

CEDAR VALLEY REGIONAL PIPELINE INTERLOCAL AGREEMENT

Between Central Utah Water Conservancy District and Eagle Mountain City

THIS CEDAR VALLEY REGIONAL PIPELINE INTERLOCAL AGREEMENT

(“*Agreement*”), is made and entered into this ____ day of _____, 2013, pursuant to authority of the Interlocal Cooperation Act, §11-13-101, *et seq.*, U.C.A., 1953, as amended, by and between the CENTRAL UTAH WATER CONSERVANCY DISTRICT, a water conservancy district organized under the laws of the State of Utah (“*District*”), and EAGLE MOUNTAIN CITY, a municipal corporation (“*City*”). The District and the City are sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

A. The City has entered into certain water supply agreements with the District designated respectively as the “CWP FY2009 Water Supply Agreement”, “CWP FY2010A1 Water Supply Agreement” and the “CWP FY2010 A2 Water Supply Agreement” (sometimes referred to herein collectively as the “*Water Supply Agreements*”), pursuant to which the District has agreed to sell and the City has agreed to purchase annually, on a take-or-pay basis, a combined total of 15,000 acre-feet of municipal and industrial water (the “*CWP Water Supply*”), to be delivered by the District to the City through the District’s Central Water Project (the “*Central Water Project*” or “*CWP*”), in accordance with the respective take-down and payment schedules (collectively, the “*Take-down Schedule*”), and other terms and conditions set forth in the CWP Water Supply Agreements. Delivery of the CWP Water Supply to the City through CWP infrastructure is scheduled to commence in FY 2015 in accordance with the Take-down Schedule.

B. In preparation to take delivery of the CWP Water Supply, the City has: (i) purchased a lot (the “*Pump Station Lot*”), situated adjacent to the CWP Pony Express Turnout for the City located in the City of Saratoga Springs, as described in the Water Supply Agreements, upon which the City proposes to build a water pump station (the “*City CWP Pump Station*”), and (ii) has acquired all rights-of-way and easements necessary for the construction of a main water transmission pipeline (the “*City CWP Transmission Line*”), extending from the pump station a distance of approximately 3.5 miles to a point of connection with the City’s municipal water system (the City CWP Pump Station and the City Transmission Line being referred to herein collectively as the “*City CWP Water Facilities*”), as depicted on EXHIBIT “A” attached hereto and incorporated by reference herein. The estimated construction cost for the City CWP Pump Station is \$2.5 million, and the estimated construction cost for the City CWP Transmission Line is \$3.5 million. The City CWP Water Facilities planned to be constructed and operational by July, 2014, so as to facilitate the City’s obligation to take delivery of the initial portion of the City’s CWP Water Supply pursuant to the Take-down Schedule set forth in the CWP FY2009 Water Supply Agreement. The City’s design of the City CWP Water Facilities is approximately 70% complete.

C. The City is currently studying the means by which it can fund its financial obligations under the CWP Water Supply Agreements and at the same time finance the cost of finalizing the design and completing construction of the City CWP Water Facilities in time to take delivery of CWP water as scheduled.

D. According to studies performed by the Mountainlands Association of Government and population projections published by the State of Utah Office of Planning and Budget, summary of which is attached as EXHIBIT “B” hereto, the population of Cedar Valley is estimated to increase from 22,163 in the year 2010 to 187,965 by the year 2060. Based thereon, in addition to satisfying its short and long-term obligations to the City under the Water Supply Agreements, it is the purpose and intent of the District, consistent with its mission as a regional water supplier, to obtain rights-of-way and easements for the construction of a regional water delivery project proposed by the District to be extended into Cedar

Valley (the “*Cedar Valley Water Project*” or “*CVWP*”), including the extension of a large diameter regional water transmission pipeline and related facilities (the “*CVWP Pipeline*”), through which District CWP water and other available water supplies are to be made available for delivery to and use by the City and other potential customers in Cedar Valley. Although functionally integrated with the Central Water Project, the Cedar Valley Water Project shall be separate and distinct project from the Central Water Project.

