FIRST AMENDED INTERLOCAL COOPERATION AGREEMENT REGARDING THE DISTRIBUTION OF RAP TAX REVENUE IN WASHINGTON COUNTY

THIS AGREEMENT ("Agreement") is made and entered into by and between Washington County, a political subdivision of the State of Utah (the "County") and the City of St. George, a Utah municipal corporation ("St. George"), the City of Washington, a Utah municipal corporation ("Washington"), the City of Hurricane, a Utah municipal corporation ("Hurricane"), the City of Santa Clara, a Utah municipal corporation ("Santa Clara"), the City of Ivins, a Utah municipal corporation ("Ivins"), the City of Enterprise, a Utah municipal corporation ("Enterprise"), the City of Toquerville, a Utah municipal corporation ("Toquerville"), the City of LaVerkin, a Utah municipal corporation ("LaVerkin"), the City of Springdale, a Utah municipal corporation ("Springdale"), the Town of Leeds, , a Utah municipal corporation ("Enterprise"), the City of Leeds, a Utah municipal corporation ("Leeds"), the Town of Virgin, a Utah municipal corporation ("Virgin"), the Town of Rockville, a Utah municipal corporation ("Rockville"), the Town of Apple Valley a Utah municipal corporation ("Apple Valley") the Town of Hildale a Utah municipal corporation ("Hildale")and the Town of New Harmony a Utah municipal corporation ("New Harmony"). The municipalities shall collectively be referred to as "Municipalities," and the Municipalities and the County shall collectively be referred to as the "Parties." The purpose of the Agreement is to establish binding funding distribution guidelines for any revenue derived from a county-wide sales and use tax for funding recreational and cultural organizations and facilities.

RECITALS

A. ~~A number~~ Through a ballot opinion question included in the November 4, 2014, general election, the voters of Washington County ~~residents have expressed the desire to seek voter approval of a county-wide~~voiced their opinion on whether the County should impose a sales and use tax ~~for funding~~of one-tenth of one percent to fund recreational and cultural organizations and facilities ("RAP tax") in accordance with Utah Code Section 59-12-~~701et~~701 et seq.;

~~Determining how such funds would be distributed will~~

B. In the canvas of the general election, the county commission accepted that a majority of the ballots cast were in favor of the imposition of a RAP tax;

C. The county commission approved the RAP tax, and the tax became operative on April 1, 2015

~~A.~~D. Prior to the imposition of the RAP tax, the Parties entered in an interlocal agreement regarding the distribution of potential RAP tax revenue in order to allow voters to make an informed decision ~~of whether to approve~~regarding the proposed RAP tax~~;~~ this Amended Agreement maintains the same distribution formula;

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~~B.~~E. The Parties are authorized under the Utah Interlocal Cooperation Act, Utah Code Section 11-13-215 ("Interlocal Act~~");~~") and also under Utah Code Section 59-12-704(6)(b), to enter into this Agreement regarding the sharing of RAP tax revenue;

~~C.~~F. An interlocal agreement stating how RAP tax ~~funds~~revenue will be distributed is necessary in order for municipalities to use the revenue to secure funding for recreational and ~~arts projects; and~~cultural organizations and facilities ;

~~D.~~G. This distribution of ~~funds~~RAP tax revenue described in this Agreement is fair to county residents and will ensure that the cities and county work together to improve recreation, arts, and parks throughout Washington County~~.~~; and

H. The purposes of this Amended Agreement ("Agreement") is to (1) clarify that the County will seek the advice of an advisory board regarding the distribution of RAP tax revenue to cultural organizations (as defined in Utah Code Section 59-12-702), but that Municipalities are not obligated to seek advice from the county-appointed advisory board for distribution of RAP tax revenue to cultural organizations; and to (2) clarify that County and Municipalities are allowed to fund ongoing operating expenses for recreational and cultural facilities with RAP tax revenue.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants hereinafter contained, the parties agree as follows:

1. **Expenditure of RAP Tax Revenue**. Utah Code Section 59-12-703 authorizes the County and the Municipalities to expend RAP tax revenues collected annually in accordance with Utah Code Section 59-12-701 et seq. ("the Act") to fund cultural and recreational facilities as well as to fund the ongoing operating expenses of recreational and cultural facilities within the County and Municipalities.

~~1.~~2. **Distribution of ~~funds.~~RAP Tax Revenue.** Washington County is, as of the date of this Agreement, ~~is~~ a county of the second class, and the distribution of the total revenue collected annually in accordance with ~~Utah Code Section 59-12-701 et seq. ("~~the Act~~")~~ shall be as follows:

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(a) Fifteen percent (15%) shall be appropriated for cultural organizations and shall be further distributed by the County as described in Section ~~3~~4 below; and

(b) The remaining eighty-five percent (85%) shall be distributed to the Parties as described in Section ~~2~~3 below, for use in accordance with the Act.

~~2.~~3. **Distribution to Parties.** The distribution of the eighty-five percent (85%) under Section ~~1~~2(b) to the Parties shall be divided as follows:

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(a) Sixty-seven percent (67%) (of the eight-five percent (85%)) shall be divided among the Parties based on the population as determined from the most recent U.S. Census; Washington County's portion shall be based on the population of the unincorporated area of the county;

(b) Thirty-three percent (33%) (of the eighty-five percent (85%)) shall be divided among the Parties based on "point of sale," or in other words based on where the sales and

use tax was collected; Washington County's portion shall be based on sales that take place in the unincorporated area of the county.

