

## AGREEMENT A3-2021

### LOCAL TRANSPORTATION FUNDING AGREEMENT

This Agreement is made effective this 25th day of May 2021, by and between Weber County and North Ogden City (collectively the “Parties” or individually the “Party”), and witnesses that:

**WHEREAS**, Utah Code Annotated §59-12-2217, the County Option Sales and Use Tax for Transportation and Utah Code Annotated §72-2-117.5, the Local Transportation Corridor Preservation Fund provide the opportunity for a Council of Governments and the local legislative body to prioritize and approve funding for transportation projects that are included in the area’s Regional Transportation Plan; 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 400/450 East project in North Ogden City is among the qualified projects prioritized for funding by WACOG and the Weber County Commission; and

**WHEREAS**, North Ogden City intends to preserve right-of-way along 400/450 East from 2600 North to 3300 North; and

**WHEREAS**, North Ogden City originally submitted a timely and complete application/request to the WACOG, and accordingly such request was approved by the WACOG on September 8, 2014 and subsequently approved by the Weber County Commission on September 30, 2014; and

**WHEREAS**, North Ogden City submitted an amendment request for additional corridor preservation funds and such request was approved by WACOG on May 3, 2021; and

**WHEREAS**, North Ogden City was previously awarded \$2,846,160 in Corridor Preservation Funds to assist with right-of-way acquisition and related expenses programmed for calendar year 2016; and

**WHEREAS**, North Ogden City was previously awarded \$625,000 in Sales Tax Funds to assist with construction and construction related expenses programmed for 2021, which will be deferred to a future year for construction of phase 2 and 3 of the project; and

**WHEREAS**, North Ogden City has committed matching funds in the amount of \$250,000 for right-of-way acquisition and \$500,000 for construction; and

**WHEREAS**, Surface Transportation Funds (STP) have been committed in the amount of \$3,519,000 for construction of phase 1 of the project; and

**WHEREAS**, Revenue generated from leased property and property resale, related to the project, will be retained and used towards construction expenses of phase 2 and 3 of the project; and

**WHEREAS**, Weber County has committed to assist with additional right-of-way expenses up to an additional \$902,700 programmed for calendar year 2021; and

**WHEREAS**, Weber County and North Ogden City propose to enter into this Funding Agreement to establish the terms and conditions Weber County and North Ogden City will be bound to in regard to this agreement;

**NOW THEREFORE**, it is agreed by and between the parties hereto as follows:

## **SECTION ONE INTRODUCTION AND BACKGROUND**

### **A. Introduction and Project Background.**

In conjunction with the North Ogden City 2600 North project, this project intends to mitigate the bottle neck effect on the roadway where the major arterial 5 lane state highway segment of Washington Blvd. narrows at 2600 North to a 3 lane city street.

The continuation of Washington Boulevard north of 2600 North is 400/450 East. This street will eventually connect to Skyline Drive/Mountain Road which is at approximately 4300 North. 400/450 East is a major collector street that serves as a transportation backbone that receives and distributes traffic from other collector/arterial roads such as 2600 North, Elberta Drive, 3100 North, 3300 North and eventually Skyline Drive/Mountain Road.

Washington Blvd (450 East) is currently an LOS E and “over capacity” by almost 3,000 cars per day. Traffic is projected to worsen rapidly as thousands of new homes are built in North Ogden and Pleasant View on Mt. Ben Lomond.

South of 2650 North on 400/450 East (Washington Boulevard) there are two travel lanes in each direction. As 400/450 East reaches 2650 North Street it narrows down to one lane in each direction. This causes traffic congestion in both directions. This area has a current level of service of an ‘F’. Information about the level of service can be found in the North Ogden City 2008 Transportation Master Plan, InterPlan, Project Number 080204. The recommendation in the InterPlan report is to add additional lanes by widening this section of roadway. The current right-of-way is 80 feet. An additional

22 feet of right-of-way (for a total of 102 feet) would accommodate two additional travel lanes. The expansion of 400/450 East (Washington Boulevard) is critical for future north-south traffic flow in North Ogden as well as for commercial purposes as 450 East will eventually connect to Skyline Drive and bring traffic from I-15, Hwy 89 and Pleasant View City.

