

RESOLUTION NO. _____

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY APPROVING THE EXECUTION OF AN INTERLOCAL
COOPERATION AGREEMENT BETWEEN WEBER COUNTY, OGDEN CITY,
AND THE UTAH TRANSIT AUTHORITY FOR RIGHT OF WAY PRESERVATION
EFFORTS TO EXTEND COMMUTER RAIL NORTH OF OGDEN**

WHEREAS, Weber County (“County”), Ogden City (“City”), and the Utah Transit Authority (“Authority”) are “public agencies” as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. § 11-13-101 et seq. (the “Act”), and, as such, are authorized by the Act to each enter into an interlocal cooperation agreement to act jointly and cooperatively on the basis of mutual advantage; and

WHEREAS, the Wasatch Front Regional Council Long Range plan has identified the need to preserve right of way in Weber County for future projects; and

WHEREAS, the Wasatch Front Regional Council Long Range plan has identified the development of a transit station at Business Depot Ogden; and

WHEREAS, City received funding from the Weber Area Council of Governments to preserve commuter rail corridor in Weber County, including funding for a future station site at the Business Depot Ogden and for surveying work; and

WHEREAS, County, City, and Authority now desire to enter into an interlocal cooperation agreement, to advance corridor preservation efforts in Weber County and to utilize the funding from the Weber Area Council of Governments;

NOW THEREFORE, the Board of County Commissioners does hereby resolve that the Interlocal Cooperation Agreement between Weber County, Ogden City, and the Utah Transit Authority is approved in substantially the same form as attached Exhibit A.

RESOLVED this ____ day of February, 2021.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
James H. Harvey, Chair

Commissioner Froerer voted _____
Commissioner Jenkins voted _____
Commissioner Harvey voted _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

Exhibit A
(Interlocal Cooperation Agreement)

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INTERLOCAL COOPERATION AGREEMENT
BETWEEN WEBER COUNTY, OGDEN CITY AND
THE UTAH TRANSIT AUTHORITY FOR
ACQUISITION OF RIGHT OF WAYS
FOR THE OGDEN CITY COMMUTER RAIL/BDO STATION

THIS INTERLOCAL AGREEMENT is entered into this ____ day of _____ 2020 between Weber County, a political subdivision of the state of Utah (the "County"), Ogden City ("Ogden" or "City), and the Utah Transit Authority., a large public transit district of the State of Utah. ("UTA") The County, Ogden, and UTA are hereafter collectively referred to as the "Parties", or individually as the "Party".

RECITALS

WHEREAS, Utah Code Ann. § 59-12-2217, the County Option Sales and Use Tax for Transportation, and Utah Code Ann. § 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 and transit projects that are included in the area's Regional Transportation Plan; and

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

WHEREAS, Ogden and UTA are collaborating to preserve the right of way for a future extension of Frontrunner from the Intermodal Hub in Ogden north to the Weber County/Box Elder County Border; and

WHEREAS, Ogden submitted a timely and complete application/request to the WACOG, and accordingly such request was approved by the WACOG on November 5, 2018 and subsequently approved by the Weber County Commission on November 20, 2018; and

WHEREAS, Ogden was awarded \$3,000,000 to purchase Right of Ways ("ROW") from the Ogden Hub station to the Business Depot of Ogden ("BDO") property, including the station site property at BDO; and

WHEREAS, Ogden submitted an amendment request for authorization of a portion of the awarded funding to be used to complete the surveying work and document preparation in Weber County from 12th Street north to the Weber County/Box Elder County Border; and

WHEREAS, accordingly such request was approved by the WACOG on May 6, 2019;

NOW, THEREFORE, in consideration of the mutual covenants and understandings herein set forth, the mutual benefits to the parties to be derived here from, and for other valuable

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consideration, the receipt and sufficiency of which the parties acknowledge the parties agree as follows:

AGREEMENT

1. The County agrees to reimburse Ogden up to \$3,000,000 programmed for calendar year 2021, from the Corridor Preservation Fund, for the costs associated with acquiring the needed ROW from Ogden Hub station to the BDO property.
2. Ogden agrees to utilize the major portion of the funds to be received from WACOG under Article 1 above to acquire the needed ROW from Ogden Hub station to the BDO property, including the station site property for the purpose of enabling UTA to eventually complete and extend the Commuter Rail Line from 12th Street north to the Weber County/Box Elder County border. Directly associated expenses including title work, closing costs, and title insurance shall also be incurred by the City using the WACOG funding.
3. The Parties also agree that a portion of the funding shall also be utilized by UTA to complete the survey work and document preparation in Weber County. Such funding shall be reimbursed directly to UTA by the County. The estimated cost of this activity is \$175,600.
4. The County's payment obligations will arise only after the submission by City and/or UTA, of appropriate evidence of expenditures that qualify for reimbursement under this agreement.
5. If City and/or 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.
6. Parties acknowledges that the County cannot guarantee the payment of funds not yet appropriated, including the funds described in this agreement. 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 Ann. § 59-12-2217, there is no guarantee that the applicable tax revenue will be sufficient to fund all approved projects for future years. If there is a funding shortfall at the time the County prepares its budget for 2021, then notwithstanding any other provision of this agreement, the County may, without penalty or liability of any kind, appropriate for this 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:

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Assume that the County promised \$1,000,000 for this project for the year 2020. If the County promised a total of \$10,000,000 for WACOG approved projects for 2020, then the ration would be 10%. If, at budget preparation time for 2020, the available funds were only anticipated to be \$5,000,000, then the County would only be obligated to pay 10% of the \$5,000,000 to this project, or \$500,000.

