COTTONWOOD HEIGHTS

RESOLUTION NO. 2016-06

A RESOLUTION APPROVING AN AGREEMENT WITH UDOT FOR A HAWK PEDESTRIAN CROSSING

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met on 26 January 2016 to consider, among other things, approving and ratifying an agreement (the "*Agreement*") with Utah Department of Transportation ("*UDOT*") whereunder UDOT will reimburse the City for the cost (estimated at $206,800) of installing a HAWK pedestrian crossing on Fort Union Blvd. near Mountview Park under Local Government Project No. F-LC35(264), on the terms and conditions specified in the Agreement; and

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

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement 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. 2016-06, shall take effect immediately upon passage.

PASSED AND APPROVED this 26th day of January 2016.

ATTEST:

By: Linda W. Dunlavy
Linda W. Dunlavy, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By _____
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr	Yea ✓	Nay ___
Michael L. Shelton	Yea ✓	Nay ___
J. Scott Bracken	Yea ✓	Nay ___
Michael J. Peterson	Yea ✓	Nay ___
Tee W. Tyler	Yea ✓	Nay ___

DEPOSITED in the office of the City Recorder this 26th day of January 2016.

RECORDED this 26 day of January 2016.

State of Utah
Department of Transportation

Federal Aid Agreement for Local Agency Project CFDA No. 20.205 Highway Planning and Construction		Maximum Project Value Authorized $206,800
PIN Number 13137 FINET Number 54404 FMIS Number F010582	Project Number F-LC35(264) PIN Description HAWK Pedestrian Crossing on Fort Union	Agreement Number (Assigned By Comptrollers) Date Executed

This Agreement is entered into this ____ day of _____, 20___, by and between the Utah Department of Transportation ("UDOT") and CITY OF COTTONWOOD HEIGHTS "Local Agency(ies)", a political subdivision(s) of the State of Utah.

The (City/County) has a project that will receive financing from federal-aid highway funds. The Project consists of HAWK Pedestrian Crossing on Fort Union, located at CITY OF COTTONWOOD HEIGHTS and identified as project number F-LC35(264);

Pursuant to 23 CFR Section 635.105, UDOT has the responsibility to oversee the federal aid projects to ensure adequate supervision and inspection so the projects are completed in conformance with the approved plans and specifications, including compliance with all federal requirements; and

This Agreement describes the respective roles and requirements of UDOT and the City/County to ensure compliance with the federal requirements for the receipt of federal funding for the Project.

State Wide Transportation Improvement Program STIP 2016 - 2019

Fund*	Prior	2016	2017	2018	2019	Total	Fed Aid	State	Other	Pct
TAP_URB_WFRC	$0	$206,800	$0	$0	$0	$206,800	$192,800	$0	$14,000	6.77%
Total:	$0	$206,800	$0	$0	$0	$206,800	$192,800	$0	$14,000	6.77%

AGREEMENT

Now, therefore, the parties agree as follows:

I. **Description of the Project.**
II. **UDOT's Roles and Responsibilities on a Federally Funded Local Government Project as follows:**

A. Oversee compliance with federal and state regulations.
B. Ensure transportation project oversight as outlined in 23 CFR 635.105.
C. Assign a UDOT Project Manager to:
   1. Assist the Local Government Project Manager to monitor scope, schedule, budget, and help track expenditures during all phases of the project.
   2. Assist in project risk monitoring by reviewing and discussing identified risks and mitigation efforts.
   3. For projects approved through the Wasatch Front Regional Council (WFRC), assist in early coordination with UDOT's Environmental staff during preparation of the environmental document.
   4. Prepare and process the federal aid agreement before project initiation.
   5. Help administer consultant qualifications-based selection, negotiation of contract, and contracting process for all phases of the Project using the UDOT Consultant Services selection process.
   6. Assist the local agency to process and approve Consultant Pay Requests.
   7. Coordinate and participate in design review meetings to ensure the federally-approved, UDOT design process is followed.
   8. Coordinate to ensure ongoing communication with the local project sponsor.
   9. Notify the Local Government that the match, betterment or other funding to UDOT is due.
   10. Assist the Local Agency in preparing and executing UDOT Standard Utility Reimbursement Agreements as required.
   11. Coordinate betterment items and finalize agreements prior to construction advertising.
   12. Assist with the federally-approved construction advertising and award processes through the UDOT construction advertising and award process.
   13. Coordinate with the Local Project Manager to review and recommend change orders for approval.
   14. Coordinate the UDOT project closeout process.

