

Non-Federal Agreement

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ADMINISTRATION, OPERATION, MAINTENANCE, AND DEVELOPMENT
OF
DEER CREEK, EAST CANYON, HUNTINGTON NORTH, HYRUM, JORDANELLE, RED
FLEET, ROCKPORT, SCOFIELD, STARVATION, STEINAKER, AND WILLARD BAY
RESERVOIRS

JUNE, 2003

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE STATE OF UTAH FOR THE ADMINISTRATION,
OPERATION, MAINTENANCE, AND DEVELOPMENT OF RECREATION
AT ELEVEN UTAH RESERVOIRS:
DEER CREEK, EAST CANYON, HUNTINGTON NORTH, HYRUM, JORDANELLE, RED
FLEET, ROCKPORT, SCOFIELD, STARVATION, STEINAKER, WILLARD BAY

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FLEET, ROCKPORT, SCOFIELD, STARVATION, STEINAKER, WILLARD BAY

EXPLANATORY REMARKS

THIS MEMORANDUM OF AGREEMENT, made this _____ day of _____ 2003, by and between THE UNITED STATES OF AMERICA, acting through the Bureau of Reclamation, Department of Interior, hereinafter referred to as the "United States," and the STATE OF UTAH, by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Recreation, hereinafter referred to as the "State." Pursuant to the statutory authority and discretion of the United States and the State, this agreement is made in accordance with the Act of June 17, 1902, (32 Stat. 388) and amendatory and supplementary Acts collectively referred to as Federal Reclamation Laws, particularly the Federal Water Project Recreation Act of July 9, 1965, (79 Stat. 213), as amended particularly by Title XXVIII of the Reclamation Recreation Management Act of October 30, 1992, (102-575, 106 Stat. 4690-4693); the State pursuant to Section 63-11-12 et seq., Utah Code Annotated, 1953, as amended.

WITNESSETH:

WHEREAS, the United States has constructed Deer Creek Dam and Reservoir under the National Industrial Recovery Act of June 16, 1933, (48 Stat. 195) for the storage, diversion, and beneficial use of the waters of the Provo, Weber, and Duchesne rivers and their tributaries, for irrigation and other purposes, and;

WHEREAS, the United States has constructed East Canyon, Rockport, and Willard Bay Reservoirs under the Weber Basin Project Act of August 29, 1949, (63 Stat. 677) for the diversion, storage and distribution of water of the Weber River and its tributaries, and water from other sources, for irrigation, municipal and industrial use, generation of electric power, flood control, recreation, fish and wildlife purposes, and for drainage of project land, and;

WHEREAS, the United States has constructed Huntington North Reservoir under the Emery County Project, a participating project of the Colorado River Storage Project Act of April 11, 1956, (70 Stat. 105) for the diversion, storage and distribution of water of Cottonwood Creek and Huntington Creek watersheds for irrigation, fish and wildlife, and recreational purposes, and;

WHEREAS, the United States has constructed Hyrum Reservoir under the Act of August 4, 1939, (53 Stat., 1187) as amended, and the Act of August 5, 1950, (Public Law No. 667, 81st Congress, 2nd Session) for irrigation, wildlife refuges and other uses, and;

WHEREAS, the United States has constructed Jordanelle and Starvation Reservoirs under the Bonneville Unit of the Central Utah Project, Red Fleet Reservoir under the Jensen Unit of the Central Utah Project, and Steinaker Reservoir under the Vernal Unit of the Central Utah Project, participating projects of the Colorado River Storage Project Act of April 11, 1956, (70 Stat. 105) for the storage, diversion, distribution of water for irrigation, municipal, industrial, recreation, fish and wildlife purposes, flood control, and drainage of project land, and;

WHEREAS, the United States has constructed Scofield Reservoir under the Act of August 11, 1939, (53 Stat., 1418), and acts amendatory thereof and supplementary thereto, herein referred to as the Water Conservation and Utilization Projects Act, for the conservation and utilization of the water supply of the Price River and its tributaries and the protection of life and property, and;

WHEREAS, the United States has contracted with several Water User Associations and Water Conservancy Districts, hereinafter referred to as the "Association(s)/District(s)", to operate and maintain the said Dams and Reservoirs for the purposes set forth in said contracts, and;

WHEREAS, the parties hereto have entered into previous memorandums of agreement for the management of public recreation and recreation facilities on the subject reservoir areas in order to provide for public use and enjoyment of the reservoir areas consistent with project purposes, and;

WHEREAS, the parties hereto desire to enter into a new Memorandum of Agreement for the administration, operation, maintenance and development of public recreation and recreation facilities at the subject reservoirs to replace and supersede the current Memoranda of Agreement for recreation management.

NOW, THEREFORE, it is agreed as follows:

1. GENERAL DEFINITIONS

Where used in this document:

(a) "United States" means the United States' Department of the Interior acting by and through the Bureau of Reclamation, or its duly authorized representative(s).

(b) "State" means the State of Utah, Department of Natural Resources, acting by and through the Division of Parks and Recreation, or its duly authorized representative(s).

(c) "Association(s)/District(s)" means the Water User Associations and Water Conservancy Districts associated with Deer Creek, East Canyon, Huntington North, Hyrum, Jordanelle, Red Fleet, Rockport, Scofield, Starvation, Steinaker, and Willard Dams and Reservoirs or their duly authorized representative(s).

(d) "Federal Estate" is the Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation. These are lands acquired in fee title by the United States or withdrawn from the public domain for project purposes, and are the lands covered by this agreement.

(e) "Reservoir Area" includes all, or any part thereof, of the Federal Estate within each reservoir boundary (as shown on the Exhibit A for each reservoir) for which management of recreation and recreation facilities is transferred pursuant to this agreement. Lands covered by flood easements (not shown in Exhibits) are exempted from this definition.

