

MINUTES OF THE TOWN COUNCIL
MEETING
OF THE TOWN OF CLARKSTON

November 15, 2022
7:00 P.M.

Town Council Meeting held at the Clarkston Town Hall, 50 South Main, Clarkston, UT

Attendance: Mayor N. Craig Hidalgo

Councilmembers: Mylind Fawcett, Shaun Kurek
McCall Stephensen, Dan Smith

Town Clerk: Kristi Hidalgo

Public Attendance: There was no public attendance at this meeting.

1. CALL TO ORDER

Mayor Hidalgo called the Clarkston Town Council to order at 7:00 p.m. Councilmember S. Kurek led the Pledge of Allegiance and offered Reverence to begin the meeting.

Mayor Hidalgo addressed the minutes of the Clarkston Town Council Meeting held November 1, 2022. Councilmember M. Fawcett motioned for the Clarkston Town Council to approve and adopt the minutes of November 1, 2022. Councilmember M. Stephensen seconded the motion. All in favor "Aye". Motion carried

2. BUSINESS

Resolution 22-12 – "An Interlocal Cooperation Agreement Between Cache County and the Municipalities of Cache County for Creation of an Entity for County and Municipal Solid Waste Disposal"- The Council previously approved an Interlocal Agreement for the creation of an entity for solid waste disposal on September 20, 2022. The Interlocal Agreement has since been amended and therefore needs to be approved again by the Council. Mayor Hidalgo explained that the Cache Waste Consortium will now be governed by a five-member Executive Committee instead of a nine-member Executive committee. One member from the North of the service area, selected from among River Heights, North Logan, Hyde Park and Amalga. One member from the South of the service area, selected from among Paradise, Hyrum, Nibley, and Millville. One member selected from the West of the service area, selected from among Wellsville, Mendon, Newton, Trenton, and Clarkston. Mayor Hidalgo informed the Council that he was asked to be a member of the board for the West service area and accepted the position. Mayor Hidalgo stated that the Interlocal Agreement was presented, in a combined meeting of the participating cities and towns lawyers and they all concurred with the final content of the Interlocal Agreement. Mayor Hidalgo referenced an email he received from Clarkston Town Attorney Seth Tait. The following are Mr. Tait's comments regarding the Interlocal agreement:

This interlocal agreement creates the Cache Waste Consortium which will eventually contract with a solid waste collection provider for the benefit of all the members of the Consortium. This final draft is the result of several meetings between myself and the Cache County Attorney as well as attorneys representing other member cities of the Consortium. Please note the following key provisions that came out of the discussions between the attorneys as we followed input from the meetings of the mayors:

- 1. The Agreement indicates the following members of the Consortium: Cache County, Millville, Nibley, Hyrum, Paradise, River Heights, North Logan, Hyde Park, Amalga, Wellsville, Mendon, Newton, Clarkston, and Trenton.*
- 2. The Consortium will be governed by a Board that is comprised of all the Mayors of the member cities and the Cache County Executive. Each board member will get one equal vote.*
- 3. There is also an Executive Committee that will be comprised of four members: one Mayor from the north cities, one mayor from the south cities, and one mayor from the west cities, and the County Executive (tie breaker vote only). The Executive Committee serves as a recommending body to the Board and does not have the power to make any final decisions, but it can execute the decisions of the Board as directed by the Board.*
- 4. The Consortium is designed to serve as an interface between a solid waste collection provider and the members of the Consortium. The Consortium's primary goal is to enter into a contract with a provider, and then pass the benefits of that contract on to the member cities through separate service agreements with the Consortium.*
- 5. Until 2028, the Consortium is not allowed to incur any debts or own any property.*
- 6. To provide for the startup costs of the Consortium, each member will contribute \$1.00 per can as an initial capital contribution.*
- 7. Members of the Consortium are not allowed to withdraw from the Consortium in the first 12 months of the signing of the agreement. This is to prevent members from pulling out after the RFP has been issued and changing the financial landscape of the Consortium before contracts can be negotiated. Also, after the first year, member cities may not withdraw unless they give notice to the Consortium at least 12 months before the end of any solid waste service contract. There is a 15% penalty if a member withdraws while the Consortium has a debt balance. These provisions protect all the members from adverse effects of a member's withdrawal.*

