

**APPROVED**

**SPECIAL CACHE COUNTY  
COUNCIL MINUTES  
MARCH 30, 2010**

**SPECIAL CACHE COUNTY COUNCIL MEETING**  
**March 30, 2010**

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**SPECIAL CACHE COUNTY COUNCIL MEETING**  
**March 30, 2010**

The Cache County Council convened in a special session on March 30, 2010 at 7:30 p.m. in the Cache County Council Chamber at 199 North Main, Logan, Utah.

**ATTENDANCE:**

**Chairman:** Gordon Zilles  
**Vice Chairman:** Jon White  
**Council Members:** Craig W Buttars, Brian Chambers, H. Craig Petersen,  
Kathy Robison & Cory Yeates.  
**County Executive:** M. Lynn Lemon  
**County Clerk:** Jill N. Zollinger  
**County Attorney:** James Swink

**The following individuals were also in attendance:** Clyde Bartlett, Peter Brunson, Ray Checketts, Amelia Christopherson, Mark Christopherson, Ann V. Collins, Neil F. Collins, John Eastmond, Joanna Endter-Wada, David Erickson, Bob Fotheringham, Jon Hardman, Laurie Hardman, Dennis Hassan, Wendi Hassan, Kirt Hoggan, Sharon L. Hoth, James Huppi, Gary C. Joy, Arden Lauritzen, Bruce Lundquist, Jon Meikle, Keith Meikle, Barbara Middleton, Art Moss, Leila O'Dell, Pat Parker, Pat Pehrson, Nick Peterson,, Val Potter, Chris Slater, Bronson Smart, Arthur Taylor, Lucy Watkins, Randy Williams, Terry Williams, David Winn, Gordon Younker,  
**Media:** Charles Geraci (Herald Journal), Jennie Christensen, (KVNU).

**OPENING REMARKS AND PLEDGE OF ALLEGIANCE**

Council member Robison gave the opening remarks and led those present in the Pledge of Allegiance.

**REVIEW AND APPROVAL OF AGENDA**

**ACTION:** Motion by Council member Yeates to approve the agenda as written. Robison seconded the motion. The vote was unanimous, 7-0.

**PENDING ACTION**

- Approval/Disapproval – NRCS/Cache High Line Canal Improvements Financial Assistance Agreement**

**AND**

- Approval/Disapproval – NRCS/Cache High Line Canal Improvements Technical Assistance Agreement** – Chairman Zilles, noting the large audience, observed that this was not a public hearing and public comment would not be invited, but that there would be future Public Hearings on the proposed High Line Canal projects where the public would be encouraged to participate. By that time the public will have all the information concerning the various options. An entity must consent to be the sponsoring agency before the NRCS funding can be released. Once there is a sponsor and the money is deposited, studies can go forth on the several options. This meeting is simply to decide if Cache County will

be the sponsoring entity for the project. Chairman Zilles asked Attorney Swink to comment.

Attorney Swink indicated he has reviewed the agreements and NRCS has made the changes he requested. It is the county's intention to pass on the cost sharing to the cities and canal companies through sub-agreements and it is the opinion of the Cache County Attorney's office that the final drafts of the agreements are acceptable. Future amendments to the agreements can be made, if needed. One of the agreements addresses funding for the studies on the options. The other agreement concerns the actual award of the money for construction costs, etc. Attorney Swink reminded the Council that if the county decides to not go forward with any of the projects, there is no financial liability for Cache County.

Cache County Water Manager Bob Fotheringham stated that this is a community issue. The Bear River Development Act gives 60,000 acre feet of water to Cache County to be developed. The water that would be given back through the NRCS project would be about 28,000 acre feet that affects about a quarter of Cache County's citizens. This is almost half of the water Cache County receives through the Bear River Development Act. This is a huge amount of water that benefits the citizens of Cache County. It is an economic benefit to get the water back working for its citizens. If Cache County consents to be the sponsoring entity for the NRCS project, it will only be the beginning of the process.

Chairman Zilles posed the question – "Then in your opinion this is in the best interests of the water users of Cache County?" Fotheringham responded, "Most definitely."

Vice Chairman White was of the opinion that the county should agree to be the sponsor to get the program going.

The NRCS worked with Washington County on a project and Attorney Swink said they indicated the process was a team effort and were pleased with NRCS. Swink commented this canal project is very important and beneficial to the citizens of Cache County.

Chairman Zilles asked when the public can expect the information to be available on the options? Fotheringham said there will be a draft document in about four weeks. The county may go to the communities and canal companies in the next several weeks with a decision matrix to help identify some of the qualitative issues.

In response to a question from the audience, other options than those now in the works may be received from the public and included in the study processes.

Bronson Smart of NRCS said that some of the items considered in the decision matrix are costs and matters of local importance, such as; how important is irrigation water to the citizens of the county, and how important is the environment to the citizens of the county?

Council member Robison recommended that the agreements and information on the project be posted on the county website as soon as available. Smart concurred.

An audience member asked what will happen to the canal way on Canyon Road where the landslide occurred? Smart said UDOT owns the property and the canal company retains ownership of the canal corridor. Agreements will have to be made between UDOT, the canal company and Logan City to determine the future of that canal way.

**PENDING ACTION**

- Resolution No. 2010-14 – Authorizing Executive to execute NRCS/High Line Canal Improvements Financial Assistance Agreement**

(Attachment 1)

**ACTION: Motion by Council member Buttars to approve Resolution No. 2010-14 – Authorizing Executive to execute NRCS/High Line Canal Improvements Financial Assistance. White seconded the motion. The vote was unanimous, 7-0.**

- Resolution No. 2010-15 – Authorizing Executive to execute NRCS/High Line Canal Improvements Technical Assistance Agreement**

(Attachment 2)

**ACTION: Motion by Council member Buttars to approve Resolution No. 2010-150- Authorizing Executive to execute NRCS/High Line Canal Improvements Technical Assistance Agreement. White seconded the motion. The vote was unanimous, 7-0.**

**OTHER BUSINESS**

- ✓ **Road Tax** – Council member Petersen asked that the road tax be an agenda item for the April 13, 2010 Council meeting.

**ADJOURNMENT**

The Council meeting adjourned at 8:02 p.m.

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**ATTEST:** Jill N. Zollinger  
County Clerk

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**APPROVAL:** Gordon A. Zilles  
Chairman

CACHE COUNTY  
RESOLUTION NO. 2010-14

A RESOLUTION AUTHORIZING THE CACHE COUNTY EXECUTIVE TO EXECUTE THE AGREEMENT WITH NATURAL RESOURCES CONSERVATION SERVICE (NRCS) FOR FINANCIAL ASSISTANCE FOR THE CACHE HIGH LINE CANAL IMPROVEMENTS

The County Council of Cache County, Utah, in regular meeting, lawful notice of which has been given, finds that it is in the best interests of the citizens of Cache County to enter into an Agreement for financial assistance with the Natural Resources Conservation Service (NRCS) for the Cache High Line Canal Improvements.

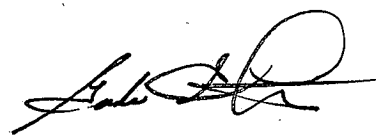
NOW, THEREFORE BE IT RESOLVED that the Cache County Executive is hereby authorized to execute the Natural Resources Conservation Service (NRCS) Agreement for financial assistance for the Cache High Line Canal Improvements.

