

County Contract No. _____
D.A. No. 18-12801

INTERLOCAL COOPERATION AGREEMENT

between

MT. OLYMPUS IMPROVEMENT DISTRICT

and

**SALT LAKE COUNTY on behalf of the
COUNTY CLERK'S ELECTION'S DIVISION**

FOR LOCAL DISTRICT ELECTION

THIS AGREEMENT is made and entered into the 25th day of March, 2019, by and between SALT LAKE COUNTY (the "County"), a body corporate and politic of the State of Utah, on behalf of the Salt Lake County Clerk's Office, Elections Division; and the Mt. Olympus Improvement District (the "Local District").

RECITALS:

WHEREAS, the County desires to provide the services of its clerk's office, elections division, to the Local District for the purpose of assisting the Local District in conducting the Local District's 2019 trustee election; and

WHEREAS, the Local District desires to engage the County for such services; and

WHEREAS, the parties are public agencies and are therefore authorized by the Utah Interlocal Cooperation Act, UTAH CODE ANN. §§ 11-13-101 to -608 (2018), to enter into agreements to cooperate with each other in a manner which will enable them to make the most efficient use of their resources and powers.

AGREEMENT:

NOW THEREFORE, in exchange for valuable consideration, including the mutual covenants contained in this Agreement, the parties covenant and agree as follows:

1. **Term.** The County shall provide election services described below to the Local District commencing on the date this Agreement is executed and terminating on December 31, 2019. Either party may cancel this Agreement upon thirty (30) days written notice to the other party. Additionally, Local District may cancel services this Agreement as provided in paragraph 9 below upon written notice to County, based upon Local District's determination that the election for 2019 will not be necessary. County will cease providing such services as soon as practical. Upon such cancellation, each party shall retain ownership of any property it owned prior to the date of this Agreement, and the Local District shall own any property it created or acquired pursuant to this Agreement.

2. **Scope of Work.** The services to be provided by the County shall be as set forth in the Scope of Work, attached hereto and incorporated by reference as Exhibit "A." Generally, the County shall perform the listed election functions as set forth in Exhibit "A" and as needed to ensure implementation of the Local District's 2019 trustee election.

3. **Legal Requirements.** The County and the Local District understand and agree that the 2019 Local District trustee election is the Local District's election. The Local District shall be responsible for compliance with all legal requirements for these elections. The Local District agrees to translate ballot issues, if any, into Spanish. The County will provide the remaining Spanish translations for the ballot and other election materials as required by law. The County agrees to work with the Local District in complying with all legal requirements for the conduct of these elections and conduct these elections pursuant to the direction of the Local District, except as provided in this Agreement and Exhibit "A." The County agrees to disclose and maintain election results through its website merely as a courtesy and convenience to the Local District. The Local District, and not the County, is responsible to resolve any and all election questions, problems, and legal issues that are within the Local District's statutory authority. The

County will cooperate in providing documents to the Local District in the event that election challenges are filed against the Local District that involve the County's services under this Agreement.

4. **Cost.** In consideration of the services performed under this Agreement, the Local District shall pay the County an amount not to exceed the estimate attached hereto and incorporated by reference as Exhibit "B." The County shall provide a written invoice to the Local District at the conclusion of the elections, and the Local District shall pay the County within thirty days of receiving the invoice. The invoice shall contain a summary of the costs of the election and shall provide the formula for allocating the costs among the issues and jurisdictions participating in the elections. In the case of a vote recount, election system audit, election contest, or similar event arising out of the Local District's election, the Local District shall pay the County's actual costs of responding to such events, based on a written invoice provided by the County. The invoice amount for these additional services may cause the total cost to the Local District to exceed the estimate given to the Local District by the County. For such consideration, the County shall furnish all materials, labor and equipment to complete the requirements and conditions of this Agreement.

5. **Governmental Immunity.** The Local District and the County are governmental entities and subject to the Governmental Immunity Act of Utah, UTAH CODE ANN. §§ 63G-7-101 to -904 (2018) (the "Governmental Immunity Act"). Nothing in this Agreement shall be deemed a waiver of any rights, statutory limitations on liability, or defenses applicable to the Local District or the County under the Governmental Immunity Act or common law. Each party shall retain liability and responsibility for the acts and omissions of their representative officers. In no event shall this Agreement be construed to establish a partnership, joint venture or other similar relationship between the parties and nothing contained herein shall authorize either party to act

as an agent for the other. Each of the parties hereto assumes full responsibility for the negligent operations, acts and omissions of its own employees, agents and contractors. It is not the intent of the parties to incur by Agreement any liability for the negligent operations, acts, or omissions of the other party or its agents, employees, or contractors.

