

**DRAFT MEMORANDUM OF UNDERSTANDING BETWEEN WASHINGTON  
COUNTY WATER CONSERVANCY DISTRICT AND TOQUERVILLE CITY  
REGARDING RECREATION AT TOQUER RESERVOIR**

This Memorandum of Understanding (MOU) is made and entered into effective \_\_\_\_\_ (date), by and between Washington County Water Conservancy District (District) and Toquerville City (City), together the “parties.”

**I. Background.**

Washington County Water Conservancy District has applied to the Bureau of Land Management for a right-of-way grant, as well as a land grant under the Recreation and Public Purposes Act for the proposed Toquer Reservoir. The location of the proposed reservoir is within the incorporated boundaries of Toquerville City along the east side of Interstate 15 and south of State Route 17. The BLM is the lead agency conducting federal environmental review for this project.

While the primary purpose of the reservoir is water storage and supply, a secondary potential benefit is water-based recreation. The District’s Plan of Development proposes reservoir recreation with enhancement through the recreation facilities depicted in Exhibit A (Toquer Reservoir Recreation Conceptual Plan), which is incorporated herein by reference. Toquerville City desires to manage the recreation. The District is willing to build the facilities depicted in Exhibit A provided that the City manages the recreation as set forth in this MOU.

**II. Purpose.**

The purpose of this MOU is to set forth the terms and conditions upon which the reservoir site, recreation facilities and recreation will be managed.

**III. Specific Terms.**

A. Construction of the Reservoir, Recreation Facilities, and Related Infrastructure.

1. Provided that the BLM makes the right-of-way and RP&P grants, the District will construct the reservoir and the recreation facilities depicted in Exhibit A at its cost. The City will install any related infrastructure needed outside the reservoir site.
2. The District reserves the right to adjust the conceptual plan depicted in Exhibit A as it determines in its sole discretion is necessary or advantageous for management of the reservoir for its primary purpose or to comply with any requirements of law. ~~If the District will notify the City if it makes changes to the conceptual plan, it agrees to provide the City notice of the changes. If the City determines in its sole discretion that the changes will negatively impact the City, then the city has the right to immediately terminate all obligations to manage the reservoir and related facilities.~~
3. The City is responsible for funding any recreation area enhancements. No enhancements may be made without written approval by the District signed by a person authorized to

**Comment [NH1]:** Moved to Termination Clause

give approval. Any permanent improvements made by the City will become the property of the District upon termination or expiration of this MOU.

4. The District reserves the right to remove from the reservoir site any materials necessary for construction, operation, and maintenance of the reservoir and facilities.

**B. Water Storage and Supply Management.**

1. The primary purpose of the reservoir and reservoir site ~~and~~ is water storage and supply. The District will manage the reservoir, site, and accompanying water storage and supply facilities for this primary purpose. The rights of the City under this MOU are subordinate to the rights of the District.
2. Recreation on and around the reservoir is a secondary and incidental use. Management and use of the recreational facilities will not inhibit, preclude, or otherwise interfere with any actions taken by the District or persons or entities on behalf of the District to manage the reservoir for its primary purpose.
3. The District reserves the right to require the City to close recreation facilities and prevent public access to the reservoir site and recreation facilities when the District determines in its sole discretion that it is necessary or advantageous for management of the reservoir for its primary purpose. In such events, the District will give the City the best notice practical under the circumstances.
4. The District reserves the right to modify the recreation facilities when the District determines in its sole discretion that it is necessary or advantageous for management of the reservoir and reservoir site for its primary purpose. If the District enforces its right to modify the recreation facilities, the District will confer with the City as to the modifications so as to remain consistent with recreational use to the extent practical. If at any time the District makes changes that will negatively impact the City, then the City has the right, in its sole and absolute discretion, to immediately terminate all obligations to manage the reservoir and related facilities.
5. The District reserves the right to construct, modify, install or place any facility it determines in its sole discretion is necessary or advantageous for the management of the reservoir for its primary purpose.
6. The fulfillment of the primary purpose of the reservoir and reservoir site requires the water level of the reservoir to fluctuate. The District reserves the right to vary the water level or drain the reservoir when it determines in its sole discretion that it is necessary or advantageous for management of the reservoir for its primary purpose. The District will inform the City in advance of any significant draw downs.

