

**SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT FOR JOINT AND
COOPERATIVE ACTION CREATING
MT. NEBO WATER AGENCY**

This Second Amended and Restated Interlocal Agreement for the Joint and Cooperative Action Creating Mount Nebo Water Agency (the "Second Amended and Restated Agreement") is made by and among the parties' signatory hereto (sometimes referred to herein individually as a "Party" and collectively as the "Parties"), pursuant to the provisions of the Interlocal Cooperation Act, Utah Code Ann. §11-13-101 et seq. (1953, as amended) (the "Act"). This Second Amended and Restated Agreement is signed by the Parties on the dates indicated and is effective upon completion of the filing requirements of the Act.

RECITALS

- A. The Act allows public agencies to exercise jointly any power, privilege, or authority exercised or capable of exercise by a Utah public agency for the betterment of itself and its constituents.
- B. The Act provides that the public agencies may create a legal entity to exercise such powers, privileges, or authority.
- C. The Parties share a common interest that water resources be developed, protected, and managed to the end that the Parties may maximize the beneficial use of the available water supplies in satisfying the demands of agriculture and a growing municipal population in southern Utah County and the Utah Lake drainage area.
- D. The Parties recognize that the success of agriculture and economic growth in south Utah County depend on an affordable and sufficient supply of water and the Parties desire to exercise powers, privileges, and authority granted through the laws of the State of Utah to achieve this purpose.
- E. Through factually and scientifically based studies, the Members (as defined hereafter) desire to develop plans to address agriculture preservation; water conservation; infrastructure needs for development, conveyance, distribution, and treatment of water resources for Members and their respective residents and customers; and financial plans to show that the projects are practical and affordable.
- F. The Parties have found that the securing additional supplies of water and protecting existing supplies can best be achieved by utilizing economies of scale, minimizing duplication of costs, reducing transmission losses, using aquifer recharge and recovery, and managing return flows.
- G. The Parties have determined that joint and cooperative action of the Parties in operating through a separate legal entity established under authority of the Act will help implement the desired economies of scale; promote the objectives stated above as well as the health, safety, and welfare of their residents and customers; and provide other benefits.

H. The Parties hereto desire to enter jointly into this Amended and Restated Agreement to accomplish the purposes set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby contract, covenant, and agree as follows:

SECTION 1- CREATION

The Parties have heretofore created a separate legal and administrative interlocal entity to be known as the "Mt. Nebo Water Agency," empowered under the authority of the Act to be a public agency and political subdivision of the State of Utah (the "Agency").

SECTION 2 - DEFINITIONS

Capitalized terms used herein shall have the meanings ascribed to them in this Section, as well as such other meanings as are clear from the context:

Act: the Utah Interlocal Cooperation Act, UCA § 11-13-101 et seq.

Agricultural Water: water appropriated for irrigation of pasture, crops, horticulture, or livestock watering.

Alternate Director: an individual appointed as an alternate to a Director as provided in this Amended and Restated Agreement.

Agency: the Mt. Nebo Water Agency created pursuant to this Amended and Restated Agreement, with its physical meeting location at 30 West 100 South, Salem, Utah 84653.

Agency Service Area: that area serviced by the Agency, as shown on the map attached hereto as Exhibit A.

Board: The Board of Directors of the Agency, which is the governing body of the Agency.

CUP Water: Bureau of Reclamation project water made available under contract by the Central Utah Water Conservancy District ("CUWCD,") to southern Utah County by means of federal project facilities which make possible the transbasin transfer of water from the Colorado River Drainage to the Agency Service Area, administered by and under the authority of CUWCD.

Director: An individual appointed by a Member to serve on the Board as provided herein.

District: A public agency of the State of Utah created to provide water services in a specific area.

Facility: Any property or works owned, operated, or used by the Agency in connection with the advancement of the purposes for which the Agency was created, including, without limitation, dams, diversion structures, reservoirs, canals, pipes, ditches, water

storage facilities, water conveyance facilities, water treatment facilities (including wastewater treatment), wells, aquifer recharge basins and wells, buildings, and other structures, wherever such facilities may be located.