6. **No Obligations to Third Parties.** The parties agree that the County's obligations under this Agreement are solely to the Local District. This Agreement shall not confer any rights to third parties.

7. **Indemnification.** Subject to the provisions of the Act, the Local District agrees to indemnify and hold harmless the County, its agents, officers and employees from and against any and all actions, claims, lawsuits, proceedings, liability, damages, losses and expenses (including attorney's fees and costs), arising out of or resulting from the performance of this Agreement to the extent the same are caused by any negligent or wrongful act, error or omission of the Local District, its officers, agents and employees and including but not limited to claims that the County violated any state or federal law in the provision of election services under this Agreement.

8. **Election Records.** The Local District shall maintain and keep control of all records created pursuant to this Agreement and from the elections relevant to this Agreement. The Local District shall respond to all public record requests related to this Agreement and the underlying elections and shall retain all election records consistent with the Government Records Access and Management Act, UTAH CODE ANN. §§ 63G-2-101 to -901 (2018), and all other relevant local, state and federal laws.

9. **Service Cancellation.** If the services under this Agreement are canceled by the Local District as provided above, the Local District shall pay the County on the basis of the actual services performed according to the terms of this Agreement through the date of notice of cancellation of services. Upon cancellation of this Agreement by either party, the County shall

submit to the Local District an itemized statement for services rendered under this Agreement up to the time of cancellation and based upon the dollar amounts for materials, equipment and services set forth herein. This Agreement will not terminate until payment for all County services have been received even after County services have been cancelled.

10. **Legal Compliance.** The County, as part of the consideration herein, shall comply with all applicable federal, state and county laws governing elections.

11. **Agency.** No agent, employee or servant of the Local District or the County is or shall be deemed to be an employee, agent or servant of the other party. None of the benefits provided by either party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party. The Local District and the County shall each be solely and entirely responsible for its own acts and for the acts of its own agents, employees and servants during the performance of this Agreement.

12. **Force Majeure.** Neither party shall be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of that party, e.g., acts of God, fires, floods, strikes or unusually severe weather. If such condition continues for a period in excess of 60 days, the Local District or the County shall have the right to terminate this Agreement without liability or penalty effective upon written notice to the other party.

13. **Notices.** Any notice or other communication required or permitted to be given under this Agreement shall be deemed sufficient if given by a written communication and shall be deemed to have been received upon personal delivery, actual receipt, or within three (3) days after such notice is deposited in the United States mail, postage prepaid, and certified and addressed to the parties as set forth below:

Salt Lake County Salt Lake County Mayor
2001 South State Street, N2-100
Salt Lake City, Utah 84190

and

Pam Tueller
Fiscal Manager
Salt Lake County Clerk's Office
2001 South State, Suite S2-200
Salt Lake City, Utah 84190-1050
email: ptueller@slco.org

Local District Mt. Olympus Improvement District
Attn: Kerry S. Eppich, General Manager
3932 South 500 East
Salt Lake City, UT 84107-1895
Email: kseppich@mtoid.org

14. **Required Insurance Policies.** Both parties to this Agreement shall maintain insurance or self-insurance coverage sufficient to meet their obligations hereunder and consistent with applicable law.

15. **Independent Contractor.** Because the County is consolidating election functions in order to conduct multiple, simultaneous elections on November 5, 2019, certain decisions by the County referenced in Exhibit "A" may not be subject to review by the Local District. It is therefore understood by the parties that the County will act as an independent contractor with regard to its decisions regarding resources, procedures and policies based upon providing the same scope and level of service to all participating jurisdictions made for the benefit of the whole as set forth in Exhibit "A."

16. **No Officer or Employee Interest.** It is understood and agreed that no officer or employee of the County has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer or employee of the Local District or any member of their families shall serve on any County board or committee or hold any such position which either by rule, practice or action nominates,

recommends or supervises the Local District's operations or authorizes funding or payments to the Local District.

