



State of Utah

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SPENCER J. COX  
Lieutenant Governor

Department of  
Environmental Quality

Alan Matheson  
Executive Director

DIVISION OF WATER QUALITY  
Walter L. Baker, P.E.  
Director

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Executive Secretary

Date Received: August 3, 2016

Date to be presented to the WQB: August 24, 2016

WATER QUALITY BOARD  
REQUEST FOR HARDSHIP PLANNING GRANT  
AUTHORIZATION

APPLICANT:	Kane County Water Conservancy District 190 West Center Street, Suite 200 Kanab, Utah 84741 Telephone: 435-644-3997
PRESIDING OFFICIAL:	Mike Noel, Executive Director
CONTACT PERSON:	Mike Noel, Executive Director
TREASURER:	Randy Brown, Office Manager
CONSULTING ENGINEER:	Joe Phillips, Project Engineer Sunrise Engineering 11 North 300 West Washington, Utah 84780 Telephone: 435-652-8450
CITY ATTORNEY:	Ed Robbins Telephone: 435-644-3299
BOND COUNSEL:	Susan Baxter Chamberlain Associates 225 North 100 East Richfield, Utah 84701 Telephone: 435-896-4461

APPLICANT'S REQUEST

Kane County Water Conservancy District (the District) requests a **hardship planning grant in the amount of \$53,000** to fund costs from the United States Forest Service associated with the District's Townsite Act application.



Duck Creek  
Supplemental Planning Grant Request  
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This work is done by the USFS and the associated expenses are outlined in the Collection Agreement Financial Plan [Attachment #2]. The USFS has indicated that it can neither proceed with the NEPA process nor scope the work to be completed by the District's consultants until the Collection Agreement fee has been received.

The District requires financial assistance to fund these expenses from the USFS, some of which have already been incurred. In 2013, the District requested funds from the Board solely for work to be done by the District's consultant and not the USFS, as they were unaware of these costs. The District is unable to self-fund these additional expenses, which are necessary to move the project forward.

Depending upon USFS participation and availability, it is expected that the environmental reviews by USFS and the District's consultants will be completed by September 1, 2017. The survey and appraisal will be done concurrently. Approval and clearance by the USFS to transfer the property is expected in that time frame and once that approval is issued, the District will begin the process of obtaining the funding to purchase the property, and to design and construct the necessary upgrades and additional collection lines.

