RESOLUTION No. 11-01-2010

A RESOLUTION TO ENTER INTO AN AGREEMENT WITH CENTRAL UTAH WATER CONCERVANCY DISTRICT FOR THE ACCEPTANCE AND USE OF GRANT PROCEEDS ON THE SANTAQUIN CITY WATER RECLAMATION FACILITY PROJECT

WHEREAS, the governing body of the City of Santaquin, Utah, acknowledges a need to enhance the City's Sewer System to meet the current and future needs of the community; and

WHEREAS, the Membrane Bio-Reactor Treatment technology chosen to meet the City's sewer needs will produce Type I water that will be used in the City's Pressurized Irrigation System and for Aquifer Recharge; and

WHEREAS, reuse of this valuable resource will benefit the city for years to come by conserving water resources by reducing the city's water needs by approximately 5300 acre feet of water per year; and

WHEREAS, The Central Utah Water Conservancy District commends said conservation efforts and desires to support said project with a \$500,000 grant; and

WHEREAS, when grant proceeds are extended by a branch of the Federal government certain reporting requirements are required necessitating a written agreement between both parties,

NOW THEREFORE, **BE IT RESOLVED** by the City Council of Santaquin, Utah, enters into an agreement with the Central Utah Water Conservancy District to provide funding for the Santaquin City Water Reclamation Facility Project.

(See attached)

ADOPTED AND PASSED by the City Council of Santaquin City, Utah, this 3rd day of November, 2010.

SANTAQUIN CITY

James E. DeGraffenried, Mayor

Attest

Susan B Farnsworth, City Recorder

Original Sent to

Agreement No. 843

CENTRAL UTAH WATER CONSERVANCY DISTRICT CENTRAL UTAH PROJECT COMPLETION ACT WATER CONSERVATION CREDIT PROGRAM

AGREEMENT BETWEEN THE CENTRAL UTAH WATER CONSERVANCY DISTRICT AND SANTAQUIN CITY CORPORATION TO PROVIDE FUNDING FOR THE SANTAQUIN CITY WATER RECLAMATION FACILITY PROJECT

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Signatory Page

CENTRAL UTAH WATER CONSERVANCY DISTRICT CENTRAL UTAH PROJECT COMPLETION ACT WATER CONSERVATION CREDIT PROGRAM

AGREEMENT BETWEEN THE CENTRAL UTAH WATER CONSERVANCY DISTRICT, AND SANTAQUIN CITY CORPORATION TO PROVIDE FUNDING FOR THE SANTAQUIN CITY WATER RECLAMATION FACILITY PROJECT

THIS AGREEMENT is made this 3rd day of November, 2010, pursuant to Section 207 of the Central Utah Project Completion Act (Titles II through VI of Public Law 102-575, 106 Stat. 4605, October 30, 1992), hereinafter called the "CUPCA", between the CENTRAL UTAH WATER CONSERVANCY DISTRICT, hereinafter called the "District" and Santaquin City Corporation, hereinafter called the "Applicant", for the purpose of providing funding for the implementation of Santaquin City Water Reclamation Facility Project, hereinafter called "Project", and the opportunity to review activities undertaken with such funds.

WITNESSETH, THAT:

WHEREAS, the following statements are made by way of explanation:

WHEREAS, the District has adopted the Water Conservation Credit Program, hereinafter called the "Credit Program," to assist in achieving the purposes of CUPCA Section 207. The Credit Program document as it exists from time to time is hereby incorporated in this Agreement.

WHEREAS, as part of the Credit Program and pursuant to Section 207(e) of CUPCA, the District is authorized to finance, with federal monies, up to sixty-five percent (65%) of the cost of implementing selected water conservation measures. The District has elected to enter into agreements providing such financing to qualified, non-federal entities and individuals to achieve water savings/conservation. Such non-federal entities must obtain the remaining financing required to complete, operate and maintain the Project through private, state and/or local matching funds.

WHEREAS, Project compliance with the National Environmental Policy Act of 1969 ("NEPA") has been completed and approved in accordance with the District's NEPA Handbook. A Categorical Exclusion is on file with the District.

WHEREAS, a feasibility study on the Project has been approved by the District and United States Department of Interior (the "Feasibility Study").

