COTTONWOOD HEIGHTS

RESOLUTION NO. 2021-30

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH VARIOUS JURISDICTIONS CONCERNING A COMMUNITY RENEWABLE ENERGY PROGRAM

WHEREAS, in 2019, the Utah Legislature enacted the "Community Renewable Energy Act," UTAH CODE ANN. 54-17-901 *et seq.* (the "*Sustainability Act*"), which authorizes jurisdictions to participate in a "community renewable energy program" filed by a qualified utility and approved by the Utah Public Service Commission, whereunder the utility would provide electric service from one or more "renewable energy sources" to end-use customers in the participating communities; and

WHEREAS, the Interlocal Cooperation Act, UTAH CODE ANN. 11-13-101 et seq. (the "*Interlocal Act*"), authorizes any two or more public agencies to enter into agreements with one another for joint or cooperative action and to contract with each other to perform any governmental service activity which each public agency entering into the contract is authorized by law to perform; and

WHEREAS, an interlocal cooperation agreement (the "*Agreement*") has been jointly prepared whereunder the city of Cottonwood Heights (the "*City*") and various other participating jurisdictions (collectively, the "*Parties*") would become participating communities in a community renewable energy program under the Act (the "*Program*") on the terms and conditions set forth in the Agreement; and

WHEREAS, the Parties are public agencies for purposes of the Interlocal Act and are empowered to enter into the Agreement;

WHEREAS, on 15 June 2021, the City's city council (the "*Council*") met in regular session to consider, among other things, authorizing the City to execute and deliver the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, the City's city attorney has approved the form of the Agreement as required by UTAH CODE ANN. §11-13-202.5(3); and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the City's residents to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, be it resolved by the city council of the city of Cottonwood Heights that the Agreement is hereby approved and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement and any related documents and instruments on behalf of the City.

This Resolution, assigned no. 2021-30, shall take effect immediately upon passage.

PASSED AND APPROVED this 15th day of June 2021.

ATTEST:

By: _____
Paula Melgar, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By: _____
Michael J. Peterson, Mayor

VOTING:

Michael J. Peterson	Yea ✓	Nay ___
Douglas Petersen	Yea ✓	Nay ___
J. Scott Bracken	Yea ✓	Nay ___
Tali C. Bruce	Yea ✓	Nay ___
Christine Watson Mikell	Yea ___	Nay ✓

DEPOSITED in the office of the City Recorder this 15th day of June 2021.

RECORDED this 17 day of June 2021.

INTERLOCAL COOPERATION AGREEMENT AMONG PUBLIC ENTITIES REGARDING THE COMMUNITY RENEWABLE ENERGY PROGRAM

This Interlocal Cooperation Agreement ("Agreement") is made among those public/governmental entities ("Listed Entities") listed on Schedule 1 who have executed this Agreement and delivered the executed Agreement to the Secretary designated in Schedule 3 ("Secretary"). Each of the Listed Entities that duly executes and delivers this Agreement and that continues to indicate its intent to become a "Participating Community" as defined by Utah Administrative Rule R746-314 ("Rules"), as adopted by the Utah Public Service Commission ("Commission"), is and will remain an "Eligible Community" (as defined by the Rules) and will become a "Participating Community" (as defined by the Rules) upon satisfaction of all of the requirements of Utah Code Ann. § 54-17-902(10).

This Agreement will become effective ("Effective Date") five calendar days after the date that at least five Listed Entities have (i) executed and delivered this Agreement to the Secretary and (ii) notified the Secretary that they agree to become Anchor Communities and will timely make Anchor Payments, as defined in and required by Section 7 (each, an "Anchor Community"). Any Listed Entity may become a Party (as defined below) to this Agreement by executing and delivering this Agreement to the Secretary at any time, whether before or after the Effective Date, on or before January 31, 2022, or such other date as may be determined by the Community Renewable Energy Board ("Participation Deadline"), with no financial commitment prior to July 31, 2021. Each Listed Entity that desires to be a Party shall deliver an executed Agreement to the Secretary with the name and contact information for such Listed Entity primary and alternate Board Members. Each Listed Entity that also agrees to become an Anchor Community shall notify

the Secretary of the same and shall timely deliver its Anchor Payments to the Treasurer as specified in Section 7. In the event any Anchor Community later determines to withdraw as a Party or as an Anchor Community, Section 7.d. shall apply. For so long as a Listed Entity that executes and delivers this Agreement as specified herein remains an Eligible Community or a Participating Community, as applicable, and continues to make any payments required of it herein on and after July 31, 2021, it will individually be a "Party," and all collectively will be the "Parties," to this Agreement.

