

St. George
Water Treatment Facilities Agreement

**ST. GEORGE
WATER TREATMENT FACILITIES AGREEMENT**

This WATER TREATMENT FACILITIES JOINT OPERATION, MANAGEMENT AND USE AGREEMENT (the "Agreement"), is made and entered into by and between the WASHINGTON COUNTY WATER CONSERVANCY DISTRICT (the "District"), a water conservancy district organized under the laws of the State of Utah, and ST. GEORGE CITY ("St. George"), a Utah municipal corporation.

RECITALS:

A. Significant economic and population growth has occurred and is continuing in Washington County, creating additional demands for water supply, storage, treatment and transportation facilities necessary to protect and conserve scarce water resources, to enable the District and the municipalities to provide water utility services necessary for the continued growth and development of Washington County (the "County"), to promote economic development in the County and to protect and promote the public health, safety and welfare. St. George is a customer of the District. Other municipalities in the County; including the cities of Washington, Santa Clara, Ivins, Hurricane and La Verkin and Toquerville and the towns of Virgin and Leeds, Utah; are or may become customers of the District. St. George and other municipalities need or will need additional water to meet future growth and the District has additional water available for such purposes and will also be developing additional projects.

B. The District has been organized pursuant to the Water Conservancy Act for the purpose of providing for the conservation and development of water resources of the State of Utah and in furtherance of such purposes has previously undertaken and presently owns and operates various water supply, storage, treatment and transportation facilities that provide water

supplies and services to the Municipal Customers and other entities located in Washington County.

C. Section 17A-2-1414 of The Water Conservancy Act provides that a water conservancy district and an incorporated municipality, located within or without the boundaries of the district, are expressly authorized and empowered to enter into a contract for the joint operation of a water facility owned by a district or municipality and further provides for the joint use of any such water facility by the parties under an appropriate arrangement for reasonable compensation.

D. The District and St. George have determined that it is in the best interest of the District and St. George to enter into a Regional Water Supply Agreement (the "RWSA"). The RWSA provides for a Capital Facilities Plan that will constitute the regional capital plan for the District and the Municipal Customers that are parties to the RWSA in order to meet the current and future water demands of such District's Municipal Customers and the District's other customers. The Capital Facilities Plan will govern the acquisition of all Capital Facilities as defined and provided for in the RWSA. The RWSA has been entered into by the District and St. George. Other Municipal Customers may also enter into the RWSA. The RWSA is incorporated herein by this reference.

E. St. George has acquired the right to receive a water supply pursuant to an existing Water Petition and Addendum to the Petition with the District (the "St. George Water Supply"). St. George is currently treating this water supply at the existing St. George water treatment facility which is located adjacent to the District's Quail Creek Reservoir and has an existing treatment capacity of 20 million gallons per day ("mgd") (the "Existing Treatment Facility"). The Existing Treatment Facility is being expanded to provide for the treatment of an additional

20 mgd (the "Expanded Treatment Facility") for a total treatment capacity of 40 mgd. It is anticipated that the Expanded Treatment Facility will be completed in 2005. The Existing Treatment Facility and the Expanded Treatment Facility will be managed as a single integrated unit and are collectively referred to herein as the "St. George Treatment Facilities".

F. St. George has determined that the operation, management and use jointly with the District ("Operation and Management") of the St. George Treatment Facilities as provided for herein will be in the best interests of the City and its inhabitants. St. George has also determined that this Agreement contains appropriate arrangements for reasonable compensation to St. George for the joint use of the St. George Treatment Facilities. Among other things, the District will pay for certain costs of the Expanded Treatment Facility and the District will pay to St. George an amount equal to the remaining debt service on the water revenue bonds issued by St. George for the Existing Treatment Facility. The District has determined that the Operation and Management of the St. George Treatment Facilities as provided for herein is consistent with the purposes of the District under the Water Conservancy Act and is in the best interests of the District and its inhabitants. Accordingly, the parties agree that St. George Treatment Facilities shall be Operated and Managed as provided in this Agreement and as part of the regional water supply system pursuant to the RWSA.