E. The purpose of this Agreement is to memorialize and implement the plan agreed to by the Parties for finalizing the design, bidding and construction of the City CWP Facilities, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Design and Construction of the City CWP Water Transmission Line.** The City shall continue to have full responsibility for and shall be obligated to pay all costs and expenses incurred in connection with finalizing the design, bidding and construction of the City CWP Transmission Line; and, upon completion, the City shall own, operate, maintain, repair and replace the same thereafter for conveyance of the CWP water to which it is entitled under the CWP Water Supply Agreements, subject to and in conformance with the following:

1.1. The City shall continue to administer and be responsible for the engineering services contract with PSOMAS for the City CWP Transmission Line (the “*Transmission Line Engineering Contract*”). The District, however, shall be authorized to review and otherwise participate in the design and engineering of the City CWP Transmission Line under the Transmission Line Engineering Contract from the date of execution hereof until design has been completed.

1.2. The City will obtain all easements necessary to construct, operate, maintain, repair

and replace the City CWP Transmission Line.

1.3. The City CWP Transmission Line shall be designed and constructed by the City, and be functionally operational in a manner sufficient to enable the District to deliver CWP water to the City under the terms of the CWP Water Supply Agreements on or before July 1, 2014.

1.4. The City shall be required, at its sole expense, to obtain, utilizing its staff, all approvals and permits required from the City of Saratoga Springs, for construction of that portion of the City CWP Transmission Line situated within the City of Saratoga Springs.

2. **Design and Construction of the City CWP Pump Station.** The District shall assume full responsibility for and shall pay all costs and expenses incurred in connection with finalizing the design, bidding and construction of the City CWP Pump Station; and, upon completion, the District shall own, operate, maintain, repair and replace the same thereafter until such time as said facilities are re-conveyed back to the City by the District, in conformance with the following:

2.1. The City, within thirty (30) days from the date of execution of this Agreement, shall assign to the District, and the District shall accept the assignment of the portion of the City's engineering services contract with PSOMAS Engineering ("*PSOMAS*"), authorizing the design and engineering of the City CWP Pump Station, including any interest of the City in any and all design and engineering drawings, plans, and specifications related thereto (the "*Pump Station Engineering Contract*"), subject to the following:

2.1.1. The District shall be authorized to review and otherwise participate in the design and engineering of the City CWP Pump Station under the Pump Station Engineering Contract from the date of execution hereof until the Pump Station Engineering Contract has been formally assigned by the City to the District.

2.1.2. Subsequent to the assignment of the Pump Station Engineering Contract to the District, the District shall be obligated to complete the design and engineering of the City CWP Pump Station with full responsibility for and control over the design under the Pump Station Engineering

Contract; except that the City shall be given reasonable opportunities to review and comment on the design and engineering work under the Pump Station Engineering Contract, as it requests.

2.1.3. Upon assignment of the Pump Station Engineering Contract to the District, the District shall reimburse the City for all costs and expenses incurred by the City under the Pump Station Engineering Contract incurred to the date of the assignment. The amount of reimbursement shall be determined and verified by the City and the District in consultation with PSOMAS.

2.2. The City shall convey the Pump Station Lot to the District at a total purchase price (the "*Purchase Price*") of ONE HUNDRED SEVENTY-TWO THOUSAND SEVEN HUNDRED FORTY-ONE AND 50/100 DOLLARS (\$102,741.50), which shall be due and payable by the District to the City prior and as a condition to the District's bidding for the construction of the City CWP Pump Station. At closing, the Pump Station Lot shall be conveyed to the District by quit claim deed in exchange for the District's payment of the Purchase Price. The deed shall be recorded in the office of the Utah County Recorder, by the District, at its expense.

