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M E M O R A N D U M

To: *Annalee Munsey & Board of Trustees*
From: *Dani Cepernich and Shawn Draney*
Date: *January 11, 2024*
Re: *Agreement re: Carriage of Flows of Grove and Battle Creek in the PRA*

BACKGROUND

Pleasant Grove City currently has the right to introduce excess flows from Grove Creek and/or Battle Creek into the Provo River Aqueduct (PRA) under the February 13, 2012, Agreement Between Metropolitan Water District of Salt Lake & Sandy and Pleasant Grove City for the Monitoring of Water Quality and the Carriage of Flood Flows of Grove Creek and Battle Creek in the Provo Reservoir Canal Enclosure Project.

As you likely know, in 2004, Provo River Water Users Association obtained Congressional authorization for the Secretary of the Interior to transfer title of the Provo Reservoir Canal to the Association through the Provo River Project Transfer Act (Title Transfer Act). The Title Transfer Act required an agreement among the District, Central Utah Water Conservancy District, Jordan Valley Water Conservancy District, and the Association. In February 2010, those entities, along with Provo Reservoir Water Users Company, entered into what is known as the “Master Agreement.” The Master Agreement expressly limits sources of water carried in the Provo Reservoir Enclosure Project (PRECP), which resulted in construction of the PRA, unless all of the parties to that agreement consent. (Because the Agreement uses the term PRECP, this memo does as well, instead of the PRA.)

During construction of the PRECP, a dispute arose over the introduction of water from Grove Creek and Battle Creek (together, the Creeks) into the PRECP. The location of the Creeks is shown roughly below, with Grove Creek to the north and Battle Creek to the south:



In most years, the peak combined flows of the Creeks do not exceed the combined available capacities of the Pleasant Grove Irrigation Company system and Pleasant Grove's storm water system. Occasionally, however, the peak combined flows of Creeks does exceed the combined available capacities. The natural waterways for these two creeks to Utah Lake were obliterated by development over time, and Pleasant Grove's boundaries do not extend to Utah Lake. As a result, for some time prior the PRECP, excess flows had been directed down sand-bagged PG streets, and later via temporary pipes laid on Pleasant Grove streets, into the then-open Provo Reservoir Canal.

As part of construction of the PRECP, Pleasant Grove wanted to have the ability to dump excess flows from the Creek into the PRECP. It indicated that it would be a burden—both financially and from an engineering perspective—to build additional storm water facilities to carry those excess flows to Utah Lake. This was particularly true, from the City’s perspective, without appropriate lead time for planning and financing.

The District had a strong preference *not* to allow Pleasant Grove to utilize PRECP capacity for the excess flows from the Creek, as doing so would diminish the operational flexibility of both the District and the Association. It also had concerns about water quality degradation and compliance with applicable state and federal laws and regulations.

Ultimately, to resolve the dispute, the District and Pleasant Grove entered into the Agreement. A copy is attached. So, too, is 2023 run-off data from Pleasant Grove.

PLEASANT GROVE’S RIGHTS TO UTILIZE PRECP CAPACITY

Pleasant Grove has the right to utilize capacity in the PRECP for *excess* flows from Grove Creek and Battle Creek as specifically provided in the Agreement. (¶ 2.)

- **Excess Flows Only** – Only excess flows are permitted, which requires that Pleasant Grove first make reasonable efforts to maximize the carriage of flows from the Creeks in the then-available combined capacities of the Pleasant Grove Irrigation system, the Pleasant Grove storm system, and the Pleasant Grove irrigation system to be maintained. (¶ 2)
- **Highest Quality Water** – If possible, Pleasant Grove is required to put higher quality water into the PRECP and lower quality water into the Pleasant Grove Irrigation system, the Pleasant Grove storm system, and the Pleasant Grove irrigation system. (¶ 2)
- **Tiered Use of Capacity** – Pleasant Grove is required to use the PRECP capacity in 4 specifically-described tiers. (¶ 3)

In order to utilize *any* capacity in the PRECP, Pleasant Grove is required to obtain the consent of all other parties to the Master Agreement, as well as the Bureau of Reclamation while the PRECP remained in Federal ownership. (¶ 3(e).)

PLEASANT GROVE'S OBLIGATIONS

Under the Agreement, Pleasant Grove has the following obligations:

- **Main Capacity of Existing Systems** – Pleasant Grove is required to cause the combined capacities of the Pleasant Grove Irrigation system, the Pleasant Grove storm system, and the Pleasant Grove irrigation system to be maintained. (§ 2)
- **Limitation on New Projects** – Pleasant Grove is prohibited from conducting or allowing any new projects above the retention/settlement basins that may increase the turbidity of water introduced into the PRECP. (§ 2)
- **Connection to PRECP** - Design, construct, and maintain a piped connection from the retention/settlement basins near the mouths of the canyons to the PRECP. (§ 1(a))
 - The valves required to introduce excess Creek flows are to be controlled exclusively by the Association (§ 1(b))
 - Reimburse the Association for reasonable repairs to the PRECP at the point of connection with Pleasant Grove's system (§ 1(f))
- **Water Quality**
 - Provide real-time and recorded metering to monitor compliance with the Agreement (§ 1(b))
 - Screen Grove Creek and Battle Creek water as directed by the District before it is introduced into the PRECP connection, with a goal of achieving “water quality consistent with the water being introduced into PRECP from the Murdock Diversion.” (§ 1(c))
 - Develop and implement a source protection plan that is approved by the District and Utah Division of Drinking Water or other state or federal agencies, as required by law. (§ 4(a))
 - Must include signage, education, and reasonable controls. Could include exclusion of horses, dogs, or overnight camping in the future as reasonably determined by the District after consultation with Pleasant Grove in order to address serious biological contamination.
 - Goals include (i) stream protection zones of a distance from the stream available to cities of the first class, which Pleasant Grove must diligently pursue; and (ii) maintaining water quality at least of the same quality as to each constituent of concern as Provo River water at the Murdock Diversion.