WHEREAS, it is the intention of the parties that the District's role regarding implementation of the Project will be limited to providing funds under CUPCA and monitoring the expenditure of the funds so provided. The District's role may include financial review and construction monitoring.

WHEREAS, it is the intention of the parties that the Applicant's performance of this Agreement and implementation of the Project shall be in accordance with Section 207 of CUPCA and that the District and the United States shall not be liable for damages resulting from the implementation of the Project by the Applicant.

WHEREAS, the parties are willing to perform their respective obligations in accordance with the provisions of this Agreement.

NOW THEREFORE, for mutual consideration, including the recitals and covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

The following definitions shall apply to the following terms as used in this Agreement:

- (a) <u>Credit Program</u>. Water Conservation Credit Program adopted by the District under Section 207 of CUPCA to identify, evaluate and implement water conservation activities and to monitor progress toward the Water Conservation Goal.
- (b) <u>Credit Program Funds</u>. Federal funds provided by Section 207(e)(2) of CUPCA for implementation of water conservation projects through the Credit Program. These funds may not exceed 65% of the total Project Implementation cost.
- (c) <u>Feasibility Study</u>. A technical report, prepared by the Applicant, dated August 2009 and approved by the District and United Stated Department of Interior (Department) describing the elements of the proposed water conservation project.
- (d) <u>Local Cost Share</u>. Non-federal funds and in-kind contributions to be provided by the Applicant for implementation of the Project. These funds must be a minimum of 35% of the total Project Implementation cost. In-kind contributions must be approved by the District.
 - (e) <u>NEPA</u>. National Environmental Policy Act of 1969.
- (f) <u>NEPA Document.</u> Categorical Exclusion, Environmental Assessment Finding of No Significant Impact, or Environmental Impact Statement.
- (g) <u>Project Annual Report</u>. A report, prepared by the Applicant, containing information on the operation of the Project. For multi-year projects, it shall contain a detailed description of the work to be performed during the past and ensuing year, an implementation schedule, and an itemized breakdown of the Credit Program Funds, Local Cost Share, and any other funds to be expended. This report is to be submitted to the District each year during the term of this Agreement.
- (h) <u>Project Implementation</u>. Includes activities required to make the Project operational, such as, but not limited to, planning, design, construction engineering and management, construction, legal services, financing services, public education, NEPA compliance and environmental mitigation. It does not include operation and maintenance of the Project.
 - (i) Water Conservation Goal. A District-wide goal of conserving 80,100 acre-feet of water per year.

2. TERM OF AGREEMENT

This Agreement shall become effective upon the date of its execution. This Agreement shall remain in effect through July 1, 2035, unless sooner terminated as provided in this Agreement.

3. PROJECT TO BE IMPLEMENTED

The Applicant shall implement the Project in accordance with the terms and conditions of this Agreement and in accordance with the approved Feasibility Study dated September 2008. Project Implementation will consist of the following:

The Santaquin City Water Reclamation Facility project will construct a membrane bioreactor (MBR) wastewater treatment facility and deliver treated (Type I) water back into the existing secondary system.

4. MAINTENANCE OF PROJECT

The Applicant shall monitor the proper operation of the Project for the life of the Project. The Applicant will ensure that the Project is providing water conservation in the following amounts starting in the proposed first year of operation and shown in ten year increments thereafter (feasibility study dated August 2009 contains a more complete listing of the yearly amounts which the applicant will be required to match in their yearly reporting):

Year	Annual Conservation / Re-use (Acre-feet/year)	
2012	500	
 2020	500	
2030	500	

The Applicant shall be required to measure the amount of water conservation achieved annually, utilizing the following method of assessment:

At the end of each year, the Applicant will submit an assessment report summarizing the progress and activities completed. The applicant is required to submit a final construction report to the District at the completion of the construction process. The applicant will submit an annual report to the District for the life of the project.

If the District, in its sole discretion, determines that the Project, as operated and maintained by the Applicant, consistently fails to achieve the stated amount of water conservation, the District may terminate this Agreement.

5. RESPONSIBILITY OF THE DISTRICT

The District will be responsible to make Credit Program Funds available to the Applicant to cover the Credit Program share of Project Implementation costs in accordance with Section 7(a)(1), concurrently and proportionately with the required Local Cost Share, as provided in this Agreement.