17. **Ethical Standards.** The Local District represents that it has not: (a) provided an illegal gift to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or section 2.07, Salt Lake County Code of Ordinances; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinance.

18. **Interlocal Agreement.** In satisfaction of the requirements of the Utah Interlocal Cooperation Act, UTAH CODE ANN. §§ 11-13-101 to -608 (2018), (the "Interlocal Act"), in connection with this Agreement, the Local District and the County 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. Any duly executed original counterpart of the Agreement shall 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 performed pursuant to this Agreement, and for any financing of such costs; and

e. No separate legal entity is created by the terms of this Agreement. No real or personal property shall be acquired jointly by the parties as a result of this Agreement. 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.

f. County and Local District Representatives.

i. The County designates the County Clerk as the County's representative to assist in the administrative management of this Agreement and to coordinate performance of the services under this Agreement.

ii. The Local District designates the Local District's General Manager as the Local District's representative in its performance of this Agreement. The Local District's Representative shall have the responsibility of working with the County to coordinate the performance of its obligations under this Agreement.

19. **Counterparts.** This Agreement may be executed in counterparts by the Local District and the County.

20. **Governing Law.** This Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance. All actions including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within Salt Lake County.

21. **Integration.** This Agreement embodies the entire agreement between the parties relating to the subject matter of this Agreement and shall not be altered except in writing signed by both parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

SALT LAKE COUNTY:



Mayor or Designee
Date: _____

Recommended for Approval:

Sherrie Swensen
Sherrie Swensen
Salt Lake County Clerk

Approved as to Form:

Paula K Smith
By: *Paula K. Smith*
Deputy District Attorney
Date: *3/29/19*

MT. OLYMPUS IMPROVEMENT
DISTRICT:

By: *[Signature]*
Name: *Kerry S. Eppich*
Title: General Manager

Attest:

Jammy Gonzales
Mt. Olympus Improvement District Clerk

Approved as to Form:

By: *Wallace O. Johnson*
Attorney for Mt. Olympus Improvement District
Date: *March 25, 2019*

Exhibit “A”
2019 Local District Elections
Scope of Work

The Local District agrees to the consolidation of all election administrative functions to ensure the successful conduct of multiple, simultaneous municipal and local district elections and the County agrees to conduct a vote by mail/consolidated polls election for the Local District in accordance with the municipal elections.

In a consolidated election, decisions made by the County regarding resources, procedures and policies are based upon providing the same scope and level of service to all the participating jurisdictions and the Local District recognizes that such decisions, made for the benefit of the whole, may not be subject to review by the Local District.

Services the County will perform for the Local District include, but are not limited to:

- Ballot layout and design
- Ballot ordering and printing
- Machine programming and testing
- Delivery of supplies and equipment
- Provision of all supplies
- Election vote center/early vote locations
- Vote by Mail administration
- Updating state and county websites
- Tabulating, reporting, auditing and preparing canvassing election results
- Conducting recounts as needed
- All notices and mailings required by law (except those required by Utah Code Ann. Ch. 11-14, Part 2 and § 20A-9-203
- Direct payment of all costs associated with the election to include vote center workers, training, polling places, rovers.

The Local District will provide the County Clerk with information, decisions, and resolutions and will take appropriate actions required for the conduct of the elections in a timely manner.

The County will provide a good faith estimate for budgeting purposes (Exhibit “B”). Election costs are variable and are based upon the offices scheduled for election, the number of voters, the number of jurisdictions participating as well as any direct costs incurred.

The Local District will be invoiced for its pro-rata share of the actual costs of the election which will not exceed the estimate in Exhibit B. In the event of a state or county special election being held in conjunction with a municipal or local district election, the scope of services and associated costs, and the method of calculating those costs, will remain unchanged.

Exhibit “B”
2019 Election Estimate
Mount Olympus Improvement District

Below is the good faith estimate for the upcoming *2019 General Election* for the Mt Olympus Improvement District to be held on November 5, 2019. The district will be billed for actual costs incurred, which will not exceed this estimate.

Assumptions for providing this estimate consist of the following:

- A. Active voters (as of 1/17/2019): 62,787
- B. General election for the entire local district boundary unless noted below**
- C. 15 Local Districts participating in the consolidated 2019 elections.

Estimate: \$102,197.70