

RESOLUTION NO. R-032019

**A RESOLUTION OF EAGLE MOUNTAIN CITY, UTAH
APPROVING AN INTERLOCAL COOPERATION AGREEMENT
WITH UTAH COUNTY FOR
THE PONY EXPRESS PKWY WIDENING PHASE 3**

PREAMBLE

WHEREAS, Utah County (Project Manager) and Eagle Mountain City (Project Sponsor) desire to facilitate the construction of a road widening project known as the Pony Express Pkwy Widening Phase 3; and

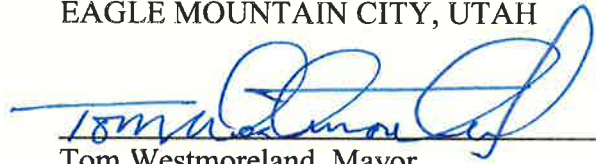
WHEREAS, if a project is within multiple jurisdictions and/or agencies, one jurisdiction or agency will enter into an interlocal agreement and interface with the Program Manager as the Project Sponsor;

BE IT RESOLVED by the City Council of Eagle Mountain City, Utah as follows:

1. The Eagle Mountain Pony Express Pkwy Widening Phase 3, attached hereto as Exhibit A and incorporated herein, is hereby approved.

ADOPTED by the City Council of Eagle Mountain, Utah, this 19th day of February, 2019.

EAGLE MOUNTAIN CITY, UTAH



Tom Westmoreland, Mayor

ATTEST:



Fionnuala B. Kofoed, MMC
City Recorder



CERTIFICATION

The above Resolution was adopted by the City Council of Eagle Mountain City, Utah
on this 19th day of February, 2019.

Those voting aye:

Donna Burnham

Melissa Clark

Colby Curtis

Stephanie Gricius

Benjamin Reaves

Those voting nay:

Donna Burnham

Melissa Clark

Colby Curtis

Stephanie Gricius

Benjamin Reaves

Those excused:


Donna Burnham

Melissa Clark

Colby Curtis

Stephanie Gricius

Benjamin Reaves



Fionnuala B. Kofoed, MMC
City Recorder

EXHIBIT A

INTER-LOCAL COOPERATION AGREEMENT

between

**UTAH COUNTY and
EAGLE MOUNTAIN CITY**

For A Project Known As

EAGLE MOUNTAIN PONY EXPRESS PKWY WIDENING PHASE 3

THIS AGREEMENT, made and entered into this 17 day of December 2019, by and between **UTAH COUNTY (Program Manager)**, a political subdivision of the State of Utah, with principle offices located at 100 East Center ST, Suite 2300, Provo, Utah 84606 and **EAGLE MOUNTAIN CITY (Project Sponsor)**, a political subdivision of the State of Utah, with principle offices located at 1650 East Stage Coach Run, Eagle Mountain City, Utah.

RECITALS:

WHEREAS, the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated (1953), as amended, permits local governmental units including cities, counties, inter-local agencies and political subdivisions of the State of Utah to make the most efficient use of their powers by enabling them to cooperate with other public entities on the basis of mutual advantage and to exercise joint cooperative action for the benefit of their respective citizens; and

WHEREAS, the Program Manager and the Project Sponsor desire to facilitate the construction of a road widening project known as Pony Express Pkwy Widening Phase 3 (**Approved Project**) which consists of adding 2 additional travel lanes and bikes lanes ; and

WHEREAS, the Project Sponsor approved this Agreement by the commission, board, council, or other body or officer vested with the executive power of the public agency.

WHEREAS, the Program Manager approved this Agreement by the commission or officer vested with the executive power.

NOW THEREFORE, in consideration of the covenants and agreements contained herein and other valuable consideration, the sufficiency of which is hereby acknowledged, the Program Manager and the Project Sponsor hereby agree as follows:

Section 1. PURPOSES.

This Agreement has been established and entered into between the Program Manager and the Project Sponsor for the purpose of outlining the respective rights and responsibilities of the Program Manager and the Project Sponsor in the construction of the Approved Project.