If the County pays a reduced, proportional amount as set forth above, the County 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.

Parties specifically acknowledge and agree 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.

7. City shall be responsible for all aspects of obtaining ROW, both within Ogden and outside of its boundaries, except as specifically stated in this agreement.
8. Once UTA receives sufficient state and/or federal funding to complete the project, Ogden agrees to sell and UTA agrees to purchase the ROW properties acquired by Ogden under Article 1 above. The purchase price to UTA shall be the same as the price paid by Ogden at the time of purchase. In addition, UTA shall reimburse the City for its expenditures that are directly associated with procurement of the ROW properties including expenses for title work, closing costs, and title insurance. UTA shall become the owner of the properties and responsible for all obligations with regard to maintenance, security and upkeep. This purchase/sell transaction will occur on a date which is satisfactory to both Parties.
9. UTA and the City shall comply with all applicable contracting and procurement requirements.
10. UTA and the City shall ensure that all applicable Local, State and Federal Transit Administration guidelines are followed with respect to property acquisition, description and recording.
11. UTA and the City shall comply with all program policies that have been adopted by WACOG. Should any of the program policies conflict with state or federal law, the conflicting provisions of state or federal law shall control.
12. The employees of each Party providing services pursuant to this agreement are solely the officers, agents, or employees of such Party. Each Party shall assume all liability for the payment of salaries and wages, and other compensation due or claimed to be due its employees, including worker's compensation claims, and each Party shall hold the other harmless therefrom. No Party shall be liable for compensation or indemnity to the employee of any other Party for injury or sickness arising out of

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his or her employment, and each Party hereby agrees to hold the other Parties harmless against any such claim.

13. Each party agrees to indemnify and hold the other Parties and their respective officers, trustees, agents, employees, and permitted assigns harmless against any claims, losses, liabilities, damages, costs, deficiencies, or expenses affecting any persons or property as a result of the indemnifying Party's actions or from any misrepresentation, material omission, breach of warranty, or non-fulfillment of any covenant or agreement on the part of the indemnifying Party under or relating to this Agreement, and any and all actions, suits, proceedings, demands, assessments, judgments, costs, and other expenses incident to any of the foregoing.
14. This agreement shall not constitute a joint venture of the Parties. No Party is or shall be the legal representative or agent of any other Party for any purpose. A Party shall have no power to assume or create, in writing or otherwise, any obligation or responsibility of any kind, express or implied, in the name of or on behalf of any other Party. No Party shall have any obligation with respect to any other Party's debts or other liabilities.
15. Each Party shall, to the extent needed, supply at its own cost all personnel, equipment, supplies, and materials necessary to perform its obligations and intended actions as set forth in this agreement.
16. If Ogden and UTA fails, in any material way, to fulfill its obligations under this agreement, or if the project changes in any material way from what WACOG approved, then the County may elect to terminate this agreement, and cease further payments. Additionally, if the County elects to terminate this agreement, then City agrees to return all funds received that have not been utilized or committed for the procurement of ROW properties under this agreement.
17. Once the purchase and sale transaction between UTA and the City has been completed to the satisfaction of both Parties as described in the paragraph 8 above, the City shall enter into a separate transaction with the County under which the City shall be solely responsible to reimburse the Weber County Corridor Preservation Funds used for the Project. The timing and method for this repayment transaction between Ogden and the County shall be 30 days after City receives funds from UTA. In addition, once the purchase and sale transaction between UTA and the City has been completed to the satisfaction of both Parties as described in the paragraph 8 above, UTA shall, within 60 days, reimburse the County for the funds actually provided to UTA by the County for the survey and document preparation work.
18. This agreement may be cancelled upon a declaration of default as provided in this agreement, or if the Parties agree to cancel the Agreement.

