

# City Council Staff Report



**Date:**

January 5, 2022

**Applicant:**

Mapleton City

**Prepared By:**

Bryce Oyler, Finance Director

**Public Hearing:**

No

**Attachments:**

Amended Interlocal Agreement

**REQUEST**

Consideration of a resolution adopting the third amended and restated interlocal agreement for construction, use and maintenance of joint wastewater treatment facility and joint trunklines.

**BACKGROUND & DESCRIPTION**

In 2020, Mapleton entered into an interlocal agreement with Spanish Fork for the construction, use, and maintenance of joint wastewater treatment facility and joint trunklines. Amendments have been made to section 5.4. The purchase price to Mapleton is 20% of the project cost rather than \$15,955,000. It also explains that Mapleton has made a deposit to Spanish Fork of \$18,000,000, which is the amount of the note.

**RECOMMENDATION**

Adopt a resolution approving the Third Amended Interlocal Agreement for construction, use, and maintenance of joint wastewater treatment facility and joint trunklines.

**~~THIRD SECOND~~-AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR  
CONSTRUCTION, USE, AND MAINTENANCE OF  
JOINT WASTEWATER TREATMENT FACILITY AND JOINT TRUNKLINES**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, ~~2022~~2020, by and between Spanish Fork City, and Mapleton City. The parties to this Agreement are sometimes referred to collectively herein as the “Cities” and separately as a “City.”

**WITNESSETH**

WHEREAS the Cities entered into an [interlocal agreement for the use and maintenance of a joint wastewater treatment facility on February 19, 2004](#), which agreement was supplemented by that [Addendum Contract dated May 17, 2005](#), which agreement was amended and restated by an [Amended and Restated Inter-Local Agreement dated May 17, 2011](#), and by a [Second Amended and Restated Interlocal Agreement for Construction, Use, and Maintenance of Joint Wastewater Treatment Facility and Joint Trunklines dated January 5, 2021](#) (collectively, “Prior Agreement”);

WHEREAS, pursuant to the terms of the Prior Agreement, the Cities jointly own a system for the transmission and disposal of wastewater sewage (the “System”);

WHEREAS, pursuant to the terms of the Prior Agreement, Spanish Fork owns the real property whereupon the existing Treatment Facility is located on and owns 73.6% of the facility capacity, while Mapleton owns 26.4% of the Treatment Facility capacity;

WHEREAS an additional joint trunkline was commenced in 2016;

WHEREAS Cities desire to construct a new wastewater treatment facility due to degrading infrastructure and government regulation, necessitating the need to further amend the Prior Agreement;

WHEREAS, based on the construction of the new Treatment Facility, the capacities for each City and the compensation to be paid therefore need to be adjusted; and

WHEREAS a cooperative effort from each City to provide for the sewage collection and treatment needs of the citizens is a basic underlying goal of the Cities;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I DEFINITIONS**

For the purposes of this Agreement the following terms shall have the respective meanings set forth below except where the context indicates otherwise:

1. ACT means the Interlocal Cooperation Act, [Utah Code Annotated §11-13-1](#) et. seq. (1953 as amended).
2. AGREEMENT means this document, the ~~Third Second~~-Amended and Restated Interlocal Agreement for Construction, Use, and Maintenance of Wastewater Treatment Facility and Joint Trunklines.
3. ANNUAL BUDGET means the annual budget for the use, operation, and maintenance for the Treatment Facility and Joint Trunklines for each fiscal year. The Annual Budget shall specify the projected operation and maintenance expenses for the Treatment Facility and Joint Trunklines for the relevant fiscal year and any costs for repairs or improvements to them to be accomplished during the fiscal year.
4. BILLING PERIOD means a monthly period commencing on the first day of each month during the term of this Agreement, to and including the last day of that month.
5. CAPITAL COSTS means future costs and expenses incurred in any expansion of the Treatment Facility or any upgrade required by new regulation of the U.S. EPA or the State of Utah, including, but not limited to, all costs of construction, construction period interest costs, costs of architects and engineers, and other similar costs and expenses incurred by way of expansion to the Treatment Facility. It does not include the repair of any part of the Treatment Facility that is not required by new regulation. Only the growth-related costs of a repair or replacement may be considered a Capital Cost unless they are required by new regulation.
6. CITY or CITIES means Spanish Fork City or Mapleton City respectively, or both of them in plural.
7. CODE means the official compilation published and known as Utah Code Annotated (1953 as amended).
8. COLLECTION SYSTEM means the wastewater collector and interceptor pipeline system of each City which is owned and operated, or will be owned and operated exclusively by that City, separate and apart from the Treatment Facility, including service laterals, manholes, pump stations, flow-measuring devices and related appurtenances, excluding the Joint Trunklines.
9. EQUIVALENT RESIDENTIAL UNIT (ERU) means a unit of wastewater which incurs the same costs for operation and maintenance as the average volume of domestic wastes discharged from a single-family residence in the treatment works service area. An ERU is equivalent to 163 gallons per day excluding infiltration, 0.629 pounds per day Biochemical Oxygen Demand (BOD), and 0.629 pounds per day Total Suspended Solids (TSS).

10. FACILITIES means collectively the Treatment Facility and Joint Trunklines.
11. FISCAL YEAR means a period of twelve (12) consecutive months commencing on July 1st and ending on June 30th of the following year.
12. GOVERNING BODY means the duly elected mayor and city council of each CITY.
13. JOINT TRUNKLINE 1995 means that sewer trunkline running from the west side of the Union Pacific Railroad right of way at approximately 950 North 2550 East (Spanish Fork) to the connection with the existing Treatment Facility owned by Spanish Fork. Mapleton owns 61% of the Joint Trunkline 1995 and Spanish Fork owns 39% of the joint trunkline as shown on [Exhibit A](#).
14. JOINT TRUNKLINE 2016 means that sewer trunkline running from the west side of the Union Pacific Railroad right of way at approximately 3150 East 100 South (Spanish Fork) to a point where it connects to the Joint Trunkline 1995 at 1789 East 970 North (Spanish Fork). Mapleton owns 65% of the joint trunkline 2016 and Spanish Fork owns 35% of the joint trunkline 2016 as shown on [Exhibit B](#).
15. JOINT TRUNKLINE CAPACITY means the total volume of sewage capable of being transported to the Treatment Facility through the Joint Trunklines. For the purpose of this agreement, Capacity is defined as eighty five percent (85%) of the full pipe capacity, reserving fifteen percent (15%) for infiltration.
16. MAPLETON means Mapleton City, a municipal corporation and body politic located in Utah County, State of Utah.
17. OPERATION AND MAINTENANCE EXPENSES means, with respect to the Facilities, all expenses reasonably incurred in connection with the operation and maintenance of the Facilities including:
  - a. Repairs and replacements (other than Capital Costs) of all existing equipment, buildings, and facilities necessary to keep the Facilities in efficient operating condition;
  - b. Costs incurred in preparing operating reports and other reports as may be required herein or by State or Federal Regulation;
  - c. Premiums on insurance for the Treatment Facility required herein;
  - d. Actual costs incurred by Spanish Fork in carrying out the duties and responsibilities specified in this Agreement, including all wages, overtime, third-party contract expenses for equipment and other special services, employee

benefits, general office overhead, administrative expenses and vehicle mileage, provided however that Spanish Fork costs to be included in Operation and Maintenance Expenses shall only be those fairly attributable to the operation of the Facilities, and not include costs attributable to any Collection System.