2.3. The District shall assume and be fully responsible for the bidding, contracting and construction of the City CWP Pump Station in conformance with the project design, and subject to and in compliance with all applicable procurement and other laws and regulations pertaining to the construction of public improvements. The design for the City CWP Pump Station provides for the installation and equipping of four (4) pumps and motors; however, but the Parties acknowledge and agree that the initial construction will only include the installation of two (2) pumps and motors. If and when the additional motors and pumps are desired to be installed, the City will notify the District and District will purchase and install the additional motors and pumps, subject to the condition, however, that the City will immediately reimburse the District for all costs and expenses incurred by it in connection with the purchase and installation of the additional motors and pumps and appurtenant equipment, as and when billed by the District.

2.3.1. The City shall have the right to participate in the review of the final plans

and specifications for the City CWP Pump Station and provide staff resources for coordination during project construction.

2.3.2. The City CWP Pump Station shall be designed and constructed by the District, and be functionally operational in a manner sufficient to enable the District to deliver CWP water to the City under the Water Supply Agreements on or before July 1, 2014.

2.4. The City, and not the District, shall be required to obtain, at its sole expense, utilizing its staff, all approvals and permits required from the City of Saratoga Springs, for construction of the City CWP Pump Station, and the City shall assign and transfer the same to the District as required to enable the District to proceed with construction and operation of the City CWP Pump Station on a timely basis as required hereunder.

2.5. The District shall maintain an accurate record of all costs and expenses incurred by it, and all mechanical and operational documents, manuals and instructions generated and obtained in connection with the engineering, design, bidding, contracting, construction, installation and operation of the City CWP Pump Station, and shall allow the City, at any time, during normal business hours, to examine its books and said records.

2.6. All costs expended by the District in connection with the bidding, contracting and construction of the City CWP Pump Station shall be accounted-for in a manner separate and distinct from any costs and expenses incurred by the District in connection with the development of the Central Water Project or other District projects. The Parties acknowledge and agree that these costs shall not include either the District's or the City's staff time involved with said project, which costs shall be accounted-for and paid separately by each of the respective Parties. Upon final completion of the City CWP Pump Station, the cost of the Pump Station Lot, and all design, bidding, contracting and construction costs and expenses associated with the City CWP Pump Station shall be determined, totaled and fixed as of the date of final completion of construction of the City CWP Pump Station, and a statement of the same shall be sent by the District to the City for its records.

3. **Operation of the City CWP Pump Station.** Upon completion of construction of the City CWP Pump Station, the District shall thereafter, on an interim basis, own, operate, maintain, repair and replace the same at its cost and expense, subject to the following:

3.1. Interim Operation of City CWP Pump Station.

3.1.1. CWP Water shall be delivered by the District to the City at the point at which the discharge line from CWP City Pump Station connects with the City CWP Transmission Line. The Parties hereby expressly agree that the CWP water delivery points which are identified in the Water Supply Agreements are hereby supplemented by authorizing the additional point of delivery as provided in this Section, and to that extent only, the Water Supply Agreements are hereby amended.

3.1.2. The District shall share with the City operational data generated through the District's SCADA System pertaining to the City CWP Pump Station meters and turn-out meters which data may only be used by the City in connection with the operation of its municipal water distribution and storage system. The City will install such facilities as are necessary to convey the operational data from its municipal water distribution and storage system along the City CWP Transmission Line, to the point of connection with the City CWP Pump Station SCADA System. The metering of CWP water deliveries at the CWP Pony Express turnout will continue to determine the quantities of CWP water billed to the City by the District.

3.2. Payment of Operational Costs. The City shall be and remain obligated to pay to the District all fees and charges imposed for delivery of CWP water as set forth in the Water Supply Agreements. In addition, all electric, natural gas and all other utility services related to the operation of the City CWP Pump Station ("*City CWP Pump Station Operational Costs*") , shall be contracted-for in the name of the District, and the District shall be primarily responsible for payment thereof as billed by said utility services; however, the City shall nevertheless be obligated to reimburse the District, in full, for all City CWP Pump Station Operational Costs on a monthly basis, as billed by the District. Each District billing therefore shall include a copy of the invoice of the respective utility companies for which

reimbursement is due and evidence of the District's payment thereof.

