

LOCAL TRANSPORTATION FUNDING AGREEMENT

This Agreement is made effective this ____ day of _____ 2021, by and between Weber County and 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 1200 South Overpass Corridor Preservation and Rail Study project is among the qualified projects prioritized for funding by WACOG and the Weber County Commission; and

WHEREAS, Ogden City intends to preserve low impact right-of-way for a future extension of Depot Drive as part of the 1200 South Overpass project ; and

WHEREAS, Ogden City intends to conduct a Rail Study, in cooperation with the Utah Department of Transportation, as part of 1200 South Overpass project; and

WHEREAS, Ogden City submitted a timely and complete application/request to the WACOG, and accordingly such request was approved by the WACOG on October 7, 2019 and subsequently approved by the Weber County Commission on October 15, 2019; and

WHEREAS, Weber County has committed to assist with right-of-way and related costs up to \$1,600,000 programmed for calendar year 2022; and

WHEREAS, Weber County has committed to assist with a Rail Study and related costs up to \$250,000 programmed for calendar year 2023; and

WHEREAS, Weber County and Ogden City propose to enter into this Funding Agreement to establish the terms and conditions Weber County and 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.

This project request has two purposes:

The first is the Sales Tax Request for expenses related to conducting a Rail Study to evaluate the viability and impacts of installing a grade separated crossing between Depot Drive and Gibson Ave on 12th Street.

Most have heard of or have experienced the frustration of being delayed at the railroad crossing on 12th Street between Stewart Drive and Gibson Avenue. The delays caused by slow or stopped trains at the crossing are a common occurrence for local businesses and frequent users of 12th Street. Blocking of the crossing is unpredictable, happens multiple times a week and at all hours of the day.

The Rail Study would focus on current and projected congestion and delays, as well as, traffic and safety related issues at major crossing throughout the County. The study would also explore alternatives and create a planning level concept report and estimate of the highest ranked crossings, which would be used for future planning purposes.

Ogden City, in discussions with UDOT, believes that conducting this Rail Study would be the most beneficial and strategic direction to take for the local governments to show support and acknowledge that this is a regional priority in an effort to possibly advance the overpass project forward.

The second purpose is to acquire low impact right-of-way, with the focus of purchasing unimproved parcels or willing buyer willing seller parcels, with priority being on the old Southern Pacific Rail Road corridor for a future extension of Depot Drive to 17th Street.

A grade separated crossing at this location would affect existing fronting properties, utilities, and adjacent roadway connectivity. Therefore, right-of-way preservation funding for this project would focus on creating new roadway and utility corridors.

B. County Obligations.

1. County agrees to reimburse up to \$1,600,000, programmed for calendar year 2022 for the purchase of right-of-way, and right-of-way related expenditures from the Local Transportation Corridor Preservation Fund.

2. County agrees to reimburse up to \$250,000, programmed for calendar year 2023 for the cost of conduction a rail study and related expenditures from the County Option Sales and Use Tax for Transportation Fund.
3. County's payment obligations will arise only after the submission, by Ogden City, of appropriate evidence of expenditures that qualify for reimbursement under this agreement. If 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.
4. Ogden City acknowledges that the County cannot guarantee the payment of funds not yet appropriated, including the funds described in paragraph B.1. and B.2. 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 and B.2 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. Ogden City 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. Ogden City Obligations.

1. Ogden City shall ensure that all applicable Local, State and Federal guidelines are followed with respect to property acquisition, description and recording.
2. 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 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, 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 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 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, 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

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

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:

Ricky Hatch, CPA
Weber County Clerk/Auditor

OGDEN CITY

By Michael P Caldwell
Michael P Caldwell (Mar 31, 2021 10:13 MDT)

Title: Mayor Ogden City

Lee Ann Peterson
Chief Deputy Recorder
Mar 31, 2021