Member: Public agencies consisting of Utah County, Spanish Fork City, Salem City, Payson City, CUWCD, Goshen Valley Local District, Santaquin City, and Genola Town, which currently constitute all of the Parties to this Amended and Restated Agreement.

Municipal Water: Water designated for municipal and industrial uses within the Agency Service Area.

Non-Member Contracting Entity: An irrigation company or other entity or individual water user, that contracts to participate with the Agency to be a contract participant with the Agency in its general affairs, or one or more Members in a specific Project or Projects.

Other Water: Agricultural Water and Municipal Water authorized for use pursuant to Water Rights valid under Utah law that is available for distribution and use in the Agency Service Area, which may include Well Water, Spanish Fork River Water, Strawberry Valley Project (SVP) Water, or Utah Lake Water, but specifically excludes CUP Water which is only available by contract.

Project: Facilities developed and constructed by the Agency, or a contractual interest in facilities owned and operated by others, for the diversion, storage, transmission, distribution, treatment, recharge, use, or reuse of water in the Agency Service Area, including all improvements developed and constructed in connection therewith; all operation, maintenance, repair, replacement and renewal thereof as defined in a Project Agreement; all feasibility, environmental, or other studies; and all surveys, estimates, licenses, permits, rights, approvals, and activities associated and required in connection therewith consistent with the purposes of the Agency. A Project requires participation of at least one Member, or Non-Member Contracting Entity, and the Agency under a Project Agreement.

Project Agreement: An agreement entered into by the Agency and one or more Members, or Non-Member Contracting Entity, relating to participation in a Project.

Public Agency: A political subdivision of the State of Utah or any agency of the federal government.

Spanish Fork River Water: Water from the Spanish Fork River, including its tributaries, springs, and seeps.

Strawberry Valley Project (SVP) Water: Water stored or delivered to southern Utah County for the shareholders of the SWUA by means of a federal project making possible the transbasin transfer and delivery of water from the Colorado River Drainage for use in the Strawberry Valley Project Area.

Utah Lake Water: Water located in Utah Lake and its tributaries which may be available for use within the Agency Service Area.

Water Right: Any right or other entitlement to the beneficial use of Water Supplies whether such right or entitlement exists by interest in real property, or by appropriation, or decree recognized by the State of Utah.

Water Supplies: Surface water, groundwater, reuse water, recharge water, or any other water capable of being put to beneficial use.

Well Water: Water from any underground source located wholly or partially in the Utah Lake drainage area, including groundwater wells, springs, and seeps.

SECTION 3 - AGENCY PURPOSES

A. The purposes of the Agency are to:

1. Plan, design, develop, construct, own and/or sponsor Projects and related Facilities.
2. Operate, administer, manage, repair and replace the same, as necessary.
3. Facilitate the transfer and distribution of Agricultural Water and Municipal Water to its Members and to Non-Member Contracting Entities for delivery to their respective customers, shareholders, and contracting parties.
4. Enjoy economies of scale and other benefits made possible through the joint and cooperative action of the Members.
5. Inventory Water Rights, Water Supplies, facilities, and other resources that might be employed to meet water supply needs, provide for agriculture, and preserve the natural environment within the Agency Service Area, or any additional area served by the Agency through agreements entered under the Act.
6. Plan for future water supplies within the Agency Service Area, or any additional area served by the Agency through agreements entered under the Act.
7. Provide a forum in which water use, management, and conservation affecting Member Agencies can be coordinated within the Utah Lake-Jordan River Basin. and,
8. Prepare, update, and implement an Agricultural Water preservation plan for agricultural areas in the Agency Service Area.

B. The Parties recognize that the accomplishment of such purposes is in the best interests of and promote the health, safety, and general welfare of the Parties and their respective residents and water users.

