

INTERLOCAL COOPERATION AGREEMENT

between

SALT LAKE COUNTY

and

WEST VALLEY CITY

This Interlocal Cooperation Agreement (this “Agreement”) is made and entered into this _____ day of _____, 2015, by and between Salt Lake County, a body corporate and politic of the State of Utah (the “County”); and West Valley City, a municipal corporation of the State of Utah (the “City”). The County and the City are sometimes referred to collectively as the “Parties” and either may be referred to individually as a “Party,” all as governed by the context in which such words are used.

WITNESSETH:

WHEREAS, the County and the City are public agencies as defined by Chapter 11-13, UTAH CODE ANN. (the “Interlocal Act”). Section 11-13-202 of the Interlocal Act provides that any two or more public agencies may enter into an agreement with one another for joint or cooperative action; and

WHEREAS, the County and the City are seeking funding from federal-aid highway funds for the replacement of a bridge located on 7200 West at approximately 3900 South (the “Project”); and

WHEREAS, it is anticipated that both the City and the County shall provide matching funds for the Project as well as coordinate and manage the Project under the terms of a future federal aid agreement; and

WHEREAS, to facilitate the efficient and timely construction of the Project, the City and County desire to move forward with an environmental document while the federal aid process is ongoing; and

WHEREAS, the City and the County desire to enter into an agreement, which sets forth the rights, obligations and responsibilities for each Party for the environmental document.

A G R E E M E N T :

NOW, THEREFORE, in reliance on the stated recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the Parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, it is hereby agreed as follows:

NOW, THEREFORE, in consideration of the premises and the mutual covenants and undertakings, the Parties hereby agree as follows:

1. County Obligations. The County shall perform the following:
 - a. The County shall pay fifty percent (50%) of the costs for the environmental document created pursuant to the 7200 West Canal Bridge Professional Services Agreement attached hereto as Exhibit A. This payment shall be made within 30 days of receipt of invoice from West Valley City which will include copies of consultant's invoice.
 - b. The County shall pay fifty percent (50%) of the costs for the Structure Concept Report prepared by Horrocks Engineers identifying rehabilitation/replacement options for the bridge. This payment shall be made upon receipt of invoice from West Valley City which will include copies of consultant's invoice.
 - c. The County shall pay fifty percent (50%) of all other costs incurred by the City which are not eligible for federal reimbursement including preliminary engineering and survey work. This payment shall be made upon receipt of invoice from West Valley City which will include copies of consultant's invoice.
 - d. The County shall enter into a Federal Aid Agreement with the Utah Department of Transportation for the Project.

2. City Obligations. The City shall perform the following:
 - a. Except as set forth in this Agreement, the City shall perform all obligations set forth in the 7200 West Canal Bridge Professional Services Agreement.
 - b. The City shall ensure prompt payment to the consultant for services provided which are not eligible for federal reimbursement.
 - c. The City will diligently work to manage the design of the bridge and apply for federal funding to complete construction.
 - d. The City shall reimburse the County for fifty percent (50%) of the local match set forth by the federal aid agreement to be executed by the County as a condition of federal funding for the Project. This amount is to be paid by the City to the County within 30 days of receipt of invoice from Salt Lake County. Each invoice will be sent upon receipt of an invoice to the County from UDOT. This obligation is contingent upon the execution of the federal aid agreement by the County.

3. Approval and Coordination. The City agrees to provide the County with the results of the environmental document conducted pursuant to the 7200 West Canal Bridge Professional Services Agreement and a copy of the Structure Concept Report. The County also agrees to timely inform the City of developments related to the design of the new structure.

4. Services Performed in a Professional and Reasonable Manner. The City shall

perform project management in a professional, reasonable and responsive manner in compliance with all applicable laws. Subject to the foregoing, the exact nature of how the services are to be performed, and any other matters incidental to providing services shall remain with the City. All construction will comply with applicable law.

5. Termination and Non-Funding.

- a. Termination. This Agreement may be terminated, for cause, upon 90 days written notice to the non-terminating party.
- b. Funding. The Parties understand that funds are presently available for performance of this Agreement by both Parties. However, if no funds or insufficient funds are appropriated and budgeted, then the non-funding party may terminate for insufficient funds by notifying the other party as soon as reasonably possible. Such termination shall not be construed as a breach or a default under this Agreement, so long as the non-terminating party is reimbursed for all work completed prior to receiving the termination for insufficient funds. The terminating Party shall be liable for adverse impact to federal aid caused by early termination.

