

**SAN JUAN COUNTY UTAH
RESOLUTION NO 2020- 11**

A RESOLUTION ENTERING INTO AN INTERLOCAL AND REIMBURSEMENT AGREEMENT WITH THE SPANISH VALLEY SPECIAL SERVICE DISTRICT FOR REIMBURSEMENT OF COUNTY FUNDS USED TO PAY WAGNER CONSTRUCTION INC. FOR A CHANGE ORDER FOR WORK RENDERED DURING THE 2019 SPANISH VALLEY WATER PROJECT

WHEREAS, the Parties, pursuant to the Utah Interlocal Cooperation Act, which is codified at Title 11, Chapter 13, Utah Code Annotated (the "Act"), are authorized to enter into in this Agreement; and

WHEREAS, the County acknowledges the Settlement Agreement approved by the SSD on the 22nd of July, 2020 between the San Juan Spanish Valley Special Service District and Wagner Construction Inc.; and

WHEREAS, in that Settlement Agreement, those parties in arbitration AAA Case No. 01-19-0001-9730 arrived at a mediated settlement on the following material terms:

1. San Juan Spanish Valley Special Services District (the "SSD") will pay to Wagner Construction, Inc. ("Wagner") the sum of \$750,000, to be paid as equitable adjustments in full satisfaction of the claims asserted in the arbitration, including disputed change proposals and any related damages, costs, and fees.
2. The settlement payment will be on a mutually agreeable Change Order attached to the settlement agreement.
3. Wagner will fully release the SSD from all claims related to the underlying project, including all claims that were or could have been raised in the arbitration.
4. The settlement is contingent on the SSD board's and the San Juan County Commission's approval of the settlement agreement and funding, as applicable. The SSD will present the settlement for approval at the earliest scheduled meetings of the SSD board and the County Commission as is consistent with notice and other any other legal requirements under Utah law.
5. Once the formalized settlement agreement has been fully approved and executed by the SSD and Wagner, the settlement funds will be released to Wagner forthwith and the arbitration dismissed each party to bear its own remaining arbitration costs, if any.

WHEREAS, for and in consideration of the mutual promises, obligations, and/or covenants contained herein, and for other good and valuable consideration, the receipt, fairness, and sufficiency of which are hereby acknowledged, and the Parties intending to be legally bound, the Parties do hereby mutually agree on the enclosed reimbursement agreement; and

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of San Juan County Commissioners

PASSED, ADOPTED, AND APPROVED by the Board of San Juan County Commissioners this 4th day of August, 2020, by the following vote:

Those voting aye: Commissioners Maryboy, Grayeyes, Adams

Those voting nay: 0

Those absent or abstaining: 0

BOARD OF SAN JUAN COUNTY COMMISSIONERS



Kenneth Maryboy, Chair

ATTEST:

John David Nielson
John David Nielson, Clerk/Auditor

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**INTERLOCAL COOPERATION AND
REIMBURSEMENT AGREEMENT**

This Interlocal Cooperation and Reimbursement Agreement (this "Agreement") is made and entered into by and between San Juan County, a political subdivision of the state of Utah (the "County"), and the San Juan Spanish Valley Special Service District, also a political subdivision of the state of Utah (the "District"). The County and the District may be collectively referred to as the "Parties" herein or may be solely referred to as a "Party" herein.

Recitals

- A. WHEREAS, the Parties, pursuant to the Utah Interlocal Cooperation Act, which is codified at Title 11, Chapter 13, Utah Code Annotated (the "Act"), are authorized to enter into in this Agreement;
- B. WHEREAS, The County, wishes to enter into a Reimbursement Agreement with the District to continue to allow them to operate the Spanish Valley water and sewer system as well as finalizing the construction and final payment of all contractors thereof;
- C. WHEREAS, the District desires assistance in a one-time payment to Wagner for arbitration results and finalization of any and all claims by Wagner Construction Inc. and to reimburse those funds as specified in this Agreement.

