



RESOLUTION 02-06-2021
A RESOLUTION APPROVING A WATER WIELDING
AGREEMENT WITH SUMMIT CREEK IRRIGATION COMPANY

BE IT HEREBY RESOLVED:

SECTION 1: The following document represents an agreement for water wielding with Summit Ridge Irrigation Company.

SECTION 2: This Resolution shall become effective upon passage.

Approved on this 16th day of February, 2021.

City of Santaquin,

Kirk F. Hunsaker, Mayor

Attest:

K. Aaron Shirley, City Recorder

SUMMIT CREEK SANTAQUIN WATER PROGRAM

THIS SUMMIT CREEK SANTAQUIN WATER PROGRAM AGREEMENT is entered into by and between the following:

SUMMIT CREEK IRRIGATION AND CANAL COMPANY,
a Utah nonprofit corporation
165 West 200 North
P.O. Box 700
Santaquin, Utah 84655 ("Summit Creek" or "SC")

and

CITY OF SANTAQUIN
275 West Main Street
Santaquin, Utah 84655 ("Santaquin")

The Effective Date of this Instrument is _____, 20__.

The Terms and Definitions contained in this Summit Creek Santaquin Water Program (SCSWP) Agreement shall be applicable to all of the provisions of this Instrument.

As of the Effective Date, for the Consideration contained in this Instrument, Summit Creek and Santaquin agree as follows:

1. UNDERSTANDINGS.

1.1 Santaquin and Summit Creek have established the SCSWP for the benefit of Participating SC Shareholders.

1.2 Summit Creek and Santaquin desire to formalize their agreed upon terms with respect to the participation of SC Shareholder(s) in the SCSWP.

1.3 Summit Creek and Santaquin acknowledge and represent that they have each received a copy and have read this Instrument in its entirety and have sought and received legal counsel.

1.4 Summit Creek and Santaquin acknowledge that:

(a) Bullock Law Firm, Clinton J. Bullock and Karen Bullock Kreeck DO NOT represent Santaquin;

(b) Bullock Law Firm, Clinton J. Bullock and Karen Bullock Kreeck DO NOT represent Summit Creek; and

(c) Bullock Law Firm, Clinton J. Bullock and Karen Bullock Kreeck DOES represent Phil Rowley, individually, and have prepared documentation at the request of Phil Rowley.

2. TERMS.

2.1 **"Assessment"** means the amount charged annually by Summit Creek to its shareholders for each share of Summit Creek owned by such shareholder.

2.2 **"Eligible SC Shareholder"** and **"Eligible SC Shareholders"** means either:

(a) as of the Effective Date, the SC Shareholder(s) listed in the attached Exhibit A with the corresponding number of shares; or

(b) subsequent to the Effective Date, a SC Shareholder:

(1) whose Water Unit has a diversion point within Santaquin limits; and

(2) who within such real property parcel with a Summit Creek Water diversion point has a tie-in/access to the Santaquin Pressurized Irrigation System; and

(3) who sixty (60) days prior to each Program Year has paid its Assessment pursuant to the rules, regulations, policies, bylaws, etc. of Summit Creek as determined by Summit Creek; and

(4) who enters into a Summit Creek Shareholder Election Agreement.

2.3 **"Participating Summit Creek Share"** means a Summit Creek Share and its associated Water Unit that have been subjected to the SCSWP by a Participating SC Shareholder.

2.4 **"Participating SC Shareholder"** and **"Participating SC Shareholders"** means an Eligible SC Shareholder(s) who qualifies and have/has elected to participate in the SCSWP. Participating SC Shareholder includes Participating SC Shareholder Continuing and Participating SC Shareholder Initial.

