

RESOLUTION NO. 02-280

A RESOLUTION OF THE DELTA CITY COUNCIL APPROVING AN INTERLOCAL COOPERATION ACT AGREEMENT BETWEEN DELTA CITY, HINCKLEY TOWN AND DESERET-OASIS SPECIAL SERVICE DISTRICT FOR CREATION OF AN AGENCY FOR JOINT AND COOPERATIVE ACTION; APPOINTING REPRESENTATIVES TO THE AGENCY; AND AUTHORIZING EXECUTION OF THE AGREEMENT BY DESIGNATED CITY OFFICERS.

RECITALS

The Delta City Council recites the following as the basis for adopting this resolution:

A. The parties to the proposed agreement have determined that the most economically feasible and cost effective means to obtain a water supply that meets the recently mandated drinking water standards for arsenic concentration is to either develop new sources, develop water treatment facilities that can remove arsenic, implement some combination of these methods, or find other acceptable methods, and the the most effective means to do so is through joint and cooperative action under the Interlocal Cooperation Act.

B. The Delta City Council has reviewed the proposed Interlocal Cooperation Act agreement that will create the West Millard Water Agency and finds that it is in the best interests of the residents of Delta City to enter into the agreement and authorize the proper execution and delivery of it.

NOW, THEREFORE, BE IT RESOLVED by the Delta City Council:

1. Agreement Approved. The document attached hereto as Exhibit "A" and entitled "INTERLOCAL COOPERATION ACT AGREEMENT ORGANIZING THE WEST MILLARD WATER AGENCY" is hereby approved and authorization is given for Delta City to become a party to that agreement. Further authorization is hereby given for the Mayor and for the City Recorder to execute and attest this agreement, respectively, on behalf of Delta City in substantially the form attached as Exhibit "A."

2. Designation of Agency Board of Directors Members. The Delta City Council shall appoint three (3) directors to represent Delta City on the West Millard Water Agency Board of Directors and shall designate their initial terms in office. The City Council shall also appoint three (3) alternate directors to serve on the Agency Board and shall designate their initial terms in office.

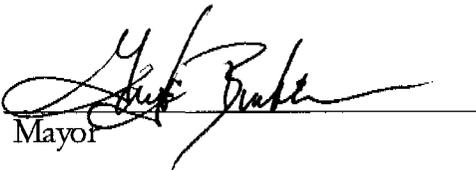
3. Administration of Agreement. The City Council directs and authorizes the City Recorder to file this agreement with the records of Delta City and directs the Mayor to supervise administration of the agreement.

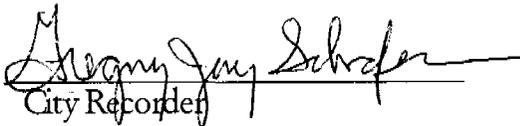
4. Publication. This resolution and a summary of the agreement approved by it shall be published in the *Millard County Chronicle-Progress* in the manner provided in § 11-13-219.

5. Effective Date. This resolution shall become effective on the date of adoption. The Agreement becomes effective, according to its terms, when the Agreement has been approved by all parties, properly filed in the office of the record keeper for each party, and each party has appointed its representatives to the board of directors as provided in the Agreement.

6. Repeal of Conflicting Resolutions. All resolutions and orders or parts thereof in conflict with the provisions of this resolution are, to the extent of such conflict, hereby amended to conform to the provisions of this resolution.

ADOPTED AND APPROVED this 9<sup>th</sup> day of SEPTEMBER, 2002.

By:   
Mayor

ATTEST:   
City Recorder

## INTERLOCAL COOPERATION ACT AGREEMENT CREATING THE WEST MILLARD WATER AGENCY

THIS AGREEMENT is entered into effective \_\_\_\_\_, 2002, by and among:

**CITY OF DELTA, UTAH**, a municipal corporation of the State of Utah, of 76 North 200 West, Delta, Utah 84624, referred to in this Agreement as "Delta;"

**HINCKLEY TOWN**, a municipal corporation of the State of Utah, of P.O. Box 108, Hinckley, Utah 84635, referred to in this Agreement as "Hinckley;" and

**DESERET-OASIS SPECIAL SERVICE DISTRICT**, a political subdivision and quasi-municipal corporation of the State of Utah, of P.O. Box 866, Delta, Utah 84624, referred to in this Agreement as "DOSSD."

Delta, Hinckley, and DOSSD are referred to collectively in this Agreement as the "Parties," or individually as a "Party" or "member."

### RECITALS

The Parties recite the following as part of their reasons for entering this Agreement:

A. Delta has for decades operated a municipal culinary water supply system for the benefit of its residents. Delta also sells a portion of its surplus water service capacity to water users located on lands beyond the corporate boundaries of Delta City. The Delta water system consists of multiple underground wells, multiple storage and equalization reservoirs, an elevated storage reservoir, distribution lines, pumps, controls, valves, chlorination equipment, and related improvements.

