Resolution No. 20 11-36

RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A FIFTH AMENDED INTERLOCAL COOPERATION AGREEMENT WITH OTHER MEMBERS OF UTAH COUNTIES INDEMNITY POOL, RELATING TO THE ESTABLISHMENT, FUNDING AND OPERATION OF UTAH COUNTIES INDEMNITY POOL

WHEREAS, pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated, 1953 as amended, and the Utah Insurance Code, Title 31A, Chapter 1, et seq, Utah Code Annotated, 1953 as amended, public agencies, including political subdivisions of the State of Utah as therein defined, are authorized to enter into mutually advantageous agreements to provide services and facilities; and

WHEREAS, the County Commission of Daggett County, Utah, has determined that the interests and welfare of the public within Daggett County's jurisdiction will best be served by a Fifth Amended Interlocal Cooperation Agreement with other members of Utah Counties Indemnity Pool relating to the establishment, funding and operation of Utah Counties Indemnity Pool.

NOW, THEREFORE, be it resolved by the County Commission of Daggett County, Utah, that Daggett County approve and authorize the Commission Chair to execute a Fifth Amended Interlocal Cooperation Agreement with other members of Utah Counties Indemnity Pool relating to the establishment, funding and operation of Utah Counties Indemnity Pool.

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Date: 20-DEC-2011 3:37:11PM
Fee: None
Filed By: CF
KERI PALLESEN, Recorder
DAGGETT COUNTY
For: DAGGETT COUNTY

APPROVED AND ADOPTED this 13th day of December, 20 11.

DAGGETT COUNTY COMMISSION

By: _____
Daggett County Commission Chair

COUNTY CLERK
DAGGETT COUNTY
STATE OF UTAH

ATTEST:

By: Vicky McKee
Daggett County Clerk

APPROVED AS TO FORM:

By: _____
Daggett County Attorney

FIFTH AMENDED INTERLOCAL COOPERATION AGREEMENT

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THIS IS THE FIFTH AMENDED INTERLOCAL COOPERATION AGREEMENT, made and entered into by and between members of the Utah Counties Indemnity Pool, a political subdivision of the State of Utah, each of which hereby agrees to abide by the terms and conditions of this Fifth Amended Agreement and all actions taken pursuant hereto.

WITNESSETH:

WHEREAS, pursuant to the provisions of the Interlocal Cooperation Act, Utah Code Ann. §11-13-101 et. seq., 1953 as amended, the Governmental Immunity Act, § 63-30-1 et. seq., 1953 as amended, and the Utah Insurance Code, Utah Code Ann. § 31A-1-103, 1953 as amended, public agencies, including political subdivisions of the State of Utah as therein defined, are authorized to enter into written agreements with one another for joint or cooperative action to establish a public agency insurance mutual; and

WHEREAS, the governing bodies of counties located in the State of Utah, by entering into an Interlocal Cooperation Agreement, formed the Utah Association of Counties Insurance Mutual, which began operations on or about January 1, 1992, as a public agency insurance mutual: and

WHEREAS, the governing bodies of the Members of the Utah Association of Counties Insurance Mutual, on or about August, 21, 2003, amended the original Interlocal Cooperation Agreement, making various corrections and updating references, by approving and adopting the first Amended Interlocal Agreement; and

WHEREAS, the governing bodies of the Members of the Utah Association of Counties Insurance Mutual amended the first Amended Interlocal Cooperation Agreement, on or about June 2, 2006, changing the name of the Utah Association of Counties Insurance Mutual to the Utah Counties Insurance Pool, by approving and adopting the second Amended Interlocal Agreement; and

WHEREAS, the governing bodies of the Members of the Utah Counties Insurance Pool amended the second Amended Interlocal Cooperation Agreement, on or about January 22, 2008, making various corrections and updating references, by approving and adopting the Third Amended Interlocal Agreement; and

WHEREAS, the governing bodies of the Members of the Utah Counties Insurance Pool amended the Third Amended Interlocal Cooperation Agreement, on or about December 3, 2010, making various corrections and updating references, by approving and adopting the Fourth Amended Interlocal Cooperation Agreement; and