(f) "Primary Jurisdiction Zone" (PJZ) means that area within each of the reservoir areas surrounding the dam, outlet works, feeder canals, and distribution works, wherein the United States and/or the Association(s)/District(s) retain primary jurisdiction for the protection, operation, and maintenance of said project facilities. The PJZ includes the area shown on each Exhibit A, and designated right-of-way for any feeder canals or distribution canals.

(g) "Resource Management Plans" means the plans prepared in accordance with Title XXVIII of Public Law 102-575 and Reclamation Directives and Standards on Resource Planning.

(h) "Outgrants" means various land use or resource management documents or instruments including, but not limited to, license agreements, contracts, rights-of-way, easements, leases, permits, and other rights of use issued or granted, according to law, by the United States on, over, across or under the Federal Estate.

(i) "Federal fiscal year" means that annual period, from October 1 of one calendar year to September 30 of the next calendar year, on which the United States' government bases its budget.

(j) "Federal appropriated funds" means any appropriated funds provided to the State from the Federal government without regard to the authorization for such funds or the manner in which they were transferred.

(k) "Recreation facilities" means those facilities constructed or installed within the reservoir area for recreational use by the public or for support of such recreational use. Said facilities may include, but are not limited to, buildings (such as park headquarters, visitor centers and maintenance shops) and other structures (such as campgrounds, picnic grounds, boat docks and ramps, electrical lines, water systems, roads, parking areas, sewer systems, signs, trash facilities, boundary and interior fencing, etc.).

(l) "Reservoir revenues" means all receipts derived from entry and other use fees which the State is permitted to collect pursuant to their authority under this agreement including, but not limited to, fees, charges, tolls, and rents, charged by the State for public recreation use and concessionaire agreements issued or administered by the State.

(m) "Administration, operation, maintenance, and development" means the acts or processes used to: direct management of the reservoir areas; manage and enhance resources and facilities, law enforcement, recreation opportunities and responsibility; and keep facilities and

equipment in good repair and usable working condition. The term maintenance includes the replacement and/or construction of equipment and/or facilities as may be agreed to by the parties.

(n) "Good repair" means maintaining functional use and longevity of facilities and equipment through use of appropriate actions including controlled maintenance, standard operating procedures, O&M manual directions, etc.; meeting Federal, State, and local Health Department standards; meeting public safety needs and standards; and maintaining facilities in a safe, neat, clean, and well kept condition.

(o) "Project Facilities" means those water diversion, collection, storage, and carriage facilities, and appurtenant ancillary facilities built under the project authorizing acts to fulfill the primary purposes of those acts.

(p) "Mutually agreed" means both party's designated representatives are in agreement on a proposed action. Such agreements shall be in writing. In the event the designated representatives cannot mutually agree on a proposed action within sixty (60) calendar days, or longer period as may be agreed to by the parties hereto, the proposed action shall be remanded to the Director of the Division of Parks and Recreation and the Director of the Upper Colorado Region of the Bureau of Reclamation. If within 45 calendar days after remanding to the respective Directors, there is still no mutual agreement on the proposed action, the United States' determination shall stand. However, should this occur, both parties shall have the right to terminate this agreement.

(q) "Concession" is a non-Federal commercial business that supports appropriate public recreational uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal Estate and usually involves the development of improvements.

(r) "Fixed Assets" are any structure, fixture, or capital improvement placed on the Federal Estate.

(s) "Exclusive Use" is any use which excludes other appropriate public uses or users for extended periods of time.

2. TRANSFER OF RESPONSIBILITY

The United States hereby transfers to the State, subject to the provisions of this agreement, and the State hereby accepts responsibility for the administration, operation, maintenance, and development of public recreation, recreation facilities, and related responsibilities pursuant to this agreement on the eleven subject reservoir areas, as shown in each Exhibit A.

3. TERM OF AGREEMENT AND TERMINATION OF EXISTING MANAGEMENT AGREEMENTS

The term of this agreement shall be twenty (20) years from the date first written above, unless terminated sooner as provided herein. During the last two years prior to expiration of this agreement, the parties hereto shall, in good faith, attempt to negotiate a new administration operation, maintenance, and development agreement or may extend, by mutual agreement the term for up to an additional 20 years, but in no event beyond 40 years from the date hereof.

Execution of this agreement supercedes or terminates all existing agreements for the management of public recreation and recreation facilities at the subject reservoirs.

**4. ADMINISTRATION, OPERATION, MAINTENANCE,
AND DEVELOPMENT**

The State shall be responsible for the administration, operation, maintenance, and development of public recreational use of the reservoir areas for the eleven subject reservoirs in accordance with the following:

(a) The State shall exercise its law enforcement authority within the reservoir areas and shall, within the limits of its authority, adopt and enforce such rules and regulations for the recreational use of the reservoir areas as are necessary and desirable to protect the health and safety of persons using the areas, preserve law and order; and protect the subject resources and facilities. Said rules and regulations shall be consistent with applicable Federal laws, regulations, and policies currently in place or as may be adopted in the future.

(b) The State shall ensure that land use and administration of the subject reservoir areas shall conform to all applicable Federal laws, regulations, and Executive Orders. Where variations exist in Federal laws, orders, regulations, and policies, the most stringent shall be the required standard.

(c) The State shall coordinate, with the appropriate Association(s)/District(s) and/or the United States, any administration, operation, maintenance, and development activities pursuant to this agreement that could affect any management, operation, and maintenance activities of the Association(s)/District(s) and/or the United States within any of the subject reservoir areas.

(d) The State shall also exercise its law enforcement authority within the PJZ, as staffing and resources allow, to maintain and preserve law and order, and protect project works, resources, and lands.

(e) Recreation facilities at the said reservoirs shall be developed pursuant to the Resource Management Plans.