III. **Local Agency Roles and Responsibilities on a Federally Funded Local Government Project.**

The Local Agency shall manage the Project in compliance with federal and state laws and regulations. The Local Agency shall monitor the quality of work being performed on the Project and daily activities and issues with the consultants.

A. The Local Agency shall assign a representative to serve as the Local Project Manager to:

   1. Research, understand, and take responsibility for federal requirements by its acceptance of federal funds.
   2. Coordinate with the UDOT Project Manager concerning the funding.
   3. Work with organizations (MPO's, etc.) for funding and expenditure time-frames, scope issues and delivery schedule.
   4. Manage the day-to-day activities of the Project as follows:
      a. Consultant and professional services used on the Project.
      b. The Local Agency shall recommend and approve consultant pay requests.
      c. Project scope, schedule, budget, and quality.
      d. Coordination of details, decisions and impacts with the local jurisdiction's community councils, commissions, legal counsel, department heads, political leads, engineering and public works departments, etc.
      e. Coordination with the assigned UDOT Project Manager.
      f. Project risk monitoring by reviewing and discussing identified risks and mitigation efforts.
      g. Monitor project schedule and progress of all project tasks- to ensure a timely delivery of the project.
      h. Schedule discussion should be held in all preconstruction and construction project progress meeting.
      i. Oversee project compliance with federal and state transportation project processes. These responsibilities include (but are not limited to):

1) Participate in the federally approved UDOT consultant qualifications-based selection, negotiation of contract, and contracting process for all phases of the project.
2) Participate as the active lead in project team meetings as well as all field and plan reviews.
3) Ensure NEPA Environmental clearances and approvals are obtained.
4) Ensure current AASHTO, MUTCD, and UDOT design standards are met, or if not, ensure all design exceptions, waivers or deviations are obtained from UDOT and have the necessary signatures in place.
5) Ensure and certify that right of way acquisitions follow the federal Uniform Act and comply with state right of way acquisition policy, including rules, and meet all Project right of way commitments.
6) Ensure construction standards and specifications are met.
7) Oversee project construction management operations, progress, documentation and quality inspection to meet state and federal contract administration requirements.

j. Coordinate with utilities to minimize project impacts and ensure needed relocations have the proper documentation, easements and agreements in place. The Local Agency shall provide to UDOT Region Utility Coordinator the Project utility certification prior to construction advertising. All utility agreements must follow the UDOT standard Utility agreement format and process.
k. Provide right of way certification verifying all required right of way has been purchased prior to advertising.
l. Ensure required documentation is in place before submitting the advertising package to UDOT for advertising through its federally-approved process.
m. Coordinate with the UDOT Project Manager and Comptroller's Office to deposit the local match and betterment funds as outlined below in Section IV.
n. Approve the final advertising package and obtain local signature approval advertisement.
o. Review the abstract of bids and recommend to the UDOT Project Manager award of the project. The Local Agency may decline to recommend award for the following reasons: Lack of funding to cover project costs as bid, or cancelling the project.
p. Attend Construction Coordination meetings and coordinate with the Consultant Resident Engineer (RE).
q. Review all construction change orders for approval and submit them to UDOT Project Manager for review and processing.
r. Review the project budget for changes related to change orders, quantity overruns, incentives, fuel and asphalt adjustments, etc.
s. Ensure materials comply with the current UDOT Materials Testing and Acceptance Manual and the UDOT Minimum Sampling and Testing Requirements.
t. Assist to provide all documentation needed for construction project close out including Buy America certification.
u. Coordinate the project close out process by timely closing all open contracts and agreements.

This list of roles and responsibilities is not comprehensive but describes the general roles of the Local Agency.

IV. **Funding.** Upon signing this agreement, the Local Agency agrees to pay its estimated matching share in phases when requested by UDOT within 30 days. Phases typically include environmental, design, right of way and construction. The local match for this project is represented by the percentages of the Total Project Value shown below. In addition the Local Agency agrees to pay 100% of the overruns that exceed $206,800 and any ineligible costs to UDOT.

The Local Agency shall be responsible for all costs associated with the project which are not reimbursed by the federal government. For a Joint Highway Committee project, the federal participation for construction engineering costs is limited to 20 percent of the construction contract costs. No costs are eligible for federal aid reimbursement until authorized by the FHWA through Form R-709, Request for Federal Aid Project Approval, separate from this Local Agency Agreement.