RECITALS

A. In 2019, the Utah State Legislature enacted H.B. 411 that was codified at Utah Code Ann. § 54-17-901 *et seq*. and is known as the "Community Renewal Energy Act" ("Act").

B. The Act authorizes a community renewable energy program ("Program") to be proposed in an application ("Application") to be filed by a qualified utility for approval by the Commission. The qualified utility relevant to this Program is Rocky Mountain Power, an unincorporated division of PacifiCorp, an Oregon Corporation (referred to herein as "RMP"). Upon Commission approval of the Program, RMP will be authorized to provide electric service from one or more "renewable energy resources" as defined by the Act ("Renewable Resources") to end-use customers within the Participating Communities who participate in the Program ("Participating Customers"). Each Listed Entity has adopted a resolution that establishes a goal of a net 100% renewable energy supply for that community by 2030, and therefore is eligible to become a Participating Community as contemplated by the Act.

C. The Act contemplates (as supplemented by the Rules) that the Parties will adopt a governance agreement (which is this Agreement) and enter into an agreement with RMP ("Service Agreement") which must provide, among other things, for (i) the payment by the Parties of the costs associated with third-party expertise contracted by the Utah Division of Public Utilities and

the Utah Office of Consumer Services to assist with activities associated with the initial approval of the Program, (ii) payment by the Parties of the costs of providing certain notices required by the Act, (iii) determination of the obligations for payment of any termination charges associated with the Program that are not paid by Participating Customers and not included in Commission-approved utility rates for the Program to be paid by Participating Customers ("Program Rates"), (iv) identification of any proposed replacement assets, and (v) proposed plans addressing low-income programs and assistance.

D. On or about January 7, 2020, the Commission adopted the Rules to facilitate implementation of the Program as contemplated by the Act. The Rules require the adoption by the Parties of this governance Agreement to establish a decision-making process among the Parties to ensure that the Parties will be able to reach a single joint decision on any necessary Program issues.

E. Each of the Listed Entities that executes this Agreement, as an Eligible Community and a potential Participating Community, desires to enter into this governance Agreement as contemplated by the Act and Rules.

F. The Listed Entities are all "public agencies" under the Interlocal Cooperation Act, Utah Code Ann. § 11-13-101 *et seq.* ("Interlocal Cooperation Act") and are authorized to enter into this Agreement for joint or cooperative action, and to form a Community Renewable Energy Agency ("Agency") as contemplated herein.

G. The Parties have determined that it is mutually advantageous to enter into this Agreement.

AGREEMENT

NOW THEREFORE, pursuant to the Interlocal Cooperation Act, the Act and the Rules, and in consideration of the mutual covenants and promises of the Parties set forth herein, the Parties agree as follows to foster the legitimate interests of the Parties actively working together

to implement the Program pursuant to the Act and Rules for the mutual benefit of the Parties. The Parties recognize that the ability to provide renewable energy options to their residents transcends political jurisdictional boundaries within Utah and intergovernmental coordination is essential to facilitate the efficient use of both public and private resources. The Parties therefore agree as follows:

1. **Purpose.** The purpose of this Agreement is to establish the Agency and a decision-making process for Program design, cost share allocation, resource solicitation, resource acquisition, other Program issues and, as contemplated by the Act and Rules, to provide a means of ensuring that the Parties will be able to reach a single joint decision on necessary Program issues, and to implement the Program in their respective communities.

2. **Governance and Administration of Agency.** There is hereby created a governing board of the Agency called the Community Renewable Energy Board ("Board"). All action taken pursuant to this Agreement shall be governed and determined by the Board, which is comprised of representatives of the Parties.

a. Board.

i. Each Party may appoint one position on the Board from among its elected officials.

ii. Board members ("Board Members") will serve indefinitely at the pleasure of the appointing Party. Any appointment or removal of a Board Member will be evidenced by a letter from the Party's chief executive officer or resolution of such Party's governing body notifying the Secretary of such action.

iii. A Party may designate an "alternate" Board Member from among its elected officials, appointed officials, or employees, to attend any Board meetings and to fully participate, including voting, in Board meetings on behalf of the Party if that Party's designated

regular Board Member is not in attendance. The alternate Board Member serves indefinitely at the pleasure of the appointing Party and any appointment or removal of an alternative Board Member will be evidenced in the same way as the appointment of a regular Board Member for that Party. As used herein the term "Board Member" shall include a Party's alternate Board Member acting in the place of a Board Member as appropriate.