B. Hinckley Town built a culinary water system in 1968 with a central well, storage reservoir, pressure pumps, valves, controls, and related improvements.

C. In 1978, the State of Utah determined that water produced from the Hinckley water system failed to meet arsenic concentrations standards established by the United States Environmental Protection Agency and by the State of Utah.

D. Residents of the unincorporated communities of Deseret and Oasis, as of 1981, had built homes and community buildings using individual wells for water supply. Many of these wells produced water with concentrations of arsenic higher than the drinking water standard. As a result, federal agencies imposed a moratorium on federal financing for new housing, housing purchases, and refinances in the Deseret and Oasis area.

E. In 1981, residents of Deseret and Oasis petitioned the Millard County Commission to establish a service district under the Utah Special Service District Act with authority to furnish

fire protection and water and sewer utility services. The Board of Commissioners of Millard County adopted a resolution on July 1, 1981 establishing the Deseret-Oasis Special Service District.

F. Hinckley and DOSSD acquired financing for and constructed a water supply system to supply water utility service to both entities. The water system includes an existing well that was sufficiently tested and upgraded so that it could be converted from irrigation to municipal use. Hinckley and DOSSD have jointly operated the water supply system under an interlocal agreement effective as of August 1, 1981.

G. Hinckley, at the same time, modified and improved its pumps, storage reservoirs, and controls to be compatible with the newly developed water supply system. DOSSD also constructed pump stations and installed pumps, motors, water delivery pipelines, valves, controls, storage reservoirs, fire hydrants, and related improvements to supply water utility services to the residents of Deseret and Oasis.

H. In January, 2002, the United States Environmental Protection Agency adopted a standard requiring that public drinking water supply systems provide water with arsenic concentrations not to exceed 10 parts per billion. The Delta water system and the water supply system jointly operated by Hinckley and DOSSD both fail to meet these standards because the water supply wells for both systems draw water from portions of the Sevier Desert aquifer in which arsenic concentrations exceed the January 2002 standard.

I. The Parties have determined that the most economically feasible and cost effective means to obtain a water supply that meets the recently mandated drinking water standard is to either develop new sources, develop water treatment facilities that can remove arsenic, implement some combination of these methods, or find other acceptable methods. The Parties have also determined that joint and cooperative action will allow more cost effective and efficient use of their resources.

J. Each Party to this Agreement owns water rights. Delta and Hinckley are restricted by Utah Constitution, Article XI, § 6 from selling or disposing of their water rights, water works, or sources of water supply, or otherwise alienating any interest therein. Therefore, the Parties desire a solution to the described problem that allows them to retain all water rights, water works, and water sources presently owned by them. Instead, the Parties desire to create a separate agency under the Interlocal Cooperation Act with authority to a) contract with each of the Parties to divert their separately-owned water rights from a suitable source, b) treat such water as may be necessary for use by each Party, and c) deliver the water to the distribution systems operated by each of the respective Parties. The Parties also intend that the agency so created should have authority to deliver water supply utility service to other water suppliers, whether owned by public agencies or private entities, in the Sevier Desert region of northern Millard County, an area referred to in the locale as "West Millard."

K. The Parties anticipate that they will need to finance construction of water improvements

through issuance of bonds, revenues from water utility services contracts, grants, reimbursements from members, and other lawful revenue sources. The Parties anticipate that any bonds issued will be repaid from revenues generated by sale of water services, and not from tax revenues.

NOW, THEREFORE, the Parties, for the mutual covenants and other consideration expressed herein, and acting under the authority of the Utah Interlocal Cooperation Act contained in Utah Code Annotated Title 11, Chapter 13 [Supp. 2002] (the "Act"), hereby agree as follows:

**SECTION 1. RECITALS AFFIRMED.** The Parties each certify the correctness and accuracy of the facts recited above and adopt the same as a statement of their principal reasons for entering this Agreement.

**SECTION 2. CREATION OF AGENCY AND SERVICE AREA.** Pursuant to Utah Code Annotated § 11-13-203, the Parties hereby create a separate legal and administrative entity, which shall be deemed a body corporate and politic, and a political subdivision of the State of Utah, to be known as the West Millard Water Agency (the "Agency"). The Agency is created:

2.1. For the purpose of carrying on joint and cooperative action, including the undertaking and financing of facilities or improvements to provide water supply utility services to the Parties, including the sale of excess service capacity to any person on terms the Agency considers to be in the best interest of the Parties, as provided in this Agreement.

2.2. To exercise all of the powers, rights, responsibilities, and authorities that each of the Parties could exercise with respect to the subject matter of this Agreement; namely, to develop and operate a water supply system and to carry out any other functions necessary or convenient thereto, as further defined in this Agreement.

