

INTERLOCAL COOPERATION AGREEMENT

between

SALT LAKE COUNTY

and

CENTRAL WASATCH COMMISSION

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 **CENTRAL WASATCH COMMISSION**, an Interlocal Entity created under the laws of the State of Utah (the “Commission”). The County and the Commission may each be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

A. The County and the Commission 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, interlocal entity 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.

C. The County intends to transfer funds to the Commission to be used for the replacement of a section of the Desolation Trail going from Mill D North Trailhead to Dog Lake.

D. The County and the Commission now desire to enter into this Agreement providing for the transfer of Twenty Thousand Dollars (\$20,000.00) of Regional Transportation Choice Funds (4th Quarter) for the development, construction, and maintenance of the property pursuant to Utah Code Ann. § 59-12-2212.2(1)(a)(viii).

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 -DISBURSEMENT OF COUNTY REGIONAL TRANSPORTATION
CHOICE FUNDS FOR PROPERTY ACQUISITION**

1.1. County Transportation Choice Funds. The County shall allocate and disburse Twenty Thousand Dollars (\$20,000.00) of Regional Transportation Funds (“Funds”) to the Commission from the Salt Lake County Regional Transportation Choice Fund, all on the terms and subject to the conditions of this Agreement.

1.2. Commission Use. The Commission shall use the Funds allocated and disbursed to it under this Agreement towards the replacement of a section of the Desolation Trail going from Mill D North Trailhead to Dog Lake, including two bridges over a ravine coming off the east side of Reynolds Peak.

ARTICLE 2 -- COVENANTS AND AGREEMENTS

2.1. 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 Commission 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 Commission’s breach of this Agreement; (ii) any acts or omissions of or by the Commission, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; or (iii) any improper use of the Funds. The Commission 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 Commission further agrees that the Commission’s indemnification obligations in this Section 5.1 will survive the expiration or termination of this Agreement.

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

2.3. Assignment and Transfer of Funds. The Commission shall not assign or transfer its obligations under this Agreement or its rights to the Funds under this Agreement without prior

written consent from the County. The Commission shall use the Funds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

ARTICLE 3 --DEFAULTS AND REMEDIES

3.1. Commission 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 Commission to comply with any of the material terms, conditions, covenants, or provisions of this Agreement that is not fully cured by the Commission 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 Commission of the occurrence thereof.

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

ARTICLE 4 -- MISCELLANEOUS

4.1. 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 Commission Executive are hereby designated as the joint administrative board for all purposes of the Interlocal Act.

4.2. 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 Commission, including the adoption of any necessary resolutions or ordinances by the County and the Commission authorizing the execution of this Agreement by the appropriate person or persons for the County and the Commission, 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 the earlier of: (a) the date the Parties have performed all of the material obligations described herein, or (b) three (3) years from the date the Agreement is executed by both Parties. The Parties intend that the distribution described herein will be made promptly following execution of this Agreement and that the Commission will expend such distribution for the purposes stated in this Agreement promptly following receipt.

4.3. Non-Funding Clause.

(a) The County has requested or intends to request an appropriation of Funds to be paid to the Commission for the purposes set forth in this Agreement. If 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 Funds to the Commission under this Agreement beyond that date will be null and void. This Agreement places no obligation on the County to Contribute Funds to the Commission in succeeding fiscal years. The County's obligation to contribute Funds to the Commission 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 Commission, its successors, or its assigns as to this Agreement, or any portion thereof, which may terminate and become null and void.

(b) If Funds are not appropriated and made available to fund performance by

the County under this Agreement, the County shall promptly notify the Commission of such non-funding and the termination of this Agreement. However, in no event, shall the County notify the Commission of such non-funding later than thirty (30) days following the expiration of the county fiscal year for which Funds were last appropriated for contribution to the Commission under this Agreement.

4.4. 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 Commission 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 Commission.

4.5. 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.

4.6. Ethical Standards. The Commission 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, Salt Lake County Code of Ordinances; 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.

4.7. 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.

4.8. Amendment. This Agreement may be amended, changed, modified or altered only by an instrument in writing.

4.9. 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.

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

4.11. Agency. No officer, employee, or agent of the Commission 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 Commission 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.

4.12. 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.

4.13. 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.

4.14. Exhibits and Recitals. The Recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

4.15. 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 Jennifer Wilson or Designee

Dated: _____, 20____

Approved by:

Salt Lake County Regional Planning and Transportation

By _____
Ryan Perry

Dated: _____, 20____

Approved as to Form and Legality:

By Jason S. Rose Digitally signed by Jason S.
Rose
Date: 2020.05.13 10:04:46
-06'00'
Senior Attorney

INTERLOCAL AGREEMENT – SIGNATURE PAGE FOR COMMISSION

CENTRAL WASATCH COMMISSION

By _____

Name: _____

Title: _____

Dated: _____, 20____

Attest:

_____, Commission Recorder

Date signed: _____

Approved as to Form and Legality:

COMMISSION ATTORNEY

By_____

Name: _____

Dated: _____, 20____