NOW, for and in consideration of the mutual promises, obligations, and/or covenants contained herein, and for other good and valuable consideration, the receipt, fairness, and sufficiency of which are hereby acknowledged, and the Parties intending to be legally bound, the Parties do hereby mutually agree as follows:

- 1. Purpose.
 - 1.1. The purpose of this agreement is to establish a Reimbursement Agreement for the reimbursement of County funds used as payment to cover those costs indicated in the Settlement Agreement, relating to AAA Case No. 01-19-0001-9730 which was arrived at a mediated settlement of \$750,000.
 - 1.2. The County recognizes that \$100,000 of this will be provided by Jones & DeMille Engineering, and \$25,000 of this will be provided by the Utah Counties Indemnity Pool.
- 2. Reimbursement. In order to reimburse the County, the District agrees to make the following payments each year during the Reimbursement Term (an "Annual Payment") in an amount equal to the following until the earlier to occur of (a) the County has received an amount equal to the Reimbursement Amount of \$625,000 has been received or (b) the expiration of the Reimbursement Term. After the County has received payments from the District in the amounts specified, or after the expiration of the Reimbursement Term, if earlier, the District shall have no further obligation to the County and this Agreement shall terminate as of the date of the final payment or the last day of the Reimbursement Term, as the case may be.
 - 2.1. For the fiscal year 2020, the District will provide the first annual payment of \$110,000 from the 2019 SILTA Escrow Payment, \$110,000 from the 2020 SITLA Escrow Payment and \$100,000 of contingency funds related to the Water and Sewer project for a total 2020 payment of \$320,000.
 - 2.2. Beginning the fiscal year 2021 and subsequent years, the District will pay the County the annual SITLA payment the District receives of \$110,000.
- 3. Effective Date of this Agreement. The Effective Date of this Agreement shall be on the earliest date after this Agreement satisfies the requirements of Title 11, Chapter 13, Utah Code Annotated (the "Effective Date").
- 4. Term of Agreement. The term of this Agreement shall begin as of August 4, 2020 and shall, subject to the termination and other provisions set forth herein, terminate on August 30, 2023 at 11:59 p.m. (the "Term"). The Parties may, by written amendment to this Agreement, extend the Term of this Agreement through amendments.

5. Termination of Agreement. This Agreement may be terminated prior to the completion of the Term by any of the following actions:

- 5.1. The mutual written agreement of the Parties;
- 5.2. By either party:
 - 5.2.1. After any material breach of this Agreement; and
 - 5.2.2. Thirty calendar days after the non-breaching party sends a written demand to the breaching party to cure such material breach, and the breaching party fails to timely cure such material breach; provided however, the cure period shall be extended as may be required beyond the thirty calendar days, if the nature of the cure is such that it reasonably requires more than thirty calendar days to cure the breach, and the breaching party commences the cure within the thirty calendar day period and thereafter continuously and diligently pursues the cure to completion; and
 - 5.2.3. After the written notice to terminate this Agreement, which the non-breaching party shall provide to the breaching party, is effective pursuant to the notice provisions of this Agreement;
- 5.3. By either party, with or without cause, thirty (30) days after the terminating party mails a written notice to terminate this Agreement to the non-terminating party pursuant to the notice provisions of this Agreement; or
- 5.4. As otherwise set forth in this Agreement or as permitted by law, ordinance, rule, regulation, or otherwise.

6. Notices. Any notices that may or must be sent under the terms and/or provisions of this Agreement should be delivered, by hand delivery or by United States mail, postage prepaid, as follows, or as subsequently amended in writing:

<u>To the Spanish Valley Special Service District:</u> Spanish Valley SSD Board Attn: Chair 375 South Main Street #234 Moab, Utah 84532	<u>With a copy to:</u> San Juan County Attn: Attorney's Office PO Box 9 Monticello UT 84535	<u>To the County:</u> San Juan County Administrator Attn: Mack McDonald PO Box 9 Monticello, Utah 84535
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7. Indemnification and Hold Harmless.

