

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE UTAH TRANSIT
AUTHORITY AUTHORIZING EXECUTION OF INTERLOCAL AGREEMENT
WITH UTAH COUNTY**

R2018-09-04

September 27, 2018

WHEREAS, Utah Transit Authority (the "Authority") is a public transit district organized under the laws of the State of Utah and was created to transact and exercise all of the powers provided for in the Utah Limited Purpose Local Government Entities – Local Districts Act and the Utah Public Transit District Act; and

WHEREAS, the Authority and Utah County (the "County") entered into a December 2, 2014 Interlocal Agreement (the "2014 Interlocal"); and

WHEREAS, pursuant to the 2014 Interlocal, the County: (i) issued \$65 million in bonds to finance a portion of the costs incurred to construct the Provo-Orem Bus Rapid Transit system ("BRT System"); and (ii) agreed to pay operation and maintenance costs ("O&M Costs") relative to the BRT System for a period of approximately ten years; and

WHEREAS, the County is utilizing the revenues of a local option sales and use tax collected pursuant to Utah Code Ann. §59-12-2218 (the "Third Quarter Tax") to secure the bonds and fund the O&M Costs; and

WHEREAS, the Authority is required to make a Forward Payment (as such term is defined in the 2014 ILA) to the County, and to also reimburse the County with respect to the O&M Costs; and

WHEREAS, the County has the ability to impose a new sales and use tax pursuant to Utah Code Ann. §59-12-2219 (the "Fourth Quarter Tax"); and

WHEREAS, the County and the Authority have negotiated a new Interlocal Agreement (the "2018 Interlocal"), which 2018 Interlocal provides for the expenditure of Fourth Quarter Tax revenues, should the Fourth Quarter Tax be imposed by the County prior to June 30, 2020; and

WHEREAS, the imposition of the Fourth Quarter Tax in accordance with the 2018 Interlocal will save the Authority substantial amounts of financing costs and accelerate the implementation of new transit service within the County.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Authority:

1. That the Board hereby approves the 2018 Interlocal with the County.

2. That the Board authorizes the Executive Director and his designee(s) to execute the 2018 Interlocal in substantially the same form as attached as Exhibit A.
3. That the Board hereby ratifies any and all actions previously taken by the Authority's management and staff to prepare the 2018 Interlocal.
4. That the corporate seal be attached hereto.

Approved and adopted this 27th day of September 2018.



Greg Bell, Chair
Board of Trustees

ATTEST:



Robert K. Biles, Secretary/Treasurer

(Corporate Seal)




CERTIFICATE

The undersigned duly qualified Chair of the Board of Trustees of the Utah Transit Authority certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Board of Trustees held on the 27th day of September 2018.



Greg Bell, Chair
Board of Trustees



Robert K. Biles, Secretary/Treasurer

Approved As To Form:



Legal Counsel

Exhibit A

INTERLOCAL COOPERATION AGREEMENT

**between
UTAH TRANSIT AUTHORITY
and
UTAH COUNTY**

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

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, pursuant to the Initial BRT ILA, the County holds legal title to BRT System improvements;

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, in part, 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;

WHEREAS, the Initial BRT ILA requires UTA to reimburse the County for all amounts previously paid by the County (plus accrued interest calculated in accordance with the Initial BRT ILA) once First Quarter Tax revenues are sufficient to fund such reimbursement;

WHEREAS, recent state legislation allows the County to impose a local option sales and use tax pursuant to Utah Code Ann. §59-12-2219 (the "Fourth Quarter Tax") on or before July 1, 2020;

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 any Fourth Quarter Tax so imposed (such percentage hereinafter the "Fourth Quarter Transit Revenues") would be paid directly to UTA;

WHEREAS, the imposition of the Fourth Quarter Tax may be either submitted to the vote of the registered voters of Utah County or directly approved by the County legislative body;

WHEREAS, if the Fourth Quarter Tax is imposed, it will generate additional funding sources for road improvement projects and allow currently encumbered Third Quarter Tax revenues to be repurposed as an additional source of road improvement funding;

WHEREAS, the consideration of whether 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. The obligations of this Agreement shall not be effective until the County imposes the Fourth Quarter Tax, either after submission

of an opinion question to the vote of the registered voters of Utah County, or directly by the County legislative body, and in accordance with the requirements of Utah Code Ann. §59-12-2219. This Agreement, and all obligations provided hereunder, shall automatically terminate if the Fourth Quarter Tax is not imposed by the County on or before June 30, 2020.

