

INTERLOCAL AGREEMENT

THIS AGREEMENT, made by and between the CITY OF NIBLEY ("City") and the CACHE COUNTY SCHOOL DISTRICT ("District"), together referenced herein as the "Parties," is made pursuant to the Utah Interlocal Cooperation Act, Utah Code Ann. § 11-13-101 et seq., and is made with reference to the following facts:

WHEREAS, the District intends to construct a new high school ("School") east of State Road 165 between 2450 South and 2700 South; and

WHEREAS, the Parties recognize the benefit of an access to the School from the west and that such an access can be most efficiently provided by extending 2600 South, east across State Road 165 to the west access of the School (the "Road"); and

WHEREAS, extending 2600 South, east across State Road 165 and to the west access to the School, would require traversing the Blacksmith Fork River and thus the construction of a bridge ("Bridge") and other road and traffic signal improvements according to the District Traffic Study conducted by A Trans Engineering dated January __, 2014 (Update #1) ("Improvements") at the intersection of State Road 165 and 2600 South ("Intersection"); and

WHEREAS, the City will be a future owner of the Bridge and Road and desires certain assurances regarding their construction; and

WHEREAS, pursuant to the Utah Interlocal Cooperation Act, any two or more Utah public agencies may enter into an agreement to provide for joint and cooperative action, including undertaking and financing a facility or improvement; and

WHEREAS, the Parties each find and expressly declare the undertaking herein contemplated ("Project") (i) is in the best interests of their several citizens and beneficial to their health and welfare, (ii) will enable them to make the most efficient use of their powers, and (iii) will enable them to realize economies of scale and other benefits contemplated by the Interlocal Cooperation Act; and

WHEREAS, all approvals, authorizations and other actions required to cause this Agreement to be the legal, valid and binding obligation of each of the Parties have been or will be obtained;

NOW THEREFORE, the City and District agree as follows:

1. Purpose/Objectives. The purpose of this Agreement is to set forth the terms and provisions by which the Parties can cooperate with each other in the construction of the Road, the Bridge and the Improvements so that the School may have a reasonable access from the west and so that the City will accept responsibility for and maintenance of the Bridge, Road and Improvements. The foregoing Recitals are hereby incorporated into this Agreement by Reference.

2. Responsibilities of and Costs to be Borne by the District.

- a. The District shall design and construct the Bridge comparable to the Providence 1700 South Bridge, consistent with UDOT design guidelines and as shown on the cross-section drawing of the Bridge.
- b. The District shall ensure that the cross section of the Bridge is compliant with the City's regulations applicable to standard cross sections for similar roadways and as shown in the attached Exhibit A.
- c. The District shall have the structural design of the Bridge and the supporting substructure done by a professional structural engineer licensed in the state of Utah and with a minimum experience and background of designing three equivalent structures, in use.
- d. The District shall have the hydraulic design of the structure done by a professional engineer licensed in the state of Utah and with a minimum experience and background of designing three equivalent structures, in use.
- e. The District shall complete the Road to City standards and shall provide sidewalk 5.5 feet in width on the south side of 2600 South from the District's west property line to State Road 165.
- f. The District shall provide lighting at the Intersection according to UDOT requirements.
- g. The District shall coordinate with the City and Millville City for sewer planning, approval, and connection in accordance with the City's regulations. **The District shall have the right at its expense to install a sewer line underneath 2600 South from the District's west property line to its connection point at Highway 165 and the Intersection. The District may install such other utilities underneath 2600 South as may be necessary for the School.**
- h. The District shall deed 0.72 acres of land on the east side of the river to the City in exchange for the roadway from State Road 165 to the District's west property line, which shall be dedicated in perpetuity as a public road and bridge upon completion by the District. See attached Exhibit B identifying the land to be exchanged.
- i. The District shall complete all aspects of the project occurring in the City in accordance with Utah Code Ann. § 10-9a-305 related to public education entities.

- j. The District shall install the Improvements, including the traffic signalization at the 2600 South intersection, which installation shall be based on UDOT approval, requirements, and timeline. Access to State Road 165 to or from the School shall be based on the District Traffic Study and meeting any other UDOT requirements. The City and the District agree that access to SR 165 to or from the school shall not be granted until signalization is complete.
- k. The District shall have the contractor constructing the Road and Bridge warrant the Road and Bridge for a period of one year following the final inspection and acceptance of the Road and Bridge by the City.
- l. The District supports the use of school facilities for other public uses. The District will support the establishment of a shared recreation facility, similar to those at Sky View High School, if the City desires to establish such a facility and dependent upon establishment of a shared maintenance agreement for such a facility. In the interim, the District will provide access to indoor and outdoor facilities in accordance with existing policy. Refer to the attached policy #I-F1 (page 2 of 7 paragraph c and d, page 3 of 7 paragraph f, and page 4 of 7 section Procedures and General Information) for details.