6. RESPONSIBILITY OF APPLICANT

- (a) The Applicant will be responsible for Project Implementation, and operation and maintenance of the Project throughout the term of this Agreement, including timely and workmanlike performance of the following:
 - (1) Preparing designs and specifications, or causing such work to be performed.
 - (2) Constructing the Project, or causing such work to be performed, in accordance with the designs and specifications.
 - Obtaining all necessary licenses and permits, and governmental approval required for the Project, or causing such work to be performed.
 - (4) Awarding construction contract(s) and providing for construction, inspection, oversight and management, or causing such work to be performed.
 - (5) Complying with all applicable federal, state and local laws, codes, and regulations including, but not limited to federal fish, wildlife, recreation and environmental laws, in performing the work, or causing such work to be performed.
 - (6) Correcting or compensating for damages occurring during the construction period to persons or property as a result of the construction, or causing such work to be performed. Payments or compensation with respect to such damages shall be identified and segregated from Project Implementation costs in accordance with the financial accounting and reporting procedures specified in this Agreement.
 - (7) Using proper safety and health precautions to protect the work, the workers, the public, and property of others, or causing such work to be performed.
 - (8) Indemnifying the District and the United States with respect to any third party claim, demand or action arising under or related to the design, construction, operation, maintenance or implementation of the Project.

- (9) Operating and maintaining the Project, without the use of Credit Program funds, throughout the term of this Agreement.
- (10) Preparing and submitting a Project Annual Report to the District on or before November 30 of each year during the term of this Agreement. The Project Annual Report shall comply in all respects with the Project Annual Report Guidelines attached as Exhibit A, and incorporated herein by reference, and shall be subject to the District's approval. Applicant shall be responsible for all costs associated with the preparation and submittal of the Project Annual Report.
- (11) Applicant shall notify the District in writing of any proposed changes to the Project after issuance of the NEPA document. Applicant shall give such notice in a timely manner so as to provide sufficient lead time for the preparation of any additional NEPA documents that may be required.
- (12) Applicant shall submit to the District a final report of construction before the end of the first year of operation.

7. ALLOCATION OF COSTS AND FUNDING

- (a) The parties shall provide for payment of Project Implementation costs as follows:
 - (l) The District shall provide Credit Program Funds for payment of approximately 3 percent of invoiced Project Implementation costs. Such Credit Program Funds shall not exceed, in the aggregate, \$500,000. In no event shall all federal funds expended for the Project, including Credit Program Funds, exceed in the aggregate, 65 percent of the total Project Implementation cost.
 (2) Applicant shall pay all Project Implementation costs not covered by Credit Program Funds. The Local Cost Share is estimated to be \$16.310.000, approximately 97 percent of total Project Implementation costs. If Project Implementation costs exceed \$16,310,000, all costs greater than the maximum amount of Credit Program Funds to be provided under Section 7(a)(1), above, will be paid by the Applicant.
 - (3) In-kind contributions, as approved by the District, shall contribute to the Local Cost Share.
 - (4) Applicant shall pay the Local Cost Share of invoiced Project Implementation costs concurrently with the District's payment of Credit Program Funds. The District shall not provide Credit Program Funds for Project Implementation until the Applicant has provided assurance acceptable to the District that Applicant will timely pay the Local Cost Share required to complete Project Implementation as described in the Feasibility Study.
- (b) This Agreement is made subject to the availability of funds. If Congress does not appropriate or the Department does not allocate sufficient Credit Program Funds, Applicant, at its option, may terminate this Agreement without prejudice to Applicant or liability to the District, or Applicant may continue to perform under this Agreement utilizing only funds provided by Applicant. If Applicant completes the Project utilizing only such funds, the District shall reimburse Applicant in an amount equal to the remaining Credit Program Funds available for the Project, up to the maximum stated in Section 7(a)(1) above, when Congress makes such Credit Program Funds available. Applicant releases the District from any and all liability resulting from the failure or delay of Congress or the Department with respect to the appropriation or allocation of Credit Program Funds for the Project.

8. SCHEDULE OF WORK

The schedule of Project Implementation shall be as follows, and, for multi-year projects, in accordance with the Project Annual Report.

Design and Construction will begin late in 2010. The system will be operational by the 2012 irrigation season.