- e. Generally all expenses, exclusive of depreciation, which under generally accepted accounting principles are properly allocated to operation and maintenance of the Facilities, but only such expenses as are reasonable and necessary to the efficient operation and maintenance of the Facilities shall be included.
18. ORDINANCE means a legislative enactment by a Governing Body of a City.
19. PRIOR AGREEMENT means the [Inter-local Agreement for Construction, Use, and Maintenance of Joint Wastewater Facility entered into between the Cities, dated February 19th, 2004](#), as supplemented by that [Addendum Contract entered into between the Cities, dated May 2005](#), ~~and~~ the [Amended and Restated Inter-local Agreement for Construction, Use, and Maintenance of Joint Wastewater Facility entered into between the Cities, dated May 17, 2011](#), and the [Second Amended and Restated Interlocal Agreement for Construction, Use, and Maintenance of Joint Wastewater Treatment Facility and Joint Trunkline, dated January 5, 2021](#).
20. SPANISH FORK means Spanish Fork City, a municipal corporation and body politic located in Utah County, Utah.
21. TREATMENT FACILITY means collectively the existing wastewater treatment plant and the new wastewater treatment plant owned and operated by the Cities, including all screens, chambers, pumps, clarifiers, filters, digesters, basins, interconnecting pipes, outfall line, transfer structures, and other equipment and facilities.
22. TREATMENT FACILITY CAPACITY means the lesser of:
- a. the total hydrologic volume of the Spanish Fork Treatment Plant, which the existing Treatment Facility is capable of processing, currently 5.0 million gallons per day, and the new Treatment Facility, which will be capable of processing 8.0 million gallons a day, average daily flow; or
  - b. the total biological volume which the Treatment Facility is capable of processing, based on the regulations on contaminant discharges, as set forth in the Treatment Facility UPDES permit issued by the State of Utah.

## ARTICLE II TERMINATION OF PRIOR AGREEMENT

In order to accomplish the purposes of the Cities, given the addition of the Joint Trunkline 2016

and the construction of a new Treatment Facility, it is in the Cities' interests to terminate the Prior Agreement and replace it with this Agreement. The Prior Agreement shall be terminated upon the approval and execution of this Agreement by each City's Governing Body.

### **ARTICLE III JOINT TRUNKLINES**

This Agreement affects the ownership interests of the Cities in the Joint Trunkline 1995 and the Joint Trunkline 2016 to reflect the percentages set forth in paragraph 13 and 14 of the definitions. O&M expenses incurred on the Joint Trunklines shall be paid for by the Cities in the same ratio as their ownership interest in the Joint Trunklines.

### **ARTICLE IV PURPOSE AND TERM OF AGREEMENT**

- 4.1 Purpose. The purpose of this Agreement is to provide for: (i) the use, operation and maintenance of the Facilities for the mutual benefit of the Cities; (ii) to provide for an Advisory Group to give recommendations regarding the operation and maintenance of the Facilities; and (iii) the establishment of a system for sharing the costs and expenses related to the use, operation, and maintenance of the Facilities.
- 4.2 Term of Contract. This Contract shall be in full force and continue in effect for 50 years, unless terminated earlier by mutual agreement of the parties.

### **ARTICLE V OWNERSHIP OF TREATMENT FACILITIES AND PURCHASE OF CAPACITY**

- 5.1 Ownership of Various Facilities. Spanish Fork shall retain all ownership interests in its Collection System. Mapleton shall retain all ownership interest in its Collection System. Except as set forth in paragraph 5.4, nothing herein shall be construed to grant to any City any ownership interest in property or assets of the other City.
- 5.2 Right to Use. Mapleton shall have the right and power during the term of this Agreement to connect its Collection System to the Joint Trunklines and thereby cause the sewage and wastewater from its residents and customers to be transmitted to the Treatment Facility for treatment, pursuant to the terms of this agreement.
- 5.3 Funding of the new Treatment Facility. Spanish Fork shall obtain funding for the construction of the new Treatment Facility in the form of cash and a municipal bond. Mapleton shall make annual payments as more specifically set forth in Exhibit C attached hereto, which amount is equal to their proportionate share of the bond, to be used by Spanish Fork for debt service payment of the bond. Notwithstanding anything in this Agreement elsewhere contained, the payments to be paid by Mapleton to Spanish Fork in this Agreement shall be payable out of the revenues of Mapleton's sewer system. In no event shall the payments be deemed or construed to be a general indebtedness of Mapleton or payable from any funds of Mapleton other than those derived from the operation of Mapleton's sewer system. The net revenues from Mapleton's sewer system

are pledged to secure the payments hereunder. Mapleton may, in its sole discretion, but without obligation and subject to the constitution, laws, and budgetary requirements of the State of Utah, make available funds to defray any insufficiency of sewer revenues to make the payments called for in this Agreement; provided, however, Mapleton has not covenanted and cannot covenant to make those funds available and has not pledged any of such funds for the payments called for under this Agreement. Mapleton shall not increase its portion of the bond payment until such time as the bond is callable. Mapleton shall provide coverage funds to Spanish Fork City in the amount of \$1,686,195, which amount is equal to one and a half (1.5) times its proportionate share of one annual payment of the bond, to be used by Spanish Fork in a rate stabilization fund to provide coverage for the bond. The coverage funds shall be placed in an interest bearing account for the full term of the bond. Upon the final bond payment, Mapleton's coverage funds and any interest accrued shall be returned to Mapleton. As Mapleton is not providing any cash to the new Treatment Facility, it shall be responsible to pay any arbitrage penalties if incurred. Mapleton pledges the net revenues of its sewer system to pay coverage funds.

