

COTTONWOOD HEIGHTS

RESOLUTION NO. 2024-12

A RESOLUTION APPROVING AN AGREEMENT WITH METROPOLITAN WATER DISTRICT OF SALT LAKE AND SANDY (COTTONWOOD CONNECTION PROJECT)

WHEREAS, the Metropolitan Water District of Salt Lake and Sandy District is a special district governed by Title 17B, Chapter 1 and Chapter 2a, Part 6 of the Utah Code, which provides an on-demand, supplemental, wholesale, treated water supply to its member cities; and

WHEREAS, the District is undertaking its “Cottonwoods Connection Project” (the “*Project*”) which includes construction of large water pipelines and associated improvements reaching from a point near Salt Lake City’s Big Cottonwood Water Treatment Plant, located near the mouth of Big Cottonwood Canyon, to the District’s Little Cottonwood Water Treatment Plant, located near Little Cottonwood Creek; and

WHEREAS, most of the District’s construction activities associated with the Project will occur within the geographical limits of the city of Cottonwood Heights (the “*City*”); and

WHEREAS, the District and the City desire to enter into the agreement that is attached as an exhibit hereto (the “*Agreement*”) to provide a legal framework for the District’s Project-related construction activities in the City; and

WHEREAS, the City’s city council (the “*Council*”) met in regular session on 5 March 2024 to consider, among other things, approving the City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement and, after careful consideration, has determined that it is in the best interests of the health, safety and welfare of the City’s residents to approve and ratify the City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the Agreement is hereby approved and ratified, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

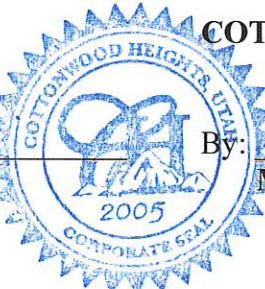
This Resolution, assigned no. 2024-12, shall take effect immediately upon passage.

PASSED AND APPROVED this 5th day of March 2024.

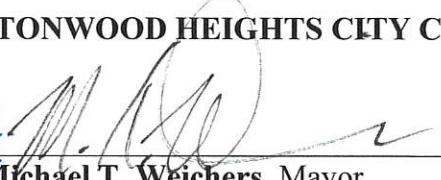
ATTEST:

By:


Paula Melgar, Recorder



By:


Michael T. Weichers, Mayor

VOTING:

Michael T. Weichers	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Matt Holton	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Suzanne Hyland	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Shawn E. Newell	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Ellen Birrell	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 5th day of March 2024.

RECORDED this 10 day of March 2024.

COOPERATION AGREEMENT
METROPOLITAN WATER DISTRICT OF SALT LAKE & SANDY
AND
COTTONWOOD HEIGHTS CITY
REGARDING THE
COTTONWOODS CONNECTION PROJECT

This Cooperation Agreement (Agreement) is effective upon the execution by both Parties and is entered into by and among Metropolitan Water District of Salt Lake & Sandy (District) and the city of Cottonwood Heights (City).

PURPOSES

The District is a Metropolitan Water District, a form of special district, governed by Title 17B, Chapter 1 and Chapter 2a, Part 6 of the Utah Code. The District provides an on-demand, supplemental, wholesale, treated water supply to its member cities, Salt Lake and Sandy City.

The District is underway on the Cottonwoods Connection Project (the District Project), which includes construction of large water pipelines and associated improvements that will reach from a point near Salt Lake City's Big Cottonwood Water Treatment Plant (BCWTP), located near the mouth of Big Cottonwood Canyon, to the District's Little Cottonwood Water Treatment Plant (LCWTP), located near Little Cottonwood Creek. The District Project includes the following three basic components: Cottonwoods Conduit Reach 1 (CC-1), Salt Lake Aqueduct Replacement (SLAR), and Cottonwoods Conduit Reach 2 (CC-2).

CC-1 begins at a pump station that will be located near BCWTP and extends westerly to the intersection of Fort Union Boulevard (approximately 7150 South) and Nutree Drive (approximately 3300 East). CC-1 consists of two components, CC-1 East and CC-1 West. CC-1 East extends westerly from BCWTP to a location near the west side of Wasatch Boulevard in Fort Union Boulevard. CC-1 East will be located entirely or nearly entirely in state highways. CC-1 West extends westerly from CC-1 East along Fort Union Boulevard to the north side of the intersection of Fort Union Boulevard and Nutree Drive (approximately 3300 East). All or nearly all of CC-1 West will be located in Fort Union Boulevard, a City street.

SLAR will reach between the terminus of CC-1 and the beginning of CC-2 near the north end of the LCWTP site. Through its course, portions of SLAR will be located within City streets as shown in Exhibit A. CC-2 will be all located on the LCWTP site and has no impact on the City.