2.3. To provide water service for use by Delta, Hinckley, and DOSSD to all the area within the territory served by of each of these public agencies, as the territory of each of these Parties may be amended from time to time, and to all areas served under agreements entered into by the Agency.

**SECTION 3. DURATION.** This Agreement and the Agency created by it shall for a term of fifty (50) years, or until expiration of the additional time specified in Utah Code Annotated § 11-13-204(3) [Supp. 2002], as that section may be later amended or reenacted; or unless terminated as set out in Section 13.

**SECTION 4. ORGANIZATION.** The Parties hereto shall be the members of the separate legal and administrative entity created by this Agreement. Governance shall be by a board of directors. The governance and organization shall be as follows:

4.1. The governing authority of the Agency shall be a Board of Directors, all of whom shall

be voting members. The Board of Directors shall consist of six regular directors, except at those times when one additional member, referred to herein as the “*ad hoc* member” participates. When an *ad hoc* director is called upon to participate, that person shall serve and vote only at the times and in the manner provided in this Section. Also, there may be alternate directors appointed as set out in this Section 4.

4.2. The six regular directors, referred to in this Agreement as a “director,” or as “directors,” shall be appointed in the following manner:

4.2.1. Three directors shall be appointed by the governing body of the City of Delta, Utah.

4.2.2. Two directors shall be appointed by the governing body of the Town of Hinckley, Utah.

4.2.3. One director shall be appointed by the governing body of the Desert-Oasis Special Service District.

4.2.4. For each director appointed by a member, the same member may appoint an alternate to act when any director appointed by that member is unwilling or unable to serve. The alternate directors shall serve only at the times specified in this Section 4.

4.3. The appointments of each director, including alternates, shall be by procedures consistent with Utah law and as established by the Party appointing the director.

4.4. An *ad hoc* director shall participate as a director as outlined in this Section and subject to the following:

4.4.1. Any regular director, or an alternate sitting in the place of a regular director, may call for participation of an *ad hoc* director at any time that participation is warranted under this Section 4. The call for an *ad hoc* director shall either be entered in the minutes of a Board of Directors meeting in which such a call is made, or in writing. The call for participation of the *ad hoc* director shall specify the question or questions for which the call is made.

4.4.2. In the instances when a call is made for an *ad hoc* director, the person who serves as an *ad hoc* director shall be either:

A. An individual selected by either the executive director or the Board of Directors of Utah Rural Water Users Association (“URWUA”); or

B. A member of the governing body of Millard County selected by the governing body of Millard County.

4.4.3. The directors shall decide in each instance whether the seventh, *ad hoc*, director shall be a representative from URWUA, or whether it shall be a person selected by and from among the members of the governing body of Millard County; provided:

A. If the six directors fail to elect whether *ad hoc* director should be from URWUA or from the members of the governing body of Millard County, the *ad hoc* director shall be a representative from URWUA, unless URWUA is not able or willing to furnish a representative.

B. If URWUA is not willing or able to furnish a representative, then the *ad hoc* director shall be selected by the governing body of Millard County, Utah from among its members.

4.4.4. The term in office of an *ad hoc* director shall be only until completion of the question or questions specified in the call for participation of the *ad hoc* director, and for such additional questions as may be approved by a majority vote of the regular directors. Otherwise, there shall be no further participation by an *ad hoc* director until a new call for an *ad hoc* director is made and a new meeting of the Board of Directors has been properly convened.

4.4.5. An *ad hoc* director shall vote only at the times and in the manner specified in this Section 4.

4.4.6. The *ad hoc* director shall not be compensated for participation, but the Agency shall reimburse the entity from whom the *ad hoc* director is sent for the actual expenses incurred by the *ad hoc* director's participation.

4.5. The terms in office of the directors shall be as follows:

4.5.1. Each director and alternate, other than an *ad hoc* director, shall serve for a term of four years. The initial terms of the directors, however, shall be as follows to allow the terms to be staggered such that the directors' terms in office do not all expire at the same time:

A. The initial term for two of the directors appointed by Delta shall be two (2) years, adjusted as set out in paragraph 4.5.2. Delta shall designate the directors who are appointed for the two-year term at the time the appointments are made.

B. The initial term for one of the directors appointed by Hinckley shall be two (2) years, adjusted as set out in paragraph 4.5.2. Hinckley shall designate the director who is appointed for the two-year term at the time the appointment is made.

C. The initial term for the director appointed by DOSSD shall be four years, adjusted as set out in paragraph 4.5.2.

4.5.2. The terms in office of the initial directors appointed prior to February 1, 2003, other than an *ad hoc* director if one is called upon prior to that date, shall be deemed to have commenced in January 1, 2003 for purposes of determining their respective terms in office.

4.5.3. A director may be removed from office at the pleasure of the governing body appointing such director.

4.5.4. Each director, other than an *ad hoc* director, shall continue in office until a successor has been duly appointed and qualified.