Councilmember S. Kurek wondered what would happen if a non-participating municipality wanted to join the Cache Waste Consortium later. Mayor Hidalgo stated that the consortium hasn't determined that yet. There has been discussion that there should be a penalty of some kind, but nothing has been decided. Councilmember S. Kurek referenced section 6 of the Interlocal Agreement and asked if the Executive Committee had the power to issue a bond. Mayor Hidalgo responded that it gives the consortium, the power to vote on a bond. The Executive Committee cannot issue a bond without the approval of the consortium. Councilmember M. Fawcett wondered when the switch

would be made from Logan City to another waste management company. Mayor Hidalgo replied that the consortium's objective is to have a contract in place with a waste management company by June 30, 2023.

Mayor Hidalgo asked if there was any further discussion by the Council. There was none. Mayor Hidalgo asked for a motion to adopt Resolution 22-12. Councilmember S. Kurek motioned for the Council to approve and adopt Resolution 22-12 Councilmember M. Fawcett seconded the motion.

Roll Call Vote:

Mayor Hidalgo	<u>X</u> Aye	___ No	___ Abstain	___ Absent
Councilmember D. Smith	<u>X</u> Aye	___ No	___ Abstain	___ Absent
Councilmember M. Fawcett	<u>X</u> Aye	___ No	___ Abstain	___ Absent
Councilmember M. Stephensen	<u>X</u> Aye	___ No	___ Abstain	___ Absent
Councilmember S. Kurek	<u>X</u> Aye	___ No	___ Abstain	___ Absent

Clarkston Town Municipal Project – Moving Forward Strategy – Mayor Hidalgo stated that at the last Town Council Meeting held November 1, 2022 sealed bids were opened for the Clarkston Town Municipal Building Project. The Council did not select a bid at that meeting. It was decided to table the bids because of some concerns they had with the costs of the bids. Mayor Hidalgo informed the Council that he had talked to Clarkston Town Attorney Seth Tait about what the Council did and was told that according to the Clarkston Town Purchasing Policy there is no avenue to table any bids. Mr. Tait said that by tabling the bids, the town basically rejected all the bids and that the Council needed to formally reject all of the bids. Mayor Hidalgo apologized for the mistake stating that he was learning a lot going through this process and proposed that the Council vote to officially reject all the bids so that the town can moved forward with another bidding process. Mayor Hidalgo asked for a motion to follow Mr. Tait's legal advice and reject all bids received for the Clarkston Town Municipal Building. Councilmember S. Kurek motioned to reject all bids received for the Clarkston Town Municipal Building. Councilmember M. Fawcett seconded the motion. All in favor "Aye" Motion carried. Councilmember D. Smith exited the meeting at 7:23 pm. Mayor Hidalgo stated that the town has applied for a \$600,000 grant for the project. The status of that grant will be known by January 2023. Mayor Hidalgo said that Mr. Tait strongly recommended that the town provide a specification book for the project and require a detailed bid from the contractors. A specification book would provide the town with an apples to apples bid comparison. Mayor Hidalgo said that he would not do a sealed bid opening in a Town Council Meeting again. Sealed bids will be opened by two or more Town Councilmembers, and they will record the bid information. Mayor Hidalgo referenced page 5 of the Clarkston Town Purchasing Policy which states the following:

Source Selection and Contract Information – Special Provisions

6. Use of competitive sealed proposal in lieu of bids

- b) Proposals shall be solicited through a request for proposals. Public notice of the request for proposals shall be given at least 30 days prior to the advertised date of the opening of the proposals.*
- c) Proposals shall be opened so as to avoid disclosure of contents to competing offerers during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after contract award.*
- d) The request for proposals shall state the relative importance of price and other evaluating factors.*
- e) Discussions may be conducted with responsible offerers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Offerers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerers.*
- f) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Town of Clarkston, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.*