5.4 Purchase by Mapleton. Subject to the provisions of paragraph 6.1(a), Mapleton purchases from Spanish Fork twenty percent (20%) of the new Treatment Facility, including land, for the purchase price of ~~twenty percent (20%) of the capital costs \$15,955,000~~ ("Purchase Price"). A deposit of \$18,000,000 has been made by Mapleton to Spanish Fork City in the project construction fund. Concurrent with the execution of this Agreement, Mapleton shall execute in favor of Spanish Fork a promissory note secured by the net revenues of Mapleton's sewer system whereby it promises to pay the Purchase Price in monthly installments. (The form of promissory note is attached as Exhibit C). If Mapleton's 20% share of the capital costs at the end of construction of the new Treatment Facility differs from ~~\$18,000,000+5,955,000~~, the Purchase Price shall be adjusted accordingly. The Cities agree to amend the promissory note to reflect the final Purchase Price. If Mapleton's 20% share of capital costs at the end of construction is less than ~~\$18,000,000+5,955,000~~, the difference shall be given as a credit toward a future bond payment under this Agreement. The credited amount shall be placed in an interest-bearing account and shall be used towards Mapleton's share of the next bond payment. If Mapleton's 20% share of the capital costs is greater than ~~\$18,000,000+5,955,000~~, the Cities agree to amend the Agreement to account for the difference.

5.5 As part of the bond financing for the new Treatment Facility, the Cities are required to deposit funds into a rate stabilization fund to ensure coverage. In Fiscal Year 2022 Mapleton shall pay Spanish Fork \$1,685,145. Spanish Fork shall contribute \$1,114,855. Spanish Fork shall deposit both amounts into a separate interest-bearing account. The rate-stabilization amount contributed by Mapleton shall be returned to Mapleton, with interest, once it is no longer needed, which is currently estimated to be in Fiscal Year 2032.

5.6 2011 Purchase by Mapleton. Pursuant to the Prior Agreement, Mapleton owes Spanish Fork \$2,800,000.00, which was to be paid in full on or before April 30, 2026. Mapleton

**Commented [1]:** Vaughn, I am comfortable with all of the changes you have made to this section. From my perspective we are ready to get this signed.

**Commented [2]:** Thanks. I will send it to Bryce Oyler and Eric Johnson in a final format.

agrees to pay three annual installments of \$933,333 in each of the fiscal years ending in 2025, 2026, and 2027 from the net revenues of Mapleton's sewer system. Interest shall not be charged. Each annual payment shall be due April 30 of the fiscal year in which it is scheduled.

**ARTICLE VI EXCEEDING OR ADJUSTMENTS TO TREATMENT FACILITY CAPACITIES**

6.1 Adjustments to capacities.

- a. If either City's wastewater needs require capacity beyond its capacity share allocated at the new Treatment Facility, the cost of expansion shall be paid solely by that City and the additional capacity created shall be owned by that City. The ownership interests shall be adjusted to reflect the new capacity. The other City not requiring the capacity expansion, at its option, may participate with the City requiring the expansion of capacity to the new Treatment Facility at which time each City shall pay for the capital costs of such expansion on the same ratio of each city's capacity within the expanded portion of the plant. The City not requiring the capacity expansion may not prevent the other City from undertaking a capacity expansion and shall have no financial obligation for expansion of the new Treatment Facility, if such expansion is done based solely on the other City's need.
- b. In the event expansion to the new Treatment Facility is required by government regulation, each City shall pay for the capital costs of such expansion on the same ratio of each City's capacity to the total new Treatment Facility Capacity. Any regulatory fines or penalties incurred shall be paid by the City causing the same. In the event the cause cannot be determined, the fines or penalties shall be paid based upon the same ratio of each City's capacity to the total new Treatment Facility Capacity.
- c. Any expansion to the new Treatment Facility shall be based on the Spanish Fork City Wastewater Master Plan.
- d. Neither City may prevent the other from undertaking a Treatment Facility capacity increase. Such increases shall require an adjustment of the ownership interests in the Treatment Facility as provided in Section 6.3.

6.2 Exceeding capacities. In the event that either City exceeds its capacity, the other's capacity may be used until unavailable (when the other City needs such capacity). If the new Treatment Facility Capacity is ever exceeded, the City that is using more capacity than owned shall do the following:

- a. Cease issuance of building permits that require a new connection to the Collection System.



- b. Be responsible for all regulatory fines and/or penalties due as a result of exceeding capacities.
  - c. Be responsible for all costs of remediation, labor, and materials to correct the problem.
  - d. Be responsible for all attorneys' fees incurred in defending any regulatory action.
  - e. Pay for and begin immediately the design and construction of the next new Treatment Facility capacity project with or without the participation of the other City according to article 6.1.a.
- 6.3 Adjustment of ownership. If the Treatment Facility Capacity is adjusted the ownership interests shall be adjusted to reflect each City's proportionate share of ownership in the new Treatment Facility Capacity. As set forth in Article 9, the Advisory Group shall meet to consider amendments to the Agreement and execution of deeds reflecting the new ownership proportion.

**ARTICLE VII OPERATION AND MAINTENANCE OF THE TREATMENT FACILITY AND JOINT TRUNKLINES**

- 7.1 Duties and Responsibilities of Spanish Fork City. Spanish Fork shall be the operator of the Facilities and shall have the following duties:
- a. Management. Spanish Fork shall have sole and exclusive responsibility for the day-to-day management of the Facilities.
  - b. Operation and Maintenance. Spanish Fork shall be responsible for the operation and maintenance of the Facilities and shall employ competent and experienced personnel or train such personnel for the Facilities and shall use its best efforts to operate and maintain the Facilities at all times in good repair and condition, and in such a manner that the operating efficiency thereof shall conform to the standards set by Federal, State, and Local law.
  - c. Compliance with Laws. In operating and maintaining the Facilities, Spanish Fork shall comply in every respect with each applicable Federal, State, or Local law regulating the safe, sanitary, and healthful operation of the Facilities, and Spanish Fork shall make every reasonable effort to prevent a shutdown or bypass of the Facilities, or an imposition of penalty by any governmental authority because of a failure to meet or otherwise comply with applicable laws and regulations. If such reasonable effort has been made, but notwithstanding, there is a penalty or requirement imposed by any authorized government authority, the penalty or cost of

compliance shall be considered as part of the operation and maintenance expense of the Facilities.

