

INTERLOCAL COOPERATION AGREEMENT

Between

SALT LAKE COUNTY

And

SANDY CITY

FOR IMPROVEMENTS TO DRY CREEK CHANNEL WITHIN SANDY BOUNDARIES

THIS INTERLOCAL COOPERATION AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2018, between SALT LAKE COUNTY, a body corporate and politic of the State of Utah ("County"), and the SANDY CITY, a municipal corporation of the State of Utah ("City"). The County and City are collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Utah Code Ann. § 11-13-101, et seq. (the "Interlocal Cooperation Act"), authorizes public agencies to enter into joint agreements with each other to do what each agency is authorized by law to perform; and

WHEREAS, the County through its Department of Public Works Flood Control and Engineering Division operates a Flood Control system in Salt Lake County ("County System");

WHEREAS, the City desires to complete portions of the Dry Creek Channel Improvements and the County desires to provide funding to the City to assist in making these Dry Creek Improvements;

WHEREAS, County and City desire to enter into this interlocal cooperation agreement to set forth the obligations and responsibilities of both parties in City's completion of these improvements.

AGREEMENT:

NOW, THEREFORE, the Parties mutually agree as follows:

1. Dry Creek Improvements Project. The City intends to make the Dry Creek Improvements or cause the Dry Creek Improvement to be made as set forth in the Sandy City

Dry Creek Concept Report, attached hereto as Exhibit A of this Agreement and incorporated by reference. The City hereby agrees that construction projects related to this Agreement will be competitively bid in compliance with all applicable procurement rules. City agrees to submit a Salt Lake County Flood Control Permit for any work done on the creek, with access details (including access road and/or equipment access to remove debris) to be worked out through the permitting process.

2. County Payment. Upon substantial completion of each phase of the Dry Creek Improvements, City shall submit records of the actual cost of completing these improvements, including a breakout of the costs that are strictly flood control related. Only County approved flood control related work is considered eligible for reimbursement. Within thirty (30) days after receipt (as defined in section 5.I. of this Agreement) of the records by the County, County shall pay to the City the actual flood control cost of completing the improvements, up to \$200,000 for 2018. Under no circumstances will County be obligated to provide more than \$200,000, regardless of actual cost. If additional funds are approved by the Salt Lake County Mayor and Salt Lake County Council for following years, written notification will be sent to Sandy City. Possible future funding shall follow the same protocols as the initial funding.

3. Use of Flood Control Funds. City acknowledges that the funds are flood control funds that must be used for valid flood control projects. County supports use of funds for design, permitting and/or construction of Dry Creek Improvements. The City hereby agrees to use these funds for flood control related expenses on the Dry Creek Improvements set forth in Exhibit A. Any other use of these funds must first be submitted to County to determine if the project is a valid flood control project, and subsequently approved in writing. Funds not used for valid flood control projects will not be reimbursed by County.

4. Operation and Maintenance of Dry Creek Improvements. After acceptance of the Dry Creek Improvements, the County shall be responsible for all operation and maintenance costs related to the Dry Creek flood control channel.

5. Ownership. Property is privately owned along Phase 2 of Dry Creek. Future phases are mixed ownership, including privately owned and publicly owned. City shall work with owners to provide Salt Lake Flood Control access to maintain the creek, including an access road and access for debris removal.

6. Miscellaneous Provisions. The following provisions are also an integral part of this Agreement:

A. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

B. Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent thereof.

C. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

D. Liability and Indemnification. The Parties are both governmental entities under the "Utah Governmental Immunity Act" (Utah Code Ann. § 63~30-1, et seq.) (the "Act"). Consistent with the terms of the Act, and as provided herein, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Act nor does any party waive any limits of liability currently provided by the Act.

E. Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

F. Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

G. Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

H. Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah. This Agreement is the result of arms-length negotiations between the parties, and both City and County have had substantive input regarding the various provisions of this Agreement. Accordingly, each of the parties affirms its desire that this Agreement be interpreted in an absolutely neutral fashion with no regard to any rule of interpretation (or the like) requiring that the provisions of this Agreement be construed to favor one party (such as, for example, the party that did not draft this Agreement) over the other.

I. Notice. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by any communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within two days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the Parties as set forth below:

County: Salt Lake County Flood Control Division Director
2001 South State Street N3-120
Salt Lake City, UT 84190

City: Sandy City Public Utilities Director
10000 Centennial Parkway, Suite 241
Sandy, UT 84070

Copy to: Sandy City Attorney's Office
10000 Centennial Parkway, Suite 301
Sandy, UT 84070

J. Delegation. Neither party may assign its rights or delegate its duties under this Agreement to any other person(s) or entity(ies) without written consent of the other party.

K. Survival. All of the parties' respective representations, covenants and warranties and obligations (including, without limitation, any obligation to indemnify) set forth herein shall survive the Closing and the delivery of any deeds, bills of sale or the like contemplated herein.

L. Exhibits and Recitals. The recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

M. Interlocal Cooperation Act. In satisfaction of the requirements of the Interlocal Act, and in connection with this Agreement, the Parties agree as follows:

- (a) This Agreement shall be approved by each Party pursuant to 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 keeper of records of each Party, pursuant to Section 11-13-209 of the Interlocal Act;
- (d) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action taken pursuant to this Agreement, and for any financing of such costs; and
- (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 a joint board of the public works directors of the City and the County, or their designees. No real or personal property shall be acquired jointly by the Parties as a result of this Agreement. To the extent that a Party acquires, holds or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party.

N. Protection of the Scrivener. No provision of this Agreement, nor any ambiguities that may be contained within this Agreement, shall be construed against any party on the grounds such Party or Party's counsel drafted the provision at issue or that the provision at issue contains a covert, representation or warranty of such Party.

[Signature Page to Follow]

IN WITNESS WHEREOF, the City, by resolution duly adopted by its council, a copy of which is attached hereto, caused this Agreement to be signed by its City Manager and attested by its Recorder; and the County, by resolution of its council, a copy of which is attached hereto, caused this Agreement to be signed by the Mayor, or his designee on the date first stated above.

SALT LAKE COUNTY

By: _____
Mayor or Designee

Administrative Approval

By: _____
Kade D. Moncur,
Division Director

Approved as to Form

By  _____
David V. Peña,
Deputy District Attorney

Date: 2/1/18

SANDY CITY

Mayor Kurt Bradburn

Attest:

Molly Spira, City Recorder

Approved as to Form

By _____
Sandy City Attorney