4.5.5. If a regular director is unwilling or unable to serve, or is removed from office, a replacement director shall be appointed to fill the vacancy for the unexpired term by the Party who appointed that director.

4.5.6. There shall be no limitation on the number of consecutive terms that a director may serve.

4.6. All of the six regular directors, including alternates, shall either be a customer who receives water supplied through a water delivery system that receives water supplied from the Agency system, or an elected or appointed officer of one of the Parties.

4.7. Each regular director, including alternates, shall, prior to taking office, subscribe to the oath of office provided for in the Utah Constitution Article IV, Section 10.

4.8. The Parties have negotiated for the number of directors and the representation of each Party to carefully balance the interests of all members of the Agency. The Parties have therefore provided for alternate directors so that a full board of six regular directors can be available at all times. Alternate directors shall vote only when another director representing a member is unable or unwilling to attend a meeting of the Board of Directors, or any portion of such a meeting. Also, the following apply to participation by alternates:

4.8.1. Alternates shall not function as chairman or vice-chairman except at times they may be elected as chairman *pro tempore* by the Board of Directors.

4.8.2. Alternates shall participate in closed sessions of the Board of Directors meetings only when they are serving as a director, or when the directors approve such participation at the time they approve the closed session.

4.8.3. The provisions of this section regarding qualifications and terms in office of directors shall also apply to alternates.

4.9. Voting by the directors shall be as follows:

4.9.1. The six regular directors, or alternates when sitting in place of a regular director, shall each be entitled to each cast one vote on all matters brought to the Board, unless otherwise legally disqualified. If a regular director is disqualified from voting on a matter for any legal reason, an alternate for that director may vote on the matter.

4.9.2. The *ad hoc* director shall vote only to break a tie, or when necessary to provide a sufficient number of members voting to take action. For example, if three of the regular members vote in favor of a proposition and three vote against it, the *ad hoc* director shall be entitled to vote to break the tie. If three of the regular members vote for a proposition and three refuse to vote or abstain from voting, the *ad hoc* director may vote so that action can be taken.

4.10. The directors shall elect from among their members a chairman and vice chairman. The chairman and vice chairman of the Board of Directors shall each be entitled to vote on all issues presented to the Board, unless otherwise legally disqualified.

4.11. The directors shall provide for a clerk and for a chief financial officer. Either position may be filled by contract or through employment of staff.

4.11.1. The clerk shall have, in addition to any other duties assigned by the Board, the duty to keep the books and records of the agency and to perform the duties ascribed to a city recorder under the Uniform Fiscal Procedures Act.

4.11.2. The financial officer shall have all duties established by the Board and shall perform the duties described to a city treasurer under the Uniform Fiscal Procedure Act.

4.12. The acts of the directors shall be evidenced and established by signature of the chairman, or in the absence of the chairman by the vice chairman, with attestation by the clerk.

4.13. At least four directors shall be necessary to constitute a quorum of the Board of Directors.

4.14. The affirmative vote of at least four directors shall be necessary to approve any action of the Board.

4.15. Any act or decision of the directors may be overridden by the governing bodies of the Parties each concurring in the override action.

4.16. All meetings of the Board of Directors shall be conducted in accordance with the Open and Public Meetings Act, as modified by § 11-13-223 of the Interlocal Cooperation Act. In addition to complying with the notice requirements of the Open and Public Meetings Act, notice of all meetings of the Board of Directors shall be sent to the chief

clerical officer of each Party and to each alternate director.

4.17. The directors shall adopt policies and procedures defining the duties of the chairman, vice chairman, clerk, and financial officer. The directors may also adopt policies and procedures for conducting the business of the Board, and as the directors determine may be necessary or convenient to conduct Agency operations. In adopting such rules, the Board may request that its rules be approved by the governing bodies of each of the Parties.

4.18. Directors shall not be entitled to any compensation for their service. They shall, however, be reimbursed for all approved expenses, travel, and a reasonable per diem.

4.19. The directors may adopt such rules and procedures for its functions, for operating Agency facilities, and for conducting Agency business as they see fit. The directors shall, within 90 days of creation of the Agency establish purchasing procedures.

4.20. The officers, directors and employees of the Agency shall comply with the provisions of the Utah Municipal Officers and Employees Ethics Act (the "Ethics Act") as found in Utah Code Annotated, Title 10, Chapter 13, Part 13. Each reference in the Ethics Act "municipality" shall be deemed to be a reference to the Agency, unless the context clearly indicates another applicable meaning. Nothing contained in this subsection shall be deemed to abrogate, abate, or delegate any other responsibility that any officer or employee of any member may otherwise have under the Ethics Act.

