REVISED INTERLOCAL AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND IVINS CITYTO SHARE USE AND COSTS OF SEWER CLEANING TRUCKS

AGREEMENT made this _____ day of _____, 2017, by and between the CITY OF SANTA CLARA (hereinafter "Santa Clara") and IVINS CITY (hereinafter "Ivins"). In this Agreement Santa Clara and Ivins are collectively referred to as the "Cities," or individually as "Santa Clara" or "Ivins," as the case may be.

R E C I T A L S:

A. On June 7th of 2012 Santa Clara and Ivins entered into an interlocal agreement to share use and costs of sewer cleaning trucks ~~Santa Clara currently has a Sewer Cleaning Truck that the Cities desire to share the use and costs of same and to share in the use and costs of a newer Sewer Cleaning Truck~~ (collectively referred to herein as the "Sewer Trucks"). This agreement is referred to as the "2012 Agreement".

B. In the 2012 Agreement, Santa Clara allowed Ivins City to jointly use their currently owned sewer cleaning truck (referred to as "Old Sewer Truck") and the Cities together purchased a newer sewer truck (referred to as "Sewer Truck #2") sharing all costs of lease payments, insurance, storage and maintenance.

C. The Cities have determined that it is in the best interests of both communities to continue to share the costs and use of the Sewer Trucks.

D. Santa Clara's Old Sewer Truck, which is shared in use, but solely owned by Santa Clara, now needs replacement and the Cities are proposing to purchase a new sewer truck to replace it (referred to as "Sewer Truck #3).

E. The Utah Interlocal Cooperation Act, Utah Code Ann. §11-13-101 through 11-13-314 allows public agencies in the State of Utah to enter into agreements for the purpose of joint or cooperative action.

F. The Cities are "public agencies" of the State of Utah for purposes of Utah Code Ann. §11-13-202, and desire to replace the 2012 Agreement and enter into ~~an~~ this revised and updated Interlocal Agreement to continue to share the use and costs of a Sewer Cleaning Trucks.

NOW, THEREFORE, in consideration of the promises, the mutual covenants and undertakings of the Cities, the receipt and sufficiency of which are hereby acknowledged, and in compliance with and pursuant to the provisions of the Utah Interlocal Cooperation Act, the Cities hereby agree as follows:

1. **Shared Use of Sewer Trucks**. Santa Clara hereby agrees to allow Ivins to use the Sewer Trucks upon the terms and conditions of this Agreement. After each use, the City that used the Sewer Trucks shall return same completely fueled and in clean condition to the designated storage area.

2. **Formula for Cost Sharing**. The formula for cost sharing of the Sewer Trucks between the Cities shall be based upon the number of sewer connections as of April 1 of each year. Currently Santa Clara has ~~1931~~ 2341 connections (~~42.5~~41.7%) and Ivins has ~~2616~~ 3278 connections (~~57.5~~58.3%).

3. **Operational Effective Date.** ~~The Operational Effective Date shall be July 1, 2012, or sooner, or later if mutually agreed upon by the Cities.~~This agreement shall become effective on the date that Sewer Truck #3 is purchased. On this same date, the 2012 Agreement shall be jointly terminated.

4. **Maintenance, Storage and Insurance of Sewer Trucks**. Santa Clara shall be responsible for the maintenance, storage and insurance of the Sewer Trucks. Santa Clara shall bill Ivins City for the proportionate share of ~~the lease/purchase payments of a newer Sewer Cleaning Truck and~~ the maintenance, storage, ~~and~~ insurance and lease/purchase payments of the Sewer Trucks.

5. **Leasing or Bonding for ~~Newer Sewer Cleaning Truck~~Sewer Trucks**. Santa Clara shall be responsible for leasing or any bonding used to purchase ~~a newer Sewer Cleaning Truck~~new and may use the revenue from Ivins City as collateral. The Cities shall mutually agree on the selection of the newer Sewer Cleaning Truck to be acquired.

6. **Term**. This Agreement ~~is effective upon execution, and unless sooner terminated as provided herein, shall terminate six (6) years from the date of execution~~ shall remain in force until the Cities terminate it in accordance with the provisions provided herein.

7. **Withdrawal**. Ivins and/or Santa Clara may withdraw from this Interlocal Agreement based upon the giving of ninety (90) days prior written notice to do so, provided that said notice is given at least ninety (90) days prior to the end of the fiscal year (June 30) of any year. Specifically, in connection with the preliminary budget approval required to be given on or before March 1 of each year, if such approval is not given, the parties shall have until April 1 to resolve any issues or problems associated with the budget, and if such approval is not granted by April 1, it shall be deemed to be an election to withdraw from the Interlocal Agreement.

