INTERLOCAL AGREEMENT BETWEEN THE CITY OF ST. GEORGE AND IVINS CITY FOR THE PROVISION OF PUBLIC TRANSIT SERVICE

This Interlocal Agreement ("Agreement") is made and entered into effective on the ___ day of _____, 2020, by and between the City of St. George ("St. George") and Ivins City ("Ivins"), political subdivisions of the State of Utah (and collectively referred to as the "Parties") for the provision of public transit services.

RECITALS

WHEREAS, the Parties are authorized to enter into an agreement for joint and cooperative action pursuant to the Interlocal Cooperation Act, Utah Code. Ann. §§ 11-13-101 *et seq.* (the "Act"); and

WHEREAS, St. George and Ivins are both authorized by state statute to provide public transit services in their communities and to extend those services into other entities pursuant to a joint agreement; and

WHEREAS, St. George and Ivins entered into the "Public Transit Service Interlocal Cooperation Agreement" dated June 20, 2013 ("2013 Agreement") and St. George currently operates a public transit service connecting St. George with Ivins; and

WHEREAS, Section 8(a)(1) and (3) entitled "Termination", a Party to the Agreement may terminate the Agreement if conditions change including a substantial change in the cost or the scope of services or if regulations result in changes in funding that significantly affect costs to either Party; and

WHEREAS, the Federal Transit Administration's ("FTA") requirements for service has increased the cost and scope of the services provided by St. George have increased the cost to St. George to provide the transit services; and

WHEREAS, the Parties have determined that it is mutually beneficial and in the best interests of their residents to terminate the 2013 Agreement and enter into this Agreement to provide public transit services into Ivins.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

SECTION 1: TERMINATION OF 2013 AGREEMENT

1.1 2013 Agreement Terminated.

The Parties mutually agree to terminate the 2013 Agreement effective on July1, 2020.

SECTION 2: SPECIFIC TERMS

2.1 Services to be Provided.

a. One fixed bus route shall be provided between St. George and Ivins to be compatible with St. George public transit services as determined by St. George. It is understood and acknowledged that the provision of transit services by St. George is subject to the requirements of the FTA. Initially such services shall be as follows:

(i) Service shall be Monday through Saturday except for the following seven (7) holidays: New Year's Day, Memorial Day, Independence Day, Pioneer Day, Labor Day, Thanksgiving Day, and Christmas Day.
(ii) Frequency shall be twenty-one (21) times per day between the hours of 6:00 a.m. and 8:00 p.m. based on a 40-minute route schedule.
(iii) Paratransit services shall be provided to the extent required by the FTA.

b. The Parties agree that the service may be expanded to add additional fixed route service by amending this Agreement in writing to address any additional equipment, costs, availability of funds and other factors. St. George will provide Ivins with available ridership data, when requested, for the purpose of assessing ridership and/or the need for additional service.

2.2 St. George Rights and Obligations.

a. St. George shall:

(i) Exercise its sole discretion regarding management and operation of the fixed route bus route provided herein. The terms of this Agreement shall in no way be construed to limit St. George's right to adjust services to fit the overall needs of its public transit services.

(ii) Provide service for the fixed bus route between St. George and Ivins. The quality of service shall be comparable to other areas within St. George's public transit service area and for the same fares as the St. George fixed route system.

(iii) Provide the required fleet maintenance for buses and other vehicles providing said service.

2.3 Ivins Rights and Obligations.

a. Ivins shall:

(i) Allow St. George to provide fixed route bus service in Ivins.

(ii) Pay St. George the annual operations and maintenance costs and capital costs for the transit services provided to Ivins. Payment shall be made within thirty (30) days of invoice from St. George.

(iii) Provide St. George with a fixed route bus plan in Ivins that is acceptable to both Parties.

(iv) Provide, at its cost, the improvements and perpetual maintenance for all bus stops located in Ivins. This shall include items such as benches, passenger shelters, signage, trash receptacles, roadway turnouts, etc. If St. George receives a request for any such improvement it shall forward such request to Ivins. Any SunTran signage shall be approved by St. George prior to installation.