iv. The Board may not hold an electronic meeting until the Board has adopted a resolution or rule ("Policy") governing the use of electronic meetings as required by the Utah Open and Public Meetings Act, Utah Code Ann. §52-4-101 *et seq.* (including any successor statutes, "OPMA"). If the Board has adopted such a Policy, then the Board Members may participate remotely/electronically as provided in the Policy, and in accordance with the OPMA.

v. Unless otherwise specified herein, Board meetings, and all actions taken thereby, will require that a quorum of Board Members be present (either physically or, if permitted by the Policy, electronically) and shall operate in compliance with the OPMA. A simple majority of all Board Members shall constitute a quorum of Board Members.

vi. Other than as specified in Section 2.a.vii, matters related to the operation of the Board, such as meeting times, meeting locations, the conduct of meetings, election of officers, a chair and vice-chair, etc., will be established and adopted by the Board as written bylaws, policies and/or procedures ("Bylaws") that include, but are not limited to, creation of various committees, hiring outside consultants, lawyers and administrators, and issuance of requests for proposals.

vii. The Parties agree to the appointment of an initial President, Secretary and Treasurer of the Agency as specified in Schedule 3. Until such time as the Board establishes Bylaws that include procedures and duties, and elects or appoints substitute officers, the President shall call and conduct board and committee meetings, conduct Agency business, and

retain and manage outside consultants, the Secretary shall receive and provide notices required or allowed hereunder and keep and prepare minutes and books of the Agency, and the Treasurer shall receive and hold payments in a separate ledger account for the benefit of the Agency and handle financial and accounting matters, including expenditures, of the Agency, in accordance with governmental accounting principles.

viii. The Board shall appoint a "participating communities' representative" ("Participating Communities' Representative") as defined in the Rules to present the decisions and opinions of the Agency and to take other actions as required by the Act or the Rules.

ix. The Board may, from time to time, appoint, establish, maintain, and replace any officers, the Participating Communities' Representative, executive committees, other committees, and outside administrative support as determined by the Board in accordance with the Bylaws. It is the intention of the Parties that the officers of the Agency will periodically be elected as set forth in the Bylaws, and that each Party will offer qualified employees to serve as potential officers of the Agency in order to equitably share administrative burdens and costs.

b. Voting.

i. Subject to Sections 2.b.ii, iii and iv, for all decisions and actions of the Agency as to all matters related to this Agreement, the Program, Commission and other proceedings relating to the Program, and otherwise, each Party as acted/voted upon by its Board Member will be entitled to one vote, and matters before the Board will be passed and approved by a vote of at least a majority of the Board Members who are present at a duly noticed meeting at which a quorum is present and who are present and voting with respect to a given matter.

ii. Subject to Sections 2.b.iii and iv, any two Board Members who are present at a Board Meeting may call for a weighted vote of the Board ("Weighted Voting") on any

action or matter appearing on the current agenda for action by the Board, in which event the Board's action on the matter will be determined by votes weighted by the Participation Percentage (as defined in Section 6) of each voting Board Member.

iii. Notwithstanding anything to the contrary in this Agreement, after the date on which the Commission has entered an order pursuant to Utah Code Ann. § 54-17-904 (3) approving the design and implementation of the Program ("Program Implementation"), neither the Agency nor any Party will make, propose or support any comment, give testimony or state a position with respect to any material change in connection with any Commission proceeding relating to the design or implementation of the Program unless and until such change has first been determined by the Board to be reasonable and material, and has been approved by Board Members, whether or not attending any given Board meeting, representing (A) at least two-thirds (2/3) of all Eligible Communities or Participating Communities, as then applicable, and (B) at least a majority of the Participation Percentages of all Eligible Communities or Participating Communities, as then applicable.

iv. Before any new Renewable Resource for the Program is acquired or approved by the Commission, the Board will, in consultation with experts as deemed appropriate, calculate reasonably projected long-term incremental per-kilowatt-hour rate impacts on Participating Customers of the new Renewable Resource, in conjunction with all other previously-approved Program Renewable Resources (the "Incremental Rate Impact"). The Incremental Rate Impact will be calculated by comparing the reasonably projected RMP revenue requirement that would otherwise apply to Participating Customers under standard RMP tariff rates to the reasonably projected RMP revenue requirement that will apply to Participating Customers if the new Renewable Resource is acquired. Notwithstanding anything to the contrary in this Agreement, neither the Agency nor any Party will make, propose or support any comment, give

testimony or state a position in support of any such acquisition or approval of a Renewable Resource for the Program unless and until the same has been approved by Board Members, whether or not attending any given Board meeting, representing (A) in the case of an Incremental Rate Impact of 10% or more, at least two-thirds (2/3) of all Eligible Communities or Participating Communities, as then applicable, and at least two-thirds (2/3) of the Participation Percentages of all Eligible Communities or Participating Communities, as then applicable; or (B) in the case of an Incremental Rate Impact of less than 10%, at least a majority of all Eligible Communities or Participating Communities, as then applicable, and at least a majority of the Participation Percentages of all Eligible Communities or Participating Communities, as then applicable.