(f) The United States has provided funding to construct the existing federally developed recreation facilities at these eleven reservoirs and may provide additional funds to design and construct upgrades to the recreation facilities at said reservoirs.

(g) The State shall be responsible for the full cost of any and all development, replacement, or alterations of those facilities for which cost sharing has not been negotiated. Reclamation shall review and approve all development plans before construction begins. Reclamation shall ensure that all environmental clearances and permits are secured prior to commencement of construction activities.

(h) The United States agrees, under Public Law 89-72, that as a part of its administrative responsibility, the United States shall enter into a development program with the State for the upgrading and rehabilitation of the existing facilities transferred to the State under this Agreement. This rehabilitation program shall be a cost-shared arrangement with the United States paying not more than 50 percent of said costs as mutually agreed by all parties.

(i) The parties hereto shall ensure that adequate personnel are available to accomplish the work agreed to herein.

(j) The United States may, upon mutual written agreement of the parties, provide technical assistance to the State. Such assistance shall be subject to cost sharing as provided in Article 4.

(k) The United States may, in situations where operating costs exceed park collections by 50 percent or more, provide operating revenue by way of a cost-share arrangement as authorized by law and agency policy.

**5. CONTINGENT ON APPROPRIATIONS OR
ALLOTMENT OF FUNDS**

The expenditure of any money and the performance of any work by the United States or the State as provided for by the terms of this Agreement is made contingent on the Congress or the Utah Legislature making the necessary appropriations or allotment of funds. The failure of the Congress or the Utah Legislature to appropriate funds or the absence of any allotment of funds shall not impose any liability on the United States or the State. If the necessary appropriations and allocations for either party to carry out this agreement are not made for any fiscal year, the parties hereto agree to work out a mutually agreeable and temporary course of action to be followed. If the non-appropriation or non-allocation of the necessary funds on behalf of either party becomes chronic, the other party may give notice of termination of this agreement pursuant to Article 28.

6. FEES AND REVENUES

(a) Fees shall be set in accordance with the fee schedule established for Utah State Park areas in accordance with State statutes and the State shall have the right to collect receipts derived from recreation related permits and contracts which it issues and administers for activities within each reservoir area.

(b) The State shall maintain accounting records for each reservoir area to satisfy the requirements of this agreement and shall, upon request, furnish to the United States not later than 90 days following the close of the State's fiscal year , a financial report of all revenues received and expenditures made for operation and maintenance, replacements, construction, and development of facilities. The State shall keep all financial records in accordance with generally accepted accounting principles.

(c) The State shall account for all revenues and expenditures. All receipts in excess of the administrative, operation, maintenance and development costs shall be returned to the United States.

7. RECLAMATION USE PARAMOUNT, PJZ

(a) The rights of the State under this agreement are subordinate to the prior rights of the United States and the Association(s)/District(s), as the United States' agent, to use any portion of the reservoir areas for the primary purposes of the projects and any associated facilities or activities pursuant to Federal Reclamation Law. The United States shall give written notice to the State if the United States determines that changes in land use for Reclamation purposes within the reservoir areas are necessary.

(b) The United States and the Association(s)/District(s), as the United States' agent, retain primary jurisdiction over the Primary Jurisdiction Zones (PJZ) as defined herein and shown on each Exhibit A, as may be amended. Said jurisdiction is retained to provide proper operation, maintenance, and protection of project facilities including, but not limited to, the dam and appurtenant works, distribution works, and feeder canals. The State shall exercise its law enforcement authority to prevent any unauthorized recreational use of the PJZ. Any use of the PJZ for recreation purposes by the State must have specific prior written approval by the United States' designated representative and written concurrence from the affected Association(s)/District(s), and shall not interfere with the operation of the dam and the appurtenant works. Any such written approval or disapproval by the United States' designated representative, and concurrence or non-concurrence, shall be made within forty-five (45)

calendar days of receipt of a written proposal from the State. Failure of the United States' designated representative to either approve or disapprove a proposal within said 45-day period may be deemed a breach of this agreement.

(c) The United States may close the reservoir area or any portion thereof, including the PJZ, to public use whenever the United States determines such restriction is necessary in the interest of project operation, public safety, or national security. The United States' designated representative shall give written notice to the State of any such closure. This notice shall be given as soon as practicable after a determination for closure is made and shall include the date when the closure becomes effective. The State shall enforce such closure and such enforcement shall include coordination and cooperation with the United States and the Association(s)/District(s).

(d) The United States, in the interest of project operation, public safety or national security, may revise the boundaries of the PJZ at any time, as it deems necessary. The United States' designated representative shall give written notice to the State of any such revision. This notice shall be given as soon as practicable after a determination for revision is made and shall include the date when the revision becomes effective.

8. RESOURCE MANAGEMENT PLAN

(a) The State shall, where one exists, follow a Resource Management Plan approved by the United States for the particular reservoir area in the management, operation, and maintenance of the reservoir areas pursuant to this agreement. Said Resource Management Plans shall be prepared by the United States in cooperation with the State, Association(s)/District(s), and other

appropriate Federal, State, and local entities. The State shall actively participate in preparation of the Resource Management Plans. Parties acting under authority granted by the United States or the State shall be required to comply with the provisions of said plans.

(b) The United States shall prepare and finalize a Resource Management Plan for each of the eleven reservoirs as funds are appropriated by Congress.

(c) The Resource Management Plans provide direction consistent with authorized project purposes and establish a desired future condition of the area's resources to assure conformance and good stewardship. The plans address the management frameworks and partnerships, water resources, recreation and visual resources, natural and cultural resources, and land management.

9. SAFETY

The United States and the Association(s)/District(s) disclaim responsibility for the safety of the public involved in recreational use in the reservoir area.

(a) The State shall, within the limits of its authority, adopt and enforce rules and regulations for the recreational use of the reservoir area as are necessary and desirable to protect the health and safety of persons using the area, for the preservation of law and order, and for the protection of the subject resources and facilities. Said rules and regulations shall be consistent with applicable Federal laws, regulations, and policies currently in place or as may be adopted in the future.