SECTION 4 – POWERS

A. To accomplish the purposes of the Agency, it shall, without limitation, have the power to:

1. Contract for the use of Strawberry Water and CUP Water and/or acquire Water Rights in any Water Supplies available for use in the Utah Lake drainage area.
2. Contract and/or coordinate with other entities to maximize the use of available Utah Lake Water.
3. Develop and implement Projects with respect to the acquisition, development, reclamation, reuse, treatment, aquifer recharge and recovery and/or transportation of water for beneficial use in the Agency Service Area.
4. Acquire, finance, operate, maintain, repair, and replace Facilities and lease and/or dispose of such Facilities.
5. Construct, own, operate, maintain, repair, replace, or participate in a Project or Projects, whether or not owned by the Agency, and distribute or convey water from a Project to Members and Non-Member Contracting Entities participating in that Project for delivery to their respective customers, shareholders, and other parties entitled to receive the water by right, contract, or otherwise.
6. Create and/or sponsor Projects developed for the benefit of one or more Members and that may include participation by and benefit Non-Member Contracting Entities.
7. Enter into contracts with entities and Non-Member Contracting Entities, as deemed beneficial by action of the Board.
8. Prepare, update, and implement capital improvement plans.
9. Prepare, update, and implement water resource sharing plans among the Members.
10. Prepare, update, and oversee the implementation of a water management and conservation plan or plans for use within the Agency Service Area.
11. Consult and participate with the United States, the State of Utah, and other government entities on issues relating to the protection, development, and beneficial use of Water Supplies in the Agency Service Area.
12. Purchase, sell, exchange, perfect, or otherwise acquire or dispose of any interest in Water Supplies and/or Water Rights capable of being put to beneficial use in the Agency Service Area.
13. Develop, store, transport, and treat Water Supplies.
14. Acquire, possess, lease, encumber, and dispose of personal and real property.
15. Contract with other parties that wish to participate in a Project or Projects along with one or more Members.
16. Contract for the provision of services to or from the Agency.
17. Contract for professional services consultants and employ such persons as it deems necessary.
18. Borrow money or incur indebtedness, including the issuance of revenue and other bonds, notes, and other obligations as permitted by law.
19. Pledge, assign, or otherwise convey as security for the payment of any indebtedness, the Agency's revenues, and receipts of any Project.

20. Exercise the power of eminent domain as authorized under the Act, provided that no such power shall be exercised against a Member or against Strawberry Highline Canal Company ("SHLCC") or Strawberry Water Users Association ("SWUA").
21. Enter into Project Agreements with Members or other Non-Member Contracting Entities and other contracts pursuant to which a Project or the benefits of a Project are made available to some or all of the Members, and, if approved by the Board, to Non-Member Contracting Entities, either by sale, lease, or other contract for the use of the Project or any portion thereof.
22. Pursue one or more Projects for the Members under separate accountability, control, and administration as may be required by financing arrangements as to each such Project without obligating the participants in any one Project for the obligations of the participants in any other Project.
23. Take such other actions, engage in such other transactions, enter into such contracts and agreements, and do all other things as may be necessary, convenient, or appropriate to accomplish its purposes or carry out any of its purposes or powers.
24. Contract for property, liability, and other insurance coverages and contracts as needed to protect the Agency, its Members, Directors, officers, and employees from and against any claim and/or loss. and,
25. Exercise all powers now or hereafter granted to an Interlocal entity pursuant to the Act.

SECTION 5– GOVERNANCE

A. Board of Directors.

1. The Agency shall be governed by a Board of Directors consisting of one appointed Director from each Member, one Director appointed by Utah County from a list of three persons whose names are submitted by SHLCC. If the SHLCC recommended names are not acceptable to Utah County, SHLCC shall recommend additional names for appointment by Utah County; and, one Director appointed by CUWCD from a list of three persons whose names are submitted by SWUA. If the SWUA recommended names are not acceptable to Members, SWUA shall recommend additional names for appointment by CUWCD.
2. Each Director shall serve at the pleasure of the Member who appointed them and shall continue to serve until his or her successor is appointed. If a Director resigns, dies, is removed, or is otherwise unable to finish their service, the Alternate Director shall act in the stead of the Director until a new Director is appointed. The Member shall appoint a new Director or a new Alternate Director in accordance with Sections 5(A)(1) and 5(B)(2).

