

# CACHE COMMUNITY EMERGENCY WATERSHED PROJECT

**COST PARTICIPATION AGREEMENT**  
by and among  
**CACHE COUNTY, UTAH,**  
**CACHE HIGHLINE WATER ASSOCIATION,**  
**CITY OF LOGAN,**  
**CITY OF NORTH LOGAN,**  
**CITY OF HYDE PARK,**  
and  
**CITY OF SMITHFIELD**

*Final  
Version  
Ready for  
approval*

**THIS COST PARTICIPATION AGREEMENT** ("*Agreement*"), is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2011 (the "*Effective Date*"), by and among CACHE COUNTY, UTAH (the "*County*"); CACHE HIGHLINE WATER ASSOCIATION, a Utah nonprofit corporation ("*Cache Highline*"), whose sole shareholders are Logan & Northern Irrigation Company, a Utah nonprofit corporation ("*L& N*"), and Logan, Hyde Park, Smithfield Canal Company, a Utah nonprofit corporation ("*LHPS*"); CITY OF LOGAN, a Utah municipal corporation ("*Logan City*"); CITY OF NORTH LOGAN, a Utah municipal corporation ("*North Logan City*"); CITY OF HYDE PARK, a Utah municipal corporation ("*Hyde Park City*"); and CITY OF SMITHFIELD, a Utah municipal corporation ("*Smithfield City*"). The County, Cache Highline, Logan City, North Logan City, Hyde Park City and Smithfield City are sometimes referred to herein individually as a "*Party*" and collectively as the "*Parties*." Logan City, North Logan City, Hyde Park City and Smithfield City are all situated within the County and are sometimes referred to herein individually as a "*City*" and collectively as the "*Cities*."

## RECITALS

A. On July 11, 2009, a landslide occurred along the hillside within an area at the mouth of Logan Canyon known as Logan Bluff, causing the complete failure and breach of the Logan & Northern Canal at the location of the landslide. As a result of the breach, the failed section of the Logan & Northern Canal was indefinitely closed, thereby prohibiting L&N from utilizing any of its canal downstream for the delivery of irrigation water to its shareholders. The Logan & Northern Canal system has historically delivered irrigation water to approximately 7,000 acres of irrigated agricultural and municipal land situated within the Cities and adjoining areas in the County.

B. LHPS has cooperated with L&N in agreeing to the joint use of a portion of the capacity of the Logan Hyde Park Smithfield Canal on a temporary, emergency basis to transport a portion of L&N's irrigation water for discharge into a temporary pipeline connecting the Logan Hyde Park Smithfield Canal with the Logan & Northern Canal to facilitate delivery of said irrigation water to L&N shareholders who can be served thereby. The failure of the Logan & Northern Canal, notwithstanding the emergency

arrangement with LHPS, has resulted in drastically reduced deliveries of irrigation water to both L&N and LHPS shareholders, and consequential adverse economic impacts to the County and the Cities.

C. The County has applied for and obtained an Emergency Watershed Protection Program ("EWPP") grant through the United States Department of Agriculture, Natural Resources Conservation Service ("NRCS"), to design and construct improvements to the Logan Hyde Park Smithfield Canal system and additional new features that will restore full irrigation water delivery to L&N and LHPS shareholders. The project is referred to by the NRCS and the Parties as the "Cache Community Emergency Watershed Project" (the "*Project*"). The Project generally includes the following elements as described in the Environmental Impact Statement for the Project:

(i) Move the point of diversion ("POD") for some of the L&N Canal water upstream to the LHPS Canal POD structure on the Logan River below Second Dam;

(ii) Reconstruct the LHPS Canal POD to accommodate an increase in the amount of water that could be diverted which would allow water to be diverted for L&N Canal shareholders and LHPS Canal shareholders.

(iii) Reconstruct the LHPS Canal as a box culvert between the POD and 1500 North in Logan;

(iv) Divert the L&N Canal shares from the box culvert at 1500 North into a pipeline that travels under city streets and discharges to the existing L&N Canal at about 1500 North. The box culvert would end at 1500 North, and LHPS Canal shares would continue to flow in the existing LHPS Canal to its shareholder downstream;

(v) At the new 1500 North discharge point of the L&N Canal, send some water to upstream users in a pressure pipe that is installed in the existing canal maintenance road. The remaining water would be discharged into the existing L&N Canal for delivery to downstream users.

(vi) For L&N Canal shareholders between the LHPS POD and Laub Diversion, construct a 10-inch diameter pipeline in the existing canal;

(vii) The Project would further include removing structures from the properties along Canyon Road in Logan at the toe of the historically unstable part of the Logan Bluff (the "*Canyon Road Structures*"). NRCS could buy Canyon Road Structures from willing sellers only.

D. As Project sponsor, the County has entered into two Cooperative Agreements with the NRCS, identified as: (i) Cooperative Agreement No. 68-8D43-10-13, approved April 22, 2010, pursuant to which the NRCS has agreed to contribute, in the form of a grant to the County, up to \$1,590,000.00, to be utilized by the County for technical assistance in connection with the plan of work which is to be submitted by the County and approved by NRCS for the Project, in conformance with the terms and conditions of said agreement (the "*Technical Assistance Cooperative Agreement*"); and (ii) Cooperative Agreement No. 68-8D43-10-14, approved April 22, 2010, pursuant to which the NRCS has agreed to

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fund up to 75% of the allowable Project construction costs up to \$19,350,000.00, in conformance with the terms and conditions of said agreement (the "*Construction Funding Cooperative Agreement*"). A copy of the Technical Assistance Cooperative Agreement and a copy of the Construction Funding Cooperative Agreement (sometimes referred to herein collectively as the "*Cooperative Agreements*"), are attached together as EXHIBIT "A" hereto.

E. The Construction Funding Cooperative Agreement expressly provides that the County is allowed and anticipates municipalities and canal companies to cover the Local Cost Share of the Project construction costs through loans or other in-kind contributions.

F. Cache Highline was incorporated by L&N and LHPS with power, among other things, to issue notes, bonds and other forms of indebtedness, and to otherwise make and perform contracts of any kind and description, including contracts with the United States, the State of Utah, and other local districts and other governmental entities for, among other things, the use, joint development of and/or improvements to water diversion, distribution and storage facilities, in anticipation and for the purpose of financing the Project and the long-term operation and maintenance of the same upon completion of construction as contemplated in the Cooperative Agreements.

G. The County and the Cities are empowered under State law to issue notes, bonds and other forms of indebtedness, to enter into contracts for the purpose of providing public services within their respective boundaries, and to appropriate funds for the payment of debts, and for any purpose that in the judgment of each City's municipal legislative body provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of its inhabitants, as provided by law, and the County and the Cities are willing to do so to assist in the financing of the Project according to the benefits received as provided herein.

H. The Parties are willing and prepared to participate in the financing of the Project in conformance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

## **AGREEMENT**

### **1. ACKNOWLEDGMENT OF BENEFITS**

1.1. Benefits to Cache Highline. The Parties hereby acknowledge that Cache Highline is the primary beneficiary of the Project, whereby L&N shall be restored to full irrigation water deliveries and its capacity to satisfy its contractual municipal exchange obligations, and LHPS shall be restored to full irrigation water deliveries at historic rates of flow.

1.2. Benefits to the County and the Cities.

1.2.1 Specific Benefits. The County and the Cities hereby acknowledge that the Cities shall receive the following specific benefits from the Project:

(a) The Cities shall be granted perpetual capacity in Project storm and drainage water collection and conveyance facilities within the L&N Canal and LHPS Canal, for the collection and conveyance of municipal storm and drainage waters from the respective Cities into Summit Creek.

(b) Logan City shall have a duly authorized point of delivery from the LHPS Canal for the delivery of irrigation water owned by the City to facilitate the irrigation of the City's Lundstrom Park. The turn-out structure shall be constructed and installed by Cache Highline as part of the Project.

(c) By virtue of the Project, Logan City, Hyde Park City and Smithfield City shall continue to receive the benefits of municipal water exchange agreements which would otherwise be rendered impossible to perform as a result of the failure of the L&N Canal. As further consideration for the participation of the Cities in the Project pursuant to this Agreement, Cache Highline agrees that it shall, to the extent reasonably possible, deliver water under L&N and/or LHPS shares owned or controlled by those Cities holding existing culinary water exchange agreements in respect to said shares, on a priority basis over the delivery of irrigation water, subject to the terms and conditions of L&N's and LHPS's water rights of record and their available water supply, in any given year, and any and all conditions, restrictions and limitations as shall, from time-to-time be imposed by the State Engineer's water commissioner or otherwise by the Utah Division of Water Rights and/or other local, state or federal entities having jurisdiction.

(d) Additional irrigation and municipal water may become available to the County and to the Cities as a result of the Project.

1.2.2. Findings. The County and the Cities hereby find that in addition to the specific benefits enumerated above, the Project otherwise provides for the safety, health, prosperity, moral well-being, peace, order, comfort and convenience of the inhabitants of the County and the Cities.

**2. COUNTY'S CONTRACTUAL ROLE AS THE PROJECT SPONSOR.** The Parties hereby acknowledge the County's role as the sponsor of the Project pursuant to the terms of the Cooperative Agreements, which role the County has agreed to assume in strict reliance upon the obligations of Cache Highline and the Cities as set forth herein. As the Project sponsor, the County is responsible for the design, pre-construction, construction, and administration of the Project during construction (the "*Project Work*"), and the payment of all costs related to the Project Work, as delineated in the Cooperative Agreements, the Project scope of work, and other agreements between the County and NRCS.

**3. FINANCING THE PROJECT WORK; PROJECT COSTS.** The Project Work is to be financed as follows:

3.1. NRCS Project Grant Funds. Under the Construction Funding Cooperative Agreement, the Project Work is to be financed, subject to Section 3.2, through a grant from the NRCS in an amount not to exceed 75% of the allowable Project construction costs for the actual construction phase of the Project, up to \$19,350,000.00 ("*NRCS Funds*"). The estimated construction cost as of the date hereof is \$22,400,000 (the "*Total Project Cost*"), which amount is preliminary and subject to change. NRCS Funds shall be disbursed by NRCS to the County as reimbursement for the actual construction costs incurred by the County for the Project Work, subject to and in conformance with the terms and procedures set forth in the Construction Funding Cooperative Agreement, up to the total authorized amount of the NRCS Funds.

3.2. Local Cost Share. The Construction Funding Cooperative Agreement requires the County to contribute a minimum of 25% of the total allowable Project construction costs (the "*Local Cost Share*"), for the actual construction phase, to be satisfied by the payment of County funds and/or value of in-kind labor, materials, or equipment, in an amount up to \$6,450,000.00 (figured at the maximum contribution by the NRCS of \$19,350,000.00 as set forth in Section 3.1 above). The \$6,450,000 Local Cost Share amount includes \$784,300 representing the Local Cost Share for the acquisition of the Canyon Road Structures.

3.3. Other Project Costs. The County is further obligated to pay 100% of all costs incurred relative to obtaining all required local, state and federal permits, licenses, property rights related to the Project Work, cost overruns and all other costs and expenses incurred in connection with the Project not allowable for reimbursement with NRCS Funds, (collectively, "*Other Costs*"), in conformance with the terms of the Construction Funding Cooperative Agreement.

