

**INTERLOCAL COOPERATION AGREEMENT**  
**between**  
**UTAH TRANSIT AUTHORITY**  
**and**  
**UTAH COUNTY**

(Relating to the Use of the Public Transit District Portion of Funding to be  
Generated Under UCA 59-12-2219 Local Option Sales Tax)

This INTERLOCAL COOPERATION AGREEMENT (this “Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_ 2018 by and between UTAH COUNTY, a political subdivision of the State of Utah (“County”), and UTAH TRANSIT AUTHORITY, a public transit district organized pursuant to Utah Code Ann. § 17B-2a-801, Et. Seq. (“UTA”). The County and UTA are sometimes referred to collectively as the “parties,” and either may be referred to individually as a “party,” all as governed by the context in which such words are used.

**RECITALS**

WHEREAS, UTA directly receives and funds public transit service in the County with revenues from local option sales and use taxes collected pursuant to Utah Code Ann. §59-12-2213 (the “First Quarter Tax”) and Utah Code Ann. §59-12-2215 (the “Second Quarter Tax”);

WHEREAS, the County funds road improvement projects with revenues from a local option sales and use tax collected pursuant to Utah Code Ann. §59-12-2218 (the “Third Quarter Tax”);

WHEREAS, on December 2, 2014, the County and UTA executed a separate Interlocal Cooperation Agreement (the “Initial BRT ILA”), whereby the County agreed to: (i) issue bonds (secured by a pledge of Third Quarter Tax revenues) to partially finance the construction of a Bus Rapid Transit system (the “BRT System”); and (ii) pay operation and maintenance costs (“O&M Costs”) relative to the BRT System for a period of approximately ten years (subject to future reimbursement by UTA);

WHEREAS, pursuant to the Initial BRT ILA, the County issued \$65 million in subordinated transportation sales tax revenue bonds, Series 2016 (the “2016 County Bonds”), and is obligated to make semiannual principal and interest payments (“Principal and Interest Payments”) with respect to the 2016 County Bonds;

WHEREAS, the County’s current, combined annual obligations with respect to the Principal and Interest Payments and O&M Costs are approximately \$6 million;

WHEREAS, UTA is required to make, no later than December 31, 2028, a Forward Payment (as such term is defined in the Initial BRT ILA) to the County in order to acquire legal title to all BRT System improvements funded by the County pursuant to the Initial BRT ILA;

WHEREAS, at approximately the same time the Forward Payment is made, the County's obligations with respect to the O&M Costs shall cease and UTA shall reimburse the County for all amounts previously paid by the County (plus accrued interest calculated in accordance with the Initial BRT ILA);

WHEREAS, recent state legislation allows the Utah County Board of County Commissioners to impose, by resolution, a local option sales and use tax pursuant to Utah Code Ann. §59-12-2219 (the "Fourth Quarter Tax");

WHEREAS, pursuant to Utah Code Ann. §59-12-2219, and effective as of July 1, 2019, forty percent of the new revenues to be collected from a Fourth Quarter Tax (such percentage hereinafter the "Fourth Quarter Transit Revenues") imposed in the County are to be paid directly to UTA;

WHEREAS, the County has determined that the Fourth Quarter Tax should be imposed in order to create additional funding sources for road improvement projects, and to allow currently encumbered Third Quarter Tax revenues to be repurposed as an additional source of road improvement funding;

WHEREAS, the County's determination to impose the Fourth Quarter Tax is based on the understanding that Fourth Quarter Transit Revenues will be used: (i) to pay/offset/reimburse Principal and Interest Payments with respect to the 2016 County Bonds; (ii) to prospectively pay O&M Costs for the BRT System; (iii) to reimburse the County with respect to any out-of-pocket O&M costs and other BRT System costs directly paid by the County to UTA; and (iv) for other purposes allowed under this Agreement; and

WHEREAS, the parties are entering this Agreement to evidence that understanding.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Imposition of Fourth Quarter Tax. By execution of this Agreement, the County agrees that the Utah County Board of County Commissioners has imposed (or, within 30 days after the execution of this Agreement, will impose) the Fourth Quarter Tax.
2. Application of the Fourth Quarter Transit Revenues. Conditioned upon its actual receipt of the Fourth Quarter Transit Revenues from the Utah State Tax Commission, and only to the extent that the annual Fourth Quarter Transit Revenues received by UTA are sufficient for the identified purposes, UTA agrees to apply Fourth Quarter Transit Revenues received from the Utah State Tax Commission for the following purposes and in the following descending order of priority:

- a. Fourth Quarter Transit Revenues shall first be applied to prospectively meet the County's obligations to make Principal and Interest Payments with respect to the 2016 County Bonds. Beginning after July 1, 2019, and at such time when sufficient Fourth Quarter Transit Revenues have been (or are projected to be) received by UTA, UTA and the County shall develop procedures pursuant to which UTA shall transfer collected Fourth Quarter Transit Revenues to the County for this purpose. Such procedures shall provide for UTA's semiannual transfer of funds according to a schedule that allows the County to use those transferred funds to make Principal and Interest Payments in accordance with the bond documents. To the extent that the annual Fourth Quarter Transit Revenues paid to UTA are insufficient to make the Principal and Interest Payments under the County's bond documents, then the County shall fund the deficiencies as contemplated in the Initial BRT ILA.
- b. In the event that the annual Fourth Quarter Transit Revenues received by UTA from the Utah State Tax Commission are more than sufficient to pay the Principal and Interest Payments as described in Section 2(a) above, then UTA shall apply additional Fourth Quarter Transit Revenues (to the extent available) to pay the actual, documented O&M Costs incurred by UTA with respect to the BRT System. To the extent that the annual Fourth Quarter Transit Revenues paid to UTA are sufficient (after payment of Principal and Interest Payments as contemplated in Section 2(a) above) to fund BRT System O&M Costs, then the County shall be relieved of its obligation to pay O&M Costs to UTA (as contemplated by Section 7 of the Initial BRT ILA) for such year. To the extent that the annual Fourth Quarter Transit Revenues paid to UTA are insufficient for such purposes, then the County shall fund the deficiencies (and be entitled to future reimbursement for such amounts) as contemplated by the Initial BRT ILA, but subject to the maximum annual limit set forth therein.
- c. In the event that the annual Fourth Quarter Transit Revenues received by UTA from the Utah State Tax Commission are more than sufficient to fund the purposes identified in Sections 2(a) and 2(b) above, then additional Fourth Quarter Transit Revenues shall (to the extent available) next be applied by UTA to reimburse the County with respect to Principal and Interest Payments previously paid by the County (but only that such payments have not already been paid/offset/reimbursed by Fourth Quarter Transit Revenue payments under this Agreement).
- d. In the event that the annual Fourth Quarter Transit Revenues received by UTA from the Utah State Tax Commission are more than sufficient to fund the purposes identified in Sections 2(a), 2(b) and 2(c) above, then additional Fourth Quarter Transit Revenues shall (to the extent available) next be applied by UTA to reimburse the County with respect to out-of-pocket O&M costs directly paid by the County to UTA pursuant to Section 7 of the Initial BRT ILA.

- e. In the event that the annual Fourth Quarter Transit Revenues received by UTA from the Utah State Tax Commission are more than sufficient to fund the purposes identified in Sections 2(a), 2(b), 2(c) and 2(d) above, then the Fourth Quarter Transit Revenues shall next be applied by UTA to reimburse the County with respect to interest accrued (pursuant to Section 7(b) of the Initial BRT ILA) on the balance of out-of-pocket O&M costs directly paid by the County to UTA pursuant to Section 7 of the Initial BRT ILA.
  - f. In the event that the annual Fourth Quarter Transit Revenues received by UTA from the Utah State Tax Commission are more than sufficient to fund the purposes identified in Sections 2(a), 2(b), 2(c), 2(d) and 2(e) above, then the Fourth Quarter Transit Revenues may be applied for new transit service within the County in accordance with Section 3 of this Agreement
3. New Transit Service in the County. UTA will coordinate the planning of any such new transit service locally with the Utah County Regional Planning Committee and in accordance with the regional process contemplated in Utah Code Annotated 17B-2a-802.2. New transit service shall be provided in accordance with the terms and conditions of a service level agreement to be executed between UTA and the County.
  4. Initial BRT ILA to Remain in Full Force and Effect. Except to the extent expressly modified by the terms and conditions of this Agreement, the parties intend that the Initial BRT ILA shall remain in full force and effect and this Agreement and Initial BRT ILA shall be read and construed so as to give effect to both agreements.
  5. Credits against UTA's Forward Payment Obligations. The Forward Payment obligation of UTA (as generally described in Section 6 of the BRT and as subsequently specifically calculated by the parties) shall be reduced to reflect all Fourth Quarter Transit Revenue: (i) transferred to the County to make Principal and Interest Payments under Section 2(a) of this Agreement; and (ii) paid to the County under Section 2(c) to reimburse the County with respect to out-of-pocket Principal and Interest Payments. Such credits to the Forward Payment shall be applied on a dollar-for-dollar basis.
  6. Credits against UTA's Obligations to Reimburse O&M Costs. Any Fourth Quarter Transit Revenues paid to the County pursuant to Sections 4(d) and 4(e) of this Agreement shall be applied as a credit to UTA's reimbursement obligations under Section 7(e) of the Initial BRT ILA.
  7. Tracking Amounts Owed by UTA under the Initial BRT ILA. UTA and the County shall develop procedures to jointly track and update, on a real-time basis, all amounts owed by UTA to the County under the Initial BRT ILA. Such procedures shall, at a minimum, track all credits applied to the Forward Payment amount pursuant to Section 5 of this Agreement and the then-outstanding principle and interest amounts due with respect to O&M costs directly paid by the County to UTA pursuant to Section 7 of the Initial BRT ILA

