

INTERLOCAL AGREEMENT
BETWEEN
GREATER SALT LAKE MUNICIPAL SERVICES DISTRICT
AND SALT LAKE COUNTY
FOR MAIL ROOM SERVICES

THIS AGREEMENT (the “Agreement”) is made and entered into by and between GREATER SALT LAKE MUNICIPAL SERVICES DISTRICT, a local district and political subdivision of the state of Utah (“District”), and SALT LAKE COUNTY, a body corporate and politic and a political subdivision of the state of Utah, on behalf of its Division of Facilities Maintenance. The District and County are sometimes referred to in this Agreement as the “Parties.”

RECITALS

- A. On September 15, 2015, the County created the District by resolution setting forth boundaries as a municipal services district pursuant to the MUNICIPAL SERVICES DISTRICT ACT, UTAH CODE ANN. § 17B-2a-1101 *et seq.* (the “Act”). The District is authorized to exercise all rights, powers, duties, and responsibilities of a municipal services district as provided by law. The District was created to provide specified municipal services to unincorporated areas of the County and to those metro townships, cities, and towns that might choose to be part of the District or to contract with the District for the provision of services, which municipalities may be referred to in this Agreement as “Members” of the District.
- B. Pursuant to the Interlocal Cooperation Act, UTAH CODE ANN. § 11-13-101 *et seq.* (the “Interlocal Cooperation Act”), the County and the District are authorized to enter into this Agreement.

- C. Subject to available funding, the Parties intend that the personnel, services, and assets to be provided by the County will be provided on an actual full cost basis, and the Parties agree that such actual cost basis is reasonable, fair and adequate compensation to the County for providing such personnel, assets and services.
- D. The District is in need of certain services that the County is willing and able to provide.
- E. The Parties have determined that it is mutually advantageous to enter into this Agreement and believe that the services provided by the County under this Agreement will contribute to the prosperity, moral well-being, peace, and comfort of Salt Lake County residents served by the District.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Scope and Description of Services to be Provided. The County agrees to provide the District with Mail Room Services (“Services”) as defined in Attachment A, which is incorporated by reference and made part of this Agreement, for the term of this Agreement, including extensions and renewals thereof. The County shall perform the Services in a professional, reasonable and responsible manner. The County and District acknowledge and agree that the District shall retain all policy decision-making authority with regard to the type, scope and quality of the Services provided under this Agreement. The County is only providing Services to the District under the direction and control of the District. The Services, or a component Service included within the Services, may be modified (increased or decreased), canceled or extended by the District or County with a

minimum of six (6) month's advance notice, provided that the Parties reach written agreement respecting the particulars of the modification, cancellation, or extension, including a modified rate schedule. The County shall use its best efforts to provide any increase in a Service requested by the District. The amount due for such increase or decrease shall accrue as of the date the modified Services become effective, and shall be due and payable as provided in Section 3 hereof. Should the Parties be unable to agree on the amount of the increase or decrease, the issue may be resolved as provided in Section 21 below.

2. Fees for Services.

- a. For the initial term of the Agreement, the District shall pay the County pursuant to the 2019 and/or 2020 rate schedule (the "Contract Price") detailed in Attachment B, which is incorporated by reference and made part of this Agreement, for the defined services provided by the County. The fees shall consist of the actual costs to provide each of the services identified in Attachment "A" including personnel and other associated costs. Because overhead costs are part of the full cost of services that the County provides under the Agreement, and State law and County ordinance and policy requires recoupment of the full cost of services, the County may continue to charge the District all of its overhead, i.e., indirect costs that may reasonably be allocated to provision of the Services. The Parties acknowledge that they are negotiating a potential change to the Agreement in regards to how overhead is handled, and any agreed-upon change will appear in a later amendment of the Agreement.

- b. The Parties recognize, understand and agree that the Services to be provided by the County to the District pursuant to this Agreement are not to be a “profit center” for the County but, rather, are intended to cover the County’s reasonable actual costs incurred in providing the Services.
 - c. Revenue received by the County as a result of providing the Services shall be credited to the District and deducted from any amount which otherwise would be due from the District under this Agreement.
3. Subsequent Price Increases. For each subsequent calendar year, the County agrees to provide any estimated updated rate schedule to the District not later than September 1st of each year during which this Agreement is in effect, with the actual rate increase or decrease to be as approved by the County Council pursuant to the County’s final adopted budget, and effective no sooner than January 1st of the next succeeding year. Should the County fail to do so after a 15-day grace period (or by September 15), the prior approved rate schedule shall remain in effect during the subsequent calendar year unless the Parties otherwise agree in writing. Upon request, the County will provide an explanation for any anticipated price increase. Should the District dispute any cost increase estimated by the County in September, the Parties agree to work together in good faith prior to approval of the County’s final adopted budget to come to a resolution in accordance with Section 21 below. Should the Parties be unable to reach an agreement, the District shall be free to provide notice of termination per section 6 and secure the subject Service or Services from any other service provider and/or to retain personnel, materials, equipment, etc. as necessary or appropriate for the District to provide the same, whereupon at the conclusion of the termination notice period, this Agreement shall terminate respecting the said

