



REQUEST FOR COUNCIL ACTION

Presenter: Scott Langford

Meeting Date Requested: 12/2/2020

Department: Community Development

Date Final Action Required: 12/2/2020

Meeting Type: ☐ Work Session ☐ Public Hearing ☒ Business Item ☐ Other:

Action Requested: ☐ Provide Information ☐ Request Feedback ☒ Decision ☐ Other:

Time Requested: Total Time: 8 minutes (Presentation Time: 3 Council Discussion: 5)

Approval Signatures

Submitter: Nate Nelson
Nate Nelson (Nov 24, 2020 13:17 MST)

Dept. Head: Scott Langford
Scott Langford (Nov 24, 2020 13:19 MST)

Reviewed as to Form: Jared C. Tingley

Executive: [Signature]

Council Office: [Signature]

Council Committee: _____

(**Please note: when completing for New Business item, only lines 1-5 are required)

1. AGENDA SUBJECT:

Resolution 20-75, approving the First Amendment to the Water and Sewer Interlocal Cooperation Agreement.

2. PURPOSE FOR COUNCIL TIME:

Review and approve an amendment to an existing interlocal agreement that sets forth the framework for annexing portions of the City's service area into the Kearns Improvement District service area, primarily in preparation for servicing new development.

3. SUMMARY:

Kearns Improvement District is currently the provider of water and sewer service in the Oquirrh Shadows area of the City. This arrangement was entered into via an interlocal agreement signed between the City and KID in 2000 when Oquirrh Shadows was annexed into the City. The First Amendment of this 2000 Interlocal Agreement ("First Amendment") modifies some processes, such as the encroachment permit process, and clarifies the responsibilities of the parties regarding repair, maintenance, and removal of utilities or the City roads. The First Amendment also modifies the term of the Agreement to begin upon execution of the Amendment for 50 years, to terminate in 2070.

4. TIME SENSITIVITY / URGENCY:

The KID has already approved the First Amendment and is now anticipating that the City will review and approve, if the City Council so desires. Although this First Amendment could wait until a later date, the expectations set forth between the parties were that this First Amendment would be reviewed and put to the Council for a decision on December 2, 2020.

5. BUDGET IMPACT

No budget impact.

6. STAFF RECOMMENDATION

The Staff recommends approving the First Amendment.

7. PLANNING COMMISSION RECOMMENDATION *(if applicable)*

N/A

8. MOTION RECOMMENDED *(if applicable)*

"I move to approve Resolution No. 20-75, approving the First Amendment to the Water and Sewer Interlocal Cooperation Agreement and authorize the Mayor to execute the First Amendment."

9. MAYOR RECOMMENDATION *(if applicable)*

The Mayor recommends the approval of the First Amendment.

10. PACKET ATTACHMENT(S) *(if larger than 25 mb, embed electronically)*

1) Resolution No. 20-75

2) The First Amendment to the Water and Sewer Interlocal Cooperation Agreement (attached as Exhibit A to the Resolution)

3) The 2000 Water and Sewer Interlocal Cooperation Agreement (attached as Exhibit A to the First Amendment)

11. OTHER INFORMATION *(if applicable)*

The 2000 Water and Sewer Interlocal Cooperation Agreement is attached as Exhibit A to the First Amendment. The passage of this Resolution does not bind the City to annex any portion of the City into the KID service area, it only extends the Agreement termination date and clarifies the processes and relationship between the City and KID as it relates to receiving encroachment permits, maintenance obligations, and repair of work on City roads. The City Council will have the opportunity in the near future to approve or reject the annexation of a portion of the Wood Ranch Development into the KID service area. Those maps and legal descriptions will be forthcoming once the Staff and Daybreak Communities are prepared to annex that portion into the KID service area.

INSTRUCTIONS

This document is intended as an aid for planning City Council agendas. The Council has expressed a desire to know what items need to be heard well before packets are prepared. Please submit this form to the City Council Director's office as soon as it is reasonably known that an item needs to be brought to the council. This is not required for routine special recognition or consent items, but is encouraged for anything that is not routine. Please provide as much information as reasonable, the requestor is authorized to alter the form to extend the sections below as appropriate. Additional attachments are encouraged and can be added as embedded attachments.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 20-75

A RESOLUTION APPROVING THE FIRST AMENDMENT TO THE WATER AND SEWER INTERLOCAL COOPERATION AGREEMENT

Whereas, in 2000, the Kearns Improvement District (the “District”) and the City of West Jordan (the “City”) entered into a Water and Sewer Interlocal Cooperation Agreement (“Agreement”) which set forth the Parties’ relationship regarding future service areas, annexations, and water and sewer infrastructure and use; and

