STATE OF UTAH

OFFICE OF THE LIEUTENANT GOVERNOR

CERTIFICATE OF CREATION

I, SPENCER J. COX, LIEUTENANT GOVERNOR OF THE STATE OF UTAH, HEREBY CERTIFY THAT there has been filed in my office a notice of creation from the NORTHERN UTAH ENVIRONMENTAL RESOURCE AGENCY ("NUERA"), dated October 28th, 2014, complying with Section 11-13-204, Utah Code Annotated, 1953, as amended.

NOW, THEREFORE, notice is hereby given to all whom it may concern that the attached is a true and correct copy of the notice of creation, referred to above, on file with the Office of the Lieutenant Governor pertaining to NORTHERN UTAH ENVIRONMENTAL RESOURCE AGENCY ("NUERA"), located in Cache, Davis, Salt Lake, Utah, and Weber counties in the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Great Seal of the State of Utah this 1st day of December, 2014 at Salt Lake City, Utah.

SPENCER J. COX
Lieutenant Governor

BTJD
BENNETT • TUELLER JOHNSON & DEERE

Received
NOV 13 2014
Spencer J. Cox
Lieutenant Governor

James K. Tracy
Partner
Email: jtracy@btjd.com
Direct Dial: (801) 438-2016

November 13, 2014

VIA HAND DELIVERY

Utah Lieutenant Governor's Office
Utah State Capitol Complex, Suite 220
Salt Lake City, Utah 84114

RE: Notice of impending boundary action – Northern Utah Environmental Resource Agency

Lieutenant Governor Cox:

This is a notice of the impending creation of the Northern Utah Environmental Resource Agency ("***NUERA***"), an interlocal agency to be created pursuant to the Utah Interlocal Cooperation Act (Utah Code § 11-13-101 et seq.) and composed of the following Member Entities:

- North Pointe Solid Waste Special Service District
- Trans-Jordan Cities
- South Utah Valley Solid Waste District
- Weber County
- City of Logan
- Wasatch Integrated Waste Management District

Attached as Exhibit A is a letter from the Utah State Retirement Office, as required by Utah Code § 67-1a-6.5(3)(d), identifying the provisions of the Utah State Retirement and Insurance Benefit Act with which NUERA may be required to comply.

Because all of the territory of each Member Entity is included in NUERA, a certified plat is not required under Utah Code § 11-13-204(4)(B).

3165 East Millrock Drive
Suite 500
Salt Lake City, Utah
84121-4704

t (801) 438-2000
f (801) 438-2050
www.btjd.com

By submitting this notice of impending boundary action, we hereby certify that NUERA has met all requirements applicable to creating an interlocal agency, as set forth in the Interlocal Cooperation Act.

Sincerely,

Bennett Tueller Johnson & Deere, LLC

James K. Tracy
Attorneys for North Pointe Solid Waste Special Service District and Trans-Jordan Cities

Cc: Clients
Enclosure

AGREEMENT TO CREATE NORTHERN UTAH ENVIRONMENTAL RESOURCE AGENCY

THIS AGREEMENT (this "*Agreement*") is entered into as of this 28th day of OCTOBER, 2014, by and among **(A) Weber County** ("*Weber*"), **(B) The City of Logan** ("*Logan*"), **(C) Wasatch Integrated Waste Management District** ("*Wasatch*"), **(D) North Pointe Solid Waste Special Service District** ("*North Pointe*"), **(E) Trans-Jordan Cities**, ("*Trans-Jordan*"), and **(F) South Utah Valley Solid Waste District** ("*South Valley*") (collectively, the "*Members*"), to jointly create, operate and maintain Northern Utah Environmental Resource Agency (the "*Organization*"), as an interlocal entity pursuant to the Utah Interlocal Cooperation Act, Title 11, Chapter 13, UCA (the "*Interlocal Act*").