- 7.1. The District, for itself, and on behalf of its officers, officials, members, managers, employees, agents, representatives, contractors, volunteers, and/or any person or persons under the supervision, direction, or control of the District (collectively, the "District Representatives"), agrees and promises to indemnify and hold harmless the County, as well as the County's officers, officials, employees, agents, representatives, contractors, and volunteers (collectively, the "County Representatives"), from and against any loss, damage, injury, liability, claim, action, cause of action, demand, expense, cost, fee, or otherwise (collectively, the "Claims") that may arise from, may be in connection with, or may relate in any way to the acts or omissions, negligent or otherwise, of the District and/or the District Representatives, whether or not the Claims are known or unknown, or are in law, equity, or otherwise. No term or condition of this Agreement, including, but not limited to, insurance that may be required under this Agreement, shall limit or waive any liability that the District may have arising from, in connection with, or relating in any way to the acts or omissions, negligent or otherwise, of the District or the District Representatives.
- 7.2. The County, for itself, and on behalf of its officers, officials, members, managers, employees, agents, representatives, contractors, volunteers, and/or any person or persons under the supervision, direction, or control of the County (collectively, the "County Representatives"), agrees and promises to indemnify and hold harmless the District, as well as the District's officers, officials, employees, agents, representatives, contractors, and volunteers (collectively, the "District Representatives"), from and against any loss, damage, injury, liability, claim, action, cause of action, demand, expense, cost, fee, or

otherwise (collectively, the "Claims") that may arise from, may be in connection with, or may relate in any way to the acts or omissions, negligent or otherwise, of the County and/or the County Representatives, whether or not the Claims are known or unknown, or are in law, equity, or otherwise. No term or condition of this Agreement, including, but not limited to, insurance that may be required under this Agreement, shall limit or waive any liability that the County may have arising from, in connection with, or relating in any way to the acts or omissions, negligent or otherwise, of the County or the County Representatives.

8. Governmental Immunity. The Parties recognize and acknowledge that each Party is covered by the *Governmental Immunity Act of Utah*, codified at Section 63G-7-101, et seq., *Utah Code Annotated*, as amended, and nothing herein is intended to waive or modify any and all rights, defenses or provisions provided therein. Officers and employees performing services pursuant to this Agreement shall be deemed officers and employees of the Party employing their services, even if performing functions outside of the territorial limits of such party and shall be deemed officers and employees of such Party under the provisions of the *Utah Governmental Immunity Act*. Each Party shall be responsible and shall defend the action of its own employees, negligent or otherwise, performed pursuant to the provisions of this Agreement.
9. No Separate Legal Entity. No separate legal entity is created by this Agreement.
10. Approval. This Agreement shall be submitted to the authorized attorney for each Party for review and approval as to form in accordance with applicable provisions of Section 11-13-202.5, *Utah Code Annotated*, as amended. This Agreement shall be authorized and approved by resolution or ordinance of the legislative body of each Party in accordance with Section 11-13-202.5, *Utah Code Annotated*, as amended, and a duly executed original counterpart of this Agreement shall be filed with the keeper of records of each Party in accordance with Section 11-13-209, *Utah Code Annotated*, as amended.
11. Survival after Termination. Termination of this Agreement shall not extinguish or prejudice either Party's right to enforce this Agreement, or any term, provision, or promise under this Agreement, regarding insurance, indemnification, defense, save or hold harmless, or damages, with respect to any uncured breach or default of or under this Agreement.
12. Benefits. The Parties acknowledge, understand, and agree that the respective representatives, agents, contractors, officers, officials, members, employees, volunteers, and/or any person or persons under the supervision, direction, or control of a Party are not in any manner or degree employees of the other Party and shall have no right to and shall not be provided with any benefits from the other Party. County employees, while providing or performing services under or in connection with this Agreement, shall be deemed employees of the County for all purposes, including, but not limited to, workers compensation, withholding, salary, insurance, and benefits. District employees, while providing or performing services under or in connection with this Agreement, shall be deemed employees of the District for all purposes, including, but not limited to, workers compensation, withholding, salary, insurance, and benefits.
13. Waivers or Modification. No waiver or failure to enforce one or more parts or provisions of this Agreement shall be construed as a continuing waiver of any part or provision of this Agreement, which shall preclude the Parties from receiving the full, bargained for benefit under the terms and provisions of this Agreement. A waiver or modification of any of the provisions of this Agreement or of any breach thereof shall not constitute a waiver or modification of any other provision or breach, whether or not similar, and any such waiver or modification shall not constitute a continuing waiver. The rights of and available to each of the Parties under this Agreement cannot be waived or released verbally, and may be waived or released only by an instrument in writing, signed by the Party whose rights will be diminished or adversely affected by the waiver.
14. Binding Effect; Entire Agreement, Amendment. This Agreement is binding upon the Parties and their officers, directors, employees, agents, representatives and to all persons or entities claiming by, through or under them. This Agreement, including all attachments, if any, constitutes and/or represents