Service, but not otherwise. If the District provides notice of termination, the final Council-approved rate schedule for the new budget year shall apply to that year until the contract terminates, even if the rate of services is the reason for termination.

4. Remittance of Contract Price.

- a. County shall bill the District on a monthly basis for the Services rendered as set forth in Attachment B or as otherwise agreed to in writing by the Parties. The County shall submit the monthly billing to the District, with the invoice presented to the District General Manager for review and approval, within forty-five (45) days after the end of each month during which any Service was provided. The billing shall cover all Services provided by the County under this Agreement during the monthly billing period, contain such detail as desired by the District, and fully comply with the requirements stated in the applicable Attachment. The District shall remit payment for Services within forty-five (45) days after the date of receipt of any undisputed bill to:

Salt Lake County Facilities Management
Attn: Fiscal Manager
2001 South State Street, Room S3-120
Salt Lake City, UT 84050

- b. If the date a payment is due and payable falls on (i) a legal holiday recognized by either the County or the District, (ii) a Saturday, (iii) a Sunday, or (iv) another day on which weather or other conditions make the relevant County office inaccessible, then the payment shall be due and payable on the next day which is not one of the aforementioned days. If any required payment is not remitted to the County as and when due, the County shall be entitled to recover interest

thereon at the rate of one percent (1%) per calendar month, to accrue from and after the date the remittance is due and payable.

5. Effective Date and Term.

- a. This Agreement shall be effective upon the last of the following events to occur:
 - (i) approval of the Agreement as provided in the UTAH CODE ANN. § 11-13-202.5(1) and (2), (ii) delivery of the Agreement to an attorney representing each Party for review as to proper form and compliance with applicable law, and (iii) the filing of the signed Agreement with the keeper of records of each of the Parties.
- b. The initial term of this Agreement shall terminate on December 31, 2020.
- c. Thereafter, the term may be renewed annually upon the same terms and conditions as set forth herein. Each annual extension shall be initiated by either Party sending, in writing, its intention to renew the Agreement for an additional one-year period, prior to October 1 of each contract year. Upon written notice by the other Party that it is willing to enter into such an extension, issued no later than November 1 of that contract year, the Agreement shall be automatically extended for one year commencing on the first day of new calendar year. References to the “term” of this Agreement shall include all renewal periods.
- d. The total duration (term) of this Agreement may not exceed 50 years.

6. Termination. Pursuant to Utah Code Ann. § 11-13-206(a), the Parties agree this Agreement may be terminated (with or without cause) by either party upon at least one-hundred eighty (180) days prior written notice to the other Party.

7. Written Notices. For purposes of communicating and maintaining ongoing contract management, written notices will be delivered, mailed or sent by email to each designated Party identified below to the address or email on file with the District. Each Party shall be responsible to maintain updated addresses and emails.

DISTRICT: Greater Salt Lake Municipal Services District
District General Manager
2001 South State Street, N3 600
Salt Lake City, UT 84190
E-mail: bbarker@msd.utah.gov

With a copy to Counsel for the District
Fabian VanCott
Mark H. Anderson
Rachel S. Anderson
215 South State Street, Suite 1200
Salt Lake City, UT 84111
E-mail: mhanderson@fabianvancott.com
E-mail: randerson@fabianvancott.com

COUNTY: Salt Lake County – Facilities Management
Division Director
2001 South State Street, S3200
Salt Lake City, UT 84190
E-mail: rpayne@slco.org

With a copy to Salt Lake County District Attorney
Attn: Chief Deputy District Attorney
35 East 500 South
Salt Lake City, UT 84111
E-mail: rhamness@slco.org

A written notice shall be effective immediately upon personal or e-mail delivery as noted above or on the third business day after deposit in the United States mail, first class postage pre-paid, addressed as stated above. From time-to-time, either Party may change its notice address by so notifying the other Party as provided above.