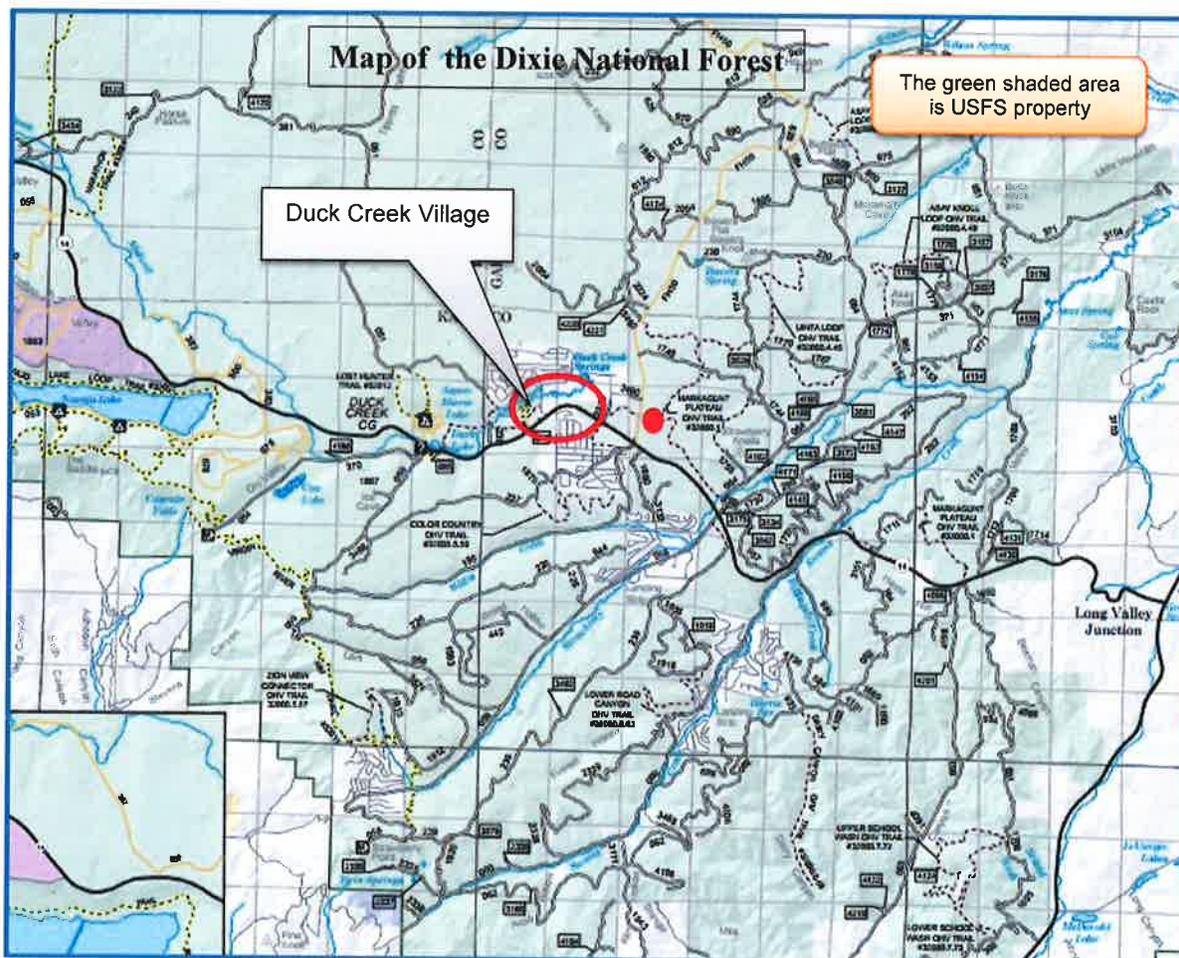


[Figure 2]

**ALTERNATIVES**

The District thoroughly explored alternatives to address the water quality problem in the Duck Creek area. They investigated constructing various mechanical treatment plants but the issue of effluent disposal in this area is unusually complicated.

Duck Creek is completely encompassed by the Dixie National Forest (USFS land) and is unable to discharge as the effluent would inevitably run across federal land. The District met with Division of Water Quality (DWQ) staff to look into disposal via injection wells or rapid infiltration basins on privately owned land in the area. However, the geology is fractured to such an extent that it is impossible to predict where the flow would ultimately end up. There is evidence that it would likely daylight in Asay Creek which flows into the Sevier River where there is an existing TMDL for phosphorus. For these reasons, the recommended alternative was to purchase the existing lagoon facility from the USFS.



[Figure 3]

**PROJECT DESCRIPTION**

This project is to fund the expenses from the USFS in support of the District's Townsite Act application to purchase the existing wastewater lagoons [Attachment #2].

**IMPLEMENTATION SCHEDULE**

Depending on the USFS participation and availability, it is expected that the environmental review by USFS and the work by the District's consultants will be completed by September 1, 2017. The survey and appraisal work will be completed concurrently. Approval and clearance by the USFS for disposal of the property is expected in that time frame. Following approval, the District will begin the process of obtaining the funding to complete the purchase and construct the necessary upgrades.