the entire agreement and understanding between the Parties with respect to the subject matter herein. There are no other written or oral agreements, understandings, or promises between the Parties that are not set forth herein. Unless otherwise set forth herein, this Agreement supersedes and cancels all prior agreements, negotiations, and understandings between the Parties regarding the subject matter herein, whether written or oral, which are void, nullified and of no legal effect if they are not recited or addressed in this Agreement. Neither this Agreement nor any provisions hereof may be supplemented, amended, modified, changed, discharged, or terminated verbally. Rather, this Agreement and all provisions hereof may only be supplemented, amended, modified, changed, discharged, or terminated by an instrument in writing, signed by the Parties.

15. Force Majeure. In the event that either Party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, acts of the United States Government, the State of Utah Government, fires, floods, strikes, lock-outs, labor troubles, inability to procure materials, failure of power, inclement weather, restrictive governmental laws, ordinances, rules, regulations or otherwise, delays in or refusals to issue necessary governmental permits or licenses, riots, insurrection, wars, or other reasons of a like nature not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act(s) shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, without any liability to the delayed Party.
16. Assignment Restricted. The Parties agree that neither this Agreement nor the duties, obligations, responsibilities, or privileges herein may be assigned, transferred, or delegated, in whole or in part, without the prior written consent of both of the Parties.
17. Choice of Law; Jurisdiction; Venue. This Agreement and all matters, disputes, and/or claims arising out of, in connection with, or relating to this Agreement or its subject matter, formation or validity (including non-contractual matters, disputes, and/or claims) shall be governed by, construed, and interpreted in accordance with the laws of the state of Utah, without reference to conflict of law principals. The Parties irrevocably agree that the courts located in San Juan County, State of Utah (or Salt Lake City, State of Utah, for claims that may only be litigated or resolved in the federal courts) shall have exclusive jurisdiction and be the exclusive venue with respect to any suit, action, proceeding, matter, dispute, and/or claim arising out of, in connection with, or relating to this Agreement, or its formation or validity. The Parties irrevocably submit to the exclusive jurisdiction and exclusive venue of the courts located in the State of Utah as set forth directly above. Anyone who unsuccessfully challenges the enforceability of this clause shall reimburse the prevailing Party for its attorneys' fees, and the Party prevailing in any such dispute shall be awarded its attorneys' fees.
18. Severability. If any part or provision of this Agreement is found to be invalid, prohibited, or unenforceable in any jurisdiction, such part or provision of this Agreement shall, as to such jurisdiction only, be inoperative, null and void to the extent of such invalidity, prohibition, or unenforceability without invalidating the remaining parts or provisions hereof, and any such invalidity, prohibition, or unenforceability in any jurisdiction shall not invalidate or render inoperative, null or void such part or provision in any other jurisdiction. Those parts or provisions of this Agreement, which are not invalid, prohibited, or unenforceable, shall remain in full force and effect.
19. Rights and Remedies Cumulative. The rights and remedies of the Parties under this Agreement shall be construed cumulatively, and none of the rights and/or remedies under this Agreement shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law, unless specifically set forth herein.
20. No Third-Party Beneficiaries. This Agreement is entered into by the Parties for the exclusive benefit of the Parties and their respective successors, assigns and affiliated persons referred to herein. Except and only to the extent provided by applicable statute, no creditor or other third party shall have any rights or interests or receive any benefits under this Agreement.
21. Recitals Incorporated. The Recitals to this Agreement are incorporated herein by reference and made

contractual in nature.

22. Headings. Headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
23. Authorization. The persons executing this Agreement on behalf of a Party hereby represent and warrant that they are duly authorized and empowered to execute the same, that they have carefully read this Agreement, and that this Agreement represents a binding and enforceable obligation of such Party.
24. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, and all such counterparts taken together shall constitute one and the same Agreement.

WHEREFORE, the Parties have signed this Agreement on the dates set forth below.

SPANISH VALLEY SPECIAL SERVICE DISTRICT

By _____

Date _____

BOARD OF COUNTY COMMISSIONERS OF SAN JUAN COUNTY

By 
Chairman Kenneth Maryboy

Date 8-4-2020

ATTEST:

Approved as to form and for compliance
with State law:


San Juan County Clerk


San Juan County Attorney