

MIDVALE CITY, UTAH

RESOLUTION NO. 2022-R-08

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER
INTO AN INTERLOCAL AGREEMENT WITH SANDY CITY FOR
THE MILL AND OVERLAY OF UNION PARK AVENUE/1300 EAST PROJECT**

WHEREAS, Midvale City has a vested interest in maintaining the road network and has an active pavement management program; and

WHEREAS, the city wishes to participate with neighboring communities in pavement projects on roads shared by both communities; and

WHEREAS, Sandy City is preparing a mill and overlay project for a portion of Union Park Avenue/1300 East, which includes a section that lies within the boundaries of Midvale City; and

WHEREAS, the estimated cost of Midvale City's portion of the work will be funded through the City's current pavement management budget, and Midvale City wishes to take advantage of this opportunity to have some pavement work done; and


WHEREAS, Sandy City has prepared an interlocal agreement enabling Midvale City to participate in their project; and

NOW THEREFORE BE IT RESOLVED, that based on the foregoing, the Midvale City Council approves this resolution authorizing the mayor to sign the interlocal agreement with Sandy City.

APPROVED AND ADOPTED this 15th day of March 2022.


Marcus Stevenson, Mayor

ATTEST:


Rori L. Andreason,
City Recorder



Voting by the City Council

"Aye"

"Nay"

Dustin Gettel

Paul Glover

Quinn Sperry

Heidi Robinson

Bryant Brown

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INTERLOCAL COOPERATION AGREEMENT

Between

SANDY CITY

And

MIDVALE CITY

THIS INTERLOCAL COOPERATION AGREEMENT (this "Agreement") is made and entered into this 15th day of March, 2022, with an effective date as provided in Section 11 of this Agreement, by and between **SANDY CITY**, a municipal corporation of the State of Utah ("Sandy"); and Midvale City, a municipal corporation of the State of Utah ("Midvale"). Sandy City and Midvale City 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.

WITNESSETH:

WHEREAS, Sandy and Midvale are public agencies as defined in Title 11, Chapter 13, UTAH CODE ANN. (the "Interlocal Act"). Section 11-13-202 of the Interlocal Act provides that any two or more public agencies may enter into an agreement with one another for joint or cooperative action; and

WHEREAS, in consultation with Midvale, Sandy is advertising an asphalt resurfacing project on 1300 E between Creek Road and High Point Parkway (the "Project"), most of which is located in Sandy City, but approximately 16,550 SF of roadway, adjacent to the SW Corner of 1300 E and Creek Road, is located in Midvale City; and

WHEREAS, it is just and equitable for Midvale to pay a portion of the cost of the Project as provided in this Agreement; and

WHEREAS, Sandy and Midvale desire to enter into an agreement, which sets forth the rights, obligations, and responsibilities of each Party respecting the Project.

AGREEMENT:

NOW, THEREFORE, in consideration of the promises and the mutual covenants and undertakings, the Parties hereby agree as follows:

1. **Sandy City Obligations.**

- a. Sandy shall perform, directly and/or through an independent contractor, and will pay for the construction and completion of the Project, including but not limited to: design, bidding, management, and construction of the Project.
- b. Sandy shall consult with Midvale in making project decisions within the jurisdictional area of Midvale City.

- c. Sandy shall select the lowest responsive and responsible bidder. Sandy shall thereafter inform Midvale of Sandy's selection and the selected contractor's itemized bid amounts for the Project.

2. Midvale City Obligations.

- a. Midvale grants Sandy all required permission and access for work to be performed in accordance with all laws, ordinances, rules, and procedures applicable to Midvale's road-cut permitting processes.
- b. Midvale agrees to pay the itemized costs based on the submitted bid of the awarded contract.
- c. The Parties agree that Sandy will provide Midvale an invoice for their portion at the time the Project reaches substantial completion and Midvale will pay the required amount within 30 days from receipt of invoice.

3. Services Performed in a Professional and Reasonable Manner. Sandy shall perform project management, if there is any, in a professional, reasonable, and responsive manner in compliance with all applicable laws. Subject to the foregoing, the exact nature of how the services were or are to be performed, and any other matters incidental to providing services, shall remain with Sandy. All construction will comply with applicable law.

4. Termination.

- a. This Agreement shall begin on the Effective Date and shall terminate in twelve months or when all work related to the Project is fully completed and accepted by the Parties, whichever is later. This Agreement is not renewable.
- b. Termination. Upon written notice to the other Party, either Party may terminate this Agreement without penalty at any time prior to award of the professional services contract.

5. Liability and Indemnification. Sandy and Midvale are governmental entities under the Governmental Immunity Act of Utah, UTAH CODE ANN. § 63G-7-101 *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, officers, 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.