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19. No Party may assign or transfer its rights or obligations under this agreement without prior written consent of the other Parties.
20. The provisions of this agreement shall bind and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.
21. This agreement shall be governed by and construed in accordance with the laws of the State of Utah. If an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this agreement. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural; the plural shall include the masculine, feminine, and neutral gender.
22. In the event of a dispute arising out of this agreement, the Parties shall attempt to resolve the dispute first through mediation or non-binding arbitration, equally sharing in the costs of the mediation or arbitration process. If that process does not resolve the dispute, and the Parties resort to court action, then each Party shall be responsible for its own costs and attorney fees.
23. If any provision of this agreement, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, then the remaining provisions of the agreement shall remain in full force and effect, unless the invalidation of the provision materially alters the agreement by interfering with the purpose of the agreement or by resulting in non-compliance with applicable law. If the invalidation of the provision materially alters the agreement, then the Parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the Parties.
24. This agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and all prior negotiations, understandings, representations, inducements, and agreements, whether oral or written and whether made by a Party hereto or by anyone acting on behalf of a Party, shall be deemed to be merged in this agreement and shall be of no further force or effect.
25. No amendment to this agreement shall be valid or binding unless reduced to writing and signed by all Parties.
26. This agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this agreement may be detached from any counterpart and reattached to any other counterpart hereof.

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27. The transmission of a signed original of this agreement or any counterpart hereof by facsimile or by other electronic means, and the retransmission of any signed transmission hereof, shall be the same as delivery of an original.
28. Each individual signing this agreement on behalf of a Party hereby represents and warrants, through his or her signature, that the execution of this agreement has been duly approved by the governing authority of such Party.
29. Additional Interlocal Cooperation Act provisions. In satisfaction of the requirements of the Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 et seq., the Parties agree as follows:
 - a. This agreement shall be authorized and adopted by resolution of the legislative body of each Party, pursuant to Section 11-13-202.5.
 - 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.
 - c. A duly executed original counterpart of this agreement shall be filed immediately with the keeper of records of each Party, pursuant to Section 11-13-219.
 - d. This agreement shall become effective upon (a) its approval and execution by each Party and (b) the filing of an executed copy of this agreement with the keeper of records of each of the Parties.
 - e. Immediately after the execution of this agreement by all Parties, each Party shall cause to be published notice regarding this agreement, pursuant to Section 11-13-219.
 - f. The Parties agree that they do not, by this agreement, create an interlocal entity or any separate entity.
 - g. Ogden appoints Justin Anderson, its City Engineer, as its administrator for all matters relating to Ogden's participation in this agreement. UTA appoints Hal Johnson, its Manager of Project Development, as its administrator for all matters relating to UTA's participation in this agreement. The County appoints Brooke Stewart, its Local Transportation Fund Manager, as its administrator for all matters relating to the County's participation in this Agreement. If an administrator ceases to be employed by the represented Party, then the person who replaces the prior administrator shall become the new administrator of that Party for purposes of this agreement, unless that Party otherwise notifies the other Parties in writing. Any Party may, at any time, change the designation of its administrator by providing written notice to the other Parties. To the extent that any administration of this agreement becomes necessary, then the Parties' administrators named above, or their designees or successors, shall constitute a joint board for such purpose, and each party shall have an equal vote in any decision that needs to be made.
 - h. There shall be no joint acquisition or ownership of property, and it will not be necessary to dispose of property on the termination of this agreement.
 - i. There is no joint budget; each Party will be responsible for maintaining its own financial budget for both income and expenditures arising under this agreement.

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30. GRAMA. The Parties acknowledge that disclosure of records pursuant to this agreement is subject to the Utah Government Records Access and Management Act, Utah Code Ann. §63G-7-101, et seq.
31. Notices. 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 following respective addresses:

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

Ogden City, 2549 Washington Blvd., Ogden, UT 84401

Utah Transit Authority, 669 West 200 South, Salt Lake City, UT 84101

IN WITNESS WHEREOF, the above-identified parties have entered into this agreement effective the date first set forth herein.

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SIGNATURE PAGE FOR AGREEMENT for Acquisition of Right of Ways for the Ogden City Commuter Rail/BDO Station

UTAH TRANSIT AUTHORITY

DocuSigned by:
Carolyn M Bonet
9C1EDCBAD5D7410

Date: 1/24/2021

DocuSigned by:
Mary DeLoritto
9B93AEE82284418...

Date: 1/21/2021

Approved

DocuSigned by:
Mike Bell
3B1F18F8387D4A81

1/21/2021

UTA Legal Counsel

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SIGNATURE PAGE FOR AGREEMENT for Acquisition of Right of Ways for the Ogden City Commuter Rail/BDO Station

OGDEN CITY CORPORATION

Michael P Caldwell

Michael P Caldwell (Jan 20, 2021 10:59 MST)

Mayor

Date: Jan 20, 2021



Angela Choberka (Jan 20, 2021 09:13 MST)

_____, City Council Chair

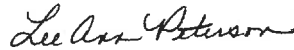
Date: Jan 20, 2021

Approved as to Form

Mark Stratford

Mark Stratford (Jan 20, 2021 09:03 MST)

ATTEST:



City Recorder



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SIGNATURE PAGE FOR AGREEMENT for Acquisition of Right of Ways for the Ogden City
Commuter Rail/BDO Station

BOARD OF COUNTY COMMISSIONERS OF WEBER COUNTY

James H. Harvey, Chair

Commissioner Jenkins voted _____

Commissioner Froerer voted _____

Commissioner Harvey voted _____

Date: _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

Date: _____

Approved as to Form

County Attorney

Date: _____