**Comment [NH2]:** Moved to Termination Clause

**C. Recreation Management**

1. The City will manage recreation on the reservoir site and the recreation facilities pursuant to the terms of Exhibit B (Toquer Reservoir Recreation and Public Purposes Act Project Development and Management Plan), which is incorporated herein by reference.
2. The ~~C~~city will provide all funding necessary for recreation management of the reservoir site and recreation facilities. Prior to opening the reservoir site and recreation facilities for recreation, the City and the District will concur in a signed writing as to amounts necessary to fund recreation management.

3. The City will perform and fund the operations, maintenance and repair of the recreation facilities.
4. The City will maintain roads and trails.
5. The City will provide fire management and weed abatement.
6. The City will provide adequate recreation management staffing and security staffing.
7. The City's annual budget shall include dedicated funding for recreation management at the reservoir site, operations, maintenance and repair of the recreation facilities, road and trail maintenance, fire management, weed abatement and recreation management staffing and security staffing.
8. The City may charge fees for recreational use. The City will set the fee at amounts similar to those charged by Utah State Parks for nearby reservoir recreation. If such amount is insufficient to cover expenses, the District and City will confer to determine an appropriate amount.
9. The City may contract with vendors to operate retail services in the recreation area, including vending machines, watercraft rentals, and retail goods. The City shall be liable for enforcing all contracts with vendors. Any such contract shall not exceed the duration of this MOU, shall be submitted to the District for approval prior to its execution, and shall state in writing the following:
  - a. The contract is subject to the terms of this MOU;
  - b. The primary purpose of the reservoir and reservoir site is water management and supply, and recreation is a secondary, incidental use;
  - c. The vendor fully defends, indemnifies, saves harmless, and releases the District and the City, and all their officers, agents, volunteers, and employees from and against any and all loss, injury, damages, debts, obligations, claims, demands, encumbrances, deficiencies, costs, penalties, suits, proceedings, liability, and expenses whether accrued, absolute, contingent or otherwise, including, without limitation, attorney fees and costs (whether or not suit is brought) and other liabilities of every kind, nature and description, arising out of the performance of the vendor contract;
  - d. In the event of the termination of this MOU, the District shall stand in the stead of the City for the remainder of the term of the contract with the vendor; provided, however, that the District may terminate the contract with the vendor within ninety (90) days of the termination of this MOU upon ten (10) days written notice to the vendor. Upon the District's termination of the contract with the vendor, the vendor shall have ten (10) days to remove any improvements it has constructed on the premises at vendor's sole expense before the District may use or dispose of the improvements as it deems appropriate.
10. The City shall require all entities with which it contracts pursuant to the terms of this MOU to carry public liability and property damage insurance as is customary among prudent operators of similar businesses under comparable circumstances.
11. The reservoir site, recreation facilities, and any vendor services must be open to the public. The City may not permit any portion of the reservoir site or recreation facilities to be reserved for the private use of individuals, businesses, or other entities.
12. The District, its officers, agents, volunteers, and employees shall have full access to and over all areas and facilities within the right-of-way grant and RP&P grant for district purposes.

13. The privileges granted herein to the City are subject to:
  - a. Existing rights, privileges, or interests in land including but not limited to easements and rights of way, and
  - b. Any easements or rights of way acquired or conveyed by the District.
14. Upon request of either party, the parties will review the administration, operations, and development of the reservoir site and recreation facilities under this MOU. The District may make inspections of the reservoir site and recreation facilities at any time and consult with the City regarding development, operation, and use.

#### D. Safety

1. The City shall be responsible for the safety of the general public, including but not limited to the disposal of floatable debris in the reservoir and undermined or fallen trees within the reservoir area, to the extent necessary to maintain the reservoir site and recreation facilities suitable for public use. To the extent that debris accumulates due to District activities, the District will dispose of such debris.
2. The City shall ensure the enforcement of applicable laws and regulations to protect the health and safety of persons and preserve law and order in the interest of public safety, including but not limited to rules and regulations for the use of the reservoir site and recreation facilities.
3. The City shall ensure that there is no interference with District facilities or functions resulting from authorized or unauthorized use of the reservoir site or recreation facilities.

