

**INTERLOCAL COOPERATION AGREEMENT**

**between**

**SALT LAKE COUNTY**

**and**

**JORDAN SCHOOL DISTRICT**

***Building Resilient Infrastructure and Communities Grant***

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 **JORDAN SCHOOL DISTRICT**, a local school district created under Utah Code §§ 53G-1-101 to -11-519 (the “District”). The County and the District may each be referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS:**

A. The County and the District 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 to enter into agreements to act jointly and cooperatively in a manner that will enable them to make the most efficient use of their resources and powers.

B. Additionally, Utah Code § 11-13-215 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.

C. The District was awarded a Building Resilient Infrastructure and Communities grant from FEMA to fund its earthquake mitigation scoping project. The County was a sponsor of the District’s application and was named as the subrecipient of the grant.

D. The Utah State Division of Emergency Management (“DEM”) will receive the grant funds (the “Grant Funds”) from FEMA initially. As the District completes work on the project, DEM will release Grant Funds to the County; the County will then use the Grant Funds to reimburse the District for the costs it incurs as set forth herein.

E. The Parties now desire to enter into this Agreement providing for the transfer of up to Three Hundred Fifteen Thousand Dollars (\$315,000) of the Grant Funds from the County to the District to reimburse the District for certain costs incurred by the District to complete the Project.

**AGREEMENT:**

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. The following terms shall have the following meanings in this Agreement:

- (a) Event of Default: As defined in Section 6.1 below.
- (b) Event of Force Majeure: As defined in Section 7.3 below.
- (c) Disbursement Invoice: A signed statement from the District to DEM, using DEM Form 85-21, that: a) indicates certain Project Element(s) have been completed; b) indicates a specified amount of Reimbursable Project Costs have been expended by the District; and c) requests a specified amount of Grant Funds be disbursed by DEM to the County.
- (d) Grant Documents: The scope of work and budget narrative attached hereto as Exhibit “A,” the Federal Emergency Management Agency’s Agreement Articles for the BRIC grant, including all subaward-specific terms and conditions, and any extensions, renewals, modifications and replacements of such documents.
- (e) Grant Funds: As defined in the Recitals, above.
- (f) Maximum Reimbursable Amount: Three Hundred Fifteen Thousand Dollars (\$315,000).
- (g) Project: The earthquake mitigation scoping project described in the Project Description.
- (h) Project Description: A seismic retrofit of ten District buildings by a qualified engineering firm as more particularly described in Exhibit “A.” Each site investigation involves visual examination of the masonry and concrete imaging where needed to determine where masonry will require reinforcement.
- (i) Project Element: A discrete portion of the Project.
- (j) Reimbursable Project Costs: Costs incurred by the District during the Reimbursement Term for the Project, so long as such costs are consistent with the allowable uses of the Grant Funds and the terms of the Grant Documents.
- (k) Reimbursement Term: The period of time commencing with the effective date of this Agreement and expiring upon the earlier of (i) the date the District has been disbursed, in aggregate, the Maximum Reimbursable Amount, (ii) the date this Agreement is terminated, or (iii) August 23, 2026, which date may be extended by the County, in its sole discretion, but only in writing, upon receipt of a written request from the District setting forth the District’s justification for such an extension.

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, in his/her sole discretion.

## **ARTICLE 2 — PROJECT COSTS**

2.1. Grant Funds. During the Reimbursement Term, the County shall disburse Grant Funds to the District to reimburse the District for Reimbursable Project Costs, up to the Maximum Reimbursable Amount for the Project, all on the terms and subject to the conditions of this Agreement.

2.2. Matching Share. In addition to the Reimbursable Project Costs, the District agrees to expend One Hundred Four Thousand One Hundred Ninety Dollars (\$104,190) toward the Project as its matching share. The District may not be reimbursed under this Agreement for any of its matching share costs.

2.3. Records. The District agrees to document all its costs expended for the Project.

## **ARTICLE 3 — REPRESENTATIONS AND WARRANTIES**

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

(a) Use of Grant Funds. Any Grant Funds disbursed to the District by the County under this Agreement will be used by the District: a) solely to reimburse the District for costs actually incurred by the District for the Project during the Reimbursement Term that are consistent with the allowable uses for Grant Funds and the terms of the Grant Documents; and b) 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 District under this Agreement.