WHEREAS the Members desire to explore the feasibility of working collectively to accomplish the Purposes (as defined below); and

WHEREAS the Members are each authorized to exercise powers conferred by the Utah Solid and Hazardous Waste Act, UCA §§ 19-6-101 through 19-6-123 (the "*SHWA*"), and the Utah Solid Waste Management Act, UCA §§ 19-6-501 through 19-6-507 (the "*SWMA*" and together with the SHWA, collectively, the "*Solid Waste Acts*"), as well as powers conferred by other statutes, including the Interlocal Act; and

WHEREAS pursuant to the Interlocal Act, any two or more Utah public agencies may enter into an agreement to provide for joint and cooperative action, and may create a Utah interlocal entity to accomplish the purposes of their joint or cooperative action; and

WHEREAS each Member is a public agency within the meaning of the Interlocal Act and desires to enter into this Agreement with the other Members to provide, on the terms of this Agreement, for the accomplishment of the Purposes; and

WHEREAS each Member finds and expressly declares this Agreement (i) is in the best interests of its several citizens and beneficial to their health and welfare, (ii) will enable it to determine the manner in which to make the most efficient use of its powers regarding the subject matters of this Agreement, and (iii) will enable it to explore opportunities to realize economies of scale and other benefits contemplated by the Interlocal Act; and

WHEREAS all approvals, authorizations and other actions required to cause this Agreement to be the legal, valid and binding obligation of each Member have been taken or obtained.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE MUTUAL COVENANTS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, IT IS AGREED AMONG THE MEMBERS AS FOLLOWS:

1. **Definitions and Rules of Procedure of Construction.**

Each term defined in the preamble and recitals of this Agreement shall have the meaning given there.

Each of the following terms shall have the meaning set forth in this Section:

a. "Board" is the Board described in Section 6.a.

b. "Committee" means the Operations and Management Committee established pursuant to Section 6.b.

c. "Costs" means all costs, expenses, fees, penalties, obligations, taxes and liabilities of any kind or nature of the Organization.

d. "Facility" means each facility that the Organization may establish, construct, operate, maintain, and/or improve.

e. "Fiscal Procedures Act" means UCA §§ 17B-1-601 through 645 (fiscal procedures for local districts), as amended from time to time.

f. "Fiscal Year" means the fiscal year adopted by the Board for the Organization, which may be the same as the calendar year.

g. "General and Administrative Expenses" means Costs incurred by the Organization that are not incurred solely for any particular Project.

h. "General Manager" means the general manager of the Organization, who is the person designated by the Board to direct and supervise the Organization's operations, carry out functions, duties and responsibilities assigned by the Committee, and execute and enforce policies adopted by the Board, all as described in further detail in Section 8 of this Agreement and the Organization's bylaws.

i. "Indebtedness" means bonds, notes, loans, commercial paper, certificates, mortgages, and any other form of debt.

j. "Member" means Weber, Logan, Wasatch, Trans-Jordan, North Pointe, South Valley, and any additional entity that may later become party to this Agreement pursuant to Section 11.

k. "Non-hazardous Solid Waste" means solid waste (as defined in the SMWA) other than hazardous waste (as such term is defined in the SHWA).

l. "Operating Expenses" means, with respect to a Project, (i) all of the Organization's Costs incurred in connection with the operation and maintenance of such

Project and ordinary repairs, replacements and reconstruction of such Project, including all Costs of producing and delivering services contemplated by such Project, and any reserves, funds or accounts required by any Security Instruments for items of Operating Expenses the payment of which is not immediately required, and shall include, without limiting the generality of the foregoing, rents, administrative and general expenses, engineering expenses, legal and financial advisory expenses, required payments to pension, retirement, health and hospitalization funds, insurance premiums, any taxes or payments in lieu of taxes pursuant to the Interlocal Act or otherwise pursuant to law and payments required under the Project Documents which are to be applied pursuant to the terms thereof to the payment (or reimbursement for the payment) of such Costs; (ii) all General and Administrative Expenses allocable to such Project; and (iii) any other current Costs required to be paid by the Organization under the provisions of any Security Instruments or by law, all to the extent properly allocable to the Projects, or required to be incurred under or in connection with the performance of the Project Documents. Operating Expenses shall not include any debt service, any Costs for new construction or any allowance for depreciation or amortization.

m. "Organization" means Northern Utah Environmental Resource Agency, a Utah interlocal entity, created by the Members pursuant to Section 11-13-203(2) of the Interlocal Act and this Agreement.

n. "Professional" means a person with expertise or experience in solid waste management and operations and who has management or supervisory responsibility for a Member's solid waste operations.

o. "Project" means, whether owned in a divided or undivided interest or consisting of a contractual right or otherwise, the following of the Organization:

i. any Facility and all services provided at or by such Facility, or any service provided in connection with or support of Solid Waste Management, whether provided at a Facility governed by this Agreement;

ii. all records and documents associated with such Facility, including, without limitation, feasibility, environmental and other studies, surveys, estimates, licenses, permits, rights, approvals and litigation associated with a Facility; and

iii. such other buildings, fixtures, land, improvements, activities and services, associated with a Facility, including, but not limited to, legal, legislative and financial activities consistent with the Purposes of the Organization and this Agreement.