- 2.5 **"Participating SC Shareholder Continuing"** means a Participating SC Shareholder who has elected to continue to participate in the SCSWP from the current Program Year to the next Program Year.
- 2.6 **"Participating SC Shareholder Initial"** means a Participating SC Shareholders who is electing to initially participate in the SCSWP for the next Program Year.
- 2.7 **"Participating SC Shareholder Withdrawing"** means a Participating SC Shareholder who is withdrawing from participation, as provided in this Instrument, in the SCSWP for the next Program Year.
- 2.8 **"Pressurized Irrigation System"** means the municipally owned system which delivers pressurized irrigation water throughout Santaquin.
- 2.9 **"Program Year"** means a twelve (12) month measurement/billing cycle for the Pressurized Irrigation System, with the initial "Program Year" beginning on the day thirty (30) days after the Effective Date and with each succeeding "Program Year" beginning the first day (1st) of April each calendar year.
- 2.10 **"SC Shareholder Election Agreement"** means written election as set forth in Exhibit B, by which SC Shareholder agrees to be bound by the terms of the "SC Shareholder Election Agreement" in exchange for participation in the SCSWP.
- 2.11 **"Summit Creek Share"** means a single share of stock in Summit Creek. For the purposes of this Instrument, only whole shares shall be considered eligible which shall not be divided in any form.
- 2.12 **"Water Unit"** means a volume of water associated with a single share which shall be established annually by the Water Wielding Technical Advisory Committee, based upon the estimated flow rate of four (4) cubic feet of water per second for thirty (30) minute intervals, with an estimated eighteen (18) turns per irrigation season. This number may fluctuate in any given irrigation season due to the participation received in the preceding winter season and/or due to infrastructure enhancements to the Summit Creek Irrigation System and/or Santaquin City Pressurized Irrigation System. When variation from the standard volume outlined above is required, it shall be determined by a scientific methodology (e.g. use of source meters, estimation of loss from evaporation and seepage, etc.) as agreed upon by the Parties.

2.13 **“Water Welding Technical Advisory Committee”** means a body organized to receive and review applications from Eligible SC Shareholders for participation in SCSWP, evaluate the technical feasibility of each application, and have the authorization to grant approvals and/or denials therein.

3. DEFINITIONS.

3.1 **"Assign," "Assigned" or "Assignment,"** as the tense or context may require, means convey, transfer, grant, pledge, bargain, mortgage, sell, exchange and/or deliver, by deed or otherwise.

3.2 **"Consideration"** means all of the undertakings by Summit Creek and all of the undertakings by Santaquin under this Instrument.

3.3 **"Day"** means a calendar day, except that if a day shall be, or any period specified in this Instrument shall end, on a Saturday, Sunday or a legal holiday within the State of Utah (as defined in § 63-13-2, Utah Code Annotated), the day shall be, or the period shall be deemed to end, on the next calendar day which is not a Saturday, Sunday or legal holiday within the State of Utah.

3.4 **"Document"** means this Instrument and any offer, notice, instrument or otherwise required or permitted to be given by one Party to the other under this Instrument.

3.5 **"Indemnified Party"** means the Party whom, under the Section of this Instrument at issue, is the Party who is to be indemnified.

3.6 **"Indemnifying Party"** means the Party whom, under the Section of this Instrument at issue, is the Party who is to provide the indemnity.

3.7 **"Instrument"** means this Summit Creek Santaquin Water Program Agreement.

3.8 **"Party"** means Summit Creek or Santaquin, as the context dictates.

3.9 **"Parties"** means Summit Creek and Santaquin.

3.10 **"Section"** means any part of this Instrument which shall be identified by a numerical designation. For example, if the context and content require, 9, 9 .1, 9.1(a), 9.1(a)(1), 9.1(a)(1)(A) or 9.1 (a)(1)(A)(I) shall each be treated as a Section for the purpose of this Instrument.

4. EXHIBITS.

4.1 "Exhibit A" - A list of each Eligible SC Shareholders with the corresponding number of shares.

4.2 "Exhibit B" – A sample or template of the SC Shareholder Election Agreement.

5. SANTAQUIN WATER PROGRAM ELECTION, WITHDRAWAL AND NOTIFICATION.

5.1 **Notification.** For each Program Year, and by April 10th of that year, Summit Creek will provide to Santaquin a list identifying the corresponding number of shares entered by each Participating SC Shareholder into the SCSWP and other data necessary to allow Santaquin to manage delivery of water, billing for water delivered, etc. in the following groups: Participating SC Shareholders Continuing, Participating SC Shareholders Initial and Participating SC Shareholders Withdrawing.