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

3.2. District's Additional Representations – Liability and Reliance. Notwithstanding anything to the contrary in this Agreement, the District further represents that the County has not opined on and will not at any point be deemed to have opined on whether any particular Reimbursable Project Cost for which a disbursement of Grant Funds is made to the District under this Agreement is consistent with the allowable uses for Grant Funds, the terms of the Grant Documents, or any other applicable federal, state and local laws, rules and regulations. As

such, notwithstanding anything to the contrary in this Agreement, the District agrees to be liable for and indemnify the County from any improper use of the Grant Funds, as indicated in Section 5.1 below. Furthermore, the District agrees that it will independently determine whether any particular Reimbursable Project Cost for which a disbursement of Grant Funds is sought by and made to the District under this Agreement is consistent with the allowable uses for Grant Funds and, as indicated in Section 4.2(d) below, the District agrees that it will not rely on the County's review or acceptance of any Disbursement Invoice, the Project Description, or any other information submitted to the County by the District, in making that determination.

#### **ARTICLE 4 — DISBURSEMENTS**

4.1. Conditions for Each Disbursement of Grant Funds. The County will not be obligated to disburse Grant Funds to the District to cover Reimbursable Project Costs unless and until the following conditions have been satisfied:

- i. The District has furnished to the County, for each and every disbursement, a copy of a Disbursement Invoice that District provided to DEM; and
- ii. The County has received a corresponding payment of Grant Funds from DEM.

4.2. Disbursements.

(a) Amount of Disbursement. Subject to compliance with the terms and conditions of this Agreement, the County shall disburse to the District the amount of Grant Funds indicated by the District in a Disbursement Invoice for Reimbursable Project Costs, but in no event shall the County be required to disburse more than the Maximum Reimbursable Amount, in aggregate, over the Reimbursement Term. However, if the County determines that the District has not complied with all terms and conditions set forth in this Agreement or determines that the District's Disbursement Invoice is deficient in any respect, the County may, in its sole discretion, decline to make a disbursement, or may make a partial disbursement based on the extent to which the District has complied with the terms and conditions set forth in this Agreement.

(b) Payment of Disbursements. The County shall, within ninety (90) days after receiving a copy of a Disbursement Invoice from the District, either disburse to the District the amount requested by the District or provide a written notice to the District setting forth the reasons for non-disbursement or partial-disbursement. The County shall have no obligation to make a disbursement of Grant Funds to the District after expiration of the Reimbursement Term.

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

(d) Disclaimer of Liability.

- i. The County will not be responsible in any manner to the District or any third-party for the quality, design, construction, structural integrity, or health or safety features of any Project for which Grant Funds are disbursed to the District, notwithstanding the County's review and/or approval of the District's Requests for Disbursement, the Project Description, or any other information submitted to the County under this Agreement.
- ii. Furthermore, the District acknowledges and agrees that the County's review and/or approval of the District's Disbursement Invoice, the Project Description, 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 Reimbursable Project Cost for which a disbursement of Grant Funds is sought by and made to the District under this Agreement is consistent with the allowable uses for Grant Funds, the terms of the Grant Documents, or any other applicable federal, state and local laws, rules and regulations. As such, the District agrees to be liable for and to indemnify the County from any improper use of the Grant 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. The District 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 District's breach of this Agreement; (ii) any acts or omissions of or by the District, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; or (iii) any improper use of the Grant Funds. The District 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 District further agrees that the District's indemnification obligations in this Section 5.1 will survive the expiration or termination of this Agreement.

5.2. Recordkeeping. The District agrees to maintain its books and records in such a way that any Grant Funds received from the County will be shown separately on the District's books. The District shall maintain records adequate to identify the use of the Grant Funds for the purposes specified in this Agreement. Upon request of the County, the District shall make its books and records related to the Grant Funds available to the County and shall enable the County to fully comply with the federal audit requirements found in 2 C.F.R. 200, Subpart F.

5.3. Eligible Vendors. The District shall ensure that any vendor from whom it procures equipment or services is not currently identified on the Federal Government's list of entities who have been suspended and/or debarred.