6. Liability and Indemnification. The City and the County are governmental entities under the Utah Governmental Immunity Act, UTAH CODE ANN. § 63G-7-101. Consistent with the terms of the Act, and as provided herein, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officers or employees. Neither party waives any defenses otherwise available under the Act nor does any party waive any limits of liability currently provided by the Act.

7. Interlocal Cooperation Act Requirements. In satisfaction of the requirements of the Interlocal Act, and 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 on behalf of each Party, pursuant to Section 11-13-202.5 of the Interlocal Act;
- (c) A duly executed original counterpart of this Agreement shall be filed with 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 taken pursuant to this Agreement, and for any financing of such costs; and

(e) No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the mayors of the City and the County. 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.

8. Counterparts. This Agreement may be executed in counterparts by the City and the County.

9. 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:

If to Salt Lake County: Salt Lake County
 Office of Township Services
 Township Engineer
 2001 South State, N-3600
 Salt Lake City, Utah 84190

With a copy to: Salt Lake District Attorney
 2001 South State, S3700
 Salt Lake City, Utah 84190

If to the City: Wayne T. Pyle
 City Manager
 West Valley City
 3600 Constitution Boulevard
 West Valley City, Utah 84119

With a copy to: J. Eric Bunderson
 City Attorney
 West Valley City
 3600 Constitution Boulevard
 West Valley City, Utah 84119

10. County Ethical Standards. The City represents that it has not: (a) provided an illegal gift or payoff 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 set forth in

State statutes or Salt Lake County's Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statutes or Salt Lake County ordinances.

11. Governing Law. This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.
12. Resolution of Claims and Disputes. In any action brought to enforce the terms of this Agreement, the Parties agree that the appropriate venue shall be the Third Judicial District Court in and for Salt Lake County, Utah.
13. Entire Agreement. This Agreement contains 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, and signed by the Parties.
14. Amendments. This Agreement may be amended, changed, modified or altered only by an instrument in writing which shall be (a) approved by the governing bodies of the County and City, including the adoption of any necessary resolutions or ordinances by the County and the City authorizing the execution of any amendment, change, modification or alteration of this Agreement by the appropriate person or persons for the County and the City, respectively, (b) executed by a duly authorized official of each of the Parties, (c) submitted 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 execution by each respective attorney, and (d) filed with the keeper of the records of each Party.
15. 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 City, including the adoption of any necessary resolutions or ordinances by the County and the City authorizing the execution of this Agreement by the appropriate person or persons for the County and the City, 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 on the earlier of (i) the completion of the Project or (ii) within three years of the execution of this Agreement as set forth herein.
16. Severability. If any provision hereof shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any

jurisdiction or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or paragraphs herein contained, shall not affect the remaining portions hereof, or any part thereof.

17. No Separate Legal Entity. No separate legal entity is created by this Agreement, however, to the extent that any administration of this Agreement becomes necessary, then the City Manager or his/her designated representative, shall administer this Agreement.

18. Additional Provisions. The following provisions also are integral to this Agreement:
 - (a) Titles and Captions. All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.
 - (b) Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.
 - (c) Applicable Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.
 - (d) Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.
 - (e) Time. Time is the essence hereof.
 - (f) Survival. All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.
 - (g) Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.
 - (h) Rights and Remedies. The rights and remedies of the parties hereto shall not

- be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.
- (i) *Litigation*. If any action, suit or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the nonprevailing party.
 - (j) *Counterparts*. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(signatures follow)

SALT LAKE COUNTY

By: _____
Mayor Ben McAdams or Designee

Approved as to Form and Legality:

SALT LAKE COUNTY DISTRICT ATTORNEY

By: _____
Deputy District Attorney

Date: _____

WEST VALLEY CITY

By: _____
Mayor Ron Bigelow or Designee

ATTEST:

City Recorder

Approved as to Form and Legality:

WEST VALLEY CITY ATTORNEY

By: _____
West Valley City Attorney

Date: _____

EXHIBIT A

7200 WEST CANAL BRIDGE PROFESSIONAL SERVICES AGREEMENT

**West Valley City
Professional Services Agreement
7200 West Canal Bridge**

THIS AGREEMENT is made this 13th day of April, 2015, by and between West Valley City, a municipal corporation of the State of Utah (hereinafter the "CITY"), located at 3600 Constitution Boulevard, West Valley City, Utah, and Horrocks Engineers, a Utah corporation (hereinafter "Horrocks"), with a location of 2162 W. Grove Parkway, Ste. 400, Pleasant Grove, Utah.