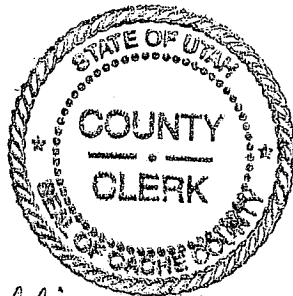
This Resolution shall take effect immediately upon adoption.

DATED this 30 day of March 2010.

CACHE COUNTY COUNCIL

By:

  
Gordon A. Zilles, Chairman



ATTEST:



By: Jill N. Zollinger  
Cache County Clerk

Agreement Number: 68-8D43-10-14  
Fund Code: 10 15F49  
Amount: \$19,350,000.00  
Expiration Date: 9/24/2010

**COOPERATIVE AGREEMENT  
68-8D43-10-14**

between the

**UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE (NRCS)**

and

**CACHE COUNTY, UTAH (County)**

**TITLE: Financial Assistance for Cache County Emergency Watershed Protection Project – Cache County, Utah**

**I. AUTHORITY**

A. Code of Federal Regulations, Title 7: Agriculture, Part 624-Emergency Watershed Protection (EWP), paragraph 624.8(c) authorizes NRCS to enter into a cooperative agreement with a sponsor.

B. For purposes of this agreement, "sponsor" refers to the County and is defined in 7 CFR 624.4(g) as: "Project sponsor means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required."

C. The principle role of NRCS in this project is to oversee the financial assistance support provided by NRCS to the County. As the project sponsor, the County is responsible for all aspects of the project including the design, specifications, construction, inspection, and ongoing operation and maintenance of the project once completed. The County may enter into subagreements or contracts with other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract to perform required tasks or functions as deemed appropriate, including but not limited to securing land rights and/or permits, performing construction oversight, removal or relocation of utilities, project engineering, quality assurance performance reports, or performing operation and maintenance of the project(s) once the construction is completed. The County may also assign responsibility and liability to other individuals, business entities, governmental agencies,

or any other legal entity capable of entering into a contract for any additional costs of the project not covered by the contracts with NRCS or for any other potential task or liability associated with the project.

## II. PURPOSE

A. On July 11, 2009, a landslide occurred that caused loss of life, property damage, and damage to the Logan Northern Canal System. The Logan Northern Canal System delivers irrigation water to over 7,000 acres of agricultural land and communities in Cache County. The purpose of this agreement is to establish the terms, conditions, and responsibilities of both parties in the planning, design, and implementation of a safe functioning project that restores the Logan Northern Canal System to its end function: delivery of irrigation water to every irrigation company shareholder affected by the landslide.

B. This agreement #68-8D43-10-14, is the second of two agreements awarded for the Cache County EWP Project. The first agreement, # 68-8D43-10-13, encompasses technical assistance for the design and specifications, construction administration, inspection services, etc.

C. This second agreement (68-8D43-10-14) describes the terms and conditions governing the NRCS funding (up to 75 percent of allowable construction cost within the established threshold) for the actual *construction phase* of the project. The terms of the second agreement require the County to contribute a minimum .25 percent cost-share of total project on-the-ground construction costs, comprised of cash and/or the value of in-kind labor, materials, and/or equipment. To simplify financial accounting for differing cost-share requirements of technical and construction activities, NRCS determined the award of two agreements was the most efficient approach.

## III. BENEFITS

Relocation of the Logan <sup>Northern</sup> Canal will restore delivery of irrigation water to over 7,000 acres of agricultural land and communities in Cache County, directly benefitting residents of the area and beyond by successful production of agricultural crops.

## IV. ATTACHMENTS TO AGREEMENT

The following attachments are incorporated into the agreement:

Attachment A: Project Area Map

Attachment B: The following Standard Forms submitted by the City:  
SF 424 – Application for Federal Assistance  
SF 424C Budget Information – Construction Programs  
SF 424D Assurances – Construction Programs



Attachment C: Special Provisions for Grants and Cooperative Agreements

Attachment D: NRCS Supplement to OSHA Parts 1910 and 1926

Attachment E: Quarterly Accrual Report format

## V. TERM OF THE AGREEMENT

This agreement is effective on the date of signature by the NRCS State Conservationist and continues in full force and in effect through September 24, 2010. Requests for extension of time must be submitted in writing to the NRCS Project Manager and received by NRCS 60 days in advance of the expiration date. The NRCS Project Manager will review the request and forward it to the NRCS Headquarters Office for consideration. If approved, the agreement will be amended to extend the date.

## VI. CONTACT INFORMATION

<b>CACHE COUNTY</b>	<b>NRCS UTAH</b>
<b>Project Manager</b>	<b>Project Manager</b>
Robert M. Fotheringham Cache County Water Manager 199 North Main St. Logan, UT 84321 Phone: 435-755-1854 Cell: 435-754-5917 Fax: 435-755-1981 Email: <a href="mailto:bfotheringham@cachecounty.org">bfotheringham@cachecounty.org</a>	Bronson Smart NRCS Utah State Conservation Engineer USDA Natural Resources Conservation Service 125 South State St., Room 4402 Salt Lake City UT 84138-1100 Phone: 801-524-4559 Fax: 801-524-4403 Email: <a href="mailto:bronson.smart@ut.usda.gov">bronson.smart@ut.usda.gov</a>
<b>Financial Contact</b>	<b>Administrative Contact</b>
Cameron Jensen Cache County Financial Director 199 North Main St. Logan, UT 84321 Phone: 435-755-1855 Cell: 435-713-5899 Fax: 435-755-1981 Email: <a href="mailto:cameron.jensen@cachecounty.org">cameron.jensen@cachecounty.org</a>	Judy Ousley Grants and Agreements Specialist USDA Natural Resources Conservation Service 125 South State St., Room 4402 Salt Lake City, UT 84138-1100 Phone: 801-524-4553 Fax: 801-524-5059 Email: <a href="mailto:judy.ousley@ut.usda.gov">judy.ousley@ut.usda.gov</a>

## VII. DELIVERABLES AND OBLIGATIONS

### A. Cache County will:

1. **Plan of Work** – Once the design and specifications are completed, the County will submit to the NRCS Project Manager and NRCS Administrative Contact (see “Contact” Section) a Financial Assistance (Construction) Plan of Work (POW). The construction phase of the project, including solicitation for the construction contract, will not occur until the final plan of work, reviewed and acceptable to NRCS, is incorporated into this agreement. The final Plan of Work will include provisions to ensure water is restored to every irrigation company shareholder affected by the landslide. In addition, the plan of work will include:

- Project description and background
- Objectives
- Beneficiaries
- Project approach
- Time schedule
- Budget, including general category cost accounting for NRCS contribution for up to 75% of total construction cost and description and accounting for County 25% of total construction cost cost-share.
- NRCS developed Damage Survey Report (DSR)
- Design and Specifications
- Design report addressing hydrology, hydraulics, and sedimentation, as applicable
- Inspection Plan
- Quality Assurance Plan
- Operations and Maintenance Plan

a. NRCS will review the revised Financial Assistance (Construction) POW and provide comments to the County. The County will review comments, contact the NRCS Project Manager as needed to discuss, and incorporate changes into the Construction POW.

b. Once a final Financial Assistance (Construction) POW acceptable to both NRCS and the County is completed, an amendment to this agreement will be written incorporating the revised, final Financial Assistance POW into the agreement as an attachment.