9. SCHEDULE OF FUNDING

(a) The anticipated schedule is as follows:

FY 2011 \$500,000

- (b) Applicant acknowledges that failure to expend the federal funding in the fiscal year(s) above could result in the reduction of the total federal funding authorized for this project.
- (c) Payment by the District to the Applicant shall be in accordance to the funding option selected by the Applicant prior to project closing. These funding options are outlined as follows:
- (1) Applicant shall deposit not less than quarterly the required Local Cost Share in a District Account. This account shall be interest bearing. Once these funds have been deposited, the District shall then disburse Credit Program Funds and Local Cost Share Funds at the approved ratio (Article 7)in one check to the Applicant based upon approved monthly invoices and assurance that the project is being constructed, implemented or maintained in compliance with all applicable laws and regulations, including Credit Program rules and regulations;
- (2) Applicant shall submit to the District monthly or quarterly documentation certifying an amount that has been paid to suppliers, vendors or has been expended as in-kind contributions. The Applicant must certify that all itemizations of costs incurred are true and correct to the best of Applicant=s knowledge and belief. When such documentation has been received, the District, in its sole discretion, shall determine the amount of Credit Program Funds to pay in response to each request for payment, and shall make such payment within thirty (30) days after the request.

In the event actual Project Implementation costs exceed the maximum as set forth in Article 7, Applicant may apply to the District for additional funding. Applicant's expenditures beyond the maximum shall be at Applicant's sole risk. The District, in its sole discretion, may deny additional funding for such expenditures or approve additional funding in an amount determined solely by the District. In no case shall Credit Program Funds exceed 65 percent of total Project Implementation costs. Regardless of whether the Applicant incurs additional Project Implementation costs or receives additional Credit Program Funds, Applicant is responsible for achieving the amount of water conservation, as specified in this Agreement.

Applicant shall maintain segregated accounts and accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all Project Implementation costs. The accounting records shall also accurately reflect all amounts received as Credit Program Funds, Local Cost Share, and any other federal, state, local or other funds for the Project.

10. TITLE TO PROPERTY

Inasmuch as the conservation measure taken under this Agreement will be implemented on non-federal property, the District will acquire no interest in the property or the facilities related to Project implementation.

11. THE DISTRICT'S RIGHT OF INSPECTION AND APPROVAL

- (a) The District shall have the right to inspect and review, at its discretion, any and all aspects of the work performed with Credit Program Funds, including designs, specifications, and construction in progress, to verify adherence to sound engineering principles and conformance with the Credit Program and Federal laws and regulations. The District may approve the work performed or reject any work performed that fails to meet these standards. The District shall notify the Applicant in writing within ten (10) days after determining to withhold approval of proposed design, specifications, or construction. The District may withhold approval at any phase of design or construction
- (b) Notwithstanding anything in this Agreement to the contrary, final responsibility to provide compliance with sound engineering principles of design and construction shall rest with the Applicant. Any failure of the District to identify a deficiency in design or construction, to withhold approval of any work performed, or to properly notify the Applicant of approval withheld, shall in no manner relieve the Applicant of its responsibilities

under this Agreement, at law or in equity. The District assumes no responsibility for the accuracy of Applicant's representations, or the feasibility or safety of the Project's design, construction or operation.

12. CONTRACTS WITH THIRD PARTIES

- (a) The District and the United States shall not be a party to or obligated in any manner by contracts entered into between the Applicant and other parties pursuant to this Agreement. The Applicant is the responsible authority, without recourse to the District or the United States, for the settlement and satisfaction of all contractual and administrative issues arising out of Applicant's contract awards and performance in support of this Agreement. Applicant shall require all third-party contracts and subcontracts related to the Project to contain the language of Section 12(b) or its functional equivalent.
- (b) The Applicant shall provide copies of the environmental commitment plans for the Project, if applicable, to each contractor. The Applicant shall require the inclusion in all consultant engineering/architect contracts, a statement and warranty that the contractor shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications and other services furnished by the contractor, and that the contractor shall, without additional compensation, correct any errors and revise any deficient designs, drawings, or specifications.
- (c) The conditions in this Article do not relieve the Applicant of the contractual responsibilities arising under its contracts.

13. COMPLETION OF THE WORK

If, prior to completion of the Project, Applicant expends all Credit Program Funds to be advanced under this Agreement, Applicant shall complete the Project with other funds, unless the parties mutually agree that it is not practical to complete the Project.