Mayor Hidalgo stated the Specification book will completely lay out the whole project. Contractors will be required to take the specification book and line-item price accordingly and provide that information with the bid. Mayor Hidalgo reiterated that he does not want a base bid he wants to see a Cost Breakdown Sheet with details of the projected costs. Mayor Hidalgo informed the Council that the specification book would cost not more than \$3,500. Initially, it was going to cost \$10,000 and that's why he didn't have one made to begin with. Mayor Hidalgo believes that there were too many assumptions put into the bids and that a specification book is needed. Councilmember M. Stephensen agreed that a specification book is needed. Councilmember M. Stephensen stated that when it comes down to bigger construction projects like this a specification book is a necessity to make sure that we know exactly what it is they are doing, and the town can't expect them to line item out everything that we want when we haven't told them what we want. Mayor Hidalgo said that that was the biggest complaint he received from the contractors bidding on the project. Councilmember M. Stephensen made the motion to move forward and have a specification book made for the Municipal Building Project. Councilmember S. Kurek seconded the motion. All in favor "Aye" Motion

carried. The vote was unanimously in favor of having a specification book drafted for the project. Mayor Hidalgo stated that moving forward the specification book would be put together over the next couple months and in January the bid proposal will be reissued. Contractors will have thirty days to reply, and the project will still be on track to start construction in early spring of 2023. Mayor Hidalgo apologized again for the confusion and clarified that the rebidding process is not to decide if we do the project but when and to ensure that the town gets a fair price that we can defend. Mayor Hidalgo feels that by having a specification book for contractors to base their bids on and going through the bidding process again is the Council doing due diligence in securing a fair and reasonable price for the project. Councilmember S. Kurek agreed. Councilmember M. Fawcett stated that we had to do what we had to do. It still gives the contractors that bid on the project a bite of the apple. It rubs me the wrong way, but we had to do it. Councilmember M. Fawcett stated that he was disappointed in the prices but believes that the new bids will come back within the same ballpark price as the first bids. Mayor Hidalgo replied that at least there can be some comparisons made and determine if they are reasonable or not. Mayor Hidalgo concluded that he made a mistake. He should have done a specification book from the start, but he was trying to save money.

4. RELEVANT BUSINESS

Next Meeting – The next Town Council Meeting will be held on Tuesday December 6, 2022 at 7:00 pm.

5. ADJOURN

There being no further business to come before the Council, Councilmember S. Kurek. motioned that the Clarkston Town Council Meeting adjourn. Councilmember M. Stephensen seconded the motion. All members present voted “Aye.” Motion carried. The meeting adjourned at 7:40 pm.

Kristi Hidalgo
Town Clerk



RESOLUTION 22-12

INTERLOCAL COOPERATION AGREEMENT BETWEEN CACHE COUNTY AND PARTICIPATING MUNICIPALITIES OF CACHE COUNTY FOR CREATION OF AN INTERLOCAL ENTITY FOR COUNTY AND MUNICIPAL SOLID WASTE DISPOSAL

THIS INTERLOCAL COOPERATION AGREEMENT (“Interlocal Agreement”) is made and entered into this 15th day November, 2022, by and between the Cache County, a political subdivision and county of the State of Utah (the “County”) and the undersigned Public Entities as set forth on the signature pages attached hereto (the “Municipalities”) for the creation, management, and administration of **The Cache Waste Consortium** (the “Consortium”). The County and Municipalities are also referred to in this agreement from time to time as the “Parties.”

WITNESSETH:

WHEREAS, CACHE COUNTY is a political subdivision and County of the State of Utah, acting by and through its County Council, the governing body thereof (the “County”), and is vested with authority under the Solid Waste Management Act, at Utah Code section 19-6-503, to supervise and regulate the collection, transportation, and disposition of solid waste generated within its jurisdiction, and to provide a solid waste management facility to adequately handle solid waste generated or existing within or without its jurisdiction; and

WHEREAS, the several Municipalities of Cache County (the “Municipalities”), acting by and through their respective Town or City Councils are likewise vested with authority under the Solid Waste Management Act, at Utah Code section 19-6-503, to supervise and regulate the collection, transportation, and disposition of solid waste generated within their respective jurisdictions, and to provide a solid waste management facility to adequately handle solid waste generated or existing within or without their respective jurisdictions; and

WHEREAS, the purpose of Utah's Interlocal Cooperation Act is "to permit local governments to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and under forms of government organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities" and "to provide the benefit of economy of scale . . . for the overall promotion of the general welfare of the state," Utah Code Section 11-13-102; and