**COST ESTIMATE:**

The costs from the USFS are \$53,000 [Attachment #2]

<u>USFS Collection Agreement</u>	<u>\$ 53,000</u>
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**STAFF COMMENTS AND RECOMMENDATION**

Staff recommends the Board authorize a hardship planning grant in the amount of \$53,000 to the Kane County Water Conservancy District. An advance is not recommended for this request since the expected project will require a significant grant component and the District has no sewer revenue to repay an advance.

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**Division of Water Quality - Planning Advance Application Supplement**

**Plan of Study**

In 2007, Kane County Water Conservancy District (the District), in collaboration with the Utah Department of Environmental Quality (UDEQ), the Southwest Utah Public Health Department (SWUPHD), and the U. S. Forest Service (USFS), completed a Wastewater Planning Study and Septic Density Analysis investigating potential pollution and contamination concerns in the Duck Creek area of Cedar Mountain in Utah.

This study and numerous others have documented the concern that discharge from onsite wastewater treatment systems may be contaminating ground and surface waters in the area. Of particular concern is the "valley" area near Duck Creek Village where the high ground water level can cause septic systems to be inundated with water and reduce the ability of the soils to provide good absorption media and treat the wastewater adequately.

The most viable alternatives identified in the 2007 study to address these concerns involved the creation of a regional wastewater collection and treatment system which would include the repair, utilization, or expansion of the existing Forest Service wastewater treatment lagoons. Utilization of the existing Forest Service treatment site offers numerous advantages including locational, environmental and financial advantages.

Providing wastewater collection and treatment services to private residents is excluded from the mission of USFS; USFS has indicated their inability (by virtue of mandate and policy) to receive wastewater from adjacent private development. Coordination meetings with the Dixie National Forest included discussion of a viable alternative for the District to take ownership of the existing wastewater treatment lagoons and infrastructure, thereby providing for treatment of all wastewater, both from private developments and USFS facilities, at the existing lagoon site. It was determined that the only method for transfer of ownership from USFS to the District was through the Townsite Act process.

The District applied for and received a DEQ Hardship Planning Advance in the amount of \$173,000 in 2013 which funded various expenses related to completing the Townsite Act process including administrative and funding efforts, an update to the previously completed wastewater facilities plan, completion of the Townsite Act application, and NEPA processes to be completed by the District and its consultants. The Townsite Act process is progressing, and has now advanced to the point of commencement of environmental (NEPA) processes, surveying of the parcels to be disposed, and appraisal of the parcels to be disposed.

The District is now requesting additional financial assistance to fund expenses related to the Townsite Act process, which will be completed by USFS and which were not included in the 2013 funding application. These expenses include USFS environmental and oversight work, property surveys to be completed by USFS, and the appraisal to be completed by USFS (see attached USFS Collection Agreement Financial Plan). The District does not currently have the financial resources to self-fund these additional project related expenses which are necessary to move the project forward.

Upon completion of the Townsite Act process, it is anticipated that the District will be in a position to seek funding to purchase the property and fund design and construction of the wastewater system improvements recommended by the updated facility plan.

### **Schedule**

Depending upon USFS participation and availability, it is expected that the environmental reviews by USFS and the District's consultants will be completed by September 1, 2017, with the survey and appraisal work being completed concurrently. Approval and clearance by USFS for disposal of the property is expected in that time frame. Following approval, the District anticipates beginning the process of funding the property purchase, design, and construction of the proposed wastewater improvements.

Construction of the proposed project would be completed in the summer construction season following completion of the Townsite Act process and successful funding of the proposed improvements.

### **Financial Hardship**

The proposed project would return to a dormant status if funding is not secured; USFS has indicated that it can neither proceed with its portion of the NEPA process nor scope the work to be completed by THE DISTRICT's consultants until such time as the Collection Agreement fee has been received. The fee cannot be funded by previously approved UDEQ funds because the work was not contemplated in the 2013 funding application. The septic systems of a high percentage of the local businesses continue to be problematic.

### **Other Funding Sources**

Since completion of the 2007 study, the District has expended a certain amount of funds to finance progress of this project including additional study, public input and coordination with USFS. During this time, no other feasible funding options have been found.

