastructure").

(b) BSA shall transfer to BWW all culinary water easements across both public and private property, including County roads, necessary for the construction, access, operation, maintenance and repair of the Water Infrastructure (the "Water Easements").

(c) Such transfers shall be accomplished in such a manner and using such documentation as shall be approved by the Parties' legal counsel.

(d) BWW shall grant access to use of Water Easements to BSA sufficient to fully satisfy its existing and future water needs in furtherance of fulfilling its purpose to operate and exercise all powers conferred and allowed by law.

Section Four: Assignment of Accounts and Other Materials.

In the event BSA shall request such information, and by complying, as may be required, with the Government Records Access and Management Act, Utah Code Ann. § 63G-1-101 et seq.:

(a) BWW shall deliver to the BSA a comprehensive list of all active water accounts within the Service Area, including names, addresses and contact information. All documents and information relating to such accounts in the possession of BWW shall be delivered to the BSA.

(b) BWW shall deliver to BSA any and all accounting statements, water use, balance sheets, statement of accounts, and other similar documents and information, showing a complete and accurate status of the finances of the BWW relating to water operations within the Service Area.

(c) BWW shall deliver to the BSA any and all other records, reports, maps, photos, GPS information, maintenance logs, repair records, construction information, equipment manuals, warranty materials, correspondence and any other documentation of any kind relating to the Water Infrastructure, Water Easements and Water Rights.

(d) All amounts, documents and items referred to in this Section are referred to collectively herein as the “Intangibles.”

Section Five: Provision of Culinary Water Services.

Beginning on the effective date established in Section Seven, and thereafter, the BWW shall provide potable water to the Service Area. The provision of potable water service by BWW to customers located within the Service Area shall be provided by BWW in accordance with all valid ordinances, rules and regulations of San Juan County and any other governmental entity having authority, and all applicable state and federal rules, regulations, statutes and case law.

Section Six: Cooperation of the Parties.

(a) Leasing Agreements. Both Parties agree the Water Rights shall remain in the Service Area unless otherwise mutually agreed by both Parties.

(b) Sharing other data and information. BSA’s recording and reporting data regarding wastewater shall be shared with BWW at least annually by the end of each calendar year.

(c) BWW shall hire a consultant engineering firm to conduct the State of Utah required 40-Year Plan.

(d) The Parties shall collaborate and jointly pursue identifying and obtaining additional water rights with priority earlier than 1922.

Section Seven: 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 and adopted by resolution of the appropriate legislative body of each Party, pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Interlocal Cooperation Act;

(b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of any Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Interlocal Cooperation Act;

(c) A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Interlocal Cooperation Act;

(d) There is no financing of the joint or cooperative undertaking and no joint budget will be established or maintained. Additionally, no real or personal property will be acquired, held or disposed of or used in the joint or cooperative undertaking, except as otherwise expressly described herein.

(d) The Chairs of the boards of BSA and BWW are hereby designated as the joint-administrators for all purposes of the Interlocal Cooperation Act, pursuant to Section 11-13-207 of the Interlocal Cooperation Act, with all powers conferred upon them by law and, to the extent necessary, voting will be based upon one vote per Party, pursuant to Section 11-13-206(1)(g); and

(e) The term of this Agreement shall become effective and shall enter into force, within the meaning of the Interlocal Cooperation Act, upon the satisfaction of the above Subsections (a) through (c) of Section Seven, and any other preliminary requirements agreed upon herein.

Section Eight. Additional Provisions

(a) **Default.** A default (“Default”) shall occur under this Agreement if any Party fails to perform its obligations hereunder and the defaulting Party has not performed the delinquent obligations within thirty (30) days following delivery to the delinquent Party of written notice of such delinquency. Notwithstanding the foregoing, if the Default cannot reasonably be cured within that 30-day period, a Party shall not be in default so long as that Party commences to cure the Default within that 30-day period and diligently continues such cure in good faith until complete.

(b) **Remedies.** Upon the occurrence of a Default, the non-defaulting Party, except as otherwise provided below, shall have the right to exercise any right or remedy available at law or in equity, including injunctive relief and specific performance. The parties acknowledge their obligations under this Agreement are unique and that monetary damages may not be sufficient to compensate for any defaults hereunder. The rights and remedies of the parties shall be cumulative.