8. Independent Contractors.

- a. The relationship of the County, and of any County employee, with the District under this Agreement shall be that of an independent contractor. The County has the entire responsibility to discharge all of the obligations of an independent contractor under federal, state, and local laws, including, but not limited to, those obligations relating to employee supervision, benefits and wages, taxes, unemployment compensation and insurance, social security, worker's compensation, and disability pensions and tax withholdings, including the filing of all returns and reports and the payment of all taxes, assessments and contributions, and other sums required of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship between the District and the County, or the County's employees, of employer and employee, partners, or parties to a joint venture. Should the District have any criticism, concern, or recommendation regarding any County employee, specifically or generally, the District may raise it directly with the head of the County department or division under which the employee operates. The County shall diligently and appropriately address an issue raised by the District and promptly report back to the District, as appropriate.
- b. In performing the Services, the County shall furnish and supply all necessary labor, supervision, insurance coverage, equipment, buildings, supplies, assets, communication facilities, uniforms, badges, and other facilities and items and support services necessary and incident to the provision of the subject Service in compliance with the requirements of the law, including the Americans with Disabilities Act, and all rules and regulations adopted or promulgated in

furtherance thereof, as understood by the County. As provided herein, the Services shall be provided and supervised by County employees. County employees shall remain County employees for all legal purposes, including salary, rights, and benefits, and shall retain their respective seniority, merit status, and all other conditions of County employment except as may otherwise be provided in a separate agreement.

9. Liability. The District and the County are governmental entities under the Governmental Immunity Act of Utah, UTAH CODE ANN. § 63G-7-101, *et seq.* the (“Governmental Immunity Act”). Consistent with the terms of the Governmental Immunity Act, as provided therein, it is mutually agreed that each Party is responsible for its own wrongful or negligent acts which are committed by its agents, officials, or employees. No Party waives any defense otherwise available under the Governmental Immunity Act nor does any Party waive any limit of liability currently provided by the Governmental Immunity Act. Each Party agrees to notify the other Party of the receipt of any notice of claim under the Governmental Immunity Act for which one Party may have an obligation to defend, indemnify, and/or hold harmless a Party within thirty (30) days of receiving the notice of claim. Each Party also agrees to notify the other Party of any summons and/or complaint served upon the said Party, if a Party may have an obligation to defend, indemnify, and/or hold harmless the other Party, at least ten (10) days before an answer or other response to the summons and/or complaint may be due.
10. Indemnification. The County shall defend, indemnify, save and hold harmless the District, including, without limitation, its elected and appointed officers and officials, and its employees and consultants, from and against any and all demands, liabilities, claims,

damages, actions, and/or proceedings in law or equity, including reasonable attorney fees and costs of suit, relating to or arising from the County providing Services to the District. Similarly, the District shall defend, indemnify, save and hold harmless the County including, without limitation, its elected and appointed officers and officials, and employees, from and against demands, liabilities, claims, damages, actions, and/or proceedings in law or equity, including reasonable attorney's fees and costs of suit, relating to or arising from actions of the District's agents, officers or employees, except such demands, liabilities, claims, damages, actions or proceedings as may result from the negligence or misconduct of the County, its elected or appointed officers or employees.

11. Interlocal Cooperation Act. For the purpose of satisfying specific requirements of the Interlocal Cooperation Act, the Parties agree as follows:

- a. The Parties do not, nor intend to, create an interlocal entity by entering into this Agreement.
- b. Each Party has submitted this Agreement to an attorney authorized to represent the said Party for review as to proper form and compliance with applicable law.
- c. The duration of this Agreement is as set forth in Sections 5 and 6 above.
- d. The District is funded by the County per Interlocal Agreement and state statute.
- e. The District shall be responsible for formulating and approving its annual budget and the County shall be responsible for formulating and approving its annual budget and, in particular, the annual budget of each County division and department that will or may provide any Service to the District as provided in this Agreement.

- f. Each Party will acquire, hold, and dispose of its own real and personal property and there will be no jointly owned property upon the partial or complete termination of this Agreement, including the termination of any Service to be provided hereunder.
- g. To the extent necessary to administer the cooperative undertaking set forth in this Agreement, the General Manager of the District shall have the full authority and responsibility to administer the cooperative undertaking on behalf of the District, and any representative designated by the Mayor of the County shall have the full authority and responsibility to administer the cooperative undertaking on behalf of the County. Although it is not anticipated that voting will be required, to the extent that voting is required, voting shall be made on the basis of one vote per Party, and not weighted.
- h. Because this Agreement cannot take effect under the Interlocal Cooperation Act until it is approved, signed, and filed with the keeper of records of each of the Parties, each Party agrees, immediately upon approval and execution of this Agreement, to file the signed Agreement with the keeper of records of the said Party.
- i. Notwithstanding anything herein to the contrary, in the event that this Agreement does not satisfy any requirement of the Interlocal Cooperation Act, which failure would cause this Agreement to fail to be effective under the Interlocal Cooperation Act, this Agreement shall nevertheless be fully binding upon and enforceable by the Parties pursuant to law outside of the application of the Interlocal Cooperation Act.

