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## COOPERATIVE AGREEMENT CONCERNING AIR QUALITY MITIGATION

**THIS COOPERATIVE AGREEMENT**, made this 8<sup>th</sup> day of March 2016, by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, referred to as "**UDOT**", and **GRANITE SCHOOL DISTRICT**, a political subdivision of the State of Utah, referred to as "**District**."

### RECITALS:

**WHEREAS**, the Mountain View Corridor Environmental Impact Statement and Record of Decision directed the establishment of an Air Quality Working Group (AWG); and

**WHEREAS**, the Air Quality Working Group provided recommendations for air quality mitigation at Whittier Elementary, Hillside Elementary, West Valley Elementary, Hunter Jr. High School, and Hunter High School.

**WHEREAS**, the District will implement the recommendations for air quality mitigation at the five schools with the funding from UDOT.

**NOW THEREFORE**, UDOT and the District agree the following terms:

1. Within thirty days from the date of this Agreement, UDOT will provide a check to the District in the amount of \$646,602 ("Expected Upgrade Installation Cost") for the upgrades to the HVAC system ("HVAC System Upgrades") at Whittier, Hillside, West Valley, Hunter Jr. High and Hunter High. The Expected Upgrade Installation Cost payment amount is subject to adjustment as set forth in Section 3 below.

2. The District will use commercially reasonable efforts to complete the following HVAC System Upgrades within 10 months after receipt of the Expected Upgrade Installation Cost..

2.1 Hillside Elementary School – Install pressure monitors and software in each of the building's four air handling units ("AHUs"), interfaced through the building's energy management system to monitor pressure drop across the filters. When the pressure drop exceeds one inch of water, the system should notify the maintenance department that the filters require replacement. Replace the currently installed MERV 8 filters with four inch deep MERV 13A filters (Aeolus SMP80 AT 24244) or comparable filters with equivalent filter efficiency (according to ASHRAE 52.2) and equal capacity.

2.2 West Valley Elementary School – Install pressure monitors and software in each of the building's nine AHU's, interfaced through the building's energy management system to monitor the pressure drop across the filters. When the pressure drop exceeds one inch of water, the system should notify the maintenance department that the filters require replacement. Replace the currently installed MERV 8 filters with four inch deep MERV13A filters (Aeolus SMP80 AT 24244) or comparable filters with equivalent filter efficiency (according to ASHRAE 52.2) and equal capacity.

2.3 Whittier Elementary School – Install pressure monitors and software in each of the buildings ten AHUs, interfaced through the building's energy management system to monitor the pressure drop across the filters. When the pressure drop exceeds one inch of water, the system should notify the maintenance department the filters require replacement. Replace the currently installed MERV 8 filters with four-inch deep MERV13A filters (Aeolus SMP80 AT 24244) or comparable filters with equivalent filter efficiency (according to ASHRAE 52.2) and equal capacity.

2.4 Hunter Junior High School – Subject to any limitations imposed by the Utah Procurement Code the District will have a qualified engineering consultant develop a scope of work for selecting and managing contractors to upgrade the infrastructure necessary for operating the proposed HVAC System Upgrades. The engineer will detail the modifications for construction, prepare bid and contract documents as appropriate, and oversee the installation and final adjustments and acceptance of the work (Kesler, 2013a). The work will include the following:

2.4.1 Install pressure monitors and software in each of the building's AHUs, interfaced through the building's EMS to monitor the pressure drop across the filters. When the pressure drop exceeds the values prescribed by the engineer, the system will notify the maintenance department that the filters for that particular AHU should be replaced.

2.4.2 Investigate and, if possible, resolve pressure problems that were apparent when reviewing the air balance reports that kept the AH-5 from being capable of accepting the enhanced filtration strategy.

2.4.3 Install larger motors, variable frequency drive, and wiring where required based upon the previous engineering report (Kesler, 2013a).

