

INTERLOCAL COOPERATION AGREEMENT

between

SALT LAKE COUNTY

and

THE UTAH DEPARTMENT OF TRANSPORTATION

Central Station (New Ballpark Station) Project

This Interlocal Cooperation Agreement (this “Agreement”) is entered into by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (the “County”); and the **UTAH DEPARTMENT OF TRANSPORTATION**, an agency of the State of Utah created under Utah Code §§ 72-1-101 to -305 (“UDOT”). The County and UDOT may each be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

A. The County and UDOT are “public agencies” as defined by the Utah Interlocal Cooperation Act, UTAH CODE §§ 11-13-101 to -608 (the “Interlocal Act”), and, as such, are authorized by the Interlocal Act to enter into this Agreement to act jointly and cooperatively in a manner that will enable them to make the most efficient use of their resources and powers. Additionally, Section 11-13-215 of the Interlocal Act authorizes a county, city, town, or other local political subdivision to share its tax and other revenues with other counties, cities, towns, local political subdivisions, or the state.

B. During the 2018 General Session, the Utah State Legislature enacted Senate Bill 136, which allowed for a one percent local option sales and use tax, which is used by the County in its Regional Transportation Choice Fund (4th Quarter), which provides for on-going transportation funding in Salt Lake County (hereinafter “Transportation Funds”).

C. The County has appropriated Transportation Funds to further regional transportation by financing all or a portion of the costs of transportation projects throughout the County in accordance with Utah Code § 59-12-2219 and all other applicable federal, state and local laws, rules and regulations.

D. The Parties now desire to enter into this Agreement providing for the transfer of up to Seven Hundred Fifty Thousand Dollars (\$750,000) of Transportation Funds to UDOT to enable UDOT to make its required contribution payment (match) towards the Utah Transit Authority’s Central Station (New Ballpark Station) project (the “Project”).

A G R E E M E N T:

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties represent and agree as follows:

ARTICLE 1 - INCORPORATION AND DEFINITIONS

1.1. Incorporation and Definitions. The foregoing recitals and all exhibits hereto are hereby made a part of this Agreement. Unless otherwise defined in this Agreement, terms shall have the meaning set forth in the Transportation Code. The following terms shall have the following meanings in this Agreement:

- (a) Certificate of Grant Recipient: The Certificate of Grant Recipient attached hereto as **Exhibit A**.
- (b) Event of Default: As defined in Section 6.1 below.
- (c) Event of Force Majeure: As defined in Section 7.4 below.
- (d) Maximum Disbursement Amount: Seven Hundred Fifty Thousand Dollars (\$750,000)
- (e) Project: The construction of the UTA Central Station (new ballpark TRAX station).
- (f) Allowed Project Costs: Costs actually incurred by UTA during the Disbursement Term for the Project, so long as such costs are consistent with the allowable uses for Transportation Funds described in Utah Code § 59-12-2212.2 and in accordance with the Certificate of Grant Recipient.
- (g) Disbursement Term: The period of time commencing with the effective date of this Agreement and expiring upon the earlier of (i) the date UDOT has been disbursed, in aggregate, the Maximum Disbursement Amount, (ii) the date this Agreement is terminated, or (iii) June 30, 2027, which date may be extended by the County, in its sole discretion, but only in writing, upon receipt of a written request from UDOT setting forth UDOT's justification for such an extension.
- (h) Request for Disbursement: A statement from UTA requesting that UDOT pay a specified amount as its required contribution (match) towards the Central Station (New Ballpark TRAX Station) project.
- (i) Transportation Code: §§ 72-1-101 to -16-402, UTAH CODE (2023).
- (j) Transportation Funds: As defined in the Recitals, above.
- (k) UTA: The Utah Transit Authority

1.2. Interpretation of Action That May be Taken by the County. Whenever in this Agreement an action may be taken or not taken by the County, in its sole discretion, this shall mean that the action may be taken or not taken by the Mayor of the County, or his/her official designee (or the Director of the Department of Regional Planning, Housing and Economic Development, if such duty is so delegated to him/her by the Mayor of the County), in his/her sole discretion.