3.4. Maximum Acceptable Project Cost. The Parties hereby acknowledge and agree that the County will not proceed with the Project, and Cache Highline and the Cities will not participate as provided herein, in the event the cost of the Project is determined to exceed the Total Project Cost set forth in Section 3.1, unless otherwise expressly agreed to, in writing, by all Parties hereto.

#### **4. REIMBURSEMENT AGREEMENTS.**

##### **4.1. Cache Highline Reimbursement Agreement; UDWR Loan.**

4.1.1. Cache Highline Reimbursement Agreement. As anticipated in and consistent with the authority expressly granted by the Cooperative Agreements, in consideration for the benefits to be received by Cache Highline as the primary beneficiary of the Project, Cache Highline hereby covenants and agrees, subject to Section 4.1.2, to reimburse the County, in full, for payment by the County of the Local Cost Share and all Other Costs pursuant to the terms and conditions of this Agreement.

4.1.2. UDWR Loan. In order to satisfy its portion of the Local Cost Share obligation under Section 4.1.1 above, Cache Highline has made application for a loan from the Utah Division of Water Resources ("*UDWR*") to finance up to approximately 85% of the Local Cost Share which Cache Highline is obligated to pay to the County (the "*UDWR Loan*"). As a condition to the

UDWR Loan, Cache Highline is obligated to provide matching funds in an amount equal to approximately 15% of the Local Cost Share (the "*Local Match*"). The UDWR Loan and Local Match percentages may change based upon revised Project cost estimates, in conformance with the terms and provisions of the UDWR Loan commitment letter from the UDWR to Cache Highline, dated September 16, 2011, a copy of which is attached as EXHIBIT "B" hereto.

4.2. County and City Cost Participation Agreement. In consideration for the Project benefits to be received by the County and the Cities, the County and the Cities hereby covenant and agree, in conformance with and subject to the provisions of Section 5 herein, to participate in the cost of the Project through payment of a portion of the Local Cost Share and the Other Costs which Cache Highline is obligated to pay to the County pursuant to Section 4.1.1 above.

## **5. ALLOCATION OF LOCAL COST SHARE AND OTHER COSTS; PAYMENT.**

5.1. Allocations Among the Parties. The total Local Cost Share and Other Costs (collectively, the "*Total Local Cost Share*"), which the Parties have agreed to pay hereunder shall be allocated among them as follows:

5.1.1. Cache Highline. 60% of the Total Local Cost Share (the "*Association Cost Share*") shall be paid by Cache Highline.

5.1.2. County and Cities. 40% of the Total Local Cost Share (the "*Municipal Cost Share*") shall be paid by the County and the Cities in conformance with the following allocation, expressed as allocated percentages of the 40% Municipal Cost Share:

(a) Logan City	40% of the Municipal Cost Share
(b) North Logan City	25% of the Municipal Cost Share
(c) Hyde Park City	15% of the Municipal Cost Share
(d) Smithfield City	15% of the Municipal Cost Share
(e) County	5% of the Municipal Cost Share

5.1.3. Estimated Cost Allocation. A preliminary estimate of the relative costs to be incurred by the Parties with respect to the Association Cost Share and the Municipal Cost Share, and the agreed-upon allocation of the Municipal Cost Share among the County and the Cities, is set forth in Paragraph 2 of the Cost Share Summary, EXHIBIT "C" attached hereto.

### **5.2. Payment of the Association Cost Share and Municipal Cost Share.**

5.2.1. Payment During the Project Construction Period. During the period of construction of the Project Works (the "*Project Construction Period*"), funds to cover the 25% Total Local Cost Share due and owing for each progress payment to be paid by the County to the construction contractor for the Project (the "*Contractor*") shall be provided and paid as follows:

(a) 85% UDWR Loan (21% of Total Project Cost). 85% of the Total Local Cost Share, being equal in amount to 21% of the Total Project Cost, shall be paid by Cache Highline to the County during the Project Construction Period from UDWR Loan funds, in conformance with the procedures set forth in the UDWR Loan documentation. A preliminary estimate of the UDWR Loan amount to be paid during the Project Construction Period as provided herein, is set forth in Paragraph 3, Column 2, of the Cost Share Summary, Exhibit "C" attached.

(b) 15% Local Match (4% of Total Project Cost). The Local Match (15% of the Total Local Cost Share), being equal in amount to 4% of the Total Project Cost, including easement acquisition, shall be paid during the Project Construction Period, by the Association in an amount equal to 15% of the Association Cost Share, and by the County and the Cities in an amount equal to 15% of the Municipal Cost Share, subject to Section 5.2.1(b)(1) immediately below. A preliminary estimate of the relative Local Match payment obligations of the Parties, during the Project Construction Period as provided herein, is set forth in Paragraph 3, Column 1, of the Cost Share Summary, Exhibit "C" attached.

(1) With the approval of the NRCS, NRCS Funds shall first be utilized by the County to pay the total amount of each progress payment to the Contractor for the Project Work, which shall continue until the full 75% of the authorized NRCS Funds have been expended (the "*Local Payment Waiver Period*"); except that at such time as UDWR Loan funds are available to be released for payment, NRCS Funds shall thereafter be used to pay 79% (being equal to the 75% NRCS Share + the 4% Local Match) of each progress payment, and available UDWR Loan funds received by Cache Highline and paid to the County shall be utilized to pay 21% of each progress payment until the full amount of the authorized NRCS Funds have been expended. At such time, all remaining Contractor progress payments shall be covered by UDWR Loan funds and the Local Match. The Parties hereby acknowledge that under UDWR policy, UDWR Loan funds in the amount of 21% of each progress payment to be paid as provided in this subparagraph shall be released by UDWR to Cache Highline on a phased basis as the design plans and specifications are reviewed and approved by UDWR for each phase, in accordance with the UDWR Loan documentation.

(A) During the Local Payment Waiver Period, the Parties shall be obligated to make mandatory sinking fund installment payments in an amount equal to 4% of each progress payment, as each progress payment is paid by the County in conformance with the provisions of subparagraph 5.2.1(b)(1)(B) immediately below. All sinking fund installment payments shall be deposited into an escrow account to be established by the County (the "*Project Escrow Account*"). The County shall bill Cache Highline and Cache Highline shall bill the County and the Cities, for their respective portions of the sinking fund installments due to be deposited. All UDWR Loan funds shall be disbursed by UDWR pursuant to a check payable to Cache Highline; and, upon receipt, Cache Highline shall immediately deposit said funds into the Project Escrow Account.

(B) Cache Highline covenants and agrees that it shall pay 60%, and the County and the Cities hereby covenant and agree to pay 40%, of the amount of each sinking fund installment payment due and owing for deposit into the Project Escrow Account, each City to pay according to the allocation schedule set forth in Section 5.2.1(b) above. The amounts due shall be

deposited not less than thirty (30) days after receipt of billing by the County. All amounts deposited by the County and the Cities into the Project Escrow Account shall be credited to the Municipal Cost Share, and all amounts deposited by Cache Highline into the Project Escrow Account shall be credited to the Association Cost Share. The County agrees to properly account for all payments made by the Parties into the Project Escrow Account pursuant to this subparagraph

(2) At the conclusion of the Local Payment Waiver Period, the County shall pay the Total Local Cost Share portion of each progress payment as the same thereafter becomes due from the funds on deposit in the Project Escrow Account. In the event the funds in the Project Escrow Account are insufficient to pay progress payments as the same become due, the Parties shall continue to make payments into the Project Escrow Account according to the procedure set forth above until the Total Local Cost Share of the Total Project Cost has been paid in full. In the event the funds on deposit in the Project Escrow Account should exceed the amount required, the County shall reimburse the funds to the Parties according to the same percentages in which the funds were deposited by them.

(c) Reconciliation. To facilitate accurate accounting of funds contributed under this Agreement during the Project Construction Period, the Parties agree to hold monthly meetings for reconciliation of all invoices, payment, reimbursements and funds received during said period.

5.2.2. Payment During the Post-Construction Loan Repayment Period. The Parties hereby acknowledge and agree that during the course of the Project Construction Period, 15% of the Association Cost Share and 15% of the Municipal Cost share will have been paid in connection with payments made pursuant to the requirements of Section 5.2.1. The remaining 85% of the Association Cost Share and the Municipal Cost Share, financed through the UDWR Loan (the "*UDWR Loan Obligation*"), shall be paid by the Parties over the course of the term of the UDWR Loan in conformance with the loan amortization schedule set out in the UDWR Loan documentation (the "*Amortization Schedule*"), subject to the following:

(a) Cache Highline shall be responsible, as the sole obligor under the UDWR Loan, to timely make all payments due each year pursuant to the Amortization Schedule in satisfaction of the UDWR Loan Obligation; however, the Parties hereby acknowledge and agree that Cache Highline applied for the UDWR Loan and agreed to assume full responsibility for payment of the UDWR Loan Obligation in reliance upon the agreement of the County and the Cities to pay the Municipal Cost Share pursuant to Section 4.2 herein and as provided in Section 5.2.2.(b) immediately below.

(b) Cache Highline covenants and agrees that it shall pay 60%, and the County and the Cities hereby covenant and agree to pay 40%, of the UDWR Loan payment due and owing each year, each City to pay according to the allocation schedule set forth in Section 5.2.1(b) above (the "*Loan Repayment Allocation*"). Inasmuch as the amount due and owing to UDWR is fixed each year according to the Amortization Schedule, the portion of the Loan Repayment Allocation due and owing by Cache Highline, and the portion of the Loan Repayment Allocation due and owing by the County and the Cities each year in which payment is due, shall be deposited by them into an escrow account to be

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established by Cache Highline (the "*UDWR Escrow Account*"). The amounts due shall be deposited, pursuant to an invoice therefore from Cache Highline, not less than thirty (30) days prior to the date payment is due by Cache Highline to UDWR pursuant to the amortization schedule. In lieu of yearly payments, the County and the Cities, at their sole discretion, may, at the outset of the UDWR Loan repayment period, pre-pay and deposit into the UDWR Escrow Account the total amount of their respective portions of the Loan Repayment Allocation due. All amounts deposited by the County and the Cities into the UDWR Escrow Account shall be credited against the Municipal Cost Share, and all amounts deposited by Cache Highline into the UDWR Escrow Account shall be credited to the Association Cost Share. Cache Highline shall properly account for all payments deposited into the UDWR Escrow Account by the County and the Cities pursuant to this subparagraph (b).

(c) Estimated Amount of the Payment Obligations During the Post-Construction Loan Repayment Period. A preliminary estimate of the relative total and yearly payment obligations of the Parties during the Post-Construction Loan Repayment Period pursuant to subsections (a) and (b) above is set forth in Paragraph 4 of the Cost Share Summary, Exhibit "C" attached.

5.3. Termination of Agreement. All duties and obligations of the Parties hereunder shall cease and this Agreement shall be terminated at such time as Cache Highline has made its final payment to UDWR under the Loan Agreement and all payments due and owing by the County and the Cities to Cache Highline under this Section 5 have been duly reconciled and paid.

## **6. PURPOSE OF THIS AGREEMENT; OTHER AGREEMENTS.**

6.1. Purpose of this Agreement. It is hereby acknowledged and agreed that the purpose and intent of this Agreement is to bind the Parties to pay, and to allocate among the Parties the relative contribution of each Party in satisfaction of their agreed-upon reimbursement obligations pertaining to the payment of the Total Local Cost Share as set forth in Section 4 herein, and to set forth the terms and conditions pursuant to which payments are to be made.