**Development of the revised Financial Assistance (Construction) POW is the first task to be completed for this agreement. The County is cautioned to refrain from proceeding with construction, including soliciting for a construction contract, until NRCS issues an amendment incorporating the revised, final Construction**

**POW into the agreement. REQUESTS FOR REIMBURSEMENT FOR THIS AGREEMENT SUBMITTED FOR WORK PERFORMED PRIOR TO THE AGREEMENT EFFECTIVE DATE OR FOR ON-THE-GROUND CONSTRUCTION WORK PERFORMED PRIOR TO SUBMISSION AND ACCEPTANCE OF THE FINAL POW BY NRCS WILL BE DENIED BY NRCS.**

c. The County intends to enter into a subagreement or contract with the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, to perform required tasks or functions described below as deemed appropriate, such as securing land rights and/or permits, performing construction oversight, or performing operation and maintenance of the project(s) once the construction is completed. The County may enter into subagreements or contracts with other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract to perform required tasks or functions as deemed appropriate, including but not limited to securing land rights and/or permits, performing construction oversight, removal or relocation of utilities, project engineering, quality assurance performance reports, or performing operation and maintenance of the project(s) once the construction is completed. The County may also assign responsibility and liability to other individuals, business entities, government agencies, or any other legal entity capable of entering into a contract for any additional costs of the project not covered by the contracts with NRCS or for any other potential task or liability associated with the project.

d. The County will ensure that subagreements with others are in compliance with 7 CFR 3016.37, requiring subrecipients to comply with applicable federal regulations.

2. **Cost-share** - Contribute a minimum 25 percent of total allowable project construction costs in County funds and/or value of in-kind labor, materials, or equipment. The County will have a process in place to directly charge County construction costs dedicated to this project (salaries and benefits of County employees performing construction, use of County-owned equipment, etc.) and will have supporting documentation on file. The County is allowed and anticipates municipalities and canal companies to cover the 25 percent cost share of the project construction costs through loans or other in-kind contributions.

a. NRCS contribution will not exceed 75 percent of total allowable project construction costs up to a maximum of \$19,350,000.00. Estimated project cost is:

**NRCS (up to 75% and not to exceed): \$19,350,000.00**

**County required cost share (25%): 6,450,000.00**

**Total project cost: \$25,800,000.00**

b. Upon completion of the project, NRCS and the County will meet and, based on documentation presented, mutually determine the total construction project cost and the cost to each party.

c. Once the project is completed and all requests for reimbursement submitted, excess funding remaining in the agreement (over and above the NRCS commitment of up to 75% of actual construction cost and within the not-to-exceed amount) will be deobligated from the agreement.

d. The County is prohibited from using other Federal funding as a part of their cost-share requirement.

### 3. Pre-Construction

a. **Notification** Prior to beginning on-the-ground construction work, the County will contact the NRCS Project Manager to confirm that all requirements relative to the following items have been completed by the County and are acceptable to NRCS:

(1) Project design, construction drawings, and specifications

(2) Environmental compliance, including cultural resources

(3) Federal, State, and local permits. **All costs relative to obtaining required permits will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County.**

(4) Design report addressing items pertaining to: geology, geotechnical, structural, hydrology, hydraulics, and sedimentation

(5) Real property rights – Form NRCS-ADS-78 and attorney's opinion – **NOTE: The ADS-78 and attorney's opinion must be submitted by the County and accepted by NRCS prior to start of construction. All costs relative to obtaining property rights will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County.**

(6) Project inspection plan

(7) O&M plan completed and acceptable to NRCS

(8) Inspection/Quality Assurance Plan completed

b. **Pre-Construction Photos**. The County will photograph the sites prior to implementation of construction. These photos will be included in the photo-documentation required in paragraph 7 of this section. The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, or another entity under contract with them will secure the foregoing photos.

4. **Safety** - All contractors on NRCS assisted projects are required to perform their work in accordance with OSHA regulations, NRCS Supplement to OSHA Parts 1910 and 1926 (incorporated into the agreement as an attachment) and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). The County is responsible for periodically checking to ensure the contractor is in compliance. The County will notify NRCS of all serious accidents and/or injuries that occur on the NRCS assisted project.

5. **Inspection, Quality Control and Assurance** - Perform all inspections and quality assurance/control of construction work and materials to verify that County employees or the County's construction contractor is performing work in accordance with plans, specifications, design, and contract clauses. Inspection 100 percent of the time is required when work is being performed through award of a contract by the County.

**Diligent oversight leading to successful completion of the project is the County's responsibility. Contracting with an engineering firm for inspection services does not relieve the County of the responsibility of diligent contract oversight to ensure inspections are being properly performed within the required timeframes.**

6. **Weekly Progress Reports** - Once a week, throughout the duration of construction activities, digital images documenting construction progress will be submitted to the NRCS Project Manager and NRCS Administrative Contact identified in the "Contact" section of the agreement. **Photos will be accompanied by a narrative progress report documenting construction progress during the week.** Submission via e-mail is acceptable.

7. **Digital Photographic Diary of Construction Activities** -

a. Upon completion of the project, the County will provide photographs in digital format (.jpeg) on a CD to both the NRCS Project Manager and Administrative Contact. The photographic documentation should be a complete diary of activities from preconstruction through final inspection.

b. A set of final photos should be made of all completed project sites and should be taken from similar vantage points as the original pre-construction photos. Photos should be taken daily of construction activities and should show construction methods, subsurface materials encountered, construction problems as well as problem solutions, and any damages incurred during construction either natural or manmade.

8. **Site Visits** - The County acknowledges that NRCS representatives will conduct random site visits to the construction site. The purpose of the visits will be to observe construction activities to ensure they are in compliance with Federal laws and regulations and the terms of the agreement (reference paragraph VII.B.2). **It is important to note that these are site visits only and not inspections. If NRCS observes problematic practices during a site visit, the County will be notified and expected to immediately address and resolve the concern. Failure of the County to act may result in termination of the agreement. The County is responsible for managing their contracts and NRCS expects that scheduled and random site visits to the construction site(s) will be made by County officials.**

9. **Notification of Significant Events** - Events may occur that have significant impact upon the project. In such cases, the County must inform the NRCS Project Manager either (1) verbally, if the issue is time-sensitive, with a written notice documenting the conversation submitted to NRCS within 24 hours of occurrence; or (2) if the issue is not time-sensitive, in writing, as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions that will materially impair the County's ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

b. Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

10. **Inspection for Final Acceptance** - A final inspection will be scheduled by the County when all construction has been completed, the County's Architect/Engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed. The final inspection will be made by representatives of the County, the Architect/Engineer and the contractor(s). The NRCS Project Manager (see "Contact" Section) must be given advance notice of the final inspection date so that an NRCS representative may participate, at the option of NRCS.

11. **As-built Drawings** - Submit two copies of the final as-built drawings to the NRCS Project Manager. **The as-built drawings will have the seal of the licensed professional engineer responsible for construction oversight along with**

a statement signed by the responsible licensed professional engineer certifying: "To the best of my professional knowledge, judgment, and belief this practice is installed in accordance with the plans and specifications and meets NRCS standards."