2.4.4 Replace the currently installed MERV 8 filters with four-inch deep MERV 13A filters (Aeolus SMP80 AT 24244) or comparable filters with equivalent filter efficiency (according to ASHRAE 52.2) and equal capacity in those AHUs that can be readily adapted to four-inch deep filters. In those units that cannot be adapted to four-inch deep

filters, install MERV 14A filters (Purolator Prime One PRM98-4402) or comparable filters with equivalent filter efficiency (according to ASHRAE 52.2) and equal capacity.

2.4.5 Rebalance the air handlers with new improved filters.

2.5 Hunter High School – Subject to any limitations imposed by the Utah Procurement Code, the District will have a qualified engineering consultant develop a scope of work for selecting and managing contractors to upgrade the infrastructure necessary for operating the HVAC System Upgrades. The engineer will detail the modifications for construction, prepare bid and contract documents as appropriate, and oversee the installation and final adjustments and acceptance of the work (Bennion, 2013). The work will include the following:

2.5.1 Install pressure monitors and software in each of the building's AHUs, interfaced through the building's EMS to monitor the pressure drop across the filters. When the pressure drop exceeds the values prescribed by the engineer, the system will notify the maintenance department that filters for that particular AHU should be replaced.

2.5.2 Investigate and, if possible, resolve the pressure problems that were apparent when reviewing the air balance reports that kept a number of air handlers from being capable of accepting the enhanced filtration strategy.

2.5.3 Install larger motors, variable frequency drive, and wiring where required based upon the previous engineering report (Logan, 2013).

2.5.4 Replace the currently installed MERV 8 filters with four-inch deep MERV 13A filters (Aeolus SMP80 AT 24244) or comparable filters with equal capacity in those AHUs that can be readily adapted to four inch deep filters. In those units that cannot be adapted to four-inch deep filters, install MERV 14A filters (Purolator Prime One PRM98-4402) or comparable filters with equivalent filter efficiency (according to ASHRAE 52.2) and equal capacity.

2.5.5 Rebalance the air handlers with the new improved filters.

3. The District shall obtain competitive bids for the HVAC System Upgrades set forth in Section 2 above. The contract for the HVAC System Upgrades shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in Section 2 above.

3.1 Construction bids for the HVAC System Upgrades may be solicited, awarded, and/or performed in two phases, at the discretion of the District subject to timeframe set forth in Section 2.

3.1.1 In such event, Phase 1 shall be comprised of Hillside Elementary and Hunter High and Phase 2 shall be comprised of Whittier Elementary, West Valley Elementary, and Hunter Jr. High.

3.1.2 The District shall provide AWG and UDOT with Expected Upgrade Installation Costs for each phase of the work and each phase shall proceed pursuant to the remainder of this Section 3.

3.2 If the construction bids for the HVAC System Upgrades are at or below the Expected Upgrade Installation Cost, the District may provide Notice to Proceed to the contractors. A summary of the accepted bids will be provided to the AWG prior to or within fifteen days of the Notice to Proceed.

3.3 If the total cost of the bids received for the HVAC System Upgrades exceeds the Expected Upgrade Installation Cost, the District will consult with the AWG and UDOT as follows:

3.3.1 If the total cost for the HVAC System Upgrades is equal to or up to ten percent (10%) above the Expected Upgrade Installation Cost, the District will notify the AWG and UDOT of the additional costs and UDOT will, within thirty days after notification and receipt of relevant bid documentation, provide a check for the overage amount to the District.

3.3.2 If the bids received for the HVAC System Upgrades exceeds one hundred and ten percent (110%) of the Expected Upgrade Installation Cost, the District and AWG will consult and a mutual decision will be made by the District and the AWG within 30 days about whether or not to proceed with the upgrades, or about whether alterations to the proposed HVAC System Upgrades are required at any individual school. The District shall have no obligation to bear the expense of unfunded improvements or to perform any work under this Agreement that is not guaranteed to be fully reimbursed by UDOT.

3.3.3 If the AWG and the District agree to reduce or alter the HVAC System Upgrades for any of the individual schools and the resulting total cost is less than the Expected Upgrade Installation Cost, the District shall return any such excess amount as set forth in Section 3.3 below.