6.2. Other Agreements. The Parties hereby acknowledge and understand that all matters pertaining to relationships, ownership, administration, control, management, operation, maintenance, repair and replacement of the Project facilities upon completion of the Project Work shall be the subject of an Operating Agreement and/or other agreements which are contemplated to be executed hereafter by and among the Parties.

## **7. TITLE; UDWR SECURITY.**

7.1. System Title Pre-UDWR Loan. Prior to closing of the UDWR Loan Agreement between UDWR and Cache Highline, title to all existing Logan Hyde Park Smithfield Canal facilities and appurtenances thereto shall be and remain vested in LHPS, and title to all existing Logan & Northern Canal facilities and appurtenances thereto shall be and remain vested in L&N.

7.2. System Title Post-UDWR Loan. The Parties hereby understand and agree that in connection with the UDWR Loan, all Project facilities and other non-system facilities of Cache Highline,

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L&N and LHPS shall be transferred to the UDWR to be held by it during the term of the UDWR Loan as security for payment of the UDWR Loan Obligation.

## **8. EVENTS OF DEFAULT; REMEDIES.**

8.1. Events of Default. The failure by any Party to pay any monetary amount when due in conformance with the provisions of Section 5 hereunder; and/or to perform any other obligation hereunder, and the failure to cure such default within thirty (30) days after written notice from the Party to whom the obligation is due, shall each be deemed to be an event of default hereunder.

8.2. Remedies. Upon the occurrence of an Event of Default, the Party to whom the obligation is due shall give the defaulting Party written notice of such occurrence. The defaulting Party shall have thirty (30) days to cure the default, the Party to whom the obligation is due may: (i) apply to and obtain from any court of competent jurisdiction such decree or order as may be necessary to require the defaulting Party, in the event of Cache Highline, to impose and collect assessments against its shareholders sufficient to cure the default, and in the event of the County or the Cities, to appropriate funds sufficient to cure the default; and/or (ii) exercise any other available right or remedy, at law or in equity, as deemed expedient.

8.3. No Waiver; Preservation of Remedies. No consent or waiver, express or implied, by any Party to or of any breach or default by any other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of obligations hereunder by such other Party hereunder. Failure on the part of any Party to complain of any act or failure to act of any other Party or to declare any other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first Party of any of its rights hereunder. The rights and remedies provided are cumulative and are not exclusive of any rights or remedies that any Party may otherwise have at law or equity.

## **9. REPRESENTATIONS AND WARRANTIES.**

9.1. Cache Highline Representations and Warranties. Cache Highline hereby represents and warrants that, as of the Effective Date:

9.1.1. Authority. Cache Highline: (i) is a Utah nonprofit corporation in good standing in the State of Utah, and has not been dissolved, terminated or liquidated; (ii) has all necessary power and authority to execute and deliver this Agreement and any other documents relating to this Agreement that are required by this Agreement to be executed and delivered; and (iii) has taken all corporate action required under applicable law, and has received all required consents that are necessary and proper to authorize the execution, delivery and performance by Cache Highline in satisfaction of its obligations hereunder.

9.1.2. Execution. The execution, delivery and performance of this Agreement by Cache Highline and the consummation of its obligations contemplated herein will not: (i) result in a breach or acceleration of or constitute a default or event of termination under the provisions of any

agreement or instrument to which Cache Highline is a party or bound; or (ii) constitute or result in the violation or breach by Cache Highline of any judgment, order, writ, injunction or decree issued against or imposed upon Cache Highline or result in the violation of any applicable law, ordinance, rule or regulation of any governmental authority.

9.1.3. Claims or Proceedings. Cache Highline has not received any notice of, nor is it aware of any claim, action or other proceeding, that is pending by any governmental department or agency or any entity or person whatsoever pertaining to the Project and specifically the obligations of Cache Highline hereunder. To the best of Cache Highline's knowledge, after due inquiry, there are no facts which could constitute the basis for any claim or litigation which might prohibit, delay or interfere with the consummation of the Project or the satisfaction of its obligations hereunder or which, if adversely determined, might affect the consummation of the Project or the satisfaction of Cache Highline's obligations hereunder.

9.1.4. Binding Agreement. This Agreement, when duly executed by Cache Highline, shall constitute a valid, legal and binding obligation of Cache Highline and shall be enforceable in accordance with its terms.

9.2. County's and Cities' Representations and Warranties. The County and the Cities each, in their own behalf, and collectively, as the context requires, hereby represent and warrant that, as of the Effective Date:

9.2.1. Authority. The County and the Cities: (i) have all necessary power and authority to execute and deliver this Agreement and any other documents relating to this Agreement that are required by this Agreement to be executed and delivered; and (ii) have taken all corporate action required under applicable law, and have received all required consents that are necessary and proper to authorize the execution, delivery and performance by the County and the Cities in satisfaction of their respective obligations hereunder.

9.2.2. Execution. The execution, delivery and performance of this Agreement by the County and the Cities and the consummation of their respective obligations contemplated herein will not: (i) result in a breach or acceleration of or constitute a default or event of termination under the provisions of any agreement or instrument to which the County and/or the Cities are a party or bound; or (ii) constitute or result in the violation or breach by the County or the Cities of any judgment, order, writ, injunction or decree issued against or imposed upon the County or the Cities, as the case may be, or result in the violation of any applicable law, ordinance, rule or regulation of any governmental authority.

9.2.3. Claims or Proceedings. The County and the Cities have not received any notice of, nor are they aware of any claim, action or other proceeding, that is pending by any governmental department or agency or any entity or person whatsoever pertaining to the Project and specifically the obligations of the County and the Cities hereunder. To the best of the County's and the Cities' knowledge, after due inquiry, there are no facts which could constitute the basis for any claim or litigation which might prohibit, delay or interfere with the consummation of the Project or the satisfaction

of their respective obligations hereunder or which, if adversely determined, might affect the consummation of the Project or the satisfaction of their respective obligations hereunder.

9.2.4. Binding Agreement. This Agreement, when duly executed by the County and the Cities, shall constitute a valid, legal and binding obligation of the County and the Cities and shall be enforceable in accordance with its terms.

## 10. GENERAL PROVISIONS.

10.1. Assignment. No Party may assign any rights under or interest in this Agreement without the prior written consent of all of the other Parties, specifically including, but not limited to, the assignment of moneys due or to become due (except to the extent this limitation may be limited by law); and unless specifically stated to the contrary in the written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

10.2. Attorney's Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, or for any reasons or in any legal proceedings whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals and re-hearings, and whether or not an action has actually been commenced, the prevailing Party shall be entitled to receive from the non-prevailing Party reimbursement for all attorney's fees, costs and expenses incurred by the prevailing Party. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

10.3. Notice. Any notice required or desired to be given pursuant to this Agreement or otherwise relating to this Agreement shall be in writing, addressed to the Party at the address listed below, and shall be deemed effective: (i) upon personal delivery, (ii) the next business day following deposit with a nationally recognized overnight courier, or (iii) three business days following deposit in the United States Mail, postage prepaid, certified mail, return receipt requested.

To:           Cache Highline:  
                  c/o Keith Meikle  
                  1285 East 4500 North  
                  Hyde Park, Utah 84318

To:           Cache County:  
                  199 North Main Street  
                  Logan, Utah 84321

To:           Logan City:  
                  290 North 100 West  
                  Logan, Utah 84321

To: North Logan City:  
2076 North 1200 East  
North Logan, Utah 84341

To: Hyde Park City:  
113 East Hyde Park Lane  
Hyde Park, Utah 84318

To: Smithfield City:  
96 South Main Street  
Smithfield, Utah 84335

Any Party may change its address by providing written notice to the other Parties in accordance with the terms of this Section.

10.4. Severability. If any provision of this Agreement is held to be void or unenforceable, in whole or in part: (i) such holding shall not affect the validity and enforceability of the remainder of this Agreement, including any other provision, paragraph or subparagraph, and (ii) the Parties agree to attempt in good faith to reform such void or unenforceable provision to the extent necessary to render such provision enforceable and to carry out its original intent.

10.5. Captions. The section and paragraph headings contained in this Agreement are for the purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

10.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute only one agreement.

10.7. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, understandings, statements, representations and warranties, oral or written, express or implied, by and among the Parties and their respective affiliates, representatives and agents in respect of the subject matter hereof.

10.8. Construction. This Agreement is the result of negotiations between the Parties, none of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Each Party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or who's attorney) prepared the executed Agreement or any earlier draft of the same. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

10.9. Force Majeure. Performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrections, strikes, lock-outs, floods, earthquakes, fires, casualties, acts of God, epidemics, quarantine, restrictions, inability (when the responsible Party is faultless) to secure necessary labor, materials, tools, acts or failure to act of any public or governmental agency or entity, or by any other reason not the fault of the Party delayed in performing work or doing acts required under the terms of this Agreement, and in such event, the performance of such work or the doing of such act shall be excused for the period of the delay and the period of performance for any such work or the doing of any such act shall be extended for a period equivalent to the period of such delay.

10.10. Further Action. The Parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

10.11. Inducement. The making and execution of this Agreement has not been induced by any representation, statement, warranty or agreement other than those herein expressed.

10.12. No Third Party Beneficiaries. This Agreement shall not be deemed to create any right in any person who is not a Party (other than the permitted successors and assigns of a Party), and shall not be construed in any respect to be a contract, in whole or in part, for the benefit of any third party (other than permitted successors and assigns of a Party hereto).

10.13. Amendment. This Agreement cannot be altered or amended except pursuant to an instrument in writing executed by the Parties.

10.14. Successors and Assigns. This Agreement shall be binding upon and shall inure solely to the benefit of the Parties hereto and their respective successors, assigns, receivers, liquidators, rehabilitators, conservators and supervisors, it not being the intent of the Parties to create any third party beneficiaries, except as specifically provided in this Agreement.

10.15. Incontestability. In consideration of the mutual covenants and agreements contained herein, each Party hereto does hereby agree that this Agreement, and each and every provision hereof, is and shall be enforceable by and among them according to its terms, and each Party does hereby agree that it shall not, directly or indirectly, contest the validity or enforceability hereof.

10.16. Warranty of Authority. The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

[THIS SPACE INTENTIONALLY LEFT BLANK]

**CACHE HIGHLINE WATER ASSOCIATION,**  
a Utah nonprofit corporation

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

**CACHE COUNTY, UTAH**

By: \_\_\_\_\_  
Chair, Cache County Council

ATTEST:

\_\_\_\_\_  
County Clerk

**LOGAN CITY,,**  
a Utah municipal corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

**NORTH LOGAN CITY,**  
a Utah municipal corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

**HYDE PARK CITY,**  
a Utah municipal corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

**SMITHFIELD CITY,**  
a Utah municipal corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder



Done 4-22-10 CJ  
Agreement Number: 68-8D43-10-13  
Fund Code: 10 15T49  
Funding Amount: \$1,590,000.00  
Expiration date: 09/24/2010

**COOPERATIVE AGREEMENT  
68-8D43-10-13**

between the

**UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE (NRCS)**

and

**CACHE COUNTY, UTAH (County)**

**PROJECT: Technical Assistance for the Cache County Emergency Watershed  
Protection Project – Cache County, Utah**

**I. AUTHORITY:**

A. Code of Federal Regulations, Title 7: Agriculture, Part 624-Emergency Watershed Protection, paragraph 624.8(c) authorizes the Natural Resources Conservation Service (NRCS) to enter into a cooperative agreement with a sponsor.