Whereas, the District and the City desire to clarify the rights and obligations of the Parties under the Agreement and to extend the term of the Agreement under the Interlocal Cooperation Act by entering into an amendment of the Agreement; and

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

- Section 1. **Amendment.** That the First Amendment to the Water and Sewer Interlocal Cooperation Agreement (the “First Amendment”) between the District and the City be and is adopted and approved and that the Mayor is authorized to execute the First Amendment, as attached as Exhibit A.
- Section 2. **Keeper of Records.** That the City Recorder be authorized and instructed to keep an executed copy of the First Amendment as part of the City’s records.
- Section 3. **Open Meetings Act Compliance.** That this Resolution has been placed on the agenda of an official meeting and this action is taken by the City Council during that meeting in compliance with the Utah Open and Public Meetings Act.
- Section 4. **Effective Date.** This Resolution shall take effect immediately upon its passage, but the effective date of the First Amendment shall be the date stated therein or the date as determined by application of the Interlocal Cooperation Act, Title 11, Chapter 13, of the Utah Code.

Adopted by the City Council of West Jordan, Utah, this 2nd day of December, 2020.

Christopher McConnehey
Council Chair

ATTEST:

Cindy M. Quick, MMC
Council Office Clerk

Voting by the City Council

"YES"

"NO"

Council Member Kelvin Green

☐☐

Council Member Zach Jacob

☐☐

Council Member Chad R. Lamb

☐☐

Council Member Chris McConnehey

☐☐

Council Member David Pack

☐☐

Council Member Kayleen Whitelock

☐☐

Council Member Melissa Worthen

☐☐

EXHIBIT A of RESOLUTION 20-75
("First Amendment")

FIRST AMENDMENT TO THE WATER AND SEWER INTERLOCAL COOPERATION AGREEMENT

This First Amendment to the Water and Sewer Interlocal Cooperation Agreement dated October 31, 2000 is entered into between the City of West Jordan, a municipal corporation (the "City") and Kearns Improvement District, a political subdivision of the State of Utah ("District") (collectively, the "Parties").

RECITALS

WHEREAS, the Parties entered into the Water and Sewer Interlocal Cooperation Agreement dated October 31, 2000 ("Agreement") setting forth the Parties relationship regarding future service areas, annexations, and obligations of the parties regarding water and sewer infrastructure and use;

WHEREAS, the Parties desire to clarify the rights and obligations of the Parties and applicability of the contract to future dealings between the Parties;

WHEREAS, the Parties desire to extend the duration of the Agreement for another fifty years from the effective date of this First Amendment.

WHEREAS, the Agreement permits amendments to the terms of the Agreement so long as it is in writing and agreed to by both parties; and

NOW THEREFORE, the Parties agree as follows:

AMENDMENT

1. **Amendment:** The terms of the Agreement shall be amended as set forth in the attached Exhibit A and incorporated herein by reference.
2. **Agreement Terms:** The Agreement, unless otherwise inconsistent with this First Amendment, shall continue in full force and effect in accordance with the provisions thereof.
3. **Duration of Agreement:** The Agreement shall be extended for an additional fifty years from the effective date of this First Amendment.
4. **Execution in Counterparts; Electronic and Photocopied Signatures.** This First Amendment may be executed by the Parties in any number of counterparts, and each executed counterpart shall have the same force and effect as the original instrument and as if all the Parties had signed the same instrument. The Parties also agree that facsimile, portable document format (PDF), scanned, and/or electronic signatures shall have the same effect as a manually signed original and shall be effective upon transmission.

5. **Effective Date:** This First Amendment shall be effective as of the latter date of the following events: (1) all signatories to this First Amendment have signed and (2) this First Amendment has been filed with the keeper of records of the City and the District.

SIGNATURE PAGE

In concurrence and witness whereof, this First Amendment has been executed by the Parties effective on the date the last party signs this First Amendment pursuant to authority granted by resolutions duly passed and adopted by the City and the District, respectively.

CITY OF WEST JORDAN

Attest:

Mayor Date


City Recorder Date

**Approved as to Proper Form and
Compliance with Utah law:**

Jared C. Tingey Date
Senior Assistant City Attorney

KEARNS IMPROVEMENT DISTRICT

Attest:

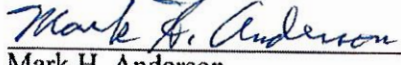


Chairman, Board of Trustees Date
18 November 2020



Clerk Date
11-10-20

**Approved as to Proper Form and
Compliance with Utah law:**



Mark H. Anderson Date
Kearns Improvement District
Legal Counsel
11/19/2020

WATER AND SEWER SERVICE INTERLOCAL COOPERATION AGREEMENT

This Agreement is made and entered into by and between the City of West Jordan, a municipal corporation, located in Salt Lake County, Utah (hereinafter the "City") and Kearns Improvement District, a political subdivision of the State of Utah, located in Salt Lake County, Utah (hereinafter the "District"), effective as of the latter of the dates appearing by the signatures of the Mayor of the City and the Chairman of the Board of Trustees of the District.

