

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, pursuant to the Federal Aid Agreement ("FAA"), attached hereto as Exhibit "A" and incorporated herein, for Project No. F-2240(2)0 (the "Project"), 4700 South from 4000 West to 5600 West, the County and the City are identified as Local Governments awarded financing from federal-aid highway funds; and

WHEREAS, in accordance with the FAA, both the City and the County shall provide matching funds for the Project as well as coordinate and manage the Project; 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 Project; and

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. Except as provided in Section 2 of this Agreement, the County shall perform all of Section III of the FAA, Local Agency Roles and

Responsibilities on a Federally Funded Local Government Project. These obligations include, but are not limited to: design, bidding, and construction of the Project through the Utah Department of Transportation. The County will consult with the City in making project decisions, and will give the City deference in making decisions within the jurisdictional area of the city.

2. City Obligations.

- a. In accordance with the FAA, the City shall perform the following:
- i) The City agrees to pay the local matching funds on the portion of the Project determined to be within the West Valley City jurisdictional limits (the “WVC Local Match”). The local match is 6.77% of each federal dollar spent.
 - ii) In the event that the Project costs exceed or overrun the federal funds available through Federal-Aid Highway Funds (presently \$7,740,080), West Valley City agrees to pay the total cost exceeding the federal funds, (the “WVC Additional Amount”) for improvements within the jurisdictional limits of the City only.
 - iii) The City’s obligations pursuant to Subsections 2(a)(i) and 2(a)(ii) are limited to a total of \$350,000. In the event that additional funds are necessary, this Agreement may be amended by execution of the Parties.
 - iv) The Parties agree that the City will pay the WVC Local Match to the County within 30 days after the bid has been opened, and the City will pay the WVC Additional Amount within 30 days after project costs are known.

3. Approval and Coordination. The County shall obtain City approval of all Project design plans, drawings, and specifications prior to bid for the portion of the Project within West Valley City limits. In addition, the County shall obtain City approval for the Project schedule, Project construction coordination, including change orders, and any Project modification within West Valley City limits. The City shall cooperate and respond to all requests for approval promptly after receipt of any such request.

4. Services Performed in a Professional and Reasonable Manner. The County 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 County. All construction will comply with applicable law.

5. Retaining Consultants and Contractors. The County will work with the City and consider input from the City in selecting consultants, but shall have sole discretion to retain

consultants and contractors to assist it in performing the design and construction of the Project, pursuant to this Agreement and the FAA.

6. Termination and Non-Funding.

(a) Termination. If the design and construction of the Project are not completed by the end of the term as set forth herein, and the County desires to extend this Agreement, the County shall request an extension from the City as soon as reasonably possible. The request shall be in writing and shall indicate the reason for the request and the length of the extension desired. Within 30 days of receipt of such written request, the City shall notify the County in writing of its intent to accept or reject the request, and the Parties shall amend this Agreement with a new termination date if accepted. 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.

7. 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.

8. 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.

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

10. 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:	County Mayor 2001 South State, N2100 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

11. 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.

12. Governing Law. This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. No Separate Legal Entity. No separate legal entity is created by this Agreement, however, to the extent that this Agreement requires administration other than as set forth herein, it shall be administered jointly by the Salt Lake County Mayor and the West Valley City Manager.

19. 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.

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: _____