3. **Immunity Act.** The decisions made pursuant to this Agreement are governmental functions and the Parties are all governmental entities under the "Governmental Immunity Act of Utah" (Utah Code Ann. § 63G-7-101, *et seq.*, or successor provision, the "Immunity Act"). The Parties do not waive any immunities, rights, or defenses available under the Immunity Act, nor does any Party waive any limits of liability provided by the Immunity Act. Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each Party is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees.

4. **Withdrawal.**

a. Before July 31, 2021. Any time prior to July 31, 2021, a Party that has previously executed and delivered this Agreement may elect not to continue as an Eligible Community and may withdraw as a Party to this Agreement by providing a notice as specified in Section 11 ("Notice") to the Secretary of its intent to withdraw. The Secretary will provide Notice to all Parties of each Party that provided such a Notice of withdrawal or that did not timely make its Initial Payment as required by Section 7.b.i, and any such Party will be deemed to have

withdrawn as a Party to this Agreement as of July 31, 2021, unless the Initial Payment is paid within fifteen days of such Notice from the Secretary. An Eligible Community that withdraws or is deemed to have withdrawn as of July 31, 2021, will have no financial commitment to the Agency or the other Parties as a result of its participation in the Agency or its withdrawal as a Party hereto, other than as provided in Section 3.

b. Before Passage of Ordinance. From July 31, 2021 to the deadline for a Party to adopt an ordinance as required by Utah Code Ann. § 54-17-903(2)(c) following Program Implementation a Party may elect not to become a Participating Community and may withdraw as a Party to this Agreement by providing at least thirty days' advance Notice to the Secretary of its intent to withdraw.

c. Effect of Withdrawal. Upon delivery of any Notice of withdrawal or upon any deemed withdrawal of a Party, the withdrawing Party's Board Member must relinquish his or her position as Board Chair/Vice-Chair and as an officer, as applicable, and will also be automatically recused from all further discussions and votes on any matters affecting such withdrawal or the Program. Due to commitments made pursuant to this Agreement and the significant impact a withdrawal after July 31, 2021 may have on the other Parties, except as specifically provided herein, all Parties acknowledge and agree that any amount previously paid or committed to by any Party will not be refunded in whole or in part for any reason, including any withdrawal of a Party after July 31, 2021.

d. After Passage of Ordinance. Neither the Act nor the Rules contemplates that Participating Communities who have adopted an ordinance as required by Utah Code Ann. § 54-17-903(2)(c) following Program Implementation can thereafter terminate participation in the Program or withdraw as a Party to this Agreement.

5. **Admission of New Parties**. Unless the Act is amended, no one other than the Listed Entities who become Parties as specified in this Agreement may or will become Parties to this Agreement. If the Act hereafter allows the admission of additional Parties, the Board may adopt policies and procedures for such admission, including, without limitation, execution and delivery of a counterpart of this Agreement by the new Party following approval by its governing body.

6. **Participation Percentages.** The weight of the vote ("Participation Percentage") of each Party's Board Member for all matters specified in Sections 2.b.ii, iii and iv will be determined pursuant to the provision of this paragraph. The Participation Percentages of all Listed Entities, assuming every Listed Entity is becoming and remains a Party, is based on the relative estimated population and annual electrical loads within each Listed Entity and is specified in Column C of Schedule 1 ("Original Weight").

a. From the Effective Date to July 31, 2021, the Participation Percentages of all Parties will equal each Party's Original Weight as a percentage of the Original Weight of all Listed Entities who have previously become Parties by executing this Agreement and delivering it to the Secretary as specified herein.

b. From August 1, 2021, to the end of Phase 1, each Party's Participation Percentage will be based on its Phase 1 Payment obligation, including its Phase 1 Initial Payment obligation and any Phase 1 Anchor Payment obligation (as defined below), as a percentage of the total approved Phase 1 expenditures specified in Section 7.b. Such Participation Percentages will be updated and calculated prior to any Board meeting or vote if any Listed Entity has become a new Party and/or an Anchor Community since the last time the same were updated.

c. From the end of Phase 1 through the end of Phase 2 each Party's Participation Percentage will be as based on its aggregate Phase 1 and Phase 2 Payment

obligations, including its Phase 1 Initial Payment obligation, any Phase 1 Anchor Payment obligation, and any Phase 2 Initial or Anchor Payment obligations (as defined below), as a percentage of the total approved Phase 1and 2 expenditures as specified Sections 7.b. and 7.c.

d. Unless otherwise agreed by all Parties, after the end of Phase 2, each Party's Participation Percentage will be updated as of April 1 of each year, or such other date as determined by the Board, to reflect the relative estimated annual electrical loads of Participating Customers within such Participating Community as a percentage of the annual electrical loads of all Participating Customers within all Participating Communities, based upon the most recently available 12-month data or estimates from RMP as approved by the Board.

e. The Participation Percentage of all parties shall equal 100%.