B. Transaction of Board Business; Alternate Directors.

1. **Votes Required for Board Action.** Action by the Board will require a simple majority vote of all the Directors or Alternates of the Board to pass any measure.
 2. **Alternate Directors.** Each Member making an appointment to the Board shall also appoint an Alternate Director for each Director it appoints to the Board, following the procedure set forth in Section 5(A)(1). The Alternate Director shall have no vote, except in the absence of the Director for whom he/she is an alternate, in which event the Alternate Director shall be authorized to cast the vote in place of the absent Director. Utah County shall appoint an Alternative Director on behalf of SHLCC from the list of names submitted by SHLCC. CUWCD shall appoint an Alternative Director on behalf of SWUA from the list of names submitted by SWUA.
- C. **Board Meetings.** The Board shall hold a regular Board meeting at least once during each calendar quarter, as scheduled by the Board, and may call and convene such other special Board meetings as shall be necessary to accomplish its work.
- D. **Committees.**
1. **Project Committees.** Each Project authorized by the Board shall be managed by a committee consisting of (i) a person appointed by each Member then participating in the Project, (ii) a person representing the Agency, and (iii) by any Nonmember Contracting Entity then participating in the Project (each, a "Project Committee"). Each decision affecting a Project that does not incur any liability to the Agency, any non-participating Member, or a non-participating Non-Member Contracting Entity shall be made by the Project Committee for the Project, subject to the terms of the Project Agreement. A majority of the members of a Project Committee shall constitute a quorum for the transaction of the business of the Project Committee. A majority vote of a quorum present is required for any official action of a Project Committee.
 2. **Committees.** The Board may appoint such committees and sub-committees as necessary for the Agency to exercise its powers in the accomplishment of its purposes.

SECTION 6- OFFICERS

- A. **Board Officers.** The Board shall appoint from among its Directors a chair, vice chair, and secretary/treasurer. The chair and vice chair shall be appointed to serve one-year terms and may serve up to three consecutive terms. The secretary/treasurer may be appointed to serve up to a three-year term but may not serve consecutive terms. Except for the initial terms, all terms shall commence and end with the beginning and ending of the Agency's fiscal year. The initial chair and vice chair may serve the balance of the initial fiscal year, plus the next full fiscal year. The initial secretary/treasurer may serve the balance of the initial fiscal year, plus the next two full fiscal years.

- B. **General Manager.** The Board may appoint a general manager, who shall be a paid employee of the Agency if such an appointment is made. The general manager shall be employed at the discretion of the Board and shall be responsible to the Board for the proper and efficient administration of the Agency. If a general manager is appointed, he/she shall plan, organize, and direct Agency activities as directed by the Board, appoint and, subject to applicable law, remove employees, authorize expenditures within the budget approved by the Board, and take such other actions which are authorized from time to time by the Board.

SECTION 7 - FISCAL YEAR

The fiscal year for the Agency shall be from and including July 1 through the following June 30.

SECTION 8 - BUDGET AND FINANCING

- A. **Budgets.** The budget for the Agency shall be established and maintained by the Board. Tentative budgets shall be prepared by the Board on or before April 1 each year and submitted to each Director. The final budget shall be adopted by the Board during June of each year.
- B. **Assessments.** The Agency shall operate, to the extent feasible, from its own revenues. The Board shall have the power to periodically assess the Members for administrative expenses, but not for Project capital expenses or Project operation and maintenance expenses, except as provided in the Project Agreement. The Board may enter into participation contracts with SHLCC and with SWUA under which SHLCC and SWUA will agree to be assessed upon the same basis as the Members to pay its equitable and proportionate share of the costs of operating the Agency. Such assessments shall be apportioned among the Members, SHLCC and SWUA on such basis as the Board determines proper, in its sole discretion. Assessments may not be made without the consent of the Member, SHLCC or SWUA. The Agency will notify Members, SHLCC and SWUA of its proposed budget by April 1 of each year and invoice for the same on or about July 1 each year. Each Member and non-member participant shall pay the assessments, for which it has consented, within thirty (30) days of being invoiced. Any Member or non-member participant that does not pay assessments when due, will be subject to expulsion from the Agency, or such other sanctions as the Board determines equitable under all the circumstances. A Director representing a Member, or other entity which has not paid its assessment, may not vote on any matter during any period in which the Member or other entity is delinquent on payment of any assessment. The Board may also establish such sanctions as it determines to be equitable if SHLCC and/or SWUA agrees to pay assessments and then fails to pay such assessments when due.
- C. **Advances of Funds; Contributions.** Contributions or advances of funds or of personnel, supplies, equipment, or property may be made to the Agency by any Member or Non-Member Contracting Entity to accomplish the purposes of the

Agency. Any such advance may be made subject to reimbursement as agreed by the Member, any Nonmember Contracting Entity, and the Agency.