12. **Perform all construction in compliance with:**

- a. NRCS standards and specifications.
- b. All required local, State, and Federal permits. The County is solely responsible for obtaining all permits.
- c. All terms and conditions herein whether included in full text or by reference. Section VIII, Provisions and Regulations, of the agreement lists applicable regulations. Links to regulations are located at the following website: [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)
- d. Information and assurances provided in Standard Forms (SF) 424, 424C and 424D, incorporated into this agreement as Attachment B;
- e. Special Provisions for Grants and Cooperative Agreements, incorporated into this agreement as Attachment C.

13. **Additional Costs** - Accept all financial and other responsibility for excess costs resulting from failure of the County to obtain, or delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures. The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, or another entity under contract with them to cover excess costs resulting from failure of the County to obtain, or delay in obtaining, adequate land and water rights, permits, and licenses needed for the emergency watershed protection measures.

14. **Engineering Services** - Agree to employ competent and professional engineering services so as to insure the soundness and adequacy of engineering services. NRCS requires that NRCS criteria and standards be followed insofar as they are applicable, but the County is expected to make independent decisions.

15. **Quality Assurance** - Agree to employ competent and professional individuals to perform engineering and quality assurance functions that will accept liability for any damage and any additional construction costs to others, to correct problems arising during or after construction resulting from deficient engineering and/or construction services.

16. **Performance Reports** - In accordance with 7 CFR 3015.92, on-site technical inspection conducted by the County will be used to monitor project progress along with submissions required by paragraphs 6 and 7 above.

17. **Requesting Reimbursement and Financial Reporting** - Comply with the following financial requirements:

a. Agree that total reimbursement from NRCS for this agreement will not exceed \$19,350,000.00.

b. The County will request reimbursement by submitting to the NRCS Project Manager (see "Contact" Section) at least quarterly and no more frequently than monthly:

(1). An original, signed Standard Form (SF) 270, Request for Advance or Reimbursement. (SF-270 form is accessible at: <http://www.ut.nrcs.usda.gov/technical/grantsagreements.html>) and

(2). If requested by NRCS, on a separate page attached to the SF-270, a general breakout of costs incurred during the reporting period and brief written description of work accomplished (materials purchased, services received, etc.) or descriptive invoices.

(a). The brief description of work accomplished during the reporting period or descriptive invoice must be in sufficient detail to allow NRCS to make a determination that funds being requested are reasonable relative to work actually accomplished.

(b) In accordance with 7 CFR 3015.102(b)(3), NRCS will not use the percentage-of-completion method to pay its construction agreements. The County may use that method to pay its construction contractor, but if it does, NRCS payments to the recipient will nevertheless be based on the County's actual rate of disbursements.

c. Costs submitted for reimbursement should match the County proposed budget.

d. If notified by NRCS, submit to the NRCS Project Manager (see "Contact" Section) an SF-425, Federal Financial Report, upon completion of the agreement. Typically, the SF-270 forms include the required information and an SF-425 form may not be required.

18. **Quarterly Accrual Report** - NRCS also requires quarterly accrual information. An accrual is the value of the work you have performed or will perform in cooperation with the NRCS but for which you have:

a. Not yet submitted an SF-270 or



- b. Submitted an SF-270 but have not received payment.

Please complete the Accrual Information form (see Attachment E to this agreement) and submit it to the address below no later than 15 days prior to the end of the quarter (submit by March 15, June 15, September 15, and December 15). The U.S. Congress relies on audits of financial statements, including accrual information, to determine future funding amounts for NRCS on-going and new programs.

**Submit SF-270 and Accrual Information Form to:**

Judy Ousley  
USDA/Natural Resources Conservation Service  
125 South State Street, Room 4402  
Salt Lake City, UT 84138-1100

19. **Records Retention** - The County is responsible for keeping all records relative to the project, including all documentation of procurements, receipts, and other accounting information. Retain all records relative to this agreement in accordance with 7 CFR 3016.42 or longer in accordance with County policy.

20. **Audit Requirements** - Comply with the Single Audit Act requiring all non-Federal entities that expend \$500,000 or more of Federal awards in a year to obtain an annual audit.

21. **Required Posting** - Recipients of Federally-Assisted Programs are required to display the enclosed "And Justice For All" (AD 475C) poster in their facilities where it can be viewed by customers. It may be downloaded from the following website: <http://www.fns.usda.gov/cr/justice-translations/475C.pdf>

**B. NRCS will:**

1. **Funding** - Contribute up to \$19,350,000.00 to reimburse the County for up to 75 percent of allowable project construction costs.

2. **Government Representative** - Designate an NRCS engineer as the government representative for the project. The government representative will be on-site during construction in an almost full-time capacity to observe construction. The presence of the government representative does not relieve the County of the responsibility of oversight of their construction contractor nor the requirement to provide full-time construction inspection.

3. **Consultation** - As requested, consult with the County on technical issues and provide advice and direction on administrative matters. Provide timely review and comments to the County on the draft POW to be submitted by the County.

4. **Reimbursement** - Upon receipt of a properly completed SF-270, Request for Advance or Reimbursement, and proper supporting documentation, assess description of work completed relative to funds requested and, if request is reasonable, approve and process payment to the County. In the event there are questions regarding the SF-270 and supporting documentation, NRCS will contact the County in a timely manner to resolve concerns.

5. **Process Amendments** - Develop and process amendments to the agreement as needed.

**C. It is mutually agreed:**

1. If the County desires to increase the level of protection over and above that described in the NRCS Damage Survey Report (DSR), the County will be responsible for paying 100 percent of the costs of any unapproved and unfunded upgrade or additional work.

2. NRCS cannot reimburse the County for construction work performed prior to award date of this agreement (date of signature by NRCS State Conservationist) and acceptance by NRCS of the County's final POW.

3. The County is responsible for 100 percent of the costs incurred in obtaining permits and property rights, and for the operation and maintenance of the completed project. The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, to secure the foregoing permits and property rights. The County may further assign the responsibility of the operation and maintenance of the completed project to a third party, which may include the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company.

4. Should inconsistencies arise between language in the agreement and the POW, the language in the agreement takes precedence.

**VIII. PROVISIONS AND REGULATIONS**

**A. Administrative Provisions:**

This agreement, and other arrangements at any tier under this agreement, shall be governed by the following regulations, appropriate to the type of organization receiving the award, relative to tier, as are in effect on the effective date of award and hereby incorporated by reference: (Internet links for the full text of Code of Federal Regulations (CFR) references may be found at [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)).

1. 7 CFR Part 3015, "Uniform Federal Assistance Regulations"

2. 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

3. 7 CFR Part 3017, "Governmentwide Debarment and Suspension (Nonprocurement)"

4. 7 CFR Part 3018, "New Restrictions on Lobbying"

5. 7 CFR Part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations"

6. 7 CFR 3021, "Government wide Requirements for Drug-Free Workplace (Financial Assistance)"

7. 7 CFR Part 3052, "Audits of Institutions of Higher Education and Other Non-Profit Institutions"

8. 2 CFR Part 215, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations (OMB Circular A-110)"

9. Treasury Circular 1075, Withdrawal of Cash from the Treasury for Advances under Federal and Other Programs

B. Federal Cost Principles:

Allowable project costs shall be determined in accordance with the authorizing statute, the purpose of the agreement award, and by the following Federal cost principles that are applicable to the type of organization receiving the award, regardless of tier, as are in effect on the effective date of award and hereby incorporated by reference: (The full text for OMB Circulars may be found at [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)).