WHEREAS, the Members of the Utah Counties Insurance Pool approved the amendments to the Fourth Amended Interlocal Cooperation Agreement, on or about December 1, 2011, changing the name of the Utah Counties Insurance Pool to the Utah Counties Indemnity Pool; and

WHEREAS, the governing bodies of the Members of the Utah Counties Insurance Pool now desire to amend the Fourth Amended Interlocal Cooperation Agreement to implement the name change by approving and adopting this Fifth Amended Interlocal Cooperation Agreement;

NOW, THEREFORE, the parties do mutually agree as follows:

Section 1. EFFECTIVE DATE; DURATION.

This Fifth Amended Interlocal Cooperation Agreement shall become effective and shall enter into force, within the meaning of the Interlocal Cooperation Act, upon the submission of this Fifth Amended Interlocal Cooperation Agreement to, and the approval and execution hereof by resolution of the governing bodies of each of the parties. The term of this Fifth Amended Interlocal Cooperation Agreement shall be fifty (50) years, pursuant to Utah Code Ann. §11-13-204, 1953 as amended, unless renewed as permitted by law, or until earlier dissolved as provided herein.

Section 2. CREATION OF A SEPARATE LEGAL ENTITY.

The parties to this agreement through their respective governing bodies and pursuant to the provisions of Utah Code Ann. §11-13-203, 1953 as amended, hereby create a legal entity to be known as the Utah Counties Indemnity Pool to provide the services described herein.

Section 3. PURPOSES.

This Fifth Amended Interlocal Cooperation Agreement has been established and entered into between the members of the Utah Counties Indemnity Pool (herein referred to as the Pool) for the following purposes:

1. To comply with the Utah Interlocal Cooperation Act and other applicable laws of the State of Utah; and

2. To ratify the previous formation of a group-funded Pool to fund through joint self-insurance, reinsurance, excess insurance, or other lawful manner, certain liabilities of member Utah counties, as permitted by the Utah Insurance Code and determined by the Board, with the powers set forth in the Amended Bylaws of the Pool (herein referred to as the Amended Bylaws); and

3. To provide, through the Pool, certain claims and risk management services related to the liabilities so funded, and assist members in reducing and preventing such liabilities; and

4. To provide other services and functions as permitted by law.

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Section 4. MEMBERS.

1. Membership in the Pool is limited to Utah counties and such other governmental entities allowed under its Amended Bylaws.

2. Members shall have such powers and authorities as provided herein and as set forth in the Amended Bylaws. Such powers shall include, but not be limited to:

   a) Voluntarily dissolve the Pool, but only at a meeting at which a majority of all Members, whether present at the meeting or not, vote in favor of the dissolution.

   b) Appoint or select members of the Pool Board of Trustees, in accordance with this Agreement, the Amended Bylaws and the Interlocal Cooperation Act.

Section 5. BOARD OF TRUSTEES.

The Pool shall be governed by a Board of Trustees. The Trustees shall have such powers and authorities as provided herein and as set forth in the Amended Bylaws.

1. The Board shall be comprised of thirteen persons in the following manner:

   a) One Trustee, appointed by the governing body of Davis County, representing Davis County;

   b) One Trustee, appointed by the governing body of Utah County, representing Utah County;

   c) One Trustee, appointed by the governing body of Washington County, representing Washington County;

   d) One Trustee, appointed by the governing body of Weber County, representing Weber County;

   e) Two Trustees, elected by Member counties of the third class, representing counties of the third class;

   f) One Trustee, elected by Member counties of the fourth class, representing counties of the fourth class;

   g) One Trustee, elected by Member counties of the fifth and sixth class, representing counties of the fifth and sixth class;

   h) Two Trustees, elected by all Member counties, representing all counties at large;

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i) One Trustee, appointed by the Board, shall be a sheriff of a Member county, who serves as the Chair of the Law Enforcement Committee;

j) One Trustee, appointed by the Board, shall be the Chair of the Litigation Management Committee and;

k) One Trustee, appointed by the Board, shall be the Chair of the Personnel Committee.