(b) The State shall also exercise its law enforcement authority within the PJZ, as staffing and resources allow, to maintain and preserve law and order and to protect the project works, resources, and lands from vandalism.

10. RISK AND DAMAGES

The parties hereto shall each be responsible and liable only for the negligent acts or omissions of their respective employees or assigns to the extent provided by law. However, nothing in this contract shall be construed to be an admission of fault or liability, and nothing shall limit the defenses and immunities legally available to each party, as against each other and third parties.

11. ACCIDENT REPORTING

The State shall investigate, or cooperate in the investigation by the agency having jurisdiction, all accidents involving death, serious injury or property damage, hazardous material spills, or other incidents of a serious nature within the reservoir areas. The State shall make an initial verbal report on the accident to the United States' designated representative within one working day of knowledge of the incident. The State shall submit written reports to the United States' designated representative as follows: (a) Serious injury or death- within 4 calendar days of the verbal notice; (b) Hazardous material spill- within 4 calendar days of the verbal notice. A copy of all accident reports shall be provided to the Association(s)/District(s).

12. HAZARDOUS WASTE, RECYCLING AND WASTE REDUCTION

(a) The State shall take all steps reasonably necessary to protect the safety of persons and property within the subject reservoir areas from hazardous or potentially hazardous materials. Unlawful use or storage of hazardous materials shall not be permitted on the subject lands.

(b) The parties hereto, and their respective agents, employees or assigns, shall report to the other party's designated representative, within twenty-four (24) hours, the suspected

significant pollution of any nature to the lands, waters, or facilities within or adjacent to the Federal Estate covered by this agreement. Materials that shall not be disposed of on the Federal Estate include but are not limited to: refuse, garbage, hazardous materials, sewage effluent outside of waste treatment facilities, industrial waste, petroleum products, mine tailings, and pesticides, including misuse or use outside of approved programs. Any violation of these provisions by either party or their assigns shall result in grounds for termination of the agreement, in accordance with termination clauses contained in Article 28 of this agreement, and/or for assessment of penalties appropriate for full and complete remediation and restoration of the Federal resources. Any contract or agreement the parties hereto may enter into with a third party pursuant to this agreement shall contain the foregoing contract provision and any additional specifications necessary to protect Federal resources and prevent the pollution of the Federal Estate, waters, and facilities within and adjacent to the reservoir areas.

(c) The State shall develop and implement a recycling and waste reduction plan for each reservoir area. Said plan and implementation shall be included in the budget and activity work plans.

13. DEBRIS AND WASTE REMOVAL

The State shall dispose of, or adequately notify the public of, floating debris in the reservoirs and undermined or fallen trees within the reservoir areas that are outside the Primary Jurisdiction Zone, to the extent necessary to maintain the areas in a safe condition suitable for public recreational use. The State shall provide litter control and trash removal in all areas where public recreation use is permitted. The State shall properly dispose of all waste, discarded or abandoned items, and debris generated by its management, operation, and maintenance activities and its management of the reservoir areas, exclusive of those areas controlled by the Association(s)/

District(s). Said waste, debris, etc., shall be disposed of in a properly permitted landfill outside of the reservoir areas, unless otherwise mutually agreed to by the parties hereto.

14. VARIATION IN WATER LEVEL

The United States and the Association(s)/District(s) have and reserve the right to vary the reservoir water level as necessary for project purposes. The water level shall not fluctuate below the dead and/or conservation pool elevation, except in an emergency. The United States' designated representative shall, to the extent reasonably practicable, provide timely notice (within twenty four hours) to the appropriate State Park Manager of any special or emergency increases or decreases in water level that would significantly adversely affect recreation facilities and public use of the reservoir areas.

15. SOIL AND WATER CONSERVATION

The State and the United States will, in cooperation with the Association(s)/District(s), take all reasonable measures necessary to minimize siltation and erosion; protect land and water resources; prevent and suppress fire; protect against introduction and spreading of noxious weeds and other pests detrimental to natural values, agriculture or public health and safety; and will cooperate in soil and water conservation, and fish and wildlife enhancement practices.

16. CONSUMPTIVE USE OF WATER BY STATE

(a) The State may, subject to Utah water law and water availability, use water that has been retained or acquired for the operation of the on-land recreation facilities within each reservoir area.

(b) When the State, a concessionaire, or other third party furnishes water to the public, it shall furnish only suitably treated, wholesome and sanitary water that meets appropriate Federal, State, and local health standards. The United States does not warrant the quality of the available water supplies as to its suitability either for domestic purposes or for human consumption.

(c) The parties hereto, or either of them, may pursue acquisition of water, water wells, potable water supplies piped in from commercial sources, and/or water rights for consumptive use for recreation purposes within the reservoir areas and/or for consumptive use by the recreation areas covered by this agreement. Such consumptive recreational uses may include, for example, water for operation of bathrooms, showers, fire fighting, campgrounds, riding stables, irrigation, and other recreation related purposes. Said water, water wells, water supplies, or water rights, except for commercial water sources, shall be obtained in the name of the United States and shall be retained for use at the specific reservoir area for which it was obtained.

17. MANAGEMENT BY THE STATE OF UNITED STATES PERSONAL PROPERTY

During the performance of this Agreement, Reclamation and the State agree as follows:

(a) United States property is property provided at United States' expense for performance of this Agreement regardless of the following methods by which it is provided:

(1) United States-furnished property is property that is transferred from United States' stocks, or purchased directly by Reclamation, and delivered into the States' custody for performance of this Agreement. Title to United States-furnished property remains with Reclamation.