Section 2. ADMINISTRATION OF AGREEMENT.

The parties hereto agree that, pursuant to Section 11-13-207, Utah Code Annotated, 1953 as amended, the Utah County Public Works Director shall act as the administrator responsible for the administration of this Agreement. The parties further agree that this Agreement does not anticipate nor provide for any organizational changes in the parties. The administrator agrees to keep all books and records in such form and manner as the Utah County Clerk/Auditor shall specify and further agrees that said books shall be open for examination by the parties hereto at all reasonable times.

Section 3. MULTIPLE JURISDICTIONS.

If a project is within multiple jurisdictions and/or agencies, one jurisdiction or agency will enter in to this interlocal agreement and interface with the Program Manager as the Project Sponsor. Multiple jurisdictions and/or agencies interactions will be outlined within a separate interlocal agreement between said jurisdictions and/or agencies. This agreement shall be referenced in such agreement as an Exhibit.

Section 4. EFFECTIVE DATE; DURATION.

This Agreement shall become effective and shall enter into force within the meaning of the Interlocal Cooperation Act, upon the submission of this Agreement to, and the approval and execution hereof by the governing bodies of the Program Manager and the Project Sponsor. The term of this Agreement shall be from the date of execution hereof until the terms and obligations identified herein are completed, but in no event longer than 3 years from the execution date.

Section 5. NO SEPARATE LEGAL ENTITY.

The Program Manager and the Project Sponsor do not contemplate nor intend to establish

a separate legal or administrative entity under the terms of this Agreement.

Section 6. TERMS.

- 1) **Project Scope** – Widen Pony Express Parkway from 3 lanes to five lanes and add bike lanes between Sandpiper and Lake Mountain Road
- 2) **Procurement** - The Project Sponsor will designate a qualified project engineer from its staff or hire a project engineer from the Project Sponsors consultant pool or the prequalified UDOT pool, who will be responsible for project delivery. The Project Sponsor shall follow Utah state code Section 63G-6a-101 or its own procurement/purchasing policy. Different project engineers can be designated or hired for different phases of the project.
- 3) **Project Development** - The Project Sponsor and the designated project engineer, will design, acquire the necessary rights-of-way (ROW), bid out and manage the construction of the Approved Project.
 - a) **Design Standard** - The design and construction of the Approved Project will meet or exceed Eagle Mountain City Construction standards.
 - b) **Environmental Work** - The Project Sponsor will acquire the appropriate clearances and permits through the design process. The Project Sponsor can follow their own adopted environmental process, or follow the Recommended Environmental Guidance / Mountainland & Utah County Programmed Projects document (including designating with the Program Manager the type of environmental work to be completed), or any other stricter environmental process under local or federal law. The Project Sponsor must follow any National Environmental Policy Act (NEPA) requirements required (Endangered Species Act, Clean Water Act, etc.), and any other local or government agency requirements for the Approved Project.
 - c) **Design Work** - The Project Sponsor will involve the Program Manager at the following design milestones:
 - (1) Kickoff Meeting,
 - (2) 30% Scope and Schedule Review,
 - (3) 60% On Site Plan Review,

(4) 90% Plans, Specifications and Estimate,

- d) **Final Design Approval** - Once project design is completed; the Project Sponsor will review the final design with the Program Manager. Both parties shall agree that the project is ready for the construction phase.
 - e) **ROW Acquisition** - The Project Sponsor will be responsible to acquire all necessary ROW adhering to state and local laws. The Project Sponsor can follow their own adopted ROW acquisition process or follow the Recommended Right of Way Acquisition Guidance / Mountainland & Utah County Programmed Projects guidance document, or as required by Utah law.
 - f) **Construction Advertising** - To advertise construction, the Project Sponsor shall follow Utah state code Section 63G-6a-101 or its own procurement/purchasing policy. All construction bids will include a 10% construction contingency. The Project Sponsor will provide a copy of the advertisement and the notice of award to the Program Manager.
- 4) **Project Signage/Contact Info** - It is recommended that the Project Sponsor install signage informing the public of the following:
- a) Project name.
 - b) Project description.
 - c) Start and completion dates (general).
 - d) Contact name, phone number, website address, email.
 - e) Use the sentence "This project funded with Mountainland Transportation Funding".
 - f) List project sponsors and their logos (Project Sponsor, Mountainland, Utah County).
 - g) Generally, one sign at each access point to the project shall be installed.
 - h) Signs should be at least 4' x 6', or large enough for passing motorists to read.
 - i) Signs should be installed prior to construction and stay in place through construction.
- 5) **Construction Process** - The Project Sponsor will manage the construction process.
- a) The Program Manager will be notified of any changes that affect the scope of the project or costs that exceed the construction contingency.
- 6) **Project Completion** - Program Manager staff will be notified and allowed to attend the final inspection of the completed project.