B. For purposes of this agreement, "sponsor" refers to Cache County, Utah, and is defined in 7 CFR 624.4(g) as: "Project sponsor means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required."

C. The principal role of NRCS in this project is to oversee the financial assistance support provided by NRCS to Cache County. As project owners, the County is responsible for all aspects of the project, including the design, specifications, construction, quality control and assurance, inspection and ongoing operation and maintenance of the project once it is completed. The County may enter into subagreements or contracts with other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract to perform required tasks or functions as deemed appropriate, including but not limited to securing land rights and/or permits, performing construction oversight, removal or relocation of utilities, project engineering, quality assurance performance reports, or performing operation and maintenance of the project(s) once the construction is completed. The County may also assign responsibility and liability to other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract for any additional costs of the project not covered by the contracts with NRCS or for any other potential task or liability associated with the project.

2550  
Approved  
4/22/10 CJ

Printed

## II. PURPOSE

*Revised  
See Draft  
8/02*

A. On July 11, 2009 a landslide occurred that caused loss of life, property damage, and damage to the Logan Northern Canal System. The Logan Northern Canal System delivers irrigation water to over 7,000 acres of agricultural land and communities in Cache County. The purpose of this agreement is to establish the terms, conditions, and responsibilities of both parties in the planning, design, and implementation of a safe functioning project that restores the Logan Northern Canal System to its end function: delivery of irrigation water to every irrigation company shareholder affected by the landslide.

B. The NRCS EWP Program may provide both technical and financial assistance to a sponsor. This agreement encompasses only the technical assistance portion of the project. NRCS intends to issue a second agreement for the financial assistance (actual construction phase) of the project.

1. NRCS technical assistance funding of \$1,590,000.00 is available for allowable costs of services such as:

- Revised*
- Administrative costs incurred in the solicitation, evaluation, award, and management of the construction contract(s).
  - Project design, construction drawings and specifications
  - Design report addressing items pertaining to: geology, geotechnical, structural, hydrology, hydraulics, and sedimentation as applicable
  - Development of a Quality Assurance Plan
  - Development of an Operations and Maintenance Plan
  - Project Inspection Plan

2. NRCS funding obligated for this agreement is not for costs incurred in the actual on-the-ground construction; those costs will be addressed in a separate cooperative agreement, NRCS number 68-8D43-10-14.

3. In acceptance of this agreement, the County acknowledges that NRCS funding may be insufficient to cover all technical assistance costs and the County may need to contribute resources toward completion of the technical assistance tasks.

**NOTE:** A cost-share contribution is not required from the County for activities conducted under the terms of this technical assistance agreement. However, under the terms of the financial assistance agreement to be awarded by NRCS to the County for construction costs, the NRCS cost-share contribution is limited to a maximum of 75% of total project costs subject to a maximum funding amount. This amount will be identified in the financial assistance agreement.

## III. BENEFITS

Relocation of the Logan Canal will restore delivery of irrigation water to over 7,000 acres of agricultural land and communities in Cache County, directly benefitting residents of the area and beyond by successful production of agricultural crops.

#### **IV. ATTACHMENTS TO AGREEMENT**

The following attachments are incorporated into the agreement:

Attachment A: Project Area Map

Attachment B: The following Standard Forms submitted by the County:  
SF 424 – Application for Federal Assistance

SF 424C Budget Information Construction Programs  
SF 424D Assurances – Construction Programs

Attachment C: Special Provisions for Grants and Cooperative Agreements

Attachment D: Performance Progress Report – SF-PPR (OMB 0970-0334)

Attachment E: Quarterly Accrual Report format

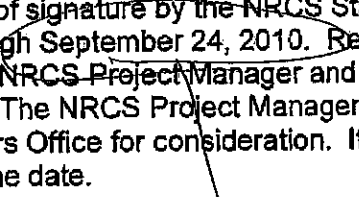
Attachment F: 7 CFR Part 624, Emergency Watershed Protection Program

Attachment G: 7 CFR 3016.36, Procurement

Attachment H: Required Contract Clauses and Bonding Requirements

#### **V. TERM OF THE AGREEMENT**

This agreement is effective on the date of signature by the NRCS State Conservationist and continues in full force and in effect through September 24, 2010. Requests for extension of time must be submitted in writing to the NRCS Project Manager and received by NRCS 60 days in advance of the expiration date. The NRCS Project Manager will review the request and forward it to the NRCS Headquarters Office for consideration. If approved, the agreement will be amended to extend the date.



## VI. CONTACT INFORMATION

CACHE COUNTY	NRCS UTAH
<u>Cache County Project Manager</u>	<u>NRCS Project Manager</u>
Robert M. Fotheringham	Bronson Smart
Cache County Water Manager	NRCS Utah State Conservation Engineer
199 North Main St.	USDA Natural Resources Conservation Service
Logan, UT 84321	125 South State St., Room 4402
	Salt Lake City, UT 84138-1100
Phone: 435-755-1854	Phone: 801-524-4559
Cell: 435-754-5917	Fax: 801-524-4403
Fax: 435-755-1981	
Email: <a href="mailto:bfotheringham@cachecounty.org">bfotheringham@cachecounty.org</a>	Email: <a href="mailto:bronson.smart@ut.usda.gov">bronson.smart@ut.usda.gov</a>

Cache County Financial Contact	NRCS Administrative Contact
Cameron Jensen	Judy Ousley
Cache County Financial Director	Grants and Agreements Specialist
199 North Main St.	USDA Natural Resources Conservation Service
Logan, UT 84321	125 South State Street, Room 4402
	Salt Lake City UT 84138-1100
Phone: 435-755-1855	Phone: 801-524-4553
Cell: 435-713-5899	Fax: 801-524-5059
Fax: 435-755-1981	
Email: <a href="mailto:cameron.jensen@cachecounty.org">cameron.jensen@cachecounty.org</a>	Email: <a href="mailto:judy.ousley@ut.usda.gov">judy.ousley@ut.usda.gov</a>

## VII. RESPONSIBILITIES AND OBLIGATIONS

### A. Cache County will:

1. **Plan of Work** - Complete all tasks described in the final plan of work, to be developed and incorporated into agreement 68-8D43-10-14 (agreement between the County and NRCS) as required under the terms of that agreement.

a. The construction phase of the project, including solicitation for the construction contract, will not occur until the final plan of work, reviewed and acceptable to NRCS, is incorporated into agreement 68-8D43-10-14. The final Plan of Work will include

provisions to ensure water is restored to every irrigation company shareholder affected by the landslide. In addition, the plan of work will include:

- Project description and background
- Objectives
- Beneficiaries
- Project approach
- Time schedule
- Budget, including general category cost accounting for NRCS contribution for up to 75% of total construction cost and description and accounting for County 25% of total construction cost cost-share.
- NRCS developed Damage Survey Report (DSR)
- Design and Specifications
- Design report addressing hydrology, hydraulics, and sedimentation, as applicable
- Inspection Plan
- Quality Assurance Plan
- Operations and Maintenance Plan

b. The County intends to enter into a subagreement or contract with the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, to perform required tasks or functions as deemed appropriate, such as securing land rights and/or permits, performing construction oversight, or performing operation and maintenance of the project(s) once the construction is completed. The County may enter into subagreements or contracts with other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract to perform required tasks or functions as deemed appropriate, including but not limited to securing land rights and/or permits, performing construction oversight, removal or relocation of utilities, project engineering, quality assurance performance reports, or performing operation and maintenance of the project(s) once the construction is completed. The County may also assign responsibility and liability to other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract for any additional costs of the project not covered by the cooperative agreements with NRCS or for any other potential task or liability associated with the project.

c. The County will ensure that subagreements with others are in compliance with 7 CFR 3016.37, requiring subrecipients to comply with applicable federal regulations.

**d. Development of the Financial Assistance (Construction) POW is the first task to be completed for this agreement. The County is cautioned to refrain from proceeding with construction, including soliciting for a construction contract, until NRCS issues an amendment incorporating the revised, final Construction POW into the agreement. REQUESTS FOR REIMBURSEMENT FOR THIS AGREEMENT SUBMITTED FOR WORK PERFORMED PRIOR TO THE AGREEMENT EFFECTIVE DATE**

OR FOR ON-THE-GROUND CONSTRUCTION WORK PERFORMED PRIOR TO SUBMISSION AND ACCEPTANCE OF THE FINAL POW BY NRCS WILL BE DENIED BY NRCS.

2. **Regulations** Complete the project in compliance with:

- a. All required Federal, State, and local permits.
- b. All terms and conditions herein whether included in full text or by reference. Section IX. of the agreement lists applicable regulations. Links to regulations are located at the following website:  
[http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)
- c. Information and assurances provided in Standard Forms (SF) 424, 424C and 424D, incorporated into this agreement as Attachment B.
- d. Special Provisions for Grants and Cooperative Agreements, incorporated into this agreement as Attachment C.
- e. Regulations and guidance provided for the following attachments:
  - Attachment F: 7 CFR Part 624, Emergency Watershed Protection Program
  - Attachment G: 7 CFR 3016.36, Procurement
  - Attachment H: Required Contract Clauses and Bonding Requirements

3. **Property Rights** – Secure property rights. As soon as possible, and before commencement of any on-the-ground construction, the County will submit a completed ADS-78 form, Assurances Relating to Real Property Acquisition, to the NRCS Project Manager. An attorney's opinion must be attached to the form certifying an examination of the real property instruments and files was made and found to provide adequate land title, right, permission and authority for the purpose(s) of the project. **All costs relative to obtaining property rights will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County.** The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, will secure the foregoing property rights.

4. **Permits** - Ensure that all applicable Federal, State, and local permits are obtained and work performed in accordance with permit requirements. **All costs relative to obtaining required permits will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County.** The County anticipates the Cache Highline

Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, will secure the foregoing permits.

5. Responsibility for Additional Costs –

a. In acceptance of this agreement, the County acknowledges that NRCS funding may be insufficient to cover all technical assistance costs and the County may need to contribute resources toward completion of the technical assistance tasks.

b. Additionally, the County agrees to accept all financial and other responsibility for additional costs resulting from failure of the County to obtain, or delay in obtaining, adequate land and water rights, permits, and licenses needed for the project.

c. The County anticipates assigning responsibility and liability to the Cache Highline Association and/or their counterparts the Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, and/or other municipalities for any additional costs of the project not covered by the cooperative agreements.

6. Removal or Relocation of Utilities - Arrange and pay for any necessary location, removal, or relocation of utilities; **EWP program regulations do not allow NRCS to reimburse the County or otherwise pay for any such costs nor do the costs qualify as a cost-share contribution.** The County anticipates assigning responsibility and liability to the Cache Highline Association and/or their counterparts the Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, and/or other municipalities for the removal or relocation of utilities.