ARTICLE 2 - DISBURSEMENT OF TRANSPORTATION FUNDS

2.1. Transportation Funds. During the Disbursement Term, the County shall disburse Transportation Funds to UDOT to enable UDOT to contribute toward Allowed Project Costs, up to the Maximum Disbursement Amount for the Project, all on the terms and subject to the conditions of this Agreement.

2.2. Annual Status Update. Until the Project has been completed and Transportation Funds have been fully disbursed to UDOT, UDOT shall, on an annual basis, update the County on the status of: (a) the Project; and (b) the anticipated timing and amount of the Request for Disbursement submittal. This annual update shall be submitted to the County in writing (via letter or email) on or before June 30th each year.

2.3. Execution of Certificate of Grant Recipient. Concurrent with the execution of this Agreement, UDOT shall execute the Certificate of Grant Recipient attached hereto as **Exhibit A**.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.1. UDOT's Representations and Warranties. UDOT hereby represents, covenants, and warrants to the County as follows:

(a) Use of Transportation Funds. Any Transportation Funds disbursed to UDOT by the County under this Agreement will be used by UDOT: (1) solely to pay UTA for Allowed Project Costs incurred and consistent with the allowable uses for Transportation Funds described in Utah Code § 59-12-2212.2; and (2) in accordance with all other applicable federal, state and local laws, rules and regulations.

(b) No Default. No default or Event of Default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an Event of Default in any material respect on the part of UDOT under this Agreement.

(c) Information. To the best of UDOT's knowledge, any information furnished to the County by UDOT under this Agreement or in connection with the matters covered in this Agreement are true and correct and do not contain any untrue statement of any material fact and do not omit any material fact.

(d) Relationship of County and UDOT. The County is not acting as a lender to UDOT. The County has no fiduciary or other special relationship with UDOT and therefore no fiduciary obligations are created by this Agreement or are owed to UDOT or any third parties.

3.2. UDOT's Additional Representations – Liability and Reliance. Notwithstanding anything to the contrary in this Agreement, UDOT further represents that the County has not opined on and will not at any point be deemed to have opined on whether any particular Allowed Project Cost for which a disbursement of Transportation Funds is made to UDOT under this Agreement is consistent with the allowable uses for Transportation Funds described in Utah Code § 59-12-2212.2 or in accordance with other applicable federal, state and local laws, rules and regulations. As such, notwithstanding anything to the contrary in this Agreement, UDOT agrees to be liable for and indemnify the County from any improper use of the Transportation Funds, as indicated in Section 5.1 below. Furthermore, UDOT agrees that it will independently determine whether any particular Allowed Project Cost for which a disbursement of Transportation Funds is sought by and made to UDOT under this Agreement is consistent with the allowable uses for Transportation Funds described in Utah Code § 59-12-2212.2, and, as indicated in Section 4.2(e) below, UDOT agrees that it will not rely on the County's review or acceptance of the Request for Disbursement, the Project, or any other information submitted to the County by UTA or UDOT, in making that determination.

ARTICLE 4 - DISBURSEMENTS

4.1. Conditions for Disbursement of Transportation Funds. The County will not be obligated to disburse Transportation Funds to UDOT unless and until the following conditions have been satisfied:

(a) Request for Disbursement. UDOT has furnished to the County a copy of the Request for Disbursement.

(b) No Event of Default. No Event of Default has occurred and is continuing beyond any applicable cure period.

(c) Warranties and Representations True. All warranties and representations made by UDOT in this Agreement have remained true and correct.

4.2. Disbursements.

(a) In General. For the disbursement of Transportation Funds, UDOT shall submit a copy of the Request for Disbursement to the County. UDOT agrees to respond in a timely manner to any reasonable requests made by the County for additional information relating to the Request for Disbursement. In the event that the County declines to make the full disbursement requested in the Request for Disbursement due to UDOT's failure to comply with the terms of this Agreement, the County shall notify UDOT promptly and shall provide a written explanation of the specific reasons for such decision.