**SECTION 5. PURPOSE.** The Parties have entered this Agreement to create the separate legal and administrative Agency to accomplish the purposes described in the Recitals. The Agency is created to exercise any power or authority under the Act, including powers that any of the Parties hold, as necessary or convenient to undertake providing water supply utility service to the water users served by each of these Parties. The Agency may also contract to supply water on a wholesale basis to water utility service providers. In particular, the Agency is created to:

5.1. Plan for, design, finance, construct, and operate a water supply system that can and will deliver water supply meeting the requirements of the Clean Water Act, the standards established by the United States Environmental Protection Agency, the Utah Department of Environmental Quality, and any other agency having authority to regulate the supply and quality of culinary water service.

5.2. Contract for such engineering, legal, construction, financing, consulting, and other services necessary to accomplish the purposes of this Agreement.

5.3. Promote water conservation and other sound management practices.

5.4. Plan, design, finance, construct, operate, maintain, enlarge, improve, replace, and, if necessary, demolish and remove any such water supply system as is contemplated in this

Agreement, and to do the same in accordance with federal and state drinking water and fire protection laws, regulations, and other applicable standards.

5.5. Hire and provide for such employees, laborers, consultants, and contractors, and to otherwise arrange for such services as may be necessary or convenient to accomplish the purposes of this Agreement.

5.6. Provide water utility service on a wholesale basis to the Parties and to such other retail water service providers with whom the Board of Directors may enter contracts.

5.7. Collect fees and other revenues from operation of the system and to budget for and pay all debt service, operating expenses, fees, fines, capital expenses, and every other lawful cost and expense of operating the contemplated water supply system.

5.8. Exercise all other powers that could be exercised by any of the Parties in order to accomplish the same purposes, including power of eminent domain (as limited by this Agreement), and all powers set out in Utah Code Annotated § 11-13-204(1)(a).

**SECTION 6. DUTIES OF DIRECTORS AND EMPLOYEES.** All directors and employees of the Agency shall subscribe to and comply with the requirements of the Municipal Officers and Employees Ethics Act as set out in Utah Code Annotated Title 10, Chapter 3, Part 13.

**SECTION 7. POWERS DELEGATED.** The Parties hereby delegate to the Agency all powers possessed by each of them, subject to the limitations set in this Agreement, as may be necessary or convenient to accomplish the purposes of this Agreement. By way of illustration and not limitation, the powers delegated shall include those stated in Utah Code Annotated §§ 10-8-14, 14.5, and 15 and in § 17A-2-1314 that relate in any way to waterworks. The delegation of eminent domain power is limited to the extent set out in paragraph 12.6. The power to levy taxes of any kind is not delegated. The Parties specifically limit, however, the powers of the Agency such that it shall not have authority to sell water or water services on a retail level to any person, but only at a wholesale basis. The term "wholesale" as used herein shall mean sale to an entity regularly engaged in either the business or governmental activity of providing water service or sales to ten or more metered water connections.

**SECTION 8. MANNER OF FINANCING.** The joint and cooperative undertaking in this Agreement shall be financed in the manner set out in this Section.

8.1. The revenue to be used for Agency capital improvements and operations shall be from the following sources:

8.1.1. Initial expenses for creation of the Agency and initial operations shall be paid by assessments to the Parties. Assessments may also be made for subsequent capital and operating expenses. Assessments shall be made under the direction of the Board of

Directors. The assessments to each member shall be based on the ratio of water service connections served by that member to the total number of connections served by the members. Payment of assessments by any member shall be subject to appropriation of funds by the governing body of the member for payment of such assessments.

A. The initial ratio of connections shall be the total number of connections to a Party's water utility system as of the effective date of this Agreement, divided by the total number of connections for all Parties as of the effective date of this Agreement. The term "connections" shall mean all current connections, whether or not water was delivered through those connections for the billing period in which the effective date falls. For example, if the effective date of this Agreement is October 1, 2002 and Delta on that date had 1150 connections, Hinckley had 250, and DOSSD had 150, and the initial assessment was \$10,000, then the ratio of connections and the assessment to each entity would be as set out in the following table:

Entity	Number of Connections	Ratio of Connections	Total Assessment	Assessment Due From Each Member
Delta	1150	0.74	\$10,000.00	\$7,400.00
DOSSD	150	0.10	\$10,000.00	\$1,000.00
Hinckley	250	0.16	\$10,000.00	\$1,600.00
<b>Totals</b>	1550	1		\$10,000.00

B. The ratio of connections shall be adjusted annually or as otherwise determined by the Board of Directors. The adjusted ratio of connections shall be used for all assessments made during that calendar quarter in which the adjustment is made.

8.1.2. The Agency shall apply for and may receive such grants and loans as it may be entitled to receive from governmental and other lawful sources.

