

## Amendment to Agreement

1. This Amendment is made by the Utah Department of Transportation (UDOT) and Toquerville City (City), parties to the agreement dated 3-25-2020 (Agreement).
2. The Agreement is amended as follows:  
Add paragraph 17

17. UDOT will set up Utah Public Treasurers' Investment Fund (PTIF) escrow account in the name of Toquerville City. Toquerville City will be required to provide a detailed accounting report annually to UDOT, or upon request by UDOT. The funds may only be used for construction or construction related expenses as detailed in the Development Standards. UDOT will require the following be included in the project:

- Project plans will meet all required UDOT reviews and approval and completed plans will be stored on UDOT's ProjectWise which UDOT will retain.
- The Development Standards for Toquerville Parkway will be amended to include the following:
  - Add a Typical Section titled UDOT preferred option. This option can only be used by UDOT to meet capacity needs.
  - The pavement section in option 1 will be amended to match the pavement section in option 2 and 3.
- The cut section at Station 1012+00 (hogsback cut) will meet the width requirements of option 3 in the Development Standards.
- No utilities will be incorporated on the roadway structure crossing Ash Creek.
- The City will be required to provide an approved Construction Engineering Management (CEM) consultant to provide all required material testing and documentation for the project. All project documentation will be in electronic form and housed in UDOT's Project wise and Masterworks, which UDOT will retain.
- The City will collaborate with UDOT to complete a PTIF escrow account request attached as Exhibit 1, and the City agrees to comply with the terms stated therein. If the City fails to comply with such terms, UDOT shall first request that the City remedy the default, and if the City fails to remedy the default within thirty (30) days, UDOT may withhold further funding approvals and may pursue any remedy available.
- Prior to any fund transfer to the PTIF account, Toquerville City must adopt a method that will require developers to meet the requirements of the Development Standards as adjacent property is developed.

When the conditions detailed above are met UDOT will transfer \$17,950,000.00 from UDOT Pin 18214 to the PTIF escrow account. UDOT will have no claim to any interest accrued in the PTIF escrow account. The interest must be used for project related expenses. The City will request in writing to the assigned UDOT Project manager for monthly disbursement of funds on the form provided on pages 6 and 7 of Exhibit 1. UDOT will review payment requests and reserves the right to reject payment if the work doesn't meet UDOT standards or if all required documentation is not complete, or to take any other action that UDOT deems necessary to approve payment requests. UDOT reserves the right to inspect the work at any time during the

project. UDOT recommends that the City hold 1.65 million of the funds for oversight expenses and dedicate 16.3 million to Construction cost.

3. Except as set forth in the amendment, the Agreement is unaffected and shall continue in full force and effect with its terms. If there is a conflict between the amendment and the Agreement or any earlier amendment, the terms of this amendment will prevail.

**City of Toquerville**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

(IMPRESS SEAL)

**Utah Department of Transportation**

By: \_\_\_\_\_  
Title: Region 4 Director  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: Director of Right of Way  
Date: \_\_\_\_\_

UDOT Comptroller Office

By: \_\_\_\_\_  
Title: Contract Administrator

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

ESCROW AGREEMENT

I. SUMMARY

PTIF Account # \_\_\_\_\_

A. Parties to the Agreement:

1. Depositor: \_\_\_\_\_ (the "Entity")  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Contact: \_\_\_\_\_ Tel. No. \_\_\_\_\_  
 \_\_\_\_\_ Tel. No. \_\_\_\_\_

2. State Agency: \_\_\_\_\_ (the "State")  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Contact: \_\_\_\_\_ Tel. No. \_\_\_\_\_  
 \_\_\_\_\_ Tel. No. \_\_\_\_\_  
 \_\_\_\_\_ Tel. No. \_\_\_\_\_

3. Escrow Agent: Utah State Treasurer (the "Treasurer")  
 350 North State St Ste 180  
 Salt Lake City, Utah 84114-2315  
 Contact: Jason Nielsen, Finance Director  
 Kathy Wilkey, Financial Analyst  
 Telephone: (801)538-1470 Telefax: (801)538-1465 Toll free: 800-395-7665

B. Deposit Amount(s):

1. Principal amount \$ \_\_\_\_\_ (the "Proceeds")  
 2. Additional amount(s), if any:  
 \$ \_\_\_\_\_ From: \_\_\_\_\_  
 \$ \_\_\_\_\_ From: \_\_\_\_\_  
 \$ \_\_\_\_\_ From: \_\_\_\_\_

C. Authorizing Resolution:

\_\_\_\_\_  
 \_\_\_\_\_ (the "Instrument")

D. Project Description:

\_\_\_\_\_  
 \_\_\_\_\_ (the "Project")

This Summary is an integral part of the Escrow Agreement

## II. AGREEMENT

- A. The undersigned hereby deliver to the Treasurer, the Proceeds and Additional amount(s) to be held and disposed of by the Treasurer in accordance with the duties, instructions, and upon the terms and conditions hereinafter set forth in this Escrow Agreement to which the undersigned hereby agree:
1. For purposes of this Escrow Agreement and this Escrow Agreement only:
    - (a) The Treasurer shall not incur any liability in acting upon any written authorization and request delivered hereunder and believed by the Treasurer to be genuine and to be signed by the proper parties.
    - (b) The Treasurer may consult with legal counsel in the event of any dispute or question as to the construction of the Treasurer's duties hereunder and shall not be held to any liability for acting in accordance with advice so received.
    - (c) The Treasurer shall have a first lien on the moneys held by it hereunder for its compensation and for any costs, liability or expense or counsel fees it may incur.
  2. In the event of any disagreement between the undersigned or any of them, and/or any other person, resulting in adverse claims and demands being made in connection with or for any moneys involved herein or affected hereby, the Treasurer shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so refusing the Treasurer may refrain from making any delivery or other disposition of any moneys involved herein or affected hereby and in so doing the Treasurer shall not be or become liable to the undersigned or any of them or to any person or party for its failure or refusal to comply with such conflicting or adverse demands, and the Treasurer shall be entitled to continue so to refrain and refuse so to act until:
    - (a) The rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the moneys involved herein or affected hereby; and/or
    - (b) All differences shall have been adjusted by agreement and the Treasurer shall have been notified thereof in writing signed by all of the persons interested.
  3. The fees for the usual services of the Treasurer under the terms of this Escrow agreement are set forth in the schedule attached hereto as **Exhibit A**. It is agreed that additional compensation shall be paid to the Treasurer for any additional or extraordinary service it may be requested to render hereunder, and the Treasurer shall be reimbursed for any out-of-pocket expenses (including, without limitation, fees of counsel) reasonably incurred in connection with additional or extraordinary services.
  4. The Entity and the State hereby agree that the deposit of the Proceeds shall constitute compliance with applicable deposit and investment provisions of the Instrument.
  5. The duties of the Treasurer under the terms of this Escrow Agreement are as follows:
    - (a) The Treasurer shall receive into a separate fund (the "Escrow Account") Proceeds and any additional amounts to be used in connection with the Project.
    - (b) The Treasurer shall reimburse Entity in amounts authorized in writing by the Entity and the State.
    - (c) Each authorization must be signed by one official from both the Entity and the State, except as provided in (i) of this section, and shall be substantially the same as the form attached as Exhibit B. On behalf of the Entity, the written authorization and request shall be signed by any one of the officials of the Entity identified in Section I.A. 1. above. On behalf of the State, the written authorization and request shall be signed by any one of the officials of the State identified in Section I.A.2. above. The Treasurer assumes no responsibility for expenditure

of moneys paid out of the Escrow Account pursuant to a written authorization and request properly signed and delivered the Treasurer as provided herein.

- (d) If a written authorization and request indicates that an amount (the “Retained Amount”) payable to a Provider is to be held for retainage pending completion of the Project or the lapse of time, the Treasurer shall segregate such amount and shall invest the Retained Amount in an interest-bearing account (the “Separate Account”), the interest on which shall accrue for the benefit of the Provider. The Retained Amount and all accrued interest thereon shall be disbursed by the Treasurer in the same manner as provided in paragraph 5(b) hereof. All fees charged or incurred by the Treasurer relating to the establishment, investment and disbursement of the Separate Account shall be borne solely by the Provider and may be withheld by the Treasurer from the Separate Account prior to the disbursement thereof; provided, however, that if such fees are borne by the Separate Account, and if the interest earned on the Separate Account is less than the amount of such fees, then the fees withheld from such Separate Account shall not exceed the interest earned and the balance of such fees shall be paid by the Entity.
- (e) The funds deposited by the parties hereto in the Escrow Fund and in any Separate Account shall be invested by the Treasurer in the Utah Public Treasurers’ Investment Fund established by Section 51-7-5 of the Utah Code. All interest earned on moneys held in the Escrow Account shall be retained therein and disbursed as provided herein.
- (f) The Treasurer shall report at least monthly concerning the receipts, disbursements and status of the Escrow Account. The reports shall be mailed to the Entity and to the State at their respective addresses as shown in Section I.A. above or will be provided electronically. Notification of changes of address, if any, shall be in writing and mailed to the parties at their respective addresses as shown in Section I.A. above.
- (g) This Escrow Agreement will be terminated after payment of the fees and out-of-pocket expenses of the Treasurer, and upon liquidation of the Escrow Account as provided herein.
  - (i) receipt by the Treasurer of a written authorization and request, signed as provided in paragraph 5(c) hereof, stating that the acquisition, construction, improvement and extension of the Project is complete, that all obligations and costs in connection with the Project which are payable out of the Escrow Account have been paid and discharged, and that the Treasurer is authorized and directed to transfer all moneys in the Escrow Fund to the Entity or such other disposition as may be agreed by the State and the Entity.