14. DISPOSAL OF PROPERTY ACQUIRED WITH CREDIT PROGRAM FUNDS

The Applicant agrees to obtain the District's written approval regarding the disposition and procedures for the disposal of property acquired with Credit Program Funds prior to termination of this Agreement. Applicant hereby grants the District a security interest in the proceeds of any such sale to secure Applicant's obligation to repay Credit Program Funds in the event of default under this Agreement.

15. DEFAULT AND REMEDIES

- (a) Applicant shall be considered to be in default if (1) it has failed to complete the Project by September 30, 2012, or (2) after completion, has failed to attain the amount of water conservation specified in this Agreement through no fault of the District; and (3) after thirty (30) days' written notice from the District of such failure to perform, it has not commenced to cure the failure, or diligently completed the cure thereafter. In the event of Applicant's default, the District shall be entitled immediately to take any or all of the following actions:
 - (1) Terminate this Agreement;
 - (2) Obtain an injunction against Applicant or its assigns preventing it from interfering with the orderly and timely achievement or preservation of the Water Conservation Goal;

(3) Recover the portion of Credit Program Funds that corresponds to any failure to attain the water conservation specified in Article 4. Such portion shall be calculated as the percentage difference between the amount of water conservation required under Article 4 and the amount of water conservation achieved, multiplied by the amount of Credit Program Funds provided under this Agreement, indexed to the Bureau of Reclamation Construction Cost Index. This amount is calculated to be approximately \$1,275 per acre-foot of water conservation not achieved (indexed as stated above). For example, if the Project achieves 80 percent of the water conservation stated in Article 4, the District may recover 20 percent of the Credit Program Funds provided (indexed as stated above); if the Project is not completed or otherwise fails to conserve any water, the District may recover 100 percent of the Credit Program Funds provided (indexed as stated above). In addition, all other reasonable costs and expenses incurred in enforcing this Agreement, including reasonable attorney fees may be recovered by the District.

The remedies set forth above are cumulative and are in addition to any other remedies available to the District under this Agreement, at law or in equity.

(b) The District shall be in default if (1) it has substantially failed to perform under this Agreement through no fault of Applicant; and (2) after ninety (90) days' written notice from Applicant of such substantial failure to perform, it has not commenced to cure the failure and diligently completed the cure thereafter. In the event of the District's default, the Applicant shall be entitled to immediately terminate this Agreement and pursue any other remedies available to it under this Agreement, at law or in equity.

16. RECORDS RETENTION

Applicant shall retain all financial records, supporting documents, records documenting amount of water conservation, and all other records pertinent to this Agreement and the work performed with Credit Program Funds, until three (3) years after the date of written declaration from the District that the Project is substantially complete as provided in Article 2; provided, however, that if any litigation, claim, or audit is commenced or raised before the expiration of such three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, or until the 3-year period expires, whichever occurs first.

17. COVENANT AGAINST CONTINGENT FEES

The Applicant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Applicant for the purpose of securing business. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability or in its discretion to subtract from Credit Program Funds to be advanced under this Agreement the full amount of such commission, percentage brokerage or contingent fee.

18. APPLICANT'S REPRESENTATIONS AND WARRANTIES

As an inducement for the District to enter into this Agreement, Applicant represents and warrants as follows:

- (a) <u>Prior Representations</u>. All written representations of Applicant submitted to CUWCD in connection with the Project or this agreement including the Feasibility Study, and NEPA Document, on which the District has relied in extending financing under this Agreement, are true and correct to the best of Applicant's knowledge and belief.
- (b) <u>Capability</u>. Applicant has the lawful authority, capability, including all necessary manpower and facilities, to implement, maintain and operate the Project and otherwise timely perform its obligations under this Agreement.
- (c) <u>Title</u>. Applicant holds and shall maintain during the term of this Agreement title to, or the legal and equitable right to use, all water rights, land, easements and facilities necessary to construct, implement, operate and maintain the Project. At its own expense, Applicant shall take all actions necessary to preserve all such property rights, including the timely payment of all applicable taxes, assessments and fees. The construction, implementation and operation of the Project will not interfere with existing water rights or other property rights.
- (d) <u>Authorization</u>. The person who signs this Agreement on Applicant=s behalf has been duly authorized to do so.