(b) Amount of Disbursement. Subject to compliance with the terms and conditions of this Agreement, the County shall disburse to UDOT the amount of Transportation Funds requested by UTA as indicated in the Request for Disbursement for Allowed Project Costs, but in no event shall the County be required to disburse more than the Maximum Disbursement Amount, in aggregate, over the Disbursement Term.

However, if the County determines that UDOT has not complied with all terms and conditions set forth in this Agreement or determines that the Request for Disbursement is deficient in any respect, the County may, in its sole discretion, decline to make the disbursement, or may make a partial disbursement based on the extent to which UDOT has complied with the terms and conditions set forth in this Agreement.

(c) Payment of Disbursements. The County shall, within ninety (90) days after receiving the Request for Disbursement from UDOT, either disburse to UDOT the amount requested by UDOT or provide a written notice to UDOT setting forth the reasons for non-disbursement or partial-disbursement. The County shall have no obligation to accept the Request for Disbursement or to make a disbursement of Transportation Funds to UDOT after expiration of the Disbursement Term. Additionally, following expiration of the Disbursement Term, the County may, in its sole discretion, reallocate any remaining and undisbursed Transportation Funds (for which a Request for Disbursement has not been submitted and is not pending) to other projects within Salt Lake County.

(d) Acquiescence Not a Waiver. To the extent that the County may have acquiesced in noncompliance with any conditions precedent to the disbursement of Transportation Funds, such acquiescence shall not constitute a waiver by the County and the County at any time after such acquiescence may require UDOT, as to future requests for disbursements, to comply with all such applicable conditions and requirements under this Agreement.

(e) Disclaimer of Liability.

(1) The County will not be responsible in any manner to UDOT or any third-party for the quality, design, construction, structural integrity, or health or safety features of any Project for which Transportation Funds are disbursed to UDOT, notwithstanding the County's review and/or approval of UDOT's Requests for Disbursement, the Project, or any other information submitted to the County under this Agreement.

(2) Furthermore, UDOT acknowledges and agrees that the County's review and/or approval of the Request for Disbursement, the Project, or any other information submitted to the County under this Agreement will not be deemed to be a review by the County as to whether any particular Allowed Project Cost for which a disbursement of Transportation Funds is sought by and made to UDOT under this Agreement is consistent with the allowable uses for Transportation Funds described in Utah Code § 59-12-2212.2 or in accordance with other applicable federal, state and local laws, rules and regulations. As such, UDOT agrees to be liable for and to indemnify the County from any improper use of the Transportation Funds, as indicated in Section 5.1 below.

ARTICLE 5 - COVENANTS AND AGREEMENTS

5.1. Indemnification and Liability.

(a) Liability. Both Parties are governmental entities under the Governmental Immunity Act of Utah, UTAH CODE §§ 63G-7-101 to -904 (the “Immunity Act”). Neither Party waives any defenses or limits of liability available under the Immunity Act and other applicable law. Both Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

(b) Indemnification. UDOT agrees to indemnify, hold harmless, and defend the County, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, debts, and liabilities of, to, or by third Parties, including demands for repayment or penalties, however allegedly caused, resulting directly or indirectly from, or arising out of (i) UDOT’s breach of this Agreement; (ii) any acts or omissions of or by UDOT, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; (iii) any improper use of the Transportation Funds; or (iv) UDOT’s breach of the Certificate of Grant Recipient attached hereto as **Exhibit A**. UDOT agrees that its duty to defend and indemnify the County under this Agreement includes all attorney’s fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against the County for the defense of any claim or to satisfy any settlement, arbitration award, debt, penalty, or verdict paid or incurred on behalf of the County. UDOT further agrees that UDOT’s indemnification obligations in this Section 5.1 will survive the expiration or termination of this Agreement.

5.2. Recordkeeping. UDOT agrees to maintain its books and records in such a way that any Transportation Funds received from the County will be shown separately on UDOT’s books. UDOT shall maintain records adequate to identify the use of the Transportation Funds for the purposes specified in this Agreement. Upon request of the County, UDOT shall make its books and records related to the Transportation Funds available to the County at reasonable times.