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- 6. This Agreement may be modified or amended only by a written Amendment attached to this Agreement and signed by the parties to this Agreement.

Entity: \_\_\_\_\_

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

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

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

Attest and Countersign:

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

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

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

STATE:

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

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

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

Accepted:

Utah State Treasurer

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

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

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

## EXHIBIT A

### Fees due to State Treasurer as Escrow Agent

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Maximum annual fee is 10 basis points (one-tenth of one percent (.001)) applied to the average daily balance in each account. The fee is assessed monthly based on the actual number of days in the month divided by 360 days.

Minimum annual fee is zero.

The Treasurer intends to deduct the administrative fee from gross earnings of each account before crediting earnings to the account(s). The amount of such fees is not reflected on monthly statements to the Entity, and is payable only from gross earnings on the account(s).

Entity shall not be liable to the Treasurer for any other costs or expenses for usual services. Usual services include:

1. Acceptance of funds delivered for deposit.
2. Deposit of funds and issuance of Treasurer's Receipt.
3. Investment of all funds delivered to Treasurer.
4. Credit net interest earnings to designated account(s) on a monthly basis.
5. Reimburse entity for project costs pursuant to receipt of a written authorization and request properly signed and delivered to the Treasurer.
6. Prepare and deliver to Entity and State a monthly accounting showing all deposits, withdrawals, interest credits and rate, ending balance and average balance for each account.

Entity will be liable to the Treasurer for out-of-pocket expenses resulting from any additional or extraordinary service Treasurer is requested to render and reasonably incurs in connection with additional or extraordinary services.

WRITTEN AUTHORIZATION AND REQUEST FOR REIMBURSEMENT  
FROM ESCROW FUND

TO: The Utah State Treasurer, as Escrow Agent (the "Treasurer").

DATE: \_\_\_\_\_

WRITTEN REQUEST NO.: \_\_\_\_\_

I, the undersigned authorized officer of \_\_\_\_\_, (the "Entity"), do hereby certify and request to the Treasurer as follows:

7. Pursuant to the provisions of the Escrow Agreement by and between the Entity, the State and the Treasurer dated \_\_\_\_\_, (the "Escrow Agreement"), the undersigned hereby authorizes and requests a reimbursement from the Escrow Account to pay the amounts shown on the attached Payment Schedule.
8. Each payment proposed to be made as set forth on the Payment Schedule has been incurred and is a proper charge against the Escrow Account.
9. To the extent that the payment of any item set forth on the Payment Schedule is for other than work, materials, equipment or supplies, in connection with this authorization and request, the undersigned certifies that each payment proposed to be made on the Payment Schedules is a proper charge against the Escrow Account, is a reasonable amount and has not been heretofore included in a prior Written Authorization and Request for Reimbursement for the Escrow Account.
10. This Written Authorization and Request, including the Payment Schedule attached hereto, shall be conclusive evidence of the facts and statements set forth herein.
11. A copy of this Written Authorization and Request is being kept on file in the official records of the Entity.

The terms used herein which are defined in the Escrow Agreement shall have the respective meanings therein assigned to them.

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

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



EXHIBIT B-2

I/we, the undersigned authorized officer(s) of the State, do hereby certify and request to the Treasurer as follows:

1. I/we have reviewed the foregoing statements of the authorized officer of the Entity attached hereto, and on behalf of the State approve the request for payment from the Escrow Fund made therein; provided that the State has not independently verified the statements of such authorized officer of the Entity attached hereto and makes no representations or certifications with respect thereto.
2. A copy of this Written Authorization and Request is being kept on file in the official records of the State.

The terms used herein shall have the same meanings assigned to them in the attached statements of the authorized officer of the Entity.

Dated the date appearing at the top of the attached statements of the authorized officer of the Entity.

STATE:

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

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

REIMBURSEMENT SCHEDULE

Check No.	Person or Firm	Amount	Purpose
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Reimbursement for the above listed payments totaling \$ \_\_\_\_\_ is to be made to \_\_\_\_\_ (“Entity”) by transfer of funds from the Escrow Account (PTIF# \_\_\_\_\_) to (CHECK ONE):

\_\_\_\_\_ Entity’s general account in the Public Treasurer’s Investment Fund (PTIF#); or to

\_\_\_\_\_ Entity’s checking account at \_\_\_\_\_ (“Bank”).  
Account number \_\_\_\_\_

**RETAINAGE REQUEST**

In addition to the above listed reimbursement, transfer the following retainage amounts:

From Escrow Acct.#	To Retainage Acct.#	For Contractor (name)	#Amount
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Contact Person at time of Wire Transfer \_\_\_\_\_ (name) \_\_\_\_\_ (phone #)