- d. Insurance. In operating and maintaining the Facilities, Spanish Fork shall obtain and maintain insurance, including but not limited to worker's compensation insurance and public liability insurance in such amounts and to such extent it is customarily carried by other operating utilities of the same type. The cost of such insurance shall be considered an operations and maintenance expense of the Facilities. In the event of any loss or damage to any part of the Facilities, insurance proceeds shall be used for the purpose of restoring or replacing the property lost or damaged.
- e. Expenditures. Spanish Fork shall use its best efforts to keep the Operation and Maintenance Expenses related to the Facilities within the amounts established in the Annual Budget and shall make no expenditures or incur any obligation in excess of amounts established in the Spanish Fork Annual Budget without revision of the budget.
- f. Collections. Spanish Fork shall collect from Mapleton, on a monthly basis, Mapleton's proportionate share of Operation and Maintenance Expenses relating to the Facilities in accordance with this Agreement, and shall apply those payments against the budget. Actual Operation and Maintenance expenses shall be trued up at the end of each budget year.
- g. Maintain Records. Spanish Fork shall maintain accurate detailed records relating to the Facilities, including but not limited to flow-measuring records, materials, supplies, and payroll records for personnel employed by Spanish Fork City. Spanish Fork City shall make those records available for inspection at reasonable times to the Advisory Group and the Governing Body of Mapleton.
- h. Budget Preparation. Spanish Fork shall prepare and provide a proposed budget for the next fiscal year by April 1st of each year. Spanish Fork will make available, upon request, a copy of the monthly financial report for the Treatment Facility. The expenses incurred in compiling each report shall be regarded as an Operation and Maintenance expense of the Facilities.

- 7.2 Pretreatment. Spanish Fork shall administer the pretreatment program for both Cities. Mapleton shall require all residents and businesses to adhere to the pretreatment requirements outlined in Spanish Fork City Municipal Code [§13.24](#). et. seq. (Wastewater Utility) by adopting code at least as stringent as the cited Spanish Fork City Municipal Code. Mapleton shall require all non-residential businesses to submit the [Spanish Fork City Pretreatment Questionnaire](#) and shall ensure that all pretreatment requirements are met prior to approving a site plan or building permit.

## ARTICLE VIII CHARGES FOR OPERATION AND MAINTENANCE EXPENSES

- 8.1 Sharing of Expenses. All actual operation and maintenance expenses related to the Treatment Facility shall be paid on a monthly basis by Mapleton in a ratio determined as follows:
- a. A meter shall be installed where the Joint Trunkline 1995 and the Joint Trunkline 2016 each cross the DRGW railroad tracks to measure total flow and contaminate strength from Mapleton's collection system. Mapleton shall own and maintain these meters. Spanish Fork shall read the flow meters monthly for billing and sample for contaminant strength quarterly.
  - b. A meter has been installed at the intake to the Treatment Facility. Spanish Fork shall own and read this meter. Mapleton may check the readings for accuracy.
  - c. Mapleton shall be responsible to pay to Spanish Fork for the operation of the Treatment Facility on the ratio of Mapleton's flow as metered at the crossing of the DRGW tracks, to the total flow, as measured at the Treatment Facility intake.
- 8.2 Payments to Spanish Fork City. Mapleton shall pay to Spanish Fork the monthly service charge described in Section 8.1 of this Agreement within twenty (20) days after receiving the bill. Mapleton covenants that the rates for all sewer service supplied by the Mapleton sewer system to its inhabitants and customers shall be sufficient for the retirement or redemption of the Note and any bonded indebtedness of Mapleton secured by the net revenues of its sewer system, provided such rates must be reasonable rates for the type, kind, and character of the service rendered. There shall be no free service and there shall be charged against all users of the system, including the Issuer, such rates and amounts as shall be sufficient to produce Net Revenues that are equal to 125% of annual debt service on the note and all bonded indebtedness of Mapleton that is secured by the net revenues of its sewer system. All revenues, including those received from the issuer, shall be subject to distribution for the payment of the cost of operating and maintaining the system, and the payment of the note and all other indebtedness secured by the net revenues of Mapleton's sewer system. Balances held in the Mapleton Revenue Fund on the last day of each Fiscal Year shall be considered to be revenues available for the next Fiscal Year. If Mapleton fails to pay the full amount due and owing within ten (10) days after the due date thereof, the unpaid balance shall bear an interest rate of one percent (1.0%) per month until paid in full, and all subsequent payments received shall be applied first to interest and then to principal.
- 8.3 Breach of Agreement. In the event of a breach of this agreement, the non-breaching party shall be entitled to recover its costs and attorneys fees incurred in enforcing the terms hereof. In the event a dispute that the parties cannot amicably resolve, a court of competent jurisdiction in Utah County, or any alternative dispute resolution method agreed upon by the parties may be used to resolve the dispute.

## ARTICLE IX ADVISORY GROUP

- 9.1. Advisory Group. An advisory group shall be created for the purpose of monitoring the number of hookups available allowed, as set forth in paragraph 6.2, discussing problems, policies, revenues, expenditures, and any other matters affecting the operation of the Facilities.
- a. Number of Representatives. The Advisory Group shall consist of five members, three of whom shall be representatives from Spanish Fork and two from Mapleton.
  - b. Advisory Group Member Selection. Each City's members shall be selected and approved by its Governing Body.
  - c. Removal or Disability. Each City may remove any of its members with or without cause. Upon such removal or in the event of resignation, a successor shall be appointed for the remainder of that term, by the City who had appointed the member who is no longer serving.
- 9.2. Duties of Advisory Group. The Advisory Group shall study and make recommendations regarding operation, maintenance, and improvement of the Facilities. The Advisory Group shall also recommend amendments to budgets, amendment to the Agreement, and changes to the proportionate ownership of the Facilities, when such are appropriate. The conclusions, recommendations, or information emanating from a meeting of the Advisory Group shall be presented to the Governing Bodies of the Cities for their consideration. It is understood, however, that the function of the group is to further the cooperation between the Cities and to render advisory assistance, but in no way to limit the rights of ownership to the Facilities set forth herein, or to make binding recommendations, but shall be advisory only.