W I T N E S S E T H :

WHEREAS, the CITY is currently in the process of designing a structure on 7200 West over the Utah and Salt Lake Canal (hereinafter the "Project"); and

WHEREAS, the CITY desires to contract with a professional engineering firm to assist the CITY with engineering services and environmental documentation for the Project; and

WHEREAS, Horrocks is a professional engineering and surveying firm that has the qualifications, expertise, and desire to provide the necessary services to the CITY; and

NOW, THEREFORE, for and in consideration of the mutual covenants made herein, the parties agree as follows:

A G R E E M E N T :

1. **Horrock's Obligations.** Horrocks agrees to perform the work necessary to complete the Environmental Document as outlined below:
 - a. Coordination with UDOT/FHWA
 - b. Document CE in UDOT's EPM, perform QC/QA.
 - (i) Develop Purpose & Need, Proposed Action, and Mapping
 - (ii) Public Hearing – Assume no public hearing will be required
 - (iii) Scoping – Prepare scoping letters, including Native American consultation letter, coordinate with UDOT/FHWA
 - (iv) Analyze and Perform Environmental Resource Clearances
 - A. ROW – Assume no right-of-way impacts
 - B. Cultural – Perform Class I and Class III – coordinate clearance letter from UDOT
 - C. Paleontological – Coordinate and get clearance letter from the Utah Geological Survey
 - D. T&E / Wildlife – Obtain clearance letter from UDOT
 - E. Invasive Species – Commit to BMPs
 - F. Noise – Assume no analysis will be required

- G. Wetlands – Document canal, obtain clearance letter from UDOT, commit to USACE coordination if necessary, no permitting included
- H. Floodplains – Document if present/mapped, assume project is not located within a documented floodplain
- I. Hazardous Waste – Review databases, disclose any known locations
- J. Farmland – Assume no impacts
- K. Air Quality – Assume air quality supplement not required
- L. Section 4(f) – Assume not present

2. **Project Schedule.** Horrocks shall complete the work as set forth in Section 1 of this Agreement [**within six (6) months**] of the Notice to Proceed, which completion time may be extended by the CITY, at the CITY's sole discretion.

3. **CITY's Obligations.**

- a. In consideration for the work performed by Horrocks, as set forth in Sections 1 and 2 above, the CITY agrees to pay Horrocks for the cost of services up to a maximum fee of Fifteen Thousand Dollars (\$15,000).

4. **Term of Agreement.** This Agreement shall commence upon execution by the parties and shall continue for a period of six months or until either of the following occurs:

- a. Horrocks completes the work set forth in this Agreement.
 - a. The CITY has paid Horrocks the maximum compensation amount of Fifteen Thousand Dollars (\$15,000).

5. **Termination.**

- a. In the event Horrocks fails to comply with any provisions of this Agreement, or if the progress or quality of the work is unsatisfactory, the CITY may serve written notice thereof upon Horrocks, and if Horrocks fails within a period of three (3) days thereafter to correct failure, the CITY may terminate this Agreement upon written notice to Horrocks. Upon such termination, Horrocks shall immediately cease its performance of this Agreement and the CITY shall determine and pay to Horrocks the amount due for such satisfactory work up to the effective date of Termination. Conditions which may result in termination of this Agreement specifically include, but are not limited to, failure to comply with any applicable federal, state, or local laws or regulations. Notwithstanding the above, Horrocks shall not be relieved of liability to the CITY for damages sustained by virtue of any breach by Horrocks.
- b. The CITY also reserves the right to terminate this Agreement at any time for its convenience, or in the event that it abandons or indefinitely postpones the Project.

Such terminations shall be accomplished by written notice to that effect, delivered to Horrocks. Upon receipt of such notice, Horrocks shall immediately cease work. Payment to Horrocks shall be made for work performed prior to receipt by Horrocks of such termination notice. Horrocks shall have no claim for loss of anticipated profits or any additional compensation.