- D. **Project Financing.** A Project may be financed in whole or in part by the issuance of bonds and/or notes of the Agency payable from or secured by the revenues and receipts derived from the ownership and operation of such Project. No Member, nor any entity represented on the Agency Board, shall be liable for any bond, note, indebtedness, or other obligation incurred by the Agency, nor liable for the indebtedness of any other Member, nor liable for any indebtedness or other obligation with respect to a Project, other than the obligations of such Member arising under its contracts with the Agency related to each separate Project.

SECTION 9 - TERM

The Agency shall exist for the later of fifty (50) years from the effective date of this Amended and Restated Agreement, or five years after it has fully paid or otherwise discharged all of its indebtedness, as authorized by §11-13-204(3)(a) and (b) of the Act. Existing or future provisions of the Act allowing for a longer term automatically extend the term of this Amended and Restated Agreement to the longest term allowed by the Act. An amendment to this Amended and Restated Agreement may extend the term. The term shall commence when this Amended and Restated Agreement is adopted by each Member and each Non-Member Contracting Entity and approved by an attorney for each Member and each Non-Member Contracting Entity, as provided in the Act, placed with the keeper of records of each Member, and provisions of the Act required for initial formation of the Agency have been completed.

SECTION 10 - ADDING FUTURE MEMBERS

Future members to the Agency, will be assessed a membership fee equal to the pro-rata portion of the value of administrative assets owned by the Agency at the time of acceptance. Future Members are accepted when the Board has approved the application, the governing bodies of all Members have approved a further amended and restated Inter- local Agreement, and the entrance fee has been paid. Future Members shall have the same rights, responsibilities, and obligations as other Members. An additional fee for the pro-rata value of project assets will also be assessed and required if the new member elects to participate in an existing Project. A new member is not required to participate in a Project in order to become a Member.

SECTION 11 - WITHDRAWAL

A Member may withdraw from the Agency subject to such terms and conditions as shall be specified in a withdrawal agreement between the Member and the Agency. Such withdrawal shall not affect any contractual liability of such Member to the Agency or to other Members. No Member shall be permitted to withdraw if such withdrawal would cause the Agency's existence to terminate, or otherwise cause the Agency to be in violation of any contract or bond obligation set forth in any indenture, contract, or other agreement

with any third party, except upon consent of the Board. A withdrawing Member is not entitled to receive any of the assets of the Agency upon its withdrawal.

SECTION 12-TERMINATION

- A. The Agency shall be terminated and dissolved upon a unanimous vote of the Board.
- B. Upon termination, the Members are entitled to receive a distribution of Agency assets, based upon their individual capital contributions to the Agency. If capital contributions cannot be determined, the Members may distribute the assets in an equitable manner, as shall be determined by the Board in its discretion.
- C. Upon such termination or dissolution, any assets specific to a Project shall be distributed to the Project participants in proportion to their individual contributions or as otherwise agreed among the Project participants.
- D. If the Members cannot agree on an equitable distribution, they shall resort to mediation to resolve the conflict. If mediation does not resolve the disagreement, an arbiter shall be chosen by the Board, who shall hear arguments of the Parties and make a distribution. The distribution made by the arbiter shall be final and non-appealable.