- Gather samples at Pleasant Grove’s cost from the watersheds and Provo River at the Murdock Diversion consistent with a protocol established by the District. The District is responsible for lab costs. (¶ 4(b))
- **Protection of Utah Lake** – At the Association’s sole discretion, excess water from the Creeks introduced into the PRECP by Pleasant Grove can be discharged into the American Fork River and/or Dry Creek in order to make Utah Lake whole. Pleasant Grove is solely responsible for the costs of compliance with any laws regarding water rights and discharges. (¶ 5(a))
 - If the excess waters from the Creeks cannot be or is not discharged into the American Fork River or Dry Creek, Pleasant Grove must have in place any approvals required by applicable law. (¶ 5(b))
- **Insurance** – Pleasant Grove must maintain insurance as provided in the Agreement. (¶ 6)
- **Develop System Upon Termination** – Pleasant Grove is required to “discontinue use of the PRECP completely and timely upon the termination date” and must “plan, finance and construct facilities to reasonably carry excess Grove Creek and Battle Creek waters without harm to person or property.” (¶ 7(e))

PROVISIONS REGARDING TERMINATION

The Agreement contains two provisions that allow the District to terminate the Agreement: Paragraphs 7(b) and (c).

Under Paragraph 7(b), the District can terminate the Agreement “without cause, in its sole and absolute discretion” by providing at least 15 years prior written notice. Once the District provides notice under that provision, Pleasant Grove must begin to implement improvements to its storm water system or identify alternative methods to manage excess flows from the Creeks. It has to provide annual written reports to the District regarding its progress. So long as Pleasant Grove is making reasonable progress during the 15 year period—as determined by the District and Pleasant Grove, jointly—then Pleasant Grove can continue to use the PRECP for excess flows from the Creeks as provided in the Agreement. If, however, during that period, Pleasant Grove

is *not* making reasonable progress, Pleasant Grove “agree[d] and acknowledge[d] that the lack of progress is deemed a public threat” and the Agreement “will be terminated pursuant to paragraph 7.c.”

The following is the entirety of Paragraph 7(b):

b. Fifteen Year Notice Termination Without Cause. Upon at least fifteen (15) years prior written notice, MWDSLS may terminate this Agreement without cause, in its sole and absolute discretion. If notice is given under this contract clause, PG will begin to implement improvements to the PG storm water system or provide information to MWDSLS regarding any other alternative methods PG decides to use in order to adequately manage the excess flows. PG will provide a written annual report to MWDSLS and PRWUA regarding the progress. During the 15 year notice period and as long as reasonable progress, as determined jointly by PG and MWDSLS, is being made regarding improvements to the PG storm water system, PG may continue to use the PRCEP for excess flows as outlined in this agreement. If reasonable progress is not being made during the 15 year notice period, PG agrees and acknowledges that the lack of progress is deemed a public threat and this agreement will be terminated pursuant to paragraph 7.c. In this event, PG agrees to defend and indemnify MWDSLS and PRWUA as more specifically stated in paragraph 7.g.

Paragraph 7(c) provides for more immediate termination of the Agreement. The District can terminate the Agreement “as determined to be reasonable and necessary to avoid a material threat to the health, safety and welfare of the public.” It must provide notice that is reasonable under the circumstances. Both of these determinations—the material threat to health, safety and welfare of the public, and the notice that is reasonable—must be made by the Board in a public meeting where Pleasant Grove is invited to attend and give comment.

The following is the entirety of Paragraph 7(c):

c. Termination Upon Finding of Public Threat. MWDSLS may terminate this Agreement as determined to be reasonable and necessary to avoid a material threat to the health, safety and welfare of the public, after notice which is reasonable under the circumstances, all as determined in good faith by the MWDSLS Board of Trustees in a public meeting where PG is invited to attend and give comment.

The Agreement additionally provides that the rights of termination set out in Paragraph 7 are in addition to any legal or equitable remedies from breach that would otherwise be available.

This includes “termination for material breach and specific performance.” Termination for material breach does not require any advance notice. It may, however, result in a claim by the non-terminating party that the terminating party breached the agreement, on the theory either that the non-terminating party did not *breach* or that any breach by the non-terminating party was *not material*, such that there is no basis to terminate.

AGREEMENT BETWEEN METROPOLITAN WATER DISTRICT
OF SALT LAKE & SANDY
AND
PLEASANT GROVE CITY
FOR THE MONITORING OF WATER QUALITY
AND THE CARRIAGE OF FLOOD FLOWS
OF GROVE CREEK AND BATTLE CREEK
IN THE PROVO RESERVOIR CANAL ENCLOSURE PROJECT

This AGREEMENT is entered into effective the 13th day of Feb, 2012, by and between METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY, a Utah metropolitan water district (MWDSLS) and PLEASANT GROVE CITY, a Utah municipal corporation (PG).

AGREEMENT BACKGROUND AND PURPOSES

The Provo Reservoir Canal (PRC), also known as the Murdock Canal, is currently a facility of the Provo River Project, Deer Creek Division (PRP), and currently belongs to the United States Department of the Interior, Bureau of Reclamation (USBR) for the benefit and use of some PRP beneficiaries.