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3.4 If the total cost for the installation of the HVAC System Upgrades is less than the Expected Upgrade Installation Cost for any reason, including that set forth in section 3.2.3 above, any such excess amounts shall be returned by the District in a check to UDOT within thirty days of completion of the installation of the HVAC System Upgrades. Any such refunded amounts shall be available for use by the AWG for air quality mitigation and monitoring.

4. The District will keep the AWG and UDOT reasonably informed of the progress concerning the HVAC System Upgrades. Provided that after execution of this Agreement the District works diligently to solicit and award the contracts for installation of the HVAC System Upgrades and uses commercially reasonable efforts to ensure that the work is performed in a diligent manner, failure to meet the timeframe set forth in Section 2 shall not result in a breach of this Agreement. Upon completion of the HVAC System Upgrades the District will provide the AWG and UDOT with documentation describing the HVAC System Upgrades that were completed in the five schools. This documentation will include a description of the scope of work for each of the schools and a total installation cost summary.

5. In order to cover the increased cost of operation and maintenance resulting from the HVAC System Upgrades, UDOT will provide payment to the District totaling \$1,160,681.00 (the Total Expected Maintenance Cost) as set forth herein. Within sixty days after both completion of the HVAC System Upgrades described in Section 2, and the AWG and UDOT receipt and acceptance of the documentation set forth in Section 4 above—which acceptance shall not be unreasonably withheld or delayed—UDOT will provide a check in the amount of \$1,044,612.90. The remaining 10% of the Total Expected Maintenance Cost (\$116,068.10) shall be withheld by UDOT until receipt of the first annual report described in Section 5.4 below.

5.1 For documentation purposes and to further the AWG's mission to reduce student exposure to near-roadway pollution and to provide a record for future mitigation efforts, the AWG will sponsor an independent evaluation of the HVAC System Upgrades. Upon completion of the improvements, the District shall allow access for the evaluation of the work as follows: (1) within sixty days after completion of the HVAC System Upgrades if the schools receiving the improvements are in session and the improvements are operating within their ordinary scope, or (2) if school is not in session, within thirty days after such ordinary operation resumes. Any such access shall occur at times of day and on a schedule reasonably convenient to the District. Results of the evaluation will be shared with the District prior to any further use by the AWG and the AWG and District will use good faith efforts to ensure that the independent evaluation is used in a manner that furthers, and does not detract from, the collaborative and cooperative relationship of the parties as it relates to this Agreement and the HVAC System Upgrades.

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5.1.1. The independent evaluation shall be conducted by a qualified consultant, mutually agreeable to both AWG and the District;

5.1.2. The scope of the independent evaluation shall focus upon evaluation of the effectiveness and functioning of the mitigating measures provided for in this Agreement which are specifically intended to mitigate an increase in near-roadway air pollution caused by traffic on and construction of the Mountain View Corridor. To the extent the independent evaluator gathers any information about other air quality metrics as a direct result of the evaluation of near-roadway air pollution, that information shall be shared with the District and shall not be shared more broadly without agreement between the AWG and the District.

5.2. For avoidance of doubt, payment of the Total Expected Maintenance Cost as set forth in Section 5 above shall not be conditioned upon the results of AWG's evaluation of the HVAC System Upgrades.

5.3 The express purpose of the Total Expected Maintenance Cost payment is to offset increased costs the District would otherwise bear for the operation and maintenance of the HVAC System Upgrades. The District commits to use the upgraded filters described above or comparable filters with equal capacity for a period of thirty years. The District acknowledges that UDOT has no further obligations to the District upon payment of both the Total Expected Maintenance Cost and the Expected Installation Cost (including the remaining 10% withheld pursuant to Section 5 above) or such other total amount as may be provided to the District pursuant to reduced initial installation cost or pursuant to approved cost overruns in excess of the 10% guaranteed contingency provided for by Section 3 of this Agreement and District waives any claims or costs against UDOT for any further improvements and costs upon receipt of same.

