



Ben McAdams
Salt Lake County Mayor

Nichole Dunn
Deputy Mayor &
Chief Administrative Officer

December 4, 2013

Honorable Steve DeBry, Chair
Salt Lake County Council
2001 South State, N2200
Salt Lake City, Utah 84190-1010

Re: Interlocal Agreement between Salt Lake County and the Utah Department of
Transportation

Dear Councilman DeBry:

We are submitted the above-referenced agreement for your Honorable Board's approval. This agreement is for transfer of preservation fees for Roadway projects.

Sincerely,

Nichole Dunn, Deputy Mayor
Salt Lake County Office of the Mayor

Attachment

SALT LAKE COUNTY COUNCIL RESOLUTION

RESOLUTION NO. _____

DATE: _____

**RESOLUTION OF THE SALT LAKE COUNTY COUNCIL
AUTHORIZING EXECUTION OF AN INTERLOCAL AGREEMENT
WITH THE UTAH DEPARTMENT OF TRANSPORTATION.**

The Legislative Body of Salt Lake County resolves as follows:

WHEREAS, the Utah State Legislature provided under Utah Code Ann. §§ 11-13-101, et seq., that any two or more public agencies may enter into agreements with one another for joint or cooperative action;

WHEREAS, during the 2013 General Session, the State legislature amended Section 72-2-121 of the Code to provide for the transfer of an amount equal to 50% of the revenue generated by the Highway Construction and Preservation Fee (the "Fee Transfer") in a county of the first class: (i) to the legislative body of a county of the first class; and (ii) to be used by a county of the first class for: (A) highway construction, reconstruction, or maintenance projects; or (B) the enforcement of State motor vehicle and traffic laws;

WHEREAS, Salt Lake County and Utah Department of Transportation, as government entities, desire to enter into an Interlocal Cooperation Agreement ("Agreement"), attached and incorporated into this Resolution as Exhibit "A", for the sharing of the Tax Revenues to support highway construction, reconstruction, maintenance projects; or the enforcement of State motor vehicle and traffic laws in Salt Lake County; this Agreement shall take effect upon execution and shall run for a term of not to exceed 50 years.

NOW, THEREFORE, BE IT RESOLVED by the Salt Lake County Council that the attached Agreement, Exhibit "A", between Salt Lake County and the State of Utah is approved and the Salt Lake County Mayor is authorized to execute the same.

APPROVED and ADOPTED this _____ day of _____, 2013.

SALT LAKE COUNTY COUNCIL

By: _____
Steve DeBry, Chair

ATTEST:

Sherrie Swensen
Salt Lake County Clerk

APPROVED AS TO FORM
Salt Lake County District Attorney's Office
By: _____
Deputy District Attorney
Date: 12-5-13

Council Member Bradley voting _____
Council Member Bradshaw voting _____
Council Member Burdick voting _____
Council Member DeBry voting _____
Council Member Granato voting _____
Council Member Horiuchi voting _____
Council Member Jensen voting _____
Council Member Snelgrove voting _____
Council Member Wilde voting _____

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Exhibit A

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement (this "Agreement") is made and entered into this ___ day of _____, 2013 by and among Salt Lake County, Utah (the "County") and the Utah Department of Transportation ("UDOT"). The County and UDOT 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 County and the UDOT are public agencies as defined by Title 11, Chapter 13 (the "Interlocal Act") of the Utah Code Annotated 1953, as amended (the "Code"), and are authorized by the Interlocal Act to cooperate on a mutually advantageous basis and as necessary to promote the general welfare of the State; and

WHEREAS, the County is a county of the first class under Section 17-50-501 of the Code; and

WHEREAS, Section 72-2-121 of the Code creates a County of the First Class State Highway Projects Fund ("Highway Fund") and provides for Highway Fund revenues to be included therein ("Highway Fund Revenues"); and

WHEREAS, the Parties and other State of Utah (the "State") participants entered into an interlocal cooperation agreement on August 3, 2010 (the "2010 Agreement"), to encompass and reflect all terms and conditions for the use and distribution of certain Highway Fund Revenues as between the parties to the 2010 Agreement; and

WHEREAS, the 2010 Agreement provided for the issuance by the County of revenue bonds (the "2010 County Revenue Bonds") pursuant to a General Indenture of Trust, as amended and supplemented from time to time, which bonds are secured by monies transferred into the 2010 Salt Lake County Revenue Bond Sinking Fund ("County Sinking Fund") created by Section 72-2-121.3 of the Code from the Highway Fund; and

WHEREAS, pursuant to Section 72-2-121.3 of the Code, the Parties agreed under the 2010 Agreement that that on July 1 of each year beginning July 1, 2011, the State's Division of Finance of the Department of Administrative Services (Division of Finance) shall transfer from the Highway Fund to the County Sinking Fund an amount equal to (i) two (2) times the debt service requirement necessary to pay principal and interest on the 2010 County Revenue Bonds for the twelve-month period commencing on said July 1 (the "Bond Year") and (ii) any additional amounts necessary to pay costs of issuance, pay capitalized interest and fund any debt service reserve requirements for such Bond Year; and

WHEREAS, the County imposed a local option highway construction and transportation corridor preservation fee (the "Highway Construction and Preservation Fee") as authorized under Section 41-1a-1222 of the Code that is included in the Highway Fund Revenues; and