7. **Phases/Expenditures/Payments.**

a. Subject to additions and changes approved by the Board, this Agreement specifies authorized activities of the Agency and associated costs and expenditures in connection with at least two phases of the development, implementation and operation of the Program (each, a "Phase"). A Listed Entity that desires to remain a Party to this Agreement must pay to the Treasurer its share of approved expenditures for each Phase on or before the due date(s) determined by the Board or if no date is determined by the Board then as specified herein (each, a "Payment").

b. The first Phase ("Phase 1") will begin on the Effective Date and end on the date the design of the Program with proposed Program Rates has been submitted by RMP to the Commission for approval pursuant to Utah Code Ann. § 54-17-904 ("Program Submittal Date"). Phase 1 has approved expenditures in an amount of $350,000. Each Listed Entity that intends to become or remain a Party after July 31, 2021, or other date as determined by the Board, shall make Phase 1 Payments as follows:

i. Each Party that desires to remain a Phase 1 Party after July 31, 2021, or other date as determined by the Board, shall make one or more Payments to the Treasurer on or before July 31, 2021, or other date as determined by the Board, in the amount of its Phase 1 Initial Payment as specified in Column D of Schedule 1. After the Effective Date, the Agency may commit to expenditures only after Parties have made full or partial Payments in amounts sufficient to cover such expenditures.

ii. Each Phase 1 Anchor Community shall also make one or more Phase 1 Anchor Payments to the Treasurer on or before October 31, 2021 for Anchor Communities that are municipalities and January 31, 2022 for Anchor Communities that are counties, or such other date in either case as may be determined by the Board, in an amount determined as specified below, up to the maximum Phase 1 Anchor Payment specified for such Anchor Community in Column D of Schedule 2. The aggregate total of all actual Phase 1 Anchor Payments shall equal the approved Phase 1 expenditures specified in Section 7.b, reduced by the aggregate total dollar amount received by the Treasurer in Phase 1 Initial Payments and from any other sources intended for such purpose other than from the Parties prior to January 31, 2022 or other date as determined by the Board, ("Phase 1 Remaining Balance"). The actual Phase 1 Anchor Payment to be paid by each Phase 1 Anchor Community shall be based on its proportionate share of the aggregate of all maximum Phase 1 Anchor Payments as specified in the "Total" Row of Column D of Schedule 2, multiplied by the Phase 1 Remaining Balance. Any Anchor Payments made by any Anchor Community in excess of such maximum Phase 1 Anchor Payments shall be entered in Column J of Schedule 2 and shall be deemed to be a prepayment ("Phase 2 Anchor Prepayment") with respect to such Anchor Community's Phase 2 Anchor Payment. The resulting actual Phase 1 Anchor Payment to be paid by each Phase 1 Anchor Community shall be entered in Column I of Schedule 2 and shall be paid to the Treasurer by each Phase 1 Anchor Community by October 31,

2021, for Anchor Communities that are municipalities and January 31, 2022 for Anchor Communities that are counties or such other date in each case as may be determined by the Board.

iii. Except as provided in Section 7.c.ii or 7.e, no Phase 1 Initial Payment, Phase 2 Anchor Prepayment, or Phase 1 Anchor Payment will be refunded regardless of the actual Phase 1 or Phase 2 expenditures, and no additional Phase 1 Payments other than those specified herein will be required of any Party absent such Party's consent. The Board will determine how any unused and uncommitted Phase 1 amounts held by it will be spent in connection with the Program.

c. The second Phase ("Phase 2") will begin on the Program Submittal Date and end on the expiration of the "implementation period" as defined in the Rules. Phase 2 has approved expenditures in an amount not to exceed $350,000 or such lesser amount as approved by the Board. Each Party that intends to remain a Phase 2 Party shall make Phase 2 Payments as follows:

i. Each Party that desires to remain a Phase 2 Party shall make one or more Payments to the Treasurer on or before July 31, 2022, or other date as determined by the Board, in the amount of its Phase 2 Initial Payment as specified in Column E of Schedule 1.

