

## AMENDED AND RESTATED AGREEMENT

Between  
SALT LAKE COUNTY  
And  
SALT LAKE CITY CORPORATION

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between Salt Lake County, a body corporate and politic of the State of Utah (“**County**”) and Salt Lake City Corporation, a municipal corporation and political subdivision of the State of Utah (“**City**”). County and City are individually referred to herein sometimes as a “Party” and collectively may be referred to as “Parties.”

### RECITALS

A. UTAH CODE §11-13-202 and other provisions of the Interlocal Cooperation Act (codified as UTAH CODE § 11-13-101, *et seq.*) (the “**Act**”) provides that any two or more public agencies may enter into an agreement with one another for joint or cooperative actions and to provide and exchange services that they are each authorized by statute to provide.

B. County and City are public agencies for purposes of the Act.

C. The Salt Lake County District Attorney’s Office (“**DA**”) is responsible for a wide variety of legal work, including prosecution of all felony and misdemeanor criminal matters in Salt Lake County, as well as handling civil governmental legal work and government litigation. The staff of deputy district attorneys, paralegals, investigators, legal secretaries, and other support staff comprise one of the largest criminal prosecutorial agencies in the State of Utah.

D. The Salt Lake City Prosecutor’s Office (“**Prosecutor’s Office**”) is responsible for a variety of misdemeanor cases including Class B, Class C and infractions within the municipal boundaries of Salt Lake City. The Prosecutor’s Office also handles all appeals from convictions for those cases. The staff of attorneys, paralegals, and other support staff, handle more cases in Justice Court than any other municipality or county in the State of Utah.

E. Both the DA and City are committed to the effective administration of justice for the cases they handle and recognize that as the State of Utah’s criminal justice system evolves over time, new ways to cooperate and manage the cases prosecuted by both offices should be considered.

F. On October 1, 2015, the criminal justice reforms passed in House Bill 348 during the 2015 Legislative Session went into effect.

G. Based on those statutory changes, the DA and the City recognized an opportunity to coordinate management of misdemeanor cases for increased efficiencies and more effective criminal justice. The Parties considered the benefits that could be realized by the DA’s management of the duties of the Prosecutor’s Office and entered into an interlocal agreement dated September 9, 2105, to memorialize how to achieve these mutually beneficial goals.

H. The DA's management of the Prosecutor's Office has resulted in improved and more efficient administration of justice, cost savings, and synergies for both Parties and directly benefited the residents of Salt Lake City and Salt Lake County by the efficient use of the taxpayers' dollars.

I. Benefits were also realized for employees of the Prosecutor's Office by enabling them to more closely work with the DA's attorneys and staff, many of whom have advanced experience in prosecuting criminal cases.

J. City and County agree that the DA's management of the Prosecutor's Office has enhanced the quality and level of service Salt Lake City receives in prosecution services and that County recognizes the importance of quality prosecution services to protect and advance Salt Lake City's and Salt Lake County's quality of life.

K. The Prosecutor's Office and its employees are currently located at 349 South 200 East, Suite 500. The Prosecutor's Office currently occupies approximately 12,000 square feet at that location.

L. The County constructed a building which will permanently house the DA. The new building is located at 35 East 500 South ("**DA Building**") and has sufficient space to house the Prosecutor's Office. The DA took occupancy of the DA Building in March 2018.

M. City and County have evaluated the effectiveness of increased collaboration between the DA and the Prosecutor's Office. The Parties have determined that the colocation of the Prosecutor's Office and the DA would be beneficial to the City and the County.

N. The Parties, wishing to memorialize their arrangement for the DA to continue management of the Prosecutor's Office while co-locating the Prosecutor's Office in the DA Building, by terminating the September 9, 2015 Agreement and replacing it with this amended and restated Agreement.

## **AGREEMENT**

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

### **1. Effective Date/Scope and Description of Services**

a. The September 9, 2015 Agreement shall terminate the date on which this Amended and Restated Agreement is recorded by the Salt Lake City Recorder, which shall also be the effective date of this Amended and Restated Agreement ("**Effective Date**"). City will pay County the amount of \$55,263.92 due under the September 9, 2015 Agreement as invoiced by the County. The Parties agree this payment will satisfy all financial amounts due under the September 9, 2015 Agreement.