Forest Service Agreement #

Cooperator Agreement #

**Collection Agreement Financial Plan  
 Cooperator and FS Contributions**

COST ELEMENTS and related data			Cooperator Contribution	FS Non-Cash Contribution	
Line Item Cost Subtotals			Subtotal	Subtotal	Combined Subtotals
<b>PERSONNEL</b>					
Resource Specialists (List all personnel):			# of Days	\$/Day	
Steve O'Neil - Engineering/HAZMAT	8	\$390.82	\$3,126.56		\$3,126.56
Chris Butler - Floodplains/Wetlands	3	\$413.57	\$1,240.71		\$1,240.71
Devin Johnson - TESP Wildlife	3	\$337.67	\$1,013.01		\$1,013.01
Mark Madsen - TESP Botanical	1	\$393.73	\$393.73		\$393.73
Patrick Moore - Timber	3	\$356.94	\$1,070.82		\$1,070.82
Susan Baughman - Minerals	3	\$419.00	\$1,257.00		\$1,257.00
Marian Jacklin- Archeology	5	\$389.97	\$1,949.85		\$1,949.85
Brian Monroe-Range	2	\$364.88	\$729.76		\$729.76
Josie Muse - NEPA	12	\$300.00	\$3,600.00		\$3,600.00
Kathy Slack - Special Uses	5	\$363.66	\$1,818.30		\$1,818.30
Mindy Savage - Project Indexing	5	\$203.35	\$1,016.75		\$1,016.75
Sherryl Liermann-Recreation	3	\$326.31	\$978.93		\$978.93
Kevin Wright	5	\$456.00	\$2,280.00		\$2,280.00
Kathy Zamba-RO Hazmat	1	\$549.44	\$549.44		\$549.44
			\$0.00		\$0.00
David Hanrion- Land Surveyor	2	\$412.00	\$824.00		\$824.00
Terry Kessel-Survey Party Chief	15	\$304.00	\$4,560.00		\$4,560.00
Mike Riley-Survey Technician	15	\$262.00	\$3,930.00		\$3,930.00
					\$0.00
					\$0.00
<b>Subtotal, Personnel:</b>			<b>91</b>	<b>\$30,338.86</b>	<b>\$0.00</b>
<b>TRAVEL</b>					
Explanation of trips: From Where/To Where/For Whom	Vehicle Mileage Cost or Airfare Cost	# of Days	PerDiem and Lodging		
				\$0.00	\$0.00
				\$0.00	\$0.00
				\$0.00	\$0.00
				\$0.00	\$0.00
<b>Subtotal, Travel:</b>		<b>\$0.00</b>	<b>\$0</b>	<b>\$0.00</b>	<b>\$0.00</b>