p. "Project Documents" means, with respect to a Project, the agreement between the Organization and one or more of the Members pursuant to which such Project is undertaken together with all documents executed in connection with or pursuant to such agreement and all Security Instruments related to such Project.

q. "Representative" means a person selected by a Member to serve on the Board.

r. "Security Instrument" means any bond resolution, trust indenture, or other security instrument or similar document entered into by the Organization in connection with the issuance of its bonds or other Indebtedness that sets forth the Organization's obligations in connection with such bonds or other Indebtedness.

s. "Solid Waste Management" has the meaning ascribed thereto in the SWMA; provided, however, that, for purposes of this Agreement, the term "solid waste" as used in such definition includes only Non-hazardous Solid Waste.

t. "Solid Waste Management Facility" has the meaning ascribed thereto in the SWMA; provided, however, that, for purposes of this Agreement, the term "solid waste" as used in such definition includes only Non-hazardous Solid Waste.

Except where the context otherwise requires: (i) terms expressed in the singular number include the plural number and vice versa; (ii) the term "person" includes any of the Members, individuals, corporations, firms, associations, trusts, federal, state and local governments and agencies; (iii) the term "include" and its derivations are not limiting; and (iv) references to Sections are references to the Sections of this Agreement.

2. Organization.

The Members hereby create and organize a separate legal and administrative interlocal entity known as Northern Utah Environmental Resource Agency, to accomplish the Purposes (as defined below).

3. Purposes.

The purposes of this Agreement and of the Organization include (collectively, the "*Purposes*"):

a. To explore the creation, acquisition, and/or operation of a Solid Waste Management Facility or Facilities.

b. To explore the provision of services relating to one or more Solid Waste Management Facilities.

c. To explore options for the effective, efficient, and economic disposal, recycling, reuse or use of Non-hazardous Solid Waste and to provide services related to Solid Waste Management.

d. To investigate and evaluate possible solutions to Non-hazardous Solid Waste problems and issues for the Members and the State of Utah and other political

subdivisions thereof, and to work in conjunction and cooperation with existing Solid Waste Management Facilities to meet Solid Waste Management objectives.

e. To take any or all other actions necessary specified in UCA § 19-6-503(1), or otherwise necessary or desirable to carry out the purposes of the SWMA and the Purposes of this Agreement.

f. To explore the sharing of research and management practices and to study emerging technologies.

g. To provide emergency and disaster resources to the Members.

h. To assist Members, on the terms provided in this Agreement, with the financing, operation, maintenance, planning and operation of Projects serving one or more of these Purposes.

i. To consider and evaluate Projects in which some or all of the Members may participate in entities separate from the Organization.

4. Powers, Duties, and Functions.

a. The Organization shall have and possess all powers and authorities in furtherance of the Purposes available under the Interlocal Act and other relevant Utah law, including, but not limited to, the power to:

i. adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business;

ii. sue and be sued;

iii. have an official seal and alter that seal at will;

iv. make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions;

v. acquire real or personal property, or an undivided, fractional, or other interest in real or personal property, necessary or convenient for the purposes of the Organization, and sell, lease, or otherwise dispose of that property;

vi. directly or by contract with another own and acquire facilities and improvements or an undivided, fractional, or other interest in facilities and improvement; construct, operate, maintain, and repair facilities and improvements; and provide the services contemplated in and by this Agreement;

vii. borrow money, incur Indebtedness, and issue revenue bonds, notes, or other obligations and secure their payment by an assignment pledge, or other conveyance of all or any part of the revenues and receipts from the facilities, improvements, or services that it provides;

viii. sell or contract for the sale of the services, output, product, or other benefits provided by it to agencies inside or outside the state, and with respect to any excess services, output, product, or benefits, any person on terms that the Organization considers to be in the best interest of the Members;

ix. own, sell or otherwise dispose of, purchase, lease, acquire by eminent domain or otherwise, construct, operate, maintain and repair or cause to be constructed, operated, maintained and repaired any Project or Projects;

x. contract for the acquisition, purchase, lease, construction, operation, maintenance and repair, management or sale or other disposition of a Project or Projects or any part thereof;

xi. enter into participation agreements and other contracts pursuant to which a Project or the benefits of a Project are made available to some or all of the Members and, if approved by the Board, to one or more non- Members, either by sale, lease or other contract for the use of the Project or any portion thereof; and

xii. purchase, sell, acquire, contract for or perform feasibility studies, preliminary services, partial Projects and options relating to a Project.

b. The Organization shall have the power and authority to do one or more of the following in furtherance of the Purposes:

i. To contract with any of the Members or any other public, private, or commercial entity or entities.

ii. To levy fees and charges as may be appropriate to discharge its responsibility for the acquisition, construction, operation, maintenance, and improvement of a Solid Waste Management Facility.

iii. To accept and disburse funds derived from a federal or state grant, a private source, or money that may be appropriated by the Utah Legislature for the acquisition, construction, ownership, operation, maintenance, and improvement of a Solid Waste Management Facility.

iv. To accept and disburse funds and services from the Members, other public agencies and public entities and from private persons pursuant to contracts authorized under law.

c. While retaining the powers they have so as to function independently, the Members hereby delegate to the Organization, and the Organization shall have (i) all powers and authorities conferred upon public entities by the Solid Waste Acts, except those powers that may not be exercised by interlocal entities pursuant to the Interlocal Act and (ii) the power of eminent domain with respect to any real property necessary for the use of the Organization or in connection with a Project; *provided that* the power of eminent domain may only be exercised by the Organization on majority vote of the Representatives on the Board; and further provided that the power of eminent domain shall not be exercised by the Organization against a Member without such Member's written consent.

d. Notwithstanding anything to the contrary in this Agreement, without the unanimous approval of the Representatives on the Board, the Organization has power to take only those actions that are consistent with the Purposes.

5. Prohibition on Levying Taxes.

The Organization may not levy, assess, or collect ad valorem property taxes.

6. Representation and Officers.

a. The Organization shall be governed by a board of directors (the "*Board*"), which shall consist of two Representatives from each Member.

i. Each Representative shall be designated by his or her Member's governing body. Each Representative shall serve the best interests of the Organization, taking into account the interests of the Member he or she represents, shall serve at the pleasure of his or her Member's governing body, and may be removed from the Board by his or her Member's governing body by the vote required to constitute action by such Member's governing body. Each Member may appoint one or more alternates to serve in the event that the appointed Representative(s) cannot serve or attend a meeting.

ii. The Board shall meet within one month of the creation of the Organization, and shall adopt bylaws within three months of the creation of the Organization that shall govern the operations of the Board and its Representatives, and the operations of the Committee and its Professionals; *provided that* such bylaws shall be consistent with the provisions of this Agreement, the Interlocal Act and other applicable law.

iii. The Board may adopt such rules, regulations, and resolutions are not inconsistent with the terms of this Agreement, the Interlocal Act and other applicable Law.

iv. It is the intention of the Members that, in exercising its responsibilities, the Board shall rely on the professional experience and technical expertise represented on the Committee and, as to decisions of the Board regarding engineering, technical and related matters, shall give due consideration to the recommendations provided by the Committee. In the event that the Board determines that it is unable or unwilling to approve or act upon a recommendation made by the Committee, the Board shall state the reasons for its disapproval or inaction and shall direct the Committee to review the matter in question and develop an alternate recommendation for consideration by the Board.

v. The Board shall meet at least five times annually.

b. The Operations and Management Committee (the "Committee") is hereby established. The Committee has the authority specified in this Section 6.b.

i. Each Member shall appoint a Professional to serve on the Committee.

ii. Each Professional shall utilize his or her engineering and/or technical skills to promote the efficiency, economy and functionality of the Organization and the Projects in which the Member appointing such Professional has elected to participate, and to ensure appropriate coordination between the Projects of the Organization and the Member he or she represents. Each Professional shall serve at the pleasure of his or her Member's governing body, and may be removed from the Committee by his or her Member's governing body at any time or subject to the policies and procedures adopted by the Member.

iii. A Professional appointed to the Committee need not reside within the jurisdiction of the appointing Member.

iv. A Professional on the Committee may not simultaneously serve as a Representative on the Board.

v. The Committee shall meet no fewer than five (5) times per year.

vi. The Committee shall have such responsibilities as delegated to it by the Board by resolution or bylaws and consistent with the provisions of this Agreement.

