

RESOLUTION NO. 2020-16

CITY OF COTTER, ARKANSAS

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
AMENDMENT NO. 4 TO INTERLOCAL COOPERATION AGREEMENT**

WHEREAS, the City of Gassville, Arkansas, and the City of Cotter, Arkansas, have, since February 19, 1975, operated a wastewater treatment facility and collection system for the treatment of sewage by the terms of an interlocal cooperation agreement;

WHEREAS, it is necessary for improvements to be made to the wastewater collection system and to pay for such improvements; and

WHEREAS, it is necessary to amend the terms of the existing interlocal cooperation agreement to pay for said improvements.

THEREFORE, BE IT RESOLVED by the City Council of the City of Cotter,
Arkansas:

Section 1: That the Mayor of the City of Cotter shall be and is hereby authorized to enter into Amendment No. 4 to Interlocal Cooperation Agreement. A copy of the agreement to be executed by the Mayor is attached hereto as Exhibit "A" and incorporated by reference.

Dated this 17th day of December 2020.



McGeorge Caradine MAYOR

ATTEST:



Andrea Kray, RECORDER / TREASURER

ORIGINAL

AMENDMENT NO. 4 TO
INTERLOCAL COOPERATION AGREEMENT

This Agreement, made this 23 day of December, 2020, between the City of Cotter, Arkansas, hereinafter referred to as "Cotter", a city of the second class situated in Baxter County, Arkansas, by its duly authorized Mayor and Recorder, and the City of Gassville, Arkansas, hereinafter referred to as "Gassville", a city of the second class situated in Baxter County, Arkansas, by its duly authorized Mayor and Recorder.

W-I-T-N-E-S-S-E-T-H:

WHEREAS, the parties herein have entered into a previous Interlocal Agreement dated February 19, 1975, and said Agreement has been amended from time to time;

WHEREAS, said original Interlocal Cooperation Agreement established a jointly constructed, operated and maintained wastewater treatment facility and collection system for the treatment of all sewage collected from both Cotter and Gassville; and

WHEREAS, the parties herein agree and acknowledge that improvements are needed to the existing wastewater collection system; and

WHEREAS, Cotter and Gassville agree and acknowledge that it is necessary for the benefit, health and welfare of their respective citizens, inhabitants and property owners to enter into an amendment to said original Interlocal Cooperation Agreement to allow for improvements to the wastewater collection system and to pay for improvements to said system;

WHEREAS, it is the desire of the parties to establish their respective fiscal

responsibilities concerning the construction, operation and maintenance of said wastewater collection system.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the parties agree as follow:

(1) This amendment to the Interlocal Cooperation Agreement executed by the parties on February 19, 1975, shall continue as a perpetual agreement between the parties remaining in full force and effect except as otherwise modified herein.

(2) That previous amendments to the Interlocal Cooperation Agreement Executed by the parties are hereby ratified and formally adopted as a continuing amendment to the original Interlocal Cooperation Agreement, and all terms and conditions of the original agreement and amendments thereto shall remain as previously agreed to unless specifically changed by this amendment.

(3) That it is the express purpose of Cotter and Gassville to make improvements to the existing wastewater collection system that is jointly operated by Cotter and Gassville.

(4) That the parties further agree that the total project cost of the improvements to the wastewater collection system is estimated to be \$2,170,000.00. The project is being funded as follows:

- (a) Loan (Rural Development) \$1,551,000.00
- (b) Grant (Rural Development) \$ 619,000.00

The loan will be secured by certain revenues of Cotter as set forth in the bond ordinance which is to be adopted. Cotter shall be and is required to be the obligor on the loan and pledge of assets for the Rural Development loan, and Gassville agrees to pay to Cotter,

Gassville's applicable portion of Rural Development loan payments, debt service reserves and short-lived asset deposits on a monthly basis based on the parties percentage of wastewater system usage and the terms and conditions of the Interlocal Cooperation Agreement, as amended.