WHEREAS, the Interlocal Cooperation Act therefore expressly permits "[a]ny power, privilege, or authority exercised or capable of exercise by a [local government to] be exercised and enjoyed jointly with any other [local government] having the same power, privilege, or authority," Utah Code Section 11-13-201; and

WHEREAS, the County and the Municipalities (the "Parties" and each individually as a "Party") have previously entered into interlocal cooperation agreements for the management of municipal solid waste from time to time; and

WHEREAS, the County and the Municipalities desire to continue to cooperate with each other in the management of municipal solid waste by creating an interlocal entity, The Cache Waste Consortium (the "Consortium"); and,

WHEREAS, the Parties wish to establish this Interlocal Cooperation Agreement for the creation, management, and administration of the Consortium for the purpose of setting minimum fees, contracting with solid waste collection service providers, and setting policies and regulations for the same;

NOW, THEREFORE, in consideration of the foregoing, the Parties, intending to be legally bound and having authority under the Interlocal Cooperation Act, hereby agree that it is to their mutual advantage to adopt this Interlocal Cooperation Agreement for the purposes of creating, managing, and administering the Cache Waste Consortium.

NOW, THEREFORE, THE SIGNATORY PARTIES OF THIS AGREEMENT AGREE AS FOLLOWS:

1) PURPOSE

The purpose and intent of this Interlocal Agreement is to facilitate the creation, establishment, management, and administration of an interlocal entity. This entity will function as an interface between a third party hauler and the several parties of the agreement for the purpose of solid waste collection and processing within the unincorporated area of Cache County and the areas contained in the Municipalities that are party to this Interlocal Agreement.

2) CREATION OF ENTITY

The interlocal entity “The Cache Waste Consortium” is hereby legally created and will be duly registered with the appropriate authorities by the Parties contemporaneously with the execution of this Interlocal Agreement.

3) GEOGRAPHICAL AREA INCLUDED IN THE DISTRICT

The geographic area to be included in the boundary of the Consortium created by this Interlocal Agreement is the unincorporated area of Cache County and the areas contained within the Municipalities that are party to this Interlocal Agreement (the “Service Area”).

4) TERM OF AGREEMENT

The Consortium is hereby authorized to begin to exercise its powers under this interlocal agreement and provide services at the time this interlocal agreement is executed by Cache County, Millville, Nibley, Hyrum, Paradise, River Heights, North Logan, Hyde Park, Amalga, Wellsville, Mendon, Newton, Clarkston, and Trenton, and approved by their several legislative bodies. This Interlocal Agreement will terminate on December 31, 2030. This Interlocal Agreement will automatically renew, with no action required from the Parties, for an additional five-year term at each expiration date.

5) GOVERNING STRUCTURE

i) Composition

The business and affairs of the Group will be governed by a Governing Board of the Consortium (the “Board”). The Board will be composed of one representative from each party to this agreement: Cache County, Millville, Nibley, Hyrum, Paradise, River

Heights, North Logan, Hyde Park, Amalga, Wellsville, Mendon, Newton, Clarkston, and Trenton. Board members will be mayors whose municipalities are Parties to this Interlocal Agreement or their designees, drawn from their respective elected bodies. The County Representative will be the County Executive.

Executive Committee Terms

The initial Executive Committee members will begin their service when they are appointed as set forth in the “Composition” paragraph of this Section 5 of the Interlocal Agreement. Regardless of when the initial Executive Committee members are appointed, the length of the initial Executive Committee members’ terms will be measured from January 1, 2023. In order for there to be staggered terms among Committee members, at its first meeting the Committee will determine by lot which initial Committee members will serve a 1-year term and which initial Committee members will serve a 2-year term.