Local Agency betterments are ineligible for Federal Funding. The Federal Aid Agreement must be modified to incorporate the additional funding for the betterments that are included after the execution of this Agreement. The Local Agency will advance the funds for the betterments to UDOT prior to the construction award.

For the specific funding for the project, see page 1, Statewide Transportation Improvement Program (STIP).

UDOT will request payment of matching shares and overruns through an email that will be sent to Mike Allen at MALLEN@CH.UTAH.GOV, the Local Agency Contact. The Local Agency shall pay within 30 days after each payment request. The Local Agency shall make the check payable to the Utah Department of Transportation referencing the project number above and mail to UDOT Comptroller's Office, 4501 South 2700 West, Box 1415010, Salt Lake City, Utah 84114-1510.

Funds requested beyond the amount described in this Agreement will require execution of a Federal Aid Agreement Modification by the parties.

If the project has cost overruns, the Local Agency shall pay the additional amount to UDOT within 30 days of receiving the invoice. Should the Local Agency fail to reimburse UDOT for costs that exceed the federal reimbursement, federal funding for other Local Agency projects or B&C road funds may be withheld until payment is made in addition to any other remedies available.

If the Local Agency's advanced amount exceeds its share of project cost, UDOT will return the amount of overpayment to the Local Agency upon financial closure of the project.

If there are any unexpended Federal Funds remaining on the project, the funds will be returned to the funding source that they originated (MPO, etc) and reprogrammed.

UDOT Comptroller shall provide the Local Agency with a quarterly statement reflecting a cost summary for the project.

V. **Local Agency's Reimbursement Claims.** The Local Agency shall bill UDOT for eligible federal aid project cost incurred after FHWA phased approval for authorization to proceed (form R709) and in conformity with applicable federal and state laws. Authorized Local Agency reimbursement claims should be submitted to UDOT Project Manager within 30 days of cost incurrence. Reimbursements to the Local Agency for right of way claims are classified as a pass-through of Federal funds from UDOT to the Local Agency. Expenditures by the Local Agency for general administration, supervision, and other overhead shall not be eligible for federal participation unless an indirect cost plan has been approved annually by the Federal government. Payments to contractors, consultants, utility companies, etc will be made from UDOT directly to those entities instead of the funds passing through the Local Agency.

The Local Agency shall comply with 23 CFR Section 710.203 for FHWA reimbursement requests of real property acquisitions. A Local Agency shall not request reimbursement for excess acquisitions which are not eligible for FHWA reimbursement under 23 CFR Section 710.203 http://www.gpoaccess.gov/cfr/retrieve.html.

VI. **Federal Aid Project Compliance.** Local Agency shall comply with Title 23, USC, 23 CFR, 2 CFR Part 200, , UDOT Local Government and State Aid Project Guide, UDOT's Right of Way Operational Manual and the Federal Aid Project Agreement between UDOT and Federal Highway Administration concerning federal aid projects. They will also follow the Local Government Design and Process Manuals.

VII. **Project Authorization for Federal Aid**. The Local Agency, through UDOT, must obtain an Authorization to proceed from FHWA before beginning work on any federal aid project. Federal funds shall not participate in costs incurred prior to the date of authorization. The Local Agency will work with the Project Manager to establish a project end date. Any expenses incurred after the project end date will not be eligible for Federal reimbursement and **the Local Agency will be required to pay 100% of those costs**. FHWA authorizes the funding in separate phases including environmental, design, ROW, and construction.

VIII. **Indemnity clause.** Local Agency agrees to hold harmless, defend and indemnify the State of Utah, UDOT, its employees and agents (Indemnitees) from and against all claims, suits and costs, including attorneys' fees for injury or damage of any kind, arising out of this Project. This clause is intended to include but not be limited to: Indemnitees own negligence unless arising out of Indemnitee's sole negligence, and any failure to inspect, discover, correct, or otherwise address any defect, dangerous condition or other condition created by or resulting from this Project.

Any periodic plan and specification review or construction inspection performed by UDOT arising out of the performance of the Project does not relieve the Local Agency of its Project duties, including its duty to indemnify, or its duty to ensure compliance with applicable standards.