1. 2 CFR Part 220, "Cost Principles for Institutions of Higher Education"

2. 2 CFR Part 225, "Cost Principles for State and Local Governments" (including Indian Tribal governments)

3. 2 CFR Part 230, "Cost Principles for Nonprofit Organizations" other than institutions of higher education

4. Federal Acquisition Regulations, Part 31, (<http://www.arnet.gov/far>) "Contract Cost Principles and Procedures"

C. The County will conduct all procurement activities in a manner that provides, to the maximum extent possible, free and open competition.

D. The County is responsible, without recourse to NRCS or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the County and others to carry out approved project activities. Matters concerning violation of law should be referred to the federal, state, or local authority having proper jurisdiction.

E. The Federal Travel Regulations will serve as a guideline for any travel performed under this agreement.

## IX. AMENDMENTS, CHANGES, AND TERMINATION

A. This agreement may be amended in writing by mutual consent of the parties. NRCS is responsible for writing the amendment, obtaining signatures, and distributing copies to the County. If an amendment is written that implements only internal administrative changes, the amendment may be issued unilaterally by NRCS. The County will receive a copy of all amendments.

B. Requests from the County to the NRCS Project Manager to extend the term of the agreement must be submitted no less than 60 days prior to the expiration date of the agreement and include a justification, in writing, documenting the need for the extension. NRCS expects that the project will be completed within the established term of the agreement. Requests for time extensions require the approval of the NRCS National Headquarters Office and are only approved when a sound, defensible justification is provided.

C. Terms of enforcement and termination are in accordance with 7 CFR 3016.43-44 including:

### ***“§ 3016.43 Enforcement.***

*(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:*

*(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,*

*(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,*

*(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,*

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §3016.35).

#### **§ 3016.44 Termination for convenience.**

Except as provided in §3016.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

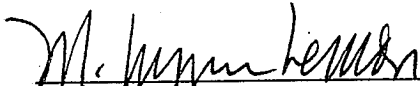
(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §3016.43 or paragraph (a) of this section."

X. APPROVAL

The United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), and Cache County execute this agreement as of the date of final signature by USDA/NRCS. The signatories below represent that each is duly authorized to bind their respective organization to the terms of this agreement. By signing this agreement the recipient assures the USDA that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

CACHE COUNTY, UTAH

U. S. DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE

 4/2/10  
M. Lynn Lemon Date  
County Executive/Surveyor

\_\_\_\_\_  
Sylvia A. Gillen Date  
State Conservationist

CACHE COUNTY  
RESOLUTION NO. 2010-15

A RESOLUTION AUTHORIZING THE CACHE COUNTY EXECUTIVE TO EXECUTE THE AGREEMENT WITH NATURAL RESOURCES CONSERVATION SERVICE (NRCS) FOR TECHNICAL ASSISTANCE FOR THE CACHE HIGH LINE CANAL IMPROVEMENTS

The County Council of Cache County, Utah, in regular meeting, lawful notice of which has been given, finds that it is in the best interests of the citizens of Cache County to enter into an Agreement for technical assistance with the Natural Resources Conservation Service (NRCS) for the Cache High Line Canal Improvements.

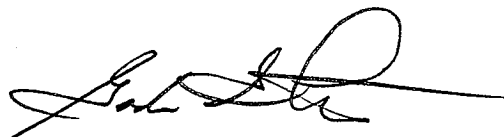
NOW, THEREFORE BE IT RESOLVED that the Cache County Executive is hereby authorized to execute the Natural Resources Conservation Service (NRCS) Agreement for technical assistance for the Cache High Line Canal Improvements.

This Resolution shall take effect immediately upon adoption.

DATED this 30 day of March 2010.

CACHE COUNTY COUNCIL



By:   
Gordon A. Zilles, Chairman

ATTEST:



By: Jill N. Zollinger  
Cache County Clerk

Agreement Number: 68-8D43-10-13  
Fund Code: 10 15T49  
Funding Amount: \$1,590,000.00  
Expiration date: 09/24/2010

**COOPERATIVE AGREEMENT  
68-8D43-10-13**

between the

**UNITED STATES DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE (NRCS)**

and

**CACHE COUNTY, UTAH (County)**

**PROJECT: Technical Assistance for the Cache County Emergency Watershed Protection Project – Cache County, Utah**

**I. AUTHORITY:**

A. Code of Federal Regulations, Title 7: Agriculture, Part 624-Emergency Watershed Protection, paragraph 624.8(c) authorizes the Natural Resources Conservation Service (NRCS) to enter into a cooperative agreement with a sponsor.

B. For purposes of this agreement, "sponsor" refers to Cache County, Utah, and is defined in 7 CFR 624.4(g) as: "Project sponsor means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required."

C. The principal role of NRCS in this project is to oversee the financial assistance support provided by NRCS to Cache County. As project owners, the County is responsible for all aspects of the project, including the design, specifications, construction, quality control and assurance, inspection and ongoing operation and maintenance of the project once it is completed. The County may enter into subagreements or contracts with other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract to perform required tasks or functions as deemed appropriate, including but not limited to securing land rights and/or permits, performing construction oversight, removal or relocation of utilities, project engineering, quality assurance performance reports, or performing operation and maintenance of the project(s) once the construction is completed. The County may also assign responsibility and liability to other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract for any additional costs of the project not covered by the contracts with NRCS or for any other potential task or liability associated with the project.



## II. PURPOSE

A. On July 11, 2009 a landslide occurred that caused loss of life, property damage, and damage to the Logan Northern Canal System. The Logan Northern Canal System delivers irrigation water to over 7,000 acres of agricultural land and communities in Cache County. The purpose of this agreement is to establish the terms, conditions, and responsibilities of both parties in the planning, design, and implementation of a safe functioning project that restores the Logan Northern Canal System to its end function: delivery of irrigation water to every irrigation company shareholder affected by the landslide.

B. The NRCS EWP Program may provide both technical and financial assistance to a sponsor. This agreement encompasses only the technical assistance portion of the project. NRCS intends to issue a second agreement for the financial assistance (actual construction phase) of the project.

1. NRCS technical assistance funding of \$1,590,000.00 is available for allowable costs of services such as:

- Administrative costs incurred in the solicitation, evaluation, award, and management of the construction contract(s).
- Project design, construction drawings and specifications
- Design report addressing items pertaining to: geology, geotechnical, structural, hydrology, hydraulics, and sedimentation as applicable
- Development of a Quality Assurance Plan
- Development of an Operations and Maintenance Plan
- Project Inspection Plan

2. NRCS funding obligated for this agreement is not for costs incurred in the actual on-the-ground construction; those costs will be addressed in a separate cooperative agreement, NRCS number 68-8D43-10-14.

3. **In acceptance of this agreement, the County acknowledges that NRCS funding may be insufficient to cover all technical assistance costs and the County may need to contribute resources toward completion of the technical assistance tasks.**

**NOTE:** A cost-share contribution is not required from the County for activities conducted under the terms of this technical assistance agreement. **However, under the terms of the financial assistance agreement to be awarded by NRCS to the County for construction costs, the NRCS cost-share contribution is limited to a maximum of 75% of total project costs subject to a maximum funding amount. This amount will be identified in the financial assistance agreement.**

## III. BENEFITS

Relocation of the Logan Canal will restore delivery of irrigation water to over 7,000 acres of agricultural land and communities in Cache County, directly benefitting residents of the area and beyond by successful production of agricultural crops.

