

COTTONWOOD HEIGHTS

RESOLUTION NO. 2021-64

A RESOLUTION APPROVING AND RATIFYING AN INTERLOCAL AGREEMENT WITH SALT LAKE COUNTY FOR CORRIDOR PRESERVATION FUNDING (2301 EAST BENGAL BLVD.)

WHEREAS, UTAH CODE ANN. §11-13-101, *et seq.* (the “*Interlocal Cooperation Act*”) provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, the city of Cottonwood Heights (the “*City*”) and Salt Lake County (the “*County*”) are public agencies for purposes of the Interlocal Cooperation Act; and

WHEREAS, UTAH CODE ANN. §72-2-117.5 authorizes the transfer of funds from the Utah Department of Transportation to local counties for disbursement to various cities and governmental entities for expenditure for corridor preservation purposes as recommended and endorsed by a council of governments (“*COG*”); and

WHEREAS, the Salt Lake County COG has requested that the County disburse to the City approximately \$61,865 (the “*Funds*”) of the corridor preservation funds administered by the County for a COG-approved transportation project (the “*Project*”) located at approximately 2301 East Bengal Blvd. in the City; and

WHEREAS, pursuant to the authority granted in the Interlocal Cooperation Act, the City and the County desire to enter into an interlocal agreement (the “*Agreement*”) whereunder the Funds will be disbursed by the County to the City for corridor preservation purposes in connection with the Project; and

WHEREAS, the city council (the “*Council*”) of the City met in regular session on 14 December 2021 to consider, among other things, approving and ratifying the City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, the city attorney of the City has approved the form of the Agreement as required by UTAH CODE ANN. §11-13-202.5(3); and

WHEREAS, after careful consideration, the Council 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 in order to make efficient use of the City’s resources;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement with the County 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. 2021-64, shall take effect immediately upon passage.

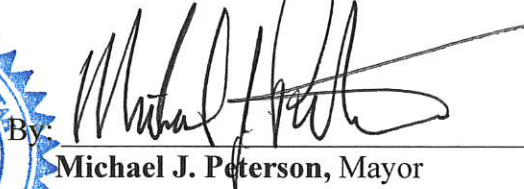
PASSED AND APPROVED this 14th day of December 2021.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Paula Melgar, Recorder



By: 
Michael J. Peterson, Mayor

VOTING:

Michael J. Peterson	Yea ☒	Nay ☐
Douglas Petersen	Yea ☒	Nay ☐
J. Scott Bracken	Yea ☒	Nay ☐
Tali C. Bruce	Yea ☒	Nay ☐
Christine Watson Mikell	Yea ☒	Nay ☐

Absent Excused

DEPOSITED in the office of the City Recorder this 14th day of December 2021.

RECORDED this 15 day of December 2021.

INTERLOCAL COOPERATION AGREEMENT

between

SALT LAKE COUNTY

and

COTTONWOOD HEIGHTS CITY

This Interlocal Cooperation Agreement (this "Agreement") is entered into by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah (the "County"); and **COTTONWOOD HEIGHTS CITY**, a municipal corporation of the State of Utah (the "City"). The County and the City may each be referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

A. The County and the City are "public agencies" as defined by the Utah Interlocal Cooperation Act, UTAH CODE §§ 11-13-101 to -608 (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. Additionally, Utah Code § 11-13-215 authorizes a county, city, town, or other local political subdivision to share its tax and other revenues with other counties, cities, towns, local political subdivisions, or the state.

B. During the 2015 General Session, the State Legislature amended Section 72-2-117.5 of the Utah Transportation Code, UTAH CODE §§ 72-1-101 to -16-402, to provide corridor preservation funds to local counties for disbursement to various cities and governmental entities, as recommended and endorsed by a council of governments (hereinafter "Corridor Preservation Funds").

C. On January 25, 2018, the Salt Lake County Council of Governments (COG), an association of local governments in Salt Lake County, requested that the County Council approve its recommended distribution to the City from the Salt Lake County Corridor Preservation Fund to enable the City to acquire property needed for a future road construction project at 2301 and 2318 East Bengal Boulevard, Cottonwood Heights, Utah.

