

**INTERLOCAL COOPERATION AGREEMENT**  
**Between the**  
**CITY OF KEARNS**  
**and**  
**GREATER SALT LAKE MUNICIPAL SERVICES DISTRICT**

This Interlocal Cooperation Agreement (this “Agreement”) is entered into by and between the **CITY OF KEARNS**, a municipal corporation of the State of Utah (the “City”), and the **GREATER SALT LAKE MUNICIPAL SERVICES DISTRICT (“the MSD”)**, a special district and body corporate and politic of the State of Utah. The City and MSD may each be referred to herein as a “Party” and collectively as the “Parties.”

**RECITALS:**

A. The City and the MSD 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 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 on the basis of mutual advantage.

B. On April 15, 2022, the City received \$4,299,678.00 in funding from the American Rescue Plan Act (“**ARPA**”) Coronavirus State and Local Fiscal Recovery Fund (“**SLFRF**”) (collectively, the “Funds”), of which \$2,631,284.85 now remains. The Funds are not fully expended and may be allocated for government services in the amount equal to revenue loss experienced by the City due to the COVID-19 public health emergency.

C. The MSD provides certain municipal services to the City, including financial and bookkeeping services, and is managing the allocation and use of the Funds on behalf of MSD.

D. ARPA and SLLRFR require the City to obligate the remaining Funds by December 31, 2024.

E. The Parties desire to enter into this Agreement: (1) obligate a portion of the Funds to the MSD, or MSD contractors and subcontractors, to construct certain infrastructure, streetlight, and soundwall projects in the City of Kearns as obligated at 6200 South or Heath Area Overlay, 4015 West Bridge, 4015 West Twilight, NW Avenue Safety, Lodestone Avenue Traffic Calming, and South Kearns Elementary & Sams Boulevard and other Traffic Calming (collectively, the “Roads Projects”); and (2) to describe how the City will obligate a portion of the Funds to develop a Kearns Community Center/City Hall through a separate agreement with a third party contractor and/or subcontractor and to authorize the MSD to use the Funds to pay for the services the selected contractor and/or subcontractor provide.

F. On November 12, 2024, the Kearns City Council adopted Resolution 2024-11-02, approving this Agreement.

## **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 — MSD CONTRIBUTION**

1.1. **Funding Obligation.** The City shall obligate the Funds for the Roads Projects and the development of a Kearns Community Center/City Hall as follows:

(a) Pursuant to this Agreement, the City obligates such sums as may be needed from the remaining Funds to the MSD, or MSD contractors or subcontractors, to complete the Roads Projects. The distribution described herein will be made promptly following the effective date of this Agreement and the MSD shall complete the Roads Projects no later than December 31, 2026. The Parties acknowledge and agree that the payments required under this Paragraph 1.1(a) shall represent the City's obligation of the Funds to the MSD to construct the Roads Project as required by the Department of the Treasury's 2022 Final Rule, 31 CFR Part 3.

(b) The City intends to obligate the remaining portion of the remaining Funds that are not needed to construct the Roads Project for the Kearns Community Center/City Hall through a separate agreement(s) with other contractors and subcontractors no later than December 31, 2026. As directed by the City in writing, the MSD shall use the Funds to pay the services the selected contractor and subcontractor provide in developing the Kearns Community Center/City Hall. The City will require the selected contractor or subcontractor to complete the development of the Community Center/City Hall by December 31, 2026. The Parties acknowledge and agree that the City's execution of a separate contract(s) with the contractors and subcontractors that will develop the Community Center/City Hall under this Paragraph 1.1(b) shall represent the City's obligation of the Funds as required by the Department of the Treasury's 2022 Final Rule, 31 CFR Part 3.

### **ARTICLE 2 — COVENANTS AND AGREEMENTS**

2.1. **Indemnification and Liability.**

(a) **Governmental Immunity.** Both Parties are governmental entities under the Governmental Immunity Act of Utah, UTAH CODE §§ 63G-7-101 to -904 (the "Immunity Act"). There are no indemnity obligations between these Parties. Both Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law. Consistent with the terms of the Immunity Act, as provided therein, it is mutually agreed that each Party is responsible for its own wrongful or negligent acts which are committed by its agents, officials, or employees. No Party waives any defense otherwise available under the Immunity Act nor does any Party waive any limit of liability currently provided by the Immunity Act.