5.4 The District shall provide the AWG and UDOT an annual report for a maximum of fifteen years following installation of the HVAC System Upgrades, or such shorter period should the AWG and UDOT determine annual reports are no longer necessary. Upon receipt of the first annual report, UDOT will issue a check for the remaining 10% of the Total Expected Maintenance Cost withheld as set forth in Section 5 above. Failure of the District to provide the annual reports is an express breach of this Agreement. The annual report shall include the following information:

- a. A written description of the filters used in each of the schools, the replacement frequency and the actual filter costs.
- b. A written description of the functionality of the pressure monitors and software over the previous year,
- c. A written description of any issues or challenges associated with operating and maintaining the upgraded HVAC systems and whether they have been resolved,
- d. A written description of the maintenance and other costs associated with the HVAC System Upgrades.

6. The funds transferred to GSD from UDOT under this Agreement shall be used exclusively for Approved Air Quality Purposes. "Approved Air Quality Purposes" is defined as air quality improvement (to include filtration or other air quality improving measures), air quality monitoring, repairs/upgrades to the initial improvements funded by this Agreement, other unanticipated modifications to the systems necessitated by the improvements funded by this Agreement, and/or air quality education and shall be used only for these GSD schools: Hunter High School, Hunter Jr. High School, Whittier Elementary, Hillside Elementary and West Valley Elementary. The funds must not be used for general maintenance or any other purposes not expressly intended to improve air quality for students attending GSD schools. Use of any remaining funds for anything other than the purposes expressed herein, absent the written consent of UDOT and the AWG is an express breach of this Agreement. In the event of such a breach, which remains uncured pursuant to Section 7 below, the remaining funds shall be forfeited and returned to UDOT for the use of the AWG, this Agreement shall be deemed terminated, and the District shall be relieved of all remaining obligations hereunder.

7. In the event either party asserts a breach of this Agreement, it shall provide written notice of such breach to the other party, which shall have fifteen days in which to commence a cure. Should the party fail to fully cure the breach within thirty days or within such other period of time as the parties may otherwise agree is reasonable under the circumstances, that party shall be in default of this Agreement. In the event of a breach involving the District's use of Agreement funds for a purpose other than Approved Air Quality Purposes the District shall be entitled to remedy said breach through repayment or reallocation of other District funds for the express use for Approved Air Quality Purposes. Any such repayment or reallocation of funds shall be confirmed in writing to UDOT.

8. UDOT represents and warrants that the work to be performed by the District and its contractors under this Agreement is not subject to the federal Davis-Bacon Act or Davis-Bacon related Acts and agrees that the District shall have no responsibility to pay contractors performing work under this Agreement Davis-Bacon prevailing wages. UDOT shall defend and indemnify the District against any and all claims asserting or otherwise relating to allegations that the District has failed to pay such prevailing wages.

9. This Agreement may be executed in counterparts by UDOT and the District.

10. This Agreement does not create any type of agency relationship, joint venture or partnership between UDOT and the District.

11. The District and UDOT agree to take any and all actions and execute, acknowledge, and deliver any and all documents reasonably necessary to effect the purposes of this Agreement.

12. This Agreement, together with any exhibits and attachments, constitutes the entire agreement between UDOT and District and supersedes any prior understandings,

agreements, or representations, verbal or written. No subsequent modification or amendments will be valid unless in writing and signed by UDOT and District.

13. UDOT and District each represents that it has the authority to enter into this Agreement.

**IN WITNESS WHEREOF**, UDOT and the District have caused the Agreement to be executed by their duly authorized officers as of the day and year first written above.

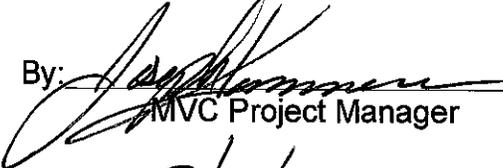
**GRANITE SCHOOL DISTRICT**  
a political subdivision of the State of Utah

By:   
David F. Garrett

Title: Business Administrator  
Date: March 8, 2016

RECOMMENDED FOR APPROVAL:

UTAH DEPT. OF TRANSPORTATION

By:   
MVC Project Manager

By:   
Region Two Director

Date: 3/10/16

Date: 3/14/16

By:   
CONTRACT ADMINISTRATOR  
COMPTROLLER'S OFFICE

Date: 3-22-16