FIRST AMENDED INTERLOCAL AGREEMENT SUPPORTING THE RENEWED MOJAVE DESERT TORTOISE INCIDENTAL TAKE PERMIT ISSUED TO WASHINGTON COUNTY

This agreement by and between Washington County (County), a political subdivision of the State of Utah, and Ivins City (Municipality), a Utah Municipal Corporation, is effective upon the date the U.S. Fish and Wildlife Service (USFWS) issues to the County a renewed Incidental Take Permit for the Mojave desert tortoise.

RECITALS

WHEREAS, the Mojave desert tortoise was listed as threatened and protected under the U.S. Endangered Species Act in 1990; and

WHEREAS, through an interlocal agreement dated November 11, 1993, the Municipality agreed to support the 1996 Mojave Desert Tortoise Incidental Take Permit issued to Washington County by the U.S. Fish and Wildlife Service (USFWS) and the 1995 Washington County Habitat Conservation Plan (1995 Plan) that provided the regulatory basis for the issuance of the 1996 Permit; in return for Municipality's support, property owners within its municipal boundary received the full protections of the 1996 Permit and were able to put their property to beneficial use even if desert tortoises were present; and

WHEREAS, Washington County applied to renew the 1996 Permit in 2015 and the USFWS is in the final stages of processing the renewal application; and

WHEREAS, if issued, the renewed permit (2021 Permit) will last for 25 years unless renewed or amended; and

WHEREAS, in support of the permit renewal application, Washington County has prepared and submitted an Updated and Amended Habitat Conservation Plan (2020 Plan); and

WHEREAS, an integral part of the Municipality's support is the ongoing collection of an endangered species impact fee; and

NOW, THEREFORE, in consideration of the mutual covenants made herein, the parties agree as follows.

1. The purpose of this agreement is to provide for compliance with the 2020 Washington County Habitat Conservation Plan.

2. The Municipality agrees to abide by the terms and conditions of the 2020 Plan. This obligation includes, but is not limited to, the following:

a. Continue to participate in the funding mechanism required in 1995 Plan or as amended under the 2020 Plan by keeping in place its ordinance establishing:

    i. In connection with the issuance of each building permit of a new residential, commercial or industrial structure, a fee of **two tenths of one percent (0.2% or 0.002)** of estimated construction costs of the work to be performed under the permit; and

b. Continue to report and submit the impact fees described above to Washington County on a quarterly basis;

c. Work through the Washington County Commission, Washington County Habitat Conservation Plan Department, and the Habitat Conservation Advisory Committee to ensure that its dealings with respect to the Plan are consistent with the purposes of the Plan;

d. Require developers whose property borders the Red Cliffs Desert Reserve to build and take reasonable steps to maintain appropriate fences and walls as approved by the staff of the Washington County Habitat Conservation Plan Department;

e. Require developers whose property is located in occupied tortoise habitat, previously described as "take areas," to coordinate with the Washington County Habitat Conservation Plan Department for tortoise surveys and clearances prior to ground disturbing activities;

f. Otherwise support the Plan as being necessary and appropriate for the benefit of its citizens; and

g. Notify the Fish and Wildlife Service of its support if necessary.

3. The incidental take of tortoises and tortoise habitat under the permit will be permissible within the municipal boundary of the Municipality in the manner provided for under the 2020 Plan.

4. Washington County agrees to provide reasonably timely staff support for tortoise surveys and clearances and other technical assistance as requested by the Municipality to ensure the applicable provisions of the 2020 Plan are followed.

5. The parties understand that the fees provided for herein are based upon estimates of future needs of the Habitat Conservation Plan and other Endangered Species Act issues, and estimates of future growth of Washington County. Should these elements or needs change, the parties agree to meet from time to time to assess and evaluate the financial needs of the Habitat Conservation Plan and Endangered Species Act issues. The parties

understand that the Washington County Commission will make the final determination as to the rate of the fees necessary.

6. The County has passed an ordinance requiring a funding mechanism for all land subdivided and building permit fees in unincorporated areas, as required of each municipality. The parties understand that municipalities in Washington County who wish to participate in the benefits of the permit through the Washington County Habitat conservation Plan must agree to the terms as provided herein.

7. In the event that the 2020 Plan shall be dissolved for any reason and if there shall be any excess endangered species funding which is not otherwise required to complete funding obligations of the HCP and ITP or litigation related to the 2020 Plan, the same shall be returned to the municipalities and the County in the same proportion in which the funds were given in the last fiscal year prior to the dissolution of the Plan.

8. The parties further acknowledge that inasmuch as the permit has not yet been renewed by the Fish and Wildlife Service, and inasmuch as it is possible that such renewal will not be forthcoming, or requirements will be placed on the Plan as a condition of obtaining approval which are unacceptable, the parties further understand that the funds to be generated under this agreement may be used to provide for the necessary negotiation and/or litigation with the goal of successfully renewing the permit within the boundaries of the Plan. Notwithstanding the above, in the event that there shall be negotiation and changes that may be required from time to time, or required in order to renew the plan, each city and town agrees to abide by the decisions of the Washington County Commission and the Habitat Conservation Plan Advisory Committee in obtaining a renewal and continuing to administer the Plan, and in providing funding for other Endangered Species Act issues.

9. Washington County agrees that the funds generated under this agreement, or any other property acquired, shall be held in trust for use under the principles set forth in this agreement, as determined in the discretion of the Washington County Commission. Any property acquisitions will be made in a manner consistent with Washington County procurement code and rules.

10. A party may withdraw from this agreement by giving ninety (90) days' advance notice in writing to the other party. The Municipality understands that in order to participate in the benefits of the incidental take permit it must be a party to, and comply with the terms of this agreement. Withdrawal will subject non-federal land within the Municipality to the requirements of the Endangered Species Act, including but not limited to the prohibitions on take of tortoise or tortoise habitat, and any requirements to mitigate such take through separate habitat conservation plans.

11. This agreement will be governed and administered by Washington County. For the purposes of the Inter-Local Cooperation Act, the Washington County Commission shall be considered the Joint Administrator of the Agreement.

12. Nothing in this agreement shall be construed as a waiver by any party of any rights, limits, protections or defenses provided by applicable government immunity laws.

13. Nothing in this agreement shall be construed to confer upon any other person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this agreement.

14. This agreement shall remain in effect until one of the following occurs: the Agreement is cancelled, both the Mojave Desert Tortoise Incidental Take Permit and Habitat Conservation Plan expire and are not renewed or amended, or fifty (50) years pass from the effective date.

15. This agreement may be executed in counterparts, each of which will be deemed an original.

(Signature block on following page.)

IN WITNESS WHEREOF, the parties have entered into this agreement as of the date of the last required signature below:

IVINS CITY:

Chris Hart, Mayor _____ Date _____

ATTEST:

City Recorder/Clerk

APPROVED AS TO FORM:

City Attorney

WASHINGTON COUNTY:

Victor Iverson, Washington County Commission Chair _____ Date _____

ATTEST:

Kim Hafen
Washington County Clerk-Auditor

APPROVED AS TO FORM:

Deputy County Attorney