

LOCAL TRANSPORTATION FUNDING AGREEMENT

This Agreement is made effective this ____ day of _____ 2023, by and between Weber County, a political subdivision of the State of Utah (County) and the Utah Transit Authority, a large public transit district (UTA) (collectively the “Parties” or individually the “Party”), and witnesses that:

WHEREAS, Pursuant to Utah Code Annotated §72-2-117.5, the Local Transportation Corridor Preservation Fund provides the opportunity for a council of governments and the local legislative body to prioritize and approve funding for transportation and transit projects or services, and

WHEREAS, the Weber Area Council of Governments (WACOG) is the council of governments with the authority to work with Weber County, the local legislative body, to prioritize and approve funding for such transportation projects; and

WHEREAS, the Commuter Rail project (Project) is among the qualified projects prioritized for funding by WACOG and the Weber County Commission; and

WHEREAS, UTA intends to preserve right-of-way (Right-of-Way) in preparation for a future extension of Frontrunner from the Intermodal Hub in Ogden north to the Weber County/Box Elder County boundary; and

WHEREAS, UTA submitted a timely and complete application/request to the WACOG, and accordingly such request was approved by the WACOG on November 7, 2022 and subsequently approved by the Weber County Commission on November 15, 2022; and

WHEREAS, the County has committed to assist with Right-of-Way acquisition and related costs up to \$1,500,000 programmed for calendar year 2024, which monies shall come from the Local Transportation Corridor Preservation Fund (“Funds”); and

WHEREAS, the County and the UTA propose to enter into this Agreement to establish the terms and conditions the County and the UTA will be bound to in regard to this Agreement;

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, it is agreed by and between the Parties hereto as follows:

SECTION ONE

INTRODUCTION AND BACKGROUND

A. Introduction and Project Background.

The Brigham City Transit Corridor Study was completed in 2007. The study examined options for a transit link between Ogden and Brigham. The report concluded that commuter rail was the best mode to connect the two communities. Just after the corridor study was completed, Box Elder County passed a second-quarter sales tax to support the development of the extension of commuter rail to Box Elder County. Additionally, the 2019-2050 Regional Transportation Plan identifies the need to preserve the right of way for a future transit project between Ogden and Brigham City as a phase 1 project. For the past four years, Utah Transit Authority (UTA) has been working to advance corridor preservation efforts in Box Elder and Weber County.

UTA's FrontRunner commuter rail service began in 2008, operating between Salt Lake City and Ogden, with limited service to Pleasant View. Previously UTA trains heading north of 12th Street ran on Union Pacific's (UP) track. This service was limited based on the freight schedule. The Rail Safety Improvement Act of 2008 required that all rail providers implement positive train control (PTC) systems by the end of 2018. At this time, UP and UTA have developed different PTC solutions. Using the shared track would require a significant investment in PTC equipment by UTA.

Corridor preservation will allow transit services to the north to be expanded in the future. Purchasing the property along UP's track is beneficial because it minimizes damage to homes, businesses, and the related costs of acquiring right-of-way when improvements are made. Right-of-way costs often represent the single most significant expenditure for a transportation improvement, particularly in growing urbanized areas where transportation improvement needs are the greatest. Furthermore, this project supports long-term transportation plans.

The project proposes to acquire a 50-foot-wide corridor adjacent to Union Pacific's Ogden Subdivision tracks. The total corridor length is approximately 7 miles in length. Ogden City was previously awarded \$3.0 million from Weber County's Corridor Preservation Fund for the BDO station site. Meridian Engineering is completing surveying work. They are identifying where property lines are located and preparing the needed documentation for acquisitions.

B. County Obligations.

1. The County agrees to reimburse UTA \$1,500,000 programmed for calendar year 2024 for the purchase of right-of-way, and right-of-way related expenditures, from the Local Transportation Corridor Preservation Fund.
2. The County's payment obligation of Funds will arise only after the submission, by the UTA, of appropriate evidence of expenditures that qualify for reimbursement under this agreement. If the UTA does not expend and seek reimbursement for the full amount approved, then the appropriate Weber County Local Transportation Fund will retain the remaining funds.
3. The County is not responsible for the construction, maintenance, or completion of the project.
4. The UTA acknowledges that the County cannot guarantee the payment of Funds not yet appropriated, including the funds described in paragraph B.1. While the County may not use those funds for purposes or projects that have not gone through the WACOG process, which is outlined in Utah Code Annotated §72-2-117.5, there is no guarantee that the applicable tax revenue will be sufficient to fund all approved projects. If there is a funding shortfall at the time the County prepares its budget for one of the years referenced in paragraph B.1 then notwithstanding any other provision of this Agreement, the County may, without penalty or liability of any kind, appropriate for the Project a proportional amount, as follows: the County shall calculate the ratio of money promised for this Project to the total promised money for WACOG approved projects for the year, and then the County shall multiply that ratio by the actual funds anticipated to be available for WACOG approved projects at the time the County prepares its budget for the year. Here is an example using hypothetical numbers:

Assume the County has promised \$1,250,000 for this Project for the year 2024. If the County promised a total of \$25,000,000 for WACOG approved projects for 2024, then the ratio would be 5%. If, at budget preparation time, the available funds were only anticipated to be \$15,000,000, then the County would only be obligated to pay 5% of the \$15,000,000 to this Project, or \$750,000.

If the County pays a reduced, proportional amount as set forth above, it shall continue to pay proportional amounts of the funds available for WACOG approved projects in subsequent years, and shall not approve new projects to

use those funds for those years, until the full amount set forth in this Agreement has been paid. The UTA specifically acknowledges and agrees that in the event of a funding shortfall, the County shall not be obligated to make up the difference using the County's general funds or any other funding source.

C. UTA Obligations.

1. The UTA shall be responsible for the Right-of-Way acquisition; in addition, UTA shall be responsible for the design, construction, and maintenance of the Project.
2. The UTA shall ensure that all applicable local, state and federal guidelines are followed with respect to property acquisition, description and recording.
3. The UTA shall comply with all program policies that have been adopted by WACOG. Should any of them conflict with state or federal law, the conflicting provisions of state or federal law shall control.

D. Joint Obligations.

1. The Parties agree to jointly develop accounting and reporting procedures for the use and reimbursement of Funds.

E. Miscellaneous.

1. Indemnification. In cases where a claim is brought or made against County arising from its reimbursement of funds and their use to UTA, County may elect to tender defense of the claim to UTA, who hereby agrees to defend County on such claim; provided, nothing herein shall constitute a waiver of the parties' immunity pursuant to the Governmental Immunity Act of the State of Utah.
2. Modification. This Agreement may be modified only upon the written agreement of both parties.
3. Applicable Law. This Agreement shall be administered and interpreted in accordance with the laws of the State of Utah.
4. Default. The County may declare a default, terminate this Agreement, and cease further payments if: (1) the UTA fails to obtain or provide its share of the funding; (2) the project changes in any material way from what WACOG approved; or (3) the Right of Way is not purchased pursuant to WACOG policies and procedures. Should UTA be found by a Court of competent jurisdiction to be

in Default of this Agreement, UTA shall be required to return any Funds it has received hereunder to County.

5. **Term.** This Agreement shall terminate at the earlier of (1) reimbursement of Funds from County to UTA as provided herein; or (2) in five years from the effective date.
6. **Notice.** Any notice or certification required or permitted to be delivered under this agreement shall be deemed to have been given when personally delivered, or if mailed, three business days after deposit of the same in the United States Mail, postage prepaid, certified, or registered, return receipt requested, properly addressed to the following respective addresses:

Board of Weber County Commissioners
2380 Washington Blvd., Suite 320, Ogden, UT 84401

Utah Transit Authority
669 West 200 South, Salt Lake City, UT 84101
7. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of proper jurisdiction, the remaining provisions shall remain in full force and effect.
8. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one of the same instrument.
9. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, and no statement, promises or inducements made by either Party or agents for either Party that are not contained in this Agreement shall be binding or valid.
10. **Waiver.** No failure to enforce any provision of this Agreement on account of any breach thereof, shall be considered as a waiver of any right to enforce provisions of this Agreement concerning any subsequent or continuing breach.
11. **Dispute Resolution.** If a dispute arises regarding this Agreement, the Parties shall first attempt informal negotiations to resolve the dispute before taking legal action. If that fails, then the Parties may, but are not required to, pursue other means of alternative dispute resolution before taking legal action. In any legal dispute, each party shall be responsible for paying its own costs, including attorneys' fees, regardless of the outcome of the dispute.

- 12. No Interlocal Entity Created. This Agreement does not create a separate legal entity nor does it involve interlocal cooperation pursuant to §11-13-101 et. seq.
- 13. No Third-Party Beneficiaries. The parties agree that the terms herein and all rights relating to the subject matter thereof shall be strictly reserved to the parties, and nothing contained in this Agreement shall give any claim or right to any other third party.

IN WITNESS THEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officers as of the day, month, and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
Gage Froerer, Chair

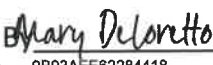
Commissioner Harvey voted _____
Commissioner Bolos voted _____
Commissioner Froerer voted _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

UTAH TRANSIT AUTHORITY

DocuSigned by:
By  _____ 4/13/2023
3A24FF46AD114EB...
Jay Fox

Executive Director
DocuSigned by:
By  _____ 4/12/2023
9893A1F62284418
Mary DeLoretto
Chief Service Development Officer

APPROVED:
DocuSigned by:
 _____ 2/22/2023
56A03BC7C491482...
Tim Merrill
Assistant Attorney General