i. Trustees serving pursuant to subsections (e)-(h) shall be designated as "Elected Trustees" and serve four-year overlapping terms.

ii. Trustees serving pursuant to subsections (a)-(d) shall serve at the pleasure of the governing bodies of the Member.

iii. Trustees serving pursuant to subsections (i)-(k) shall serve for four-year terms and may be reappointed to subsequent terms by the Board.

iv. A Trustee serving pursuant to subsection (i) shall serve a four-year term ending on December 31 in even numbered years between presidential elections.

v. Trustees serving pursuant to subsections (j) and (k) shall serve four-year terms ending on December 31 of presidential election years.

2. No person convicted of a felony may serve as a Trustee.

3. Each Trustee shall be an elected or appointed officer or an employee of a Member.

4. Election of Trustees shall take place at the annual Membership Meeting. Elected Trustees shall assume office at the first Board meeting of the calendar year following their election.

5. The Board of Trustees shall elect a Nominating Committee from its members. The Nominating Committee shall solicit nominations for available elected Trustee positions in accordance with the Amended Bylaws.

6. A vacancy shall occur on the Board when a Trustee:

a) Submits a written resignation to the Board; or

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b) Dies; or

c) Is no longer an elected or appointed officer or employee of a Member; or

d) Fails to attend three consecutive regular meetings of the Board without the Board having excused such absences except that such additional absence or absences shall be excused for temporary mental or physical disability or illness; or

e) Is removed by the Members by a two-thirds vote of the Members present at a Membership Meeting; or

f) Is convicted of a felony; or

g) The Member of which the Trustee is an official or employee terminates their membership in the Pool.

7. Any vacancy in the position of an Elected Trustee may be filled by majority vote of the remaining Trustees until the next annual meeting of the Members, at which time the Members shall elect a person to fill the vacancy for the unexpired term.

8. Any vacancy in the position of an appointed Trustee under Article 5.1(a)-(d) shall be filled by appointment from the respective county and the Trustee shall serve for the remainder of the unexpired term. If the county is no longer a Member, the Trustee position shall revert to an at large position, adding to the number of such positions under Section 5.1(h), and be filled by a majority vote of the remaining Trustees until the next annual meeting of the Members, at which time the Members shall elect a person to fill the vacancy.

9. Any vacancy in the position of an appointed Trustee under Article 5.1(i)-(k) shall be filled by majority vote of the remaining Trustees and shall fill the unexpired term of the Trustee.

10. To the extent permitted by law, Trustees may be reimbursed for expenses incurred in the performance of their duties, as authorized by the Board.

11. Each Trustee must be a resident of the State of Utah.

12. The powers of the Board shall include, but not be limited to, the powers to:

a) Delegate, by resolution adopted at a meeting of the Trustees and specifically defined in the written minutes of the Trustees' meetings, authority for specific functions to the Chief Executive Officer, but only to the extent permitted by the laws of the State of Utah and the Amended Bylaws.

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b) Establish Member contributions, including premiums and service fees, pursuant to guidelines adopted by the Board from time to time.

c) Serve as the policyholder of any group policies or plans.

d) Determine the methods of claim administration and payment; provide for claim experience for the Members collectively or separately; and establish claim procedures and conditions to be met prior to the payment or defense of a claim.

e) Jointly self-insure or obtain reinsurance or excess insurance (specific or aggregate), or any combination thereof, or otherwise provide for the funding of coverages and adopt and adjust coverages provided by or through the Pool, as the Board deems appropriate.

f) Establish employment policies for the employees of the Pool including but not limited to policies, salaries and benefits.

g) Provide for the administration of the moneys of the Pool, for the manner of payments to the Pool, and for payment of all expenses of the Pool; establish standards for the accountability of all receipts and disbursements of the Pool; and establish procedures for safekeeping, handling, and investing such monies received or paid.