D. The County and the City now desire to enter into this Agreement providing for the transfer of Sixty-One Thousand Eight Hundred Sixty-Five Dollars (\$61,865) of Corridor Preservation Funds to the City to be used by the City as provided in this Agreement and in accordance with Utah Code § 72-2-117.5.

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 -DISBURSEMENT OF COUNTY TRANSPORTATION FUNDS

1.1. **County Transportation Funds.** The County shall allocate and disburse Sixty-One Thousand Eight Hundred Sixty-Five Dollars (\$61,865) of Corridor Preservation Funds to the City from the Salt Lake County Corridor Preservation Fund, all on the terms and subject to the conditions of this Agreement.

1.2. **City.** The City shall use the Corridor Preservation Funds allocated and disbursed to it under this Agreement: a) for the purpose of acquiring property needed for the transportation project considered and approved by the Council of Governments on January 25, 2018, located at approximately 2301 East Bengal Boulevard, Cottonwood Heights, Utah; and b) in accordance with Utah Code § 72-2-117.5 and all other applicable federal, state and local laws, rules and regulations.

ARTICLE 2 — COVENANTS AND AGREEMENTS

2.1. Indemnification and Liability.

(a) **Liability.** Both Parties are governmental entities under the Governmental Immunity Act of Utah, UTAH CODE §§ 63G-7-101 to -904 (the "Immunity Act"). Neither Party waives any defenses or limits of liability available under the Immunity Act and other applicable law. Both Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

(b) **Indemnification.** The City agrees to indemnify, hold harmless, and defend the County, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, debts, and liabilities of, to, or by third Parties, including demands for repayment or penalties, however allegedly caused, resulting directly or indirectly from, or arising out of: i) the City's breach of this Agreement; ii) any acts or omissions of or by the City, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement; or iii) any improper use of the Corridor Preservation Funds. The City agrees that its duty to defend and indemnify the County under this Agreement includes all attorney's fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against the County for the defense of any claim or to satisfy any settlement, arbitration award, debt, penalty, or verdict paid or incurred on behalf of the County. The City further agrees that the City's indemnification obligations in this Section 2.1 will survive the expiration or termination of this Agreement.

2.2. **Recordkeeping.** The City agrees to maintain its books and records in such a way that any Corridor Preservation Funds received from the County will be shown separately on the City's books. The City shall maintain records adequate to identify the use of the Corridor Preservation Funds for the purposes specified in this Agreement. The City shall make its books and records available to the County at reasonable times.

2.3. **Assignment and Transfer of Corridor Preservation Funds.** The City shall not

assign or transfer its obligations under this Agreement nor its rights to the Corridor Preservation Funds under this Agreement without prior written consent from the County. The City shall use the Corridor Preservation Funds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

ARTICLE 3 —DEFAULTS AND REMEDIES

3.1. **City Event of Default.** The occurrence of any one or more of the following shall constitute an "Event of Default" as such term is used herein:

(a) Failure of the City to comply with any of the material terms, conditions, covenants, or provisions of this Agreement that is not fully cured by the City on or before the expiration of a sixty (60) day period (or, if the County approves in writing, which approval shall not be unreasonably withheld, conditioned or delayed, such longer period as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be cured within 60 days) commencing upon the County's written notice to the City of the occurrence thereof.

3.2. **County's Remedies in the Event of Default.** Upon the occurrence of any Event of Default, the County may, in its sole discretion, and in addition to all other remedies conferred upon the County by law or equity or other provisions of this Agreement, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

- (a) Withhold disbursement of Corridor Preservation Funds to the City; and/or
- (b) Reduce the amount of any future disbursement of Corridor Preservation Funds to the City by the amount incurred by the County to cure such default; and/or
- (c) Terminate this Agreement.

ARTICLE 4 — MISCELLANEOUS

4.1. **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 a duly authorized attorney in 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 done pursuant to this Agreement, and for any financing 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 County Mayor and the City Mayor are hereby designated as the joint administrative board for all purposes of the Interlocal Act.

4.2. 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 Utah Code § 11-13-202.5, 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 upon the earlier of: y) the date the Parties have performed all of the material obligations described herein; or z) three (3) years from the date the Agreement is executed by both Parties. The Parties intend that the distribution described herein will be made promptly following execution of this Agreement and that the City will expend such distribution for the purposes stated in this Agreement promptly following receipt.

