

INTERLOCAL COOPERATION AGREEMENT

between

GREATER SALT LAKE MUNICIPAL SERVICES DISTRICT

and

WEST VALLEY CITY

This Interlocal Cooperation Agreement (this "Agreement") is made and entered into this 8 day of October, 2019, with an effective date as provided in Section 16 of this Agreement, by and between Greater Salt Lake Municipal Services District, a Political Subdivision of the State of Utah (the "MSD"); and West Valley City, a municipal corporation of the State of Utah (the "City"). The MSD 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 MSD and the City are public agencies as defined by Title 11, Chapter 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 MSD is identified as a Local Government awarded financing from federal-aid highway funds; and

WHEREAS, in addition to the federal-aid highway funds, the City shall provide funds for the Project; and

WHEREAS, the City and the MSD desire to enter into an agreement, which sets forth the rights, obligations and responsibilities of each Party for the Project.

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 promises and the mutual covenants and undertakings, the Parties hereby agree as follows:

1. MSD Obligations. Except as provided in Section 2 of this Agreement, the MSD 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 (“UDOT”). The MSD 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 provided that such deference does not increase the cost of the project at MSD’s expense. The City shall diligently cooperate with MSD to ensure that the decisions are sound and made in a timely manner.

2. City Obligations.

a. 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, West Valley City agrees to pay its proportional cost exceeding the federal funds, (the “WVC Additional Amount”) for improvements within the jurisdictional limits of the City only. However, the City shall not be obligated to pay any additional amount exceeding the federal funds that results from Change Orders that are not approved by the City and/or are unrelated to the improvements within the jurisdictional limits of the City.
- iii) The City’s obligations pursuant to Subsections 2(a)(i) and 2(a)(ii) are limited to a total of \$500,000. 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 MSD within 30 days after the MSD’s receipt of any invoice from UDOT, and the City will pay the WVC Additional Amount within 30 days after Project costs are known and approved by the City, which approval shall not unreasonably be withheld, delayed or conditioned.

3. Approval and Coordination. The MSD 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 MSD 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 and shall not unreasonably withhold, condition, or delay any approval required under this paragraph or elsewhere in this Agreement.

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

5. Retaining Consultants and Contractors. The MSD will consult with the City and consider input from the City in selecting consultants.

6. Termination. If the design and construction of the Project are not completed by the end of the term as set forth herein, and the MSD desires to extend this Agreement, the MSD 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. The City shall not unreasonably withhold, condition, or delay its acceptance of a request by the MSD for an extension. Within 30 days of receipt of such written request, the City shall notify the MSD 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 if the other Party fails to cure the default identified in the written notice within the 90 day notice period.

7. Liability and Indemnification. The City and the MSD are governmental entities under the Utah Governmental Immunity Act (the "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 budgeting and 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 a joint board consisting of the City Manager of the City and the General Manager of the MSD. No real or personal property shall be acquired jointly by the Parties as a result of this Agreement. To the extent that

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 MSD and City, including the adoption of any necessary resolutions or ordinances by the MSD and the City authorizing the execution of any amendment, change, modification or alteration of this Agreement by the appropriate person or persons for the MSD 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 adoption of a resolution by the governing body of each of the MSD and the City, (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 five (5) years after the execution of this Agreement as set forth herein. Except as otherwise provided in Section 6 there is no permissible method or methods to be employed to accomplish the partial or complete termination of this Agreement.

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 MSD General Manager and the West Valley City Manager, each of whom will have one (1) vote.

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 either 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 provision hereof.

(i) Attorney Fees. 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.

(k) Severability. The provisions of this Agreement are severable and, should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(l) Cumulative Remedies. The rights and remedies of the Parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(m) 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 in their entirety within the body of this Agreement.

(n) No Agency. Agents, employees or representatives of a Party shall not be deemed to be agents, employees or representatives of the other Party.

IN WITNESS WHEREOF, the MSD, by a resolution duly adopted by its governing authority, caused this Agreement to be signed and attested by the Chair of the MSD Board of Trustees, or his designee; and the City, by resolution of its Council, caused this Agreement to be signed by the Mayor, or his designee.

GREATER SALT LAKE MUNICIPAL SERVICES DISTRICT

By: _____
Joe Smolka, Chair

Approved as to Form and Legality:

Greater Salt Lake Municipal Services District

By: _____

Date: _____

WEST VALLEY CITY



By: Ron Bigelow
Mayor Ron Bigelow or Designee

ATTEST:

Michele Can
City Recorder

Approved as to Form and Legality:

WEST VALLEY CITY ATTORNEY

By: BMH
West Valley City Attorney

Date: 9/26/19