(b) Indemnification. Subject to the provisions of the Immunity Act, each Party agrees to indemnify and hold harmless the other, as well as the other Party's agents, officers and employees from and against any and all actions, claims, lawsuits, proceedings, liability, damages, losses and expenses (including attorney's fees and costs), arising out of or resulting from the implementation of this Agreement to the extent the same are caused by its own negligent or wrongful act, error or omission or those of its own officers, agents, and/or employees. Neither Party shall be required to indemnify the other Party for the negligent or wrongful acts, errors or omissions of the other Party's officers, agents, and/or employees.

2.2. Recordkeeping. The MSD agrees to maintain its books and records in such a way that any ARPA-SLFRF funds received from the City will be shown separately on the MSD's books. The MSD shall maintain sufficient records to show that the funds have been paid by the City to the MSD. The MSD shall make its books and records available to the City and the Department of the Treasury, upon request, at reasonable times.

### **ARTICLE 3 — MISCELLANEOUS**

3.1. Interlocal Cooperation Act. For the purpose of satisfying specific requirements of the Interlocal Act, the Parties agree as follows:

(a) This Agreement shall be approved by each Party pursuant to Utah Code § 11-13-202.5.

(b) This Agreement shall be reviewed as to proper form and compliance with applicable law by duly authorized attorneys on behalf of each Party pursuant to and in accordance with Utah Code § 11-13-202.5.

(c) A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Utah Code § 11-13-209.

(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 and budgeting of such costs.

(e) No separate legal entity is created by the terms of this Agreement. Pursuant to Utah Code § 11-13-207, to the extent this Agreement requires administration other than as set forth herein, the MSD General Manager and the City Mayor are hereby designated as the joint administrators for all purposes of the Interlocal Act, with each having one vote.

(f) No real or personal property shall be acquired jointly by the Parties as a result of this Agreement. To the extent 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. Notwithstanding the foregoing, however, the Parties understand and acknowledge that the MSD may have constructive possession, solely for the benefit of the

City, during the construction phase, which possession shall immediately pass to the City once the project, or the phase of the project, is completed.

3.2. Term of Agreement. This Agreement shall take effect immediately upon the last to occur of Subsections 3.1(a), (b) and (c) above; and shall expire upon the earlier of: a) the date the Parties have performed all of the material obligations described herein; or b) December 31, 2026.

3.3. 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 MSD or the City that prevents a Party from complying with any of its obligations under this Agreement, including but not limited to: a) an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods); b) war, acts or threats of terrorism, invasion, or embargo; or c) riots or strikes.

3.4. 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.

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

3.6. 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 Salt Lake County, State of Utah.

3.7. No Obligations to Third Parties. The Parties agree that the City's obligations under this Agreement are solely to the MSD and that the MSD's obligations under this Agreement are solely to the City. The Parties do not intend to confer any rights to third parties unless otherwise expressly provided in writing and agreed upon by both Parties.

3.8. Agency. No officer, employee, or agent of the City or of the MSD 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 City and the MSD 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.

3.9. 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.

3.10. 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. Should any term or provision of this Agreement or the application thereof to any person or circumstance, to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. Furthermore, should this Agreement or its approval by the Parties fail to satisfy the Interlocal Act, in any particular, it is nevertheless the intent of the Parties that this Agreement shall be a legal, binding contract between the Parties separate and apart from the Interlocal Act.

3.11. 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.

3.12. Incorporation of Recitals. The recitals of this Agreement are incorporated as part of this Agreement as if set forth fully herein.

IN WITNESS WHEREOF, the Parties execute this Agreement as of the latest date indicated below.

**Greater Salt Lake Municipal  
Services District:**

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

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

Recommended for Approval:

By: \_\_\_\_\_  
MSD General Manager

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

Reviewed as to form and compliance with  
applicable law:

By: \_\_\_\_\_  
Mark Anderson  
MSD Attorney

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

**CITY OF KEARNS:**

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

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

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

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

Reviewed as to form and compliance with  
applicable law:

By: \_\_\_\_\_  
City Attorney

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