7. Project Engineering –

a. Ensure individuals and/or organizations providing engineering services employ a licensed professional engineer who directly supervises the staff performing the services or who serves as a Principal.

b. Ensure any designs, drawings and specifications submitted for review to NRCS State Conservation Engineer, Bronson Smart, meet NRCS standards and are sealed by a licensed engineer. The documents will be certified as follows: **"To the best of my professional knowledge, judgment and belief, these plans (or this report, etc.) meet applicable NRCS standards."** This certification statement will be signed and sealed by the licensed professional engineer. The Utah NRCS Engineering website address is: <http://www.ut.nrcs.usda.gov/technical/engineering/index.html>. Contact the NRCS State Engineer if you have difficulty accessing the site. Contact information:

Bronson Smart  
USDA/NRCS Utah State Conservation Engineer  
125 South State St., Room 4402  
Salt Lake City, UT 84138  
Phone: 801-524-4559  
Cell: 801-710-5387  
Email: [bronson.smart@ut.usda.gov](mailto:bronson.smart@ut.usda.gov)

c. Agree that NRCS engineering staff will perform only a functional review of the design and specifications. A functional review shall consist of the following (as defined in NRCS National Engineering Manual (NEM) 505.03(b)(3). :

- (1) Achieves the objectives of the plan and program(s);
- (2) Meets the criteria in the applicable practice standards;
- (3) Complies with the applicable State and Federal programs;
- (4) Includes a design report addressing hydrology, hydraulics, and sedimentation, as applicable;
- (5) Includes an Inspection Plan and Operation and Maintenance Plan; and,
- (6) Does not require a technical review as defined in NEM 511.05.

NRCS shall provide feedback in writing to the County if items of concern are discovered in the functional review or if it is acceptable as is. The NEM website is:  
<http://www.info.usda.gov/CED/ftp/CED/NEM.html>.

**NOTE: Designs and/or specifications that, upon cursory review by NRCS, appear to be unacceptable will be returned to the County for revision without further review by NRCS. The County bears the responsibility for ensuring that contracted architectural and engineering firms possess the skills required to successfully and efficiently perform the project work and that payment is made only for work performed in producing acceptable products.**

d. Agree to employ competent and professional engineering services so as to insure the soundness and adequacy of all engineering services. NRCS requires that NRCS criteria and standards be followed insofar as they are applicable, but the County is expected to make independent decisions.

e. Agree to employ competent and professional individuals to perform engineering and quality assurance functions that will accept liability for any damage and any additional construction costs to others, to correct problems arising during or after construction resulting from deficient engineering and/or construction services.

f. Obtain NRCS concurrence, in writing, for any deviations from the certified design. Every attempt will be made to contact NRCS for verbal concurrence of minor deviations and corrections that become necessary during construction; however, construction should not be delayed to await approval **unless there is reasonable doubt on the part of the County that the change will be unacceptable to NRCS. All minor changes and corrections, regardless of whether NRCS was verbally contacted or not, will be documented by the County engineer in writing and submitted to the NRCS Project Manager and Administrative Contact within 24 hours of occurrence.**

g. As-built Drawings. Submit two copies of the final as-built drawings to the NRCS Project Manager. **The as-built drawings will have the seal of the licensed professional engineer responsible for construction oversight along with a statement signed by the responsible licensed professional engineer certifying: "To the best of**



my professional knowledge, judgment, and belief this practice is installed in accordance with the plans and specifications and meets NRCS standards."

8. **Quarterly Performance Report** Submit to the NRCS Project Manager and NRCS Administrative Contact, a quarterly performance report (reference "Contacts" section of the agreement).

a. The reporting period for the performance report is based on a calendar year quarter or portion thereof and the report is due 30 calendar days following the end of the quarter. The performance report will be submitted on SF-PPR form, "Performance Progress Report" (see Attachment D). The performance narrative in block 10 of the form will include, as applicable:

(1) A summary of project progress from beginning of project up to the end of the reporting period.

(2) Detailed description of project progress during the reporting period. Include tasks from your plan of work that are partially or fully completed. Report on meetings held and decisions made. Describe any problems encountered and how they were resolved. If goals were not met, explain why. Address changes to work schedule, why they occurred and how the changes impact project completion. If significant changes to the work schedule have occurred, submit a revised schedule of work.

(3) Describe successes achieved.

(4) Quantify results when possible. Provide an overview of expenditures by budget category. Report on reimbursements received for the reporting period.

(5) Describe work to be completed during the next reporting period, any anticipated problems, and any opportunities for early project completion or cost-savings.

**NOTE:** Once actual construction has begun, the weekly construction progress report required under the terms of the financial assistance agreement number, 68-8D43-10-14, will suffice as fulfilling the performance report requirements for this agreement.

b. Events may occur that have significant impact upon the project. In such cases, the County must inform the NRCS Project Manager either (1) verbally, if the issue is time-sensitive, with a written notice documenting the conversation submitted to NRCS within 24 hours of occurrence; or (2) if the issue is not time-sensitive, in writing, as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the County's ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or for less cost than anticipated or producing more beneficial results than originally planned.

9. **Requesting Reimbursement and Financial Reporting** - Comply with the following financial requirements:

a. Agree that total reimbursement from NRCS for this agreement will not exceed \$1,590,000.00 unless amended to add funding.

b. The County will request reimbursement by submitting to the NRCS Project Manager (see "Contact" Section) at least quarterly and no more frequently than monthly:

(1) An original, signed Standard Form (SF) 270, Request for Advance or Reimbursement. (SF-270 form is accessible at: [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)) and

(2) If requested by NRCS, on a separate page attached to the SF-270, a general breakout of costs incurred during the reporting period and brief written description of work accomplished (materials purchased, services received, etc.) or descriptive invoices.

(a) The brief description of work accomplished during the reporting period or descriptive invoice must be in sufficient detail to allow NRCS to make a determination that funds being requested are reasonable relative to work actually accomplished.

(b) In accordance with 7 CFR 3015.102(b)(3), NRCS will not use the percentage-of-completion method to pay its construction agreements. The County may use that method to pay its construction contractor, but if it does, NRCS payments to the recipient will nevertheless be based on the County's actual rate of disbursements.

c. Costs submitted for reimbursement should substantially match the County proposed budget. NRCS will consider approving shifting funds from one category to another upon written request from the County.

d. If notified by NRCS, submit to the NRCS Project Manager (see "Contact" Section) an SF-425, Federal Financial Report, upon completion of the agreement. Typically, the SF-270 forms include the required information and an SF-425 form will not be required.

e. All non-Federal entities that expend \$500,000.00 or more of Federal awards in a year are required to have an annual audit performed in accordance with the Single Audit Act.

10. **Quarterly Accrual Report** - NRCS also requires quarterly accrual information. An accrual is the value of the work you have performed or will perform in cooperation with the NRCS but for which you have:

- a. Not yet submitted an SF-270 or
- b. Submitted an SF-270 but have not yet received payment.

Please complete the Accrual Information form (see Attachment E) and submit it to the address below no later than 15 days prior to the end of the quarter (submit by March 15, June 15, September 15, and December 15). The U.S. Congress relies on audits of financial statements, including accrual information, to determine future funding amounts for NRCS ongoing and new programs.

**Submit SF-270 and Accrual Information Form to:**

Judy Ousley  
USDA/Natural Resources Conservation Service  
125 South State Street, Room 4402  
Salt Lake City UT 84138-1100

11. **Records Retention** - The County is responsible for keeping all records relative to the project, including all documentation of procurements, receipts, and other accounting information. Retain all records relative to this agreement in accordance with 7 CFR 3016.42 or longer in accordance with County policy. Retention period is typically three years.

12. **Required Posting** - Recipients of Federally-Assisted Programs are required to display the enclosed "And Justice For All" (AD 475C) poster in their facilities where it can be viewed by customers. It may be downloaded from the following website: <http://www.fns.usda.gov/cr/justice-translations/475C.pdf>

**B. NRCS will:**

1. Contribute up to \$1,590,000.00 to be used by the County to complete technical assistance work in accordance with the County's Plan of Work, reviewed and accepted by NRCS and incorporated into agreement 68-8D43-10-14. Additional NRCS TA funding may be added to the agreement through award of an amendment.
2. Submit to the County the final, signed, Damage Survey Report (DSR) within 30 days of award of the agreement.
3. Complete all necessary NEPA and cultural resources documentation. Notify the County if there are actions the County needs to carry out to ensure compliance with decisions rendered.
4. Provide technical assistance to the County. An NRCS engineer will be designated as the government representative for the project and will be available to assist the County throughout the project.

5. Complete timely review of all submittals by the County.

6. Upon receipt of a properly completed SF-270, Request for Advance or Reimbursement, and requested proper supporting documentation, assess description of work completed relative to allowable funds requested and, if request is reasonable, approve and process payment to the County. In the event there are questions regarding the SF-270 and supporting documentation, NRCS will contact the County in a timely manner to resolve concerns.

#### **VIII. IT IS MUTUALLY AGREED:**

A. That NRCS funding available for project technical services identified in this agreement will not exceed \$1,590,000.00 unless amended to add funding. Any costs in excess of amounts shown in this agreement or amendments are the responsibility of the County.

B. Should inconsistencies arise between language in the agreement and the plan of work, the language in the agreement takes precedence.

C. If the County desires to increase the level of protection over and above that described in the NRCS Damage Survey Report (DSR), the County will be responsible for paying 100 percent of the costs of any unapproved and unfunded upgrade or additional work.

D. NRCS cannot reimburse the County for work performed prior to award date of this agreement (date of signature by NRCS State Conservationist).

E. The County is responsible for 100 percent of the costs incurred in obtaining permits and property rights, and for operation and maintenance of the completed project.

#### **IX. PROVISIONS AND REGULATIONS**

##### **A. Administrative Provisions:**

This agreement, and other arrangements at any tier under this agreement, shall be governed by the following regulations, appropriate to the type of organization receiving the award, relative to tier, as are in effect on the effective date of award and hereby incorporated by reference: (Internet links for the full text of Code of Federal Regulations (CFR) references may be found at [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)).

1. 7 CFR Part 3015, "Uniform Federal Assistance Regulations"

2. 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

3. 7 CFR Part 3017, "Governmentwide Debarment and Suspension (Nonprocurement)"

4. 7 CFR Part 3018, "New Restrictions on Lobbying"

5. 7 CFR Part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations"

6. 7 CFR 3021, "Government wide Requirements for Drug-Free Workplace (Financial Assistance)"

7. 7 CFR Part 3052, "Audits of Institutions of Higher Education and Other Non-Profit Institutions"

8. 2 CFR Part 215, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations (OMB Circular A-110)"

9. Treasury Circular 1075, Withdrawal of Cash from the Treasury for Advances under Federal and Other Programs

**B. Federal Cost Principles:**

Allowable project costs shall be determined in accordance with the authorizing statute, the purpose of the agreement award, and by the following Federal cost principles that are applicable to the type of organization receiving the award, relative to tier, as are effective on the date of award and hereby incorporated by reference: (The full text for OMB Circulars may be found at [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)).

1. 2 CFR Part 220, "Cost Principles for Institutions of Higher Education"

2. 2 CFR Part 225, "Cost Principles for State and Local Governments" (including Indian Tribal governments)

3. 2 CFR Part 230, "Cost Principles for Nonprofit Organizations" other than institutions of higher education

4. Federal Acquisition Regulations, Part 31, (<http://www.acqnet.gov/far>) "Contract Cost Principles and Procedures"

C. The County will conduct all procurement activities in a manner that provides, to the maximum extent possible, free and open competition.

D. The County is responsible, without recourse to NRCS or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the County and others to carry out approved project activities. Matters concerning violation of law should be referred to the federal, state, or local authority having proper jurisdiction.

E. The Federal Travel Regulations will serve as a guideline for any travel performed under this agreement.

## **X. AMENDMENTS, CHANGES, AND TERMINATION**

A. This agreement may be amended in writing by mutual consent of the parties. NRCS is responsible for writing the amendment, obtaining signatures, and distributing copies to the County. If an agreement is written that implements only internal administrative changes, the amendment may be issued unilaterally by NRCS; the County will receive a copy of all amendments.