h) Acquire, lease, hold, and dispose of real and personal property.

i) Exercise the full power and authority of any Member of the Pool when requested to do so by the Member's governing body.

j) Provide for necessary activities, and enter into contracts as necessary or appropriate to accomplish the purposes of the Pool.

k) Do any act permitted by law and not in conflict with the Fifth Amended Interlocal Cooperation Agreement or the Amended Bylaws of the Pool.

l) Provide for an independent audit of the financial statements and operations of the Pool, including claim handling procedures, handling of receipts and payments, investments, adequacy of reserves, compliance with financial reporting requirements and overall operations of the Pool, at such times as the Board may determine.

m) Establish loss reduction, prevention and risk management policies, procedures, and requirements for Members of the Pool and provide risk management services and educational and other programs related to risk management.

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n) Create various Committees of the membership to assist in the oversight and operation of the Pool. The members of such Committees, including the chair, shall be appointed by the Board.

o) Approve a list of attorneys or law firms authorized to represent Members in claims covered by or through the Pool.

p) Obtain the services of agents, attorneys, brokers, consultants, employees, and service providers as necessary or appropriate for the operation of the Pool.

q) Terminate a Member from the Pool as provided for in the Amended Bylaws.

r) Create levels of membership within the Pool to provide for appropriate representation and control. Levels of membership may include, but are not limited to, voting and non-voting members and equity and non-equity members.

s) Amend the Bylaws by a two-thirds vote of all Board members.

t) Exercise all powers of the Pool except those powers reserved to the Members, and all powers necessary and proper for the operation of the Pool and implementation of the Pool, subject to the limits of the Agreement, the Amended Bylaws, and the Utah Code. The Board is responsible for all operations of the Pool.

Section 6. OFFICERS.

The Board of Trustees shall elect officers and establish the duties of officers of the Pool in accordance with Utah law and the Amended Bylaws.

Section 7. COMMITTEES.

The Board of Trustees may establish from time to time such committees of the Board as shall be deemed appropriate by said Board.

Section 8. MANNER OF FINANCING.

1. The Utah Counties Indemnity Pool shall be funded by contributions in the form of premiums or service fees, from the Members:

   a) The amount of such contributions including any interest penalty thereon shall be established by the Board of Trustees.

   b) Premiums established by the Board may be audited and additional premium charged based on the rate used to establish the original premium.

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c) The Board may not charge assessments to the Members.

2. All monies of the Pool, and earnings thereon, shall be held in the name of and for the use and benefit of the Pool.

3. The Board of Trustees shall prepare an annual budget consistent with Utah Code Ann. 17A-1-408 et. seq., as amended.

Section 9. PROPERTY USED IN COOPERATIVE UNDERTAKING.

1. Any real or personal property acquired, held, and used pursuant to this cooperative undertaking shall be administered and controlled by the Board of Trustees established in Section 5 hereof. Any disposition of said real or personal property shall also be administered and controlled by said Board of Trustees, pursuant to the terms of this Agreement.

2. The provisions of this Agreement and the assets of the Pool are for the benefit of the Members of the Pool only, and no other persons or entities shall have any rights or interest in this Agreement or in any of the other documents referred to herein or in any such assets, as a third party beneficiary or otherwise. The assets of the Pool shall not be subject to attachment, garnishment, or any equitable proceeding.

3. In the event of a voluntary dissolution of the Pool, as provided in Section 4 hereof, the property of the Pool not used or needed for the purposes of the Pool, including its contractual obligations, shall be distributed, as determined by the Board, only to Utah counties which are Members of the Pool at the time of dissolution. Such dissolution shall be handled as provided in Section 12.

Section 10. ADDITION OF OTHER MEMBERS.

Other governmental entities may become parties to this Fifth Amended Interlocal Cooperation Agreement, subject to the approval of the Board of Trustees, by executing an Addendum to this Agreement.

1. In order for a governmental entity to be added to this Agreement by Addendum, the Addendum must be:

   a) Approved by the governing body of the governmental entity to be added; and

   b) Reviewed as to form and compliance with applicable law by the attorney for the governmental entity to be added.