ii. Each Phase 2 Anchor Community shall also make one or more Phase 2 Anchor Payments to the Treasurer on or before October 31, 2022, for Anchor Communities that are municipalities and January 31, 2023 for Anchor Communities that are counties or such other date in each case as may be determined by the Board, in an amount determined as specified below, up to the maximum Phase 2 Anchor Payment specified for such Anchor Community in Column G of Schedule 2. The aggregate total of all actual Phase 2 Anchor Payments shall equal the aggregate of the approved Phase 1 and Phase 2 expenditures specified in Sections 7.b and 7.c, reduced by the aggregate total dollar amount of all Phase 1 and Phase 2 Initial

Payments and any other amounts received from sources intended for such purpose other than Parties by July 31, 2022, or other date as determined by the Board, and further reduced by all Phase 1 Anchor Payments received by July 31, 2021, or other date as determined by the Board ("Phase 2 Remaining Balance"). The actual Phase 2 Anchor Payment to be paid by each Phase 2 Anchor Community shall be based on its proportionate share of the aggregate of all maximum Phase 2 Anchor Payments as specified in the "Total" Row of Column G of Schedule 2, multiplied by the Phase 2 Remaining Balance, as adjusted to credit each Phase 1 Anchor Community for its proportionate share of any Phase 1 Anchor Payments received by the Treasurer after July 31, 2021, or other date as determined by the Board. The resulting actual Phase 2 Anchor Payment to be paid by each Phase 2 Anchor Community shall be entered in Column K of Schedule 2 and shall be paid to the Treasurer by each Phase 2 Anchor Community by October 31, 2022 or other date as determined by the Board. In the event an Anchor Community's Phase 2 Anchor Prepayment exceeds its actual Phase 2 Anchor Payment obligation, the Treasurer shall refund the excess prepayment.

iii. Except as provided in Section 7.e and 7.c.ii, no Phase 2 Initial Payment or Phase 2 Anchor Payment will be refunded regardless of the actual Phase 1 or Phase 2 expenditures, and no additional Phase 2 Payments other than those specified herein will be required of any Party absent such Party's consent. The Board will determine how any unused and uncommitted Phase 1 or Phase 2 amounts held by it will be spent in connection with the Program.

d. If at any time an Anchor Community provides Notice to the Secretary that it elects to withdraw as a Party to this Agreement or as an Anchor Community, or if an Anchor Community fails to make any Phase 1 or Phase 2 Initial Payment or Anchor Payment as required hereunder, or if an Anchor Community is otherwise deemed to have withdrawn from this Agreement, the Secretary shall provide Notice to all Parties of the same and this Agreement shall

terminate unless all remaining Anchor Communities, including any other Parties that then agree to become Anchor Communities, reach agreement within 90 calendar days of such Notice as to expenditures and future Anchor Community Payments.

e. If this Agreement is terminated, any unused and uncommitted Payments or Phase 2 Anchor Prepayment held by the Agency or the Treasurer shall be refunded to the Parties making the Phase 2 Anchor Prepayment or otherwise based on their relative total Payments previously paid.

f. Any other or additional Phases approved by the Board in addition to Phase 1 and Phase 2 will include such activities, expenditures and Payment requirements as may be determined by the Board.

g. Notwithstanding anything to the contrary in this Agreement, each Eligible Community shall be solely responsible for paying separately all costs and expenses of providing notice within such Eligible Community as required by Sections 54-17-905(1) and (6)(a) of the Act.

8. **Commitments Subject to Appropriation; Failure to Pay.** All of the financial commitments made herein by the Parties, as governmental entities, are subject to the appropriation of funds approved by a Party's governing body and the limitations on future budget commitments provided under applicable Utah law, including the Utah Constitution. In the event the governing body of a Party fails to make appropriations necessary to satisfy the Party's financial obligations hereunder, such failure to make an appropriation shall not be considered a breach of the Agreement and such Party shall endeavor to provide timely Notice of the same to the Secretary and to all Parties of its withdrawal from this Agreement. In the event a Party otherwise fails to timely make any Payment required by this Agreement, the Board will notify such Party of such non-payment and will provide 30 calendar days for such Party to make the required Payment. If such Party fails to make any such required Payment, the Agency may pursue all remedies available at law or equity

(including the judicial remedy of injunctive relief if applicable), and the Board may determine that such Eligible Community will be deemed to have withdrawn from this Agreement unless and until such Payment has been received.

9. **Term.** If not sooner terminated, the term of this Agreement shall be for 50 years from the Effective Date of this Agreement.

10. **Amendment.** This Agreement may not be amended except by written instrument signed by all the Parties.