8.1.3. The Agency is authorized to issue bonds or notes as authorized under the Utah Interlocal Cooperation Act and/or under the Utah Municipal Bond Act. The Agency shall not issue any bonds, however, until sufficient water utility service agreements have been entered by the Agency with the Parties, or with other entities, to assure sufficient revenues for repayment of the bonds and all reserves, emergency funds, underwriting fees, and other payments necessary to fulfill the covenants of any bonds so issued.

8.1.4. Revenues from services provided under water utility service contracts and other contracts for services entered into by the Agency.

8.1.5. Grants or other contributions from governmental or private entities.

8.1.6. Such other lawful revenue sources as will help the Agency fulfill the purposes of this Agreement.

8.2. All assessments to members shall be subject to the limitations of this paragraph.

8.2.1. Assessments to members shall be made only when other revenues available to the Agency are not sufficient, or are not available for current Agency operations and capital projects.

8.2.2. Assessments made to and paid by members shall constitute and be authorized as revenue sharing under Utah Code Annotated § 11-13-215, provided:

A. The Agency shall have no authority to call on or to receive tax revenues from any Agency member.

B. Unless otherwise specifically provided for in an agreement between a member and the Agency, assessments paid to the Agency shall be from the water utility enterprise fund revenues of a member.

8.3. Financing of the Agency shall also come from revenues of water supply utility services furnished by the Agency under agreements with the members or other entities.

8.3.1. Unless otherwise agreed between a member and the Agency, charges for the Board of Directors shall set a price for each billing unit (in gallons) of water delivered to each member adjusted as necessary to account for the cost of capital improvements repayments, debt service, operating expenses, and maintenance necessary to provide water service to that member, after taking into account other capital contributions and revenues available to the Agency. For each monthly billing, the total revenue needed by the Agency shall be charged to the members so that each member pays an equitable fraction of the revenues needed by the Agency. The fraction shall be as follows:

A. The numerator of the fraction shall be the total number of gallons delivered to a Party's service connection during the previous calendar month, multiplied by a factor as necessary to account for the cost of capital improvements repayments, debt service, operating expenses, and maintenance necessary to provide water service to that member.

B. The denominator of the fraction shall be the total number of gallons delivered to all of the Parties during the same calendar month from which the numerator is derived.

8.3.2. Charges for water services shall at least be sufficient in each fiscal year, when added together with other available funds, to pay the sum of:

- A. Operating expenses during the fiscal year;
- B. An amount equal to the total debt service during that fiscal year for indebtedness incurred by the Agency;
- C. The amounts, if any, to be paid during such fiscal year into any debt service reserve accounts or debt service funds;
- D. The amounts to be paid during the fiscal year into any reserve or contingency funds;
- E. The amounts, if any, budgeted for payment into a capital reserve and replacement fund; and
- F. All other expenses whatsoever payable out of revenues during the fiscal year.

8.3.3. Unless otherwise agreed in writing between a member and the Agency, charges for services under a water service agreement shall be billed monthly on or before the 15<sup>th</sup> day of each calendar month.

8.3.4. Unless otherwise agreed in writing between a member and the Agency, all amounts due from a member or other party to a service contract with the Agency shall be paid on or before the 10<sup>th</sup> day of the calendar month following the billing from the Agency.

8.3.5. At any time when equipment failure, weather, or other cause prevents calculation of service costs based on gallons delivered, the Agency shall prepare a reasonable estimate for such service based on the account history, subject to later adjustment if more accurate information can be later obtained.

8.3.6. Interest on any past due accounts shall be charged to a contracting party at the highest debt service rate for any debt then being paid by the Agency, plus any rebilling or administrative fees set by policies and procedures adopted by the Board of Directors.

**SECTION 9. FISCAL YEAR.** The fiscal year of the Agency shall be from July 1 of any given calendar year and shall end on June 30 of the following calendar year.

**SECTION 10. COMPLIANCE WITH STATE FISCAL PROCEDURES.** The Agency shall comply with all requirements of Utah law regarding finances and fiscal procedures.

10.1. The Agency shall comply with all applicable procedures of the Uniform Fiscal Procedures Act as contained in Utah Code Annotated Title 10, Chapter 6, provided that §§ 10-6-147, and 153 through 156 shall not apply. Further, any reference in the Uniform Fiscal

Procedures Act to a city recorder shall be deemed to refer to the clerk provided for in Section 4.11. References to the city treasurer shall be deemed to refer to the financial officer referred to in Section 4.11.

10.2. The Agency shall comply with all applicable provisions of the Utah Procurement Code as contained in Utah Code Annotated Title 63, Chapter 56.

**SECTION 11. PRICE OF SERVICES.** The price of services to be provided by the Agency shall be determined by contract, subject to the criteria contained in Section 8.

**SECTION 12. WATER RIGHTS.** The water rights to be used to obtain the supply delivered through the system that the Parties contemplate will be designed, financed, constructed, and operated by the Agency shall be provided and managed as set out in this Section.