8. **Non-Funding.** The Cities acknowledge that funds are not presently available for performance of this Agreement beyond the close of each respective fiscal year. Each City's obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated for payments due under this Agreement. If no funds or insufficient funds are

budgeted and appropriated in any fiscal year, or if there is a reduction in appropriations of any City resulting in insufficient funds for payments due or about to become due under this agreement, then this Agreement shall create no obligation as to such fiscal year, but instead shall terminate and become null and void for that City on the first day of the fiscal year for which funds were not budgeted and appropriated or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriate and budgeted). Such non-funding shall not be construed as a breach of or default under this Agreement and shall be without penalty, additional payments, or other charges of any kind whatsoever to the City, and no right of action for damages or other relief shall accrue to the benefit of the City who has budgeted for continuing services.

9. **Ownership**. Santa Clara shall be and remain the owner of the Sewer Trucks with Ivins City having a contractual right to the residual values and use of same. Upon termination of ~~this~~ the 2012 Agreement, Santa Clara's ~~current Sewer Cleaning Truck~~Old Sewer Truck shall become exclusively owned ~~and used~~ by Santa Clara and any proceeds from its sale belong solely to Santa Clara. Regarding the disposition of ~~the newer Sewer Cleaning Truck~~Sewer Truck #2 and #3, or any other future trucks jointly purchased under this agreement, upon termination:

a. If ~~the newer~~ a Sewer Truck was purchased without the use of a lease, then Santa Clara shall have the first option of buying out Ivins City's interest in said Sewer Cleaning Truck by paying the proportional amount of the fair market value of same to Ivins City. In the event Santa Clara decides not to exercise its option within thirty (30) days of termination of this Agreement, Ivins City shall have thirty (30) days to exercise the option of buying out Santa Clara's interest in said Sewer Cleaning Truck by paying the proportional amount of the fair market value of same to Santa Clara, at which time Santa Clara shall deliver to Ivins City the vehicle and title

to same. In the event neither City desires to buy out the other, then the ~~newer~~ Sewer Cleaning Truck shall be sold and the proceeds split between the cities in the proportions set forth herein for cost sharing.

b. If ~~the newer~~a Sewer Truck is to be acquired by lease or lease/purchase, then Santa Clara shall negotiate as part of the lease or lease/purchase that in the event of non-funding or Santa Clara withdrawing from this Agreement prior to obtaining legal title to the newer Sewer Truck then Ivins may either assume the lease or lease/purchase or the newer Sewer Truck may be returned and the lease or lease/purchase terminated without further obligation. In the event Ivins is the withdrawing party then Ivins shall be have no further payment obligations to Santa Clara but shall forfeit any claim to an interest in the newer Sewer Truck and to payments made up to that point. In the event Santa Clara is the withdrawing party, then Ivins shall have the right to assume the lease or lease/purchase whereupon Santa Clara shall have no further payment obligations but shall forfeit any claim to an interest in the newer Sewer Truck and to payments made up to that point. In the event neither City desires to continue with the lease or lease/purchase then the newer Sewer Truck shall either be returned to the lessor and released from any further obligation or, if allowed by the terms of the lease or lease purchase, the newer Sewer Truck may be sold with the proceeds thereof being used first to pay off any remaining balance owed on the lease or lease/purchase and any excess split between the cities in the proportions set forth herein for cost sharing.

10. **Future Truck Replacements and Fleet Expansions.** Ivins and Santa Clara may jointly decide to replace the Sewer Trucks in the future or expand the Sewer Truck fleet using the terms of this agreement based on joint decisions on expenditures that are approved by each City's Council.

11. **Remittance**. Quarterly, Ivins shall remit to Santa Clara 25% (or such other percentage or frequency as Ivins and Santa Clara shall agree) of the "Fee," comprised of actual costs incurred and paid by Santa Clara for the lease/purchase, maintenance, storage and/or insurance of the Sewer Trucks, to the following address (or at such other address as Santa Clara may from time to time specify):

Santa Clara City
2603 Santa Clara Dr.
Santa Clara, UT 84765

Santa Clara shall bill Ivins for its share of the Fee ~~beginning October 1, 2012, and~~ on the 1st day of each quarter thereafter for the term of this Agreement. Ivins City shall remit the funds to Santa Clara within thirty (30) days after receipt of the Invoice. If the day the payment is due and payable it is (a) a legal holiday, (b) a Saturday; (c) a Sunday, or (d) another day on which weather or other conditions have made the billing address inaccessible, the payment shall be due and payable on the next day which is not one of the aforementioned days. If any payment is not remitted to Santa Clara when due, Santa Clara shall be entitled to recover interest thereon at the rate interest specified in Utah Code Ann. §15-1-4(3)(a) or its successor, commencing on the date the remittance is due and payable.

