**Memorandum of Understanding**

***(Ash Creek Pipeline and Toquer Reservoir Project Authorizations***

***and Grant of Public Right of Way)***

Effective February \_\_, 2020, this Memorandum of Understanding (MOU) is made between Washington County Water Conservancy District (District), and Toquerville City (City), together the Parties.

I. AUTHORITY

The statutes authorizing the Washington County Water Conservancy District to enter into this MOU and engage in the activities described herein include but are not limited to Utah Code Sections 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).

The statutes and regulations authorizing City to enter into this MOU and engage in the activities described herein include but are not limited to Utah Code Sections 11-13-101 *et seq.* (Interlocal Cooperation Act), 10-7-1 *et seq.* (Miscellaneous Powers of Cities and Towns), and 10-8-1 *et seq.* (Powers and Duties of Municipalities).

II. BACKGROUND

The District is engaging in the federal permitting process for its Ash Creek Pipeline and Toquer Reservoir Project (Project). Some of the Project will occur within the boundaries of the City on property owned by the District described in Exhibit A (Property). The District intends to quarry the Property for materials for the Project and to construct or improve haul roads upon the Property to transport materials for the Project. The District desires the City to take actions necessary to authorize the Project within City’s jurisdiction.

The City is engaging in a planning process to zone and provide for transportation routes in the area in which the Property is located. The City desires the District to dedicate a public right of way across the Property in the location described in Exhibit B (Public Right of Way).

III. PURPOSE

The purpose of this MOU is to outline the intent of the City and the District regarding the Property and the Public Right of Way.

Pursuant to applicable law, the City intends to take necessary actions to authorize the Project within the City’s jurisdiction, including but not limited to approving zoning, conditional use permits or other authorizations for the District to quarry materials, construct or improve haul roads, or complete, operate and maintain any other component of the Project.

Pursuant to applicable law, after completion of the Project, the District intends to dedicate to the City a Public Right of Way across the Property. It is the intent of the District that easements for water infrastructure be retained by the District in this grant, and that this grant will also include a grant of easements for public utilities in general.

IV. ACTION STEPS

To accomplish the Purpose described above, the Parties respectively agree to pursue in good faith and pursuant to applicable law the following action steps:

A. Toquerville City

1. Zoning. The City will ensure that the appropriate zoning for the quarry, haul roads and other components of the Project within the City’s jurisdiction is in place prior to the federal record of decision regarding the Project, which is expected to be on or before (\*date).

2. Authorizations. The City will provide necessary permitting and other authorizations within the City’s jurisdiction for construction, operation and maintenance of the Project, including but not limited to those necessary for the quarry, haul roads and other components of the Project.

B. Washington County Water Conservancy District

1. Dedication of Public Right of Way. After completion of the Project, the District will grant a Public Right of Way as described in Exhibit B to the City.

2. Utility Easements. In the grant of the Public Right of Way, the District will retain easements for water infrastructure and make a general public utility easement grant.

VI. GENERAL

1. Amendment. This MOU may be amended through written agreement of all Parties.
2. Termination. Any party may end its participation in this MOU for any reason and at any time by providing written notice to the other Party. If not terminated earlier, this MOU will end when the Parties have fulfilled their respective commitments described above or December 31, 2025, whichever occurs first.
3. Other Agreements. Nothing in this MOU limits any Party from entering into other agreements with one another or with third parties.
4. Release. The Parties agree to release one another from any and all liability, loss, injury, damages, debts, obligations, claims, demands, encumbrances, deficiencies, costs, penalties, suits, proceedings, attorney fees and costs whether or not suit is brought, expenses whether accrued, absolute, contingent or otherwise, and other liabilities of every kind, nature and description arising out of the performance of this MOU. This release shall survive any termination of this MOU. If a third party challenges anything arising out of the performance of this MOU, each Party will bear its own costs and incur any liabilities imposed by the third-party action.
5. No Third-Party Beneficiaries. Nothing in this MOU is intended to create any rights, duties, or obligations by the Parties to any person or entity not a party, and this MOU shall not be deemed to give rise to any right by any person or entity not a party against any Party to this MOU. Nothing in this MOU is intended to nor shall be deemed to relieve or discharge the obligation or liability of any person or entity not a party to any party to this MOU.
6. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.
7. Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.
8. Immunity and defenses retained. 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.
9. Enforceability. The Parties agree that this MOU does not create any contractual, or any other legal obligations meant to be enforceable by operation of law.
10. Counterparts. This MOU may be executed in counterparts.
11. Headings. The headings used herein are for convenience only and shall not be considered in the interpretation of this MOU.
12. 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.
13. Points of Contact. Each Party designates below a primary point of contact (“POC”) to coordinate all matters concerning the carrying out of activities under this MOU. Any modifications to the POC will be provided in writing to the other parties. The contacts for work related to the project are:

| **Party** | **Point of Contact** | **Address** | **Telephone** | **e-mail** |
| --- | --- | --- | --- | --- |
| WCWCD | \* | 533 East Waterworks Dr.  St. George, UT 84770 | 435.673.3617 | \*@wcwcd.org |
| Toquerville City | \* | \* | \* | \* |

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

\*

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Entered into and effective on the date first written above:

Zachary Renstrom, General Manager

Washington County Water Conservancy District

\*NAME, Title\*