5.2 **Election to Participate.** An Eligible SC Shareholder for each Program Year elects to participate in the SCSWP as follows:

(a) An Eligible SC Shareholder who is not a Participating SC Shareholder shall *deliver to* Summit Creek a signed SC Shareholder Election Agreement by the March 31st preceding the applicable Program Year indicating the Eligible SC Shareholder:

(1) desires to place it's Summit Creek Share in the SCSWP for the next Program Year; and

(2) agrees to be subject to the rules and conditions set forth on the written election form for the next Program Year and all subsequent Program Years until withdrawn; or

(b) An Eligible SC Shareholder who is a Participating SC Shareholder in the current Program Year, automatically renews participation in the SCSWP by *failing to deliver* to Summit Creek a written withdraw form (as designed and provided by Summit Creek) by the end of the current Program Year.

5.3 **Effect of Election to Participate.** An Eligible SC Shareholder who elects for a Program Year to participate in the SCSWP, and is approved by the Water Wielding Technical Advisory Committee, will be classified as either a Participating SC Shareholder Continuing or Participating SC Shareholder Initial.

5.4 **Withdrawal.** A Participating SC Shareholder may elect to have its Summit Creek Share withdrawn from participation in the SCSWP for the next Program Year as follows:

- (a) by *delivering to* Summit Creek a written withdrawal form (as designed and provided by Summit Creek) by the March 31st preceding the next Program Year indicating that the Participating SC Shareholder is withdrawing its Summit Creek Share from SCSWP; or
- (b) by failing to qualify by April 1st of a Program Year as an Eligible SC Shareholder as set forth in this Instrument.

5.5 **Effect of Withdrawal.** If a Summit Creek Share of a Participating SC Shareholder is withdrawn from the SCSWP, either by election, or ineligibility as provided in this Instrument, then:

- (a) the Participating SC Shareholder will be identified as a Participating SC Shareholder Withdrawing on the annual written notification from Summit Creek to Santaquin as set forth in Section 5.1;
- (b) the Summit Creek Share/Water Units subject to such withdrawal will not be diverted for use by Santaquin and will remain in the Summit Creek water system; and
- (c) the former Participating SC Shareholder will not receive a credit/reduction in the user fees charged by Santaquin to such former Participating SC Shareholder for any delivery of water through the Pressurized Irrigation System.

6. **SANTAQUIN USAGE OF WATER UNITS.** For each Participating SC Share, Santaquin may divert, and Summit Creek allows Santaquin to divert, one Water Unit into the Pressurized Irrigation System for Santaquin's use in the Pressurized Irrigation System in accordance with this Instrument.

7. **SANTAQUIN OBLIGATIONS AND REPRESENTATIONS.**

7.1 **Program.** Santaquin for each SC Share entered into the SCSWP:

- (a) **Access/Construction.** If an application for a SC Shareholder Election Agreement has been approved by Santaquin, Santaquin will provide to each Participating SC Shareholder all water lines, water meters, pumps, and other facilities necessary for each Participating SC Shareholder to receive water from Pressurized Irrigation System and shall construct said facilities in compliance

with all regulatory requirements. The costs of construction of all such facilities shall be borne entirely by the Participating SC Shareholder.

(b) Measurement. All water supply service connection from Santaquin to each Participating SC Shareholder shall be measured by Santaquin approved metering equipment, the equipment shall:

- (1) be furnished and installed by the Santaquin at the expense of each Participating SC Shareholder;
- (2) remain the property of Santaquin; and
- (3) the cost of calibrating, testing, repairing, replacing, or maintaining any damaged or defective meter(s) shall be the responsibility of Santaquin City.

(c) Billing of each Participating SC Shareholder.