On the Effective Date, the DA shall assume primary responsibility for the prosecution of all misdemeanors, Class A, Class B and Class C, and all infractions occurring within the jurisdiction of City.

b. Scope of Management Services

DA shall provide Management Services which include overseeing prosecution of City cases under state statute and City Ordinance, in all courts including appeals to district court and appellate courts, on behalf of the City (“**Management Services**”). City hereby designates the District Attorney as the Deputy Public Prosecutor pursuant to Utah law (Utah Code § 10-3-928) with all the rights and responsibilities of that position pursuant to law. DA shall maintain full discretion to assign staff as necessary for the efficient processing of casework and the prosecution of either City or County cases. The DA acknowledges that any changes to prosecution-related fees charged to the public are subject to the approval of the Salt Lake City Council. The Management Services shall include:

- i. advising on the investigation needed to determine if prosecution is warranted;
- ii. initiating and assisting in the negotiation of case resolutions when appropriate for the efficient administration of justice;
- iii. overseeing the drafting of legal documents such as complaints, warrants, and subpoenas;
- iv. consulting, upon request, and advising the City police department, as well as City department heads and employees, and the general public on matters concerning criminal law;
- v. consulting with City Justice Court judiciary and personnel as needed; and,
- vi. providing oversight and management of City personnel to include being responsible for all personnel decisions within the Prosecutor's Office, pursuant to City ordinance, policy, and procedure, including consultation and coordination with the City Attorney and the City Department of Human Resources.

c. Other Services and Costs

County agrees to provide all necessary office space in the DA Building, parking, equipment, office supplies, computers, desks, phones, CLE training, IT services for County equipment, access to legal research and other services needed to fulfill the duties outlined in this Agreement. City agrees to provide all employee compensation, benefits, CLE associated travel costs, HR services, and the maintenance of all relevant computer linkages and credentials for City employees to access supportive City systems such as: SLCnet, Versadex, and Evidence.com.

City will bear all costs associated with physically moving into the DA Building, including moving City personnel and their personal effects, active case files, and office supplies. It is anticipated that these costs will be absorbed by the FY18 City Prosecutor's budget.

2. Consideration

a. City shall compensate County for expenses related to lease of the space, operation, and Management Services, provided under this Agreement, from the Effective Date. These expenses are specified in three fees and set out in **Schedule A**. Combined, the three fees are the **"Quarterly Payment."** The three fees are defined as follows:

- i. the **"Management Fee"** for the Management Services, defined above. The cost for the Management Fee is based upon the volume of prosecutions within the City jurisdiction and the number of staff used to prosecute those cases;
- ii. the **"Lease Fee"** for the space City employees will occupy in the DA Building; and,
- iii. the **"Operating Fee"** for other costs covered by the County in carrying out the terms of this Agreement, including costs commonly referred to as "operating and maintenance supply" and "charges and services."

City will pay County Quarterly Payments pursuant to Schedule A. The first Quarterly Payment (prorated) covering the period of May 1, 2018 through June 30, 2018 shall be paid on or before July 31, 2018.

b. Effective City FY 19-20 and each subsequent fiscal year thereafter, the Management Fee shall increase on July 1 by a minimum of one percent (1%).

c. Effective January 1, 2019 and each subsequent calendar year thereafter, the Operating Fee shall increase on January 1 by a minimum of one-half of one percent (0.5%).

d. County may make a written request to City that the Management Fee and/or the Operating Fee increase as a result of: a need for additional personnel based on an increase of the previous year's case filings, as reported by the Administrative Office of the Courts; an increase in the previous year's case filings, as reported by the Salt Lake City Justice Court or any successor court with jurisdiction in Salt Lake City; an increase of the previous year's citations or arrests for misdemeanors and infractions within the municipal boundaries of Salt Lake City by the Salt Lake City Police Department; or any other evidence of increase in the number of cases screened or filed for the most recent twelve month period. County may also make a written request to City that the Operating Fee increase as a result of documented increased costs. City shall respond to any request and shall consider and process it within its budget or budget amendment process. Such request shall be made by February 15 of each year. County shall send all requests for such an adjustment to the City's contract administrator at the address listed in Section 8.j of this Agreement.