(2) State-acquired United States' property is property purchased or fabricated by the State at a cost of \$5,000 or more; the cost of which is reimbursable under this Agreement. Title to property purchased by the State vests in Reclamation upon its delivery by the supplier. Title to property drawn from the States' stocks or stores or fabricated by the State vests in Reclamation upon reimbursement of the cost thereof by Reclamation in whole or in part.

(b) Subject to advance approval by Reclamation, the State may purchase property and equipment and replace it if necessary during the tenure of this Agreement to the extent deemed necessary by the State and may seek reimbursement for such expenditures.

(c) The State shall meet the basic requirements prescribed in Exhibit E of this Agreement to establish and maintain control over Reclamation property in its possession.

(d) The State shall return to Reclamation all United States-titled property that becomes excess to the performance requirements of this Agreement.

18. THIRD PARTY CONTRACTS, CONCESSIONS CONTRACTS

AND PERMITS

(a) The State may enter into basic service contracts without prior review and written approval of the United States. Such contracts may include, but not necessarily be limited to, services for normal management, operations, and maintenance of the area, including, but not necessarily limited to, trash removal and disposal, toilet pumping, tree trimming, etc.

(b) The State may enter into and administer contracts with third parties to carry out any of the functions of the State relating to recreation and related administration, operations, maintenance, and development pursuant to this agreement. Such contracts would include, but not necessarily be limited to, recreation concessions such as resorts, restaurants, retail sales, and marina facilities. New, renewed or modified contracts and permits shall include clauses that prohibit new exclusive use and require existing exclusive use, if any, be phased out in accordance with an established timetable. If a contract or permit expires or is terminated, the State shall require that all exclusive use be removed from the Federal Estate. The State shall submit any such third party contract in excess of one year duration to the United States' designated representative for review and approval, prior to the State's approval. The United States' designated representative shall, within forty-five (45) calendar days of receipt, review and either approve or disapprove the contract, in writing. Failure of the United States' designated representative to either approve or disapprove a proposed contract within said 45-day period may be deemed a breach of this agreement.

(c) All third party contracts issued by the State shall be subject to applicable Federal laws and regulations, Reclamation policy, directives and standards, and applicable terms of this agreement. The term of such contracts shall not extend beyond the term of this agreement. Said contracts shall also provide that in the event of the termination of this agreement, the United States shall be deemed to stand in the stead of the State as grantor for the remainder of the term of said contract; provided however, in the event of such termination, the United States may, at any time thereafter, terminate said contract by giving the contractor, concessionaire or permittee ninety (90) calendar days written notice thereof.

(d) The United States reserves the right and responsibility for the issuance of outgrants for land use and resource management within the Federal Estate. The United States shall, prior to approval, provide the State a copy of any outgrant application for review and comment by the State. The State shall review any such application and make written comment to the United States' designated representative within 45 calendar days from receipt. The United States' designated representative shall consider the written comments of the State during the approval process. Comments received shall, if applicable, be incorporated. Outgrants shall contain reasonable measures to protect recreation facilities and reclaim or repair damages that may occur to such.

19. LIABILITY OF CONTRACTORS, CONCESSIONAIRES AND PERMITTEES

(a) The State shall require all contractors, concessionaires and permittees operating within the reservoir areas to carry adequate liability and property damage insurance. Said insurance shall be of sufficient amount to cover, as a minimum, the State's liability under their governmental liability act and shall be consistent with the services, facilities, etc., provided and the potential for injury or damage to life and property. The United States and the Association(s)/District(s) may be named as an additional insured on all such insurance, and a certificate of insurance shall be provided to the State by the contractor to ensure that the insurance is in effect.

(b) All contracts issued by the State for activities within the reservoir areas pursuant to this agreement shall contain a provision that requires the contractor, concessionaire or permittee to indemnify and hold harmless the State, the United States and their respective employees and

assigns, including the Association(s)/District(s) from liability for causes or actions resulting from negligence on the part of the contractor, concessionaire or permittee or their respective employees, subcontractors, or agents.

20. UNAUTHORIZED USE

The State shall, in cooperation with the United States and the Association(s)/District(s), take all reasonable measures necessary to identify, investigate, and resolve incidents of unauthorized land, resource, or recreation facility use; or unauthorized encroachment within the reservoir areas. This includes any legal actions necessary to prevent or prosecute such unauthorized use. The United States hereby delegates to the State the right to bring action in the State's name in order to protect each party's interests and carry out their responsibilities in connection therewith. Resolution of boundary disputes shall be the responsibility of the United States. The State shall notify the United States' designated representative of boundary disputes or unauthorized incidents within thirty (30) calendar days of discovery.

21. RESERVATIONS

The State is subject to the following conditions and reservations in the administration, operation, maintenance, and development of the reservoir areas:

(a) Existing land uses, rights, or interests within each reservoir area and lawfully held by the United States or persons or entities not party to this agreement.

(b) The right of the United States and the Association(s)/District(s), their assigns, employees and agents, to enter upon the reservoir area on official business without charge, for the purpose of enforcing, protecting, and exercising the rights of the United States and the Association(s)/District(s), and also to protect the rights of those not party to this agreement.

(c) The right of the United States, the Association(s)/District(s), and their agents, employees, assigns, contractors, lessees, or permittees, to remove from the reservoir area, any and all materials necessary for the construction, operation, and maintenance of project works and facilities. All such removal activities shall not encroach on developed sites without mutual agreement of the parties hereto.

(d) The right of the United States, or its assigns, permittees, or lessees to prospect for, extract, and carry on the management of oil, gas, coal, and other minerals, and the right to issue leases or permits to prospect for oil, gas, or other minerals on said lands under the Act of February 25, 1920,(41 Stat. 437), and amendatory acts, the Act of August 4, 1939, (53 Stat. 1187), as amended, and the Act of August 7, 1947, (61 Stat. 913).

(e) Except in emergency situations, the United States' designated representative shall give written notice to the State's designated representative thirty (30) calendar days prior to the exercise of the above rights.