G. Pursuant to Section 17A-1-1414 of the Water Conservancy Act, the terms of this Agreement and the RWSA, the District will assume the day-to-day operation and management (the "Operational Management") of the St. George Treatment Facilities to provide to St. George the St. George Water Supply, and also to facilitate St. George, other Municipal Customers and other District customers receiving the additional water required to meet future needs. St. George will retain ownership, oversight, control and responsibility for the operation and management of

the St. George Treatment Facilities (“Oversight Management”). The parties are also cognizant of Article XI, Section 6 of the Utah Constitution and agree that this Agreement does not, directly or indirectly, lease, sell, alien or dispose of any waterworks, water rights or sources of water supply now or hereafter to be owned or controlled by St. George or otherwise violate Article XI, Section 6 the Utah Constitution for reasons which include:

- (1) St. George currently does not have a water supply sufficient to serve the Expanded Treatment Facility. St. George does not have a water supply separate from the existing St. George Water Supply to serve the Existing Treatment Facility.
- (2) The District has water supplies sufficient to serve the Expanded Treatment Facility, in addition to providing the St. George Water Supply which provides water to the Existing Treatment Facility.
- (3) St. George has determined that its future water requirements can best be supplied by the District pursuant to the terms of the RWSA and if the St. George Treatment Facilities and the District’s water supply and delivery facilities are cooperatively and conjunctively managed and operated. This will result in a firm, reliable future water supply for St. George on the most economical and reliable basis and will provide water to St. George residents at a reasonable charge.
- (4) St. George will retain ownership and have continuing Oversight Management of the St. George Treatment Facilities which is located on land previously made available to St. George by the District.
- (5) St. George shall continue to receive the St. George Water Supply as provided for in St. George’s Petition and Amended Petition. St. George’s additional water shall be provided pursuant to the terms of the RWSA.
- (6) St. George will continue to receive and have priority to the first 20 mgd of the treatment capacity in the St. George Treatment Facilities.
- (7) St. George issued its Water Revenue Bonds, Series 2004A (together with any bonds issued by St. George to refund such bonds, the “Series 2004A Bonds”) to pay for the construction of the Expanded Treatment Facility. When the Series 2004A Bonds were issued, it was contemplated that consideration would be given to the application of the excess capacity in the Expanded Treatment Facility to provide water to other municipalities in Washington County and the operation of the plant on a cooperative basis sharing operating and capital costs or other arrangements. The

Operational Management of the St. George Treatment Facilities may be assumed by the District consistent with the provisions hereof.

- (8) The District will pay to St. George funds that may be used to pay debt service on the Series 2004A Bond payments related to the Expanded Treatment Facility as provided for herein.

H. Based on the foregoing, the District is willing to assume operation and management of the St. George Treatment Facilities pursuant to the RWSA and the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein the parties agree as follows:

1. Water Treatment Plant Management.

1.1 The District shall assume the Operational Management of the St. George Treatment Facilities in accordance with this Agreement and the RWSA when the construction of the Expanded Treatment Facility for the benefit of St. George and the District's other Municipal Customers is completed and the integrated St. George Treatment Facilities are fully operational. The District's Operational Management will include the management, operation, maintenance, repair and replacement of the St. George Treatment Facilities as provided for herein and in the hereinafter described annual Operating Plan. The costs associated with the District's Operational Management of the St. George Treatment Facilities shall be paid for by the District (the "Operation and Management Costs"). However, the District shall be entitled to fully recover its Operation and Management Costs from St. George and the other Municipal Customers as provided for in the RWSA. It is understood and agreed that St. George will retain ownership and oversight control of the St. George Treatment Facilities. The operating

permit for the St. George Treatment Facilities will remain in the name of St. George. Copies of all reports, notices and other regulatory information pertaining to the St. George Treatment Facilities shall be forwarded immediately by St. George to the District unless arrangements have been made for the regulatory agency to directly copy the District on such information at the time it is issued.

1.2 St. George and the District agree that the District will have primary responsibility to facilitate the most efficient Operation and Management of the St. George Treatment Facilities. Accordingly, the District will determine who should be involved in the operation of the St. George Treatment Facilities, and will hire new District employees or assign pre-existing District employees for that purpose. Notwithstanding the foregoing, St. George will retain oversight of the Operation and Management of the St. George Treatment Facilities.

2. St. George Treatment Facilities Construction and Financing.

2.1 St. George agrees to remain fully responsible for the payment of the Series 2004A Bonds and any other debt obligation related to the St. George Treatment Facilities in order to continue receiving the water to which it is currently entitled.