**Comment [JR3]:** Took out "To the extent required by law."

#### IV. **General Terms.**

1. Authority. The laws authorizing the District and the City to enter into this MOU and engage in the activities described herein include but are not limited to their general contracting powers, Utah Code Sections 10-1-202 (Municipal Power to Contract), 11-13-101 et seq. (Interlocal Cooperation Act), 17B-1-101 et seq. (Local District Powers), and 17B-2a-1001 et seq. (Water Conservancy District Act).

2. Paragraph Headings. The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this MOU.

3. Number and Gender. The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this MOU in accord with the manifest intention of the parties hereto. Likewise, if either the feminine, masculine or neuter gender should be one of the other genders, it shall be so treated.

4. Authorization. Each individual executing this MOU does represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this MOU in the capacity and for the entities set forth where he or she so signs.

5. Counterparts. This MOU may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6. Utah Law to Govern. This MOU has been drawn and executed in the State of Utah. All questions concerning the meaning, intention and enforcement of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah. In any dispute jurisdiction and venue shall be in Utah.

7. Inducement. The making and execution of this MOU has not been induced by any representation, statement, warranty, or MOU other than those herein expressed.

8. Integration. All agreements heretofore made in the negotiation and preparation of this MOU between the parties hereto are superseded by and merged into this MOU, no statement or representation not embodied herein shall have any binding effect upon the parties hereto and there shall be no amendments hereto except those in writing signed by the parties hereto.

9. Time is of the Essence. Time is of the essence with regard to this MOU as to each covenant, term, condition, representation, warranty and provision hereof.

10. Necessary Acts and Cooperation. The parties hereby agree to do any act or thing and to execute any and all instruments required by this MOU and which are necessary and proper to make effective the provisions of this MOU.

11. Partial validity. If any portion of this MOU shall be held invalid or inoperative, then insofar as is reasonable and possible:

- a. The remainder of this MOU shall be considered valid and operative, and,
- b. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

12. Ambiguities. This MOU has been negotiated and drafted by all parties hereto and the general rule of contract construction that 'ambiguities shall be construed against the draftsman' shall have no application to this MOU.

13. No Third-Party Beneficiaries. This MOU is not intended to be a third-party beneficiary contract for the benefit of any third parties, including but not limited to any customer of any party, and no such persons shall have any right of subrogation or cause of action against any party for any breach or default by any party hereunder. In addition, no third parties shall have any rights hereunder that would, in any way, restrict the parties' right to modify or renew this MOU at any time or in any manner. Nothing in this MOU is intended to relieve or discharge the obligation or liability of any third persons to any party to this MOU.

14. Laws and Regulations. Any and all actions performed pursuant to this MOU will comply fully with all applicable Federal, State and local laws and regulations.

15. Equal Opportunity Clause. The parties shall abide by applicable provisions of state and federal law, including executive orders, that prohibit discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, national origin, sex, age or disabilities and that prohibit sexual harassment in the work place.

16. Binding on successors in interest. This MOU shall bind the parties hereto and their successors, heirs, assigns and representatives.

17. Assignment. No rights or obligations of the City under this MOU shall be assigned without the prior written consent of the District. This MOU is voidable and subject to immediate

cancellation by the District upon City becoming insolvent, or filing proceedings in bankruptcy or reorganization under Title XI, United States Code.

18. Indemnity Clause. Each party agrees to defend, indemnify, save harmless, and release the other party and all its officers, agents, volunteers, and employees from and against any and all loss, injury, damages, debts, obligations, claims, demands, encumbrances, deficiencies, costs, penalties, suits, proceedings, liability, and expenses whether accrued, absolute, contingent or otherwise, including, without limitation, attorney fees and costs (whether or not suit is brought) and other liabilities of every kind, nature and description, arising out of the performance of this MOU which are caused in whole or in part by the negligence of the that party's officers, agents, volunteers, or employees, but not for claims arising from the other party's sole negligence. Each party entitled to indemnification (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after receiving actual knowledge of any claim for which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim, or any litigation resulting from it, provided that counsel for the Indemnifying Party, who shall conduct the defense of the claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may, at its own expense, participate in the defense, and provided further that the failure of any Indemnified Party to give the required notice shall not relieve the Indemnifying Party of its obligations under the MOU unless the failure to give notice is materially prejudicial to an Indemnifying Party's ability to defend the action. Notwithstanding the foregoing, however, (i) if the Indemnified Party reasonably determines that there may be a conflict between the positions of the Indemnifying Party and of the Indemnified Party in connection with the defense of an action, suit, investigation, inquiry or other proceeding, or that there may be legal defenses available to the Indemnified Party different from or in addition to those available to the Indemnifying Party, then counsel for the Indemnified Party shall be entitled to conduct a defense to the extent it reasonably determines necessary to protect the interest of the Indemnified Party, and (ii) in any event, the Indemnified Party shall be entitled to have counsel of its choice participate in, though not to conduct, the defense. No Indemnifying Party, in the defense of any claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability in respect to the claim or litigation. The right of indemnification provided herein shall be in addition to any rights to which the Indemnified Person may otherwise be entitled.