22. TITLE TO LAND, IMPROVEMENTS, EQUIPMENT AND RESTORATION

(a) The United States shall be vested with title to land and permanently fixed assets such as structures, facilities, and equipment (restrooms, shower buildings, fences, barriers, roads,

utility lines, etc.,) within the reservoir areas. Permanent structures and improvements constructed on the Federal Estate that were funded by the United States shall remain the property of the United States.

(b) The State shall keep a current and accurate property record/inventory of all recreation facilities, structures and improvements installed or constructed within the reservoir areas as well as all equipment purchased with federal funds for use at each reservoir area pursuant to this agreement.

(c) Except as otherwise provided in this agreement, property, equipment and supplies acquired with federal funds pursuant to this agreement shall be managed in accordance with Office of Management and Budget (OMB) Circular A-102.

(d) The State shall keep a current and accurate inventory of any structures and improvements installed or constructed solely at its own expense or at the expense of their contractors, concessionaires and permittees, and shall provide the United States such inventory within 30 days of completion of such installation or construction, so the United States inventory records can be maintained accordingly. Upon termination of this Agreement, the United States may purchase at the Cost Less Depreciation value those facilities determined necessary for the future operation and maintenance of the area, provided the facilities were exclusively constructed or financed by the State, their contractors, concessionaires or permittees.

(e) For a period of 120 days after termination of this Agreement or such longer period as may be determined by the United States to be reasonable, the State, their contractors, concessionaires or permittees shall have the privilege of salvaging and/or removing structures or facilities installed or constructed by the State, their contractors, concessionaires or permittees at their sole cost or expense and that are not determined to be necessary for the continued operation

and management of the area. After the expiration of such period, the title to all such remaining structures or facilities financed by the State, their contractors, concessionaires or permittees shall vest in the United States. The State, their contractors, concessionaires and permittees shall restore the land occupied by such removed structures or facilities to its original condition as determined to be satisfactory to the United States.

23. REVIEW OF ADMINISTRATION, OPERATION, MAINTENANCE, AND DEVELOPMENT

The parties hereto shall meet annually, if requested by either party, at a time mutually agreed to, in order to review and inspect the administration, operation, maintenance, and development of each reservoir area including concession facilities. The Area Manager for the Bureau of Reclamation and the Director of the Utah Division of Parks and Recreation or their designees shall arrange the specific date and time. The purpose of this review and inspection is to ensure that administration, operation, maintenance, and development procedures are adequate; to identify and correct deficiencies and problems; and to ensure the administration of each reservoir area is in accordance with the intended purposes. Said reviews shall include, but are not necessarily limited to: monitoring items in the Resource Management Plan, health and safety; appropriate use of the Federal Estate, land interests and resources; and inspections of facilities and operations, including third party or commercial concessions or permits, and basic service contracts, within each reservoir area. Deficiencies and problems within each reservoir area shall be corrected in a timely manner. Conclusions and recommendations based upon such reviews

and inspections by the parties hereto shall provide direction for, and possible modification of, the administration, operation, maintenance, and development responsibilities pursuant to this agreement.

24. EXAMINATION OF RECORDS

(a) The State agrees that the United States shall have access to and right to examine any pertinent books, documents, papers, and records of the State and/or third party entities involving transactions related to this Agreement.

(b) The United States' designated representative may at any time request an independent audit of the State's financial activities for each reservoir area. Such independent audit shall be performed at the cost of the United States. The responsible party shall correct any discrepancies found during such audits.

(c) The United States' designated representative may at any time request an independent audit or examination of records of third party commercial concessions or other service contracts for each reservoir area. Such independent audit or examination of records shall be performed at the cost of the United States. The responsible party shall correct any discrepancies found during such audits.

25. RECREATION USE DATA REPORT

Each calendar year, the State shall furnish to the United States' designated representative an annual summary of the recreation related use and/or resources at each reservoir area for the previous calendar year. The United States shall provide the forms for this report, which is currently titled "Recreation Use Data Report".

26. MISCELLANEOUS PROVISIONS

(a) The State, its contractors, concessionaires or permittees, relative to this Agreement, shall be subject to the Environmental Requirements set forth in Exhibit **B** attached hereto and incorporated herein.

(b) The State, its contractors, concessionaires or permittees, relative to this Agreement, shall be subject to the Equal Opportunity requirements set forth in Exhibit **C** and Title IV of the Civil Rights Act of 1964 set forth in Exhibit **D** attached hereto and incorporated herein.

(c) Where variations exist in laws, orders, regulations, policies, and instructions, the most stringent shall be the required standard.

(d) The State shall comply with all State of Utah and Federal laws and regulations pertaining to the activities contemplated herein, without regard to the specific identification herein of such laws and regulations.

(e) The United States, at the request of the State, shall provide information on property boundaries, easements, and rights-of-way on lands administered by the State.

(f) The parties hereto understand and agree that the various terms and conditions within this agreement apply to the agreement as a whole to reduce redundancy, and, except as the context of this

Agreement may require, are not to be narrowly defined within the specific article under which a given term or condition is located.

(g) Each party hereto shall provide to the other party any additional reports or information which may be reasonably requested.

(h) Prior to any action pursuant to this agreement which would modify the environment, the United States shall prepare the necessary National Environmental Policy Act documentation.

(i) All work done by the State, its agents, employees or assigns, relative to this agreement within the reservoir areas, and all contracts, concessions and permits issued by the State, its agents, employees or assigns, relative to this agreement shall be subject to the provisions of the attached exhibits and the information in the attached appendices, as amended.

27. MODIFICATION OF AGREEMENT

(a) This agreement may be modified, amended, or superseded at any time during its term upon mutual written agreement by the parties hereto.