(c) **Notices.** Any notice, confirmation or other communication hereunder shall be given in writing by certified mail, postage prepaid, or personally or by nationally-recognized overnight courier, at the following addresses, or by email to the following email addresses:

To: BSA
Attn: Chair
Address: P.O. Box 310
Bluff, Utah 84512
Email: bluffserviceareaboard@gmail.com

To: BWW
Attn: Chair

Address: P.O. Box 3
Bluff, Utah 84512
Email: TBD

(d) Execution Voluntary. The parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to obtain legal counsel of their choice.

(e) Dispute Resolution. If any dispute arises between the Parties that they cannot resolve, the Parties shall agree to engage in mediation prior to filing any matter with the court.

(f) Attorneys' Fees. If there is any litigation or mediation between the Parties to enforce or interpret any provisions or rights under this Agreement, the unsuccessful Party in such litigation, as determined by the court, shall pay to the successful Party, as determined by the court, all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by the successful Party, such fees to be determined by the court.

(g) Additional Acts. The Parties agree to promptly execute and deliver such other documents and perform such other acts as may be reasonably necessary to carry out the purposes and intent of this Agreement.

(h) Governing Law; Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state of Utah. Any civil action shall be brought in the district court of San Juan County.

(i) Waiver. The waiver by any Party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

(j) Construction. This Agreement is the result of negotiations between the Parties, neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. The Parties hereby waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that provides in effect that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.

(k) Interpretation. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any document, instrument or other agreement executed in connection herewith or in furtherance hereof, including any exhibits hereto, the same shall be consistently interpreted in such manner as to give effect to the general purposes and intentions as expressed in this Agreement, which shall be deemed to prevail and control.

(l) Headings. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

(m) No Third-Party Beneficiary. No term or provision of this Agreement or the exhibits hereto is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a Party hereto, and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

(n) Severability. If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions

hereof so long as removing the severed portion does not materially alter the overall intent of this Agreement.

IN WITNESS WHEREOF, each Party to this Agreement has caused it to be executed as of the dates indicated below.

BLUFF SERVICE AREA

BLUFF WATER WORKS SPECIAL SERVICE DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTEST:

ATTEST:

District Clerk

District Clerk

Approved and reviewed as to proper form and compliance with applicable law:

Approved and reviewed as to proper form and compliance with applicable law:

Attorney for Bluff Service Area

Attorney for Bluff Water Works Special Service District

STATE OF UTAH)

: ss.

COUNTY OF SAN JUAN)

On the ____ day of _____, 2016 personally appeared before me _____
_____(NAME), who being by me duly sworn did say, each for himself/herself, the said _____
_____(NAME), is the _____(TITLE) of the BLUFF SERVICE AREA, and that
the foregoing instrument was signed on behalf of the Board of the Bluff Service Area by authority of a
Resolution of the said Board and said _____(NAME), duly acknowledged to me that
the said district executed the same.

(SEAL)

NOTARY PUBLIC
Residing at:

STATE OF UTAH)

: ss.

COUNTY OF SAN JUAN)

On the ____ day of _____, 2016 personally appeared before me _____
_____(NAME), who being by me duly sworn did say, each for himself/herself, the said _____
_____(NAME), is the _____(TITLE) of the BLUFF WATER WORKS
SPECIAL SERVICE DISTRICT, and that the foregoing instrument was signed on behalf of the Board of
the Bluff Water Works Special Service District by authority of a Resolution of the said Board and said ____
_____(NAME), duly acknowledged to me that the said district executed the same.

(SEAL)

NOTARY PUBLIC
Residing at:

Exhibit A

Water Right	Priority Date	Acre Feet	Points of diversion	Status	Requirement
09-217	1957	2.06	One well	Certificated	File change application to add other points of diversion (other wells) and change to municipal use.
09-357	1964	6.87	One well	Certificated	File change application to add other points of diversion (other wells) and change to municipal use.
09-1853	1975	181 (with flow limitation)	Nine wells	Approved application with change application filed in 2012 for municipal use and points of diversion	<ol style="list-style-type: none"> 1) File (5 year) extension request before June 30, 2015. 2) Continue to get extension of what's not in use (varies, but likely every five years). 3) In 2017, submit 40-year plan including all of water rights.
09-2327 (best priority right)	1966	500 (with no flow limitation)	Nine wells and two surface points on San Juan River	Approved application with change application filed in 2012 for municipal use and points of diversion	<ol style="list-style-type: none"> 1) Certificate what is in use before August 31, 2017. 2) Segregate what's not in use. 3) By August 31, 2017, submit 40-year plan with an extension request on the part that was segregated. 4) Continue to get extension of what's not in use (varies, but likely every five years).

Exhibit B

“Service Area” Map