5.3. Assignment and Transfer of Transportation Funds. UDOT shall not assign or transfer its obligations or rights under this Agreement without prior written consent from the County. UDOT shall use the Transportation Funds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

ARTICLE 6 - DEFAULTS AND REMEDIES

6.1. UDOT Event of Default. The occurrence of any one or more of the following shall constitute an “Event of Default” as such term is used herein:

(a) Failure of UDOT to comply with any of the material terms, conditions, covenants, or provisions of this Agreement that is not fully cured by UDOT on or before the expiration of a sixty (60) day period (or, if the County approves in writing, which approval shall not be unreasonably withheld, conditioned or delayed, such longer period

as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be cured within 60 days) commencing upon the County's written notice to UDOT of the occurrence thereof.

6.2. County's Remedies in the Event of Default. Upon the occurrence of any Event of Default, the County may, in its sole discretion, and in addition to all other remedies conferred upon the County by law or equity or other provisions of this Agreement, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

- (a) Withhold further disbursement of Transportation Funds to UDOT; and/or
- (b) Reduce the amount of any future disbursement of Transportation Funds to UDOT by the amount incurred by the County to cure such default; and/or
- (c) Terminate this Agreement.

ARTICLE 7 - MISCELLANEOUS

7.1. Interlocal Cooperation Act. In satisfaction of the requirements of the Interlocal Act in connection with this Agreement, the Parties agree as follows:

- (a) This Agreement shall be approved by each Party pursuant to Section 11-13-202.5 of the Interlocal Act.
- (b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with Section 11-13-202.5 of the Interlocal Act.
- (c) A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Interlocal Act.
- (d) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.
- (e) No separate legal entity is created by the terms of this Agreement. Pursuant to Section 11-13-207 of the Interlocal Act, to the extent this Agreement requires administration other than as set forth herein, the County Mayor and UDOT Executive Director are hereby designated as the joint administrative board for all purposes of the Interlocal Act.

7.2. Term of Agreement. This Agreement shall take effect immediately upon the completion of the following: (a) the approval of the Agreement by the governing bodies of the County and UDOT, including the adoption of any necessary resolutions or ordinances by the County and UDOT authorizing the execution of this Agreement by the appropriate person or

persons for the County and UDOT, respectively, (b) the execution of this Agreement by a duly authorized official of each of the Parties, (c) the submission of this Agreement to an attorney for each Party that is authorized to represent said Party for review as to proper form and compliance with applicable law, pursuant to Section 11-13-202.5 of the Interlocal Act, and the approval of each respective attorney, and (d) the filing of a copy of this Agreement with the keeper of records of each Party. This Agreement shall terminate upon expiration of the Disbursement Term. If upon expiration of the Disbursement Term, the County has not disbursed to UDOT the Maximum Disbursement Amount, then all such undisbursed Transportation Funds may be used by the County as the County deems appropriate.

7.3. Non-Funding Clause.

(a) The County has requested or intends to request an appropriation of Transportation Funds to be paid to UDOT for the purposes set forth in this Agreement. If Transportation Funds are not appropriated and made available beyond December 31 of the county fiscal year in which this Agreement becomes effective, the County's obligation to contribute Transportation Funds to UDOT under this Agreement beyond that date will be null and void. This Agreement places no obligation on the County to Contribute Transportation Funds to UDOT in succeeding fiscal years. The County's obligation to contribute Transportation Funds to UDOT under this Agreement will terminate and become null and void on the last day of the county fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds are budgeted and appropriated. The Parties agree that such termination of the County's obligation under this Paragraph will not be construed as a breach of this Agreement or as an event of default under this Agreement, and that such termination of the County's obligation under this Paragraph will be without penalty and that no right of action for damages or other relief will accrue to the benefit of UDOT, its successors, or its assigns as to this Agreement, or any portion thereof, which may terminate and become null and void.