SECTION 13– MISCELLANEOUS

- A. This Second Amended and Restated Agreement is governed by the laws of the State of Utah.
- B. The Members, SHLCC and SWUA, and any Non-Member Contracting Entities who participate in a Project, shall not be deemed to be partners, joint venturers, or associated in any manner which obligates them for the debts, defaults, or mistakes of any other party, or which renders them liable for the debts or obligations of the Agency.
- C. The provisions of this Amended and Restated Agreement applicable to SHLCC and SWUA, particularly the provisions for appointment of directors under Section 5, are for SHLCC and SWUA's direct benefit and protection as third-party beneficiaries under those provisions. No provision concerning or affecting SHLCC and SWUA may be removed or amended without SHLCC and SWUA's written consent.
- D. Should any part, term, or provision of this Second Amended and Restated Agreement be held by a court of proper jurisdiction as void, illegal, in conflict with any law, or otherwise rendered unenforceable, the validity of the remaining portions shall not be affected, unless the purposes of the Agency are thwarted thereby.
- E. Directors shall have no liability to any Member for any act or omission in the performance of his/her duties as a Director.

- F. The Agency shall defend, indemnify, and hold harmless the Directors, officers, and employees for any action taken within the scope of the authority of the Agency.
- G. The Agency is entitled to the protections, obligations, and responsibilities conferred on public agencies by the Utah Governmental Immunities Act.
- H. This Second Amended and Restated Agreement is unique to the Members hereof, and is, therefore, not assignable, though qualified Future Members may be added according to the procedure set forth herein.
- I. This Second Amended and Restated Agreement shall only be amended, in writing, upon the unanimous approval of the Members hereof.

SECTION 14 - NOTICE TO THE LIEUTENANT GOVERNOR

The governing body of each Party to this Amended and Restated Agreement shall:

- 1. Within 30 days after the date of the Amended and Restated Agreement, jointly file with the Lieutenant Governor of the State of Utah a copy of a notice of an impending boundary action, as required in the Act; and,
- 2. Upon the Lieutenant Governor's issuance of a certificate of creation of the Agency, submit to the recorder of Utah County the original notice of an impending boundary action, the certificate of creation, and a certified copy of this Amended and Restated Agreement. Upon the Lieutenant Governor's issuance of a certificate of creation the Agency shall be duly created.

SECTION 15 - FILING OF THIS SECOND AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement shall take effect upon the filing of a fully executed copy of this Amended and Restated Agreement with the keeper of records of each of the Parties hereto.

[Signature pages follow]

SPANISH FORK CITY

Authorized by Resolution No. _____, adopted on _____, 2022.

SPANISH FORK CITY

By:
Mayor

Attest:

By:
City Recorder

Approved as to form and compliance
With applicable law:

By:
City Attorney

PAYSON CITY

Authorized by Resolution No. _____, adopted on _____, 2022.

PAYSON CITY

By:
Mayor

Attest:

By:
City Recorder

Approved as to form and compliance
With applicable law:

By:
City Attorney

SALEM CITY

Authorized by Resolution No. _____, adopted on _____, 2022.

SALEM CITY

By:
Mayor

Attest:

By:
City Recorder

Approved as to form and compliance
With applicable law:

By:
City Attorney

UTAH COUNTY

Authorized by Resolution No. _____, adopted on _____, 2022.

UTAH COUNTY

By:
County Commission Chair

Attest:

By:
County Clerk

Approved as to form and compliance
With applicable law:

By:
County Attorney

CENTRAL UTAH WATER CONSERVANCY DISTRICT

Authorized by Resolution No. _____, adopted on _____, 2022.

CENTRAL UTAH WATER CONSERVANCY DISTRICT

By:
General Manager

Attest:

By:
Title:

Approved as to form and compliance
With applicable law:

By:
Attorney

GOSHEN VALLEY LOCAL DISTRICT

Authorized by Resolution No. _____, adopted on _____, 2022.

GOSHEN VALLEY LOCAL DISTRICT

By:
Chair

Attest:

By:
Secretary

Approved as to form and compliance
With applicable law:

By:
Attorney

SANTAQUIN CITY

Authorized by Resolution No. _____, adopted on _____, 2022.

SANTAQUIN CITY

By:
Mayor

Attest:

By:
City Recorder

Approved as to form and compliance
With applicable law:

By:
City Attorney

GENOLA TOWN

Authorized by Resolution No. _____, adopted on _____, 2022.

GENOLA TOWN

By:
Mayor

Attest:

By:
City Recorder

Approved as to form and compliance
With applicable law:

By:
City Attorney