2.4 Determination of Costs; Payments.

a. Annual Operation and Maintenance Costs; Payments. Ivins shall pay the costs as shown in Exhibit A which shall be billed on a monthly basis. This cost is based on the estimated increase in cost incurred by St. George to add a fixed bus route between St. George and Ivins and the current local match percentage required by the FTA. Any change by the FTA in the required local match percentage shall be calculated in Ivins's cost and adjusted accordingly. At the end of each year the cost will be re-evaluated. The actual costs are based on actual expenditures for transit and paratransit services including costs for fuel, maintenance, wages, salaries and benefits, bus and paratransit van capital costs, etc. All expenditures made are tracked and accumulated to determine federal reimbursement and local match. If the actual cost, as determined by St. George, is higher or lower than the estimate shown in Exhibit A by more than 20% an adjustment will be made in the annual payment to reflect the actual cost. The Parties understand and agree that some fixed costs are integral to the overall transit operations; thus, Ivins's share of such costs shall be pro-rated and included in the total cost. Ivins acknowledges that it has reviewed the cost estimate attached as Exhibit A and agrees that it is a fair estimate of the costs.

b. Capital Costs. Ivins shall pay all costs for the purchase of equipment and facilities needed to provide services to Ivins. At this time, the only required equipment is one 35-foot bus and one paratransit vehicle as specified by St. George (both of which are currently being provided). Ivins shall continue providing the prorated annual costs for a replacement bus and paratransit vehicle. Replacement is required approximately every twelve (12) years or 500,000 miles for a bus and every four (4) years or 100,000 miles for a paratransit vehicle. St. George shall notify Ivins one year in advance of the need to order a replacement bus or paratransit vehicle. The Parties understand and agree that all facilities and equipment acquired by St. George using funds from Ivins shall become the property of St. George and will primarily be used to serve Ivins, however St. George reserves the right to substitute and/or use any of its fleet, facilities and equipment to provide the services under this Agreement.

2.5 Commencement of Services. The services under this Agreement shall commence on July 1, 2020.

2.6 Fares, Fees and Other Additional Revenues. The Parties acknowledge that any fares, fees or other additional revenues derived as a result of transit services provided to Ivins are held with other transit related revenues received by St. George. Such additional revenues shall be assumed to defray overhead costs that are attributable to services in Ivins but cannot be accounted for directly. Ivins shall not have claim to any portion of the fares, fees or other additional revenues received as a result of services provided to Ivins.

2.7 Administration. St. George shall be the administrator for this Agreement and manage and operate the transit services and routes. St. George shall be solely responsible for the operation, management, and administration of the service, including provision of vehicles, vehicle maintenance, insurance and accounting for the transit services and routes.

2.8 Audits. Upon request, Ivins shall be provided a copy of financial audits related to transit services that are performed for any year that they receive services under this agreement.

2.9 Term. This Agreement shall be July 1, 2020 and shall continue through June 30, 2025 with automatic renewal for one additional five (5) year term.

2.10. Termination.

a. The Parties understand and agree that the services under this agreement are regulated by the federal government and are subject to the grant requirements and Federal and State Laws governing the services. As a result, there is potential that requirements may change. This Agreement may be terminated or renegotiated if any of the following conditions arise:

(i) There is a substantial change in the cost or the scope of services;

(ii) Either Party defaults in its obligations; or

(iii) FTA or other governmental entity adopts laws or regulations or changes funding that significantly affect the services or cost of services to either Party.

b. Notwithstanding any provisions of this agreement, either party may terminate this agreement by providing written notice of such termination, specifying the effective date thereof, at least one (1) year prior to such date. Such notice is subject to paragraph 3.19 below.

2.11 Default. The occurrence of any of the following events shall constitute a default under this Agreement:

a. Ivins fails to pay its portion of the costs within sixty (60) days of the due date of monthly or annual invoices or any other obligation set forth in this Agreement.

b. St. George fails to fulfill any of its obligations under this Agreement.

c. In the event this Agreement is terminated due to default by St. George, Ivins City shall be refunded on a prorated basis for the remaining portion of its annual operation and maintenance payment made for the fiscal year in which the termination occurs. Ivins shall also be refunded payments made to St. George on a prorated useful life basis (either time or mileage, whichever is less) for capital costs payments as set forth in Section 1.4. Any refund shall be made in the earliest future fiscal year in which funds are available, but not longer than five (5) years after such default.

2.12 Dispute Resolution. The parties to this Agreement are governmental entities working together for mutual advantage. In the event a dispute arises with respect to this Agreement, the

parties agree to first submit the matter to non-binding mediation with a mediator agreeable to both parties. In the event that the parties are not able to resolve the dispute after participating in non-binding mediation, the venue for any subsequent legal action, if any, shall be the Fifth Judicial District Court for the State of Utah.

SECTION 3: GENERAL TERMS

3.1 Recitals. The Recitals contained in this Agreement are incorporated into the Agreement.

3.2 Paragraph Headings. The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this Agreement.

3.3 Number and Gender. The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this Agreement in accord with the manifest intention of the Parties hereto.

3.4 Authorization. Each individual executing this Agreement does represent and warrant to each other so signing that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she so signs.

3.5 No Interlocal Agency Created. No interlocal agency is created by this Agreement and all property acquired under this Agreement shall be the sole property of St. George.

3.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument and shall be filed immediately with the keeper of records of each Party.