The PRC extends approximately 21.5 miles, from and including the Murdock Diversion near the mouth of Provo Canyon, to discharge points to the Utah Lake Distributing Company canal, and the Welby and Jacobs canals, at locations near and west of Jordan Narrows.

The original PRC was constructed by the Provo Reservoir Company in the early part of the 20th Century on mostly fee lands acquired by Provo Reservoir Company. In 1939, as a part of the construction of the PRP, USBR acquired the PRC, together with additional PRC corridor lands and interests in lands. The PRC was enlarged and reconstructed by USBR, including the construction of entirely new, larger siphons, which in some cases were relocated onto lands newly acquired by USBR.

The Provo River Water Users Association (PRWUA) is the local sponsor of the PRP. By the terms of the 1936 repayment contract between PRWUA and USBR, and federal Reclamation statutes, PRWUA is responsible to repay to USBR all of the costs of acquisition and construction of the PRP, including the PRC. PRWUA annually assesses its shareholders to fund repayment to USBR. PG is not a PRWUA shareholder, and has not contributed directly to the repayment of the PRP, but does have indirect interests via the Metropolitan Water District of Pleasant Grove and ownership of stock in Pleasant Grove Irrigation Company, Provo Reservoir Water Users Company, and potentially other companies who are PRWUA shareholders.

All of the capacity of the PRC was allocated by contract by USBR. The original design capacity of the original PRC was confirmed by a USBR contract to Provo Reservoir Water Users Company. All of the PRC capacity created by USBR was contracted by USBR to PRWUA. PRWUA in turn contracted essentially all of its PRC capacity by subscription contract to some of the PRWUA shareholders, but not in proportion to PRWUA shares. PG does not hold any contract PRC capacity rights directly from USBR or PRWUA, but does have indirect interests via the Metropolitan Water District of Pleasant Grove and ownership of stock in Pleasant Grove Irrigation Company, Provo Reservoir Water Users Company, and potentially other entities that do have PRC capacity.

Those with PRC capacity rights are responsible to reimburse annual maintenance costs to PRWUA in proportion to capacity rights, whether any of that capacity is exercised or not. Those with PRC capacity rights are responsible to reimburse annual operation costs to PRWUA in proportion to the volume of their water carried in the PRC. PG has not directly reimbursed PRWUA for PRC operation or maintenance costs, but has paid costs via the Metropolitan Water District of Pleasant Grove, Pleasant Grove Irrigation Company, Provo Reservoir Water Users Company, and potentially other entities that do reimburse PRWUA for PRC operation and maintenance costs.

USBR as owner of the PRC, and PRWUA as the entity responsible for the operation and maintenance of the PRC under the 1936 repayment contract, have long desired to enclose the PRC. Finally, the necessary legislation, and extensive and complicated contracts, and National Environmental Policy Act (NEPA) compliance, necessary for the \$150 Million Provo Reservoir Canal Enclosure Project (PRCEP) are in place. Construction of the PRCEP is well underway. The public benefits to be realized through the PRCEP will include, but are not limited to, the following:

Improved Personal and Property Safety. Because the PRC is an open canal, with siphons under streams and roads, a number of people have drowned in the PRC. Because the PRC is an earthen, mostly unlined, perched, canal, it has breached on one occasion, and approached breach on another occasion. The PRCEP will virtually eliminate these risks to the public.

Increased Capacity. The design capacity of the PRCEP, as compared to the PRC, will be increased and generally remain constant along its entire length. One benefit enclosure and enlargement will bring is year-round redundancy and operational flexibility. The PRCEP complements the Jordan Aqueduct System (JAS) and the Salt Lake Aqueduct (SLA), the two other facilities that convey water from the Provo River System to treatment for public use.

Water Conservation and Habitat Restoration. The unlined PRC lost, on a long-term annual average, approximately 8,000 acre-feet (AF) of water. The savings of water allowed MWDSLS and Jordan Valley Water Conservancy District (JVWCD) to relinquish contracts for a total of 8,000 AF of Central Utah Project (CUP), Utah Lake System (ULS) water and free up that water for use by the Department of the Interior for stream flows in the lower Provo River, which is designated critical habitat for the endangered June sucker. Such stream flows were a critical statutory and contractual mandate for the CUP, which is being constructed, operated and maintained by Central Utah Water Conservancy District (CUWCD). CUWCD is bearing half of the costs of PRCEP design and construction.

Improved Water Quality. MWDSLS very recently constructed the Point of the Mountain Water Treatment Plant (POMWTP) that will be supplied water primarily by the PRCEP. Before that, MWDSLS' direct use of the PRC was delivery of irrigation water only. MWDSLS has for a number of years had some of its water treated by JVWCD, who operates and maintains the Jordan Valley Water Treatment Plant (JVWTP) for the benefit of JVWCD and MWDSLS. Each of those two districts has ownership interests in the JVWTP, with JVWCD holding a 5/7ths interest, and MWDSLS holding a 2/7ths interest. The JVWTP is supplied water primarily by the Jordan Aqueduct System, but the PRC does supply water to JVWTP. Increasingly, the PRCEP will provide water to JVWTP. MWDSLS has been motivated to participate in the PRCEP in significant part because enclosure of the PRC will improve water quality by eliminating storm water, debris, etc. from entering the PRCEP.

Decreased Operation and Maintenance Costs. The costs of operating and maintaining the PRCEP are expected to be markedly less than the costs of operating and maintaining the PRC. A large majority of these costs are ultimately paid by public entities like the parties here.