IX. **Single Audit Act.** The Local Agency, as a sub-recipient of federal funds, shall adhere to the Federal Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, http://www.whitehouse.gov/omb/circulars/a133/a133.html. A sub-recipient who expends $750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provision of OMB Circular A-133. Upon conclusion of the A-133 audit, the Local Agency shall be responsible for ensuring that a copy of the report is transmitted to the Utah Department of Transportation, Internal Audit, 4501 S 2700 W, Box 148230, Salt Lake City, Utah 84114-8230.

X. **Maintenance.** The Local Agency shall properly maintain and restore each type of roadway, structure and facility as nearly as possible in its original condition as constructed or improved in accordance with state and federal requirements.

XI. **Utilities.** The Local Agency shall notify and cooperate with utility companies having facilities in the project limits in accordance with Utah Code Section 54-3-29. The Local Agency shall follow the standard UDOT utility agreement process including signatures by UDOT, utility, and the Local Agency.

The Local Agency shall certify, in accordance with 23 CFR Section 645.107(c), that utility relocation reimbursements to be made in accordance with the provisions of 23 CFR Section 645.107(a) do not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the Local Agency, or are solely for the purpose of implementing safety corrective measures to reduce the roadside hazards of utility facilities to the highway use as provided in 23 CFR Section 645.107(k).

The Local Agency shall determine reimbursement eligibility for identified relocations based on Local Agency Franchise Agreement or Ordinance. If not reimbursable, submit a written statement to UDOT that the Local Agency is "legally unable to reimburse the utilities" for relocation or protection work as part of the project. Utility relocations deemed to be reimbursable will be performed in accordance with 23 CFR Section 645, Utilities, Subpart A, and are subject to 23 CFR Section 635.410, Buy America Requirements.

In accordance with 23 CFR Section 645.209 (g), the Local Agency will provide a degree of protection to the highway that is equivalent to or more protective than Utah Administrative Rule 930-7, Utility Accommodation Rule.

XII. **Availability of Records**. For a period not less than three (3) years from the date of final voucher, the Local Agency accounting records pertaining to the federal aid project are to be kept available for inspection and audit by the state and federal government, or furnished upon request.

XIII. **Right of Way.** The Local Agency shall acquire all the required right of way for the Project in compliance with 23 CFR Section 710.309, 49 CFR Part 24 and UDOT Right of Way Operations Manual. The Local Agency shall use the right of way module in ePM for acquisitions. Once all the necessary right of way is acquired, the Local Agency shall obtain UDOT's certification. All the necessary right-of-way must be obtained before the project is advertised. No limitations concerning right-of- way shall be allowed. For UDOT right-of-way certifications required for advertising access the following: http://www.udot.utah.gov/main/f?p=100:pg::::1:T,V:808,34728.

For real property disposals the Local Agency shall comply with 23 CFR Sections 710.409 and 710.403. The Local Agency should have property management records, which identify inventories of real property considered excess to project needs. If a Local Agency determines that real property initially acquired as part of the project is declared excess and disposed of the Local Agency must comply with 23 CFR Sections 710.409 and 710.403. These sections require that the Federal share of net income from the sale or lease of real property acquired with Federal assistance be used for Title 23 eligible projects. Refer to http://www.gpoaccess.gov/cfr/retrieve.html for additional information. The Local Agency shall deposit the net proceeds from the sale or lease with UDOT to be applied towards a Title 23 eligible project as authorized by the appropriate metropolitan planning organization or the Joint Highway Committee.

XIV. **Change in Scope and Schedule.** Local Agency recognizes that if a project scope changes from the original intent of the project application, the project will need to be re-evaluated by the responsible agency that programmed the project (i.e, MPO, JHC). Such a review may result in approval of the scope change, removal from the program, or adjustment in the federal aid funds programmed for the project.

Local Agency is responsible for the schedule of the project. If the project cannot progress as programmed, the responsible programming agency may advance other projects and require the project to wait for next available funding.

Any change orders required to meet the terms and conditions of the construction contract will be initiated by UDOT. UDOT will notify the Local Agency of any such change orders and obtain the Local Agency's consent if the change order increases the cost of the project. The Local Agency shall be responsible for 100% of the costs of all change orders on the Project not reimbursed by FHWA.

XV. **UDOT Service Costs.** UDOT may provide expertise in project management, contract preparation, design plan reviews, advertising, construction materials verification/certification, technical assistance, engineering services or other services as needed. This includes costs for auditing consultant contracts that can be up to 0.5% of the contract costs. Appropriate charges for these costs will be incurred by the project and included in the overall project costs.