19. Notice. Any notice to be given or payment to be made hereunder shall have been properly given or made when received by the District or City, as the case may be, or when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

WASHINGTON COUNTY WATER CONSERVANCY  
DISTRICT

ATTN. Ronald W. Thompson

533 East Waterworks Drive

St. George, UT 84770

TOQUERVILLE CITY

P.O. Box 27

212 North Toquerville Blvd.

Toquerville, UT 84774

20. Term. This Agreement shall become effective upon the date of the last signature of this document and remain in effect until December 31, 2025, unless otherwise terminated pursuant to Paragraph 21 herein. This MOU shall automatically renew for additional terms of five years, unless terminated pursuant to paragraph 21 or by written notice by either party at least 180 days prior to the expiration of any term.

21. Termination. Unless expressly stated otherwise herein, this MOU may be terminated without prejudice to any claim for damages or other remedy for breach as follows:

a. If the District exercises its rights to modify the conceptual plan as set forth in Paragraph III(A)(2) or to modify the recreational facilities as set forth in Paragraph III(B)(4), the City may immediately terminate the MOU if it determines in its sole discretion that such modifications will negatively impact the City.

b. With cause by either party, in advance of the specified termination date, upon written notice being given to the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the MOU may be terminated for cause.

21-c. Without cause, in advance of the specified expiration date, by either party upon one hundred eighty-nine (18090) days prior written notice being given the other party. Such termination shall be without prejudice to any claim for damages or other remedy for such breach.

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22. Default. Except as specifically provided for herein, a default by any party in an obligation set forth herein shall not result in, or be the basis for, the termination or rescission of this MOU.

23. Waiver. The waiver by any party to this MOU of a breach of any provision of this MOU shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this MOU. Any waiver shall be in writing and signed by the waiving party.

24. Attorney's fees. Should either party default in any of the covenants or MOUs contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing or terminating this MOU or in pursuing any remedy provided under this MOU or by applicable law, whether such remedy is pursued by filing suit or otherwise.

25. Rights and Remedies. The parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened breach of this MOU. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms

that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

26. Immunity. Nothing in this MOU shall be construed to waive the sovereign immunity of the District. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

27. Covenants to run with the land. The parties intend, declare and covenant that the terms, conditions, agreements and covenants set forth in this MOU shall run with the land and shall bind, and the benefits and burdens shall inure to, the parties and their respective successors and assigns.

28. Record Keeping, Audits, and Inspections. The City shall maintain such records as are necessary to satisfy the requirements of this MOU. The City shall retain any records relating to the operation of this MOU open for District inspection and until the later of:

- a. The completion of all audits initiated by State and Federal auditors;
- b. The disposition of any disputes, litigation, or claims arising out of the performance of this MOU;
- c. Five (5) years from the date of termination of this MOU; or
- d. Such period as is required by law or any other provision of this MOU.

29. Exhibits. The following exhibits attached hereto are incorporated herein by this reference.

**Exhibit A** - Toquer Reservoir Recreation Conceptual Plan

**Exhibit B** – Toquer Reservoir Recreation and Public Purposes Act Project Development and Management Plan (July 2018)

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this MOU on the date first above written.

**TOQUERVILLE CITY:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**WASHINGTON COUNTY WATER  
CONSERVANCY DISTRICT:**

By: \_\_\_\_\_  
Ronald W. Thompson, General Manager



DRAFT