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U.S. Forest Service

OMB 0596-0217  
 FS-1500-18

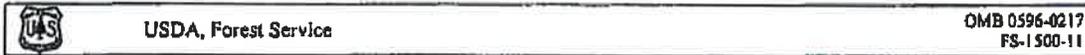
<b>EQUIPMENT</b>					
Name and Type of Equipment:	Unit Cost	Quantity			
		1	\$0.00	\$0.00	\$0.00
		1	\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
<b>Subtotal, Equipment:</b>	<b>\$0.00</b>	<b>2</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>SUPPLIES</b>					
Name and Type of Supplies:	Unit Cost	Quantity			
Boundary Markers	\$13.50	72	\$972.00	\$0.00	\$972.00
Monuments	\$20.00	18	\$360.00	\$0.00	\$360.00
Stakes, Paint, flagging and misc			\$0.00	\$0.00	\$0.00
<b>Subtotal, Supplies:</b>	<b>\$33.50</b>	<b>90</b>	<b>\$1,332.00</b>	<b>\$0.00</b>	<b>\$1,332.00</b>
<b>CONTRACTUAL</b>					
<b>Describe Contracts that will most likely result from this project:</b>					
Phase One Hazardous Materials Report			\$250.00	\$0.00	\$250.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
<b>Subtotal, Contractual:</b>			<b>\$250.00</b>	<b>\$0.00</b>	<b>\$250.00</b>
<b>OTHER</b>					
<b>Describe Other Costs of the Project:</b>					
Plat preparation and filing			\$912.00	\$0.00	\$912.00
			\$0.00	\$0.00	\$0.00
Appraisal			\$15,500.00	\$0.00	\$15,500.00
			\$0.00	\$0.00	\$0.00
<b>Subtotal, Other:</b>			<b>\$16,412.00</b>	<b>\$0.00</b>	<b>\$16,412.00</b>
<b>TOTAL DIRECT CHARGES</b>			<b>\$48,332.86</b>	<b>\$0.00</b>	<b>\$48,332.86</b>
<b>OVERHEAD ASSESSMENT</b> (If applicable, see FSH 1909.13)		<b>Insert Rate Here:</b>			
		8.0%	\$3,866.63		
<b>Total Party Costs</b>			<b>\$52,199.49</b>	<b>\$0.00</b>	
<b>TOTAL PROJECT COSTS</b>					<b>\$52,199.49</b>

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9902 (voice). TDD users can contact USDA through local relay of the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.



FS Agreement No. 16-CO-11046000-032

Cooperator Agreement No. \_\_\_\_\_

**COLLECTION AGREEMENT**  
Between  
**KANE COUNTY**  
And The  
**USDA, FOREST SERVICE**  
**R4-INTERMOUNTAIN REGION**

This COLLECTION AGREEMENT is hereby entered into by and between Kane County, Utah, hereinafter referred to as "the County", and the USDA, Forest Service, Intermountain Region, Lands, hereinafter referred to as the "U.S. Forest Service," under the provisions of the Cooperative Funds Act of June 30, 1914 (16 U.S.C. 498 as amended by Pub. L. 104-127.

Background: Kane County, Utah submitted an application for Townsite Act conveyance, dated June 2, 2015 for approximately 74 acres. The main purpose is to acquire and expand the existing Forest Service sewer lagoons for the Kane County Water Conservancy District. Other purposes served are Cedar Mountain Fire Protection, Western Kane County Special Service District #1 (Solid Waste), Kane County (Road Dept., Sheriff's Office, etc.) and Duck Creek Village Association (Future Community needs). On the site there currently exist Forest Service sewer lagoons and a Fire Department building under special use permit to Cedar Mountain Fire Protection district.

Title: Duck Creek Sewer Lagoons Townsite Act

**I. PURPOSE:** The purpose of this agreement, and incorporated Financial Plan, is to document the voluntary contribution of funds from the County to the U.S. Forest Service to conduct the necessary specialist reports, to perform a cadastral survey to determine parcel configuration and acreage and to facilitate an appraisal according to Uniform Appraisal Standards for Federal Land Acquisition to determine market value for the sale of federal land. Also included is the necessary deed preparation and advertising in the Federal Register and newspapers.

**II. THE County SHALL:**

**A. LEGAL AUTHORITY.** The County shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the nonfederal share of project costs, when applicable.

- B. Perform in accordance with the Financial Plan.
- C. Upon presentation of a Bill for Collection, deposit with the U.S. Forest Service the amount agreed to in the Financial Plan.

**III. THE U.S. FOREST SERVICE SHALL:**

- A. ADVANCE BILLING. The maximum total cost liability to the The County for this agreement is \$52,199.49. The U.S. Forest Service shall bill the County prior to commencement of work for deposits sufficient to cover the estimated costs (including overhead) for the specific payment period. Overhead is assessed at the rate of 8.0 percent.