12. Non-Funding.

- a. The Parties acknowledge that the obligation of any Party to perform as provided in this Agreement is conditioned and dependent upon the appropriation of funds required for any payment due hereunder or to finance the provision of any Service as provided in this Agreement. Each Party's obligation is contingent upon funds being appropriated annually for payments due for the provision of the Services to be provided under this Agreement.
- b. If no funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriations due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement then, unless the Parties mutually agree in writing to reduced Services and/or reduced payments that are in line with available and budgeted funding, this Agreement shall create no obligation on the Parties or any Party as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become void on the first day of the fiscal year for which funds are not budgeted and appropriated or, in the event of a reduction in appropriation, on the last day before the reduction becomes effective (except as to those reduced Service(s) and/or portions of payments required to perform hereunder as agreed upon by the Parties for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payment, or other charge of any kind whatsoever to the Parties, and no right or action for damages or other relief shall accrue to the benefit of any Party to this Agreement

13. Applicable Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah.
14. 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.
15. Waiver. No failure by any 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.
16. Recitals and Exhibits. The recitals are an integral part of this Agreement and are included as part of this Agreement. All exhibits and attachments annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or any such writing, shall be deemed to refer to and include this Agreement and all such exhibits, attachments and writings.

17. Amendment. The Parties may amend this Agreement as provided in the Interlocal Cooperation Act by a writing signed by the Parties. The amendment shall not be effective if it is not in writing or if it is not signed by all the Parties.
18. No Agency. Agents, employees or representatives of each party shall not be deemed to be agents, employees or representatives of the other.
19. 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 right or remedy.
20. Filing. Promptly upon its mutual execution and delivery, copies of this Agreement shall be filed with the keeper of records of each of the Parties.
21. Claims and Disputes.
- a. CLAIMS AND DISPUTES. In the event of a claim or dispute between the Parties regarding the Services, the Parties agree (without limiting any and all other legal and equitable remedies) that a representative of the District will meet as soon as practical with a representative of the County to discuss and attempt to resolve such dispute.
 - b. 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 rights or remedies provided in this Agreement shall not preclude the exercise of any other right or remedy.
22. Titles and Captions. All section or subsection titles or captions in this Agreement 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

23. 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.

24. Time. Time is of the essence.

25. 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.

26. Severability. In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

27. Litigation Expenses. If any action, suit or proceeding is brought by either Party 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.

28. 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. A signature delivered electronically shall be deemed an original.

Each Party hereby signs this Interlocal Cooperation Agreement on the date written by each Party on the signature pages attached hereto.

[The balance of this page was left blank intentionally – Signature pages follow]

INTERLOCAL AGREEMENT -- SIGNATURE PAGE FOR THE COUNTY

SALT LAKE COUNTY:

By _____
Mayor Jennifer Wilson or Designee

Dated: _____, 2019

Reviewed by:

ADMINISTRATIVE APPROVAL

By _____
Megan Hillyard
Department Director

Approved as to Form and Legality:

SALT LAKE COUNTY DISTRICT ATTORNEY

By _____
Deputy District Attorney

[Signatures continue on next page.]

INTERLOCAL AGREEMENT -- SIGNATURE PAGE FOR THE DISTRICT

**GREATER SALT LAKE MUNICIPAL
SERVICES DISTRICT**

By _____

Name: _____

Title: _____

Dated: _____, 2019

Approved as to Form and Legality:
ATTORNEY FOR THE DISTRICT

By _____

Name: _____

Dated: _____, 2019

ATTACHMENT A

- A. The County will provide daily intake, sorting, and delivery services of mail delivered to the Salt Lake County Government Center by the United States Postal Services on business days.
- B. The County will pick up MSD mail once daily within the Salt Lake County Government Center on business days.

ATTACHMENT B

As further detailed in the Agreement, the County will invoice the MSD monthly in arrears for services provided at the following rates:

- a. A monthly flat fee of \$45.00.
- b. Actual postage the County pays, with no mark-up, for items the MSD sends out through the County's mail system.
- c. A fee for mail sorting based on a scaled approach:
 - i. 0-90 pieces/month = no charge
 - ii. 91-270 pieces/month = \$5.00
 - iii. 271-450 pieces/month = \$10.00
 - iv. Each additional 0-180 pieces = \$5.00