(b) If Transportation Funds are not appropriated and made available to fund performance by the County under this Agreement, the County shall promptly notify UDOT of such non-funding and the termination of this Agreement. However, in no event, shall the County notify UDOT of such non-funding later than thirty (30) days following the expiration of the county fiscal year for which Transportation Funds were last appropriated for contribution to UDOT under this Agreement.

7.4. Force Majeure. Neither Party will be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises after this Agreement becomes effective. "Event of Force Majeure" means an event beyond the control of the County or UDOT that prevents a Party from complying with any of its obligations under this Agreement, including but not limited to: (i) an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); (ii) war, acts or threats of terrorism, invasion, or embargo; or (iii) riots or strikes. If an Event of Force Majeure persists for a period in excess of sixty (60) days, the County may terminate this Agreement without liability or penalty, effective upon written notice to UDOT.

7.5. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States mail, postage pre-paid, and certified and addressed to the Parties at their respective addresses.

7.6. Ethical Standards. UDOT represents that it has not: (a) provided an illegal gift in connection with this Agreement to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards in connection with this Agreement set forth in State statute or Salt Lake County Code of Ordinances § 2.07; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, in connection with this Agreement, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County Ordinances.

7.7. Entire Agreement. This Agreement and the documents referenced herein, if any, constitute the entire Agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either Party, or agents for either Party, that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

7.8. Amendment. This Agreement may be amended, changed, modified or altered only by an instrument in writing signed by both Parties.

7.9. Governing Law and Venue. The laws of the State of Utah govern all matters arising out of this Agreement. Venue for any and all legal actions arising hereunder will lie in the District Court in and for the County of Salt Lake, State of Utah.

7.10. No Obligations to Third Parties. The Parties agree that UDOT's obligations under this Agreement are solely to the County and that the County's obligations under this Agreement are solely to UDOT. The Parties do not intend to confer any rights to third parties unless otherwise expressly provided for under this Agreement.

7.11. Agency. No officer, employee, or agent of UDOT or the County is intended to be an officer, employee, or agent of the other Party. None of the benefits provided by each Party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the officers, employees, or agents of the other Party. UDOT and the County will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of this Agreement.

7.12. No Waiver. The failure of either Party at any time to require performance of any

provision or to resort to any remedy provided under this Agreement will in no way affect the right of that Party to require performance or to resort to a remedy at any time thereafter. Additionally, the waiver of any breach of this Agreement by either Party will not constitute a waiver as to any future breach.

7.13. Severability. If any provision of this Agreement is found to be illegal or unenforceable in a judicial proceeding, such provision will be deemed inoperative and severable, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

7.1. Counterparts. This Agreement may be executed in counterparts and all so executed will constitute one agreement binding on all the Parties, it being understood that all Parties need not sign the same counterpart. Further, executed copies of this Agreement delivered by facsimile or email will be deemed an original signed copy of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties execute this Agreement as of the latest date indicated below.

SALT LAKE COUNTY:

Mayor or Designee

Date: _____

Recommended for Approval:

By: *Helen Peters*

Department Director

Date: Feb 20, 2024

Reviewed as to Form:

By:  Adam Miller
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Deputy District Attorney

**UTAH DEPARTMENT OF
TRANSPORTATION:**

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

By: _____

Date: _____

EXHIBIT A

Certificate of Grant Recipient

CERTIFICATE OF RECIPIENT

Under the terms of Utah Code § 59-2-2219 and the Interlocal Cooperation Agreement (the “*Agreement*”) between Salt Lake County and the Utah Department of Transportation (the “*Recipient*”), the County has committed to provide up to Seven Hundred Fifty Thousand Dollars (\$750,000) of the Transportation Funds to the Recipient to enable the Recipient to contribute toward certain costs incurred by the Utah Transit Authority to complete the transportation project described in the Agreement (the “*Project*” or “*Projects*”). The undersigned officer or agent of the Recipient hereby certifies that all applicable requirements have been met for distribution of the Transportation Funds and that the Transportation Funds will be used solely for the Project or Projects.

IN WITNESS WHEREOF, the Utah Department of Transportation has caused this certificate to be executed as of the day and year first above written.

UTAH DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Date: _____