A person may serve on the Committee for an unlimited number of terms. After the 1- or 2-year term of the initial Committee members, anyone appointed to the Committee will serve a 2-year term. Upon the expiration of a Committee member’s term, a replacement Committee member will be appointed in the manner described in the “Composition” paragraph of this Section 5 of the Interlocal Agreement. If a Committee member leaves elected office as mayor, county executive, or county council member prior to the expiration of his or her term on the Committee, the person selected to replace the Committee member as mayor, county executive, or county council member will fill the remainder of that Committee member’s term on the Committee.

ii) Officers

The Governing Board officers shall consist of a chair and vice chair. At the Board’s first meeting of each calendar year, the members of the Board will nominate members to serve as chair and vice chair. Thereafter, by majority vote, the members of the Board will select from among those nominated a chair and vice chair for that year. The chair of the Board will conduct meetings and sign all documents authorized by the Board. If the chair is unavailable, the vice chair of the Board may conduct meetings and sign documents authorized by the Board. Clerk duties for the Board will be provided by an executive assistant appointed by the Board.

iii) Quorum and Voting

A quorum of the Board will consist of not less than one half of the total members of the Board. Board members participating in a Board meeting electronically will count toward a quorum and deemed present at the meeting. If less than a majority of the members is present at a meeting of the Board, a majority of members present must adjourn the meeting until a quorum is present. Action of the Board requires a vote by a majority of Board members, not merely the vote of a majority of a quorum. No Board member may vote or otherwise act by proxy at any meeting of the Board. Each member of the Board has one vote.

iv) Meetings

The Board will hold meetings as necessary but must hold no fewer than two meetings per year. Board meetings will be open to the public to the extent required by Utah law governing open and public meetings.

v) Parliamentary Procedure

The Board will adopt bylaws and procedure for the conduct of meetings, and will be empowered to amend the bylaws as needed from time to time.

6) POWERS OF THE CONSORTIUM

The Consortium is empowered to exercise, through its Board the powers delegated to it by the Parties. Subject to Section 24 below, and with the terms in this Section 6 having the meanings given to them in Utah's Solid Waste Management Act, the Parties agree and delegate to the Board the authority to do the following:

- (1) Enter into a short- or long-term agreement to provide for or operate a solid waste management facility with another public entity; a public agency, as defined in Utah Code section 11-13-103; a private person; or a combination of public entities, public agencies, and private persons;
- (2) Levy and collect a fee or charge or require a license as may be appropriate to discharge its responsibility for the acquisition, construction, operation, maintenance, and/or improvement of a solid waste management facility, including licensing a private collector operating within its jurisdiction;
- (3) Pledge, assign, or otherwise convey as security for the payment of bonds, revenues and receipts derived from the sale or contract or from the operation and ownership of a solid waste management facility or an interest in it;

- (4) Issue a bond according to Title 11, Chapter 14, Local Government Bonding Act;
- (5) Issue industrial development revenue bonds according to Title 11, Chapter 17, Utah Industrial Facilities and Development Act, to pay the costs of financing a project consisting of a solid waste management facility on behalf of an entity that constitutes the users of a solid waste management facility project within the meaning of Section 11-17-2;
- (6) Agree to construct and operate or to provide for the construction and operation of a solid waste management facility project, which project manages the solid waste of a public entity or private person, according to one or more contracts and other arrangements provided for in a proceeding according to which a bond is issued; and
- (7) Issue a bond to pay the cost of establishing reserves to pay principal and interest on the bonds as provided for in the proceedings according to which the bonds are issued.
- (8) Agree that, according to Utah Code section 19-6-505, the exclusive right to collect, transport, and dispose of solid waste within its jurisdiction may be assumed by:
 - a. another public entity;
 - b. a private person; or
 - c. a combination of persons;
- (9) Determine and control the joining of additional municipalities to the Consortium;
- (10) Adopt and Amend bylaws and procedures of the Board and Executive Committee;
- (11) Develop, adopt and amend the budget of the Consortium.
- (12) Act as interface between the third party waste hauler and the several parties of the agreement, including setting a minimum rate for the collection, transportation, and disposition of solid waste within the service area;
- (13) Provide a solid waste management facility to adequately handle solid waste generated or existing within or without the jurisdiction of each Party;