- 7) **Project Hold** - The Program Manager has the authority to place a project on hold at any time during the project development process or withhold reimbursement of invoices during the construction process if the Program Manager deems that the Approved Project is not within the Approved Project scope or budget. The Program Manager shall notify the Project Sponsor of the hold in writing and will work with the Project Sponsor to rectify the issues promptly. If the Project Sponsor and Program Manager cannot bring the Approved Project back into scope or if additional funding is needed above what the Program Manager or the Project Sponsor can provide, the issues will be brought to the Mountainland MPO committees for their review, recommendations, resolutions, and approvals.
- 8) **Total Project Cost** - Both the Program Manager and Project Sponsor acknowledge that the Approved Project has been authorized by the Mountainland MPO Regional Planning Committee (Utah County Commission must also approve if county funds are used) to be funded at an amount not to exceed \$1,443,439 (Total Project Cost) for the direct costs of the Approved Project.
 - a) **Matching Funds** - The Project Sponsor is required to pay a match or portion of the Total Project Cost. This amount is 6.77% of the Total Project Cost. The use of Project Sponsor equipment and/or Project Sponsor employee time for the project shall not be reimbursable, but can be claimed by the Project Sponsor as a soft match toward the required 6.77% matching funds required from the Project Sponsor. Soft match being used as the required match for this project is NA, equating to \$97,721. The Project Sponsor is required to pay the difference between the required match and the value of the soft match, if any.
 - b) **Multi-Year Funding** - Some projects require funding across multiple fiscal years. Reimbursement for Approved Project activities can only be made up to the available amount identified in a single fiscal year. Any balance from a prior year where available funds have not been expended for the Approved Project are then advanced to the next fiscal year and are added to the funds available that fiscal year. Fiscal years for MAG Exchange Funds begin each year on October 1st or as otherwise designated in the Cooperative Agreement between MAG and UDOT, and for County Transportation Sales Tax Funds on January 1st. The Approved Project has \$1,345,718 in 2022, NA in 2023.
 - c) **Funding Availability** - MAG Exchange funds are distributed to the MPO generally in October each year through a cooperative agreement with UDOT. The exchange process requires that MPO federal funds be exchanged with UDOT for state funds on an annual basis. The federal funds are made available by congress, the release of funds can fluctuate yearly. County Transportation Sales Tax funds are generally available each January and

are generated by sale tax revenue, which can fluctuate with the economy. MAG will not reimburse expenses on an Approved Project unless funding is made available by UDOT and Utah County. This could require the Approved Project to be placed on hold by the Program Manager or that the Project Sponsor advance their own funds toward the Approved Project with reimbursement to be made by the Program Manager upon receipt of available funding from UDOT and/or Utah County.