(b) If any portion of this agreement is rendered null and void as a result of applicable laws, regulations, executive orders, court rulings, etc., all remaining portions of the agreement shall remain in full force and effect, provided the voided portion or portions do not affect the primary purposes of this agreement.

28. TERMINATION

(a) This agreement shall terminate and all rights and obligations of the parties under this agreement shall cease under the following conditions:

(1) Upon expiration of the term of this agreement, as provided in Article 3;

(2) Upon receipt of a written notice of termination by either party for cause as provided in this Article.

(b) Either party may serve written notice of breach of this agreement upon the failure of the other party to abide by the terms or conditions of this agreement.

(c) Either party may serve written notice of termination of this agreement upon the failure of the other party to correct any default or contract violation of the other party within one hundred-twenty (120) calendar days following specific written notice of the breach or violation.

(d) Should a transfer or sale of all or any part of the eleven areas identified in this Agreement take place, the United States shall, to the fullest extent possible, insure the entity receiving said area shall be bound by the terms of this Agreement. If the entity receiving the land is not bound by the terms of this agreement, the United States shall, as allowed by law, provide for the reimbursement to the State for all of the State's contributions to the transferred area at the current fair market value, subject to Article **22**.

(e) If the United States Congress or the Utah Legislature fails to provide adequate funding to enable the United States or the State to carry out their respective obligations under this Agreement, either party may give written notice that this Agreement shall terminate on a certain date at least 120 days after the date of notice.

(f) For conditions other than those expressed in a, b, c, d and e herein, the State shall give to the United States at least 2 years written notice on its intent to terminate the subject Agreement.

29. DESIGNATED REPRESENTATIVES

The parties hereto agree that the designated representatives for administration of this agreement are as follows, or as may be further delegated in writing by the following:

United States - Area Manager, Provo Area Office, Bureau of Reclamation, Provo, Utah

State - Director, Utah Division of Parks and Recreation, Salt Lake City, Utah

30. NOTICES

(a) Any written notice, demand, or request, as required or authorized by this agreement, shall be properly given if delivered by hand, or by mail, postage prepaid, to the other party as herein listed:

United States: Area Manager	State: Director
Bureau of Reclamation	Utah Division of Parks and Recreation
Provo Area Office	1594 West North Temple Suite 116
302 East 1860 South	PO Box 14601
Provo, Utah 84606-7317	Salt Lake City, Utah 84114-6001
Phone: 801-379-1000	Phone: 801-379-1000

(b) Both parties hereto are responsible for notifying all affected parties of any subsequent change of address, organizational changes, responsibility adjustments, and other related changes as they take place.

31. OFFICIALS OR EMPLOYEES NOT TO BENEFIT

No member of or delegate to Congress or Resident Commissioner, and no officer, agent, or employee of the Executive, Legislative, or Judicial Branch of the Federal government, or official or employee of the State shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Agreement if made with a company or corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the first date written above.

STATE OF UTAH
Mike Leavitt, Governor

THE UNITED STATES OF AMERICA
Department of the Interior

By _____

Director, Division of Parks and Recreation,
for the Executive Director of the
Department of Natural Resources

By _____

Regional Director
Upper Colorado Region
Bureau of Reclamation

EXHIBIT A

ENVIRONMENTAL REQUIREMENTS

1. After the recreation facilities are constructed and transferred to the State, the State shall operate, maintain, and manage all structures and facilities on the premises to minimize environmental consequences. Consideration shall be given to alleviating potential harmful effects on landscape, soils, water, wildlife, cultural resources, timber, population, or other resources. Prior to any action, which would modify the environment beyond those currently covered by existing NEPA documents, the State shall submit any necessary environmental reports as directed by the United States. No such modifications of the environment shall be undertaken without prior written approval of the United States.

2. The State shall correct any pollution of soil, air, or water, and deterioration of all resources resulting from exercise of the privileges granted in accordance with rules, regulations, and directives of the Secretary of the Interior and in compliance with all Federal laws. Increased cost shall not justify noncompliance with environmental quality controls required by the United States.

3. State shall comply fully with all applicable Federal laws, orders, regulations, and the laws of the State of Utah concerning the pollution of streams, reservoirs, ground water, or water courses.

4. The State shall comply with all provisions of Federal and State pesticide laws and amendments. Further, in the use of all pesticides on lands owned by the United States, the State shall submit plans for such use annually and shall obtain prior written approval of the United States before implementing said plans.

5. In accordance with the National Historic Preservation Act of 1966, Executive Order 11593, and Public Law 93-921, cultural resources shall be given full consideration in any proposed actions initiated by the State beyond those approved in existing plans and documents. Archeological, historical, and paleontological sites that may be impacted shall be adequately mitigated prior to any development. If during construction or development cultural resources are exposed, the site and surrounding area shall be left undisturbed. The State Historical Preservation Office and the United States, specifically the Provo Area Office archaeologist, shall be notified immediately. Cost of any recovery work, if necessary, shall be borne by the State. The State shall provide the United States with copies of any cultural resource reports concerning identified sites. No surface disturbance operations can proceed until the requirements of this article have been met. This provision shall be included in all construction contracts.

6. The Endangered Species Act of 1974 shall be given full consideration in all activities. In particular, wintering habitat of the bald eagle shall be preserved.