4. **CVWP Utility Corridor and Easements.** The Parties hereby acknowledge that in order to facilitate the District's development and construction of the CVWP, that rights-of-way and easements shall be required to be obtained long in advance of development. In that regard, the Parties hereby agree as follows:

4.1. CVWP Utility Corridor. The City shall amend and modify its General Plan and other applicable master plans, street plans and planning and zoning documents, as required, so as to expand transportation corridor rights-of-way as necessary in order to provide for a regional water utility right-of-way and easement corridor adjacent to roads, streets, trails and highways extending through the City (the "*CVWP Utility Corridor*"). The CVWP Utility Corridor shall be utilized by the District, on a non-exclusive basis, for the development, construction, ownership, operation, maintenance, repair and replacement of the District's CVWP Pipeline and related facilities, in conformance with the following:

4.1.1. It is anticipated that the CVWP Utility Corridor shall extend from the District's CWP North Shore Terminal Reservoir ("*NSTR*"), utilizing, the City's NSTR turnout as described in the Water Supply Agreements, on the north side of SR-73, and extending thence through the City as depicted on EXHIBIT "C" attached hereto and incorporated by reference herein (the "*CVWP Corridor Plan*"). It is acknowledged and agreed that the CVWP Corridor Plan alignment through the City as shown on Exhibit "C" is preliminary as of the date of this Agreement, that the District has no obligation to extend the CVWP to the terminus point, and that the alignment and terminus point may be adjusted by the Parties, from time-to-time, by substituting a revised Exhibit "C" by written amendment to this Agreement. According to the current preliminary alignment, a portion of the CVWP Utility Corridor is shown as running within State of Utah Department of Transportation ("*UDOT*") rights-of-way. The Parties hereby acknowledge that the City currently has no right or authority from UDOT to locate utilities within UDOT rights-of-way; however, the City agrees to utilize its best efforts to coordinate with and obtain from UDOT its authority for the District to identify the CVWP Utility Corridor within present or future revised

UDOT rights-of-way, and to ultimately obtain from UDOT the legal right, on behalf of the District, to construct, install, own, operate, maintain, repair and replace CVWP Project Facilities within UDOT rights-of-way in the identified CVWP Utility Corridor.

4.1.2. The City shall grant to the District non-exclusive rights to the use of the CVWP Utility Corridor within the City pursuant to one or more separate franchise agreements to be entered into between the Parties and/or by express grant of easement from the City or third party landowners, as necessary, in conformance with Subsection 4.2, which franchise agreements shall be executed and said easements granted by or caused to be granted by the City and assigned to the District without any additional fee, charge or other consideration therefore, except for and in consideration of the District's obligations under this Agreement, as set forth in Section 5 hereof.

4.2. CVWP Easements. Except for the portion of the CVWP Utility Corridor running within the UDOT right-of-way, as defined in Subsection 4.1.1, if the City is not able to acquire the right to use the CVWP Utility Corridor as part of roadway dedications or voluntary transfers from property owners, the City, at its expense, shall negotiate for the purchase of and/or condemn any additional non-exclusive easements and rights-of-ways ("*CVWP Easements*"), within the CVWP Utility Corridor, as shall be required by the District for the development, construction, ownership, operation, maintenance, repair and replacement of the District's Cedar Valley Water Project facilities up to the south terminus point of the CVWP Utility Corridor as shown on CVWP Corridor Plan, Exhibit "C", as the same may be amended from time-to-time by the Parties.

4.2.1. All CVWP Easements shall, by their express terms, be fully assignable to the District, and the same shall be assigned to the District by the City without any consideration therefore except for and in consideration the District's obligations under of this Agreement as set forth in Section 5 hereof.