- c. In the event the CITY fails to substantially comply with the provisions of this Agreement, or if it fails to timely pay compensation due to Horrocks, Horrocks may serve written notice thereof upon the CITY, and, if the CITY fails within a period of seven (7) working days thereafter to correct such failure, Horrocks may terminate this Agreement upon written notice to the CITY. Horrocks accepts no liability in such circumstances for damages or delays that result from suspension of work by the City.
6. **CITY Representative.** The CITY hereby appoints Coby Wilson, as the CITY's representative to assist in the administrative management of this Agreement, to ensure that the work to be performed by Horrocks is timely and adequately performed, and to provide for CITY approvals as may be required by this Agreement or the nature of the work. The CITY's representative shall assist in coordinating, monitoring, and evaluating this Agreement to completion. Horrocks understands and agrees that the CITY's representative shall have no control over the means, methods, techniques, or procedures employed by Horrocks, it being clearly understood that the CITY is interested only in the results obtained under this Agreement, with the manner and means of obtaining those results being under the sole control of Horrocks.
7. **Additional Conditions.**
- a. CITY will furnish all applicable criteria and operating standards needed to meet CITY requirements.
 - b. The originals of drawings, calculations and other data will remain Horrocks' property whether the Project is completed or not. Reproducible copies of ALL data will be furnished to the CITY for the CITY's unlimited use or distribution.
 - c. **Responsibility for Consultants.** Horrocks shall be responsible for all of Horrocks' consultants and subconsultants of any tier for the services set forth in this Agreement. Horrocks shall be solely responsible for compensation due to consultants and subconsultants at any tier for the services set forth in this Agreement. In addition, Horrocks shall indemnify, defend, and hold the City harmless for claims made by Horrocks' consultants and/or subconsultants of any tier related to the Project.
 - d. **Responsibility for Documents.** Notwithstanding any approval from the CITY of the documents prepared by Horrocks pursuant to this Agreement, Horrocks and Horrocks' consultants shall be solely responsible, as measured by the City and regional engineers and general engineering standards, for (i) the technical

accuracy and adequacy of such documents; (ii) the constructability of the improvements described in such documents; (iii) the compliance of such documents and the improvements described in such documents with all laws, ordinances, codes, regulations, rules, or other requirements of governmental authorities having jurisdiction over the Project applicable to the Project; and (iv) the compliance of such documents and improvements described in such documents with the design and construction standards provided by the CITY, if any. Horrocks shall be responsible for the adequacy, accuracy, and coordination of all documents used on the Project prepared by Horrocks, Horrocks' consultants, or their subconsultants of any tier.

8. **Independent Contractor.** It is understood and agreed that Horrocks is an independent contractor, and that the officers and employees of Horrocks shall not be employees, officers, or agents of the City; nor shall they represent themselves to be City employees; nor shall they be entitled, as a result of the execution of this Agreement, to any benefits or protections that would otherwise be available to City employees.

9. **Conflict of Interest.** Horrocks warrants that no City employee, official, or agent has been retained by Horrocks to solicit or secure this Agreement upon an agreement or understanding to be or to become an officer, agent, or employee of Horrocks, or to receive a commission, percentage, brokerage, contingent fee, or any other form of compensation.

10. **Indemnification and Insurance.** Horrocks agrees to indemnify, defend, and hold the CITY harmless from and against damages and expenses, including reasonable court costs and attorney's fees, by reason of liability imposed against the CITY for damages because of bodily injury, death, and/or property damages, intellectual property or otherwise, resulting from the Horrocks' performance of services under this Agreement, to the extent that such bodily injuries, death, and/or property damages, intellectual or otherwise, are attributable to the negligence of Horrocks and/or Horrocks' consultants, subconsultants of any tier, representatives, servants, agents, employees, and/or assigns. The indemnification required by this section shall not apply to any bodily injuries, death, and/or property damages that are attributable to the negligence of the CITY. As used in this section, the CITY shall also refer to the officers, agents, assigns, volunteers, and employees of the CITY.

Horrocks will maintain insurance coverage throughout the term of the Agreement. Insurance coverage will include:

- | | | |
|----|-----------------------------------|-------------|
| 1) | Worker's Compensation | |
| | State | Statutory |
| | Employer's Liability | \$100,000 |
| 2) | Commercial General Liability | |
| | Bodily Injury and Property Damage | \$2,000,000 |
| | Aggregate | \$4,000,000 |

Either party may change its address for purposes of this Agreement by giving written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.



WEST VALLEY CITY

Ron Bunch

Mayor

ATTEST:

Sheri McFendrick

City Recorder

APPROVED AS TO FORM
West Valley City Attorney's Office
By: *[Signature]*
Date: 4-7-15

HORROCKS ENGINEERS, INC.

Brian G. Atkinson

By: BRIAN G. ATKINSON
Its: PRINCIPAL

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 2nd day of ~~17~~ April, 2015, personally appeared before me Brian Atkinson, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he is the Principal [title] of Horrocks Engineers, a Utah corporation, and that this Professional Services Agreement was signed by him in behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he acknowledged to me that said corporation executed the same.

Lisa Whitehead

Notary Public