## ARTICLE X BUY BACK PROVISIONS

- 10.1 Mapleton System.
- a. The parties acknowledge Mapleton's significant capital contributions towards the Treatment Facility and Joint Trunklines, and that Mapleton may one day need to construct its own sewer treatment system. If Mapleton decides to construct its own sewer treatment system, it may terminate this agreement and negotiate with Spanish Fork the amount of reimbursement it will receive for its capital contributions, based upon the depreciation of the facilities, their condition, and value.
  - b. If Mapleton decides to construct its own sewer treatment system, it may phase out of the Spanish Fork Treatment Facility, but must eventually take all of its sewerage into

a different system. Any such phasing may not take longer than five years. As Mapleton phases out of the Treatment Facility, it may make additional capacity available to Spanish Fork. Once Mapleton is no longer using its allotted capacity, in whole or in part, Spanish Fork shall begin to reimburse Mapleton its contributions towards capital facilities in proportion to the amount Mapleton has reduced its allotted capacity. For example, if Mapleton reduces its use of its allotted capacity by 10%, Spanish Fork shall begin to reimburse Mapleton for 10% of its investment in capital facilities.

- c. Mapleton shall give one year written notice to Spanish Fork of its intent to construct its own sewer treatment system or to withdraw from the Treatment Facility, and thereby terminate this agreement. However, Mapleton may not terminate this Agreement if there is debt still outstanding.
- d. Unless otherwise agreed to by the parties, the reimbursement period shall be 10 years and shall commence 30 days from the date Mapleton makes additional capacity available. Spanish Fork shall make a down payment of 25% and pay the balance in 10 annual installments. Upon full reimbursement being made, Mapleton shall relinquish its ownership interest by conveying a deed to Spanish Fork for Mapleton's share in the Treatment Facility and Spanish Fork shall become the sole owner of the Treatment Facility.
- e. No interest shall accrue on any money owed to Mapleton by Spanish Fork during the reimbursement period.

#### **ARTICLE XI MISCELLANEOUS PROVISIONS**

- 11.1 Adoption of Ordinances. Each City agrees to adopt and enforce such ordinances as are reasonably necessary to permit the purposes of this Agreement to be accomplished. Mapleton further agrees to maintain an ordinance in substantially the same format and content as Spanish Fork City Municipal Code [§13.24](#). et. seq. (Wastewater Utility). Mapleton further agrees to be subject to the provisions of [§13.24](#). et seq. (Wastewater Utility)
- 11.2 Joint Cooperation. The Cities hereby agree to cooperate with each other in the planning for the future capital improvements to the Facilities or the construction of facilities for the joint use of the Cities. The installation of such capital improvements or new facilities and costs to be assumed by each city with respect thereto shall be reviewed with the Advisory Group. The Advisory Group shall make a recommendation on whether the improvements shall be subject to provisions of a separate written agreement between the Cities.
- 11.3 Authorized Agreement. Each City hereby represents and warrants that its Governing Body has taken all action as required by law to approve this Agreement and to authorize execution of this Agreement on behalf of that City.

11.4 Force Majeure. In case by reason of force majeure, either City shall be rendered unable wholly, or in part, to carry out its obligations under this Agreement, other than the obligation of each City to make the payments required under the terms hereof, then such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, and the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove and overcome such inability with reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy, an order from any kind of the government of the United States or the State of Utah, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, restraint of government and people, civil disturbance, explosions, breakage, accidents to machinery or collection line, or the partial or complete inability of Spanish Fork to treat and dispose of such wastewater on account of any other cause not reasonably within the control of Spanish Fork.

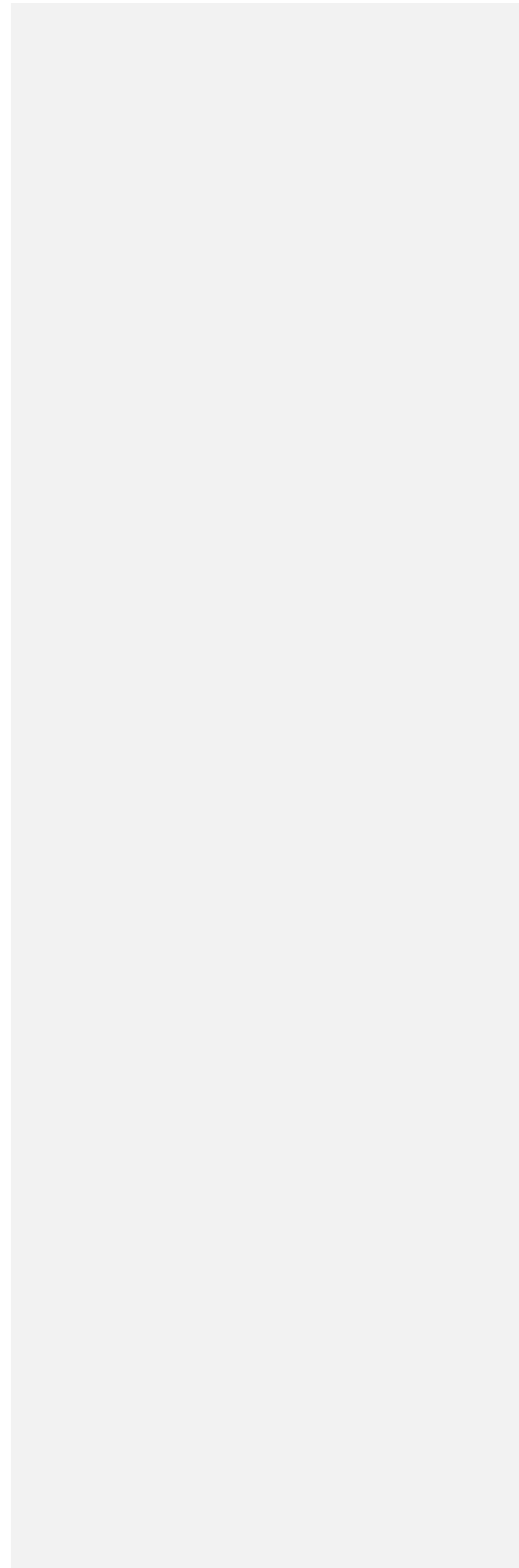
11.5 Miscellaneous Provisions.

- a. This Agreement shall be governed by and construed under the laws of the State of Utah.
- b. The Cities shall not be deemed to be partners or joint venturers in any manner in the use or operation of the Facilities.
- c. Spanish Fork shall be responsible for ascertaining and overseeing compliance by the Facilities with all government requirements, including in particular those of the Department of Environmental Quality and the United States Environmental Protection Agency. No separate legal entity is established under the terms of the Interlocal Cooperation Act.
- d. This Agreement may be amended from time to time by mutual written Agreement between the Cities, provided that said amendment does not jeopardize or adversely affect any notes, bonds, or other instruments relating to the financing of the construction of the Facilities or the Collection System of either City, and that it does not invalidate or adversely affect the operation or use of the Facilities.
- e. If any provision of this Agreement is determined by a court of competent jurisdiction to be void, voidable, or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.
- f. No City may assign its rights or duties under this Agreement without the prior written consent of the other City.

