

**INTERLOCAL COOPERATION AGREEMENT**

*between*

**SALT LAKE COUNTY**

*and*

**WASTACH FRONT REGIONAL COUNCIL**

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 **WASATCH FRONT REGIONAL COUNCIL**, an interlocal entity under the Utah Interlocal Cooperation Act (the “Agency”). The County and the Agency may each be referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS**

A. The County and the Agency are “public agencies” as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (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, at the discretion of the local governing body, to share its tax and other revenues with other counties, cities, towns, or local political subdivisions, the state, or a federal government agency.

B. During the 2018 General Session, the State Legislature passed SB136, which amended Section 59-12-2219 of the Revenue and Taxation Code, Utah Code Ann. §§ 59-12-101 *et seq.*, to provide for implementation of a .25% increase in the County Sales Tax to be used by the County for certain transportation purposes (hereinafter “County Transportation Funds”).

C. On May 1, 2018, the Salt Lake County Council passed Ordinance 1829, imposing a .25% increase the County sales tax.

D. The County desires to use County Transportation Funds to further regional transportation by financing all or a portion of the costs of a regionally significant transportation facilities or public transit projects of regional significance throughout the County in accordance with Utah Code Ann. §59-12-2219(11)(a)(ii) and all other applicable federal, state and local laws, rules and regulations.

E. The County and the Agency desire to enter into this Agreement providing for the transfer of up to One Hundred Thousand Dollars and No Cents (\$100,000.00) of County Transportation Funds to the Agency for creation of the Southwest Visioning Project for the southwest region of Salt Lake County for unincorporated Salt Lake County and the municipalities of Bluffdale, Copperton Metro Township, Herriman, Riverton, South Jordan, and West Jordan so long as County Transportation Funds are used for allowable transportation uses and consistent with the scope of work submitted with the application to the Salt Lake County Regional Transportation Choice Fund.

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) County Transportation Funds: As defined in the Recitals above.
- (b) Event of Default: As defined in Section 6.1 below.
- (c) Event of Force Majeure: As defined in Section 7.4 below.
- (d) Project: The transportation project or projects described in or determined pursuant to the Project Description.
- (e) Project Description: The project description attached hereto as Exhibit A.
- (f) Project Element. A discrete portion of the Project.

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 Regional Planning and Transportation, if such duty is so delegated to him/her by the Mayor of the County), in his/her sole discretion.

1.3 Representation. Mayor Jennifer Wilson or her designee shall be the representative for the unincorporated Salt Lake County.

## **ARTICLE 2 - DISBURSEMENT OF COUNTY TRANSPORTATION FUNDS**

2.1. County Transportation Funds. The County shall disburse One Hundred Thousand Dollars (\$100,000.00) of County Transportation Funds to the Agency subject to the terms and conditions of this Agreement. The County Transportation Funds disbursed under this Agreement shall be used for creation of the Southwest Visioning Project for the southwest region of Salt Lake County, including the unincorporated Salt Lake County and the municipalities of Bluffdale, Copperton Metro Township, Herriman, Riverton, South Jordan, and West Jordan so long as such County Transportation Funds are used for allowable transportation uses and consistent with the scope of work submitted with the application to the Salt Lake County Regional Transportation Choice Fund.

2.2. Annual Status Update. Until the Project has been completed and the County Transportation Funds have been fully spent by the Agency, the Agency shall, on an annual basis, update the County on the status of (a) the Project and (b) the anticipated completion of the Project. This annual update shall be submitted to the County in writing (via letter or email) on or before June 30<sup>th</sup> of each year.

## **ARTICLE 3 -- REPRESENTATIONS AND WARRANTIES**

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

(a) Use of County Transportation Funds. Any County Transportation Funds disbursed to the Agency by the County under this Agreement will be used by the Agency: (1) solely for Project costs so long as such costs are consistent with the allowable uses for County Transportation Funds described in Utah Code Ann. §59-122219(11)(a)(ii); 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 the Agency under this Agreement.