11. **Notices**. All notices, requests, demands, and other communications hereunder (each, a "Notice") to the Agency will be in writing and given by delivering a copy, by certified U.S. Mail, return receipt requested, to the Secretary specified in Schedule 3, as the same may be updated from time to time. Notice may also be sent to the Secretary via email as specified in Schedule 3, so long as the Notice is followed up by written notice via U.S. Mail unless the Secretary has provided written confirmation of receipt of such Notice. Notice information for each Party shall be included on such Party's signature page to this Agreement, and may be updated from time to time by providing written Notice of the same to the Secretary. Notices received by the Secretary will promptly be sent electronically by the Secretary to all officers and Board Members of the Agency using such email address(es) as to which the Secretary has received Notice.

12. **Interlocal Cooperation Act Requirements.** The Parties enter into this Agreement pursuant to the Interlocal Cooperation Act. For the purpose of satisfying specific requirements of the Interlocal Cooperation Act, the Parties agree as follows:

a. *Approval Resolution.* This Agreement shall be conditioned upon the approval, execution and delivery to the Secretary of this Agreement by the Parties pursuant to and in accordance with the provisions of the Interlocal Cooperation Act, including the adoption of

resolutions of approval if such resolutions of the legislative bodies of the Parties are required by the Interlocal Cooperation Act.

b. *Attorney Approval as to Form.* In accordance with the provisions of Utah Code Ann. §11-13-202.5(3), this Agreement shall be submitted to the attorney authorized to represent each Party for review as to proper form and compliance with applicable law before this Agreement becomes effective as to such Party or is delivered to the Secretary.

c. *Repository.* A duly executed copy of this Agreement shall be filed with the keeper of records of each Party, pursuant to Utah Code Ann. §11-13-209.

d. *Joint Board.* As required by Utah Code Ann. § 11-13-207, the Parties agree that the cooperative undertaking under this Agreement shall be administered by the Board.

e. *Real and Personal Property.* No real or personal property shall be acquired jointly by the Parties as a result of this Agreement unless this Agreement has been amended to authorize such acquisition. To the extent that a Party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party.

f. *Financing Joint Cooperative Undertaking; Budget.* The functions to be performed by the joint or cooperative undertaking are those described in this Agreement. There will be no financing of this joint or cooperative undertaking and no formal budget shall be established or maintained. Each Party's share of approved Agency expenditures shall be established and paid in accordance with this Agreement.

13. **Entire Agreement & Schedules**. This Agreement constitutes the entire agreement between the Parties regarding those subjects that are the subject matter of this Agreement, and this Agreement supersedes all prior agreements and understandings between the Parties pertaining thereto. All schedules annexed 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 schedules and writings.

14. **Governing Law & Venue.** The provisions of this Agreement will be governed by and be construed in accordance with the laws of the state of Utah. Disputes and other issues between the Parties arising out of or related to this Agreement will, to the extent possible, be resolved by informal mediation. If informal mediation is unsuccessful then the disputing Parties shall attempt to mediate the dispute before an acceptable mediator. If the dispute is not successfully mediated or an acceptable mediator is not selected within ten business days of a request for mediation then the dispute will be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah.

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

16. **Severability.** In the event that any condition, covenant, or other provision hereof is held to be invalid, void, or unenforceable, the same will be deemed severable from the remainder of this Agreement and will in no way affect any other covenant, condition, or other provision herein contained. If such condition, covenant, or other provision will be deemed invalid due to its

scope or breadth, such provision will be deemed valid to the extent of the scope or breadth permitted by law.

17. **Ethics.** The Board members shall, as applicable, comply with the requirements of the "Municipal Officers and Employees Disclosure Act" (Part 13 of Chapter 3 of Title 10 of the Utah Code), the "County Officers and Employees Disclosure Act" (Chapter 16a of Title 17 of the Utah Code), the "Public Officers and Employees Ethics Act" (Chapter 16 of Title 67 of the Utah Code) and other applicable statutory provisions related to ethics and honesty in public government service.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Delivery of an executed signature page by e-mail transmission or electronic signature shall be effective as delivery of a manually signed counterpart of this Agreement.

19. **Third-Party Beneficiaries.** There are no intended third-party beneficiaries to this Agreement. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any claim or right of action by any third person under this Agreement. It is the express intention of the Parties that any person, other than the Party who receives benefits under this Agreement, shall be deemed an incidental beneficiary only.

20. **Authorization.** The individuals executing this Agreement on behalf of the Parties confirm that they are duly authorized representatives of the Parties and are lawfully enabled to execute this Agreement on behalf of the Parties.

IN WITNESS WHEREOF, each of the Parties, by resolution duly adopted, has caused this Agreement to be signed and delivered.