7. **Budget and Finance.**

a. The Board shall adopt an annual budget (an "*Annual Budget*") prepared in accordance with the provisions of, and in the manner contemplated by, the Fiscal Procedures Act, or as otherwise required by applicable law.

b. The General and Administrative Expenses of the Organization shall be allocated by the Board among the Projects in a manner the Board may set forth by resolution or in bylaws.

c. The Organization shall operate, to the extent feasible, from its own revenues. The Board shall have the power to periodically assess the Members for General and Administrative Expenses only, but not for the Project Costs, Project Operating Expenses, or any other expense or cost associated with a Project, except as provided in the Project Documents. Such assessments shall be apportioned among the Members on such basis as the Board determines proper, in its sole discretion. Assessments may not be made without the consent of the Member. The Organization will notify Members of its proposed budget each year and invoice for the same. Each Member shall pay the assessments, for which it has consented, within thirty (30) days of being invoiced. Any Member which does not pay assessments will subject such Member to expulsion from the Organization, or such other sanctions as the Board determines equitable under all the circumstances. Representatives of a Member which has not paid its assessment may not vote on any matter during any period in which the Member is delinquent on payment of any assessment. No Member shall be liable for any bond, note indebtedness, or other obligation incurred by the Organization, nor liable for the indebtedness of any other Member, nor liable for any indebtedness or other obligation with respect to a Project, other than the obligations of such Member arising under the Project Documents. A Member shall have liability only for those Costs, Indebtedness and other liabilities associated with the Project Documents. A Member shall have liability only for those Costs, Indebtedness and other liabilities associated with the Projects with respect to which such Member elects to participate.

d. The obligation of each Member to pay any amounts to the Organization pursuant to this Agreement is in each case a special and limited obligation of the Member payable solely from the revenues and income from and assets of its Solid Waste Management Facilities and other legally available moneys appropriated for such payment. The payment obligation of each Member under this Agreement is not directly payable from or secured by ad valorem property taxes. It shall not constitute a debt of the Member within the meaning of the Utah Constitution.

8. **Management and Staff.**

a. The Organization shall have the authority to hire the General Manager. The General Manager's duties shall be set forth in the Organization's bylaws and the General Manager shall serve at the pleasure of the Board.

b. Subject to bylaws or resolutions adopted by the Board, the General Manager shall be authorized to hire agents and employees as necessary or convenient for the efficient operation of the Organization, and for the proper and efficient operation, maintenance, and/or repair of the Organization's Projects.

9. **Duration.**

a. This Agreement shall become effective once the lieutenant governor issues a certificate of creation pursuant to UCA §§ 11-13-204(4) and 67-1a-6.5 and the Agreement is filed with the keeper of records for each of the public agencies that are Members to the agreement pursuant to UCA § 11-13-209. Each Member shall notify the other Members when the Agreement has been filed with their keeper of records in accordance with UCA § 11-13-209.

b. Unless earlier terminated pursuant to Section 13, the term of this Agreement shall extend until the latest to occur of:

i. 50 years after the effective date of this Agreement;

ii. five years after the Organization has fully paid or otherwise discharged all of its Indebtedness.

iii. five years after the Organization has abandoned, decommissioned, or conveyed or transferred all of its interest in its facilities and improvements; or

iv. five years after the facilities of the Organization are no longer useful in providing the service, output, product, or other benefit of the facilities and improvements, as determined under the agreements governing the sale of the service, output, product, or other benefit.

10. **Approval.**

a. Execution of this Agreement by a Member shall constitute a representation and warranty by such Member that the legislative body of each Member has formally approved of this Agreement by a resolution or ordinance which satisfies the requirements of UCA § 11-13-202.5(2).

b. Pursuant to UCA § 11-13-204(4), the governing body of each Member, within 30 days of the date that this Agreement is executed by such Member and such Member's attorney(s), shall jointly file with the lieutenant governor the documents required by UCA § 11-13-204(4)(a)(i). The Members shall work together to obtain the lieutenant governor's certification of creation pursuant to UCA §§ 11-13-204(5) and 67-1a-6.5 as expeditiously as possible. Upon the lieutenant governor's issuance of a certificate of creation under UCA §§ 11-13-204(5) and 67-1a-6.5, the governing body of each Member shall jointly submit to the recorders of the counties within the boundaries of the Organization the documents required by UCA § 11-13-204(4)(a)(ii)(B).

11. **Additional Members.** An additional Member may be added to the Organization upon a petition of the proposed additional Member and after the governing body of the proposed additional Member has adopted a resolution approving such petition. The addition of a Member shall be permitted only by unanimous vote of the Board. Any Member added to the Organization as a Member shall have liability only for those Costs, Indebtedness and other liabilities associated with the Projects with respect to which such Member elects to participate. Such additional Member shall be entitled to appoint two Representatives to the Board in accordance with Section 6.a. and to exercise all other rights of a Member with respect to the Organization and any Project.