12.1. Each entity receiving delivery of water from the Agency water system will be required to furnish water rights sufficient to supply that entity, whether such water rights are provided by ownership of appropriated water rights, shares in a mutual water company, or by a water supply contract. Unless otherwise provided in a written agreement between an entity to receive water and the Agency, no water shall be delivered to an entity unless that entity has sufficient water rights for such water delivery.

12.2. Unless otherwise agreed between the entity receiving water service and the Agency, the water rights used to supply water to the entity shall be and remain the property of that entity.

12.3. Each entity receiving water service from the Agency shall be obligated to manage its own water rights, unless the Agency specifically contracts to provide such services. Such obligation to manage water rights include, but are not limited to, the entity being responsible for all:

12.3.1. Change applications necessary for diversion of water through any water system owned and operated by the Agency.

12.3.2. Protection of the entity's water rights against forfeiture, in whole or in part, under Utah Code Annotated § 73-1-4, or any abandonment of its water rights.

12.4. The Agency may contract to manage the water rights belonging to a water service recipient; provided, however, that a water service recipient contracting for such services shall pay the Agency the full cost incurred by the Agency in providing such water right management services.

12.5. The Agency shall not require that water rights be transferred to it as a condition of providing water service.

12.6. Further, the Agency shall not have authority to acquire water rights by eminent domain, unless the eminent domain proceeding to acquire water rights is authorized by a resolution of the governing body of each public agency that is a member of the Agency, in each instance.

**SECTION 13. TERMINATION OF AGENCY AND DISPOSITION OF PROPERTY.** The Agency may be terminated and any property owned by it disposed of as provided in this Section.

13.1. Partial or complete termination of the Agency may occur by:

13.1.1. Expiration of this Agreement;

13.1.2. Mutual agreement allowing withdrawal of one or more members, or unanimous mutual agreement to terminate the Agency;

13.1.3. Order of a court of competent jurisdiction; or

13.1.4. Legislative action specifically dissolving the Agency, or through a statute of general application withdrawing or revoking authority for the Agency to continue its existence.

13.2. No member may withdraw from the Agency, except by mutual agreement of all members. If a member entity withdraws from the Agency, any property owned by the Agency shall continue to be owned by and held by the Agency without any claim of ownership or interest on the part of the withdrawing member, unless otherwise provided in the agreement allowing withdrawal.

13.3. Any property held by the Agency upon complete termination shall be disposed of as follows:

13.3.1. Any tangible property conveyed or transferred to the Agency by a Party on the condition that the property be returned to the Party on dissolution of the Agency shall be returned to that Party or its assignee.

13.3.2. All property of the Agency shall first be offered to Agency members to be sold by sealed bid at a time and in a manner set by the Board of Directors.

13.3.3. Any property remaining after the properties of the Agency have been offered for sale to Agency members shall be sold by public auction in a time, place, and manner determined by the Board of Directors.

13.4. All proceeds from sale of Agency property shall be applied as follows:

13.4.1. To pay the costs of disposition of property.

13.4.2. If the Agency remains in existence after sale of Agency property, the proceeds shall be applied to the Agency budget as determined by the Board of Directors.

13.4.3. If the sale of Agency property occurs as part of a complete termination of the Agency, the proceeds from sale of property shall be applied to pay the debts of the Agency, if any. Any remaining amounts shall be distributed to Agency members proportionately by ratio of the number of water connections served by each member at the time of termination of the Agency.

13.5. As used herein, the term "members" shall mean the original Parties to this Agreement, and any other parties added by amendment.

**SECTION 14. OPERATION OF INDEPENDENT WATER DISTRIBUTION SYSTEMS.** Each Party shall be responsible for operation, maintenance, improvement, and replacements of the culinary water distribution systems presently maintained by that Party.

14.1. Unless provided for by specific written agreement, the Agency shall not be responsible for any maintenance, improvement, operation, or other responsibility beyond the point of connection between the regional system to be constructed by the Agency and the water systems owned and operated by each of the Parties. The point of connection, unless otherwise specifically provided in a written agreement between a Party and the Agency, shall be the discharge side of any water meter measuring water delivered from the Agency system into a Party's system.

14.2. Similarly, each Party shall be responsible for budgeting, billing, and all other administration related to operation of their own water systems, except to the extent otherwise provided in a contract between the Agency and that Party.

**SECTION 15. ASSIGNMENT.** None of the Parties may assign any interest herein without consent of all other parties to this Interlocal Cooperative Agreement and receipt by the Agency of an opinion of nationally recognized bond counsel to the effect that such assignment is legally authorized and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any bonds or notes should the interest on such bonds or note be excluded from taxation for federal income tax purposes. The terms of this Interlocal Cooperative Agreement shall inure to the benefit of and be binding upon the respective representatives and successors of the Parties.