(c) Information. To the best of the Agency's knowledge, any information furnished to the County by the Agency 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 Agency. The County is not acting as a lender to the Agency. The County has no fiduciary or other special relationship with the Agency and therefore no fiduciary obligations are created by this Agreement or are owed to the Agency or any third parties.

3.2. Agency's Additional Representations – Liability and Reliance. Notwithstanding anything to the contrary in this Agreement, the Agency further represents that the County has not opined on and will not at any point be deemed to have opined on whether any particular Project Cost for which a disbursement of County Transportation Funds is made to the Agency under this Agreement is consistent with the allowable uses described in Utah Code Ann. §59-12-2219(11)(a)(ii) or in accordance with other applicable federal, state and local laws, rules and regulations. As such, notwithstanding anything to the contrary in this Agreement, the Agency agrees to be liable for and indemnify the County from any improper use of the County Transportation Funds, as indicated in Section 5.1 below. Furthermore, the Agency agrees that it will independently determine whether any particular Project cost incurred by the Agency under this Agreement is consistent with the allowable uses for County Transportation Funds described in Utah Code Ann. §59-12-2219(11)(a)(ii), and, as indicated in Section 4.2(e) below, the Agency agrees that it will not rely on the County's review or acceptance of the Project Description or any other information submitted to the County by the Agency, in making that determination.

#### **ARTICLE 4 – REVIEW OF PROJECT COSTS**

4.1. Project Review. The County will disburse County Transportation Funds to the Agency to cover Project costs consistent with the terms of this Agreement. The County may request, and the Agency shall provide upon such request, the following:

(a) Documents to be Furnished for Each Expense Upon Request. The Agency shall furnish to the County upon County's request, for each and every Project cost:

(1) invoices and proof of payment for any Project cost incurred by the Agency;

(2) any other record or document related to the Project as needed so the County may review whether Project costs have been used to pay for allowable expenses.

(b) Completion of Project Element. Proof that the Agency has completed or caused to be completed the Project Element or Elements to which the funding relates and for which Project costs were incurred by the Agency.

(c) No Event of Default. Proof that no Event of Default has occurred and is continuing beyond any applicable cure period.

(d) Warranties and Representations True. Proof that all warranties and representations made by the Agency in this Agreement have remained true and correct.

4.2. Request for Information Related to Project Costs.

(a) In General. The Agency agrees to respond in a timely manner to any reasonable requests made by the County for additional information relating to any Project cost.

(b) Disclaimer of Liability.

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

(2) Furthermore, the County's review of documents or information under this Agreement does not amount to acknowledgement by the County that Project costs incurred by the Agency are consistent with the allowable uses for County Transportation Funds described in Utah Code Ann. §59-12-2219(11)(a)(ii) or in accordance with other applicable federal, state and local laws, rules and regulations.

## **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 Ann. §§ 63G-7-101 *et seq.* (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. The Agency 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) the Agency's breach of this Agreement; (ii) any acts or omissions of or by the Agency, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; (iii) any improper use of the County Transportation Funds; or (iv) the Agency's breach of the Certificate of Grant Recipient attached hereto as Exhibit B. The Agency 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. The Agency further agrees that the Agency's indemnification obligations in this Section 5.1 will survive the expiration or termination of this Agreement.

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

5.3. Assignment and Transfer of County Transportation Funds. The Agency shall not assign or transfer its obligations under this Agreement nor its rights to the County Transportation Funds under this Agreement without prior written consent from the County. The Agency shall use the County 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. Agency 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 the Agency to comply with any of the material terms, conditions, covenants, or provisions of this Agreement that is not fully cured by the Agency 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 the Agency 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, 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 1113-202.5 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 the Agency Mayor are hereby designated as the joint administrative board for all purposes of the Interlocal Act.