12. **Withdrawal of Members.**

a. A Member may withdraw from this Agreement only with the unanimous approval of the Board. Such Member seeking to withdraw shall agree to remain responsible for (i) its share of any fixed and contingent liabilities associated with any Project with respect to which such Member has elected to participate, and (ii) such liabilities imposed by law through the date of withdrawal.

b. Notwithstanding the provisions of Section 12.a., no Member may withdraw from this Agreement while the Organization has any bonds, notes, or other obligations outstanding with respect to any Project with respect to which such Member has elected to participate, unless otherwise permitted by (i) the applicable Security Instruments and (ii) the contractual arrangements between the Organization and the Member providing for the use of the Project.

c. Any Member wishing to withdraw must file with the secretary/treasurer of the Board a certified resolution of the Governing Body of the Member stating its desire to withdraw, no less than 180 days prior to the desired effective date of the withdrawal.

d. Upon withdrawal, no Member shall receive repayment for any amounts expended by the Member for the funding of the Organization or any Project.

e. After the effective date of the withdrawal of any Member, the Board composed of the remaining Representatives shall continue to have and assume all of the rights, duties and obligations provided for herein.

13. **Termination.**

a. A Member may be allowed to withdraw from the Organization as set forth in Section 12, but the Organization shall continue to operate until the end of its term with the remaining Members. This Agreement shall be terminated and the Organization shall cease to exist upon the first to occur of (i) unanimous agreement among the Members that the Organization shall cease to exist as stated in certified copies of the resolutions of the governing bodies of such Members effecting the dissolution or termination of the

Organization are filed with the secretary/treasurer of the Organization and compliance with all other requirements of applicable law for the dissolution of the Organization, (ii) any of the events specified in Section 9.b., and (iii) such other time or upon such other events as required pursuant to the Interlocal Act or other applicable law.

b. Upon termination of this Agreement, title to all assets of the Organization, upon its dissolution, shall revert to the Members (i) to the extent constituting a portion of a Project, in accordance with the terms of the Project Documents relating to such Project and (b) to the extent not consisting of a portion of a Project, in proportion to such Member's average operating expenses incurred and paid during the life of the Organization; *provided, however*, that the Board shall provide for the retention of assets or monies in accordance with the Project Documents and retain additional assets or monies that are sufficient, in the Board's sole judgment, to provide for the payment of any unsatisfied liabilities of the Organization and for the proper closure or other resolution of the Projects. Upon a decision to terminate this Agreement and the Organization, the Board shall have such powers to take such actions as shall be necessary to effectuate the termination of the Organization and to dispose of the property of the Organization in a manner consistent with the provisions of this Agreement.

c. Notwithstanding the termination of this Agreement, the following provisions shall survive and continue to be operative until the Organization has completely discharged all of its obligations and liabilities (and no Member has any potential liability for the same) as provided in Section 19 below.

14. Projects.

a. *Establishment of a Project.* To establish a Project, (i) at least one Member shall propose to participate in such Project pursuant to a contract with the Organization; (ii) the member(s) shall submit and present to the Operations and Management Committee for its recommendation; (iii) the Member(s) shall present the proposed Project to the Board; and (iv) a majority of the Board shall vote to approve the Project as a Project of the Organization. Neither the individual Representatives of the Board nor the Organization shall have any liability to those proposing a Project as a result of the Board's decision to not approve a Project. Any Project may be situated in whole or in part within or without the State of Utah.

b. *Option to Participate.* Each Member that desires to participate in a Project must give the Board written notice to that effect within 60 days after the Board vote approving establishment of the Project. If a Member indicates that it does not wish to participate in the Project or it does not timely deliver such notice to the Board within such period, the Member shall have elected not to participate in such Project.

c. *Project Plan.* Within 120 days of the establishment of a Project, those Members who have elected to participate in the Project shall develop a Project Plan to present to the Board for approval. At a minimum, the Project Plan shall detail how the Project shall be operated, funded, and managed, and the rights and obligations of

Members who choose to participate in the Project. The Board, in its discretion, may extend the time for preparation of a Project Plan. If no Project Plan is presented to the Board in the time designated, the Project shall be deemed to have been abandoned. No Operating Expenses or any Indebtedness may be incurred with respect to a Project until a Project Plan has been adopted for such Project. All Costs, Indebtedness and other liabilities incurred in connection with the formulation and implementation of the Project Plan will be borne by the Members who have chosen to participate in the Project.

