

LOCAL TRANSPORTATION FUNDING AGREEMENT A4-2024

Project: 450 East (Phase 2)

This Local Transportation Funding Agreement (the “Agreement”) is entered into by and between the County of Weber, Utah (the “County”) and North Ogden City (the “City”), individually referred to as “Party” and jointly referred to as “Parties.”

WHEREAS, Utah Code Annotated § 59-12-2217, the County Option Sales and Use Tax for Transportation, provides the opportunity for a council of governments and the local legislative body to prioritize and approve funding for transportation and transit projects or services (“Transportation Funding”), and

WHEREAS, the Weber Area Council of Governments (“WACOG”) is the council of governments with the authority to work with the Board of Weber County Commissioners (the “County Commission”) to prioritize and approve Transportation Funding for such projects; and

WHEREAS, the City submitted a timely and complete application to WACOG, which is attached as **Exhibit A** of this Agreement, requesting Transportation Funding for the City’s 450 East (Phase 2) Project; and

WHEREAS, the City has committed matching contributions to the Project, as evidenced in its funding application; and

WHEREAS, the City’s application was approved by WACOG on November 6, 2023 and subsequently approved by the County Commission on November 14, 2023; and

WHEREAS, the County Commission, in consideration of the recommendations of WACOG, has awarded the City up to \$4,028,000 in Transportation Funding (the “Award”) programmed for the calendar year 2026, subject to the County and the City entering into this Agreement with respect to the use of said funds.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the County and the City agree as follows:

- 1. SCOPE OF PROJECT; ELIGIBLE USE OF THE AWARD**
 - A.** The County shall pay the City the Award to cover expenses that are necessary for the completion of the activities specifically described in **Exhibit A** (the “Project”). If there is a conflict between the terms and provisions of **Exhibit A** and this Agreement, the terms of this Agreement shall govern.
 - B.** The City shall only use the Award to cover necessary expenses that fall within the scope of the Project. The City shall use the Award in compliance with all program policies that have been adopted by WACOG. Should any provision of the program policies conflict with state or federal law, the conflicting provisions of state or federal law shall govern.

- C. Except as provided in Section 4.B. of this Agreement (which involves advanced Award payments), the City must expend “Matching Contributions” toward the Project before receiving the Award. For purposes of this Agreement, the Matching Contributions shall be 10% of the Award. The reimbursement payments described in Section 4 of this Agreement shall not commence until the County has received and verified evidence of the City’s expenditure of the Matching Contributions. If the actual Award received by the City is less than the original Award amount, then the County shall adjust the Matching Contributions proportionately to reflect the actual Award.
- D. The City may make revisions to the scope of the Project with written approval from the County Commission where such revision does not materially alter the scope of the Project. The Parties are not required to execute an amendment to this Agreement in making such revisions. Instead, the written approval shall be incorporated into Exhibit A and shall be retained on file with the original Agreement.
- E. For illustration purposes only, a revision to a Project may include a change in the design, implementation, or construction means and methods that results in the ability to make additional improvements to the Project or serve more properties or individuals. Revisions to the scope of the Project that reduce the extent of the improvements to be made or properties or individuals to be served should be avoided unless necessary to keep the Project within the City’s budget for the Project and/or the Award to City set forth in this Agreement.
- F. In no event shall a revision to the scope of the Project entitle the City to an additional allocation of Transportation Funding unless the City and the County execute a written amendment to this Agreement to increase the Award. The County Commission, in its sole discretion, and in consideration of a recommendation from WACOG, may approve and authorize additional Transportation Funding for the Project. However, no such additional allocation is guaranteed.
- G. The County is not responsible for the construction, maintenance, or completion of the Project.

2. TRANSPORTATION FUNDING SUBJECT TO AVAILABILITY

- A. The City acknowledges that the County cannot guarantee the payment of Transportation Funding that has not yet been appropriated, including such funding that makes up the Award. 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.
- B. If there is a funding shortfall at the time the County prepares its budget for one of the years programmed for the Award, then notwithstanding any other provision of this

Agreement, the County may, without penalty or liability of any kind, adjust the Award to the proportional amount of available Transportation Funding, 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 2026. If the County promised a total of \$25,000,000 for WACOG approved projects for 2026, 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.

- C. 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. The 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.

3. TERM OF AGREEMENT

This Agreement shall terminate after satisfaction of all obligations accrued or incurred hereunder, or upon completion or cancellation of the Project referenced herein.