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2. Prior to becoming effective, this Fifth Amended Interlocal Cooperation Agreement and the Addendum shall be filed with the person who keeps the records of the public agency being added to this Agreement.

Section 11. WITHDRAWAL AND TERMINATION.

1. Any Member may withdraw their participation in a line of coverage of the Pool, but only at the end of a Pool fiscal year after giving the Board timely written notice of such withdrawal, pursuant to a resolution of the Member's governing body. Timely written notice of such withdrawal must be provided to the Board no later than 120 days prior to the Member's intended date of withdrawal. The Board shall consider a timely written notice of withdrawal to be a final decision unless the notice is rescinded by the Member no later than 90 days prior to the Member's intended date of withdrawal. The Board may, by a three-fourths vote and at its sole discretion, agree to permit an earlier date of withdrawal. A Member withdrawn from a line of coverage shall lose any voting rights inured as a result of participation in that line of coverage and any claim of title or interest to any asset of the Pool resulting from that line of business upon the effective date of that withdrawal with the exception of the right to payment of claims which occurred prior to withdrawal, or in the case of "claims made" coverage, the payment of claims made within the claims made reporting period adopted by the Board and in effect at the time of withdrawal.

2. Any member may terminate its membership in the Pool, but only at the end of a Pool fiscal year, after giving the Board timely written notice of such termination, pursuant to a resolution of the Member's governing body. Timely written notice of such termination must be provided to the Board no later than 120 days prior to the Member's intended date of termination. The Board shall consider a timely written notice of termination to be a final decision unless the notice is rescinded by the Member at least 90 days prior to the Member's intended date of termination. A terminating Member shall lose all voting rights and any claim of title or interest to any asset of the Pool upon the effective date of termination with the exception of the right to payment of claims which occurred prior to termination, or in the case of "claims made" coverage, the payment of claims made within the claims made reporting period adopted by the Board and in effect at the time of termination.

Section 12. DISSOLUTION AND DISPOSITION OF PROPERTY.

The Pool may be dissolved by a majority of the entire Membership voting in favor of dissolution at a Membership Meeting. In the event of voluntary dissolution of the Pool, the assets of the Pool not used or needed for the purposes of the Pool, including its contractual obligations shall be distributed, as determined by the Board, only to Utah

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counties, which are Members of the Pool at the time of dissolution. The Members of the Pool at the time the vote is held to dissolve the Pool shall continue to be considered Members of the Pool until the final disposition of property and dissolution of the Pool is complete.

Upon partial or complete dissolution of the Pool by the Members, the Trustees shall determine all other matters relating to the disposition of property and dissolution of the Pool by a two-thirds vote of all Trustees.

Each member's interest in the property of the Pool shall be calculated as follows:

1. The sum of the contributions for all fund years for which the Member was a participant in the Pool divided by all contributions received by the Pool during its life, is the ratio used to calculate interest in Pool property other than equity, which is defined for these purposes as cash or cash equivalent assets of the Pool.

2. For equity calculation, the ratio of each Member's contributions to the total contributions shall be computed for each fund year. The Member's contribution ratio shall then be multiplied by the total surplus, less any borrowed surplus, attributable to a fund year as stated in the most recent monthly financial statement. A Member's total equity will be the sum of the yearly amounts for each fund year for which that Member was a participating Member in the Pool.

3. In the event that the surplus amount is a negative number, a Member's equity will be decreased using the same method of calculation as above.

4. In the event of a termination of membership, the terminated Member shall lose and have no claim to any Pool property or assets. The property interest and equity formerly attributed to that Member for each fund year shall be allocated to the remaining counties that were Members during that year.

The Board shall serve as trustees for the disposition of property or funds, payment of obligations, dissolution and winding up of the affairs of the Pool. Any vacancy on the Board after dissolution has begun shall be filled in accordance with the Bylaws.

Section 13. INDEMNIFICATION.