d. *Option to Withdraw.* Until a Project Plan has been approved by the Board, any Member who has elected to participate in the Project may withdraw from the Project by delivering a written notice to that effect to the Board. A Member who has withdrawn from a Project shall remain liable for its full share of the Costs, Indebtedness and other liabilities incurred in connection with the formulation of the Project Plan.

e. *Project Documents.* The Organization and those Members participating in the Project shall adopt and enter into Project Documents that shall include such provisions as the Organization may require by resolution or bylaws or that may be adopted for a specific Project, and that may be required by law.

f. *Ownership of Projects.* The ownership of a Project may be a divided or undivided ownership interest, a contractual right or otherwise.

15. Publication. If the Board chooses to publish an enactment, notice of bonds, or notice of agreement, it shall comply with the requirements of UCA § 11-13-219.

16. Assignment. The Rights and obligations set forth herein shall not be assigned without the express written approval of all other non-assigning Members.

17. Insurance.

a. *Maintenance of Insurance.* The Organization shall at all times use its best efforts to keep or cause to be kept the properties of the Organization (including but not limited to the Projects) which are of an insurable nature and of the character usually insured by those operating properties similar to the properties of the Organization (including but not limited to the Projects) insured against loss or damage by fire and from other causes customarily insured against and in such relative amounts and having such deductibles as are usually obtained. The Organization shall at all times use its best efforts to maintain or cause to be maintained insurance and reserves against loss or damage from such hazards and risks to the person and property of others as are usually insured or reserved against by those operating properties similar to the properties of the Organization (including but not limited to the Projects). The Organization shall at all times maintain or cause to be maintained errors and omissions insurance or officer and director insurance, as applicable, for the Representatives on the Board and Professionals on the Committee as are usually insured or reserved against by those operating properties similar to the properties of the Organization (including but not limited to the Projects). Any insurance required pursuant to this Section 17.a. shall be in the form of policies or

contracts for insurance with insurers of good standing and shall be payable to the Organization. Causing the Members who have chosen to participate in a Project to maintain insurance in accordance with the terms of the Project Documents relating to such Project shall satisfy the Organization's obligation to insure the properties of such Project or to maintain insurance against loss or damage from hazards and risks relating to such Project.

b. *Reconstruction; Application of Insurance Proceeds.* If any useful portion of any Project shall be damaged or destroyed, the Organization shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the reconstruction or replacement thereof. The proceeds of any insurance paid on account of such damage or destruction shall be held by the Organization in a special account and made available for, and to the extent necessary be applied to, the cost of such reconstruction or replacement of the Project.

18. Management of Funds; Future Indebtedness. All money, funds and accounts owned, held or administered by the Organization shall be handled in accordance with the Project Documents and applicable law, including without limitation, the Utah State Money Management Act, UCA § 51-7-1, *et seq*. The Organization shall not use the money, funds or accounts owned, held or administered thereby in any way that would impair its ability to operate and maintain the Projects in accordance with the terms of this Agreement or the Project Documents. The Organization may not incur any Indebtedness after the date of this Agreement except in compliance with the terms, conditions and covenants hereof.

19. Indemnification. The Organization shall indemnify and save and defend each Member and each Member's employees and officers harmless from and against any and all liabilities, claims, penalties, forfeitures, suits, and the Costs incident thereto, which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on any Project or property owned or operated by the Organization, or any violation of governmental laws, regulations, or orders caused, in whole or in part, by any negligent or willful act or omission of the Organization, its employees, agents, or subcontractors in the performance of the duties of the Organization.

20. Integration, Amendment & Modification. This Agreement constitutes the entire agreement between the Members and supersedes all prior agreements and negotiations. No amendment or modification of this Agreement shall be valid or binding unless in a writing duly executed by all Members hereto.

21. Governing Law & Disputes. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of Utah. Any dispute arising hereunder must be brought in the state and federal courts located in Salt Lake County, Utah. The prevailing party in any action arising hereunder may recover its court costs, including its reasonable attorney fees.

22. **Survival Clause.** If any term or provision of this Agreement is held to be illegal, invalid, or unenforceable, the legality, validity, or enforceability of the remaining terms and provisions hereof shall not be affected thereby.