XVI. **Additional Contracting Party.** If the Local Agency desires to be an additional contracting party and an additional bondholder or obligee on the performance bond for Class B and C roads, a signed letter on official letterhead by the governing body of the Local Agency shall be an attachment to this Federal Aid Agreement. This provision applies only to federally funded projects and only on B and C roads.

XVII. **Termination.** This agreement may be terminated as follows:

1. By mutual agreement of the parties, in writing.
2. By either UDOT or the Local Agency for failure of the other party to fulfill their obligations as set forth in the provisions of this agreement. Thirty day written notice to terminate the Agreement will be provided to the other party describing the noncompliance of the Agreement. If the noncompliance is not remedied within the thirty day period, the Agreement shall terminate. However, if UDOT believes that the Local Agency is violating the Agreement that may result in harm to the public, inappropriate use of federal funds or if the Federal Highway Administration requests immediate termination, UDOT may terminate the Agreement without giving the thirty day notice.
3. By UDOT for the convenience of the state upon written notice to the Local Agency.
4. By UDOT, in the event that construction of the project for which this design engineering is undertaken is not started by the close of the fifth fiscal year following the fiscal year in which this agreement is executed.

In the event of termination, the Local Agency shall pay all of UDOT's costs referenced in paragraph XV regardless of whether the Project is constructed.

XVIII. **Miscellaneous.**

1. This Agreement cannot be altered or amended, except pursuant to an instrument in writing signed by each of the parties.
2. If any term or provision of this Agreement or application to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement shall not be affected and each term, condition and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, so long as removing the severed portion does not materially alter the overall intent of this Agreement.
3. The failure of a party to insist upon strict performance of any provisions of this Agreement shall not be construed as a waiver for future purposes with respect to any such provision or portion. No provision of this Agreement shall be waived unless such waiver is in writing and signed by the party alleged to have waived its rights.
4. Each undersigned represents and warrants that each has been duly authorized for all necessary action, as appropriate, to execute this Agreement for and on behalf of the respective parties

5. The parties shall not, by this Agreement nor by any act of either party, be deemed principal and agent, limited or general partners, joint ventures or to have any other similar relationship to each other in the conduct of their entities.

XIX. **Content Review**
Language content was reviewed and approved by the Utah AG's office on March 16, 2015.

LOCAL AGENCY

By _____

Date _____
CITY OF COTTONWOOD HEIGHTS Official
Mayor Kelvyn Cullimore

Utah Department of Transportation

By _____
Region Director

Date _____

UDOT Comptroller

By _____
Comptroller's Office

Date _____

Consultant Services
Federal Aid Agreement Review/Approval Routing Form

STATE OF UTAH
UTAH DEPARTMENT OF TRANSPORTATION
ENGINEERING SERVICES

TODAY'S DATE 10/29/2015
PM REQUEST DATE 10/29/2015

FEDERAL AID
AGREEMENT NO.

Project No.: F-LC35(264) **PIN No.:** 13137

PIN Description: HAWK Pedestrian Crossing on Fort Union **FINET Prog Code No.:** 54404

UDOT Project Manager	UDOT Contract Administrator
Steven J. Quinn 2010 South 2760 West Salt Lake City, UT 84104 (801)503-6451 squinn@utah.gov	Michael R. Butler PO Box 148490 Salt Lake City Utah 84114-8490 (801)965-4419 michaelbutler@utah.gov

Local Government
CITY OF COTTONWOOD HEIGHTS 1265 E. FORT UNION BLVD STE.250 Cottonwood Heights, UT 84047 Mike Allen, (801) 944-7090 MALLEN@CH.UTAH.GOV

Project Value	$206,800
Federal Match	$192,800
Local Government Match	$14,000
State Match	$0

Please print two single sided copies and route for review/approval to the individuals listed below, using the contact information above. Please sign where appropriate on page #1 in the document before forwarding to the next individual on the list. Please route in the following order:

Routing Sequence		Date
1	Sent to Local Government	10/29/2015
2	Review/Approved Local Government	
3	Review/Approved UDOT Region Director (c/o UDOT PM)	
4	Consultant Services	
5	Sent to UDOT Comptroller	
6	Review/Approved UDOT Comptroller	