4.2.2. The District shall have the right to prescribe the general form of the Grant of Easement to be utilized by the City in obtaining the necessary CVWP Easements.

4.3. Placement of Parallel Utilities. Although the franchise agreements to be established and the easement rights to be granted, obtained and assigned to the District as required in this Section 4 are to be non-exclusive, the City agrees that where sufficient area exists within the road right-of-way, the City shall coordinate with the District to restrict any parallel utility from being placed within fifteen feet (15') from the centerline of the District's CVWP Pipeline or such other distance depending upon the required depth of the CVWP Pipeline within the CVWP Corridor as finally determined by the Parties, or where it is determined sufficient area does not exist within the road right-of-way to reasonably accommodate the agreed-upon depth, the City will obtain additional rights-of-way as required.

4.4. Best Efforts. It is acknowledged and agreed that the obtaining of the CVWP Utility Corridor and CVWP Easement rights to be obtained by the District thereunder, is the primary motivation and consideration in the District's willingness to enter into this Agreement and fund the up-front cost of finalizing the design, bidding, constructing the City CWP Pump Station and operating the same during the temporary period as provided herein. The City shall thus use its best efforts in moving forward expeditiously in the establishment of the CVWP Utility Corridor and obtaining the CVWP Easements, as required, in conformance with this Agreement.

4.5. Relocation after Easements Obtained by the City. The District agrees that it shall, subject to the terms and conditions of this Agreement, locate the CVWP Pipeline within the alignment set forth in the CVWP Corridor Plan, Exhibit "C," as amended from time-to-time by the Parties as provided in Subsection 4.1.1. In the event the City obtains CVWP Easements for the location of the CVWP Utility Corridor in conformance with the location identified in the then current CVWP Corridor Plan, and the District thereafter determines, for its purposes, that the CVWP Utility Corridor needs to be relocated to an area outside of any CVWP Easement already obtained by the City, the District, at its sole cost and expense, shall be required to obtain any necessary replacement easements and facilitate the termination of any CVWP Easements obtained by the City which are no longer required.

5. Consideration and Re-conveyance of the City CWP Pump Station.

5.1. Consideration. The Parties hereby acknowledge and agree that value of the CVWP Utility Corridor and the CVEP Easements to be provided or caused to be provided by the City to the District for the development of the CVWP Project is hereby deemed equal and equivalent to the costs to be incurred by the District in fronting the cost of finalizing the design, and bidding, constructing and installing the City CWP Pump Station and operating the same during the temporary period as provided in Section 2 herein. Accordingly, in full and final consideration of the City's agreement under Section 4 hereof to provide to the District the CVWP Utility Corridor and CVWP Easements, the District shall perform its obligations under Section 2 hereof.

5.2. Reconveyance of the City Pump Station. Upon receipt from the City of the required CVWP Utility Corridor franchise and easement rights, and the CVWP Easements required to be transferred by the City to the District under Section 4 hereof, the District shall re-convey to the City all of the District's right, title and interest in and to the CWP Pump Station, the Pump Station Lot, and all facilities and equipment appurtenant thereto, together with an assignment of all utility and other contracts associated with the operation, maintenance and repair of the City CWP Pump Station. Upon re-conveyance of the City CWP Pump Station by the District to the City, the City shall assume and thereafter be fully responsible for the ownership, operation, maintenance, repair and replacement of the City CWP Pump Station, and the City's obligation to pay City CWP Pump Station Project Operational Costs to the District shall thereupon terminate.

5.3. Time of Performance. The Parties acknowledge and agree that the CVWP Utility Corridor and the CVWP Easement rights shall be established, acquired, transferred, conveyed and assigned by the City to the District, and the City CWP Pump Station shall be re-conveyed by the District to the City no later than twenty (20) years from the effective date of this Agreement (the "Time of Performance"), unless the time for performance is extended upon the mutual written agreement of the Parties.