7. The State shall insure that recognized standards and proper uses are achieved on the lands covered by this Memorandum of Agreement. Land use planning and administration of the Federal Estate shall conform to all applicable Federal laws, regulations, and Executive Orders. Following is a list of some of the more important of these:

1. Executive Order 11990, Protection of Wetlands.
2. Executive Order 11988, Floodplain Management.
3. Safe Drinking Water Act of 1974, (Public Law 93-523, U.S.C. 300, 88 Stat. 1660).
4. Federal Land Policy and Management Act of 1976, (Public Law 94-579, 43 U.S.C. 1701).
5. Executive Orders 11664 and 11989 for Off-Road Use.
6. National Trails System Act, (Public Law 95-43, 16 U.S.C. 1241 Et seq.).
7. Fish and Wildlife Coordination Act, (Public Law 85-624, 16 U.S.C., 661, 662).
8. Antiquities Act of 1906, (34 Stat. 225, 16 U.S.C., 431).
9. National Historic Preservation Act of 1966 (NHPA), (Public Law 89-665, 80 Stat. 915, 16 U.S.C. 470) as amended by Public Laws 91-243, 93-54, 94-422, 94-458, and 96-515.
10. Archaeological Resources Protection Act of 1979, (Public Law 95-95, 93 Stat. 721).
11. National Environmental Policy Act, (Public Law 91-190, 83 Stat. 852).
12. Endangered Species Act, (Public Law 93-205, 16 U.S.C. 1531 et seq.).
13. Executive Order 12088, Federal compliance with Pollution Control Standards.
14. The Clean Air Act, (Public Law 88-206, as amended, 42 U.S.C., 7401 et seq.).
15. Clean Water Act of 1978, (Public Law 95-217, 33 U.S.C., 1288 et seq.).
16. Resource Conservation and Recovery Act (RCRA), (Public Law 94-580).
17. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund), Public Law 96-510.
18. 43 Code of Federal Regulation, Part 420 (off-road vehicle use on Bureau of Reclamation lands).

19. 36 Code of Federal Regulation, Part 800, Protection of Historical and Cultural Properties.
20. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7 U.S.C. P.L. 100-460, 100-464, to 100-526 and 100-532).
21. Rehabilitation Act of 1973, Section 504, as amended (29 U.S.C. 700, et seq., P.L. 93-516 and P.L. 95-602).
22. Architectural Barriers Act of 1968, as amended (ABA) (42 U.S.C. 4151-4157, P.L. 90-480).
23. Uniform Federal Accessibility Standards (UFAS) (49 CFR 31528), August 7, 1984.
24. Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001)

EXHIBIT B

EQUAL OPPORTUNITY REQUIREMENTS

During the performance of this contract, the State agrees as follows:

a) The State shall not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. The State shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, age, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The State agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the United States setting forth the provisions of this Equal Opportunity clause.

b) The State shall, in all solicitations or advertisements for employees placed by or in behalf of the State, state that all qualified applicants shall receive consideration for employment without regard to race, color, age, religion, sex, or national origin.

c) The State shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the United States, advising the labor union or workers representative of the States commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d) The State shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e) The State shall furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant, thereto, and shall permit access to its books, records, and accounts by the United States and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f) In the event of the States noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, by the United States and the State may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

g) The State shall include the provisions of paragraphs a) through g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions shall be binding

upon each subcontractor or vendor. The State shall take such action with respect to any subcontract or purchase order the United States may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event the State becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the United States, the State may request the United States to enter into such litigation to protect the interests of the United States.

CERTIFICATION OF NONSEGREGATED FACILITIES

The term segregated facilities means: any waiting rooms, work areas, restrooms and washrooms, restaurants or eating areas, time clocks, locker rooms, storage areas, dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habitat, local custom, or otherwise. The State certifies that it does not maintain or provide for its employees are segregated facilities are maintained. The State agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. The State agrees that (except where it has obtained identical certification from proposed subcontractors for specific time periods) it shall obtain identical certification from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it shall retain such certification in its files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

EXHIBIT C

TITLE VI, CIVIL RIGHTS ACT OF 1964

a) The State agrees that it shall comply with Title VI of the Civil Rights Act of July 2, 1964, (78 Stat. 241), and all requirements imposed by or pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the State receives financial assistance from the United States and hereby gives assurance that it shall immediately take any measures to effectuate this Agreement.

b) If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the State by the United States, this assurance obligates the State; or in the case of any transfer of such property or structure is used for a purpose involving the provision of similar service or benefits. If any personal property is so provided, this assurance obligates the State for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the State for the period during which the Federal financial assistance is extended to it by the United States.

c) This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the state by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The State recognizes and agrees that such Federal financial assistance shall be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the State, its successors, transferees, and assignees.

EXHIBIT D

NONEXPENDABLE GOVERNMENT PROPERTY REQUIREMENTS

1. Nonexpendable government property is equipment which is complete in itself and does not ordinarily lose its identity or become a component part of another piece of equipment when put into use. Nonexpendable Government property includes the following:

- a. Any single item, having a useful life of 1 year or more, which is acquired at a cost of, or valued at \$5000 or more;
- b. Sensitive items identified in Article 5 below, regardless of acquisition cost;
- c. All office furnishings and furniture.

2. For each item of nonexpendable United States' property, the State is required to maintain an individual item record which shall adequately satisfy the requirements set forth in Article 15 of this MOA. In establishing and maintaining control over United States' property, the State shall include, at the minimum, the following information in their property accounting system:

- a. Contract number
- b. Name of item
- c. Manufacturer's name
- d. Manufacturer's model number
- e. Manufacturer's serial number
- f. Acquisition document reference and date
- g. Guarantee and warranty lapse date
- h. Location
- i. Unit price

3. Accessory and component equipment that is attached to, part of, or acquired for use with a specific item or equipment must be recorded on the record of the basic item. Any accessory or component item that is not attached to, part of, or acquired for use with a specific item of equipment must be recorded separately. Useable accessory or component items that are permanently removed from items of Government property must also be separately recorded.

4. The unit price of each item of government property must be contained in the State's property control system. The State's quantitative inventory record must contain the unit prices. The supplementary records containing this information must be identified and recognized as a part of the unit price of the item (less discount).

5. Firearms, museum property, motor vehicles, heavy equipment, and laptop computers are sensitive items of nonexpendable property which shall be included in the State's property accountability system, even if the original acquisition cost is under \$5000.