#### **IV. ATTACHMENTS TO AGREEMENT**

The following attachments are incorporated into the agreement:

Attachment A: Project Area Map

Attachment B: The following Standard Forms submitted by the County:  
SF 424 – Application for Federal Assistance

SF 424C Budget Information Construction Programs  
SF 424D Assurances – Construction Programs

Attachment C: Special Provisions for Grants and Cooperative Agreements

Attachment D: Performance Progress Report – SF-PPR (OMB 0970-0334)

Attachment E: Quarterly Accrual Report format

Attachment F: 7 CFR Part 624, Emergency Watershed Protection Program

Attachment G: 7 CFR 3016.36, Procurement

Attachment H: Required Contract Clauses and Bonding Requirements

#### **V. TERM OF THE AGREEMENT**

This agreement is effective on the date of signature by the NRCS State Conservationist and continues in full force and in effect through September 24, 2010. Requests for extension of time must be submitted in writing to the NRCS Project Manager and received by NRCS 60 days in advance of the expiration date. The NRCS Project Manager will review the request and forward it to the NRCS Headquarters Office for consideration. If approved, the agreement will be amended to extend the date.

**VI. CONTACT INFORMATION**

<b>CACHE COUNTY</b>	<b>NRCS UTAH</b>
<b>Cache County Project Manager</b>	<b>NRCS Project Manager</b>
<b>Robert M. Fotheringham</b> Cache County Water Manager	<b>Bronson Smart</b> NRCS Utah State Conservation Engineer
199 North Main St.	USDA Natural Resources Conservation Service
Logan, UT 84321	125 South State St., Room 4402
	Salt Lake City, UT 84138-1100
Phone: 435-755-1854	Phone: 801-524-4559
Cell: 435-754-5917	Fax: 801-524-4403
Fax: 435-755-1981	
Email: <a href="mailto:bfotheringham@cachecounty.org">bfotheringham@cachecounty.org</a>	Email: <a href="mailto:bronson.smart@ut.usda.gov">bronson.smart@ut.usda.gov</a>

<b>Cache County Financial Contact</b>	<b>NRCS Administrative Contact</b>
<b>Cameron Jensen</b> Cache County Financial Director	<b>Judy Ousley</b> Grants and Agreements Specialist
199 North Main St.	USDA Natural Resources Conservation Service
Logan, UT 84321	125 South State Street, Room 4402
	Salt Lake City UT 84138-1100
Phone: 435-755-1855	Phone: 801-524-4553
Cell: 435-713-5899	Fax: 801-524-5059
Fax: 435-755-1981	
Email: <a href="mailto:cameron.iensen@cachecounty.org">cameron.iensen@cachecounty.org</a>	Email: <a href="mailto:judy.ousley@ut.usda.gov">judy.ousley@ut.usda.gov</a>

**VII. RESPONSIBILITIES AND OBLIGATIONS**

**A. Cache County will:**

1. **Plan of Work** - Complete all tasks described in the final plan of work, to be developed and incorporated into agreement 68-8D43-10-14 (agreement between the County and NRCS) as required under the terms of that agreement.

a. The construction phase of the project, including solicitation for the construction contract, will not occur until the final plan of work, reviewed and acceptable to NRCS, is incorporated into agreement 68-8D43-10-14. The final Plan of Work will include

provisions to ensure water is restored to every irrigation company shareholder affected by the landslide. In addition, the plan of work will include:

- Project description and background
- Objectives
- Beneficiaries
- Project approach
- Time schedule
- Budget, including general category cost accounting for NRCS contribution for up to 75% of total construction cost and description and accounting for County 25% of total construction cost cost-share.
- NRCS developed Damage Survey Report (DSR)
- Design and Specifications
- Design report addressing hydrology, hydraulics, and sedimentation, as applicable
- Inspection Plan
- Quality Assurance Plan
- Operations and Maintenance Plan

b. The County intends to enter into a subagreement or contract with the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, to perform required tasks or functions as deemed appropriate, such as securing land rights and/or permits, performing construction oversight, or performing operation and maintenance of the project(s) once the construction is completed. The County may enter into subagreements or contracts with other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract to perform required tasks or functions as deemed appropriate, including but not limited to securing land rights and/or permits, performing construction oversight, removal or relocation of utilities, project engineering, quality assurance performance reports, or performing operation and maintenance of the project(s) once the construction is completed. The County may also assign responsibility and liability to other individuals, business entities, governmental agencies, or any other legal entity capable of entering into a contract for any additional costs of the project not covered by the cooperative agreements with NRCS or for any other potential task or liability associated with the project.

c. The County will ensure that subagreements with others are in compliance with 7 CFR 3016.37, requiring subrecipients to comply with applicable federal regulations.

**d. Development of the Financial Assistance (Construction) POW is the first task to be completed for this agreement. The County is cautioned to refrain from proceeding with construction, including soliciting for a construction contract, until NRCS issues an amendment incorporating the revised, final Construction POW into the agreement. REQUESTS FOR REIMBURSEMENT FOR THIS AGREEMENT SUBMITTED FOR WORK PERFORMED PRIOR TO THE AGREEMENT EFFECTIVE DATE**

**OR FOR ON-THE-GROUND CONSTRUCTION WORK PERFORMED PRIOR TO SUBMISSION AND ACCEPTANCE OF THE FINAL POW BY NRCS WILL BE DENIED BY NRCS.**

2. **Regulations** Complete the project in compliance with:

- a. All required Federal, State, and local permits.
- b. All terms and conditions herein whether included in full text or by reference. Section IX. of the agreement lists applicable regulations. Links to regulations are located at the following website:  
[http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)
- c. Information and assurances provided in Standard Forms (SF) 424, 424C and 424D, incorporated into this agreement as Attachment B.
- d. Special Provisions for Grants and Cooperative Agreements, incorporated into this agreement as Attachment C.
- e. Regulations and guidance provided for the following attachments:
  - Attachment F: 7 CFR Part 624, Emergency Watershed Protection Program
  - Attachment G: 7 CFR 3016.36, Procurement
  - Attachment H: Required Contract Clauses and Bonding Requirements

3. **Property Rights** – Secure property rights. As soon as possible, and before commencement of any on-the-ground construction, the County will submit a completed ADS-78 form, Assurances Relating to Real Property Acquisition, to the NRCS Project Manager. An attorney's opinion must be attached to the form certifying an examination of the real property instruments and files was made and found to provide adequate land title, right, permission and authority for the purpose(s) of the project. **All costs relative to obtaining property rights will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County.** The County anticipates the Cache Highline Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, will secure the foregoing property rights.

4. **Permits** - Ensure that all applicable Federal, State, and local permits are obtained and work performed in accordance with permit requirements. **All costs relative to obtaining required permits will be borne by the County. In accordance with EWP program regulations, NRCS cannot pay for these costs nor can they be counted as a cost-share contribution by the County.** The County anticipates the Cache Highline

Association and/or their counterparts Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, will secure the foregoing permits.

5. **Responsibility for Additional Costs** –

a. In acceptance of this agreement, the County acknowledges that NRCS funding may be insufficient to cover all technical assistance costs and the County may need to contribute resources toward completion of the technical assistance tasks.

b. Additionally, the County agrees to accept all financial and other responsibility for additional costs resulting from failure of the County to obtain, or delay in obtaining, adequate land and water rights, permits, and licenses needed for the project.

c. The County anticipates assigning responsibility and liability to the Cache Highline Association and/or their counterparts the Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, and/or other municipalities for any additional costs of the project not covered by the cooperative agreements.

