

Midway City Council  
17 January 2023  
Regular Meeting

Resolution 2023-04 /  
TAP Interlocal Agreement



## RESOLUTION 2023-04

### **A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT FOR TAP TAX DISTRIBUTIONS**

**WHEREAS**, Utah Code Title 11, Chapter 13 authorizes governmental entities such as Midway City to enter into cooperative arrangements with other governmental entities for their mutual benefit; and

**WHEREAS**, the City Council of Midway City finds that it is in the best interest of its citizens to fund trails, arts, and parks; and

**WHEREAS**, Midway City desires to work with Wasatch County and Heber City to establish the distribution of TAP tax distributions.

**NOW THEREFORE**, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The Mayor of Midway City is authorized to execute on behalf of the City the Interlocal Agreement attached hereto.

**PASSED AND ADOPTED** by the Midway City Council on the     day of             2022.

MIDWAY CITY

\_\_\_\_\_  
Celeste Johnson, Mayor

ATTEST:

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Brad Wilson, Recorder

(SEAL)

DRAFT

INTERLOCAL COOPERATION AGREEMENT  
BETWEEN WASATCH COUNTY, HEBER  
CITY, AND MIDWAY CITY FOR TAP TAX  
DISTRIBUTIONS

I. PARTIES

This Interlocal Cooperation Agreement is made and entered into by and between Wasatch County ("the County") a political subdivision of the State of Utah, whose address is 25 North Main Street, Heber City, Utah, 84032, Heber City, also a political subdivision of the State of Utah, whose address is 75 North Main Street, Heber City, Utah 84032, and Midway City, also a political subdivision of the State of Utah, whose address is 75 North 100 West, Midway, Utah 84049.

II. RECITALS

**WHEREAS** the parties have a vested interest in providing recreation, trails, parks, and arts programs to improve the quality of life of their respective residents; and

**WHEREAS** the County, Heber City, and Midway City share certain boundaries and have common jurisdictional interests; and

**WHEREAS** the County, Heber City, and Midway City intend to proportionately represent their constituents using population estimates; and

**WHEREAS** the allocation percentages utilized are those identified in the 2020 decennial census as published by the US Census Bureau; and

**WHEREAS** the County Council has passed Resolution No. 22-16 acknowledging the passing of the Trails, Arts, and Parks Tax (TAP Tax) and imposing the same; and

**NOW THEREFORE IN CONSIDERATION OF THE FULFILLMENT OF THE MUTUAL PROMISES, TERMS AND CONDITIONS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:**

III. PURPOSE

The purpose of this Interlocal Cooperation Agreement is to assign responsibility of portions of the TAP Tax to each entity for prioritization and utilization.

IV. DEFINITIONS

A. Agreement – This Interlocal Cooperation Agreement.

V. TERM

This Agreement is effective upon the first day in January, 2023 and expires on December 31, 2032. The allocation of the above referenced TAP tax proceeds is a fixed percentage for a limited duration of ten (10) years.

#### VI. DISTRIBUTION METHODOLOGY

- A. The parties agree to the following distribution of TAP Tax Funds within 30 days of receipt by the Wasatch County Treasurer: Heber City 48.45%, Wasatch County 34.29%, and Midway City 17.26%.
- B. Each entity will be responsible for complying with state code for the distribution of TAP Tax funds. Each entity reserves the right to independently allocate their respective distribution per the terms of State TAP tax requirements.
- C. Any of the parties may petition the others for use of an annual allotment of TAP Tax funds in exchange for future funds from the requestor. Such a request shall be granted at the donating entity's sole discretion.

#### VII. GENERAL PROVISIONS.

- A. **Applicable Law.** The construction, interpretation, and enforcement of this Agreement shall be governed by the laws of the State of Utah. The courts of the State of Utah shall have jurisdiction over any action arising out of this Agreement and over the parties, and the venue shall be the Fourth District Court, Wasatch County, Utah.
- B. **Entirety of Agreement.** This Agreement represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- C. **Amendments.** Any party may request changes to this Agreement at any time. Any changes, modifications, revisions, or amendments to this Agreement, which are mutually agreed upon by and between the parties, shall be incorporated by written instrument, and are only effective when executed and signed by all parties.
- D. **Liability.** Pursuant to the provisions of the Utah Governmental Immunity Act, any employee or officer acting under this Agreement shall be deemed to be acting within the scope of his duties for purposes of the Act. All privileges and immunities from liability, and all pension, disability, worker's compensation and other benefits which apply to employees or officers while in the performance of their duties in their own jurisdiction shall also apply to them when acting pursuant to this Agreement. Each party agrees to maintain appropriate liability insurance as determined by that entity and nothing in this Agreement shall be construed as a waiver of any rights or defenses applicable to either party under the Act, including without limitation, any provisions regarding limitation of judgments or defenses based upon sovereign immunity.
- E. **Severability.** Should any portion of this Agreement be judicially determined to be

illegal or unenforceable, the remainder of it shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

- F. **Sovereign Immunity.** The Cities and the County, their employees, officers, deputies, and their respective governing bodies do not waive their governmental immunity by entering into this Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.
- G. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this instrument shall operate only between the parties to it, and shall inure solely to the benefit of the parties signing herein. In addition, the provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under it. Moreover, the parties to this Agreement intend and expressly concur that only parties whose signatures are affixed below shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this document, or to bring an action for the breach of this instrument.
- H. The Parties each agree that should they default in any of the covenants or agreements contained herein, that the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue in enforcing this Agreement.

#### VIII. INTERLOCAL ACT REQUIREMENTS

- A. No interlocal entity is created by this Agreement.
- B. Pursuant to Utah Code Section 11-13-202.5, this Agreement shall be reviewed by the attorney representing each party prior to its taking effect.
- C. Pursuant to Utah Code Section 11-13-202.5, this Agreement provides for sharing taxes or other revenue.
- D. Pursuant to Utah Code Section 11-13-207, this Agreement does not provide for the joint acquiring, holding, or disposing of real or personal property.
- E. Pursuant to Utah Code Section 11-13-209, this Agreement shall be filed with the keeper of records of the County and the City.

SIGNATURES

IN WITNESS WHEREOF, the parties to this Agreement, through their duly authorized representatives, have executed this instrument on the dates established below, and certify that they understand and agree to the terms and conditions as set forth herein.

The effective date of this INTERLOCAL COOPERATION AGREEMENT is as provided in Section V of this Agreement.

**HEBER CITY MUNICIPAL CORPORATION APPROVAL**

\_\_\_\_\_  
[Name], Heber City Council

Date:

\_\_\_\_\_  
Heidi Franco, Mayor of Heber City

Date:

\_\_\_\_\_  
Matt Brower, Heber City Manager

Date:

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_

Mark Smedley, Attorney for Heber City

**WASATCH COUNTY APPROVAL**

\_\_\_\_\_  
Mark Nelson, Wasatch County Council Chair

Date:

\_\_\_\_\_  
Dustin Grabau, County Manager

Date:

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Shelby M. Thurgood, Deputy County Attorney

Date:

**MIDWAY CITY MUNICIPAL CORPORATION APPROVAL**

\_\_\_\_\_  
[NAME], Midway City Council

Date:

\_\_\_\_\_  
Celeste Johnson, Mayor of Midway City

Date:

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Corbin Gordon, Attorney for Heber City

Date: