# COTTONWOOD HEIGHTS

## RESOLUTION NO. 2016-42

## A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH SALT LAKE COUNTY FOR CORRIDOR PRESERVATION FUNDING (INTERSECTION OF FT. UNION BLVD. AND HIGHLAND DRIVE)

**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 disbursal to various cities and governmental entities for expediture for corridor preservation purposes; and

**WHEREAS**, the County desires to distribute $196,532 (the "*Funds*") to the City for the acquisition of twelve small parcels of real property (the "*Property*") at the intersection of Ft. Union Blvd. and Highland Drive 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 expenditure by the City to acquire the Property for corridor preservation purposes; and

**WHEREAS**, the city council (the "*Council*") of the City met in regular session on 24 May 2016 to consider, among other things, approving 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 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 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. 2016-42, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 24th day of May 2016.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By _____
**Kelvyn H. Cullimore, Jr.**, Mayor

**ATTEST:**

_____
**Linda W. Dunlavy**, Recorder

**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 24th day of May 2016.

**RECORDED** this 24 day of May 2016.

# Interlocal Cooperation Agreement

**THIS INTERLOCAL COOPERATION AGREEMENT** (this "*Agreement*") is made effective 24 May, 2016 ("*Effective Date*"), by and between **SALT LAKE COUNTY**, a body corporate and politic of the state of Utah ("*County*"), and **COTTONWOOD HEIGHTS CITY,** a Utah municipal corporation and political subdivision of the State of Utah (the "*City*"). The County and the City are individually referred to herein sometimes as a "*Party*" and collectively as the "*Parties*."

## RECITALS:

A. UTAH CODE ANN. §11-13-202 and other provisions of the Interlocal Cooperation Act (codified as UTAH CODE ANN. § 11-13-101, *et seq.*) (the "*Act*") provides that any two or more public agencies may enter into an agreement with one another for joint or cooperative actions.

B. The County and the City are public agencies for purposes of the Act.

C. During the 2015 General Session, the Utah Legislature amended Utah Code Annotated § 72-2-117.5, Local Transportation Corridor Preservation Funds to transfer corridor preservation funding from the Utah Department of Transportation to local counties to be disbursed to various cities and governmental entities.

D. Section 72-2-117.5 (11) further requires that local counties "ensure to the extent possible that the fund money allocated to a city or town in accordance with Subsection (4) is expended" in accordance with the statue.

E. By letter dated April 13, 2016, the Salt Lake County Council of Governments, an Association of Local Governments in Salt Lake County, Utah ("COG") requested the County Council approve its recommended distribution from the Salt Lake County Corridor Preservation Fund, a local transportation corridor preservation fund in the amount of $196,532 to City for the acquisition of twelve small parcels at the intersection of Fort Union Boulevard and Highland Drive (the "Request").

F. The Request is an allowable project under the Section 72-2-117.5 and is in accordance with the guidelines and budget agreed to by COG.

G. Further the Request has been forwarded to the County Council for approval.

## AGREEMENT:

**NOW, THEREFORE,** in consideration of the premises and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE 1
## ALLOCATION

Section 1.1 **County.** The County shall allocate and disburse $196,532 from the Local Transportation Corridor Preservation Funds to the City.

Section 1.2 **City.** The City shall use the funds allocated and disbursed to it for the purpose of acquiring twelve small parcels for the improvement of the intersection of Fort Union Boulevard and Highland Drive.

## ARTICLE 2
## ADDITIONAL PROVISIONS

Section 2.1 **Duration and Termination**. This Agreement shall take effect upon execution and terminate upon the performance by the Parties of all the obligations described herein. The parties intend that the distribution described herein shall be accomplished promptly. Any provision of this Agreement which contemplates performance subsequent to the expiration or earlier termination of this Agreement shall so survive such expiration or termination and shall continue in full force and effect until fully satisfied, but in no event shall this Agreement have a term longer than 50 years.

Section 2.2 **Interlocal Act Provisions**. In compliance with the requirements of the Act and other applicable law:

*(a)* *No Interlocal Entity.* The Parties agree that they do not by this Agreement create an interlocal entity.

(b) *Joint Board*. As required by UTAH CODE ANN. § 11-13-207, the Parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of the County's Mayor or designee and the City's Manager or designee.

(c) *Financing Joint Cooperative Undertaking and Establishing Budget*. There is no financing of joint or cooperative undertaking and no budget shall be established or maintained.

(d) *Attorney Review*. This Agreement shall be reviewed as to proper form and compliance with applicable law by the authorized attorneys for the County and the City in accordance with UTAH CODE ANN. § 11-13-202.5.

(e) *Copies*. Duly executed original counterparts of this Agreement shall be filed with the keeper of records of each Party, pursuant to UTAH CODE ANN. § 11-13-209.

(f) *Manner of Acquiring, Holding or Disposing of Property*. No propeorty shall be acquired, held or disposed of under this Agreement.

Section 2.3 **General Provisions**. The following provisions are also integral parts of this Agreement:

(a) *Binding Agreement*. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) *Captions*. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) *Counterparts*. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) *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.

(e) *Waiver of Breach*. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) *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.

(g) *Amendment*. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) *Time of Essence*. Time is the essence of this Agreement.

(i) *Interpretation*. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) *Notice*. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses.

(k) *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.

(l) *Liability and Indemnification*. Both Parties are governmental entities under the Governmental Immunity Act of Utah, §§ 63G-7-101 to -904 (2011), as amended (the "*Immunity Act*"). There are no indemnity obligations between these Parties. Subject to and consistent with the terms of the Immunity Act, the County and the City shall be liable for their own negligent acts or omissions, or those of their authorized employees, officers, and agents while engaged in the performance of the obligations under this Agreement, and neither the County nor the City shall have

any liability whatsoever for any negligent act or omission of the other Party, its employees, officers, or agents. 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.

(m) *Ethical Standards*. The Parties hereto represent that they have not: (a) provided an illegal gift or payoff to any officer or employee, or former officer or employee, or to any relative or business entity of an officer or employee, or relative or business entity of a former officer or employee of the other party hereto; (b) retained any person to solicit or secure this Agreement upon any contract, 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 set forth in State statute or County's Ethics, Gifts and Honoraria ordinance (Chapter 2.07, SALT LAKE COUNTY CODE OF ORDINANCES [2001]); or (d) knowingly influenced, and hereby promise that they will not knowingly influence, any officer or employee or former officer or employee to breach any of the ethical standards set forth in State statute or County ordinances.

(n) *Third Parties*. Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person, board, or entity, other than the Parties hereto and their successors and assigns, any right or remedies by reason of this Agreement, as a third party beneficiary or otherwise.

(o) *Costs.* 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.

(p) *Integration*. This Agreement, including exhibits, constitutes the entire agreement of the Parties and supersedes all prior understandings, representations or agreements of the Parties regarding the subject matter in this document.

**IN WITNESS WHEREOF**, the City caused this Agreement to be signed by its Mayor and attested by its City Recorder; and the County caused this Agreement to be signed by the Mayor or his designee.

**SALT LAKE COUNTY**

By: _____
Mayor or Designee

**Approved As To Form:**

_____
Melanie F. Mitchell, Deputy District Attorney
Date: 25 April 2016

**COTTONWOOD HEIGHTS CITY**

By _____
Kelvyn H. Cullimore Jr., Mayor

**ATTEST:**

_____
City Recorder

**Approved As To Form:**

_____
Cottonwood Heights City Attorney
Date: _____, 2016