- (1) Base Rates. Santaquin will continue to bill each Participating SC Shareholder its monthly Pressurized Irrigation System base rates;
- (2) Usage Rates. Santaquin will complete a meter read for all Participating SC Shareholder irrigation meters prior to the commencement of a Program Year's irrigation season. A second meter read will be taken at the end of the Program Year's irrigation season. Santaquin shall waive its Pressurized Irrigation usage fees for each Participating SC Share equivalent to volume of 75% of the Water Unit of the applicable share(s). Pressurized Irrigation water usage in excess of 75% of the water volume for the applicable share(s) shall be billed to the Participating SC Shareholder by Santaquin. Such billings will be applied at the same standard Pressurized Irrigation System usage rates as applied to the remainder of Pressurized Irrigation System users city wide.

7.2 Delivery Limitations. Santaquin City agrees to deliver water to each Participating SC Shareholder at established point(s) of connection; provided, however, that each Participating SC Shareholder shall not be guaranteed any specific quantity or pressure of water whenever Santaquin City's supply of water is limited or when Santaquin City's equipment may become inoperative or is in need of maintenance and repair. Santaquin agrees that it will attempt to make any necessary repairs or adjustments to its equipment within reasonable times. Santaquin agrees to give each Participating SC Shareholder reasonable notice of any likely interruptions in the quantity or pressure.

7.3 **Representations of Santaquin.** Santaquin hereby represents the following:

- (a) Santaquin has the legal power, right and authority to enter into this Instrument and to consummate the transactions contemplated hereby;
- (b) Santaquin is not prohibited from consummating the transactions contemplated by this Instrument by any law, regulation, agreement, instrument, restriction, order or judgment;
- (c) Santaquin acting through any of its empowered and authorized officers, has the full right, power, and authority to enter into this Instrument and to carry out its obligations hereunder; and all required actions necessary to authorize Santaquin to enter into this Instrument and to carry out its obligations hereunder has been or will have been taken prior to the execution of this Instrument;
- (d) This Instrument is a valid, binding and enforceable agreement against Santaquin in accordance with its terms.

8. SUMMIT CREEK OBLIGATIONS, REPRESENTATIONS.

8.1 **Facilities.** Summit Creek shall provide, by gravity feed to Santaquin's Theodore Ahlin Irrigation Pond, one (1) Water Unit for each approved Participating SC Share according to the water turn schedule associated with said share.

8.2 **Representations of Summit Creek.** Summit Creek hereby represents to Santaquin as follows:

- (a) Summit Creek has been duly formed, validly exists and is in good standing in the jurisdiction of its formation and Summit Creek has the legal power, right and authority to enter into this Instrument and to consummate the transactions contemplated hereby;
- (b) Summit Creek is not prohibited from consummating the transactions contemplated by this Instrument by any law, regulation, agreement, instrument, restriction, order or judgment;
- (c) Summit Creek acting through any of its empowered and authorized officers, has the full right, power, and authority to enter into this Instrument and to carry out its obligations hereunder; and all required actions necessary to authorize Summit Creek to enter into this Instrument and to carry out its

obligations hereunder have been or will have been taken prior to the execution of this Instrument;

(d) This Instrument is a valid, binding and enforceable agreement against Summit Creek in accordance with its terms.

9. WATER WIELDING TECHNICAL ADVISORY COMMITTEE.

9.1 Members. Summit Creek and Santaquin will each nominate two representatives to participate on a Water Wielding Technical Advisory Committee to evaluate the technical feasibility of each application submitted by Eligible SC Shareholders.

9.2 Application Review. The Water Wielding Technical Advisory Committee shall review SCSWP applications for compliance with the following limitations and requirements:

(a) **Post Delivery.** After the water is delivered to the point(s) of connection to each Participating SC Shareholder's meter, each Participating SC Shareholder shall be in exclusive control and possession thereof and solely responsible for any injury or damage caused by the delivered water. Therefore, as a requirement for participation in SCSWP, Summit Creek shall require, through its SC Shareholder Election Agreement, that each Participating SC Shareholder shall hold harmless Santaquin City from any loss, claim or damage related thereto.

(b) **Limitations on Water Resale.** Summit Creek shall require, through its SC Shareholder Election Agreement, that each Participating SC Shareholder shall not resell water supplied by Santaquin through the Pressurized Irrigation System.