6. Interlocal Cooperation Act Requirements. 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 promptly 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, each Party shall be responsible for its own costs of any action taken pursuant to this Agreement, and for any budgeting and 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 consisting of the Mayor of Sandy City and the Mayor of Midvale City, with each member of the joint board to have one vote. No real or personal property shall be acquired jointly by the Parties as a result of this Agreement. The portion of the Project located within Midvale's corporate boundaries shall be and is the property of Midvale City, and Midvale waives and disclaims any ownership interest in any portion of the Project that is not located within Midvale City. 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. No joint Budget will be established or maintained by the Parties, and Sandy shall solely be responsible for the Project Budget.

7. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing, and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, (b) within three days after such notice is deposited in the United States mail, postage pre-paid, and certified and addressed as follows, or (c) upon receipt of an e-mail notice addressed to the respective Parties as follows:

Midvale City: Midvale City Public Works Director
kennedyg@midvale.com
8196 S Main Street
Midvale, Utah 84047

Sandy City: Sandy City Public Works Director
mgladbach@sandy.utah.gov
10000 S. Centennial Parkway
Sandy, UT 84070

Copy to: Sandy City Attorney's Office
dalcorn@sandy.utah.gov
10000 Centennial Parkway, Suite 301
Sandy, UT 84070

8. **Governing Law.** This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance.

9. **Resolution of Claims and Disputes.** In any action brought to enforce the terms of this Agreement, the Parties agree that the appropriate venue shall be the Third Judicial District Court in and for Salt Lake County, Utah.

10. **Entire Agreement/Amendment.** This Agreement contains 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, amended, modified, or altered except in a writing signed by the Parties which shall be (a) approved by the governing bodies of Sandy and Midvale, including the adoption of any necessary resolutions or ordinances by Sandy and Midvale authorizing the execution of any amendment, change, modification or alteration of this Agreement by the appropriate person or persons for Sandy and Midvale, respectively, (b) executed by a duly authorized official of each of the Parties, (c) 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 the execution by each respective attorney, and (d) filed with the keeper of the records of each Party.

11. **Term of Agreement.** This Agreement shall take effect immediately upon the completion of the following: (a) the approval of the Agreement by the adoption of a resolution by the governing body of each Sandy and Midvale, (b) the execution of this Agreement by a duly authorized official of each of the Parties, (c) the submission of this Agreement to an attorney for each Party who 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 the approval of each respective attorney, and (d) the filing of a copy of this Agreement with the keeper of records of each Party. This Agreement shall terminate twelve (12) months after the execution of this Agreement as set forth herein, provided that Midvale shall have made payment in full to Sandy pursuant to Section 2 above; otherwise, this Agreement shall terminate one (1) month after Sandy receives payment in full as provided in Section 2 above. Except as otherwise provided herein, there is no permissible method or methods to be employed to accomplish the partial or complete termination of this Agreement.

12. **Severability.** If any provision hereof shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances

shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or paragraphs herein contained, shall not affect the remaining portions hereof, or any part thereof.

13. **No Separate Legal Entity.** No separate legal entity is created by this Agreement.

14. **Additional Provisions.** The following provisions also are integral to this Agreement:

(a) **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

(b) **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

(c) **Applicable Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

(d) **Integration.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

(e) **Time.** Time is the essence hereof.

(f) **Survival.** All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

(g) **Waiver.** No failure by either Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term, or condition. Any Party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other Party. No waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

(h) **Rights and Remedies.** The rights and remedies of the Parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provision hereof.

(i) Attorney Fees. If any action, suit, or proceeding is brought by a Party hereto with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing Party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the non-prevailing Party.

(j) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(k) Cumulative Remedies. The rights and remedies of the Parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(l) No Agency. Agents, employees, or representatives of a Party shall not be deemed to be agents, employees, or representatives of the other Party.

IN WITNESS WHEREOF, Sandy City, by resolution of its Council, caused this Agreement to be signed and attested by the Mayor of Sandy City, or her designee; and Midvale City, by resolution of its Council, caused this Agreement to be signed by the Mayor, or his designee.

SANDY CITY DocuSigned by:

By: Monica Zoltanski
Mayor Monica Zoltanski or Designee

DocuSigned by:

ATTEST: Wendy R.
City Recorder



Approved as to Form and Legality:

DocuSigned by:
By: Derian Alcorn
Attorney Representing Sandy City

Date: 3/17/2022

MIDVALE CITY

By: Marcus Stevenson
Mayor Marcus Stevenson or Designee

ATTEST:

Don L. Anderson
City Recorder



Approved as to Form and Legality:

By: [Signature]
Attorney Representing Midvale City

Date: March 16, 2022