4.3. Non-Funding Clause.

(a) The County has requested or intends to request an appropriation of Corridor Preservation Funds to be paid to the City for the purposes set forth in this Agreement. If Corridor Preservation Funds are not appropriated and made available beyond December 31 of the county fiscal year in which this Agreement becomes effective, the County's obligation to contribute Corridor Preservation Funds to the City under this Agreement beyond that date will be null and void. This Agreement places no obligation on the County to contribute Corridor Preservation Funds to the City in succeeding fiscal years. The County's obligation to contribute Corridor Preservation Funds to the City under this Agreement will terminate and become null and void on the last day of the county fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds are budgeted and appropriated. The Parties agree that such termination of the County's obligation under this Paragraph will not be construed as a breach of this Agreement or as an event of default under this Agreement, and that such termination of the County's obligation under this Paragraph will be without penalty and that no right of action for damages or other relief will accrue to the benefit of the City, its successors, or its assigns as to this Agreement, or any portion thereof, which may terminate and become null and void.

(b) If Corridor Preservation Funds are not appropriated and made available to fund performance by the County under this Agreement, the County shall promptly notify

the City of such non-funding and the termination of this Agreement. However, in no event, shall the County notify the City of such non-funding later than thirty (30) days following the expiration of the county fiscal year for which Corridor Preservation Funds were last appropriated for contribution to the City under this Agreement.

4.4. 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 County 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. If an Event of Force Majeure persists for a period in excess of sixty (60) days, the County may terminate this Agreement without liability or penalty, effective upon written notice to the City.

4.5. 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 to the Parties at their respective addresses.

4.6. Ethical Standards. The City represents that it has not: a) provided an illegal gift in connection with this Agreement 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 in connection with this Agreement set forth in State statute or Salt Lake County Code of Ordinances § 2.07, Salt Lake County Code of Ordinances; or d) knowingly influenced, and hereby promises that it will not knowingly influence, in connection with this Agreement, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

4.7. 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; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

4.8. Amendment. This Agreement may be amended, changed, modified or altered only by an instrument in writing.

4.9. 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 the County of Salt Lake, State of Utah.

4.10. No Obligations to Third Parties. The Parties agree that the City's obligations under this Agreement are solely to the County and that the County'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 for under this Agreement.

4.11. Agency. No officer, employee, or agent of the City or the County 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 County 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.

4.12. 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.

4.13. 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.

4.14. 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 herein in their entirety within the body of this Agreement.

4.15. 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.

IN WITNESS WHEREOF, each Party hereby signs this Agreement on the date written by each Party on the signature pages attached hereto.

[SIGNATURE PAGE TO FOLLOW]

INTERLOCAL AGREEMENT - SIGNATURE PAGE FOR THE COUNTY

SALT LAKE COUNTY

Lisa Hartman

Digitally signed by Lisa
Hartman
Date: 2021.09.08
10:03:25 -06'00'

By

Mayor Jennifer Wilson or Designee

Dated: September 8, 2021

Approved by:

Salt Lake County Regional Planning and Transportation

Dina Blaes

Digitally signed by Dina
Blaes
Date: 2021.08.20
18:18:14 -06'00'

By

Name: _____

Title: _____

Dated: _____, 20____

Approved as to Form and Legality:

By



Deputy District Attorney

INTERLOCAL AGREEMENT – SIGNATURE PAGE FOR THE CITY

COTTONWOOD HEIGHTS CITY

By

Name:

Title:

Dated:

Michael Peterson

Michael Peterson

MAYOR

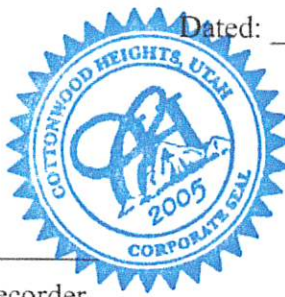
11/1/2021, 2021

Attest:

Paula Melgar

PAULA MELGAR, City Recorder

Date signed: 11/1/2021



Approved as to Form and Legality:

CITY ATTORNEY

By

Name:

Dated:

W. Shane Topham

Wm. Shane Topham

11/1, 2021