(c) **Limitations on Water Use for Flood Irrigation.** Summit Creek shall require, through its SC Shareholder Election Agreement, that each Participating SC Shareholder shall not flood irrigate from water supplied by Santaquin through the Pressurized Irrigation System.

(d) **Water Conservation and Drought Contingency Plan.** At any time Santaquin places into effect water conservation and/or drought contingency measures, Summit Creek shall require, through its SC Shareholder Election Agreement, that each Participating SC Shareholder shall place into effect the same measures.

(e) **Ownership of Shares Required.** In order for an application to be approved, the share wielded must be owned by the property owner to which the water is being delivered.

(f) **Whole Shares Required.** Only whole shares shall be considered eligible for wielding, which shall not be divided in any form.

(g) **Limitation on the Number of Shares in SCSWP.** The maximum number of shares eligible to be wielded by any single SC Shareholder is six (6), within the terms of this Instrument.

9.3 Approval or Denial of Applications. Approval of an application submitted by an Eligible SC Shareholder requires a majority vote of the members of the Water Wielding Technical Advisory Committee.

10. OWNERSHIP/RESPONSIBILITY.

10.1 **Ownership.** The Parties agree that an election by a SC Shareholder to enter a SC Share into the SCSWP as set forth in this Instrument shall not constitute an Assignment of title or ownership of the Participating SC Share and the SC Shareholder shall retain all rights of Ownership of and title to the SC Share.

10.2 **Possession and Control.** Possession and control of the Water Unit(s) for each Participating SC Share shall remain in the Pressurized Irrigation System for use as directed by Santaquin.

10.3 **Responsibility.** As between the Parties, Santaquin City shall:

(a) have exclusive control and possession of the water delivered to the Pressurized Irrigation System; and

(b) hold harmless each Participating SC Shareholder from any loss, claim or damage related thereto until the same shall have been delivered to each Participating SC Shareholder at such point(s) of connection.

11. RELATIONSHIP OF PARTIES. Nothing contained in this Instrument shall be deemed or construed by Summit Creek, Santaquin or by any third party, to create the relationship of principal and agent, or of partnership or of joint venture between Summit Creek, Santaquin and/or any Participating SC Shareholder.

12. REGULATORY REQUIREMENTS. This Instrument shall be subject to, all present and future valid laws, orders, rules and regulations of the United States of America, the State of Utah, or any other regulatory agency having jurisdiction.

13. **TERM AND EFFECTIVENESS.** This Instrument shall be valid as of the Effective Date. The initial term of this contract shall be through January 31, 2022. This contract will automatically renew each February 1st in one (1) year annual increments unless either party provides a written withdrawal notification at least thirty (30) days prior to the annual renewal date. This contract may be amended or terminated only by written agreement Summit Creek and Santaquin.

14. **FORCE MAJEURE.** In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of these obligations under this contract, then the obligations of such party, to the extent affected by such force majeure and performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence, of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure", as used herein, shall include, without limitations of the generality hereof, acts of God, strikes, lockouts, or other kind of industrial disturbances, acts of the public enemy, orders of any civil or military authority, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakages or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and any other incapacities of either party, whether similar to those enumerated or otherwise, which are not within the control of the party claiming such inability and which such party could not have avoided by the exercise of due diligence and care. It is understood and agreed that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes lockouts or contract disputes by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. Force majeure shall not relieve each Participating SC Shareholder of its obligation to make payments to Santaquin City as provided in this contract for water delivered in accordance with the Instrument.

15. **ADMINISTRATIVE PROVISIONS.**

15.1 **Advice of Counsel.** The Parties acknowledge and represent that they have received a copy and have read this Instrument in its entirety and have sought and received legal counsel to the extent they have deemed necessary to protect their interests.

15.2 **Capitalized Terms.** Capitalized terms and definitions used in this Instrument without other definition shall, unless expressly stated otherwise, have the meanings specified in Section 2 and Section 3 respectively.