- d) **Reimbursement** - The Project Sponsor, if desiring reimbursement for the direct costs of the Approved Project, will provide the Program Manager with one monthly itemized invoice detailing actual costs for the ROW acquisition, design, utility relocation, construction, or other approved elements of the project. Appropriate backup materials shall also be supplied by the Project Sponsor to the Program Manager without requiring separate inquiry. The Program Manager agrees to reimburse the Project Sponsor within 30 days of receiving acceptable itemized invoices establishing the validity of the direct costs of the Approved Project. The maximum amount of reimbursement from the Program Manager to the Project Sponsor for any fiscal year shall be the available funds actually received by the Program Manager for such fiscal year. The maximum amount of reimbursement from the Program Manager to the Project Sponsor for the entire cost of the Approved Project shall not exceed \$1,345,718 (Total Project Cost less Matching Funds). Any costs which exceed \$1,345,718 shall be the sole responsibility of the Project Sponsor. The Program Manager will review and approve monthly each itemized invoice and will reimburse the total invoice amount less the required matching funds.
- e) **Cost Overruns** - The Program Manager maintains a contingency account for cost overruns. The Project Sponsor may request additional funds above the approved Total Project Cost with supporting documentation demonstrating the need for additional funds. The Program Manager may approve up to 10% of the Total Project Cost up to a maximum of \$500,000. The MPO Regional Planning Committee can approve higher amounts (Utah County Commission must also approve if county funds are used). The addition of these contingency funds would require a modification to this Agreement. If no additional funds are awarded or the Approved Project still requires additional funds, the Project Sponsor will be responsible to fund the overrun.
- f) **Surplus Funds** - Any surplus funds remaining after the completion of the Approved Project will be returned to the Mountainland or Utah County fund balance to be reallocated to other projects selected through the MPO project selection process. Note that Mountainland and Utah County selects and funds projects, not project sponsors. Surplus funds cannot be moved to a new project not already approved through the MPO project

selection process. Any surplus funds paid by the Project Sponsor shall be returned to the Project Sponsor.

- 9) **Liability, Ownership and Maintenance of Approved Project** - The Project sponsor bears all liability through all stages of project development and construction. The Project Sponsor shall own and be responsible for maintenance, repair and replacement of the completed project.
- 10) **Inspection of Approved Project** - The Program Manager and its designees, upon reasonable notice, reserve the right to enter upon the Approved Project to inspect the same to verify compliance with this Agreement.
- 11) **Other Expenses** - Except as otherwise expressly stated herein, all expenses not identified as a part of the Approved Project or executed prior to the Agreement shall be the sole responsibility of the Project Sponsor.
- 12) **No Third-Party Rights** - The obligations of the parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the Project Sponsor and Program Manager. This Agreement is not intended to nor shall it be construed to benefit any third party.
- 13) **Recitals** - The Recitals portion of this Agreement constitutes a part of this Agreement.

Section 7. FILING OF INTERLOCAL COOPERATION AGREEMENT.

Executed copies of this Agreement shall be placed on file with the official keeper of records of the Program Manager and the Project Sponsor and shall remain on file for public inspection during the term of this Agreement.

Section 8. AMENDMENTS.

- 1) **Amending this Agreement** - This Agreement may not be amended, changed, modified or altered except by an instrument in writing which shall be one of the following: (a) approved by Resolution of the governing body of each of the parties, (b) executed by a duly authorized official of each of the parties, and (c) filed in the official records of each party.
- 2) **Change Orders** - Changes can occur throughout a project. Changes that are outside the scope outlined in this Agreement must be amended as stated above. Minor changes and adjustments that fall within the original project scope can be addressed with a change order. A change order

does not require amending this agreement. A change order is defined as that additional effort necessary by reason of changed conditions which are radical, unforeseen, and completely beyond the control of the Project Sponsor. The Project Sponsor shall create the change order and keep records of them. Any additional costs incurred can be covered by the construction contingency or by added local funding and should be addressed in the change order. If additional costs are more than the construction contingency and available local funds, the Project Sponsor shall contact the Program Manager to review funding options.

Section 9. EXTRA WORK

Extra work shall be undertaken only when previously authorized in writing by the Program Manager, and is defined as additional work which is neither shown nor defined in this Agreement. Extra work includes additional improvements adjacent to the Approved Project or in other locations that the Project Sponsor desires to complete as a package of other approved projects. Extra work can be for utility projects, facilities that tie into the Approved Project, project betterments, or other work desired by the Project Sponsor. No costs incurred by extra work can be billed to the Approved Project. Any invoices submitted by the Project Sponsor shall clearly detail costs incurred by the Approved Project and list separately costs incurred by the extra work. Extra work shall be outlined in a new exhibit.