5.4. Reporting. The District shall comply with all deadlines, reporting requirements, and documentation requests identified by the County, DEM, and/or FEMA. Quarterly reports must be submitted to DEM no later than the third Friday of the month following the end of each quarter (January, April, July, and October).

5.5. Approved Purchases. The District agrees to purchase only those items that have been identified with approved line item numbers, and to perform only work per the scope of work. Any changes to the original scope of work must be requested by the District, in writing, and must be approved by the County and DEM prior to the procurement of those newly requested items. Any unauthorized purchases or changes will not be eligible and the named agency will be fully responsible for those costs.

5.6. Monitoring. The District is subject to monitoring visits by the County and/or DEM of all Project-related activities. This shall include, but not limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress and to observe all of the District's personnel in every phase of performance of Project-related work.

5.7. Ground Disturbance Work. If ground disturbing activities occur during Project implementation, the District must ensure monitoring of ground disturbance, and if any potential archeological resources are discovered, it shall immediately cease construction in that area and notify the County, FEMA and the appropriate Utah State historic preservation office. Any construction activities that have been initiated without the necessary EHP review and approval will not be eligible for reimbursement hereunder.

5.8. Assignment and Transfer of Grant Funds. The District shall not assign or transfer its obligations under this Agreement nor its rights to the Grant Funds under this Agreement without prior written consent from the County. The District shall use the Grant Funds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

## **ARTICLE 6 — DEFAULTS AND REMEDIES**

6.1. District 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 District to comply with any of the material terms,

conditions, covenants, or provisions of this Agreement that is not fully cured by the District 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 District 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 Grant Funds to the District; and/or
- (b) Reduce the amount of any future disbursement of Grant Funds to the District 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 the District Superintendent 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 the District, including the adoption of any necessary resolutions or ordinances by the County and the District authorizing the execution of this Agreement by the appropriate person or persons for the County and the District, 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 Reimbursement Term. If upon expiration of the Reimbursement Term, the County has not disbursed to the District the Maximum Reimbursable Amount, then all such undisbursed Grant Funds may be used by the County as the County deems appropriate.

7.3. 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 District 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 District.

7.4. 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.

7.5. Ethical Standards. The District 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.

7.6. 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.

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

7.8. 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.

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

7.10. Agency. No officer, employee, or agent of the District 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 District 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.

7.11. 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.

7.12. 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: \_\_\_\_\_  
Department Director

Date: \_\_\_\_\_

Reviewed as to Form:

By: \_\_\_\_\_  
Deputy District Attorney

Date: \_\_\_\_\_

**JORDAN SCHOOL DISTRICT:**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Reviewed as to Form:

By: \_\_\_\_\_  
District Attorney

Date: \_\_\_\_\_

**EXHIBIT A**

*Project Scope of Work and Budget Narrative*

## 2022 BRIC Jordan School District Earthquake Mitigation Scoping Project

Ten school campuses across the Jordan School District were identified by the Utah K-12 Public Schools Unreinforced Masonry Inventory as being “likely under-reinforced masonry.” Five of the buildings serve populations that fall under Title I. These five buildings serve high populations (over 40%) of elementary-aged students who are low-income.

In order to evaluate the current state of these buildings, the Jordan School District will hire an engineering firm to perform a seismic retrofit scope of work. This site investigation would involve visual examination of the masonry and concrete imaging where needed to determine where masonry would require reinforcement.

This project would be completed in preparation for a future project that would include “actions that would reduce vulnerabilities” by adding requisite reinforcement to schools based on the findings of the exploratory project. This is of particular importance due to Jordan School District’s proximity to fault lines that exist across Salt Lake County.

Budget Narrative

	<b>Year 1</b> 2023- 2024	<b>Year 2</b> 2024- 2025	<b>Total</b>
<b>PROFESSIONAL FEES/CONTRACT SERVICES</b>			0
Scoping Work (Engineering Firm)			0
1 high school @\$60,000 each (\$60,000) + 3 middle schools @\$50,000 each (\$150,000) +6 elementaries \$40,000 each (\$240,000) = (\$450,000)	450,000		450,000
<b>DIRECT COSTS</b>	450,000		450,000
<b>INDIRECT COSTS</b>	0	0	0
<b>TOTAL COSTS</b>	<b>450,000</b>	<b>0</b>	<b>450,000</b>