23. **Counterparts.** This Agreement may be executed in any number of counterparts and the counterparts when assembled together shall constitute but one agreement.

In Witness Whereof the parties have executed this Agreement the day and year first written above.

Attest:

Teresa Harris

City of Logan

Mayor

10/28/14
Date

Approved as to form:

City Attorney

Attest:

Secretary

Wasatch Integrated Waste Management District

Executive Director

10·10·2014
Date

Approved as to form:

Agency Attorney

Attest:

County Recorder/Clerk

Weber County

Commission Chair

9/16/2014
Date

Approved as to Form:

County Attorney

Attest:

Secretary

North Pointe Solid Waste Special Service District

Chairman

10-14-14
Date

Approved as to Form:

Agency Attorney

Attest:

Secretary

Trans-Jordan Cities

Chairman

10/13/14
Date

Approved as to form:

Agency Attorney

Attest:

Secretary

South Utah Valley Solid Waste District

Chairman

10/9/14
Date

Approved as to form:

Agency Attorney

Utah Retirement Systems

Retirement Office
560 East 200 South
Salt Lake City, UT 84102-2021

(801) 366-7700
(800) 365-8772 Toll Free
(801) 366-7734 Fax
www.urs.org

DANIEL D. ANDERSEN
Executive Director

Public Employees Health Program
560 East 200 South
Salt Lake City, UT 84102-2004

(801) 366-7500
(800) 365-8772 Toll Free
(801) 366-7596 Fax
www.pehp.org

R. CHET LOFTIS
Director

November 10, 2014

Northern Utah Environmental Resource Agency
Attn: Eric Jeppsen
Bennett Tueller Johnson & Deere
3165 E. Millrock Drive, Suite 500
Salt Lake City, Utah 84121

Re: Eligibility for Participation of a Newly Created Entity in the Utah State Retirement Systems

Dear Northern Utah Environmental Resource Agency:

When a governmental entity is being incorporated or created, Utah law requires the Utah State Retirement Office ("Office") to provide a letter to that entity identifying the potential provisions under Utah Code Title 49, Utah State Retirement and Insurance Benefit Act ("Retirement Act"), with which it shall comply. *See* Utah Code Ann. § 67-1a-6.5(3)(d). This letter serves as the official notice for the Northern Utah Environmental Resource Agency ("Agency"), a newly created interlocal entity.

Based upon the information provided, the Office has determined that the Agency is an "employer" under the Retirement Act as a political subdivision of the state by virtue of its status as an interlocal entity created under the Utah Interlocal Cooperation Act, Utah Code Title 11, Chapter 13. Accordingly, the Agency must comply with the participation requirements of the Retirement Act.

This does not mean that the Agency must provide retirement benefits to its employees. However, at the present time and throughout the future, **the Agency is required by law to provide URS retirement benefits if and when it offers any type of retirement benefit to its employees.**

It may be the case that the Agency does not currently have employees or has not yet elected to provide a retirement benefit to its employees. Please be aware, it is not the obligation of the Office to monitor the activities of the Agency. **By law, it is the Agency's obligation to apply for membership with URS if and when it chooses to provide a retirement benefit to its employees.**

Once the Agency begins participation with URS, its public employees will be covered under either the Tier I or Tier II public employee retirement systems, as described in the Retirement Act. If the Agency employs public safety or firefighter service employees, those employees will be covered under the separate Tier I or Tier II systems for public safety and/or firefighter service employees described in the Retirement Act.

In addition, Participating Employers of URS are required by section 49-11-606 to "cover all employees eligible for service credit under this title." As such, once admitted as a participating employer, the Agency will be required to cover all eligible employees, pursuant to the eligibility rules found in the

Retirement Act.

Please note that the above-referenced laws are those used to determine eligibility for participation and are not the only laws with which a participating employer must comply. Participating employers are required to "inform themselves of their rights and obligations" under Title 49 and should become familiar with all provisions of the Retirement Act. Once the Agency is admitted into the System, URS provides education about the requirements with which the Agency must comply as a participating employer.

Additionally, please be aware that should the Agency fail to participate with URS while offering another retirement benefit to its employees, the Agency's employees may have a claim against it for service credit under the Retirement Act, which the Office is required to enforce. Under the Retirement Act, such a claim would include all past employer contributions, interest, and in some cases, penalties. *See* Utah Code Ann. § 49-11-601(3).

Please do not hesitate to contact me if you have any questions.

Sincerely,

Matthew K. Judd
Records Management Director
Utah State Retirement Office