Public Non-Motorized Trail. The PRCEP will allow Utah County to construct, operate and maintain a public trail over most of the length of the PRCEP. The wide PRC corridor, a very mild slope for the most part, and connections to other trail systems, present a unique opportunity for public recreation. More of that trail will be located in PG than in any other city.

In 2004, with the support of USBR, MWDSLS, CUWCD, JVWCD, Provo Reservoir Water Users Company, other PRWUA shareholders, northern Utah County cities, Utah County, Utah's Congressional delegation, and many others, PRWUA obtained Congressional authorization for the Secretary of the Interior to transfer title of the PRC to PRWUA (Title Transfer), through the enactment by Congress of the Provo River Project Transfer Act (Title Transfer Act). The Title Transfer Act mandated an agreement among MWDSLS, CUWCD,

JVWCD and PRWUA as a condition for Title Transfer. That agreement would eventually also include Provo Reservoir Water Users Company as a party. That agreement was required to be approved by USBR as complying with the Title Transfer Act, and would come to be known as the "Master Agreement."

On February 1, 2010, MWDSLS entered into the Master Agreement with PRWUA, CUWCD, JVWCD and Provo Reservoir Water Users Company. The Master Agreement expressly limits sources of water carried in the PRCEP to the Provo River and ULS, unless all of the parties to the Master Agreement concur.

In most years the peak combined flows of Grove Creek and Battle Creek do not exceed the combined available capacities of the Pleasant Grove Irrigation Company system and the PG storm water system. Occasionally, however, the peak combined flows of these two creeks does exceed the combined available capacities of the Pleasant Grove Irrigation Company system and the PG storm water system. The natural waterways for these two creeks to Utah Lake have been obliterated by development over time, however, PG boundaries do not extend to Utah Lake. For some time, excess flows have been directed down sand-bagged PG streets, and later via temporary pipes laid on PG streets, into the open PRC.

Under the existing agreements of USBR and others, PG has no capacity right in PRCEP. MWDSLS believes that allowing excess flows of these creeks into the PRCEP, among other problems or potential problems, would be in violation of federal Reclamation statutes while the PRCEP is still in federal ownership, and would cause violations of state and federal Safe Drinking Water Acts and related regulations because there is no approved source water protection plan in place. Also, to the extent that excess flows have been dumped into the open PRC and beneficially used, there is no apparent water right for such use. The Utah Lake basin is over-appropriated and is closed to new appropriations. MWDSLS, PRWUA and many others depend upon Utah Lake directly and indirectly, as well as the priority rights in and to Utah Lake.

It is not clear if PG has any right to dump excess flows into the PRC, particularly after completion of the PRCEP. Such a claim, and defenses to such a claim, is disputed.

PG has indicated that it would have a financial and engineering burden building additional facilities to carry the excess flows to Utah Lake, particularly without appropriate lead time for planning and financing.

MWDSLS believes it is compelled to protect the quality of its drinking water from any degradation, and to see that applicable state and federal laws and regulations, including but not limited to, Safe Drinking Water Act provisions and related regulations, are complied with. MWDSLS would strongly prefer not to give up any of its PRCEP capacity in order to

accommodate Grove Creek and Battle Creek excess flows, even if only for a matter of weeks in high runoff years, as this diminishes operational flexibility for MWDSLS and PRWUA.

The parties have agreed to resolve their disputes as described below.

IN CONSIDERATION of the mutual covenants of the parties, and the resolution of disputed claims, the parties agree as follows:

1. **Design, Construction and Operation of PG Connection to PRCEP.**

a. **Design and Construction.** PG shall cause a piped connection from the retention/settlement basins near the mouths of the two canyons to the PRCEP to be constructed and maintained, at PG's sole expense, in a safe and reasonably professional manner, as reasonably approved by MWDSLS. The plans for the described connection to PRCEP are in progress. Any changes to the current plans proposed by PG shall be approved in advance by MWDSLS. Upon reasonable notice, PG agrees to cause to be designed and constructed, at PG's sole expense, modifications to the PG connection and related facilities if determined by MWDSLS, after consultation with PG, to be reasonable and necessary for water quality or operational flexibility, including, but not limited to facilities necessary to move the diversion of one or both creeks further up-stream, improvements to retention/settlement basins, improvements to screens, etc.

b. **Metering and Operation.** Such PG connection shall contain real time and recorded metering to enable MWDSLS to monitor compliance with this Agreement and to measure flows and quantities of water introduced into PRCEP from Grove and Battle Creeks, with feeds to the MWDSLS and PRWUA Supervisory Control and Data Acquisition (SCADA) systems. Any valves required to introduce excess Grove Creek and Battle Creek flows, as described in this Agreement, into the described PG connection will be controlled remotely by PRWUA only. Both parties to this agreement agree to reasonably cooperate with PRWUA regarding design, construction, operation, maintenance, and restoration activities.

c. **Source of Water.** No source of water other than the retention/settlement basins shall be allowed into the PG connection, and no source of water other than natural Grove Creek and Battle Creek flows (and natural precipitation falling directly on the basins) upstream of the retention/settlement basins shall be allowed into the retention/settlement basins.

d. **Screening.** PRCEP is lined with a material critical to the durability and capacity of PRCEP that is susceptible to abrasion. Grove Creek and Battle Creek water shall be screened, as directed by MWDSLS, before it is introduced into the above described PG connection. Such directions are subject to change upon reasonable notice and consultation with

PG and PRWUA. The goal will be to achieve water quality consistent with the water being introduced into PRCEP from the Murdock Diversion.

e. **Inspection.** MWDSLS shall have the right to inspect all or any part of the PG connection upon notice to PG which is reasonable under the circumstances.