(5) That, as previously stated, it is anticipated that the renovation and expansion costs of the wastewater collection system will be approximately \$2,170,000.00. The respective obligation of Cotter and Gassville shall be determined by examining the percentage of use of the existing sewer treatment facility averaged over the preceding 12 month period, beginning November 1st of each year and extending through October 31st of the following year with each city then being responsible for their determined percentage of the improvement costs. The start of construction is the time when ground is first broken by any contractor on the expansion project. By way of example and not by limitation, if Cotter's usage of the sewer treatment facility has averaged 35% for the preceding 12 month period, beginning November 1st of each year and extending through October 31st of the following year, then Cotter shall be responsible for 35% of the improvement costs with Gassville to be responsible for the remaining 65% based upon its average usage for the 12 month period.

(6) The parties agree that the actual construction and renovation costs for the improved Wastewater treatment facility and Wastewater systems shall be determined with each city bearing their responsibility for their percentage of usage as calculated above. Cotter and Gassville further acknowledge and agree that Cotter will be the responsible party on the Rural Development loan previously referenced herein. Gassville shall pay to Cotter, Gassville's percentage as determined by the usage formula set forth

in this agreement, of the loan payments, debt service reserves, short-lived assets and any other wastewater collection system required financing costs on a monthly basis or any other periodic basis set forth in any and all Rural Development loan documents. A failure of Gassville, at any time, to pay its percentage share of the obligations stated herein, shall allow Cotter to declare all of Gassville's unpaid percentage share of the loan payments, debt service reserves, short-lived assets and any other wastewater collection system required financing costs to be immediately due and payable. The payment obligation of Gassville shall be secured by a pledge of Gassville wastewater revenues and all other assets of the wastewater collection system.

(7) The parties further agree that each year, no later than November 30th of that year, the joint sewer commission shall determine each city's respective usage of the improved sewage treatment facility to determine if there has been any change from the previous percentage of usage. Again, by way of example and not by limitation, if after the first year of usage Cotter is determined by the joint sewer commission to have used 36% of the sewer treatment facility, there shall be determined a 1% change in usage by each city with their respective financial obligations adjusted as set forth herein below.

(8) That upon any whole percentage point change, and the parties herein specifically agree to round down any percentage of usage of .1% to .4% and round up any percent of usage from .5% to .9%, shall result in the city with the increased usage owing the other city a prorata share of the total construction costs recalculated for that year. Again, by way of example and not by limitation, if Gassville's usage increased from 65% to 65.6%, Gassville shall be considered to have used 66% of the facility for all purposes relevant to this agreement. Gassville would likewise owe an additional 1% of

the cost of the project to be based upon the terms and conditions set forth in Paragraph 6 hereinabove, and any such change in the percentage shall be applicable to the next payment due following the recalculation of the percentage.

(9) The parties hereto agree that each party shall execute any and all documents which are necessary to carry out the purpose and intent of this agreement or as may be requested by Rural Development.

IN WITNESS WHEREOF, the City of Cotter, Arkansas, and the City of Gassville, Arkansas, have caused this agreement to be executed on this 23 of December, 2020, by their respective Mayors and attested to by their respective recorders, and by order of their respective Councils, all of which was held in accordance with the requirements of Arkansas law.

CITY OF COTTER, ARKANSAS

ATTEST:

Andrew Kray
Recorder

By: McGeorge Caradine
Mayor MCGEORGE CARADINE

CITY OF GASSVILLE, ARKANSAS

ATTEST:

Jeffrey Lewis
Recorder

By: Jeff Brain
Mayor

APPROVED:

_____, Attorney General

By: _____

RESOLUTION NO. 2020-16

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WHEREAS, it is necessary to amend the terms of the existing interlocal cooperation agreement to pay for said improvements.

THEREFORE, BE IT RESOLVED by the City Council of the City of Cotter,
Arkansas:

Section 1: That the Mayor of the City of Cotter shall be and is hereby authorized to enter into Amendment No. 4 to Interlocal Cooperation Agreement. A copy of the agreement to be executed by the Mayor is attached hereto as Exhibit "A" and incorporated by reference.

Dated this 17th day of December 2020.