15.3 **Counterparts.** This Instrument may be signed by the Parties in counterpart, each of which shall be deemed an original, but all of which together shall constitute one and

the same Instrument, with the same effect as if each of the Parties had signed the same Instrument.

15.4 **Cost of Enforcement**. In the event either Party hereto fails to perform any of its obligations under this Instrument or in the event a dispute arises concerning the meaning or interpretation of any provisions of this Instrument, the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party in enforcing or establishing its rights under this Instrument, including without limitation court costs, reasonable attorneys' fees, expert witness fees, etc., regardless of whether formal legal proceedings are commenced.

15.5 **Facsimile (Fax) or Electronic Documents**. Facsimile or electronic (pdf) transmission of any signed original document and retransmission of any signed facsimile or electronic (pdf) transmission shall be the same as delivery of an original.

15.6 **Governing Law**. This Instrument shall be governed by and construed in accordance with the laws of the state of Utah. This Instrument has been executed, delivered and accepted in the laws of the state of Utah. Any action, proceeding or counterclaim concerning this Instrument must be commenced and conducted by a court located within Fourth Judicial District of the state of Utah.

15.7 **Headings and Section Headings**. Headings and Section heading are inserted only for convenience and are in no way to be construed as part of the Section to which they relate or as a limitation on the scope of the particular Section to which they refer.

15.8 **Modification of this Instrument**. No waiver or modification of this Instrument or of any agreement, condition or limitation contained in this Instrument will be valid unless in writing and duly executed by the party to be charged. No evidence, of any waiver or modification shall be offered or received in evidence of any proceeding, arbitration or litigation between the Parties to this Instrument arising out of or affecting this Instrument or the right or obligations of the parties under this Instrument unless such waiver or modification is in writing executed by the party to be charged. The Parties agree that the provisions of this Section may not be waived except as set forth in this Section.

15.9 **No Construction Against Drafter**. Ambiguities, inconsistencies, or conflicts of the provisions of this Instrument shall not be strictly construed against the drafter of the such provision or this Instrument, and if an ambiguity, inconsistency or conflict arises with respect to any provision of this Instrument, the Instrument will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of authorship of any of the provisions of this Instrument.

15.10 **Notices.** Any notice required or permitted to be given shall be delivered to the address of the Party entitled to receive such notice or payment. The address of the Party to which any notice shall be delivered shall be the address which is as follows, or as the receiving Party may designate from time to time in writing:

To Summit Creek: Summit Creek Irrigation and Canal Company
165 West 200 North
P.O. Box 700
Santaquin, Utah 84655
Attn:
Tel.
Fax

To Santaquin City: CITY OF SANTAQUIN
275 West Main Street, Santaquin, Utah 84655
Attn: CITY MANAGER
Tel. (801) 754-3211
Fax (801) 754-3526

with a copy to: Brett B. Rich, Nielsen & Senior
1145 South 800 East, Suite 110
Orem, Utah 84097
Tel. (801) 701-7074
Fax (801) 225-5335

Any notice required or permitted to be given under this Instrument shall be in writing. Any notice required or permitted to be given under this Instrument which is sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as set forth in this Instrument, shall be deemed to have been received when deposited in a United States Post Office. Any time period within which a response to a notice given by registered or certified mail is required to be made under this Instrument shall be extended by Five (5) days. Any notice required or permitted to be given which is not given by registered or certified mail or any payment required to be made under this Instrument shall be deemed to have been received upon actual physical receipt.

15.11 **Number, Gender and Tense.** Where applicable, the singular includes the plural, the masculine includes the feminine, and the past includes the present and the future.

15.12 **References:**

- (a) **To a Section or Exhibit.** Reference to a Section or Exhibit in this Instrument is a specific reference to the Section or Exhibit specified unless otherwise expressly indicated.
- (b) **To information outside of this Instrument.** Except where otherwise expressly provided or unless the context otherwise necessarily requires:
- (1) Reference to a given Governmental Rule is a reference to that law as amended as of the date with respect to which the interpretation is made;
 - (2) Referenced accounting terms shall have the meanings given to them under Generally Accepted Accounting Principles applied on a consistent basis by the accounting entity to which they refer; and
 - (3) Except to the extent otherwise specifically designated, all Internal Revenue Code section references contained in this Instrument are to the Internal Revenue Code of 1986 and include all successor or amended sections of similar content.
- (c) **"including"** means "including, without limitation."