(f) No real or personal property shall be acquired jointly by the Parties as a result of this agreement. To the extent that a party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party.

(g) Either Party may withdraw from the joint or cooperative undertaking described in this Agreement only upon the termination of this Agreement.

(h) Voting of the County mayor and the Agency Mayor shall be based on one vote per Party.

(i) The functions to be performed by the joint or cooperative undertaking are those described in this Agreement.

(j) The powers of the joint board are those described in this Agreement.

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 the Agency, including the adoption of any necessary resolutions or ordinances by the County and the Agency authorizing the execution of this Agreement by the appropriate person or persons for the County and the Agency, 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 as of June 30, 2021. The Parties may extend the Agreement as needed and as agreed upon in writing by the Parties.

7.3. Non-Funding Clause.

- (a) The County has requested or intends to request an appropriation of County Transportation Funds to be paid to the Agency for the purposes set forth in this Agreement. If County 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 County Transportation Funds to the Agency under this Agreement beyond that date will be null and void. This Agreement places no obligation on the County to contribute County Transportation Funds to the Agency in succeeding fiscal years. The County's obligation to contribute County Transportation Funds to the Agency 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 the Agency, its successors, or its assigns as to this Agreement, or any portion thereof, which may terminate and become null and void.
- (b) If County Transportation Funds are not appropriated and made available to fund performance by the County under this Agreement, the County shall promptly notify the Agency of such non-funding and the termination of this Agreement. However, in no event, shall the County notify the Agency of such non-funding later than thirty (30) days following the expiration of the county fiscal year for which County Transportation Funds were last appropriated for contribution to the Agency 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 the Agency 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 the Agency.



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 as follows (or to such other address that may be designated by the receiving party from time to time):

If to Salt Lake County:           Regional Planning and Transportation  
2001 South State, S2-100  
Salt Lake City, Utah 84190

With a copy to:                   Salt Lake County District Attorney  
35 East 500 South  
Salt Lake City, Utah 84111

If to the Agency:                 Wasatch Front Regional Council  
14 N. Rio Grande Street, Suite 103  
Salt Lake City, Utah 84101

7.6. Ethical Standards. The Agency 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 the Agency's obligations under this Agreement are solely to the County and that the County's obligations under this Agreement are solely to the Agency. 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 the Agency 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. The Agency 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.

7.14. 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.

IN WITNESS WHEREOF, each Party hereby signs this Agreement on the date written by each Party on the signature pages attached hereto.

*[Intentionally Left Blank - Signature Page Follows]*

**INTERLOCAL AGREEMENT - SIGNATURE PAGE FOR THE COUNTY**

**SALT LAKE COUNTY**

By \_\_\_\_\_  
Mayor or Designee

Dated: \_\_\_\_\_, 20\_\_\_\_

***Reviewed by:***


**REGIONAL PLANNING AND TRANSPORTATION**

By *Wilford Sommerkorn*  
Wilford Sommerkorn (Jul 29, 2019)  
\_\_\_\_\_  
Wilf Sommerkorn  
Director

Dated: Jul 29, 2019, 20\_\_\_\_

***Approved as to Form and Legality:***

**Jason S.  
Rose**

 Digitally signed by  
Jason S. Rose  
Date: 2019.07.29  
08:52:08 -06'00'

**INTERLOCAL AGREEMENT – SIGNATURE PAGE FOR AGENCY**

**WASATCH FRONT REGIONAL COUNCIL**

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

**EXHIBIT A**  
**PROJECT DESCRIPTION for WASATCH FRONT**  
**REGIONAL COUNCIL**

**Project Title:** Southwest Salt Lake County Visioning Project

<b>Project Description:</b>	Visioning Project for the southwest region of Salt Lake County, for the unincorporated Salt Lake County and the municipalities of Bluffdale, Copperton Metro Township, Herriman, Riverton, South Jordan, and West Jordan.
<b>Amount to be Transferred:</b>	\$100,000.00