- g. Spanish Fork will maintain ownership of all treated wastewater. In the event of sale or lease, the proceeds shall be used to reduce the operation and maintenance expenses of the Facilities.

IN WITNESS WHEREOF, the parties have set their hands on the date and the year above written.

*[signatures follow]*



SPANISH FORK CITY by:

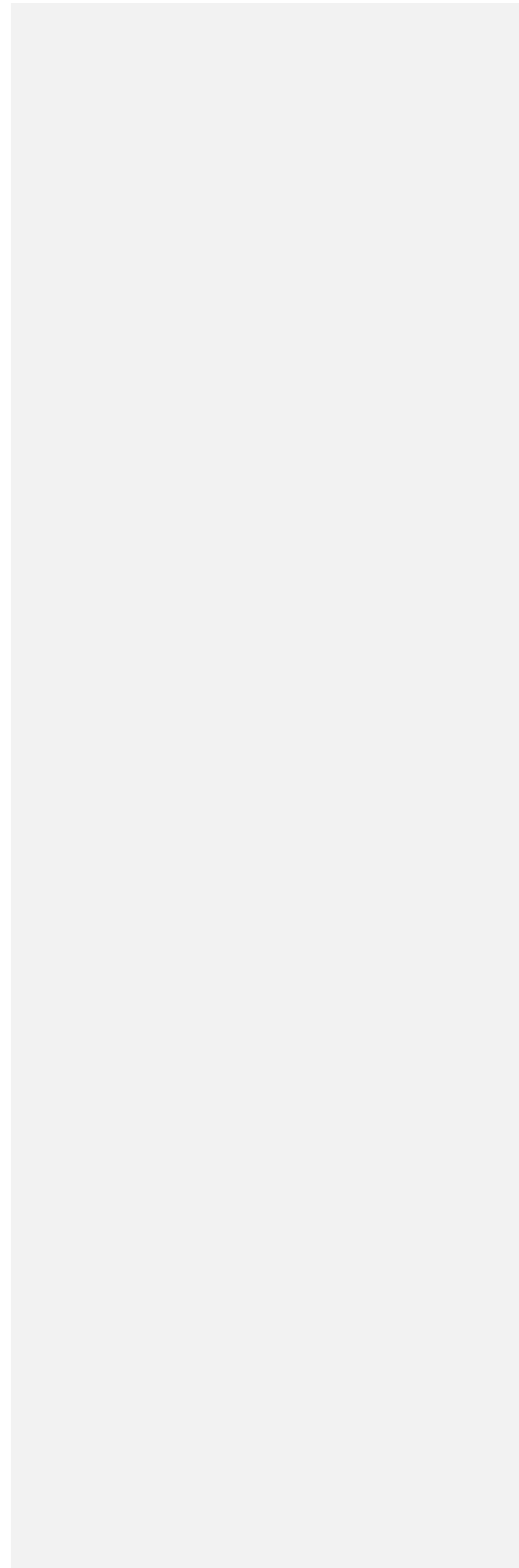
\_\_\_\_\_  
STEVE LEIFSON, Mayor

Attest:

\_\_\_\_\_  
Kent R. Clark, City Recorder

Approval as to form and compliance with Utah law:

\_\_\_\_\_  
Vaughn R. Pickell, City Attorney





MAPLETON CITY by:

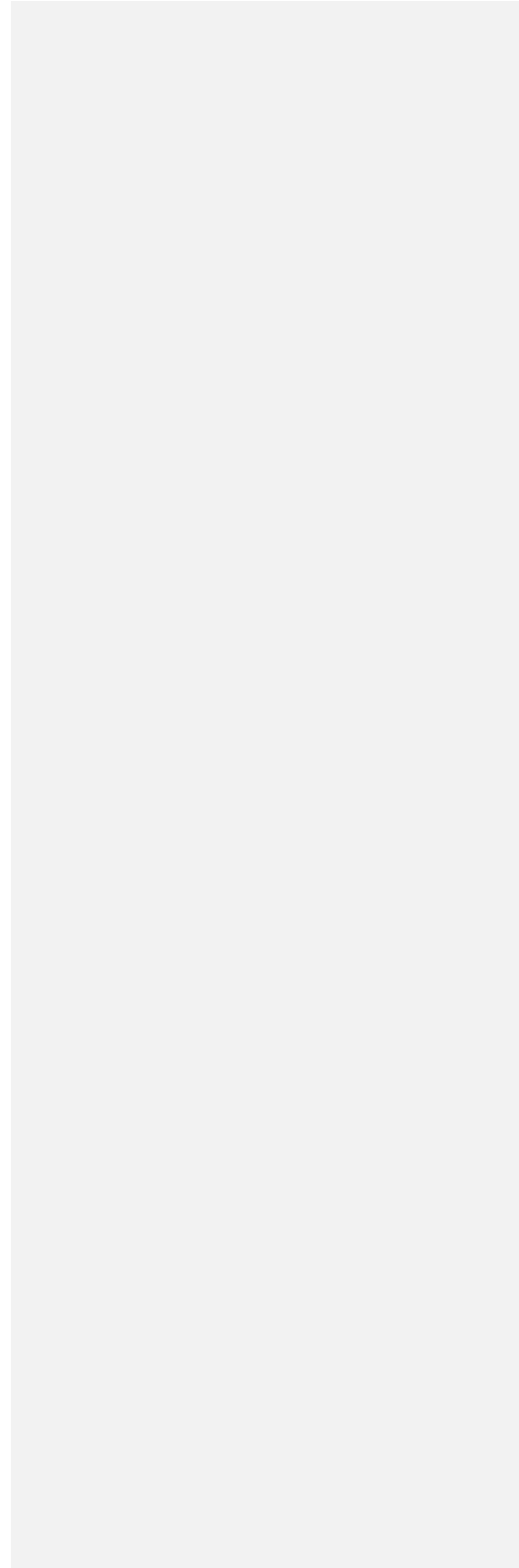
\_\_\_\_\_  
DALLAS HAKES, Mayor

Attest:

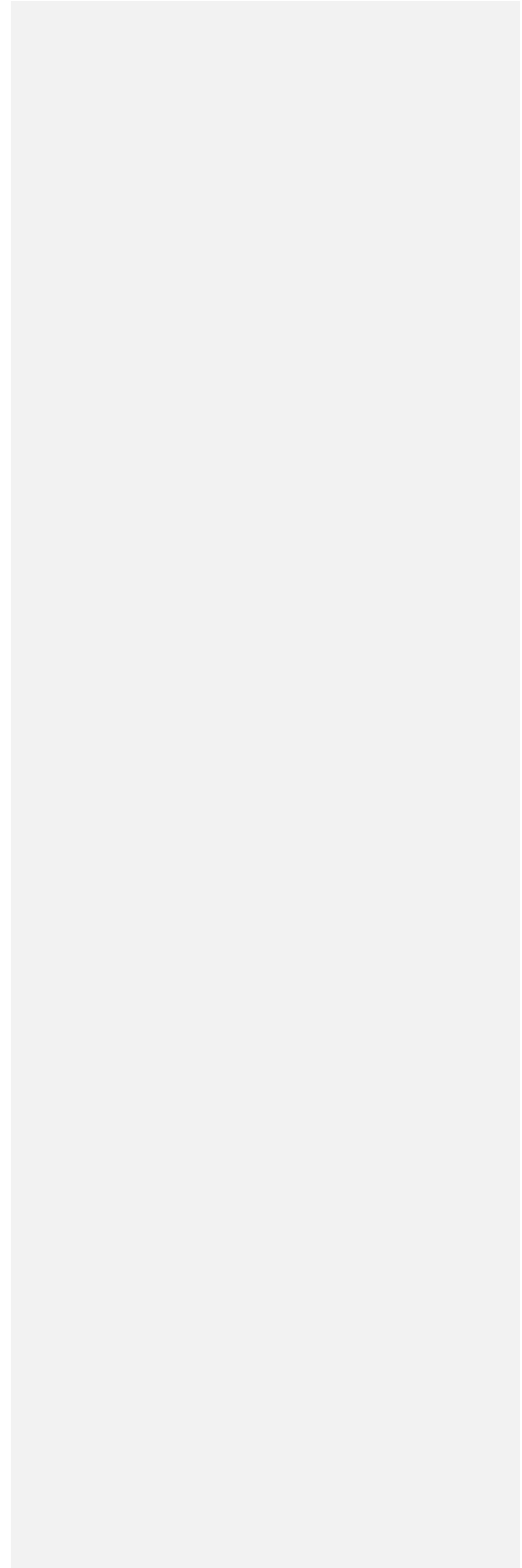
\_\_\_\_\_  
Camille Brown, City Recorder

Approval as to form and compliance with Utah law:

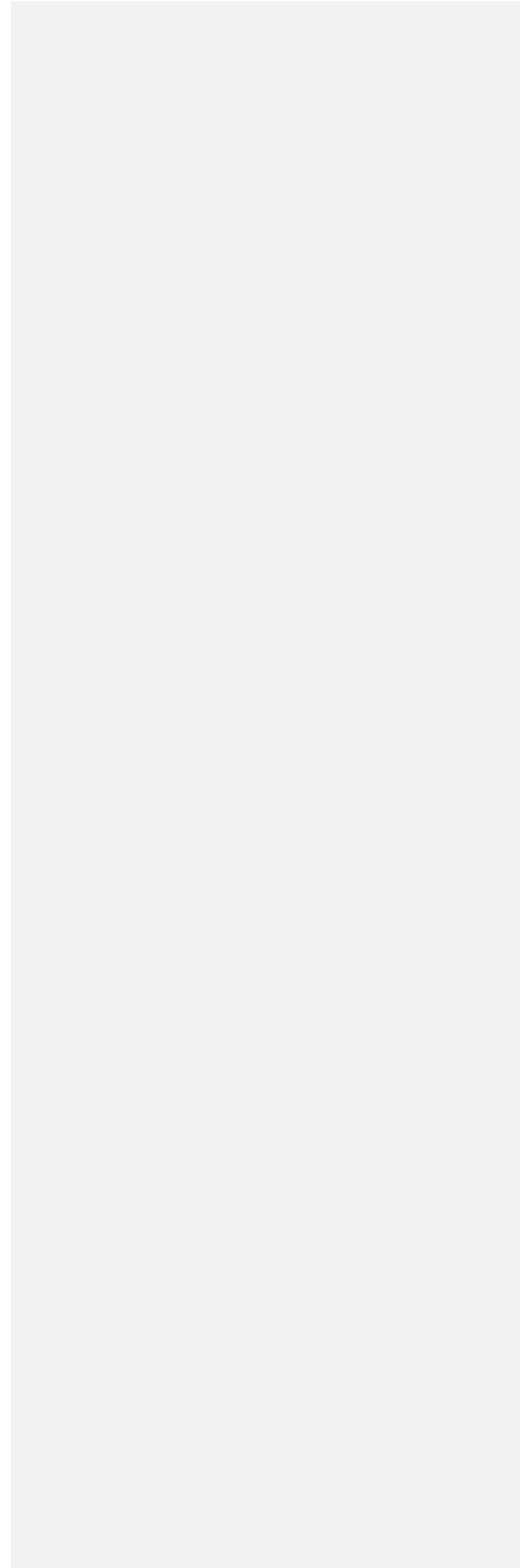
\_\_\_\_\_  
Eric Todd Johnson, City Attorney