6. **Removal or Relocation of Utilities** - Arrange and pay for any necessary location, removal, or relocation of utilities; **EWP program regulations do not allow NRCS to reimburse the County or otherwise pay for any such costs nor do the costs qualify as a cost-share contribution.** The County anticipates assigning responsibility and liability to the Cache Highline Association and/or their counterparts the Logan Northern Canal Company and the Logan, Hyde Park and Smithfield Canal Company, and/or other municipalities for the removal or relocation of utilities.

7. **Project Engineering** –

a. Ensure individuals and/or organizations providing engineering services employ a licensed professional engineer who directly supervises the staff performing the services or who serves as a Principal.

b. Ensure any designs, drawings and specifications submitted for review to NRCS State Conservation Engineer, Bronson Smart, meet NRCS standards and are sealed by a licensed engineer. The documents will be certified as follows: **“To the best of my professional knowledge, judgment and belief, these plans (or this report, etc.) meet applicable NRCS standards.”** This certification statement will be signed and sealed by the licensed professional engineer. The Utah NRCS Engineering website address is: <http://www.ut.nrcs.usda.gov/technical/engineering/index.html>. Contact the NRCS State Engineer if you have difficulty accessing the site. Contact information:

Bronson Smart  
USDA/NRCS Utah State Conservation Engineer  
125 South State St., Room 4402  
Salt Lake City, UT 84138  
Phone: 801-524-4559  
Cell: 801-710-5387  
Email: [bronson.smart@ut.usda.gov](mailto:bronson.smart@ut.usda.gov)

c. Agree that NRCS engineering staff will perform only a functional review of the design and specifications. A functional review shall consist of the following (as defined in NRCS National Engineering Manual (NEM) 505.03(b)(3). :

- (1) Achieves the objectives of the plan and program(s);
- (2) Meets the criteria in the applicable practice standards;
- (3) Complies with the applicable State and Federal programs;
- (4) Includes a design report addressing hydrology, hydraulics, and sedimentation, as applicable;
- (5) Includes an Inspection Plan and Operation and Maintenance Plan; and,
- (6) Does not require a technical review as defined in NEM 511.05.

NRCS shall provide feedback in writing to the County if items of concern are discovered in the functional review or if it is acceptable as is. The NEM website is:  
<http://www.info.usda.gov/CED/ftp/CED/NEM.html>.

**NOTE: Designs and/or specifications that, upon cursory review by NRCS, appear to be unacceptable will be returned to the County for revision without further review by NRCS. The County bears the responsibility for ensuring that contracted architectural and engineering firms possess the skills required to successfully and efficiently perform the project work and that payment is made only for work performed in producing acceptable products.**

d. Agree to employ competent and professional engineering services so as to insure the soundness and adequacy of all engineering services. NRCS requires that NRCS criteria and standards be followed insofar as they are applicable, but the County is expected to make independent decisions.

e. Agree to employ competent and professional individuals to perform engineering and quality assurance functions that will accept liability for any damage and any additional construction costs to others, to correct problems arising during or after construction resulting from deficient engineering and/or construction services.

f. Obtain NRCS concurrence, in writing, for any deviations from the certified design. Every attempt will be made to contact NRCS for verbal concurrence of minor deviations and corrections that become necessary during construction; however, construction should not be delayed to await approval **unless there is reasonable doubt on the part of the County that the change will be unacceptable to NRCS. All minor changes and corrections, regardless of whether NRCS was verbally contacted or not, will be documented by the County engineer in writing and submitted to the NRCS Project Manager and Administrative Contact within 24 hours of occurrence.**

g. As-built Drawings. Submit two copies of the final as-built drawings to the NRCS Project Manager. **The as-built drawings will have the seal of the licensed professional engineer responsible for construction oversight along with a statement signed by the responsible licensed professional engineer certifying: "To the best of**

my professional knowledge, judgment, and belief this practice is installed in accordance with the plans and specifications and meets NRCS standards.”

8. **Quarterly Performance Report** Submit to the NRCS Project Manager and NRCS Administrative Contact, a quarterly performance report (reference “Contacts” section of the agreement).

a. The reporting period for the performance report is based on a calendar year quarter or portion thereof and the report is due 30 calendar days following the end of the quarter. The performance report will be submitted on SF-PPR form, “Performance Progress Report” (see Attachment D). The performance narrative in block 10 of the form will include, as applicable:

(1) A summary of project progress from beginning of project up to the end of the reporting period.

(2) Detailed description of project progress during the reporting period. Include tasks from your plan of work that are partially or fully completed. Report on meetings held and decisions made. Describe any problems encountered and how they were resolved. If goals were not met, explain why. Address changes to work schedule, why they occurred and how the changes impact project completion. If significant changes to the work schedule have occurred, submit a revised schedule of work.

(3) Describe successes achieved.

(4) Quantify results when possible. Provide an overview of expenditures by budget category. Report on reimbursements received for the reporting period.

(5) Describe work to be completed during the next reporting period, any anticipated problems, and any opportunities for early project completion or cost-savings.

**NOTE:** Once actual construction has begun, the weekly construction progress report required under the terms of the financial assistance agreement number, 68-8D43-10-14, will suffice as fulfilling the performance report requirements for this agreement.

b. Events may occur that have significant impact upon the project. In such cases, the County must inform the NRCS Project Manager either (1) verbally, if the issue is time-sensitive, with a written notice documenting the conversation submitted to NRCS within 24 hours of occurrence; or (2) if the issue is not time-sensitive, in writing, as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the County’s ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.



(2) Favorable developments which enable meeting time schedules and objectives sooner or for less cost than anticipated or producing more beneficial results than originally planned.

9. **Requesting Reimbursement and Financial Reporting** - Comply with the following financial requirements:

a. Agree that total reimbursement from NRCS for this agreement will not exceed \$1,590,000.00 unless amended to add funding.

b. The County will request reimbursement by submitting to the NRCS Project Manager (see "Contact" Section) at least quarterly and no more frequently than monthly:

(1) An original, signed Standard Form (SF) 270, Request for Advance or Reimbursement. (SF-270 form is accessible at: [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)) and

(2) If requested by NRCS, on a separate page attached to the SF-270, a general breakout of costs incurred during the reporting period and brief written description of work accomplished (materials purchased, services received, etc.) or descriptive invoices.

(a) The brief description of work accomplished during the reporting period or descriptive invoice must be in sufficient detail to allow NRCS to make a determination that funds being requested are reasonable relative to work actually accomplished.

(b) In accordance with 7 CFR 3015.102(b)(3), NRCS will not use the percentage-of-completion method to pay its construction agreements. The County may use that method to pay its construction contractor, but if it does, NRCS payments to the recipient will nevertheless be based on the County's actual rate of disbursements.

c. Costs submitted for reimbursement should substantially match the County proposed budget. NRCS will consider approving shifting funds from one category to another upon written request from the County.

d. If notified by NRCS, submit to the NRCS Project Manager (see "Contact" Section) an SF-425, Federal Financial Report, upon completion of the agreement. Typically, the SF-270 forms include the required information and an SF-425 form will not be required.

e. All non-Federal entities that expend \$500,000.00 or more of Federal awards in a year are required to have an annual audit performed in accordance with the Single Audit Act.