B. Requests from the County to the NRCS Program Manager to extend the term of the agreement must be submitted no less than 60 days prior to the expiration date of the agreement and include a justification, in writing, documenting the need for the extension. NRCS expects that the project will be completed within the established term of the agreement. Requests for time extensions require the approval of the NRCS National Headquarters Office and are only approved when a sound, defensible justification is provided.

C. Terms of enforcement and termination are in accordance with 7 CFR 3016.43-44 as follows:

### ***"§ 3016.43 Enforcement.***

*(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:*

*(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,*

*(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,*

*(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,*

*(4) Withhold further awards for the program, or*

*(5) Take other remedies that may be legally available.*

*(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.*

*(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs*

during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §3016.35).

#### **§ 3016.44 Termination for convenience.**

Except as provided in §3016.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

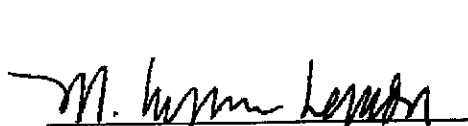
(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §3016.43 or paragraph (a) of this section."

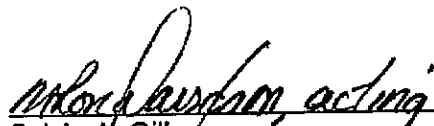
#### **XI. APPROVAL**

The United States Department of Agriculture, Natural Resources Conservation Service and Cache County execute this agreement as of the date of final signature by USDA/NRCS. The signatories below represent that each is duly authorized to bind their respective organization to the terms of this agreement. By signing this agreement, the County assures USDA that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

**CACHE COUNTY, UTAH**

**US DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE**

  
M. Lynn Lamon  
County Executive/Surveyor  
4/2/10  
Date

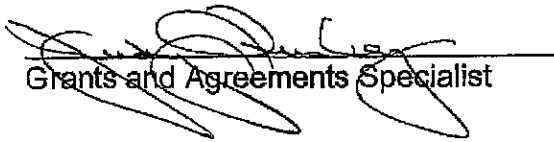
  
Sylvia A. Gillen  
State Conservationist  
4/2/10  
Date

Concurrence – Agreement with Cache County Utah

Agreement # 68-8D43-10-13 (TA Agreement) and  
Agreement #68-8D43-10-14 (FA Agreement)

Cache County EWP Project

I have reviewed the attached agreement and recommend the State  
Conservationist approve and sign:

  
Grants and Agreements Specialist

4-22-2010  
Date

  
Program Manager

4-22-2010  
Date

  
State Administrative Officer

4-22-2010  
Date



**FUNDING REQUEST FOR FINANCIAL ASSISTANCE**  
(GRANT OR COOPERATIVE AGREEMENT OR AMENDMENT INCREASING FUNDING)

**TO: State Administrative Officer**

**FROM: Bronson Smart, EWP Program Manager**  
(Program Manager)

**PROJECT TITLE:** Cache County EWP TA

**PROPOSED RECIPIENT** (If non-discretionary funds.) Cache County

**AUTHORIZED BY:** Public Law \_\_\_\_\_  
U.S. Code 7 CFR 624.8(c) – Emergency Watershed Protection

**FUNDING AMOUNT:** ~~\$1,000,000.00~~  
\$1,590,000.00

**FUND CODE (YEAR-FUND-JOB #-BOC):** 10 15T49

**RECIPIENT COST-SHARE:** To be determined based on level of work required (NRCS may reimburse 100% but only up to a maximum not yet determined)

**PROPOSED EXPIRATION DATE OF AGREEMENT:** September 24, 2010

**IF AMENDMENT, GRANT OR AGREEMENT NUMBER:** \_\_\_\_\_


**FUNDS SPECIFIED ABOVE ARE AVAILABLE AND AUTHORIZED FOR THE IDENTIFIED PURPOSE:**

  
\_\_\_\_\_  
PROGRAM MANAGER

3/4/10  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
BUDGET OFFICER

3/8/10  
\_\_\_\_\_  
DATE

 SAO 3/8/10

done 4-22-10 CS  
Agreement Number: 68-8D43-10-14  
Fund Code: 10 15F49  
Amount: \$19,350,000.00  
Expiration Date: 9/24/2010

**COOPERATIVE AGREEMENT  
68-8D43-10-14**

between the

**UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE (NRCS)**

and

**CACHE COUNTY, UTAH (County)**

**TITLE: Financial Assistance for Cache County Emergency Watershed Protection  
Project – Cache County, Utah**

**I. AUTHORITY**

A. Code of Federal Regulations, Title 7: Agriculture, Part 624-Emergency Watershed Protection (EWP), paragraph 624.8(c) authorizes NRCS to enter into a cooperative agreement with a sponsor.

B. For purposes of this agreement, "sponsor" refers to the County and is defined in 7 CFR 624.4(g) as: "Project sponsor means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required."

C. The principle role of NRCS in this project is to oversee the financial assistance support provided by NRCS to the County. As the project sponsor, the County is responsible for all aspects of the project including the design, specifications, construction, inspection, and ongoing operation and maintenance of the project once completed. The County may enter into subagreements or contracts with other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract to perform required tasks or functions as deemed appropriate, including but not limited to securing land rights and/or permits, performing construction oversight, removal or relocation of utilities, project engineering, quality assurance performance reports, or performing operation and maintenance of the project(s) once the construction is completed. The County may also assign responsibility and liability to other individuals, business entities, governmental agencies,

or any other legal entity capable of entering into a contract for any additional costs of the project not covered by the contracts with NRCS or for any other potential task or liability associated with the project.

## II. PURPOSE

A. On July 11, 2009, a landslide occurred that caused loss of life, property damage, and damage to the Logan Northern Canal System. The Logan Northern Canal System delivers irrigation water to over 7,000 acres of agricultural land and communities in Cache County. The purpose of this agreement is to establish the terms, conditions, and responsibilities of both parties in the planning, design, and implementation of a safe functioning project that restores the Logan Northern Canal System to its end function: delivery of irrigation water to every irrigation company shareholder affected by the landslide.

B. This agreement #68-8D43-10-14, is the second of two agreements awarded for the Cache County EWP Project. The first agreement, # 68-8D43-10-13, encompasses technical assistance for the design and specifications, construction administration, inspection services, etc.

C. This second agreement (68-8D43-10-14) describes the terms and conditions governing the NRCS funding (up to 75 percent of allowable construction cost within the established threshold) for the actual *construction phase* of the project. The terms of the second agreement require the County to contribute a minimum 25 percent cost-share of total project on-the-ground construction costs, comprised of cash and/or the value of in-kind labor, materials, and/or equipment. To simplify financial accounting for differing cost-share requirements of technical and construction activities, NRCS determined the award of two agreements was the most efficient approach.

## III. BENEFITS

Relocation of the Logan <sup>Northern</sup> Canal will restore delivery of irrigation water to over 7,000 acres of agricultural land and communities in Cache County, directly benefitting residents of the area and beyond by successful production of agricultural crops.

## IV. ATTACHMENTS TO AGREEMENT

The following attachments are incorporated into the agreement:

Attachment A: Project Area Map

Attachment B: The following Standard Forms submitted by the City:  
SF 424 – Application for Federal Assistance  
SF 424C Budget Information – Construction Programs  
SF 424D Assurances – Construction Programs

Attachment C: Special Provisions for Grants and Cooperative Agreements

Attachment D: NRCS Supplement to OSHA Parts 1910 and 1926

Attachment E: Quarterly Accrual Report format

## V. TERM OF THE AGREEMENT

This agreement is effective on the date of signature by the NRCS State Conservationist and continues in full force and in effect through September 24, 2010. Requests for extension of time must be submitted in writing to the NRCS Project Manager and received by NRCS 60 days in advance of the expiration date. The NRCS Project Manager will review the request and forward it to the NRCS Headquarters Office for consideration. If approved, the agreement will be amended to extend the date.

## VI. CONTACT INFORMATION

CACHE COUNTY	NRCS UTAH
<b>Project Manager</b>	<b>Project Manager</b>
Robert M. Fotheringham Cache County Water Manager	Bronson Smart NRCS Utah State Conservation Engineer
199 North Main St. Logan, UT 84321	USDA Natural Resources Conservation Service 125 South State St., Room 4402 Salt Lake City UT 84138-1100
Phone: 435-755-1854 Cell: 435-754-5917 Fax: 435-755-1981	Phone: 801-524-4559 Fax: 801-524-4403 Email: bronson.smart@ut.usda.gov
Email: bfotheringham@cachecounty.org	
<b>Financial Contact</b>	<b>Administrative Contact</b>
Cameron Jensen Cache County Financial Director 199 North Main St. Logan, UT 84321	Judy Ousley Grants and Agreements Specialist USDA Natural Resources Conservation Service 125 South State St., Room 4402 Salt Lake City, UT 84138-1100
Phone: 435-755-1855 Cell: 435-713-5899 Fax: 435-755-1981	Phone: 801-524-4553 Fax: 801-524-5059 Email: judy.ousley@ut.usda.gov
Email: cameron.jensen@cachecounty.org	

## VII. DELIVERABLES AND OBLIGATIONS

### A. Cache County will:

1. **Plan of Work** – Once the design and specifications are completed, the County will submit to the NRCS Project Manager and NRCS Administrative Contact (see "Contact" Section) a Financial Assistance (Construction) Plan of Work (POW). The construction phase of the project, including solicitation for the construction contract, will not occur until the final plan of work, reviewed and acceptable to NRCS, is incorporated into this agreement. The final Plan of Work will include provisions to ensure water is restored to every irrigation company shareholder affected by the landslide. In addition, the plan of work will include:

- Project description and background
- Objectives
- Beneficiaries
- Project approach
- Time schedule
- Budget, including general category cost accounting for NRCS contribution for up to 75% of total construction cost and description and accounting for County 25% of total construction cost cost-share.
- NRCS developed Damage Survey Report (DSR)
- Design and Specifications
- Design report addressing hydrology, hydraulics, and sedimentation, as applicable
- Inspection Plan
- Quality Assurance Plan
- Operations and Maintenance Plan

a. NRCS will review the revised Financial Assistance (Construction) POW and provide comments to the County. The County will review comments, contact the NRCS Project Manager as needed to discuss, and incorporate changes into the Construction POW.

b. Once a final Financial Assistance (Construction) POW acceptable to both NRCS and the County is completed, an amendment to this agreement will be written incorporating the revised, final Financial Assistance POW into the agreement as an attachment.

**Development of the revised Financial Assistance (Construction) POW is the first task to be completed for this agreement. The County is cautioned to refrain from proceeding with construction, including soliciting for a construction contract, until NRCS issues an amendment incorporating the revised, final Construction**

**POW into the agreement. REQUESTS FOR REIMBURSEMENT FOR THIS AGREEMENT SUBMITTED FOR WORK PERFORMED PRIOR TO THE AGREEMENT EFFECTIVE DATE OR FOR ON-THE-GROUND CONSTRUCTION WORK PERFORMED PRIOR TO SUBMISSION AND ACCEPTANCE OF THE FINAL POW BY NRCS WILL BE DENIED BY NRCS.**

c. The County intends to enter into a subagreement or contract with the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, to perform required tasks or functions described below as deemed appropriate, such as securing land rights and/or permits, performing construction oversight, or performing operation and maintenance of the project(s) once the construction is completed. The County may enter into subagreements or contracts with other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract to perform required tasks or functions as deemed appropriate, including but not limited to securing land rights and/or permits, performing construction oversight, removal or relocation of utilities, project engineering, quality assurance performance reports, or performing operation and maintenance of the project(s) once the construction is completed. The County may also assign responsibility and liability to other individuals, business entities, government agencies, or any other legal entity capable of entering into a contract for any additional costs of the project not covered by the contracts with NRCS or for any other potential task or liability associated with the project.

d. The County will ensure that subagreements with others are in compliance with 7 CFR 3016.37, requiring subrecipients to comply with applicable federal regulations.

