Ivins City Staff Report
City Council Meeting 5/16/2019

Agenda Item: Consider approval of Interlocal Agreement with Santa Clara City for Equipment Sharing

Submitted by: Charles Gillette, P.E., Public Works Director/City Engineer

Recommended City Council Action:
Approve Interlocal Agreement and expenditure of $35,000 to Santa Clara City

BACKGROUND:
Ivins City and Santa Clara City have been sharing sewer cleaning trucks for several years now and the arrangement has been successful for both cities. Santa Clara has purchased a used Kobelco excavator, an asphalt paver and a trailer for transport and has offered to Ivins City buy in to share the equipment. This agreement has been drawn up to set up the sharing arrangements.

FINDINGS AND ANALYSIS:
The agreement is summarized as follows:

- For buy-in, Ivins city pays to Santa Clara $16,000 representing 40% of the cost of excavator, $10,000 representing 50% of the cost of the trailer and $9,000 representing 50% of the cost of the paver.
- All maintenance and insurance costs shall be split 50% - 50%.
- Santa Clara reserves the first right to the excavator during emergencies.

SUPPORT MATERIALS:

- Agreement

FINANCIAL IMPACT:
These items have been budgeted for next Fiscal Year. We will make the $$35,000 payment on July 1, 2019.

Water Fund, 51-42740: 40%
Streets Fund, 10-60740: 25%
Sewer Fund, 52-42740: 25%
Storm Drain Fund, 53.43740: 10%

Respectfully Submitted:

Charles Gillette, P.E., Public Works Director/City Engineer

Content Review:

Dale Coulam, City Manager

INTERLOCAL AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND IVINS CITY TO SHARE USE AND COSTS OF CERTAIN EQUIPMENT

AGREEMENT made this _____ day of _____, 2019, 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.

RECITALS:

A. 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.

B. The parties hereto wish to enter this Agreement for the purpose of sharing the use of certain equipment currently owned by Santa Clara, in order that together the parties might save costs and fully utilize available equipment.

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 Kobelco Excavator, Trailer and Asphalt Layer**. Santa Clara hereby agrees to allow Ivins to use the Kubota Excavator, Trailer and Asphalt Layer upon the terms and conditions of this Agreement. After each use, the City that used the Kobelco Excavator, Trailer and Asphalt Layer shall return same completely fueled and in clean condition to the designated

storage area. In case of an emergency Santa Clara has the first right to use of the Kobelco Excavator, Trailer and Asphalt Layer.

2. **Formula for Cost Sharing**. The formula for cost sharing of the Kobelco Excavator, Trailer and Asphalt Layer between the Cities shall be a 50%-50% split.

3. **Operational Effective Date.** This agreement shall become effective on the date both City's Council approve and signed the agreement.

4. **Maintenance and Insurance of Kobleco Excavator, Trailer and Asphalt Layer.** Santa Clara shall be responsible for the maintenance and insurance of the Kobelco Excavator, Trailer and Asphalt Layer. Santa Clara shall bill Ivins City for the proportionate share of the maintenance and insurance.

5. **Term**. This Agreement shall remain in force until the Cities terminate it in accordance with the provisions provided herein. In the event that one or more pieces of the equipment identified herein is sold, becomes inoperable, is exchanged or replaced, or otherwise becomes permanently unavailable, the remaining equipment identified in this Agreement shall still be subject to this Agreement unless said equipment also becomes unavailable, or unless this Agreement is replaced, amended, modified or terminated.

6. **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.

7. **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.

8. **Ownership**. Santa Clara shall be and remain the owner of the Kobelco Excavator, Trailer and Asphalt Layer with Ivins City having a contractual right to the residual values and use of same. Santa Clara shall have the sole right to determine when, or if, the equipment or any piece thereof shall be sold or otherwise disposed of without replacement, or either party may elect to terminate this Agreement with respect to the equipment or any piece thereof sfor any other reason, and in such event the terminating party shall give the other party notice of the same in writing. Thereafter Santa Clara City shall have the first option of buying out Ivins City's interest in said Kobelco Excavator, Trailer and Asphalt Layer 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 Kobelco Excavator, Trailer and Asphalt Layer 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 equipment and title to same. In the event neither City desires to buy out the other, then the Kobelco Excavator, Trailer and Asphalt Layer shall be sold and the proceeds split between the cities in the proportions set forth herein for cost sharing.

9. **Future Truck Replacements and Fleet Expansions.** Ivins and Santa Clara may jointly decide to replace the Kobelco Excavator, Trailer and Asphalt Layer, or any one or more of them, in the future or expand the Kobelco Excavator, Trailer and Asphalt Layer fleet using the terms of this agreement based on joint decisions on expenditures that are approved by each City's Council.

10. **Remittance**. ~~Quarterly,~~ Upon commencement of this agreement Ivins shall remit to Santa Clara $16,000 (40% of the purchase price) for the Kobelco Excavator and $10,000 for the Trailer and $9,000 for the Asphalt Layer. In addition, a quarterly "Fee," comprised of Ivins City's share of Santa Clara City's actual quarterly costs incurred and paid by Santa Clara for maintenance, repair, storage and/or insurance of the equipment, shall be paid by Ivins City 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 the Fee 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.

11. **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.

12. **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: Dale Coulam
Ivins City Attorney & Manager
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: Matthew Ence
Santa Clara City Attorney
Snow, Jensen & Reece
912 W 1600 S, Suite B200
St. George, UT 84770

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

13. **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.

14. **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.

15. **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