4. PAYMENTS

- A. *Reimbursement Payment.* The County shall pay the Award to the City on a reimbursement basis. The City shall submit reimbursement requests to the County Transportation Fund Manager each calendar quarter for the duration of the Project. Such requests shall be in a form acceptable to the County and include a signed certification by the City engineer that the expenses for which the City is seeking reimbursement fall within the Project scope under Section 1 of this Agreement. The City may not request reimbursements under this Agreement for work that has not been completed.
- B. *Advance Payment.* The County, in its discretion, may elect to pay the City in advance for its allowable costs for the Project identified by this Agreement upon the presentation of all forms and documents as may be required by the County. Advance payments must be limited to the minimum amounts needed and timed to be in accordance with the City's actual, immediate cash requirements in carrying out and completing the work of the Project.

- C. *Withholding or Cancellation of Funds.* The County reserves the right to withhold payments until the City delivers reimbursement requests or documents as may be required under this Agreement. Upon completion of the Project, the County may cancel payment of any portion of the Award that the County determines to be surplus. The County shall be relieved of any obligation for payments if funds allocated to the County cease to be available for any cause other than misfeasance of the County itself.
- D. *Where Payments Are Made.* Payments shall be made by check or electronic deposit into City's bank account, according to a mutually agreeable process established by the City and the County.
- E. *Recoupment.* The Award is subject to recoupment by the County for the City's failure to use the funds for the Project in strict accordance with this Agreement and WACOG policies.

5. REPORTING REQUIREMENTS

The City shall submit such reports and adhere to all conditions and obligations as are required by the County, which include, but are not limited to, the reporting requirements established under WACOG policies. Such reporting requirements shall extend beyond the term of this Agreement. The County reserves the right to inspect, at any time, the City's records that are related to the Project and/or the City's performance of this Agreement. Notwithstanding any record retention policies, the City shall maintain all documentation associated with the Project for the period required by State law or Federal law or seven (7) years, whichever is greater.

6. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

In addition to the requirements set forth in this Agreement and WACOG policies, use of the Award may be subject to various other federal, state, and local laws including, but not limited to Utah Code Ann. §§ 59-12-2217 (as amended) and 59-12-2212.2 (as amended). The City shall comply with all applicable federal, state, and local laws and regulations with respect to its receipt and use of the Award pursuant to this Agreement.

7. RETURN OF FUNDS; RECOUPMENT

- A. If the City uses any portion of the Award in violation of this Agreement, including any applicable laws and WACOG policies, then the County may recoup such funding from the City. If the County determines that such a violation exists, the County shall provide the City with an initial written notice of the amount subject to recoupment, along with an explanation of such amounts. Within 30 calendar days of receipt of such notice from the County, the City may submit to the County either (1) a request for reconsideration requesting the County seek a reconsideration of any amounts subject to recoupment, or (2) written consent to the notice of recoupment.

- B. If the City has not submitted a reconsideration request, or if the County denies the reconsideration request, the City shall repay the amount subject to recoupment within 30 calendar days of the request for consideration deadline or the County's denial of the request.

8. WITHHOLDING REIMBURSEMENT; SUSPENSION OF AGREEMENT

- A. If the City fails to comply with any terms or conditions of this Agreement, or to provide in any manner the activities or other performance as agreed to herein, the County reserves the right to:
 - a. withhold all or any part of payment pending correction of the deficiency; or
 - b. suspend all or part of this Agreement.
- B. Further, any failure to perform as required pursuant to this Agreement may subject the City to recoupment as set forth under this Agreement. The option to withhold funds is in addition to, and not in lieu of, the County's right to terminate as provided in Section 9 below. The County may also consider performance under this Agreement when considering future awards.

9. TERMINATION

- A. *Termination for Cause.* The County may terminate this Agreement for cause if the City fails to comply with the terms and conditions of this Agreement and any of the following conditions exist:
 - a. The lack of compliance with the provisions of this Agreement is of such scope and nature that the County deems continuation of this Agreement to be substantially non-beneficial to the public interest;
 - b. The City has failed to take satisfactory corrective action as directed by the County or its authorized representative within the time specified by the same; or
 - c. The City has failed within the time specified by the County or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this Agreement.

The County shall initiate termination for cause by providing notice to the City of its intent to terminate for cause, accompanied by a written justification for the termination. After receiving the notice of termination for cause, the City shall have 15 calendar days to cure the cause for termination. If the City has not cured the cause for termination within 15 days of receipt of the notice, the County may pursue such remedies as are available by law, including, but not limited to, the termination of this Agreement in whole or in part, and thereupon shall notify in writing the City of the termination, the

reasons for the termination, and the effective date of the termination. Upon termination, any outstanding Award funds held by the City are subject to recoupment by the County in accordance with this Agreement. Any costs resulting from obligations incurred by the City after termination of this Agreement are not allowable and will not be reimbursed by the County unless specifically authorized in writing by the County.