RECITALS

1. The City is a municipal corporation of the State of Utah and, as such, provides certain municipal services to residents and inhabitants of the City.
2. The District is an improvement district which was formed primarily for the purpose of providing culinary water and sanitary sewage collection and disposal services to residents and inhabitants of the District.
3. The City has annexed a small portion of the District and two annexation petitions, one for approximately 160 acres and another for approximately 811 acres, were recently considered by the Boundary Commission.
4. The District formally protested both annexations, largely out of a concern for the integrity of its water distribution and sewage collection systems.
5. The Boundary Commission denied the 160-acre annexation and, in a decision dated May 31, 2000, approved the 811-acre annexation "conditioned upon Kearns Improvement District and West Jordan City entering into an agreement with substantially the same terms and conditions" as an agreement negotiated last November.
6. The City and the District have engaged in discussions concerning issues of overlapping boundaries, duplication of services and division of resources within the area which lies within the City or within the annexation policy declaration of the City and desire to enter into this Interlocal Cooperation Agreement in satisfaction of the condition imposed by the Boundary Commission in its decision dated May 31, 2000 and to induce the District not to appeal that decision.

NOW, THEREFORE, in consideration of the foregoing, and the mutual promises, covenants and conditions hereinafter set forth, the City and the District agree as follows:

AGREEMENT

1. Duration of Agreement. To the extent allowable under applicable law, the parties intend that this Agreement be perpetual unless terminated by the mutual written consent of the parties. In the event that applicable law does not allow this Agreement to be perpetual, then the term of this Agreement shall be 50 years from its effective date.

2. No Separate Entity. This Agreement shall not create any separate legal or administrative entity or body and there shall be no joint acquisition or ownership of property and it will not be necessary to dispose of property on the termination of this Agreement. Rather, this Agreement is intended to define the areas that will receive water distribution and sanitary sewage collection and disposal services from each of the parties and provide for cooperation in the installation of water and sewer lines and related facilities. Each party shall be responsible for its own operations and activities within their respective service areas, under the direction of their respective legislative bodies.

3. Service Areas. The City shall not, without the prior express written consent of the District, provide water distribution or sanitary sewage collection and disposal services to any area which, at the time of annexation into the City, is or was part of the District and agrees that the District shall have the sole and exclusive right to provide water distribution and sanitary sewage collection and disposal services within any such area. Similarly, the District agrees that it will not support the annexation of any portion of the City into the District and will not provide water distribution or sanitary sewage collection and disposal services to any portion of the City which is not part of the District unless requested or authorized in writing to do so by the City. The District's South boundary, which is the primary boundary of concern, extends to the middle of 7000 South Street. The area located within the District's boundaries, as from time-to-time constituted (which may include annexations of areas within the City with the City's prior written approval) may be referred to herein as the District's "service area" and all portions of the City which are not part of the District's service area may be referred to herein as the City's "service area". Notwithstanding the foregoing, either the City or the District may provide water and/or sanitary sewer services within the service area of the other entity upon the express written consent of the said other entity and subject to such restrictions and requirements as may be agreed to, in writing, by the parties.

4. No Annexation Protests. In consideration of the City's acknowledgment that the District has the sole right to provide water distribution and sanitary sewage collection and disposal services within its boundaries and the City's agreement not to provide any such services absent the District's written request or approval as provided in paragraph 3 of this Agreement, the District agrees not to protest any subsequently proposed annexation by the City on the ground that such annexation might result in a conflict over the provision of water and sewer services and the District further agrees not to appeal, under UTAH CODE ANN. § 10-2-417, the May 31, 2000 decision of the Salt Lake County Boundary Commission

5. District Infrastructure Expansion and Street Crossing Permits. Except for an emergency arising from or related to the District-owned pipelines and appurtenances that necessitates the District's immediate action, the District is required to obtain an encroachment permit each time it crosses City streets at such locations as may be reasonably necessary for the installation, repair, replacement, and/or enlargement of new and existing pipelines and appurtenances reasonably required by the District. The City shall issue the encroachment permits in accordance with City Code and standard procedures and shall not unreasonably withhold, delay or condition an encroachment permit for the District. The District's work shall be subject to inspection and approval of the City, which approval shall not unreasonably be withheld, delayed or conditioned, and to all other existing City ordinances, rules and regulations pertaining to such construction. The final plat and/or final engineering plans shall depict the location of the District's proposed pipelines and appurtenances and must first be approved and signed by the Parties before any work may be performed arising or relating to the installation of the pipelines and appurtenances. The Parties acknowledge that District sewer pipelines and appurtenances will generally be located in the middle of the City streets and water pipelines and appurtenances will generally be located near the gutter along the North and East side of City streets. The Parties also acknowledge that conflicts may arise from time to time that make the general locations impossible or undesirable. If such conflicts arise, the Parties will determine a mutually acceptable alternate location for the sewer and water pipelines and appurtenances.