2. **Cost-share** - Contribute a minimum 25 percent of total allowable project construction costs in County funds and/or value of in-kind labor, materials, or equipment. The County will have a process in place to directly charge County construction costs dedicated to this project (salaries and benefits of County employees performing construction, use of County-owned equipment, etc.) and will have supporting documentation on file. The County is allowed and anticipates municipalities and canal companies to cover the 25 percent cost share of the project construction costs through loans or other in-kind contributions.

a. NRCS contribution will not exceed 75 percent of total allowable project construction costs up to a maximum of \$19,350,000.00. Estimated project cost is:

**NRCS (up to 75% and not to exceed): \$19,350,000.00**

**County required cost share (25%): 6,450,000.00**

**Total project cost: \$25,800,000.00**

b. Upon completion of the project, NRCS and the County will meet and, based on documentation presented, mutually determine the total construction project cost and the cost to each party.

c. Once the project is completed and all requests for reimbursement submitted, excess funding remaining in the agreement (over and above the NRCS commitment of up to 75% of actual construction cost and within the not-to-exceed amount) will be deobligated from the agreement.

d. The County is prohibited from using other Federal funding as a part of their cost-share requirement.

### 3. Pre-Construction

a. **Notification** Prior to beginning on-the-ground construction work, the County will contact the NRCS Project Manager to confirm that all requirements relative to the following items have been completed by the County and are acceptable to NRCS:

(1) Project design, construction drawings, and specifications

(2) Environmental compliance, including cultural resources

(3) Federal, State, and local permits. **All costs relative to obtaining required permits will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County.**

(4) Design report addressing items pertaining to: geology, geotechnical, structural, hydrology, hydraulics, and sedimentation

(5) Real property rights – Form NRCS-ADS-78 and attorney's opinion – **NOTE: The ADS-78 and attorney's opinion must be submitted by the County and accepted by NRCS prior to start of construction. All costs relative to obtaining property rights will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County.**

(6) Project inspection plan

(7) O&M plan completed and acceptable to NRCS

(8) Inspection/Quality Assurance Plan completed

b. **Pre-Construction Photos**. The County will photograph the sites prior to implementation of construction. These photos will be included in the photo-documentation required in paragraph 7 of this section. The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, or another entity under contract with them will secure the foregoing photos.

4. **Safety** - All contractors on NRCS assisted projects are required to perform their work in accordance with OSHA regulations, NRCS Supplement to OSHA Parts 1910 and 1926 (incorporated into the agreement as an attachment) and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). The County is responsible for periodically checking to ensure the contractor is in compliance. The County will notify NRCS of all serious accidents and/or injuries that occur on the NRCS assisted project.

5. **Inspection, Quality Control and Assurance** - Perform all inspections and quality assurance/control of construction work and materials to verify that County employees or the County's construction contractor is performing work in accordance with plans, specifications, design, and contract clauses. Inspection 100 percent of the time is required when work is being performed through award of a contract by the County.

**Diligent oversight leading to successful completion of the project is the County's responsibility. Contracting with an engineering firm for inspection services does not relieve the County of the responsibility of diligent contract oversight to ensure inspections are being properly performed within the required timeframes.**

6. **Weekly Progress Reports** - Once a week, throughout the duration of construction activities, digital images documenting construction progress will be submitted to the NRCS Project Manager and NRCS Administrative Contact identified in the "Contact" section of the agreement. **Photos will be accompanied by a narrative progress report documenting construction progress during the week.** Submission via e-mail is acceptable.

7. **Digital Photographic Diary of Construction Activities** -

a. Upon completion of the project, the County will provide photographs in digital format (.jpeg) on a CD to both the NRCS Project Manager and Administrative Contact. The photographic documentation should be a complete diary of activities from preconstruction through final inspection.



b. A set of final photos should be made of all completed project sites and should be taken from similar vantage points as the original pre-construction photos. Photos should be taken daily of construction activities and should show construction methods, subsurface materials encountered, construction problems as well as problem solutions, and any damages incurred during construction either natural or manmade.

8. **Site Visits** - The County acknowledges that NRCS representatives will conduct random site visits to the construction site. The purpose of the visits will be to observe construction activities to ensure they are in compliance with Federal laws and regulations and the terms of the agreement (reference paragraph VII.B.2). It is important to note that these are site visits only and not inspections. If NRCS observes problematic practices during a site visit, the County will be notified and expected to immediately address and resolve the concern. Failure of the County to act may result in termination of the agreement. The County is responsible for managing their contracts and NRCS expects that scheduled and random site visits to the construction site(s) will be made by County officials.

9. **Notification of Significant Events** - Events may occur that have significant impact upon the project. In such cases, the County must inform the NRCS Project Manager either (1) verbally, if the issue is time-sensitive, with a written notice documenting the conversation submitted to NRCS within 24 hours of occurrence; or (2) if the issue is not time-sensitive, in writing, as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions that will materially impair the County's ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

b. Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

10. **Inspection for Final Acceptance** - A final inspection will be scheduled by the County when all construction has been completed, the County's Architect/Engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed. The final inspection will be made by representatives of the County, the Architect/Engineer and the contractor(s). The NRCS Project Manager (see "Contact" Section) must be given advance notice of the final inspection date so that an NRCS representative may participate, at the option of NRCS.

11. **As-built Drawings** - Submit two copies of the final as-built drawings to the NRCS Project Manager. The as-built drawings will have the seal of the licensed professional engineer responsible for construction oversight along with

a statement signed by the responsible licensed professional engineer certifying: "To the best of my professional knowledge, judgment, and belief this practice is installed in accordance with the plans and specifications and meets NRCS standards."

12. Perform all construction in compliance with:

- a. NRCS standards and specifications.
- b. All required local, State, and Federal permits. The County is solely responsible for obtaining all permits.
- c. All terms and conditions herein whether included in full text or by reference. Section VIII, Provisions and Regulations, of the agreement lists applicable regulations. Links to regulations are located at the following website: [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)
- d. Information and assurances provided in Standard Forms (SF) 424, 424C and 424D, incorporated into this agreement as Attachment B;
- e. Special Provisions for Grants and Cooperative Agreements, incorporated into this agreement as Attachment C.

13. Additional Costs - Accept all financial and other responsibility for excess costs resulting from failure of the County to obtain, or delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures. The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, or another entity under contract with them to cover excess costs resulting from failure of the County to obtain, or delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures.

14. Engineering Services - Agree to employ competent and professional engineering services so as to insure the soundness and adequacy of engineering services. NRCS requires that NRCS criteria and standards be followed insofar as they are applicable, but the County is expected to make independent decisions.

15. Quality Assurance - Agree to employ competent and professional individuals to perform engineering and quality assurance functions that will accept liability for any damage and any additional construction costs to others, to correct problems arising during or after construction resulting from deficient engineering and/or construction services.

16. **Performance Reports** - In accordance with 7 CFR 3015.92, on-site technical inspection conducted by the County will be used to monitor project progress along with submissions required by paragraphs 6 and 7 above.

17. **Requesting Reimbursement and Financial Reporting** - Comply with the following financial requirements:

a. Agree that total reimbursement from NRCS for this agreement will not exceed \$19,350,000.00.

b. The County will request reimbursement by submitting to the NRCS Project Manager (see "Contact" Section) at least quarterly and no more frequently than monthly:

(1). An original, signed Standard Form (SF) 270, Request for Advance or Reimbursement. (SF-270 form is accessible at: <http://www.ut.nrcs.usda.gov/technical/grantsagreements.html>) and

(2). If requested by NRCS, on a separate page attached to the SF-270, a general breakout of costs incurred during the reporting period and brief written description of work accomplished (materials purchased, services received, etc.) or descriptive invoices.

(a). The brief description of work accomplished during the reporting period or descriptive invoice must be in sufficient detail to allow NRCS to make a determination that funds being requested are reasonable relative to work actually accomplished.

(b) In accordance with 7 CFR 3015.102(b)(3), NRCS will not use the percentage-of-completion method to pay its construction agreements. The County may use that method to pay its construction contractor, but if it does, NRCS payments to the recipient will nevertheless be based on the County's actual rate of disbursements.

c. Costs submitted for reimbursement should match the County proposed budget.

d. If notified by NRCS, submit to the NRCS Project Manager (see "Contact" Section) an SF-425, Federal Financial Report, upon completion of the agreement. Typically, the SF-270 forms include the required information and an SF-425 form may not be required.

18. **Quarterly Accrual Report** - NRCS also requires quarterly accrual information. An accrual is the value of the work you have performed or will perform in cooperation with the NRCS but for which you have:

a. Not yet submitted an SF-270 or

- b. Submitted an SF-270 but have not received payment.

Please complete the Accrual Information form (see Attachment E to this agreement) and submit it to the address below no later than 15 days prior to the end of the quarter (submit by March 15, June 15, September 15, and December 15). The U.S. Congress relies on audits of financial statements, including accrual information, to determine future funding amounts for NRCS on-going and new programs.

**Submit SF-270 and Accrual Information Form to:**

Judy Ousley  
USDA/Natural Resources Conservation Service  
125 South State Street, Room 4402  
Salt Lake City, UT 84138-1100

19. **Records Retention** - The County is responsible for keeping all records relative to the project, including all documentation of procurements, receipts, and other accounting information. Retain all records relative to this agreement in accordance with 7 CFR 3016.42 or longer in accordance with County policy.

20. **Audit Requirements** - Comply with the Single Audit Act requiring all non-Federal entities that expend \$500,000 or more of Federal awards in a year to obtain an annual audit.

21. **Required Posting** - Recipients of Federally-Assisted Programs are required to display the enclosed "And Justice For All" (AD 475C) poster in their facilities where it can be viewed by customers. It may be downloaded from the following website: <http://www.fns.usda.gov/cr/justice-translations/475C.pdf>

**B. NRCS will:**

1. **Funding** - Contribute up to \$19,350,000.00 to reimburse the County for up to 75 percent of allowable project construction costs.

2. **Government Representative** - Designate an NRCS engineer as the government representative for the project. The government representative will be on-site during construction in an almost full-time capacity to observe construction. The presence of the government representative does not relieve the County of the responsibility of oversight of their construction contractor nor the requirement to provide full-time construction inspection.

3. **Consultation** - As requested, consult with the County on technical issues and provide advice and direction on administrative matters. Provide timely review and comments to the County on the draft POW to be submitted by the County.

4. **Reimbursement** - Upon receipt of a properly completed SF-270, Request for Advance or Reimbursement, and proper supporting documentation, assess description of work completed relative to funds requested and, if request is reasonable, approve and process payment to the County. In the event there are questions regarding the SF-270 and supporting documentation, NRCS will contact the County in a timely manner to resolve concerns.