Section 10. SEVERABILITY.

If any term or provision of this Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and shall be enforced to the extent permitted by law. To the extent permitted by applicable law, the parties hereby waive any provision of law, which would render any of the terms of this Agreement unenforceable.

Section 11. GOVERNING LAW.

All questions with respect to the construction of this Agreement, and the rights and liability of the parties hereto, shall be governed by the laws of the State of Utah.

Section 12. INDEMNIFICATION.

The Project Sponsor shall indemnify and hold the Program Manager harmless from any and all claims of liability for any injury or damage to any person or property whatsoever occurring

in, on or about the Approved Project or any part thereof. The Project Sponsor shall further indemnify and hold the Program Manager harmless from and against any and all claims arising from any breach or default in the performance of any obligation on the Project Sponsor's part to be performed under the terms of this Agreement, or arising from any act or negligence of the Project Sponsor, or any of the Project Sponsor's agents, employees, contractors, subcontractors, or invitees and from and against all costs, reasonable attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Both the Project Sponsor and Program Manager agree that the terms of this Agreement are subject to, and not a waiver of, the protections, immunities and liability limits of the Governmental Immunity Act, U.C.A. 63G-1-101, et. seq. The Project Sponsor's obligations under this provision shall survive the expiration or other termination of this Agreement.

Section 13. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

IN WITNESS WHEREOF, the parties have signed and executed this Agreement, after resolutions duly and lawfully passed, on the dates listed below:

UTAH COUNTY

Authorized and passed on this 17 day of December 2019,

**BOARD OF COUNTY COMMISSIONERS,
UTAH COUNTY, UTAH**

DocuSigned by:
Tanner Ainge
85F901465FEC43D...
TANNER D. AINGE, Chair

**ATTEST:
AMELIA POWERS GARDNER
Utah County Clerk/Auditor**

DocuSigned by:
Kelly Evans
527605707B604A1...
By: _____
Deputy Clerk/Auditor

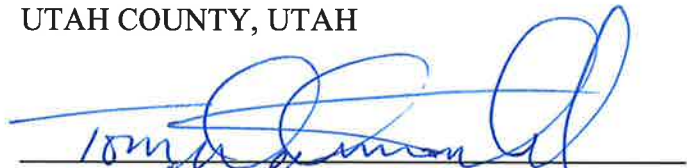
**REVIEWED AS TO FORM AND COMPLIANCE
WITH APPLICABLE LAW:
DAVID O. LEAVITT
Utah County Attorney**

DocuSigned by:
David O. Leavitt
3F8BDF01CA840F...
By: _____
Deputy Utah County/Attorney

EAGLE MOUNTAIN CITY

Authorized and passed on this 19 day of February 2019,

EAGLE MOUNTAIN CITY
UTAH COUNTY, UTAH



Tom Westmoreland, Mayor

ATTEST:



Fionnuala B. Kofoed, City Recorder



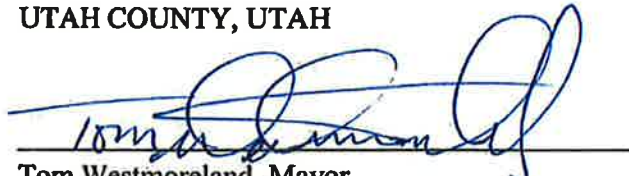
REVIEWED AS TO FORM AND
COMPATIBILITY WITH APPLICABLE
LAW:

By: _____
Jeremy R. Cook, City Attorney

EAGLE MOUNTAIN CITY

Authorized and passed on this 19 day of February 2019,

**EAGLE MOUNTAIN CITY
UTAH COUNTY, UTAH**



Tom Westmoreland, Mayor

ATTEST:


Fionnuala B. Kofoed, City Recorder



REVIEWED AS TO FORM AND
COMPATIBILITY WITH APPLICABLE
LAW:

By: 
Jeremy R. Cook, City Attorney