f. **Restoration.** Upon the effective date of termination of this Agreement, PRWUA shall reasonably repair the PRCEP at the point of connection with the PG system, and PG shall reimburse PRWUA for such costs, together with interest after 60 days from invoice at the rate of prime + 2% as reasonably calculated by PRWUA.

g. **Salt Lake Aqueduct Protection.** The retention/settlement basins are on or near the SLA and SLA corridor belonging to MWDSLS. These retention basins are owned by North Utah County Water Conservancy District (NUCWCD), but are maintained and operated to a degree by PG. PG will reasonably cooperate with MWDSLS and NUCWCD to see that the ownership, use, operation, maintenance, modification, repair and replacement of the retention/settlement basins shall at all times comply with MWDSLS regulations and policies. PG shall at its sole cost be responsible for any compliance with law, statute, regulation or ordinance applicable to the PG activities regarding the design, construction, operation, maintenance, repair or replacement of all facilities above PRCEP used by PG.

2. **Excess Flows Only.** PG waives any claims or potential claims regarding its legal right to dump excess flows into the PRC by entering into this agreement. PG shall cause the combined capacities of the Pleasant Grove Irrigation Company system, the PG storm water system and the PG secondary irrigation system to be maintained. PG shall not attempt to introduce Grove Creek and/or Battle Creek flows into PRCEP without making reasonable efforts to maximize the carriage of such flows in the then available combined capacities of the Pleasant Grove Irrigation Company system, the PG storm water system and the PG secondary irrigation system. To the extent that PG has at that time any ability to put higher quality water into the PRCEP and lower quality water into the Pleasant Grove Irrigation Company system and/or PG storm water system and/or any PG secondary irrigation system, the highest quality water shall be diverted to PRCEP. No flows from Grove Creek or Battle Creek that fail to meet these criteria shall be introduced into PRCEP without the prior written consent of MWDSLS. No projects above the retention/settlement basins that may increase the turbidity of water introduced into PRCEP shall be conducted or allowed by PG.

3. **Use of PRCEP Capacity.**

a. **First Tier PRCEP Capacity Use.** PG shall first utilize PRCEP capacity that is then available to PG via the Metropolitan Water District of Pleasant Grove, or as a shareholder of Pleasant Grove Irrigation Company, Provo Reservoir Water Users Company,

and/or any other entity that may have capacity rights in the PRCEP. PG shall not take any action during the term of this Agreement to diminish any capacity that may be available to it to carry Battle Creek and Grove Creek excess flows via the Metropolitan Water District of Pleasant Grove or as a shareholder of Pleasant Grove Irrigation Company, Provo Reservoir Water Users Company, and/or any other entity that may have capacity rights in the PRCEP. PG is solely responsible to make the arrangements necessary for such first tier PRCEP capacity use, and pay all associated costs. All terms of this Agreement shall be applicable to the use of such PRCEP capacity except for the MWDSLS charges for use of MWDSLS PRCEP capacity described in section 3.c. below.

b. **Second Tier PRCEP Capacity Use.** Next, PG will use any capacity that PRWUA can and agrees to make available to PG consistent with the terms of the Master Agreement. PG is solely responsible to make the arrangements necessary for such second tier PRCEP capacity use, and pay all associated costs. All terms of this Agreement shall be applicable to the use of such PRCEP capacity except for the MWDSLS charges for use of MWDSLS PRCEP capacity described in section 3.c. below.

c. **Third Tier PRCEP Capacity Use.** Next PG may utilize any MWDSLS PRCEP capacity that MWDSLS can reasonably make available to PG. Due to the redundancy in MWDSLS' system, and the likely demands on MWDSLS when excess Grove Creek and Battle Creek flows are likely to occur, it is anticipated that MWDSLS will be able to make PRCEP capacity available to PG, however, MWDSLS makes no specific warranty. MWDSLS' service to its member cities (including any member agency(ies) that may be added), MWDSLS' commitments to Utah Lake Distributing Company, and MWDSLS' opportunities to sell surplus water for revenue, may all take priority to the uses granted PG herein. Increased costs incurred by MWDSLS, as reasonably calculated by MWDSLS, as a result of PG use of MWDSLS PRCEP capacity shall be reimbursed to MWDSLS by PG within 30 days of receipt of an invoice for the same, together with interest at the then prevailing PTIF rate plus 2% per annum. In addition, PG will be charged a carriage fee as set by the MWDSLS Board of Trustees as a part of the MWDSLS annual budget. MWDSLS may in its discretion charge a lower fee, or no fee, to its member cities and/or others. PG may, in lieu of payment of the carriage fee to MWDSLS, and while PG is deemed by MWDSLS to be in full compliance with the terms of this Agreement, keep the carriage fee in a restricted reserve to be used by PG only for improvements to PG facilities that reduce PG dependence on PRCEP capacity, or studies regarding the same, as reasonably approved in advance by MWDSLS.

d. **Fourth Tier PRCEP Capacity Use.** To the extent that PG needs PRCEP capacity in addition to MWDSLS' capacity it will acquire such capacity by written contract, but all terms of this Agreement shall be applicable to the use of such additional PRCEP capacity except for the MWDSLS charges for use of MWDSLS PRCEP capacity described in section 3.c. above.

e. **Mandatory Consents of Others.** Any use of PRCEP by PG shall require the written and signed agreement of the other parties to the Master Agreement. MWDSLS will reasonably cooperate with PG to obtain such agreement, but makes no warranty or representation that such agreements will be obtained. Any use of the PRCEP while in USBR ownership shall require the written agreement of USBR. PG agrees to not approach USBR regarding such an agreement, nor discuss or enter into such an agreement with USBR, without the prior consultation with MWDSLS and PRWUA. MWDSLS shall reasonably cooperate with PG's reasonable efforts to obtain any such USBR agreement, but makes no representation or warranty that such agreement will be obtained.