**SECTION 16. NOTICES.** All notices, demands, or other writings in this Agreement provided to be given or made or sent, or which may be given or made or sent, by any Party to another, shall be governed by the following:

16.1. Notice shall be deemed to have been fully given when actually communicated in

writing, whether in person, by facsimile, electronic mail or other written means that can be objectively verified, or when made or sent when made in writing and deposited in the United States mail, registered or certified and postage prepaid, and addressed as follows:

16.1.1. To Delta:

Delta City  
ATTN: Mayor  
76 North 200 East  
Delta, UT 84624

With a copy to:

Delta City  
ATTN: City Recorder  
76 North 200 East  
Delta, UT 84624

16.1.2. To Hinckley:

Hinckley Town  
ATTN: Mayor  
P.O. Box 108  
Hinckley, UT 84635-0108

With a copy to:

Hinckley Town  
ATTN: Town Clerk  
P.O. Box 108  
Hinckley, UT 84635-0108

16.1.3. To DOSSD:

Deseret-Oasis Special Service District  
ATTN: Board Chairman  
P.O. Box 866  
Delta, UT 84624-0866

With a copy to:

Deseret-Oasis Special Service District  
ATTN: District Clerk  
P.O. Box 866  
Delta, UT 84624-0866

16.2. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such Party as above provided.

## **SECTION 17. GENERAL PROVISIONS.**

17.1. Waiver. The waiver by the Agency or any Party of, or the failure of the Agency or any Party to take action with respect to any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same, or any other term, covenant, or condition contained in this Agreement.

17.2. Attorney Fees. If any Party is required to commence proceedings on account of any breach of, or to enforce any of the covenants, terms, or conditions of this Agreement, any prevailing party shall be entitled to recover from any other party the prevailing party's costs and reasonable attorney fees, whether or not a lawsuit is actually filed and whether or not a final judgement is entered. Such costs and reasonable attorney fees shall also be payable in any dispute resolved through alternative dispute resolution.

17.3. Paragraph Captions. The captions appearing under the paragraph numbers in this Agreement are for convenience only and are not a part of this Agreement and do not in any way modify the terms of this Agreement.

17.4. Governing Law. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

17.5. Entire Agreement. This Agreement shall constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon any party except to the extent incorporated in this Agreement.

17.6. 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 a writing signed by an authorized representative of each Party.

17.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

17.8. Severability. The following provisions shall apply if any provision of this Agreement is held to be illegal, invalid, or unenforceable:

17.8.1. Any such provision will be fully severable and this Agreement will be construed and enforced as if the provision had never been part of this Agreement;

17.8.2. The remaining provisions of this Agreement will remain in full force and will not be affected by severing such a provision from this Agreement; and

17.8.3. The intent of the invalid provision shall, to the extent permitted by law, be enforced according to the intent thereof.

17.9. Additional Documents. The parties agree to execute whatever additional documents may be necessary to effectuate the terms of this Agreement.

17.10. Terminology. All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural; any gender, either masculine or feminine; and any corporation, partnership or other business entity and any persons acting in a representative capacity, as the context or sense of this Agreement or any paragraph or clause herein may require.

17.11. Consultation with Counsel. Each Party represents that such Party has had opportunity to consult with legal counsel of that Party's choice concerning this Agreement

prior to execution hereof.

17.12. Authority to Execute Agreement. Each party represents that the official signing on its behalf has been duly authorized by a resolution of its governing body.

**SECTION 18. EFFECTIVE DATE OF AGREEMENT.** This Agreement shall take effect when the following events have occurred:

18.1. The Agreement has been approved by resolution of the governing bodies of each of the Parties;

18.2. The Agreement has been filed with the keeper of the records of each Party hereto; and

18.3. Each Party has appointed its representative to the Agency Board of Directors.

Each Party shall send notice to the other Parties when it has complied with the provisions of this Section.

**SECTION 19. NOTICE TO TAX COMMISSION.** The Board of Directors shall file notice with the Utah Tax Commission as required by Utah Code Annotated § 11-13-204(4).

IN WITNESS WHEREOF, the Parties have executed this Agreement on the \_\_\_\_ day of \_\_\_\_\_, 2002, effective as of the day and year specified herein.

**DELTA CITY**, a municipal corporation of the State of Utah

By: \_\_\_\_\_  
GAYLE BUNKER  
Its Mayor

ATTEST: \_\_\_\_\_  
City Recorder

**HINCKLEY TOWN**, a municipal corporation of the State of Utah

By: \_\_\_\_\_  
DONALD BROWN  
Its Mayor

ATTEST: \_\_\_\_\_  
Town Clerk

**DESERET-OASIS SPECIAL SERVICE DISTRICT**, a political subdivision and quasi-municipal corporation of the State of Utah

By: \_\_\_\_\_  
DALLAS J. ANDERSON  
Administrative Control Board  
Chairman

ATTEST: \_\_\_\_\_  
District Secretary