

**PARTICIPATION COMMITMENT
AND DELEGATION OF AUTHORITY
INTERLOCAL AGREEMENT**

THIS PARTICIPATION AND DELEGATION OF AUTHORITY INTERLOCAL AGREEMENT (“Agreement”) is entered into this _day of June, 2019 (effective May 26, 2017) by and between the TOQUERVILLE CITY, a Utah municipal corporation (“City”) and the HURRICANE VALLEY FIRE SPECIAL SERVICES DISTRICT, a Utah special services district (“District”). Throughout this Agreement the City and the District may be referred to individually as a “Party” and collectively as “the Parties”.

WHEREAS, The City has entered into a cooperative agreement with the Utah Division of Forestry, Fire and State Lands (Division) to allow the participation in the Utah Cooperative Wildfire System as provided in 65A-8-203, (“Cooperative Agreement”); and

WHEREAS, City retains statutory responsibility to provide fire services under UCA 11-7-1(1) and 65A-8-202.5; and

WHEREAS, City boundaries are entirely within the boundaries of the District; and

WHEREAS, the District was created to provide fire suppression for the political subdivisions within its boundaries; and

WHEREAS, a wildfire escaping initial attack directly increases the amount of participation commitment and negatively impacts the City and the District; and

WHEREAS, the District has the wildland fire suppression authority and fulfills the requirements of the Utah Cooperative Wildfire System in behalf of the political subdivisions within its boundaries.

NOW, THEREFORE, in consideration of the promises, covenants and agreements herein contained and the requirements the District has undertaken in the Cooperative Agreement, the Parties do hereby agree to the terms and conditions as herein set forth. The following provisions apply to this Agreement:

1. **PARTICIPATION COMMITMENT.** District will engage in prevention, preparedness and mitigations efforts within its boundaries and apply the participation credits equally across its boundaries for the benefit of City and the other participating political subdivisions served by the District in order to meet the participation commitment level of all the political subdivisions it serves.

2. **RESOURCES.** District will provide the resources to comply with Section IV of the Cooperative Agreement including the Initial attack and District personnel necessary to act as the local fire official on scene to make the determination to transfer Fire Management Authority. Wildland Fire Response Training, Certification and Equipment Standards of the Agreement. The requirements of Section V of the Cooperative Agreement are specifically delegated to District

under this Agreement.

3. **DISTRICT PARTICIPATION COMMITMENT.** District will cooperate with the City to comply with the Participation Commitment found in Section III of the Cooperative Agreement by assisting with prevention, preparedness, and mitigation actions and necessary documentation of such prevention, preparedness, and mitigation actions in order to prepare the Annual Participation Commitment Accounting Report.

4. **CITY PARTICIPATION COMMITMENT.** City will annually participate in Wildland Assessment items to help comply with the participation commitment statement and provide the resources necessary either through direct expenditure or in-kind activities together with the District for the prevention, preparedness and mitigation actions necessary to comply with the Participation Commitment.

5. **PREPAREDNESS PLAN.** City will adopt the Community Wildfire Preparedness Plan prepared by the District in accordance with the Cooperative Agreement.

6. **DELEGATION OF AUTHORITY.** The City expressly delegates fire management authority to the Chief of the District or his/her assigned agent.

7. **TRANSFER OF AUTHORITY.** City acknowledges that the Chief of the District or his/her designees may delegate fire management authority and transfer fiscal responsibility in behalf of City to the Division and authorizes the delegation on City's behalf.

8. **COST RECOVERY.** City will seek cost recovery on behalf of the District for human-caused fires determined to be the result of neglect, reckless, knowing, or intentional acts.

9. **TERM; AGREEMENT TERMINATION.** This Agreement shall continue for a period of five (5) years from the date of execution hereof or at any time the Cooperative Agreement between the District and the Division expires or fails to renew. This Agreement shall be automatically renewed annually for an additional five (5) year period corresponding with the District's renewal of their Cooperation Agreement with the Division unless a party to this Agreement gives written notice of non-renewal. The City may non-renew, in its sole discretion, prior to expiration date by giving thirty (30) days prior written notice of such cancellation to each of the other Parties. Unless earlier terminated, this Agreement shall automatically terminate upon the date which is fifty (50) years from the Effective Date.

10. **IMMUNITY.** The Parties are governmental entities as set forth in the Governmental Immunity Act of Utah, Title 63, Chapter 30d, Utah Code Annotated ("Immunity Act"). The Parties do not waive any defenses otherwise available under the Immunity Act, nor does any Party waive any limits of liability provided by the Immunity Act which immunity and damage caps are expressly preserved and retained. The Parties shall retain the same privileges and immunities from liability when responding to a request for assistance outside its jurisdictional area, as it possesses in the performance of its duties within its own territorial jurisdiction.

11. **INDEMNIFICATION.** Consistent with terms of the Immunity Act, and as provided

herein, it is mutually agreed that the Parties are each responsible for their own negligent acts or omissions which are committed by them or their agents, officials or employees. Furthermore, the Parties agree to indemnify, defend and hold each other harmless from any and all damages or claims for damages occurring to persons or property as a result of the negligent acts or omissions of their own officers, employees and agents involved in providing services and equipment under the terms of this agreement. This duty to indemnify, defend and hold each other harmless includes costs or expenses in law or equity, including attorney's fees.

12. **NO CREATION OF SEPARATE LEGAL ENTITY; ADMINISTRATIVE JOINT BOARD.** No separate legal entity or interlocal entity under U.C.A. § 11-13-203 is created by the terms of this Agreement. However, to the extent that this Agreement requires administration other than as set forth herein, it shall be administered by a governing body comprised of the District fire chief and an administrative officer as appointed by the City acting as a joint board. Each of the governing body members shall have one vote on any matter. There shall be no real or personal property acquired jointly by the Parties as a result of this Agreement and no fees or other charges may be assessed by said Board. There shall be no separate financing of the joint efforts under this Agreement and no separate budget shall be maintained.

13. **NO WAIVER OF LEGAL DUTIES; CREDIT FOR SERVICE PROVIDED.** This Agreement shall not relieve any Party of this Agreement of an obligation or responsibility imposed upon a Party to this Agreement by law.

14. **GOVERNMENTAL APPROVAL.** This Agreement shall be approved by each Party in accordance with the provisions of §11-13-202.5, Utah Code 1953, as amended.

15. **LAWS OF UTAH.** It is understood and agreed by the Parties that this Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance.

16. **SEVERABILITY OF PROVISIONS.** If any provision of this Agreement is held invalid or unconstitutional, the remainder shall be held invalid and shall be of no force.

17. **THIRD PARTIES.** This Agreement is not intended and shall not be construed to benefit persons or other entities not named as a Party herein.

18. **TITLES AND CAPTIONS.** The titles and captions of this Agreement are for the convenience only and in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts of this Agreement.

19. **NON ASSIGNABILITY.** No Party shall transfer or delegate any of their rights, duties, powers or obligations under this Agreement, without consent of each of the other Parties.

20. **EXECUTION.** Each Party agrees that each party sign, acknowledge and have its Attorney approve their Agreement as to legality and form.

(Signature Page to Follow)

CITY:

TOQUERVILLE CITY,
a Utah municipal corporation

Lynn Chamberlain, Mayor

Attest:

Dana McKim, Toquerville City Recorder

DISTRICT:

HURRICANE VALLEY FIRE SPECIAL SERVICES
DISTRICT, a Utah Special Service District

Tom Kuhlman, Fire Chief

Attest:

Patty Olesky, District Secretary