It is the intent of the Pool to provide the broadest possible immunity from personal liability to each trustee, officer, and employee of the Pool allowed by applicable laws of the State of Utah including, but not limited to, the Utah Governmental Immunity Act, the Utah Non-Profit Corporation and Co-operative Association Act and the Utah Insurance Code, as amended from time to time. The Pool shall defend and indemnify the trustees, officers and employees of the Pool against any and all expense, including attorney fees and liability expenses, sustained by them or any

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of them in connection with any suit or suits which may be brought against them involving or pertaining to any of their acts or duties to the fullest extent allowed by the laws of the State of Utah.

The Pool shall purchase liability or other appropriate insurance providing coverage for the trustees, officers and employees of the Pool. Nothing herein shall be deemed to prevent compromises of any litigation where the compromise is deemed advisable in order to prevent greater expense or cost in the defense or prosecution of such litigation.

Neither this Fifth Amended Interlocal Cooperation Agreement nor any action of the governing body of a county in adopting this Fifth Amended Interlocal Cooperation Agreement is intended to nor do they waive, nor shall they be construed as waiving, any immunity or limitation on liability provided to the Members or their officers or employees by any law, including but not limited to any such immunity or limitation appearing in the Utah Governmental Immunity Act, and amendments thereto.

Section 14. FILING OF INTERLOCAL COOPERATION AGREEMENT.

Executed copies of this Fifth Amended Interlocal Cooperation Agreement shall be placed on file in the office of the County Clerk of each of the Members to this Fifth Amended Interlocal Agreement, and shall remain on file for public inspection during the term of this Fifth Amended Interlocal Cooperation Agreement.

Section 15. JOINT AND SEVERAL LIABILITY.

Except as provided herein, and to the extent of the financial contributions to the Pool agreed to herein or such additional obligations as may come about through amendments to this agreement or the Bylaws, no Member agrees or contracts herein to be held responsible for any claims made against any other Member. The contracting parties intend in the creation of the Pool to establish an organization to operate only within the scope herein set out and have not herein created as between Member and Member any relationship of partnership, surety, indemnification, or responsibility for the debts of or claims against any other Member.

Section 16. AMENDMENTS.

This Fifth Amended Interlocal Cooperation Agreement may not be amended, changed, modified or altered except by an instrument in writing which shall be (a) approved by resolution of the governing body of each of the parties, (b) executed by a duly authorized official of each of the parties, (c) submitted to and reviewed by an authorized Attorney of each of the parties, as required by Utah Code Ann. §11-13-202.5(3), 1953 as amended, and (d) filed in the official records of each party.

Section 17. SEVERABILITY.

If any term or provision of the Fifth Amended Interlocal Cooperation Agreement

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or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Fifth Amended Interlocal Cooperation Agreement, or the application of such term or provision to circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and shall be enforced to the extent permitted by law. To the extent permitted by applicable law, the parties hereby waive any provision of law, which would render any of the terms of this Fifth Amended Interlocal Cooperation Agreement unenforceable.

Section 18. GOVERNING LAW.

All questions with respect to the construction of this Fifth Amended Interlocal Cooperation Agreement, and the rights and liability of the parties hereto, shall be governed by the laws of the State of Utah.

Section 19. EXECUTION BY COUNTERPART.

This Fifth Amended Interlocal Cooperation Agreement may be executed in counterparts. The original of each executed Fifth Amended Interlocal Cooperation Agreement shall be filed with the Pool.

IN WITNESS WHEREOF, the parties have signed and executed this Fifth Amended Interlocal Cooperation Agreement, after resolutions duly and lawfully passed, on the dates listed below:

Dated this 13th day of December, 20 11.

COUNTY CLERK
DAGGETT COUNTY
STATE OF UTAH

DAGGETT COUNTY COMMISSION

By: _____
Daggett County Commission Chair

ATTEST:

By: Vicky M. Lee
Daggett County Clerk

REVIEWED AND FOUND TO BE IN PROPER FORM AND COMPLIANCE WITH APPLICABLE LAW.

By: _____
Daggett County Attorney

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