3.7 Utah Law to Govern; Governmental Immunity. This Agreement has been drafted and executed in the State of Utah. All questions concerning the meaning, intention and enforcement of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah. Jurisdiction for any dispute and venue shall be in the State of Utah. Both Parties to this Agreement are governmental entities under the Governmental Immunity Act of Utah and nothing in this Agreement shall be construed as a waiver of the requirements, protections, rights, defenses, or immunities granted to the Parties under the act.

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

3.9 Integration. All agreements heretofore made in the negotiation and preparation of this Agreement between the Parties hereto are superseded by and merged into this Agreement, no statement or representation not embodied herein shall have any binding effect upon the Parties hereto and there shall be no amendments hereto except those in writing signed by the Parties hereto.

3.10 Time is of the Essence. Time is of the essence with regard to this Agreement as to each covenant, term, condition, representation, warranty and provision hereof.

3.11 Necessary Acts and Cooperation. The Parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.

3.12 Partial validity. If any portion of this Agreement shall be held invalid or inoperative, then insofar as is reasonable and possible:

a. The remainder of this Agreement shall be considered valid and operative, and,
b. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

3.13 Ambiguities. This Agreement has been negotiated and drafted by all Parties hereto and the general rule of contract construction that ambiguities shall be construed against the draftsman shall have no application to this Agreement.

3.14 No Third-Party Beneficiaries. This Agreement is not intended to be a third-party beneficiary contract for the benefit of any third parties, including but not limited to any customer of any Party, and no such persons shall have any right of subrogation or cause of action against any Party for any breach or default by any Party hereunder. In addition, no third parties shall have any rights hereunder that would, in any way, restrict the Parties' right to modify or renew this Agreement at any time or in any manner. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement.

3.15 Laws and Regulations. Any and all actions performed pursuant to this Agreement will comply fully with all applicable Federal and State laws and regulations.

3.16 Binding on successors in interest. This Agreement shall bind the Parties hereto and their successors, heirs, assigns and representatives, and the obligations of the Parties shall survive closing and shall not merge with any document of title.

3.17 Assignment. No rights or obligations of any Party under this Agreement shall be assigned without the prior written consent of the Parties. This Agreement is voidable and subject to immediate cancellation upon either Party becoming insolvent, or filing proceedings in bankruptcy or reorganization under Title XI, United States Code.

3.18 Indemnity Clause. Ivins shall defend, indemnify, save harmless and exempt St. George, its elected officials, officers, agents and employees from and against any and all loss, injury, damages, debts, obligations, claims, demands, encumbrances, deficiencies, costs, penalties, suits, proceedings, liability, and expenses whether accrued, absolute, contingent or otherwise, including, without limitation, attorney's fees and costs (whether or not suit is brought) and other liabilities of every kind, nature and description incident to, caused by, resulting from or arising out of the acts, errors, or omissions, or other liability imposed by law whether willful or negligent acts or omissions of Ivins, its officers, agents or employees and for all acts arising out

of the services provided by this agreement that occur at bus stops in Ivins and other locations in Ivins but not on a St. George owned and operated bus. Ivins shall assume full responsibility for any transit related incidents that occur within its city limits unless such incident occurs on a St. George owned and operated bus.

3.19 Notice. Any notice to be given or payment to be made hereunder shall have been properly given or made when received by the respective Party when deposited in the United States mail, certified or registered, postage prepaid, addressed as follows:

As to:	City of St. George 175 East 200 North St. George, UT 84770 Attention: City Manager	As to:	Ivins City 111 North 100 East Ivins, UT 84780 Attention: City Manager

3.20 Waiver. The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this Agreement. Any waiver shall be in writing and signed by the waiving Party.

3.21 Attorney's fees. Should either Party default in any of the covenants or agreements contained herein, the defaulting Party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing or terminating this Agreement or in pursuing any remedy provided under this Agreement or by applicable law, whether such remedy is pursued by filing suit or otherwise.

3.22 Rights and Remedies. The Parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each Party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the Parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government Parties.

3.23 Amendments. This Agreement may not be amended except by approval by the governing body of each Party and conformance with the requirements of the Act.

3.24 Effective Date; Approvals Required. This Agreement does not take effect until each Party to the Agreement approves the Agreement and the Agreement has been approved by the attorney for each Party as provided in Utah Code. Ann. § 11-13-202.5 et seq.

IN WITNESS WHEREOF, the Parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement on the date first above written.

CITY OF ST. GEORGE	IVINS CITY
By: Jonathan T. Pike, Mayor	By: Chris Hart, Mayor
ATTEST:	ATTEST:
By: Christina Fernandez, City Recorder	By: Kari Jimenez, City Recorder
APPROVED AS TO FORM:	APPROVED AS TO FORM:
By: Shawn M. Guzman, City Attorney	By: Dale Coulam, City Attorney/Manager