~~3.~~4. **Advisory Board; Distribution to Cultural Organizations.** ~~An advisory board is hereby created to provide recommendations and input on the distribution of funds appropriated to cultural organizations. The advisory board shall be comprised of seven members and appointed by the County Commission. Board members shall be appointed for staggered two-year terms, with four members appointed for initial two-year terms, and three members appointed for initial one-year terms. Advisory board members may be replaced by a majority vote of the County Commission, in which case the County Commission shall appoint a member to serve the remainder of the vacated term.~~

An advisory board has been created by Washington County, pursuant to Washington County Code Section 8-12-6, to provide recommendations and input on the distribution of RAP tax revenue appropriated by the County for cultural organizations.

(a) The Municipalities may choose to utilize the advisory board, but are not obligated to do so. Each Municipality may~~shall~~ establish~~, by ordinance or resolution~~, a procedure for considering applications from and distributing RAP tax revenue to cultural organizations.

(b) Any distribution of RAP tax revenue by the County or a Municipality to a cultural organization shall be made in compliance with applicable state law(s)~~ the Utah Code Section 59-12-701 et seq~~.

~~4.~~5. Term.

(a) This agreement shall take effect when it is executed by Washington County and one of the municipalities. The term of the Agreement shall end on December 31, 2025, which is when the RAP tax will expire, unless renewed as provided by law and agreed upon by the Parties in writing. ~~However, the Agreement will terminate immediately if the RAP tax ballot proposition of 2014 fails.~~

(b) The Parties intend that the allocations herein of revenues provide a funding source for the projects a party may undertake that may continue throughout the term of any debt obligations issued to finance such project. This Agreement shall be irrevocable and shall continue unmodified through December 31, 2025, unless changed by mutual agreement in writing by each Party.

~~5.~~6. **Governmental Immunity.** The Parties are governmental entities and subject to the Governmental Immunity Act of Utah, Utah Code Ann. § 63G-7-101, et seq. ("Immunity Act"). The Parties agree that they shall only be liable within the parameters of the Immunity Act. Nothing in this Agreement shall be deemed a waiver of any rights, statutory limitations on liability, or defenses applicable to the Parties under the Immunity Act.

~~6.~~7. **Legal Compliance.** The Parties, as part of the consideration herein, shall comply with all applicable federal, state and local laws, and shall indemnify, defend, and hold one another harmless from and against any respective claims, actions, proceedings, damages or losses resulting from or arising as a result of any such failure of compliance.

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~~7.~~8. **Interlocal Agreement.** In satisfaction of the requirements of the Interlocal Act the Parties agree as follows:

(a) This Agreement shall be approved by each party, pursuant to § 11-13-202.5 of the Interlocal Act;

(b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to § 11-13-202.5 of the Interlocal Act;

(c) A duly executed original counterpart of the Agreement shall be filed with the keeper of records of each party, pursuant to § 11-13-209 of the Interlocal Act;

(d) Each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs; and

(e) No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the County Commission and mayors of signatory municipalities acting as a joint board. No real or personal property shall be acquired jointly by the parties as a result of this Agreement. To the extent that a party acquires, holds, and disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such party shall do so in the same manner that it deals with other property of such party.

~~8.~~9. **Counterparts.** This Agreement may be executed in counterparts by the Parties.

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~~9.~~10. **Governing Law.** This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.

~~10.~~11. **Integration.** ~~This~~Once executed, this Agreement embodies the entire agreement between the Parties and supersedes any prior interlocal agreement(s) between the Parties regarding the distribution of RAP tax revenue. This Agreement shall not be altered except in writing signed by both parties.

[Signatures follow]

WASHINGTON COUNTY

_____ _____

~~James Eardley~~Alan Gardner, Chair, Washington County Commission Date

ATTEST:

_____ _____

Kim Hafen, County Clerk-Auditor Date

Approved as to form:

_____ _____

Deputy Washington County Attorney Date

CITY OF ST. GEORGE

_____ _____

Jonathan T. Pike, Mayor, City of St. George Date

ATTEST:

_____ _____

Christina Fernandez, City Recorder Date

Approved as to form:

_____ _____

Shawn M. Guzman, City Attorney Date

CITY OF ENTERPRISE

_____ _____
Lee Bracken, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name

CITY OF HURRICANE

_____ _____
John Bramall, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name

CITY OF HILDALE

_____ _____
Phillip Barlow, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name

CITY OF IVINS

_____ _____
Chris Hart, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name

CITY OF LAVERKIN

_____ _____
Kerry Gubler, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name

CITY OF SANTA CLARA

_____ _____
Rick Rosenberg, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name

CITY OF WASHINGTON

_____ _____
Kenneth Neilson, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

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City Attorney Date

_____
Attorney Printed Name

TOWN OF APPLE VALLEY

_____ _____
Richard Moser, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name

TOWN OF LEEDS

_____ _____
Wayne Peterson, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

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City Attorney Date

_____
Attorney Printed Name

TOWN OF NEW HARMONY

_____ _____
Joel Webster, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

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City Attorney Date

_____
Attorney Printed Name

TOWN OF ROCKVILLE

_____ _____
Tracy N. Dutson, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name

TOWN OF SPRINGDALE

_____ _____
Stan Smith, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

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City Attorney Date

_____
Attorney Printed Name

TOWN OF TOQUERVILLE

_____ _____
Darrin LeFevre, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name

TOWN OF VIRGIN

_____ _____
Bruce Densley, Mayor Date

ATTEST:

_____ _____
Date

_____
Printed Name and Title

Approved as to form:

_____ _____
City Attorney Date

_____
Attorney Printed Name