McGeorge Caradine MAYOR

ATTEST:


Andrea Kray, RECORDER / TREASURER

ORIGINAL

SANDERS, MORGAN & CLARKE PLLC

ATTORNEYS AT LAW
701 SOUTH STREET
P.O. BOX 2308
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(870) 425-2126
FAX: (870) 424-3447

TED H. SANDERS, P.A.
ROGER L. MORGAN
ROBERT S. CLARKE, P.A.
CHRISTOPHER M. FLOYD

December 7, 2020

Neal Hodges
Area Loan Specialist
US Department of Agriculture
402 N. Walnut, Room 201
Harrison, AR 72601

Re: City of Cotter 2019 Wastewater Collection System Rehabilitation
Wastewater Loan

Dear Mr. Hodges,

Please be advised that I serve as general counsel for the City of Cotter, AR. In my capacity as general counsel for the City of Cotter, I have examined and reviewed all proposed documents for the existing structure and proposed loan structure that the City of Cotter is taking out on behalf of both the City of Gassville and City of Cotter, AR for the above referenced loan indebtedness. The documents specifically include Amendment No. 4 to the Interlocal Agreement between the City of Gassville and the City of Cotter. A copy of proposed Amendment No. 4 is attached hereto as Exhibit "A".

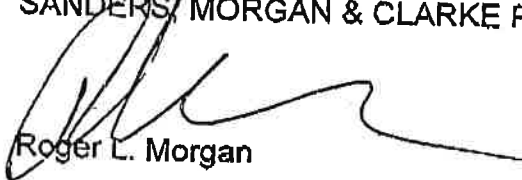
It is my opinion that the proposed documents include appropriate protections to insure that the City of Gassville will be required to pay the City of Cotter it's applicable portion of the proposed RD loan payments, debt service reserves and short-lived asset deposits required on a monthly basis as required based upon their percentage of the wastewater system used and pursuant to the terms of the Amendment No. 4 to the Interlocal Agreement. The terms and conditions of the documents referenced herein constitute legally binding obligations and agreements of both the City of Gassville and the City of Cotter.

This opinion is delivered to you in connection with the loan referenced hereinabove, and may not be utilized or quoted by you for any other purpose or relied

upon by any other person or entity other than your successors or assigns without my express written consent.

Sincerely

SANDERS MORGAN & CLARKE PLLC

A handwritten signature in black ink, appearing to read 'Roger L. Morgan', written over the typed name.

Roger L. Morgan

RLM:th
Enclosure

Kincade Law Office

RONALD P. KINCADE
KERRY D. CHISM

701 S. CHURCH STREET
MOUNTAIN HOME, AR 72653
PHONE (870) 425-8454
FAX (870) 424-4048

December 3, 2020

Neal Hodges
Area Loan Specialist
US Department of Agriculture
402 N. Walnut, Room 201
Harrison, AR 72601

RE: City of Gassville 2019 Wastewater Collection System Rehabilitation
Wastewater Loan

Dear Mr. Hodges:

Please be advised that I serve as general counsel for the City of Gassville, Arkansas. In my capacity as general counsel for the City of Gassville, I have examined and reviewed all proposed documents for the existing structure and proposed loan structure that the City of Gassville is taking out on behalf of both the City of Cotter and City of Gassville, Arkansas for the above referenced loan indebtedness. The documents specifically include Amendment No. 4 to the Interlocal Agreement between the City of Gassville and the City of Cotter. A copy of proposed Amendment No. 4 is attached hereto as Exhibit "A".

It is my opinion that the proposed documents is in compliance with Ark Code 25-20-104 et al and include appropriate protections to insure that the City of Cotter will be required to pay the City of Gassville it's applicable portion of the proposed RD loan payments, debt service reserves and short-lived asset deposits required on a monthly basis as required based upon their percentage of the wastewater system used and pursuant to the terms of the Amendment No. 4 to the Interlocal Agreement. The terms and conditions of the documents referenced herein constitute legally binding obligations and agreements of both the City of Gassville and the City of Cotter. Be sure to send this correspondence to the Attorney General, as the Arkansas Statute specifies to do.

This opinion is delivered to you in connections with the loan referenced hereinabove, and may not be utilized or quoted by you for any other purpose or relied upon by any other person or entity other than your successors or assigns without my expires written consent.

Sincerely,

KINCADE LAW OFFICE


Ronald P. Kincade

RPK/ab
Enclosures

Bcc: Mayor Braim