19. APPLICANT'S ACKNOWLEDGMENTS

Applicant acknowledges that the District has certain responsibilities under Section 207 of the CUPCA, including the timely filing of a Water Management Improvement Plan and supplements and the timely achievement of the Water Conservation Goal. Applicant acknowledges further that Applicant's timely performance under this Agreement is critical to the District's successful fulfillment of those responsibilities, and that its nonperformance may result in substantial penalties for the District.

20. APPLICANT'S STANDARD OF CARE

Applicant shall perform its obligations under this Agreement in a timely and workmanlike manner. Applicant shall correct any problem or deficiency arising out of its failure or the failure of its contractors or subcontractors to meet this standard of care without additional cost to the District.

21. NO PARTNERSHIP

Neither this Agreement nor the parties' performance under this Agreement shall be construed to create a partnership or joint venture between the parties, nor shall Applicant be construed to be an agent or employee of the District.

22. ACKNOWLEDGMENT OF CREDIT PROGRAM

Applicant shall place on the Project site permanent public acknowledgment of Credit Program assistance in financing the Project. The District shall provide the Applicant appropriate signage or other advertising to accomplish this acknowledgment.

23. ACCESS TO PROJECT SITE

Applicant shall allow the District access to the Project site at all reasonable times.

24. CHANGES

The District, in its discretion, may make or approve changes to the Project. If such changes affect the cost or time required for Applicant to complete, implement or maintain the Project, the parties shall make an equitable adjustment in this Agreement through a change order. All such changes shall be subject to the District's prior written approval.

25. INDEMNIFICATION

To the greatest extent allowed by law, Applicant shall indemnify and defend the District and hold the District and its employees harmless against all third party damages, losses, claims, attorney fees and costs arising out of any act or omission of Applicant related in any way to Applicant's performance under this Agreement, or any interference with the property rights of others occasioned by the design, construction, implementation or maintenance of the Project. This indemnification provision shall apply to all theories of recovery, including breach of contract or warranty, negligence, quiet title, and strict or statutory liability, except for sole negligence by the District.

The Applicant shall require each of its contractors and subcontractors to maintain liability insurance as required under State of Utah procurement regulations.

26. AUTHORIZED REPRESENTATIVES

The parties respectively designate the following persons to act as their authorized representatives in matters and decisions pertaining to the timely performance of this Agreement:

For District:

D. Heath Clark, P.E. Project Manager Central Utah Water Conservancy District 355 West University Parkway Orem, Utah 84058;

For Applicant:

Trevor Lindley, P.E. J-U-B Engineers 466 North 900 West Kaysville, UT 84037

The authorized representatives shall have full power to bind the District and Applicant in decisions not requiring approval of their respective boards. All written notices required to be given under this Agreement shall be hand delivered, or sent via facsimile or United States mail, postage prepaid, to the parties' respective authorized representatives identified above. Notice shall be deemed to be received upon actual receipt or three (3) days after mailing, whichever occurs first.

27. ASSIGNMENT

Applicant shall not assign its interest in this Agreement, the Project, or the land, facilities and water rights associated with the Project, without the prior written consent of the District. Any successor in interest or assignee of Applicant shall be required to enter into an agreement with the District substantially similar to this Agreement and to operate and maintain the Project throughout the remainder of the term of this Agreement, including preparation and submission of Project Annual Reports. Subject to this limitation on assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties' respective successors and assigns.

28. MISCELLANEOUS PROVISIONS

- (a) <u>Entire Agreement</u>. This Agreement and the attached exhibit constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and they supersede all previous or contemporaneous representations or agreements of the parties regarding the subject matter of this Agreement.
- (b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, except to the extent those laws are preempted or superseded by applicable laws of the United States. Applicant hereby consents to the jurisdiction of the courts of the State of Utah, or the courts of the United States located in the State of Utah, as the sole forum for any proceeding arising out of any difference, dispute, claim or controversy relating to this Agreement or its enforcement.
- (c) <u>Modification</u>. No modification of this Agreement shall be valid or binding, unless made in writing and signed by both parties.
- (d) <u>Waiver</u>. Acceptance by either party of any performance less than that required by this Agreement shall not be deemed to be a waiver of that party's rights under this Agreement. No waiver of any provision of this Agreement shall be deemed to be a waiver of any other provision, nor shall any waiver constitute a continued waiver. Any waiver of any provision of this Agreement shall be in writing and shall be signed by the party waiving the provision.
- (e) <u>No Third-Party Beneficiaries</u>. This Agreement gives no rights or benefits to anyone other than the parties and has no third-party beneficiaries.
- (f) <u>Severability</u>. The provisions of this Agreement are severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

IN WITNESS WHEREOF, the parties execute this Agreement on the date first written above.