6. Assignment. Neither party may assign this Agreement or any interest herein without first obtaining the written consent of the other party, except that an assignment may be made to a successor entity with which the assigning party is consolidated or merged or which acquires by conveyance, transfer or condemnation all or substantially all of the assigning party's water distribution and/or sewage collection system. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

7. Resolution Required. This Agreement shall not be effective until approved by a resolution of the governing body of each party. The individuals signing this Agreement on behalf of the City represent and warrant, through their signatures, that the execution of this Agreement has been approved by a resolution duly adopted by the governing authority of the City. Similarly, the individuals signing this Agreement on behalf of the District represent and warrant, through their signatures, that the execution of this Agreement has been approved by a resolution duly adopted by the governing authority of the District. Each party agrees that a signed copy of this Agreement will be filed with the keeper of public records of the said party.

8. Approval by Authorized Attorneys. As required by Utah law, and as a condition precedent to this Agreement's entry into force, it shall be submitted to an authorized attorney for each party who shall approve the Agreement as being in proper form and compliance with applicable law.

9. Default. The substantially prevailing party in any litigation to interpret and/or enforce the provisions of this Agreement shall be entitled to an award of reasonable attorney fees and costs, in addition to other available relief. Other than as expressly provided in this Agreement, no breach of this Agreement shall entitle either party to unilaterally cancel, rescind

or terminate this Agreement; but such limitation shall not affect in any manner any other rights or remedies which either party may have by reason of any such breach

10. Separate Facilities. Nothing contained in this Agreement, or otherwise, shall constitute the parties as partners or joint venturers. Except as otherwise specifically provided herein, each party shall, at its own risk and expense, install, own, maintain, operate and dispose of the pipelines, improvements and other property, real and personal, necessary to deliver water and/or collect sewage within that party's service area. Except as otherwise provided in this Agreement, impact fees, service charges, and other fees and charges assessed by either party shall be in the sole discretion of the serving party and the ordinances and rules and regulations of the said serving party shall be operative on that party's customers wherever located.

11. Compliance With Laws. This Agreement is made and entered into subject to the provisions of the laws of the State of Utah, which laws shall control the enforcement of this Agreement. Any dispute may, with the concurrence of the parties, be submitted to binding arbitration in accordance with rules and procedures approved by both parties.

12. Additional Documents. Each party agrees to execute such other and further documents and instruments as may be reasonably necessary or proper to consummate the transactions contemplated by this Agreement and to implement the intent of the parties as expressed herein.

13. Headings, Tense, Construction. The paragraph headings of this Agreement are for purposes of reference only and shall not limit or define the meaning hereof. The singular tense herein shall include the plural and any gender shall include all other genders. This Agreement shall be construed only by the contents hereof and there shall be no presumption or construction in favor of or against either party.

14. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law; but if any provision of this Agreement shall be held invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement. Notwithstanding the foregoing, however, should such invalidity of any provision of this Agreement frustrate the intent and purpose of the parties, as expressed herein, such invalidity shall cause this Agreement to be terminated, with the parties, to the extent possible, to be restored to the "status quo" as though this Agreement had not been signed.

15. Waiver and Modification. No failure on the part of either party at any time to require the performance of the other of any term of this Agreement shall in any way affect such party's right to enforce its terms, nor shall any waiver by any party of any term hereof be taken or held to be a waiver of any other term, or of any breach hereof. Except as otherwise specifically stated, no right under this Agreement may be waived and no modification or amendment of this Agreement may be made except by a written Agreement executed by the party or parties against whom such enforcement of a waiver, modification or amendment is sought.

16. Time. Time shall be and is of the essence of this Agreement.

17. Entire Agreement. The parties agree that this document contains the entire agreement and understanding between them and constitutes their entire agreement with respect to the specific issues contained herein and supersedes any and all prior oral representations and agreements.











7c - 1st Amendment to the Water and Sewer ILA - Final Packet


Final Audit Report


2020-11-24


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 Agreement completed.
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