4. **Watershed Protection.**

a. **Approved Watershed Protection Plan.** PG shall, at its sole cost, cause a source protection plan, reasonably approved by MWDSLS in advance, to be developed and implemented. The source protection plan must be approved by the Utah Division of Drinking Water and/or other state and/or federal agency from time to time as required by applicable law, statute, regulation or ordinance. The source protection plan shall include signage, education and reasonable patrols. It is not anticipated that the plan will require exclusion of horses, dogs, or overnight camping, but that may change in the future to address serious biological contamination as reasonably determined by MWDSLS after consultation with PG. One goal of the source protection plan is stream protection zones of a distance from the stream available to Utah cities of the first class. Since PG is not a city of the first class, cooperation of the United States Forest Service (USFS), and/or MWDSLS member city ordinance, and/or Utah County ordinance, and/or legislation may be necessary to achieve this goal. The same will be diligently pursued as necessary by PG, with the reasonable cooperation of MWDSLS. One goal of the source protection plan shall be maintaining water quality at least of the same quality as to each constituent of concern as Provo River water at the Murdock Diversion as that may change from time to time.

b. **Sampling.** In consultation with PG and MWDSLS' member cities, MWDSLS will develop a sampling plan for the watersheds and Provo River at the Murdock Diversion. The sampling plan may change from time to time with experience, trends, concerns as to particular constituents that may change from time to time (including but not limited to constituents that are regulated), and applicable law, statute, regulation or ordinance. Attached as Exhibit B is an initial sampling plan. PG shall, at its sole cost, cause samples to be gathered, labeled and transported for testing in a manner consistent with MWDSLS protocols, that may change from time to time, by qualified and trained individuals. MWDSLS shall be solely responsible for lab costs.

5. **Regulatory Approvals and Water Rights.**

a. **Protection of Utah Lake Rights.** PG understands that PRP, CUP and Utah Lake Distributing Company water rights that MWDSLS depends upon are dependent upon the level of Utah Lake. Except as otherwise approved by final order of the Utah State Engineer (or final court order upon judicial review), at PRWUA's sole discretion, Grove Creek and Battle Creek water introduced into PRCEP by PG may be discharged to American Fork River, Dry Creek, and/or Jordan River in order to make Utah Lake whole. PRWUA shall never have any obligation to discharge quantities that would cause the capacity of American Fork River, Dry Creek or Jordan River as determined by PRWUA, to be exceeded. PG shall at its sole cost be responsible for any compliance with law, statute, regulation or ordinance applicable to such water rights and discharges, including, but not limited to, any Clean Water Act compliance and any compliance with any applicable water rights common law, statutes or regulations.

b. **Necessary Water Rights.** To the extent Grove Creek and Battle Creek water introduced into PRCEP for PG cannot be so discharged, or is not so discharged, into American Fork River, Dry Creek and/or Jordan River, PG shall have in place any approvals required by applicable law, statute, regulation or ordinance. MWDSLS will make reasonable efforts to consult with PG before protesting any application to the Utah State Engineer filed by PG to use excess Grove Creek or Battle Creek water introduced into PRCEP, but MWDSLS reserves all power and right to protect its water rights and the water rights that it depends upon. Subject to the foregoing, PG is free to sell the Grove Creek and Battle Creek water introduced into PRCEP consistent with this Agreement.

6. **Insurance.** PG shall maintain a broad form general liability policy of insurance consistent with Exhibit A attached. PG will procure an endorsement listing MWDSLS and PRWUA, and their respective trustees, directors, officers, and employees as additional insureds for claims arising out of PG's use of the PRCEP or PG's failure to make alternative measures for handling Grove Creek and Battle Creek flows following effective date of termination of this Agreement. Such coverage for MWDSLS and PRWUA and their respective trustees, directors, officers and employees shall be primary to any other coverage for the additional insureds. PG shall provide an insurance certificate and an endorsement to MWDSLS and PRWUA evidencing compliance with this provision at least annually. From time to time MWDSLS may increase the required liability limit to account for inflation. From time to time MWDSLS may make other changes to the liability insurance requirements to account for changes to the insurance industry or standard insurance forms. In the alternative, MWDSLS and PRWUA may elect to make other equivalent arrangements to have MWDSLS, PRWUA and PG, and their trustees, directors, officers, and employees as insured under the same policy for the first layer of coverage as described and apportion the costs reasonably.

7. **Term.**

a. **Perpetual Term Subject to Termination.** Except as described in this Agreement, the term of this Agreement shall be perpetual.

b. **Fifteen Year Notice Termination Without Cause.** Upon at least fifteen (15) years prior written notice, MWDSLS may terminate this Agreement without cause, in its sole and absolute discretion. If notice is given under this contract clause, PG will begin to implement improvements to the PG storm water system or provide information to MWDSLS regarding any other alternative methods PG decides to use in order to adequately manage the excess flows. PG will provide a written annual report to MWDSLS and PRWUA regarding the progress. During the 15 year notice period and as long as reasonable progress, as determined jointly by PG and MWDSLS, is being made regarding improvements to the PG storm water system, PG may continue to use the PRCEP for excess flows as outlined in this agreement. If reasonable progress is not being made during the 15 year notice period, PG agrees and acknowledges that the lack of progress is deemed a public threat and this agreement will be terminated pursuant to paragraph 7.c. In this event, PG agrees to defend and indemnify MWDSLS and PRWUA as more specifically stated in paragraph 7.g.