WHEREAS, during the 2013 General Session, the State legislature amended Section 72-2-121 of the Code to provide for the transfer of an amount equal to 50% of the revenue generated by the Highway Construction and Preservation Fee (the “Fee Transfer”) in a county of the first class: (i) to the legislative body of a county of the first class; and (ii) to be used by a county of the first class for: (A) highway construction, reconstruction, or maintenance projects; or (B) the enforcement of State motor vehicle and traffic laws; and

WHEREAS, the Fee Transfer is to occur after the UDOT has verified pursuant to Section 72-2-121.3 of the Code that, until the 2010 County Revenue Bonds are paid off, the director of the Division of Finance has transferred from the Highway Fund and the Transportation Investment Fund of 2005 to the County Sinking Fund the amount certified by the County that is necessary to pay: (i) up to two times the debt service requirement necessary to pay debt service on the revenue bonds issued by the County for that fiscal year; and (ii) any additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements (the “Verification”); and

WHEREAS, because revenue generated by the Highway Construction and Preservation Fee is allocated individually by the State Tax Commission, the UDOT maintains separate accounting of those monies; and

WHEREAS, the County plans to provide for the issuance of its revenue bonds, which bonds shall be secured by monies transferred to the County from the Fee Transfers (the “2013 County Revenue Bonds”); and

WHEREAS, in order to facilitate the Fee Transfer, the Parties desire to memorialize their agreement and understanding with respect to the Fee Transfer in accordance with the requirements of State law; and

WHEREAS, Section 11-14-307(3) of the Code provides that the State of Utah pledges that it will not alter, impair, or limit the excise taxes (including the Highway Construction and Preservation Fee) pledged to such bond that reduces the amounts to be rebated to the County until such bonds have been discharged; and

WHEREAS, the 2010 Agreement remains in full force and effect;

NOW, THEREFORE, 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:

1. Definitions. Terms defined in the foregoing recitals shall, to the extent used but not otherwise defined herein, be used as so defined.
2. Fee Transfer. The UDOT and the County hereby agree as follows:

(a) Until the 2010 County Revenue Bonds are paid off, the UDOT hereby agrees to complete the Verification as soon as practicable after the first day of the State's fiscal year, with the first such Verification having taken place on or about July 1, 2013.

(b) Once the Verification has been made and continuing after such time as the 2010 County Revenue Bonds are paid off, UDOT hereby agrees to execute the Fee Transfer quarterly within thirty (30) days of the end of each calendar quarter, with the next transfer to be made on or prior to January 30, 2014.

3. Liability and Indemnification. Both Parties are governmental entities under the Governmental Immunity Act of Utah, Section 63G-7-101, et seq. of the Code. Consistent with the terms of this Act, it is mutually agreed that each Party is responsible and liable for its own wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither Party waives any defenses otherwise available under the Governmental Immunity Act.

4. 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 authorized by the Executive Director of UDOT, and by a resolution of the legislative body of the County, all as required by 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 the 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 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. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the Executive Director of UDOT, and by the Mayor of the County. No real or personal property shall be acquired jointly by the Parties as a result of this Agreement. To the extent that 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;

(f) This Agreement shall take effect upon execution and shall run for a term of not to exceed 50 years; and

(g) As provided in Section 11-13-219 of the Interlocal Act, the Parties agree that the County shall cause a notice of this Agreement to be published in the Deseret News and the Salt Lake Tribune, which are hereby designated by the County as the

official newspapers for all publications made under the Interlocal Act. Any person in interest may contest the legality of this Agreement for thirty (30) days after the publication of the notice of Agreement. After the thirty (30) days have passed, no one may contest the regularity, formality, or legality of the Agreement or any action performed or instrument issued under the authority of this Agreement for any cause whatsoever.

5. Amendments. This Agreement may be amended, changed, modified or altered only by an instrument in writing which shall be (a) approved by the Executive Director of UDOT and by Resolution of the governing body of the County, (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 (d) filed in the official records of each Party.

6. Counterparts. This Agreement may be executed in counterparts by the UDOT and the County. In such event, a duly executed original counterpart shall be filed with the keeper of records of each Party pursuant to the Interlocal Act.

7. Governing Law. This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.

8. Effective Date. This Agreement shall take effect upon execution by the Parties.

9. 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 as follows:

If to Salt Lake County: County Mayor
2001 South State, N2100
Salt Lake City, Utah 84190

With a copy to: Salt Lake District Attorney
2001 South State, S-3700
Salt Lake City, Utah 84190

If to UDOT: Executive Director
Utah Department of Transportation
P.O. Box 141265
4501 South 2700 West
Salt Lake City, Utah 84114-1265

10. 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.

11. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the Fee Transfer, 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.

12. 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 or 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.

IN WITNESS WHEREOF, the Parties have subscribed their names and seals the day and year first above written.

SALT LAKE COUNTY

By: Nichole Dunn
Name: Nichole Dunn
Title: Deputy Mayor

Reviewed as to Proper Form and Compliance
with Applicable Law: [Signature] 12-5-13
Salt Lake County Deputy District Attorney

UTAH DEPARTMENT OF
TRANSPORTATION

By: _____
Name: _____
Title: _____

Approved as to Proper Form and Compliance
with Applicable Law:

_____, Legal Counsel
Utah Department of Transportation