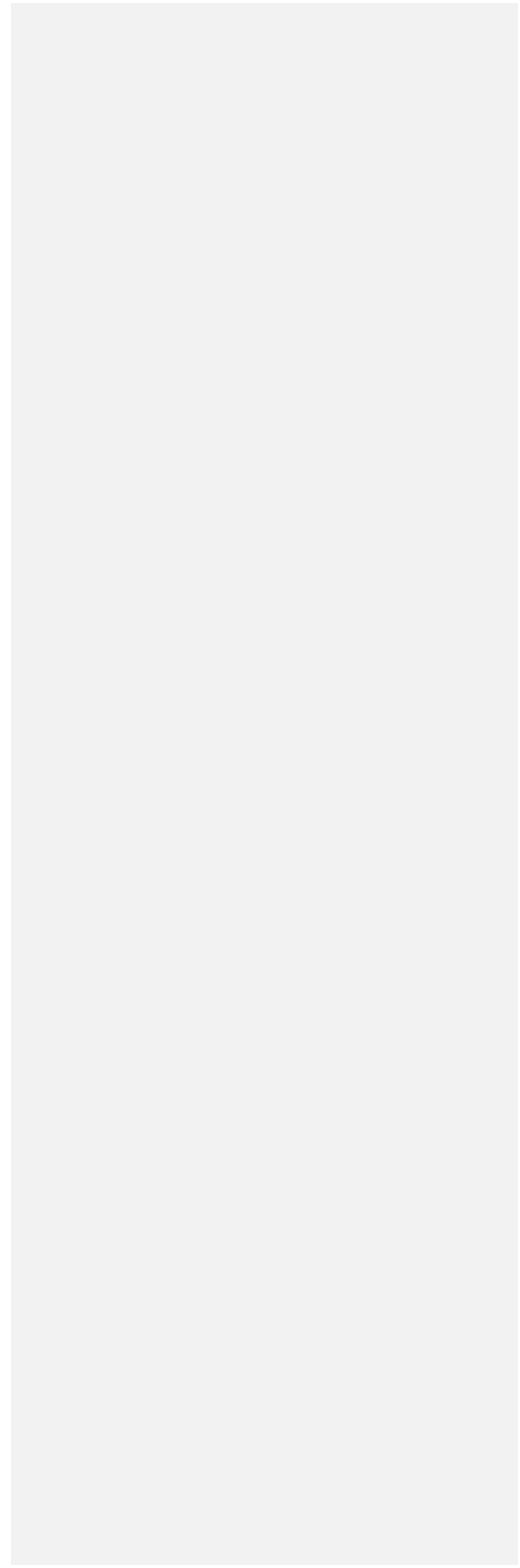
**EXHIBIT A**  
**JOINT TRUNKLINE 1995**



**EXHIBIT B**  
**JOINT TRUNKLINE 2016**



**EXHIBIT C**  
**FORM OF PROMISSORY NOTE**



**ALL-INCLUSIVE PROMISSORY NOTE SECURED BY  
THE NET REVENUES OF MAPLETON'S SEWER SYSTEM**  
(Installment Note, Interest Included)

\$15,955,000

Spanish Fork, Utah  
\_\_\_\_\_, 20\_\_\_\_

1. In Installments as herein stated, for value received, Mapleton City, a Utah municipal corporation, hereinafter referred to as "Maker," promises to pay to Spanish Fork City, a Utah municipal corporation, hereinafter referred to as "Holder," the principal sum of Fifteen Million Nine Hundred Fifty-five Thousand Dollars (\$15,955,000), with interest from the date hereof on unpaid principal at the rate of 1.635246% per annum (true interest cost), said principal and interest being payable as follows:

Due Date	Annual Amount (principal and interest)
03/01/2021	\$ 302,522.44
03/01/2022	528,680.00
03/01/2023	528,680.00
03/01/2024	1,123,430.00
03/01/2025	1,117,305.00
03/01/2026	1,119,680.00
03/01/2027	1,120,305.00
03/01/2028	1,119,180.00
03/01/2029	1,121,180.00
03/01/2030	1,121,180.00
03/01/2031	1,124,055.00
03/01/2032	1,119,430.00
03/01/2033	1,122,630.00
03/01/2034	1,124,130.00
03/01/2035	1,120,565.00

03/01/2036	1,121,650.00
03/01/2037	1,116,400.00
03/01/2038	1,120,750.00
03/01/2039	1,119,650.00
03/01/2040	1,123,100.00
03/01/2041	1,121,100.00
TOTAL	\$ 21,535,602.44

Mapleton shall make 12 monthly payments for each annual payment, each monthly payment being one twelfth (1/12) of the listed annual payment ("Monthly Payment"). Each Monthly Payment shall be due on the first day of the month. The first Monthly Payment shall be due 12 months prior to the Annual Amount due date so that 12 months of Monthly Payments shall be made before the Annual Amount is due. Mapleton shall also pay 20% of the Trustee's fees on the bond, which amount shall be billed by Spanish Fork. A late payment penalty of one and one half percent (1.5%) per month of any payment due shall be assessed against the Maker if said Monthly Payment has not been received by Holder within thirty (30) days of the due date. Each payment shall be credited first to any late payments due, then to accrued interest due and the remainder to principal.

2. Maker may not prepay the amounts required herein except as allowed in the bond documents.

3. When all the sums payable pursuant to the terms of this Note have been paid in full, Holder shall surrender this Note to Maker marked paid in full.

4. Notwithstanding anything in this Note elsewhere contained, the payments to be paid by Mapleton to Spanish Fork in this Note shall be payable out of the revenues of the Mapleton sewer system. In no event shall the payments be deemed or construed to be a general indebtedness of Mapleton or payable from any funds of Mapleton other than those derived from the operation of Mapleton's sewer system. The net revenues from Mapleton's sewer system are pledged to secure the payments hereunder.

5. In the event that any payment under this Note is not made, or any obligation provided to be satisfied or performed under this Note is not satisfied or performed at the time and in the manner required. Holder, at its option and without notice or demand, may declare the entire principal balance, all amounts of accrued interest and all other amounts then due under the terms of this Note immediately due and payable, however such accelerated payment demand shall not alter the pledge of net revenues from the Mapleton sewer system and shall not entitle Holder to any other funds or monies from Mapleton.

6. In the event that any payment under this Note is not made, or any obligation provided to be satisfied or performed under this Note is not satisfied or performed at the time and in the manner required, the defaulting party shall pay any and all costs and expenses (regardless of the particular nature thereof) which may be incurred by the Maker or Holder hereof in connection with the enforcement of any rights under this Promissory Note, including, without limitation, court costs and reasonable attorney's fees.

7. The Maker and endorser hereof waive presentment for payment, protest, demand, notice of protest, notice of dishonor and notice of nonpayment and expressly agree that this Note or any payment hereunder may be extended from time to time by the Holder hereof without in any way affecting the liability of such parties. No course of dealing between the Maker and Holder in exercising any rights hereunder, shall operate as a waiver of rights of Holder.

8. This Note shall inure to the benefit of and shall be binding upon respective successors and assigns of the Maker and Holder.

9. This Note shall be construed in accordance with the laws of the State of Utah.

10. In this Note, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

\_\_\_\_\_  
MAKER

\_\_\_\_\_  
MAKER

\_\_\_\_\_  
MAKER

\_\_\_\_\_  
MAKER

The undersigned hereby accept(s) the foregoing All- Inclusive Promissory Note and agree(s) to perform each and all of the terms thereof on the part of the Holder to be performed.

Executed as of the date and place first above written.

\_\_\_\_\_  
HOLDER

\_\_\_\_\_  
HOLDER

\_\_\_\_\_  
HOLDER

\_\_\_\_\_  
HOLDER