3. Responsibilities of the City.

- a. The City shall apply for Council of Governments (the “COG”) funds during the 2014, **2015 and 2016** funding cycles to obtain funding to construct those parts of the Improvements on the west side of the Intersection, according to the District Traffic Study, that are necessary to install traffic signals based on cost estimates provided by the District, and shall contribute all COG funds awarded to the project. **If this is not the only submission to the COG by Nibley City in each funding cycle, Nibley City shall as part of the application indicate that this project is the City’s top and most critical priority and take all reasonable steps necessary and in good faith to obtain approval and procure such funding. The City shall submit the application to the District at least fifteen (15) days before the application deadline for the District’s input and review.** However, the City shall not contribute, with funding or in-kind, to the construction of signalization beyond the funds awarded by the COG to the City. **But any betterments or other upgrades beyond those required by the District Traffic Study, if any, shall be the responsibility of the City for payment and construction of the same. If any property must be acquired north of the 2600 South right-of-way west of State Road 165, the District shall have no obligation to acquire or pay for the same.**
- b. The City shall grant the District a construction easement on the Road and contiguous to the Road on the North and South sides sufficient to build the Road, Improvements, Bridge, and Intersection, including stockpiling of

materials and storage of equipment as reasonably necessary to facilitate construction.

- c. The City shall dedicate the roadway and bridge land referenced in Paragraph 2.h as a public road.

4. Additional Rights/Powers of the City.

- a. As a designated future owner of the Bridge **and at its sole expense**, the City may designate an engineer reviewer, with equal standing to the District's designated engineer reviewer, who may attend all engineering design meetings.
- b. As a designated future owner of the Bridge, the City may also elect **at its sole expense** to participate in the construction inspections and acceptance of the work with equal standing to the District's designated representative.

5. Duration of Agreement. This Agreement shall become effective on the date it has been approved by the executive and legislative bodies of each party or as otherwise required by Utah Code Ann. § 11-13-202.5. The Agreement shall remain effective until the completion of the Project and acceptance of the Bridge and Improvements by the City, excepting the provisions of paragraph 2.h and 2.l., which shall survive the termination of this Agreement as provided in that paragraph.

6. Termination. Termination of this Agreement prior to the expiration of its term is not contemplated. However, this Agreement may be terminated early under the following conditions:

- a. Upon mutual written agreement by the Parties; or
- b. In the event of a material breach of this Agreement by either party, the non-breaching party shall give written notice of the alleged material breach to the other party, with a request that the breach be cured within thirty (30) days of the written notice. In the event the stated breach is not cured within the thirty (30) day time or shorter period, the non-breaching party may terminate this Agreement by giving a sixty (60) day written notice to the breaching party of termination. Provided, however, additional time shall be allowed as may be required to diligently complete a cure reasonably commenced within the original thirty (30) day period of time. A material breach is defined as intentional or willful neglect of any of the provisions of this Agreement. A non-material breach shall be resolved by the contact persons/representatives of the Parties, provided that the refusal or neglect by either party to cure a non-material breach may be sited as a material breach within the reasonable discretion of the non-breaching party.

7. Damages/Expenses. All costs, damages and expenses incurred by a non-breaching party because of a default or a breach by the other party of this Agreement shall be the responsibility of the defaulting or breaching party.
8. Indemnification. Each party shall indemnify, save harmless and defend the other party, and the other party's officers, agents, employees and representatives, from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto, which may hereafter arise or be incurred, that are caused in whole or in part, by any negligent or wrongful act or omission of the indemnifying party, its officers, agents, employees and representatives. Notwithstanding anything herein to the contrary, nothing will be interpreted hereunder that would limit the effect and application of the Utah Governmental Immunities Act, §63G-7-101 through 904, *Utah Code Annotated, 1953 as amended.*
9. Governing Law/Disputes. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of Utah. Any litigation arising hereunder must be filed in the First Judicial District Court in and for Cache County, State of Utah.
10. Severability of Agreement. If any provision of this Agreement is found to be in violation of law or unenforceable, then notwithstanding any other provision of this Agreement, the remaining provisions of the Agreement shall remain effective and be interpreted consistent with the remaining provisions to give effect to the mutual intent of the Parties to the maximum extent allowed by law.
11. Entire Agreement. This Agreement contains the entire Agreement between the Parties, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force and effect.
12. Headings and Paragraph Numbers. Headings and paragraph numbers have been inserted solely for convenience and reference and shall not be construed to effect the meaning, construction of effect of this Agreement.
13. Binding/Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their agents, successors-in-interest, assigns and transferees. This Agreement may not be assigned without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld.
14. Authorization. The undersigned representatives of each party confirm his or her authority to execute this Agreement and represent that his or her governing body has authorized this Agreement.
15. Modification. This Agreement may not be changed, altered or modified without the written consent of the Parties.
16. Conflict of Interest/Advice of Separate Counsel. Each party acknowledges that it has been advised by the firm of Olson & Hoggan, P.C. that a potential conflict of

interest may exist because of the firm's current or past representation of both Parties in other matters. Each party acknowledges and agrees that the attorneys have advised them each to seek separate counsel prior to entering into this Agreement to advise them relative to the terms hereof. Therefore, the Parties acknowledge that (i) they have been fully advised of the conflict of interest that may exist, and (ii) they hereby waive any such conflict of interest and have entered into this Agreement only after they have obtained such independent advice and counsel as they deem necessary.

DATED this _____ day of April, 2014.

ATTEST:

CITY OF NIBLEY

City Recorder

By _____
Its _____

Approved by Attorney for the City of Nibley

Bruce L. Jorgensen

DATED this _____ day of April, 2014.

CACHE COUNTY SCHOOL DISTRICT

By _____
Its _____

Approved by Attorney for
Cache County School District

Miles P. Jensen