10. **Quarterly Accrual Report** - NRCS also requires quarterly accrual information. An accrual is the value of the work you have performed or will perform in cooperation with the NRCS but for which you have:

- a. Not yet submitted an SF-270 or
- b. Submitted an SF-270 but have not yet received payment.

Please complete the Accrual Information form (see Attachment E) and submit it to the address below no later than 15 days prior to the end of the quarter (submit by March 15, June 15, September 15, and December 15). The U.S. Congress relies on audits of financial statements, including accrual information, to determine future funding amounts for NRCS on-going and new programs.

**Submit SF-270 and Accrual Information Form to:**

Judy Ousley  
USDA/Natural Resources Conservation Service.  
125 South State Street, Room 4402  
Salt Lake City UT 84138-1100

11. **Records Retention** - The County is responsible for keeping all records relative to the project, including all documentation of procurements, receipts, and other accounting information. Retain all records relative to this agreement in accordance with 7 CFR 3016.42 or longer in accordance with County policy. Retention period is typically three years.

12. **Required Posting** - Recipients of Federally-Assisted Programs are required to display the enclosed "And Justice For All" (AD 475C) poster in their facilities where it can be viewed by customers. It may be downloaded from the following website: <http://www.fns.usda.gov/cr/justice-translations/475C.pdf>

**B. NRCS will:**

1. Contribute up to \$1,590,000.00 to be used by the County to complete technical assistance work in accordance with the County's Plan of Work, reviewed and accepted by NRCS and incorporated into agreement 68-8D43-10-14. Additional NRCS TA funding may be added to the agreement through award of an amendment.
2. Submit to the County the final, signed, Damage Survey Report (DSR) within 30 days of award of the agreement.
3. Complete all necessary NEPA and cultural resources documentation. Notify the County if there are actions the County needs to carry out to ensure compliance with decisions rendered.
4. Provide technical assistance to the County. An NRCS engineer will be designated as the government representative for the project and will be available to assist the County throughout the project.

5. Complete timely review of all submittals by the County.

6. Upon receipt of a properly completed SF-270, Request for Advance or Reimbursement, and requested proper supporting documentation, assess description of work completed relative to allowable funds requested and, if request is reasonable, approve and process payment to the County. In the event there are questions regarding the SF-270 and supporting documentation, NRCS will contact the County in a timely manner to resolve concerns.

#### **VIII. IT IS MUTUALLY AGREED:**

A. That NRCS funding available for project technical services identified in this agreement will not exceed \$1,590,000.00 unless amended to add funding. Any costs in excess of amounts shown in this agreement or amendments are the responsibility of the County.

B. Should inconsistencies arise between language in the agreement and the plan of work, the language in the agreement takes precedence.

C. If the County desires to increase the level of protection over and above that described in the NRCS Damage Survey Report (DSR), the County will be responsible for paying 100 percent of the costs of any unapproved and unfunded upgrade or additional work.

D. NRCS cannot reimburse the County for work performed prior to award date of this agreement (date of signature by NRCS State Conservationist).

E. The County is responsible for 100 percent of the costs incurred in obtaining permits and property rights, and for operation and maintenance of the completed project.

#### **IX. PROVISIONS AND REGULATIONS**

##### **A. Administrative Provisions:**

This agreement, and other arrangements at any tier under this agreement, shall be governed by the following regulations, appropriate to the type of organization receiving the award, relative to tier, as are in effect on the effective date of award and hereby incorporated by reference: (Internet links for the full text of Code of Federal Regulations (CFR) references may be found at [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)).

1. 7 CFR Part 3015, "Uniform Federal Assistance Regulations"

2. 7 CFR Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

3. 7 CFR Part 3017, "Governmentwide Debarment and Suspension (Nonprocurement)"

4. 7 CFR Part 3018, "New Restrictions on Lobbying"
5. 7 CFR Part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations"
6. 7 CFR 3021, "Government wide Requirements for Drug-Free Workplace (Financial Assistance)"
7. 7 CFR Part 3052, "Audits of Institutions of Higher Education and Other Non-Profit Institutions"
8. 2 CFR Part 215, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations (OMB Circular A-110)"
9. Treasury Circular 1075, Withdrawal of Cash from the Treasury for Advances under Federal and Other Programs

B. Federal Cost Principles:

Allowable project costs shall be determined in accordance with the authorizing statute, the purpose of the agreement award, and by the following Federal cost principles that are applicable to the type of organization receiving the award, relative to tier, as are effective on the date of award and hereby incorporated by reference: (The full text for OMB Circulars may be found at [http://www.ut.nrcs.usda.gov/technical/grants\\_agreements.html](http://www.ut.nrcs.usda.gov/technical/grants_agreements.html)).

1. 2 CFR Part 220, "Cost Principles for Institutions of Higher Education"
2. 2 CFR Part 225, "Cost Principles for State and Local Governments" (including Indian Tribal governments)
3. 2 CFR Part 230, "Cost Principles for Nonprofit Organizations" other than institutions of higher education
4. Federal Acquisition Regulations, Part 31, (<http://www.arnet.gov/far>) "Contract Cost Principles and Procedures"

C. The County will conduct all procurement activities in a manner that provides, to the maximum extent possible, free and open competition.

D. The County is responsible, without recourse to NRCS or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the County and others to carry out approved project activities. Matters concerning violation of law should be referred to the federal, state, or local authority having proper jurisdiction.

E. The Federal Travel Regulations will serve as a guideline for any travel performed under this agreement.

## X. AMENDMENTS, CHANGES, AND TERMINATION

A. This agreement may be amended in writing by mutual consent of the parties. NRCS is responsible for writing the amendment, obtaining signatures, and distributing copies to the County. If an agreement is written that implements only internal administrative changes, the amendment may be issued unilaterally by NRCS; the County will receive a copy of all amendments.

B. Requests from the County to the NRCS Program Manager to extend the term of the agreement must be submitted no less than 60 days prior to the expiration date of the agreement and include a justification, in writing, documenting the need for the extension. NRCS expects that the project will be completed within the established term of the agreement. Requests for time extensions require the approval of the NRCS National Headquarters Office and are only approved when a sound, defensible justification is provided.

C. Terms of enforcement and termination are in accordance with 7 CFR 3016.43-44 as follows:

### ***“§ 3016.43 Enforcement.***

*(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:*

*(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,*

*(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,*

*(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,*

*(4) Withhold further awards for the program, or*

*(5) Take other remedies that may be legally available.*

*(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.*

*(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs*

during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §3016.35).

**§ 3016.44 Termination for convenience.**

Except as provided in §3016.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

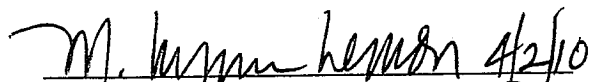
(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §3016.43 or paragraph (a) of this section."

**XI. APPROVAL**

The United States Department of Agriculture, Natural Resources Conservation Service and Cache County execute this agreement as of the date of final signature by USDA/NRCS. The signatories below represent that each is duly authorized to bind their respective organization to the terms of this agreement. By signing this agreement, the County assures USDA that the program or activities provided for under this agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

**CACHE COUNTY, UTAH**

**US DEPARTMENT OF AGRICULTURE  
NATURAL RESOURCES CONSERVATION SERVICE**

  
M. Lynn Lemon Date  
County Executive/Surveyor

\_\_\_\_\_  
Sylvia A. Gillen Date  
State Conservationist