- (14) Assume, by agreement, responsibility for the collection and disposition of solid waste whether generated within or without its jurisdiction;
- (15) Require that solid waste generated within its jurisdiction be delivered to a solid waste management facility;
- (16) Control the right to collect, transport, and dispose of solid waste generated within its jurisdiction;
- (17) Accept and disburse funds derived from a federal or state grant, a private source, or money that may be appropriated by the Legislature for the acquisition, construction, ownership, operation, maintenance, and improvement of a solid waste management facility;
- (18) Contract for the lease or purchase of land, a facility, or a vehicle for the operation of a solid waste management facility;
- (19) Establish one or more policies for the operation of a solid waste management facility, including:
 - a. hours of operation;
 - b. character and kind of wastes accepted at a disposal site;
 - c. any other policy necessary for the safety of the operating personnel;
- (20) Sell or contract for the sale, according to a short or long-term agreement, of usable material, energy, fuel, or heat separated, extracted, recycled, or recovered from solid waste in a solid waste management facility, on terms in its best interest;

7) EXECUTIVE COMMITTEE

The Board will create an Executive Committee composed of four voting members appointed from among the members of the Board, and the County Executive. One member from the North of the service area, selected from among River Heights, North Logan, Hyde Park, and Amalga. One member from the South of the service area, selected from among Paradise, Hyrum, Nibley, and Millville. One member selected from the West of the service area, selected from among Wellsville, Mendon, Newton, Trenton, and Clarkston. One member selected from the Cache County Council. The County Executive will only be able to vote in the event of a tie as a tie breaker. The Executive Committee will be empowered by the Board to execute such matters as are delegated to the Executive

Committee. The executive committee will make recommendations to the governing board but will not have power to make final decisions. Notwithstanding any delegation of powers, the Executive Committee will not have power to set rates, approve budgets, select or contract with waste management companies, change bylaws, make assignments to the executive committee, make capital investments, or approve new members to the Consortium.

8) REGULATIONS AND POLICIES

The Board is empowered to create such regulations and policies as are necessary in the discharge of its purpose, operations, powers, and authority as set forth above. Policies and regulations shall be adopted or repealed as necessary during the regular meetings of the Board. Such regulations and policies duly adopted will be binding on Consortium activities, the provision of waste collection services, and relations with contractors, employees, and the public.

9) BUDGETS

The fiscal period for the Consortium will be an annual period beginning on January 1 of each year and ending December 31 of the same calendar year. The Board must review, approve, and adopt the Consortium's annual budget for the upcoming year no later than December 31 of each year. During the budget year, the Board may amend the budget in any regular meeting or in any special meeting called for that purpose.

10) NOTICE

Any notices or other documents permitted or required to be delivered to the Parties pursuant to this Interlocal Agreement must be delivered to the County at the office of the County Executive and to the other Parties at the offices of their respective City or Town Mayors.

11) INITIAL CAPITAL CONTRIBUTION

For the purpose of funding initial start costs for the Consortium, retaining accounting personnel, securing general liability insurance, and other necessary costs the parties will contribute a per capita amount of \$1.00 per can.

12) WITHDRAWAL

No Party may withdraw from, or terminate its obligations under or participation in, this Interlocal Agreement within the first 12 months of the execution of this

agreement, nor prior to the expiration or renewal of the contract with the Third Party Provider. If a Party intends to terminate its obligations under and participation in this Interlocal Agreement at the expiration or renewal of a contract with a Third Party Provider, the Party must deliver written notice to the other Parties at least 12 months prior to the expiration or renewal of the contract with the Third Party Provider. Termination by one party will not affect the validity of this Interlocal Agreement as to the remaining parties. If a Party that withdraws from this Interlocal Agreement has a representative serving on the Board at the time of withdrawal, that representative will be deemed to have resigned from the Board at the time of withdrawal, and a new Board member from another Party will be appointed to fill out the remainder of the resigned Board member's term. Upon a municipality's withdrawal from the Consortium, if the Consortium has a positive asset and capital balance, the municipality will receive a payout of capital on a per capita basis, with 15% of the asset and capital payout forfeited as a penalty for withdrawal. If the Consortium has a debt balance, the municipality will assume its portion of the debt on a per capita basis, with an additional 15% of the debt assumed, as a penalty for withdrawal.

13) TERMINATION

This Agreement may be terminated by unanimous consent of the parties. If such termination occurs, assets, capital, and debt will be distributed among the parties on a per capita basis, without penalty.

14) SEVERABILITY

If any provision of this Interlocal Agreement is held invalid, the remainder of the agreement will not be affected thereby and all other parts of this agreement will nevertheless be in full force and effect.