8. Records of O&M Costs. UTA shall maintain financial records reasonably demonstrating the O&M Costs to which Fourth Quarter Transit Revenues are applied during the term of this Agreement, and shall make such records available to the County upon request. This obligation shall be in addition to the record keeping obligations assumed by UTA pursuant to the Initial BRT ILA.
9. Refinancing or Early Payment of the 2016 County Bonds. The parties agree to work in good faith to determine if mutually advantageous changes to the structure and administration of the 2016 County Bonds could be made to reduce the overall financing costs related to the BRT System. Potential opportunities include, without limitation, determining the feasibility of advancing the timing of the Forward Payment to coincide with the ten-year optional redemption of the 2016 County Bonds, exploring additional prepayment opportunities that are mutually beneficial and exploring opportunities to refinance the 2016 County Bonds. Upon the implementation of any mutually agreed changes to the project finance structure, the parties shall agree to adjust the amount and timing of the Forward Payment to reflect such changes.
10. Interlocal Cooperation Act Requirements. In satisfaction of the requirements of the Interlocal Cooperation Act (Utah Code Ann. §11-13-101, Et. Seq. and hereinafter the “Interlocal Act”), and in connection with this Agreement, the parties agree as follows:
  - a. This Agreement shall be authorized by resolution of the legislative body of UTA and the legislative body of the County, all as required by Section 11-13-202.5 of the Interlocal Act.
  - 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 of the Interlocal Act.
  - c. A duly executed original counterpart of this Agreement shall be filed with the keeper of records of each party, pursuant to Section 11-13-209 of the Interlocal Act.
  - d. Except as otherwise specifically provided herein or in the Initial BRT ILA, each party shall be responsible for its own costs of any action undertaken pursuant to this Agreement, and for any financing of such costs.
  - e. No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the UTA Board of Trustees and by the Utah County Board of County Commissioners.
  - f. As provided in Section 11-13-219 of the Interlocal Act, the parties agree that a notice of this Agreement shall be published in the Deseret News, which is hereby designated by the County as the official newspaper for all publications made under the Interlocal Act. Any person in interest may

contest the legality of this Agreement for 30 days after the publication of the notice of Agreement. After the 30 days have passed, no one may contest the regularity, formality, or legality of the Agreement or any action performed or instrument issued under the authority of this Agreement for any cause whatsoever.

11. Amendments. This Agreement may be amended, changed, modified or altered only by an instrument in writing which shall be: (i) approved by resolution of the governing or legislative body of each of the parties; (ii) executed by a duly authorized official of each of the parties; (iii) submitted to an attorney for each party that is authorized to represent said party for review as to proper form and compliance with applicable law, pursuant to Section 11-13-202.5 of the Interlocal Act; and (iv) filed in the official records of each party.
12. Successors and Assigns. This Agreement is binding upon all of the assigns, grantees and successors in interest to each of the parties, and shall remain in full force and effect until amended or terminated as provided herein.
13. Remedies. The parties acknowledge and agree that any breach of this Agreement may result in irreparable damage for which the non-breaching party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the non-breaching party may immediately seek enforcement of this Agreement by means of specific performance or injunction, without any requirement to post a bond or other security.
14. Counterparts. This Agreement may be executed in counterparts by UTA and the County. In such event, a duly executed original counterpart shall be filed with the keeper of records of each party pursuant to the Interlocal Act.
15. Governing Law. This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.
16. Term of Agreement. This Agreement shall take effect immediately upon execution and shall terminate on the earlier of (i) 50 years from the effective date hereof (as required by Section 11-13-216 of the Act), or (ii) repayment in full of the amounts owed by UTA to the County (including interest thereon) under the Initial BRT ILA.
17. Entire Agreement. This Agreement, together with the referenced Initial BRT ILA, collectively contain the entire agreement between the parties, with respect to the subject matter hereof, and no statements, promises, or inducements made by either party or agents for either party that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified, or altered except in writing, and signed by the parties.

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

BOARD OF COUNTY COMMISSIONERS,  
UTAH COUNTY, UTAH

UTAH TRANSIT AUTHORITY

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Steve Meyer, Interim Executive Director

ATTEST:

\_\_\_\_\_  
Bryan E. Thompson, County Auditor/Clerk

\_\_\_\_\_  
Robert Biles, Vice President of Finance

Reviewed and Approved as to Form:

\_\_\_\_\_  
Legal Counsel