5. **Process Amendments** - Develop and process amendments to the agreement as needed.

**C. It is mutually agreed:**

1. If the County desires to increase the level of protection over and above that described in the NRCS Damage Survey Report (DSR), the County will be responsible for paying 100 percent of the costs of any unapproved and unfunded upgrade or additional work.

2. NRCS cannot reimburse the County for construction work performed prior to award date of this agreement (date of signature by NRCS State Conservationist) and acceptance by NRCS of the County's final POW.

3. The County is responsible for 100 percent of the costs incurred in obtaining permits and property rights, and for the operation and maintenance of the completed project. The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, to secure the foregoing permits and property rights. The County may further assign the responsibility of the operation and maintenance of the completed project to a third party, which may include the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company.

4. Should inconsistencies arise between language in the agreement and the POW, the language in the agreement takes precedence.

**VIII. PROVISIONS AND REGULATIONS**

**A. Administrative Provisions:**

This agreement, and other arrangements at any tier under this agreement, shall be governed by the following regulations, appropriate to the type of organization receiving the award, relative to tier, as are in effect on the effective date of award and hereby incorporated by reference: (Internet links for the full text of Code of Federal Regulations (CFR) references may be found at [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)).

1. 7 CFR Part 3015, "Uniform Federal Assistance Regulations"

2. 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

3. 7 CFR Part 3017, "Governmentwide Debarment and Suspension (Nonprocurement)"

4. 7 CFR Part 3018, "New Restrictions on Lobbying"

5. 7 CFR Part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations"

6. 7 CFR 3021, "Government wide Requirements for Drug-Free Workplace (Financial Assistance)"

7. 7 CFR Part 3052, "Audits of Institutions of Higher Education and Other Non-Profit Institutions"

8. 2 CFR Part 215, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations (OMB Circular A-110)"

9. Treasury Circular 1075, Withdrawal of Cash from the Treasury for Advances under Federal and Other Programs

**B. Federal Cost Principles:**

Allowable project costs shall be determined in accordance with the authorizing statute, the purpose of the agreement award, and by the following Federal cost principles that are applicable to the type of organization receiving the award, regardless of tier, as are in effect on the effective date of award and hereby incorporated by reference: (The full text for OMB Circulars may be found at [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)).

\* 1. 2 CFR Part 220, "Cost Principles for Institutions of Higher Education"

2. 2 CFR Part 225, "Cost Principles for State and Local Governments" (including Indian Tribal governments)

3. 2 CFR Part 230, "Cost Principles for Nonprofit Organizations" other than institutions of higher education

4. Federal Acquisition Regulations, Part 31, (<http://www.arnet.gov/far>) "Contract Cost Principles and Procedures"

C. The County will conduct all procurement activities in a manner that provides, to the maximum extent possible, free and open competition.

D. The County is responsible, without recourse to NRCS or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the County and others to carry out approved project activities. Matters concerning violation of law should be referred to the federal, state, or local authority having proper jurisdiction.

E. The Federal Travel Regulations will serve as a guideline for any travel performed under this agreement.

#### **IX. AMENDMENTS, CHANGES, AND TERMINATION**

A. This agreement may be amended in writing by mutual consent of the parties. NRCS is responsible for writing the amendment, obtaining signatures, and distributing copies to the County. If an amendment is written that implements only internal administrative changes, the amendment may be issued unilaterally by NRCS. The County will receive a copy of all amendments.

B. Requests from the County to the NRCS Project Manager to extend the term of the agreement must be submitted no less than 60 days prior to the expiration date of the agreement and include a justification, in writing, documenting the need for the extension. NRCS expects that the project will be completed within the established term of the agreement. Requests for time extensions require the approval the NRCS National Headquarters Office and are only approved when a sound, defensible justification is provided.

C. Terms of enforcement and termination are in accordance with 7 CFR 3016.43-44 including:

##### **"§ 3016.43 Enforcement.**

*(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:*

*(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,*

*(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,*

*(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,*

*(4) Withhold further awards for the program, or*

*(5) Take other remedies that may be legally available.*

*(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.*

*(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:*

*(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,*

*(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.*

*(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §3016.35).*

#### **§ 3016.44 Termination for convenience.**

*Except as provided in §3016.43 awards may be terminated in whole or in part only as follows:*

*(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or*

*(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §3016.43 or paragraph (a) of this section."*

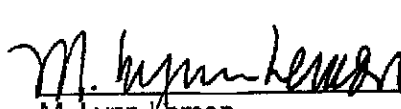



**X. APPROVAL**

The United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), and Cache County execute this agreement as of the date of final signature by USDA/NRCS. The signatories below represent that each is duly authorized to bind their respective organization to the terms of this agreement. By signing this agreement the recipient assures the USDA that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

CACHE COUNTY, UTAH

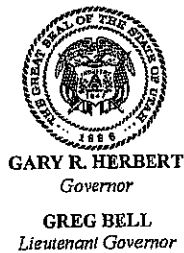
U. S. DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE

 4/2/10  
M. Lynn Lemon Date  
County Executive/Surveyor

 4/27/10  
Sylvia A. Gillen Date  
State Conservationist

## **EXHIBIT “B”**

### **UDWR LOAN COMMITMENT LETTER**



GARY R. HERBERT  
Governor

GREG BELL  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Water Resources

DENNIS J. STRONG  
Division Director

September 16, 2011

Keith Meikle, President  
Cache Highline Water Assoc.  
1285 East 4500 North  
Hyde Park, UT 84318

Mr. Meikle:

In its May 27, 2010 meeting the Board of Water Resources authorized the association's canal enclosure project. The board will advance 20.6% of the project cost up to \$5,875,000. The association will purchase the project from the board at 0% interest over approximately 22 years with annual payments of \$274,500 for the first 21 years and the balance paid the final year. The board's action is contingent upon the availability of funds at the time the project is ready for construction.

Before any funds can be released, however, the following requirements must be accomplished:

1. Obtain all easements, rights-of-way, and permits required to construct, operate, and maintain the project.
2. Enter into service agreements with Logan & Northern Irrigation Company and Logan, Hyde Park & Smithfield Canal Company, as well as Logan, North Logan, Hyde Park and Smithfield cities if they are involved in carrying storm water in the canals.
3. Pass a resolution by the appropriate (as defined in the company's Articles of Incorporation and Bylaws) majority of company stock authorizing its officers to do the following:
  - a. Assign properties and easements required for the project to the Board of Water Resources.
  - b. Enter into a contract with the Board of Water Resources for construction of the project and subsequent purchase from the board.
4. Have an attorney give the Board of Water Resources a written legal opinion that:
  - a. The association is legally incorporated for at least the term of the purchase contract and is in good standing with the state Department of Commerce.



- b. The association has legally passed the above resolution in accordance with the requirements of state law and the company's Articles of Incorporation and Bylaws.
  - c. The association has obtained all permits required for the project.
  - d. The association owns all easements and rights-of-way for the project, as well as the land on which the project is located, and that title to these easements, rights-of-way, and the project itself can be legally transferred to the board.
  - e. The water rights applicable to the project are unencumbered and legally transferable to the Board of Water Resources, and that they cover the land to be irrigated by the project.
5. Obtain approval of final plans and specifications from the Division of Water Resources.
6. Prepare a water management and conservation plan for its service area, and obtain approval of it from the Division of Water Resources.
7. Complete a Water Conveyance Facility Management Plan as described and within the time frame required by 1st Substitute House Bill 60, as passed by the 2010 State Legislature. A copy of the bill is included that explains what is required for this plan. The important details in the bill begin on page 12, line 323, Section 73-10-33 "*Management Plan for Water Conveyance Facilities*".

We have also included a brochure created by the Utah Association of Conservation Districts that summarizes House Bill 60 (as well as related House Bill 298). Hopefully, you will find this summary useful in creating your management plan.

A Certification and Acknowledgment Form is included that, when completed by the association, will accomplish Item #3.

After all these things have been accomplished the project will be presented to the board for committal of funds. To enable the project to move ahead, it is essential that action be started on all of these items. Board policy requires that these items be completed in 18 months or less, or the board will consider either withdrawing your project or reauthorizing it with possibly more restrictive financial terms.

Please call Tom Cox (801-538-7265) or me if you have any questions.

Thank you,

Val J. Anderson, P.E.  
Chief of Investigations

Enclosures

cc: Blair Francis : Board of Water Resources  
Cache County : Cache County Commission  
Bronson Smart : NRCS  
Will Atkin : Water Rights Regional Engineer  
Lyle Thornley  
Jon Meikle  
Bob Fotheringham

**EXHIBIT “C”**  
**COST SHARE SUMMARY**

# EXHIBIT COST SHARE SUMMARY

**(PRELIMINARY, SUBJECT TO CHANGE)**

1. Maximum Total Project Cost	\$	25,800,000	(Financial Assistance Grant) <sup>1</sup>
75% NRCS EWPP GRANT	\$	19,350,000	
25% LOCAL COST SHARE	\$	6,450,000	(Includes Structure Acquisition Cost --See Section 3)

2. Allocation of Local Cost Share:

Association Local Cost Share	60%	\$	6,450,000	\$	3,870,000
Municipal Local Cost Share	40%	\$	6,450,000	\$	2,580,000
Logan City	40%	\$	2,580,000	\$	1,032,000
N. Logan City	25%	\$	2,580,000	\$	645,000
Hyde Park City	15%	\$	2,580,000	\$	387,000
Smithfield City	15%	\$	2,580,000	\$	387,000
Cache County	5%	\$	2,580,000	\$	129,000

3. Payment of 25% Local Cost Share and Other Costs During Design and Construction Period:

Local Cost Share Obligation	\$	6,450,000	
DWR Loan <sup>2</sup>	85%	\$	5,482,500
Local Match	15%	\$	967,500
			(Includes easement cost of \$250,000)

Structure Acquisition	\$	784,300
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			Local Match (15%)	DWR Loan (85%)	Structure Acquisition <sup>3</sup>	Total Costs
Association Cost Share						
Cache Highline	\$ 3,870,000 @100%	\$	580,500	\$ 3,289,500		\$ 3,870,000
Municipal Cost Share						
Logan City	\$ 2,580,000 @40%	\$	154,800	\$ 877,200	\$ 784,300	\$ 1,816,300
N. Logan City	\$ 2,580,000 @25%	\$	96,750	\$ 548,250		\$ 645,000
Hyde Park City	\$ 2,580,000 @15%	\$	58,050	\$ 328,950		\$ 387,000
Smithfield City	\$ 2,580,000 @15%	\$	58,050	\$ 328,950		\$ 387,000
Cache County	\$ 2,580,000 @5%	\$	19,350	\$ 109,650		\$ 129,000

4. UDWR Loan Repayment Annual Allocation (22 Year Repayment Period @ 0% Interest)

	DWR Loan	Yearly Payment
Cache Highline	\$ 3,289,500	\$ 149,523
Logan City	\$ 877,200	\$ 39,873
N. Logan City	\$ 548,250	\$ 24,920
Hyde Park City	\$ 328,950	\$ 14,952
Smithfield City	\$ 328,950	\$ 14,952
Cache County	\$ 109,650	\$ 4,984

1. In addition, NRCS is providing a Technical Assistance Grant for \$1,300,000 @ no cost share obligation
2. Maximum amount currently authorized by DWR Board is \$5,875,000
3. Local cost share portion of total estimated acquisition cost of \$3,137,200