2.2 St. George agrees to complete construction of the Expanded Treatment Facility in a timely manner. It is anticipated that the Expanded Treatment Facility will be constructed and operational in 2005. St. George agrees to acquire and maintain insurance on the Expanded Treatment Facility and to have the District named as an insured party. The cost of insurance paid by the District shall be treated as an Operation and Management Cost that the District shall be entitled to recover as provided for herein and in the RWSA.

2.3 In the event the Expanded Treatment Facility is further expanded or replaced and paid for by the District, the cost thereof shall be treated as an Operation and Management Cost that the District shall be entitled to recover as provided for herein and in the RWSA.

2.4 St. George has issued the Series 2004A Bonds to pay for the construction of the Expanded Treatment Facility. The District agrees that for the right to the use of capacity in the St. George Treatment Facility for the benefit of St. George and other Municipal Customers as provided for herein, the District will pay to St. George an amount equal to the scheduled principal and interest payments on the Series 2004A Bonds that are specifically attributed to the Expanded Treatment Facility in the amount of approximately Twenty-Six Million Dollars (\$26,000,000), which payments shall be treated as operation and maintenance expenses by the District. The dates and amounts of the District's payments to St. George for the use of capacity in the Expanded Treatment Facility is set forth in Exhibit A which is attached hereto and by this reference incorporated herein. St. George shall furnish the District final cost figures for the Expanded Treatment Facility within thirty (30) days of its completion.

2.5 Based on the foregoing payments by the District, it is understood and agreed that the District shall have the continued right to the use of capacity from the Expanded Treatment Facility for the treatment of water supplied by the District to St. George and other Municipal Customers for the term of the RWSA, and any extension thereof, or if the RWSA is subsequently terminated, without any additional payment to St. George.

2.6 Either party shall have the right to terminate this Agreement upon one year written notice. However, it is understood by the parties that the Expanded Treatment Facility will have a useful life that will extend for years beyond the time required to pay off the Series 2004A Bonds. The parties agree that in the event St. George terminates this Agreement, it shall repay the District a proportionate share of amount paid by the District pursuant to Paragraph 2.4 that the payments previously made by the District represents to the projected life of the Expanded Treatment Facility. In the event this Agreement is terminated, St. George agrees it will make any remaining Series 2004A Bond payment as provided for in Exhibit A.

2.7 The parties further agree that if this Agreement is terminated as provided for herein, they will work cooperatively to secure the continued operation of the St. George Treatment Facilities for the benefit of St. George, the District, and the other Municipal Customers.

3. St. George Treatment Facilities Water Supply.

3.1 The existing St. George Water Supply from the District is being treated at the Existing Treatment Facility and St. George currently has a peak demand of 20 mgd of water for use by its customers. The parties agree that St. George shall continue to have the right to the first 20 mgd of treated water produced by the St. George Treatment Facilities to the extent required for St. George's continued use.

3.2 The parties further agree that the District shall have the right to the use of the treatment capacity in the Expanded Treatment Facility as provided for herein, and also any unused treatment capacity to which St. George has the right to use in the Existing Treatment Facility, for District purposes as provided for in the RWSA.

3.3 The St. George Treatment Facilities shall be utilized to treat the District Water Supply in excess of the St. George's 20 mgd right specified above. The District Water Supply will be treated, delivered, and paid for by St. George and the other Municipal Customers as provided for in the RWSA.

4. St. George Oversight.

4.1 It is agreed that St. George shall have continuing Oversight Management of the St. George Treatment Facilities. In this regard, the parties agree to prepare an annual operating plan for the St. George Treatment Facilities (the "Annual Operating Plan"). St. George and the District shall meet annually to review and update the Annual Operating Plan for the District's continued Operational Management of the St. George Treatment Facilities.

4.2 St. George may make such additional recommendations as it deems necessary for the continued Operation and Management of the St. George Treatment Facilities by the District. The District shall cooperate with St. George in implementing any such reasonable recommendations.

4.3 Effective and Enforceable Date. The Agreement shall be effective and enforceable on April 23, 2006 at 12:00 a.m.

5. Agreement Validation. Once this Agreement becomes effective and enforceable pursuant to the provisions of Paragraph 5, the parties shall have the Agreement validated pursuant to the provisions of Section 17A-2-1442 of the Water Conservancy Act.

6. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

7. No Waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly provided herein. Either party may, by notice delivered in the manner provided in this Agreement, but shall not be under obligation to, waive any of its rights or any conditions to its obligations hereunder, or any covenant or duty of any other party. No waiver shall affect or alter the remainder of this Agreement, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

8. Default.

8.1 District's Default.

8.1.1 In the event the District defaults on the Operational Management of the St. George Treatment Facilities as provided for herein, St. George may give the District written notice of such default. The District shall have not less than ninety (90) days, or such additional time as may be reasonably necessary, to cure the default provided the District commences the cure within ninety (90) days of receiving written notification and diligently proceeds to cure such default.

8.1.2 If the default cannot be cured within the time provided for herein, St. George shall have the right to enter into and undertake the Operational Management of the St. George Treatment Facilities. However, in the event St. George undertakes the Operational Management of the St. George Treatment Facilities as provided for herein, it shall be obligated to provide for the treatment of the District's water supply in the Expanded Facility and service the District's

customers subject to the District making the payments as provided for in paragraph 2.4 above.

8.2 St. George Default. In the event St. George defaults hereunder, the District may give St. George written notice of such default. St. George shall have Ninety (90) days or such additional time as the District may grant, to cure such default. If St. George's default is not cured as provided for herein, the District may proceed with all such remedies as it is entitled to under Utah law.

9. Rights and Remedies. The parties shall have all rights and remedies provided under Utah law for a breach or threatened breach of this Agreement, these rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies.

10. Uncontrollable Forces.

10.1 No party shall be considered to be in default with respect to any obligation herein and no party shall forfeit any rights provided herein, if, and for the period of no default, the defaulting party was prevented from fulfilling such obligation or exercising such right by reason of Uncontrollable Forces ("Uncontrollable Forces"). A party rendered unable to fulfill any obligation or exercise any right by reason of Uncontrollable Forces shall use every reasonable effort to remove such inability with all reasonable dispatch. Uncontrollable Forces means any cause beyond the reasonable control of the party affected, including but not limited to inadequacy of water, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, accident, unlawful actions or omissions by others, and restraint by

any court of public authority, which, by exercise of due diligence and foresight, the party could not reasonably have been expected to avoid.

10.2 The provisions of this paragraph shall not apply to the payments the District is required to make to St. George pursuant to Paragraph 2.4.

11. No Third Party Beneficiaries. This Agreement is not intended to be a third party beneficiary contract for the benefit of any third parties including, but not limited to, any customer of St. George, and no such person shall have any cause of action against the District for any breach or default by the District hereunder.

12. Necessary Acts and Cooperation. The parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement which are necessary and proper to make effective the provisions of this Agreement.

13. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

14. Captions. All captions are for reference only and shall not be considered in interpreting or enforcing the provisions of this agreement.

15. Notices. Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when delivered in person or sent by certified or registered United States mail to the respective address of the District or St. George as set forth below:

If sent to Washington County
Water Conservancy District:

Washington County Water Conservancy District
Attn: Ronald W. Thompson, District Manager
136 North 100 East, Suite #1
St. George, Utah 84720

If sent to St George City:

St. George City
Attn: City Manager
175 East 200 North
St. George, Utah 84770

16. Drafting Considerations. This agreement has been drafted, negotiated, and revised by each of the parties hereto, each of whom is sophisticated in the matters to which this agreement pertains, and no specific party shall be considered to have drafted this agreement.

17. Authorization. Each individual executing this Agreement does thereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she signs.

18. Entire Agreement. This Agreement shall constitute the entire agreement between the parties and supersedes any prior understanding, representation, or agreement of the parties regarding the subject matter hereof.

19. Severability. If any provision of this Agreement should be deemed invalid or unenforceable by a final decision of any court of competent jurisdiction, then the remaining provisions of this Agreement shall remain in effect and shall not be affected by any such decision.

20. Execution of Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

WASHINGTON COUNTY WATER
CONSERVANCY DISTRICT

ST. GEORGE CITY

By: *M. S. Jensen*
Chairman

By: *Daniel W. McIntosh*
Mayor

Date: *3/22/06*

Date: *03/21/06*

ATTEST:
By: *Robert McNeil*
Secretary

ATTEST:
By: *Marian C. Palma*
City Recorder
Deputy