5.3.1. In the event the City has not obtained and conveyed the CVWP Easement

rights and CVWP Utility Corridor to the District within the Time of Performance, the Parties agree that the District shall acquire any and all remaining easements and rights-of-way necessary to complete the Cedar Valley Water Project, and the City shall reimburse to the District all costs and expenses incurred by the District in acquiring said easements and rights-of-way, as billed by the District. In connection with the foregoing, the Parties agree to extend the Time of Performance in the event the City is diligently pursuing one or more condemnation actions to acquire any of the necessary easements and rights-of-way.

6. **Water Supply Agreements Remain in Full Force and Effect.**

6.1. Independent Agreements. This Agreement operates independent of the Water Supply Agreements, and shall remain in force and effect irrespective of the status of the Water Supply Agreements, and/or any other agreement which has been or may in the future be executed between the Parties, unless otherwise stated therein.

6.2. Water Supply Agreements Remain in Effect. Except as provided in Subsection 3.1.1 herein which provides for an additional point of delivery for CWP water at the City CWP Pump Station, nothing herein shall be amend or otherwise modify the Water Supply Agreements, as may be amended between the Parties, such that the City shall be and remain obligated to pay when due all CWP Fees and Annual Fees and charges provided for therein, and otherwise comply with all other terms and provisions of the Water Supply Agreements, each of which shall be and remain in full force and effect in accordance with their respective terms.

7. **No Third-party Beneficiaries.** There are no third party beneficiaries of this Agreement.

8. **Assignment Limited.** Neither Party may assign this Agreement or any of its rights under it without the prior written consent of the other Party; provided, however, that the District may pledge and assign any monies received pursuant to this Agreement to the payment of the District's bonds.

9. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

10. **Severability.** If any term or provision of this Agreement shall, to any extent, be

determined by a court of competent jurisdiction to be void, voidable, or unenforceable, such void, voidable or unenforceable term or provision shall not affect the enforceability of any other term or provision of this Agreement.

11. **Construction.** This Agreement is the result of negotiations between the Parties, neither of whom 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. Each Party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or who=s attorney) prepared the executed Agreement or any earlier draft of the same. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

12. **Further Action.** The Parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

13. **Business Relationship.** This Agreement neither acknowledges the existence of nor is it intended nor shall it be construed to establish, create or organize any principal-agent relationship, partnership, joint venture, or any other legal entity or form of business relationship between the Parties, and is limited solely to the purposes and interests expressed herein.

14. **Entire Agreement.** This Agreement, including exhibits, constitutes the entire agreement of the Parties and supersedes all prior undertakings, representations, or agreements of the Parties regarding the subject matter hereof.

15. **Warranty of Authority.** Each individual executing this Agreement does hereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities identified herein. The District and the City each represent and warrant that it has full legal

right and authority to enter into this Agreement.

16. **Effective Date.** This Agreement shall become effective upon a resolution duly adopted by the Board of Trustees of the District and the City Council of the City.

17. **Filing of Agreement.** Executed copies of this Agreement shall be deposited with and remain in the office of the District and the City during the effective term hereof.

IN WITNESS WHEREOFF, the Parties hereto have executed this Agreement effective as of the day and year first written above.

**CENTRAL UTAH WATER CONSERVANCY
DISTRICT**

EAGLE MOUNTAIN CITY

By: _____
Its: President

By: _____
Its: Mayor

Attest: _____
Its: Secretary

Attest: _____
Its: Recorder

APPROVED BY:

APPROVED BY:

District's Attorney

City's Attorney

EXHIBIT A
CWP CITY WATER FACILITIES

EXHIBIT B
MOUNTAINLANDS AOG POPULATION PROJECTIONS, 2013
CEDAR VALLEY, UTAH

EXHIBIT C
CVWP CORRIDOR PLAN