CENTRAL UTAH WATER CONSERVANCY DISTRICT	SANTAQUIN CITY	NUCAS	
By: Don A. Christiansen	By: James E. DeGraffenried	Jenoorporded Z Jenucry 4, 1932	
Its: <u>General Manager</u>	Its: <u>Mayor</u>	TO OF WE	
ATTEST:	ATTEST:		
Betty Bolander Assistant to the General Manager	Susan B Parnsworth City Recorder	_	
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printed: October 29, 2010

EXHIBIT A

PROJECT ANNUAL REPORT GUIDELINES

In accordance with the requirements of the Water Conservation Credit Program a Project Annual Report is required of the applicant for the life of the water conservation project, as stated in the Feasibility Study. The Project Annual Report is to include:

- X General administrative information about the project
- X An assessment of the project documenting results to date
- X Any changes in the project affecting amount of water conservation
- X Problems since last Project Annual Report and proposed solutions
- X Outlook for the next year (i.e. any planned alterations to the project and any other pertinent information)
- X A detailed description of the implementation performed during the past year and to be performed in the ensuing year, and an itemized breakdown of the Credit Program Funds, Local Cost Share funds, and any other funds expended for projects funded over more than one year

The applicant is required to submit two (2) copies of the Project Annual Report to CUWCD by **November 30** of each year after initiation of the Contract. The Report must contain information on the previous calendar-year or portion thereof. For example, reports due on November 30, 1999 shall cover the 1999 Water Year (approximately April 1 through October 15).

A **cover page** is required as a preface to the actual report. This cover page shall be clearly labeled "PROJECT ANNUAL REPORT for *name-of-project*" and shall include the application number, and the date of submittal. Once submitted, the report will be reviewed by CUWCD.

The following sections describe specific information and an outline of the format required for the Project Annual Report:

I. Administrative Information

A. Project Information

List the project name or title; the application number originally assigned to the project; the contact person, address, telephone, and fax number.

B. Signature and Date

The Director, Chairman or other responsible person authorized by the applicant shall sign and date the Project Annual Report.

II. Detailed Project Schedule and Expected Future Costs

Indicate if the implementation of the project was completed by the end of the reporting period. If implementation of the project was not completed during the reporting period then provide a

timetable or schedule for project completion. Include planning tasks; design and construction tasks; interagency coordination requirements; and, environmental/regulatory requirements remaining. In addition, provide an itemized breakdown of the Credit Program Funds, Local Cost Share funds, and any other funds to be expended for project in the coming year.

III. Water Conservation

A. Water Conservation Realization

Provide documentation for the method of measurement for water conserved by implementation of the project. This method of assessment must be in accordance with the methodology provided in the Final approved Feasibility Study. Provide a record of actual water conserved for the water-year or the indicated portion thereof.

B. Water Conservation Projection

If the water conservation project, or portion thereof, was not implemented within the water-year, discuss any changes to any previous water conservation projections provided. Discuss any changes in the methodologies used to assess water conserved. If necessary, provide an update of the water conservation schedule for the life of the project; including provisions for phased implementation.

IV. Issues and Solutions

Indicate any issues or concerns encountered with the implementation of the project as it relates to the water conserved and provide possible solutions or alternatives. This should include information on any changes to the financial requirements for completing, operating, or maintaining the project; problems with constructing, implementing, operating, or maintaining the water conservation project; decreases or increases in actual water conserved if different than originally projected.

V. Outlook

Provide a description of the progress of the project for the next year. Discuss such topics as new information on portions of the project yet to be implemented; or opportunities for increased water conservation with this project; or ideas for reducing operation and maintenance costs. Present changes or alterations to the water conservation project that are different from that agreed to in the Contract.