12. **Failure to Pay Fee**. In the event Ivins fails to pay its Fee within thirty (30) days after written notice from Santa Clara or fails to appropriate and budget its Fee (under the non-funding provisions contained in Section 8 above, or otherwise), for whatever reason, then at Santa Clara's option and upon written notice to Ivins, Ivins shall be deemed to have given the requisite 90 days notice to terminate this Agreement pursuant to paragraph 7.

13. **Notices**. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a)

upon personal delivery or actual receipt thereof, or (b) within two (2) days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the respective Cities as set forth below:

TO: ~~Judy Gubler~~Dale Coulam
Ivins City Attorney & Manager
55 N. Main St.
Ivins, UT 84738

~~WITH COPY TO: Dale Coulam~~
~~Ivins City Attorney~~
~~55 N. Main St.~~
~~Ivins, UT 84738~~

TO: Edward Dickie, III
Santa Clara City Manager
2603 Santa Clara Dr.
Santa Clara, UT 84765

WITH COPY TO: ~~Russell J. Gallian~~Matthew Ence
Santa Clara City Attorney
Snow, Jensen & Reece
~~965 E. 700 S., #305~~912 W 1600 S, Suite B200
St. George, UT ~~84790~~84770

Such address and designees for notice may be changed by either City upon written notice to the other.

14. **Claims and Disputes**. Claims, disputes and other issues between the Cities arising out of or related to this Agreement shall be decided by litigation in the Fifth Judicial District Court of Washington County, Utah.

15. **Indemnification**. The Cities are governmental entities under the "Utah Governmental Immunity Act" (Utah Code Ann. §63G-7-101, *et seq.*) (the "Immunity Act"). Consistent with the terms of the Immunity Act as provided herein, it is mutually agreed that each is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials,

or employees. The Cites do not waive any defenses otherwise available under the Immunity Act, nor does either City waive any limits of Liability currently provided by the Immunity Act. Each City agrees to defend, indemnify, save, and hold harmless the other City from and against any and all demands, liabilities, claims, damages, actions and/or proceedings, in law or equity (including reasonable attorney's fees and costs of suit) relating to or arising from their use of the Sewer Trucks.

16. **Additional Provisions**. The following provisions also are integral to this Agreement:

a. *Titles and Captions*. All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

b. *Pronouns and Plurals*. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

c. *Applicable Law*. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

d. *Integration*. This Agreement constitutes the entire agreement between the Cities pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

e. *Time*. Time is of the essence hereof.

f. *Survival*. All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

g. *Waiver*. No failure by any City to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any City may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other City. No waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

h. *Rights and Remedies*. The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

i. *Severability*. In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

j. *Exhibits*. All exhibits attached to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such exhibits and writings.

k. *Counterparts*. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

l. *Approval by Attorneys*. This Agreement shall be submitted to the authorized attorneys for each of the Cities for approval in accordance with Utah Code Ann. §11-13-202.5.

m. *Amendment*. This Agreement may not be amended or modified in any respect without the written consent of both Cities. Promptly upon such consent, both Cities shall mutually execute and deliver an amendment to this Agreement. The Amendment shall be effective upon this occurring.

n. *No Third Party Beneficiaries*. This Agreement is entered into by the parties solely for the benefit of the parties hereto. No obligation, benefit or rights are intended to be created or are created in any third party by execution hereof.

IN WITNESS WHEREOF, each of the Cities, by resolution duly adopted by its City Council, a certified copy of which is attached hereto, caused this Agreement to be signed by its Mayor and attested by its Recorder, and the County, by resolution duly adopted by its Council, a certified copy of which is attached hereto, caused this Agreement to be signed by its Mayor or designee and attested by the County Clerk.

CITY OF SANTA CLARA

By:_____
Its:_____

ATTEST:

_____
Recorder

APPROVED AS TO FORM:

_____
City Attorney

IVINS CITY

By:_____
Its:_____

ATTEST:

_____
Recorder

APPROVED AS TO FORM:

_____
City Attorney