15.13 **Representations.** The Parties stipulate and agree that none of them have made any representations with respect to the subject matter of this Instrument or any representations including the execution and delivery of this Instrument, except such representations as are specifically set forth in this Instrument and *both* Parties acknowledge that they have relied on their own judgment in entering into this Instrument.

15.14 **Severability.** It is the intent of the Parties that each provision of this Instrument be construed in a manner which will result in enforcement of this Instrument to the maximum extent permitted by applicable laws. The invalidity or unenforceability of any part of this Instrument shall not invalidate or affect the remainder which shall continue to govern the rights, duties and obligations of the Parties as though the invalid or unenforceable part were not a part of this Instrument.

15.15 **Successors and Assigns.** Except to the extent any other provision of this Instrument shall be applicable, this Instrument shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, personal representatives and assigns.

15.16 **Survival.** All of the Parties' respective agreements, representations, and obligations under this Instrument shall survive the execution of this Instrument.

15.17 **Time**. Time is of the essence of this Instrument and every term, agreement and condition contained in this Instrument.

15.18 **Waiver**. The failure of any Party to enforce the provisions of this Instrument shall not constitute a waiver unless specifically reflected in writing, signed by the Party whose rights are deemed waived, regardless of a Party's knowledge of a breach under this Instrument. No waiver of any provision of this Instrument shall constitute a waiver of any other provision of this Instrument.

15.19 **Authorization**. Each person executing this Agreement of behalf of a Party certifies that such execution is performed pursuant to the formal authorization of the governing body of the Party.

THIS SIGNATURE AND NOTARY PAGE IS PART OF A DOCUMENT ENTITLED "SUMMIT CREEK SANTAQUIN WATER PROGRAM AGREEMENT" AND HAS NOT BEEN SIGNED BY THE FOLLOWING PERSON(S) FOR ANY OTHER PURPOSE.

WITNESS the hands of the Parties to this Instrument.

"SUMMIT CREEK"

Summit Creek Irrigation and Canal Company, a Utah non-profit corporation:

By: Philip B. Rowley, President

Date _____

"SANTAQUIN"

By: Kirk F. Hunsaker, Mayor

Date _____

Attest:

K. Aaron Shirley, City Recorder

EXHIBIT A: Eligible SC Shareholder with the corresponding number of shares

EXHIBIT B: Sample SC Shareholder Election Agreement

I, _____, owner of _____ # of Summit Creek Irrigation Shares, elect to participate in the Summit Creek Santaquin Water Program (SCSWP) and wield the water associated with my share(s) through Santaquin City's Pressurized Irrigation System pursuant to the following terms:

I do hereby agree to:

- Maintain Current Payments on Summit Creek Annual Assessments; and
- Maintain Current Payments on Santaquin City Irrigation System Monthly Base Rates; and
- Surrender 25% of the water associated with my share(s) to Santaquin City in exchange for the wielding of the remaining water associated with my share through the City's system; and
- Utilize water delivered through the City system in accordance with the requirements of Santaquin City Ordinances, including, but not limited to:
 - Not reselling any water wielded by Santaquin City to any third party; and
 - Not utilizing water wielded by Santaquin City to flood irrigate; and
 - Being subject to conservation and drought restrictions, if imposed by Santaquin City under the same terms and conditions imposed upon all users of said system; and
 - Holding Santaquin City Harmless for any losses or damages resulting from water wielded by Santaquin City after said water passes through the irrigation water meter associated with this Agreement; and
- Provide infrastructure needed to facilitate the delivery (e.g. meter fee, connection fees, piping, installation, etc.) in accordance with Santaquin City Standards, if needed; and
- Perpetuate the aforementioned, unless a notice of termination is submitted to Summit Creek Irrigation Company by March 31st for the subsequent irrigation season.

Shareholder Name:

Signature

Date