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 as contemplated in this Agreement, 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: (i) out-of-pocket O&M costs directly paid by the County to UTA pursuant to Section 7 of the Initial BRT ILA (hereafter the "County O&M Payments"); and (ii) \$2.8 million in Third Quarter Tax revenues that were paid to UTA pursuant to a September 17, 2013 Design Funding Agreement (the "Design Agreement").
 - 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 Fourth Quarter Transit Revenues shall next be applied by UTA to reimburse the County with respect to interest accrued (pursuant to Section 7(b) and Section 7(e) of the Initial BRT ILA) on the balance of the County O&M Payments 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 Fourth Quarter Transit Revenues shall next be deposited into a reserve account to fund the early redemption of the 2016 Bonds (including any optional redemption of the 2016 Bonds or other refinancing or early payment of the 2016 Bonds that is agreed to pursuant to Section 9 of this Agreement) (hereafter the "Reserve Account"). Any interest earned by UTA with respect to the Reserve Account shall also be subject to the provisions of this Section 2.
 - g. Once the 2016 Bonds have been retired, and once all amounts advanced by the County under the Initial BRT ILA and Design Agreement have been repaid as contemplated in Sections 2(b), 2(c), 2(d) and 2(e) above, then the Fourth Quarter Transit Revenues shall be applied to new transit service within the County and/or major transit projects within the County, in accordance with Section 3 of this Agreement.
3. New Transit Service and Major Transit Projects Funded by the Fourth Quarter Transit Revenues. UTA shall coordinate the planning of any new transit service, and any major transit projects, to be funded pursuant to Section 2(g) in consultation with the Utah County Council of Governments and in accordance with the

requirements of Utah Code Ann. § 17B-2a-801, et seq. New transit service to be funded pursuant to Section 2(g) shall not be provided until a service level agreement is executed between UTA and the County and shall only be provided in accordance with the terms and conditions of such service level agreement. Major transit projects to be funded pursuant to Section 2(g) are also subject to the written approval of the County, which County approval must be obtained by UTA prior to commencement of construction. Major transit projects are projects such as new or expanded commuter rail, light rail or bus rapid transit construction.

4. Initial BRT ILA and Design Agreement 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 and the Design Agreement shall remain in full force and effect and this Agreement, the Initial BRT ILA, and the Design Agreement shall be read and construed so as to give effect to all such agreements.
5. Credits against UTA's Forward Payment Obligations. The Forward Payment obligation of UTA (as generally described in Section 6 of the Initial BRT ILA 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.
6. Credits against UTA's Obligations to Reimburse O&M Costs. Any Fourth Quarter Transit Revenues paid to the County pursuant to Sections 2(d) and 2(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 later 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 and the referenced Design Agreement, 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 said agreements shall be binding or valid; and this Agreement may not be enlarged, modified, or altered except in writing, and signed by the parties.
18. Potential Name Change. Enacted in 2018, Section 17B-2a-803.1 of the Utah Code changes the name of Utah Transit Authority to Transit District of Utah, but provides that UTA shall implement the change over time and as resources permit. Notwithstanding the timing or manner of this change, the parties acknowledge that any such name change, or lack thereof, will only pertain to UTA's name, and will not affect the duties and obligations of the parties set forth in this Agreement or otherwise.

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

Nathan Ivie, Chairman

Steve Meyer, Interim Executive Director

ATTEST:
Bryan E. Thompson
Utah County Clerk/Auditor

Robert Biles, Vice President of Finance

By: _____
Deputy

Reviewed and Approved as to Form and
Compliance with Applicable Law:

Reviewed and Approved as to Form and
Compliance with Applicable Law:
Jeffrey R. Buhman
Utah County Attorney

Legal Counsel for UTA

By: _____
Deputy