Utah Code Section 17B-1-103(2)(p) authorizes the District to "construct and maintain works and establish and maintain facilities, including works or facilities . . . across or along any public street or highway, subject to Subsection (3) and if the district: (A) promptly restores the

street or highway, as much as practicable, to its former state of usefulness; and (B) does not use the street or highway in a manner that completely or unnecessarily impairs the usefulness of it.” Subsection (3) provides, “(a) the district will comply with the reasonable rules and regulations of the governmental entity, whether state, county, or municipal, with jurisdiction over the street or highway, concerning: (i) an excavation and the refilling of an excavation; (ii) the relaying of pavement; and (iii) the protection of the public during a construction period; and (b) the governmental entity, whether state, county, or municipal, with jurisdiction over the street or highway: (i) may not require the district to pay a license or permit fee or file a bond; and (ii) may require the district to pay a reasonable inspection fee.”

Utah law recognizes that governmental entities “hold[] all forms of property and assets in trust for the benefit of” the public they serve, such that absent specific statutory authority they “can expend them only in exchange for fair value.” *Salt Lake Cnty. Com'n v. Salt Lake Cnty. Atty.*, 1999 UT 73, ¶ 31, 985 P.2d 899.

The District Project is anticipated to go to bid in January 2024, with an award to the Contractor in late February 2024, and a Notice to Proceed in March 2024. Construction is anticipated to begin in May 2024 beginning with CC-1 East. CC-1 East must be completed before July 2024 to meet the timing requirements imposed by the Utah Department of Transportation. The entire District Project is anticipated to be substantially complete by June 30, 2026.

The Parties have agreed to cooperate regarding the construction of the District Project as stated in this Agreement:

TERMS

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. Construction. The District warrants that the Contractor for the District Project will meet the following requirements.

A. **Standards.** The work performed in any City street will conform to the requirements of the following then-current standards that are generally applicable to work in City streets:

1. OSHA standards;
2. Salt Lake County “Standard Plans for Public Works Construction,” and the “City of Cottonwood Heights Street Cut Standards” (except to the extent these may be inconsistent with this Agreement) made available to District; and

3. The Manual on Uniform Traffic Control Devices (MUTCD) (except to the extent it may be inconsistent with this Agreement) made available to the District.

B. Unattended Job Site. Where a job site is left unattended before completion of the work, signage with minimum two-inch-high letters will be attached to a barricade or otherwise posted at the site, indicating the contractor's name, local telephone number of a responsible party, and after-hours local telephone number of a responsible party.

C. Excavations. All excavations will be conducted in a manner that will to the greatest extent practicable minimize interference with or interruption of vehicle and pedestrian travel. All reasonable steps will be taken to minimize inconvenience to residents and businesses fronting on the public way.

D. Barricades. Suitable, adequate, and sufficient barricades and/or other structures will be available and used where necessary to reasonably minimize the risk of accidents involving property or persons. Barricades must be in place until all equipment is removed from the site and the excavation has been backfilled and a proper temporary gravel surface is in place. From sunset to sunrise, all barricades and excavations must be clearly outlined by reasonably adequate signal lights, flares, reflective markers, etc.

E. Notice of street closures, detours. The following will be notified at least 5 business days in advance of any planned excavation in a City street requiring street closure or traffic detour, except in the event of an emergency or reasonably unforeseeable circumstances:

1. Cottonwood Heights Police Department;
2. Utah Transit Authority;
3. Canyons School District;
4. United States Postal Service;
5. Cottonwood Heights Public Works Department; and
6. Unified Fire Authority.

In the event emergency or reasonably unforeseen work is commenced with a City street during regular business hours, the Cottonwood Heights Public Works Department will be notified within one-half-hour from the time the work is commenced. Otherwise, notice of emergency or unforeseen work shall be provided as reasonable under the circumstances. The person commencing and conducting emergency or reasonably unforeseen work shall be responsible for taking safety precautions for the protection of the public and the direction and control of traffic,

and shall perform the work according to MUTCD and other applicable laws, regulations, or generally recognized practices in the industry.

The District will reasonably coordinate street closures and traffic detours with the City.

2. Restoration of Street Surfaces. Except as otherwise described below, to the greatest extent practicable the surface of any City street disturbed by the District Project will be restored to its original condition and any removed or damaged pavement will be replaced with the same type and depth of pavement as that which is adjoining, including the gravel base material. Refills will be properly compacted. All restoration will conform to the applicable then-current City standards that are generally applicable to work in City streets.

A. Danish Road. Because the repaving of Danish Road was substantially completed during summer 2023, the District's Contractor will replace four inches of asphalt the entire width of the excavated pavement from street edge to street edge and to a distance of five feet from each side of the excavation north and south.