15) PRIOR AGREEMENTS

This Interlocal Agreement is the entire agreement between the parties. It supersedes all previous oral and written presentations, understandings, and agreements between the Parties respecting the subject matter of this Interlocal Agreement.

16) ASSIGNMENT

No assignment, delegation, transfer, or novation of this Interlocal Agreement or part thereof may be made unless unanimously approved by the Parties.

17) AMENDMENT

This Interlocal Agreement may be amended only by a writing duly executed by all of the Parties under the procedure outlined in Section 25 of this Interlocal Agreement.

18) CONSTRUCTION

This Interlocal Agreement will be governed by and construed in accordance with the laws of the State of Utah.

19) BOOKS AND RECORDS

The Parties shall have reasonable access to the books, records, and accounts of the Consortium. A duly executed copy of this Agreement shall be filed with the keeper of records of each Party, pursuant to Utah Code section 11-13-209.

20) FILING

This Interlocal Agreement and any subsequent amendments hereto will be filed by Cache County with the Cache County Clerk and by the other Parties with their respective City or Town Clerks.

21) INDEMNIFICATION

Each Party agrees to indemnify and hold the other Parties harmless from and against any and all claims, demands, losses, causes of action, damages, lawsuits, and judgments, including attorney's fees and costs, to the extent that such are caused by or arise out of or relate to its own work, errors, omissions, and/or operations. The Parties agree that by execution of this Interlocal Agreement none of them will be deemed to have waived their statutory defenses of sovereign immunity nor increased their limits of liability as provided for under Utah law.

22) RESERVATION OF RIGHTS

Nothing in this Interlocal Agreement will be deemed or interpreted to prohibit, preclude, or otherwise pre-empt the Parties' rights or abilities to take any lawfully available actions to provide funding or other support for the Consortium.

23) DEFAULT

If a Party breaches the terms of this Agreement, the Board may provide written notice of the default, in accordance with the Notice requirements described above. If the breaching Party does not cure the default within 30 days from the date the notice is sent, the Consortium may terminate this Agreement as to the breaching Party. The Consortium

may seek redress to recover all costs and damages resulting from the breach of this Agreement. Any outstanding funds owed to the breaching Party may be used to offset the damages and costs incurred by the Consortium. The right to offset is not intended to limit the Consortium's right to any other remedy available in law or equity. This paragraph shall not be construed to limit or otherwise constrain any party to this agreement to seek redress for damages incurred as a result of the default or breach of a party to this agreement. The parties reserve their right to exercise any rights at law and equity as a result of any breach.

Failure of the Consortium to exercise its rights in the event of any breach by a Party will not constitute a waiver of such rights.

24) DEBT AND PROPERTY OWNERSHIP

Until January 1, 2028, the Consortium is not authorized to acquire, lease, or create any interest in real or personal property or to incur debt, except that the Board may authorize the purchase of a reasonable amount of office supplies and related items as may be necessary to conduct the day-to-day business of the Consortium. After December 31, 2027, the Consortium is authorized incur debt and to acquire real and personal property in its own name pursuant to Section 6 above. The Consortium's acquisition of property is not a joint acquisition of property by the Parties to this Interlocal Agreement. No real or personal property will be acquired jointly by the Parties because of this Interlocal Agreement.

25) APPROVAL

Each respective Party's participation in this Interlocal Agreement is conditioned upon the approval and execution of this agreement by the Party pursuant to and in accordance with the provisions of the Interlocal Cooperation Act, including the adoption of resolutions of approval, but only if such resolutions of the legislative bodies of the Parties are required by the Interlocal Cooperation Act. In accordance with Utah Code section 11-13-202.5(3), this Interlocal Agreement must be submitted to the attorney authorized to represent each respective Party for review as to proper form and compliance with applicable law before this Interlocal Agreement may take effect.

IN WITNESS WHEREOF, each party has executed this agreement on the respective signature page of that Party as of the date specified in the signature block.

TOWN OF CLARKSTON

N. Craig Hidalgo 11-15-22
Mayor, Craig Hidalgo Date

Attest:

Kristi Hidalgo 11/15/2022
Clerk Date

Approved as to form and as compatible with State Law:

Legal Counsel Date