[Signatures begin after Schedules]

SCHEDULE 1

[Listed Entities/Original Weights/Initial Payments]

A	B	C	D	E
	Listed Entities:	**Original Weight (%):**	**Phase 1 Initial Payment [Due 7/31/21]**	**Phase 2 Initial Payment [Due 7/31/22]**
1	Grand County	0.603	2,109.37	2,109.37
2	Salt Lake County	3.306	11,570.26	11,570.26
3	Summit County	3.074	10,759.97	10,759.97
4	Town of Alta	0.063	218.93	218.93
5	Bluffdale City	3.168	11,088.57	11,088.57
6	Town of Castle Valley	0.030	106.74	106.74
7	Coalville City	0.161	562.99	562.99
8	Cottonwood Heights	3.126	10,942.10	10,942.10
9	Emigration Canyon Township	0.130	456.22	456.22
10	Francis City	0.120	421.54	421.54
11	City of Holladay	2.682	9,387.72	9,387.72
12	Kamas City	0.212	743.49	743.49
13	Kearns	2.745	9,606.01	9,606.01
14	Moab City	0.639	2,237.95	2,237.95
15	Millcreek	5.263	18,421.40	18,421.40
16	Oakley City	0.149	520	520
17	Ogden City	10.211	35,737.26	35,737.26
18	City of Orem	8.863	31,019.52	31,019.52
19	Park City	1.926	6,742.38	6,742.38
20	Salt Lake City	28.872	101,050.33	101,050.33
21	Springdale City	0.138	481.26	481.26
22	West Jordan City	10.833	37,916.77	37,916.77
23	West Valley City	13.685	47,899.22	47,899.22
	SUM	**100.00**	**350,000.00**	**350,000.00**

SCHEDULE 2

[Anchor Communities/Anchor Payments]

A	B	C	D	E	F	G	H	I	J	K	L
	Anchor Communities*	**Phase 1 Initial Payment (from Schedule 1)**	**Maximum Phase 1 Anchor Payment**	**Maximum Phase 1 Total Payments**	**Phase 2 Initial Payment (from Schedule 1)**	**Maximum Phase 2 Anchor Payment**	**Maximum Phase 2 Total Payments**	**Actual Phase 1 Anchor Payment**	**Actual Phase 2 Anchor Pre-Payment**	**Actual Phase 2 Anchor Payment**	**Total Maximum Phase 1 and Phase 2 Initial and Anchor Payments**
1	Grand County	2,109.37	2,716.04	4,825.41	2,109.37	2,716.04	4,825.41				9,650.82
2	Salt Lake County	11,570.26	14,897.93	26,468.19	11,570.26	14,897.93	26,468.19				52,936.38
3	Summit County	10,759.97	13,854.61	24,614.58	10,759.97	13,854.61	24,614.58				49,229.16
4	Town of Castle Valley	106.74	137.44	244.18	106.74	137.44	244.18				488.36
5	Moab City	2,237.95	2,881.60	5,119.55	2,237.95	2,881.60	5,119.55				10,239.10
6	Millcreek	18,421.40	23,719.50	42,140.90	18,421.40	23,719.50	42,140.90				84,281.80
7	Park City	6,742.38	8,681.52	15,423.90	6,742.38	8,681.52	15,423.90				30,847.80
8	Salt Lake City	101,050.33	130,112.96	231,163.29	101,050.33	130,112.96	231,163.29				462,326.58
	TOTALS:	**152,998.40**	**197,001.60**	**350,000.00**	**152,998.40**	**197,001.60**	**350,000.00**				**700,000.00**

***Not final until signed**

SCHEDULE 3

[Initial Officers/Contact Information/Payment Information]

Initial President:

_____
_____
_____
_____
Phone: _____
Fax: _____
Email: _____

Initial Secretary:

_____
_____
_____
_____
Phone: _____
Fax: _____
Email: _____

Initial Treasurer

_____
_____
_____
_____
_____
Phone: _____
Fax: _____
Email: _____

Payment Information:

_____
_____
_____
_____
_____

COTTONWOOD HEIGHTS

COTTONWOOD HEIGHTS

By _____
Print: MICHAEL J. PETERSON
Its: MAYOR

Approved as to legal form:

_____
WM. SHANE TOPHAM,
CITY ATTORNEY

DATED: 6/15/2021

Attest:

_____
PAULA MELGAR, RECORDER

COTTONWOOD HEIGHTS UTAH 2005 CORPORATE SEAL

Contact Information:
CITY MANAGER
2277 EAST BENGAL BLVD
COTTONWOOD HEIGHTS, UT 84121

Phone: 801.944.7000
Fax: _____
Email: _____