c. **Termination Upon Finding of Public Threat.** MWDSLS may terminate this Agreement as determined to be reasonable and necessary to avoid a material threat to the health, safety and welfare of the public, after notice which is reasonable under the circumstances, all as determined in good faith by the MWDSLS Board of Trustees in a public meeting where PG is invited to attend and give comment.

d. **Termination by PG.** PG may terminate this Agreement without cause upon 30 days notice.

e. **PG Obligation to Develop System Upon Termination.** PG shall plan, finance and construct facilities to reasonably carry excess Grove Creek and Battle Creek waters without harm to person or property, and shall discontinue use of the PRCEP completely and timely upon the termination date.

f. **No Prejudice to Other Remedies.** All rights of termination by MWDSLS and PG expressed in this Agreement shall be in addition to any legal or equitable remedies for breach of this Agreement that would otherwise be available, including termination for material breach and specific performance.

g. **Indemnity.** Except as otherwise defended and indemnified by insurance, PG shall defend and indemnify MWDSLS, PRWUA and their respective trustees, directors, officers and employees from any claim arising out of any allegation of third parties regarding termination of Grove Creek and Battle Creek excess flows in the PRCEP.

h. **Obligations That Survive Termination.** PG obligations to make payments, make restoration, and indemnify as described in this Agreement shall survive termination.

8. **General.**

a. **Notice.** Any notice required by this Agreement shall be deemed given when mailed or delivered to:

Metropolitan Water District of Salt Lake & Sandy
ATTN: General Manager
3430 East Danish Road
Cottonwood Heights, Utah 84093
Phone: (801) 942-1391

Pleasant Grove City
ATTN: City Administrator
70 South 100 East
Pleasant Grove, Utah 84062

b. **Successors/Assigns/Third Party Beneficiaries.** The rights and obligations of the parties may not be assigned or transferred without the prior written consent of the other party, which may be withheld at the sole discretion of the approving party. PRWUA alone is an intended third party beneficiary.

c. **Authority.** The person(s) signing on behalf of the parties represent and warrant that they have been duly authorized by formal action of their respective governing body to execute this Agreement.

d. **No Warranty.** Neither MWDSLS nor PRWUA make any warranty or representation as to the condition of the PRCEP, or the fitness or compatibility of the PRCEP for use as anticipated by PG or this Agreement.

e. **Venue.** This Agreement shall be governed by the laws of the State of Utah. Any action regarding this Agreement shall be brought in the Third Judicial District Court in and for Salt Lake County.

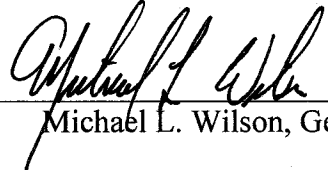
f. **Integrated Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior negotiations or discussions, and cannot be altered except through a written instrument signed by all parties.

DATED effective the day and date first written above.

MWDSLS:

Dated: February 28, 2012

METROPOLITAN WATER DISTRICT OF
SALT LAKE & SANDY

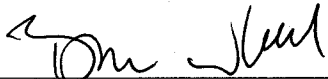
By: 
Michael L. Wilson, General Manager

CITY:

Dated: _____

PLEASANT GROVE CITY

Attest:

By: 
Bruce W. Call, Its Mayor

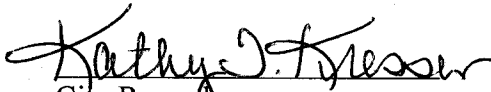

Kathy J. Kresser
City Recorder



EXHIBIT A

INSURANCE AND BOND REQUIREMENTS

Re: Pleasant Grove/Metropolitan Water MWDSLS of Salt Lake & Sandy

A. MINIMUM LIMITS OF INSURANCE

PG and all of PG's contractors and all subcontractors of PG's contractors shall maintain limits no less than:

1. **GENERAL LIABILITY:** \$1,000,000 combined single limit per occurrence, personal injury and property damage, \$2,000,000.0 Aggregate, Broad Form Commercial General Liability, (ISO 1993 or better), to include Products - Comp/OP, aggregate of \$2,000,000.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retention must be declared to and approved by the MWDSLS in writing. At the option of the MWDSLS, either; the insurer may be required to reduce or eliminate such deductibles or self-insured retention as respects the MWDSLS, its trustees, officers, and employees; or PG may be required to procure a bond guaranteeing payment of losses and related investigations, claim distribution and defense expenses.

C. PERFORMANCE AND PAYMENT BONDS

All persons and entities performing any work which may impact PRP, PRCEP or MWDSLS facilities will provide performance and payment bonds for the full sum of their contracts, naming the MWDSLS or PRWUA, as applicable, as co-obligee.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

I. General Liability Coverages

(a) MWDSLS, its trustees, officers, and employees are to be covered as additional insureds as respects: claims arising out of activities of the named insured relating to the collection, conveyance, or discharge of Grove Creek and/or Battle Creek flows and/or construction that may impact MWDSLS and/or PRWUA facilities. The coverage shall contain

no special limitations on the scope of protection afforded to MWDSLS, its trustees, officers, and employees.

(b) The insurance coverage of PG, PG's contractors and subcontractors, shall be a primary insurance with respect to MWDSLS, its trustees, officers, and employees. Any insurance or self-insurance maintained by MWDSLS, its trustees, officers, and employees shall be in excess of the PG's insurance and shall not contribute with it.