3. Insurance.

A. Minimum limits of insurance. The District agrees that its Contractor, and any subcontractors will be required to provide at least the following insurance during the course of the construction:

1. General Liability (including claims arising from: premises-operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract):

i. Combined Single Limit (Bodily Injury and Property Damage):

\$2,000,000 Per Occurrence

ii. Personal Injury (including completed operations and products liability):

\$2,000,000 Each Occurrence

iii. General Aggregate:

\$3,000,000

iv. Products - Comp/OP Aggregate:

\$3,000,000

v. Limits to apply to this project individually.

2. Automobile Liability:
 - i. \$2,000,000 Per Occurrence
 - ii. "Any Auto" coverage required.
3. Workers' Compensation and Employers' Liability:
 - i. Workers' compensation statutory limits.
 - ii. Employers' Liability statutory limits.
4. Contractor's Pollution Liability:
 - i. \$1,000,000 Per Claim
 - ii. \$1,000,000 Aggregate
 - iii. Coverage applies to this project individually.

B. Other insurance provisions. The General Liability, Automobile Liability, and Pollution Liability Coverages are to contain, or be endorsed to contain, the following provisions:

1. The District and the City and their respective trustees, elected or appointed officials, officers, and employees are to be covered as additional insureds.
2. Additional insured coverage shall be on a primary basis for ongoing and completed work.

A waiver of Worker's Compensation subrogation shall be provided as to the District, the City, and their respective trustees, elected or appointed officials, officers, and employees.

C. Acceptability of Insurers. Insurance and bonds are to be placed with insurers admitted in the State of Utah with a Bests' rating of no less than A-, VII, and in the limits as listed in this document, unless approved in writing by the District.

D. Verification of coverage. The District's Contractor and all subcontractors shall furnish the District and the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be provided on forms reasonably acceptable to the District and the City before work commences. The District and the City reserve the right to require complete, certified copies of all required insurance policies, with all endorsements, at any time. The District shall provide an insurance certificate and an endorsement evidencing compliance with this provision at least annually.

4. **Indemnity.** The District shall indemnify the City, its officers, employees, and agents from all costs, damages, and liabilities caused by the negligence or other fault of the District or its officers, employees, agents or contractors concerning construction of the District Project. The described duty to indemnify is not intended to run to the benefit of any City liability insurer to the extent such insurer would be responsible for defense costs or indemnity. The described duty to defend does not apply to any costs, damages, or liabilities caused by the negligence or other fault of the City, its officers, employees, agents or contractors.

5. **Remedies.**

A. Dispute resolution. In the event of a dispute regarding the subject of this agreement, the Party raising the issue will first submit the claim or dispute, in reasonable detail, to the Project Representative of the other Party. If the matter is not resolved satisfactorily, the dispute or claim will be submitted to non-binding mediation, with a qualified mediator selected by the Parties, with each Party sharing the cost of that non-binding mediation. After, and only if these processes are first followed and the dispute or claim remains unresolved, an action may be brought in the Third Judicial District Court of the State of Utah in and for Salt Lake County.

B. Right to cure. In the event of a dispute involving a material breach of this Agreement which was not resolved satisfactorily through the discussions between the District and the City, the non-defaulting Party will have the right to cure the default and seek reimbursement from the defaulting Party for the costs incurred in effecting such cure.

C. Consequential damages. The Parties shall not be entitled to consequential damages resulting from a breach of this Agreement.

6. **General.**

A. Counterparts. This Agreement may be executed in any number of counterparts, which, when executed and delivered, will be deemed to be an original, binding between the executing Parties, and all of which will together constitute one and the same instrument.

B. Warranty of Authority. All persons signing this Agreement on behalf of any entity represent and warrant that they have full authority to enter into this Agreement for and on behalf of the entity for which they are signing.

C. Changes in Writing. This Agreement and any of its terms may only be modified, waived, or terminated by a written instrument properly executed by both Parties.

D. Waiver. Any Party's failure to enforce any provision of this Agreement will not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing signed by the Party intended to benefit from the provisions.

E. No Third-Party Beneficiary. This Agreement does not create any rights for third parties.

F. Time is of the Essence. Time is of the essence regarding the dates and time constraints set forth in this Agreement.

G. Entire Agreement. This Agreement contains the entire agreement of the Parties regarding the District Project, and this Agreement supersedes all prior agreements, negotiations, and understandings between the Parties regarding that topic.

[Signature pages follow]

METROPOLITAN WATER DISTRICT OF SALT
LAKE & SANDY

Annalee Munsey, General Manager

Date: _____

COTTONWOOD HEIGHTS, a Utah municipality

M. T. Weichers

Michael T. Weichers, Mayor

Date:

3-5-24

Paula Melgar
Paula Melgar, City Recorder

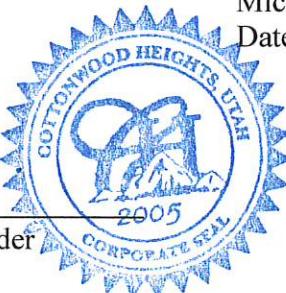


Exhibit A
SLAR and CC Alignments within City Streets