Billing Method: a single lump sum

Billing must be sent to:

Kane County Commissioners
c/o Dirk Clayson
76 N. Main Street
Kanab, Utah 84741

- B. Perform in accordance with the attached Financial Plan.

**IV. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:**

- A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Name: Dirk Clayson Address: 76 N Main Street City, State, Zip: Kanab, Utah 84741 Telephone: 435-616-1234 FAX: 435-644-4939 Email: <a href="mailto:dirkclayson@gmail.com">dirkclayson@gmail.com</a>	Name: Karla Johnson Address: 76 N. Main Street City, State, Zip: Kanab, UT 84741 Telephone: 435-644-2458 FAX: 435-644-4939 Email: <a href="mailto:cleckkj@kane.utah.gov">cleckkj@kane.utah.gov</a>

	USDA, Forest Service	OMB 0596-0217 FS-1500-11
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**Principal U.S. Forest Service Contacts:**

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Kevin Wright Address: 1789 Wedgewood Lane City, State, Zip: Cedar City, UT 84721 Telephone: 435-865-3741 FAX: 435-865-3791 Email: kevinjwright@fs.fed.us	Name: Carla Pickering Address: 324 25 <sup>th</sup> Street City, State, Zip: Ogden, UT 84401-2310 Telephone: 801-625-5812 FAX: 801-625-5365 Email: carlapickering@fs.fed.us

- B. **FOREST SERVICE LIABILITY TO THE COOPERATOR.** The United States shall not be liable to The County for any costs, damages, claims, liabilities, and judgments that arise in connection with the performance of work by the U.S. Forest Service or its contractors under this agreement, including but not limited to damage to any property owned by The County or any third party.
- C. **REFUNDS.** Funds collected in advance by the U.S. Forest Service, which are not spent or obligated for the project(s) approved under this agreement, may be refunded to the County, authorized for use for a new agreement by the County, or waived by the County. A DUNS number and registration in the System for Award Management (SAM) by the County may be necessary to process a refund. Due to processing costs, any balance less than \$25 shall not be refunded to the County.
- D. **FREEDOM OF INFORMATION ACT (FOIA).** Public access to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552). Requests for research data are subject to 2 CFR 215.36.
- Public access to culturally sensitive data and information of Federally-recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2009 Farm Bill).
- E. **PARTICIPATION IN SIMILAR ACTIVITIES.** This agreement in no way restricts the U.S. Forest Service or the County from participating in similar activities with other public or private agencies, organizations, and individuals.
- F. **ENDORSEMENT.** Any of the County's contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of the County's products or activities.
- G. **NOTICES.** Any communication affecting the operations covered by this agreement by the U.S. Forest Service or the County will be sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:



To the U.S. Forest Service Program Manager, at the address specified in the agreement.

To the County, at the County's address shown in the agreement or such other address designated within the agreement.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- H. TERMINATION FOR COLLECTION AGREEMENTS. Either party, in writing, may terminate this agreement in whole, or in part, at any time before the date of expiration. The U.S. Forest Service shall not incur any new obligations for the terminated portion of this agreement after the effective date of termination and shall cancel as many obligations as possible. Full credit must be allowed for U.S. Forest Service expenses and all non-cancelable obligations properly incurred up to the effective date of termination. Excess funds must be refunded in accordance with the REFUND provision of the agreement.
- I. DEBARMENT AND SUSPENSION. The County shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the Federal Government according to the terms of 2 CFR Part 180. Additionally, should the County or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- J. MODIFICATIONS. Modifications within the scope of this agreement must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.
- K. COMMENCEMENT/EXPIRATION DATE. This agreement is executed as of the date of the last signature, and has an expiration date of December 31, 2018. The expiration date is the final date for completion of all work activities under this agreement.
- L. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this agreement. In witness whereof, the parties hereto have executed this agreement as of the last date written below.

  
DIRK CLAYSON, Commissioner  
Kane County, Utah

7/12/16  
Date