E. ACCEPTABILITY OF INSURERS

Insurance and bonds are to be placed with insurers admitted in the State of Utah with a Bests' rating of no less than A-, IX, and in the limits as listed in this document, unless approved in writing by the authorized representative of the MWDSLS.

F. VERIFICATION OF COVERAGE

PG and all of PG's contractors and all subcontractors of PG's contractors shall furnish MWDSLS with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by MWDSLS before work commences. MWDSLS reserves the right to require complete, certified copies of all required insurance policies, with all endorsements, at any time.

G. PG STRICTLY LIABLE FOR COMPLIANCE OF CONTRACTORS

PG shall see that each of PG's contractors, and each of their subcontractors, complies with these insurance requirements, and PG shall be strictly liable for any failure of such contractors and subcontractors to meet these requirements.

EXHIBIT B

Sampling Plan

Samples will be gathered at or near the Murdock Diversion on the Provo River, at or near the mouth of Battle Creek canyon, at or near the mouth of Grove Creek canyon for the purposes of testing for the following listed constituents. Samples will be collected at the frequencies indicated. Samples will be collected by PG and delivered to the MWDSLS lab located at 9000 South Danish Road, Cottonwood Heights, Utah, 84093. Any costs related to the collection and transporting of the samples will be the responsibility of PG. Sample testing will be performed by MWDSLS. Any costs related to the processing of sample tests will be the responsibility of MWDSLS.

<u>Constituent</u>	<u>Frequency (April-September)</u>	<u>Frequency (October-March)</u>
total organic carbon (TOC)	weekly	monthly
pH	weekly	monthly
alkalinity	weekly	monthly
hardness	weekly	monthly
turbidity	weekly	monthly
colilert	weekly	monthly
heterotrophic plate count	weekly	monthly
nitrate	weekly	monthly
nitrite	monthly	monthly
chloride	weekly	monthly
fluoride	monthly	monthly
sulfate	weekly	monthly
ortho-phosphate	monthly	monthly
metals	monthly	monthly
total dissolved solids	monthly	monthly
conductivity	monthly	monthly
giardia	monthly	quarterly
cryptosporidium	monthly	quarterly

Changes to the location, frequency, and constituents may be modified from time to time as reasonably determined by MWDSLS.

Battle Creek	Historic 95 th %ile	2023 95 th %ile	Percent Change	Historic Average	2023 Average	Percent Change	MCL
E. coli (MPN/100 mL)	33.05	318.84	865%	10.25	22.27	117%	Not > 5% of monthly Samples. TT
Total Organic Carbon (mg/L)	1.78	2.80	57%	0.81	1.06	32%	Percent Removal if >2 mg/L
Turbidity (NTU)	39.05	914.75	2243%	24.08	154.78	543%	≤0.5 NTU in 95% of samples. MCL
Aluminum (µg/L)	575	10811	1779%	426	2139	403%	200 µg/L SMCL
Arsenic (µg/L)	0.49	4.62	839%	0.26	0.7	168%	10 µg/L MCL
Iron (µg/L)	773	12367	1499%	862	2199	155%	300 µg/L SMCL
Lead (µg/L)	2.74	29.09	963%	1.02	5.02	391%	15 µg/L MCL
Manganese (µg/L)	33.32	412	1137%	24.69	77.08	212%	50 µg/L SMCL

Grove Creek	Historic 95 th %ile	2023 95 th %ile	Percent Change	Historic Average	2023 Average	Percent Change	MCL
E. coli (MPN/100 mL)	32.82	53.63	63%	6.54	7.53	15%	Not > 5% of monthly Samples. TT
Total Organic Carbon (mg/L)	1.94	3.18	64%	0.97	1.22	26%	Percent Removal if >2 mg/L
Turbidity (NTU)	11.00	120.76	998%	5.62	9.40	67%	≤0.5 NTU in 95% of samples. MCL
Aluminum (µg/L)	77.99	1740	2131%	15.61	149	854%	200 µg/L SMCL
Arsenic (µg/L)	0.22	0.83	279%	0.17	0.14	-18%	10 µg/L MCL
Iron (µg/L)	352	2500	610%	219	201	-8%	300 µg/L SMCL
Lead (µg/L)	0.74	2.14	187%	0.67	0.16	-76%	15 µg/L MCL
Manganese (µg/L)	3.49	46.88	1245%	1.22	4.26	249%	50 µg/L SMCL

PRA	Historical 95 th %ile	2023 95 th %ile	Percent Change	Historic Average	2023 Average	Percent Change	MCL
E. coli (MPN/100 mL)	38.36	82.95	116%	13.37	20.32	52%	Not > 5% of monthly Samples. TT
Total Organic Carbon (mg/L)	2.67	3.12	17%	2.11	2.61	24%	Percent Removal if >2 mg/L
Turbidity (NTU)	5.59	35.78	540%	2.61	6.0	130%	≤0.5 NTU in 95% of samples. MCL
Aluminum (µg/L)	233.11	1185	408%	55.59	244	339%	200 µg/L SMCL
Arsenic (µg/L)	3.72	3.12	-16%	2.15	2.02	-6%	10 µg/L MCL
Iron (µg/L)	597	1191	99%	310	240	-22%	300 µg/L SMCL
Lead (µg/L)	0.4	1.94	390%	0.13	0.32	135%	15 µg/L MCL
Manganese (µg/L)	57.33	71.51	25%	21.96	30.09	37%	50 µg/L SMCL

MCL = Maximum Contaminate Level, SMCL = Secondary Maximum Contaminate Level – Mostly Aesthetic, TT = Treatment Technique, AL = Action Level