This project will greatly enhance traffic flow on Washington Blvd and will resolve the safety concerns that exist currently where the road narrows at the end of the state highway. It is an important project for the citizens to improve the current LOS E to an acceptable LOS, but also for many residents of Pleasant View and Harrisville who use Washington Blvd./450 E for shopping, access to the Library, or commuting.

In 2014, WACOG approved \$2,846,160 in corridor preservation funds to begin purchasing right-of-way from Washington Blvd. to 3300 North.

Due to current market increases, the property values have been higher than what was originally estimated. The city submitted an amendment request seeking an additional \$902,700 in corridor preservation funds to acquire the remaining right-of-way needing up to 3100 North. WACOG approved this request May 3, 2021.

North Ogden City received a federal grant through the Wasatch Front Regional Council for the construction portion of the project. Due to increasing construction costs, phase 1 of the project will be constructed up to 2850 North.

During the acquisition process, the city acquired several homes that are being leased and generating lease revenue until the project is ready for construction. The city also anticipates that there will be revenue generated from the resale of some remnant properties. The city estimates that the total future 2024 generated revenue from this project will be around \$1.2 million.

North Ogden City requested to use the generated revenue toward the construction of phase 2 and 3 of the project from 2850 N. to 3300 N. These revenues will be combined with the \$625,000 in local sales tax funds that the project was awarded for construction, which will be deferred and used in a future year. WACOG approved this request May 3, 2021.

North Ogden will contribute a local match of \$250,000 total, towards the right-of-way acquisition portion of all the entire contemplated project and \$500,000 total towards the construction portion of the entire contemplated project.

**B. County Obligations.**

1. County agrees to reimburse up to an additional \$902,700, programmed for calendar year 2021 for the purchase of right-of-way, and right-of-way related expenditures from the Local Transportation Corridor Preservation Fund.
2. County's payment obligations will arise only after the submission, by North Ogden City, of appropriate evidence of expenditures that qualify for reimbursement under this agreement. If North Ogden City 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. North Ogden City 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 § 59-12-2217, 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 2022. If the County promised a total of \$25,000,000 for WACOG approved projects for 2022, 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. North Ogden 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. City Obligations.**

1. North Ogden City shall ensure that all applicable Local, State and Federal guidelines are followed with respect to property acquisition, description and recording.
2. North Ogden City 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 County and North Ogden City agree to jointly develop accounting and reporting procedures for the use and distribution of transportation funds.

**E. Miscellaneous.**

1. Indemnification. Because the County is only providing funding for this project, North Ogden City agrees to hold harmless and indemnify Weber County, its officers, employees and agents from and against all claims, suits and costs, including attorney's fees for injury or damage of any kind, arising out of North Ogden City's acts, errors or omissions in the performance of this project.
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. If North Ogden City fails to obtain or provide its share of the funding, or if the project changes in any material way from what WACOG approved, then the County may declare a default, terminate this Agreement, and cease further payments. Additionally, North Ogden City agrees to return all funds that have already been paid under this Agreement.
5. Term. This Agreement shall terminate after satisfaction of all obligations accrued or incurred hereunder, or upon completion or cancellation of the Project referenced herein.
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

North Ogden City, 505 E. 2600 N., North Ogden City, UT 84414

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.

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 \_\_\_\_\_  
James H. Harvey, Chair

Commissioner Jenkins voted \_\_\_\_\_  
Commissioner Froerer voted \_\_\_\_\_  
Commissioner Harvey voted \_\_\_\_\_

ATTEST:

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Ricky Hatch, CPA  
Weber County Clerk/Auditor

NORTH OGDEN CITY

By  \_\_\_\_\_  
Title: MAYOR