- B. *Termination for Convenience.* This Agreement may be terminated for convenience, in whole or in part, by written mutual agreement of the Parties.

10. CLOSE OUT AFTER TERMINATION

Upon termination of this Agreement, in whole or in part for any reason, including completion of the Project, the following provisions apply:

- A. Upon written request by the City, the County will make or arrange for payment to the City of allowable reimbursable costs that were not covered by previous reimbursements.
- B. Within 30 calendar days after the date of termination, the City shall submit to the County all financial, performance, and other reports required by this Agreement and WACOG policies, and in addition, will cooperate in a Project audit by the County or its designee if the County opts to conduct such an audit;
- C. Closeout of funds will not occur unless all requirements of this Agreement, WACOG policies, and Federal, State, and Local laws are met and all outstanding issues with the City in regards to this Agreement have been resolved to the satisfaction of the County.
- D. Any unused Award funds in the City's possession or control shall be immediately returned to the County.

11. INDEMNIFICATION

To the greatest extent permitted by law, the City shall indemnify and hold harmless the County, its appointed and elected officials, and employees from any liability, loss, costs (including attorney fees), damage or expense, incurred because of actions, claims or lawsuits for damages arising from the City's misuse of the Award; personal or bodily injury, including death, sustained or alleged to have been sustained by any person or persons; and in regards to damage to property, arising or alleged to have arisen out of the City's performance of this Agreement, when such injuries to persons or damage to property are due to the actions of the City, its subcontractors, agents, successors, or assigns.

12. NOTICES

Any notices required to be given by the County or the City shall be in writing and delivered to the following representatives for each party:

The County	The City
County of Weber Attn: Transportation Funding Specialist 2380 Washington Blvd., Suite 240 Ogden, UT 84401 bstewart@webercountyutah.gov	North Ogden City Attn: Jon Call 505 East 2600 North North Ogden, UT 84414 jcall@noogden.org

13. RESERVATION OF RIGHTS

Failure to insist upon strict enforcement of any terms, covenants, or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of any right or power granted through this Agreement at any time be construed as a total and permanent waiver of such right or power.

14. FURTHER ASSURANCE

Each of the Parties shall cooperate in good faith with the other to execute and deliver such further documents, to adopt any resolutions, to take any other official action and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this agreement.

The City shall, in good faith and to the greatest extent possible, complete the Project in accordance with the City’s proposed project timeline in the City’s application. City acknowledges that time is of the essence, and City shall exercise due diligence to complete the project in a timely manner.

15. ASSIGNMENT

The City shall not assign any portion of the Award, nor responsibility for completion of the Project provided for by this Agreement, to any other party.

16. AMENDMENTS

This Agreement cannot be amended or modified except in writing signed by both Parties.

17. VENUE AND CHOICE OF LAW

If either Party initiates any legal or equitable action to enforce the terms of this Agreement, to declare the rights of the parties under this Agreement, or which relates to this Agreement in any manner, the County and the City agree that the proper venue for such action is the Utah Second Judicial District. This Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance.

18. SEVERABILITY

If any part of this Agreement is held by the courts to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part held to be invalid.

19. INTEGRATED DOCUMENT

This Agreement, together with all exhibits and attachments, which are incorporated by reference, constitute the entire agreement between the Parties. There are no other agreements, written or oral, that have not been fully set forth in the text of this Agreement.

20. NO THIRD PARTY BENEFICIARY.

Nothing in this Agreement shall create or be interpreted to create any rights in or obligations in favor of any person or entity not a party to this agreement. Except for the Parties to this agreement, no person or entity is an intended third party beneficiary under this agreement.

21. HEADINGS

The section headings of this agreement are for the purposes of reference only and shall not limit or define the meaning thereof.

22. AUTHORITY TO SIGN

The persons executing this Agreement on behalf of the City represent that one or both of them has the authority to execute this Agreement and to bind the City to its terms.

**BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY**

By _____
James H. Harvey, Chair

Date _____

ATTEST:

Weber County Clerk/Auditor

NORTH OGDEN CITY

By _____

Name/Title: _____

Date _____

ATTEST:

Name/Title: _____

EXHIBIT A
Project Scope