e. City may make a written request to County that the Management Fee and/or Operating Fee decrease as result of: a need for an decrease in the number of personnel based on a decrease of the previous year's case filings, as reported by the Administrative Office of the Courts; a decrease in the previous year's case filings, as reported by the Salt Lake City Justice Court or any successor court with jurisdiction in Salt Lake City; a decrease of the previous year's citations or arrests for misdemeanors and infractions within the municipal boundaries of Salt Lake City by the Salt Lake City Police Department; or any other evidence of decrease in the number of cases screened or filed for the most recent twelve month period. City may also make a written request to County that the Operating Fee decrease as a result of documented decreased costs. County shall respond to any request and shall consider and process it within its budget or budget amendment process. Such request shall be made by August 15 of each year. City shall send all requests for such an adjustment to the County's contract administrator at the address listed in Section 8.j of this Agreement.

3. Term

This Amended and Restated Agreement shall terminate no later than June 30, 2028. During the term of this Agreement, either Party may terminate this Agreement by giving the other Party six (6) months' prior written notice stating the reasons for the termination. Such notice shall be sent to the nonterminating Party's representative as designated in Section 8.j. If this Agreement is terminated, DA agrees to fully cooperate and coordinate all steps necessary to assure that the City prosecutorial functions go uninterrupted and are fully operational during any time of transition from DA management of City employees and services. Such steps shall include assuring that the City has available to it the e-Prosecutor case management system or an equivalent system that is fully operational at the time of termination. City agrees that it will vacate any space in the DA Building no later than the termination date. If City provides its notice of termination and the separation of prosecutorial functions has been completed prior to the end of 6-month termination period, City will no longer be required to pay the fees under this Agreement as of the actual date of separation.

4. Personnel

a. **City Employees.** Employees employed in the Prosecutor's Office ("**City Employees**") shall remain City employees and are entitled to receive all benefits available to City employees. City Employees will remain subject to all applicable Utah laws, City ordinances, policies, and procedures after the effective date of this Agreement.

b. **Salary and Wages.** City shall remain responsible for the payment of any salaries, wages, insurance benefits, mileage or other compensation to City Employees.

c. **Other Expenses.** Except as specifically outlined in this Agreement, County shall pay all other expenses related to City Employees such as registrations, bar dues, licensing fees, permits, badges, or other employee recognitions.

d. **Similar Treatment.** City Employees will have access to all facilities available to DA employees in the DA Building. DA agrees that City Employees will receive training and career support equal to other professionals employed by the DA.

e. **Daycare Usage.** The DA Building has a daycare facility which may provide daycare for City Employees. Access to the daycare will be administered by an independent contractor and DA agrees that City Employees will have access to the daycare on the same terms and conditions as DA employees. Daycare costs are subsidized as a benefit for County employees (“**Daycare Subsidy**”). City agrees to pay any subsidy for those City Employees utilizing the daycare within the DA Building. For each child of a City Employee, the Daycare Subsidy will be equal to the County’s Daycare Subsidy and shall not exceed \$200 per month per child. The Daycare Subsidy shall be paid by the City in addition to the Quarterly Payments outlined above. The City will independently determine whether City employees will pay the City the Daycare Subsidy or whether the City will pay the Daycare Subsidy as a benefit for City employees.

5. Access to Files

City and County agree to provide access to any Employee files or records necessary to fulfill their obligations under this Agreement.

6. Reporting

No later than February 15 of each year, DA shall provide an annual report to the City’s designee regarding a summary of the services furnished, case estimates and trends, court disposition rates and program participation efforts.

DA agrees to meet with City Officials upon reasonable request. Unless otherwise modified in the future, the City Attorney shall serve as the City’s designee.

7. Additional Interlocal Act Provisions. In compliance with the requirements of the Act and other applicable law:

- a. **No Separate Legal Entity.** No separate legal entity is created by the terms of this Agreement. There is no financing of joint or cooperative undertaking and no budget shall be established or maintained. 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.
- b. **Joint Administrators.** As required by Utah Code Ann. § 11-13-207, the Parties agree that the cooperative undertaking under this Agreement shall be administered jointly by the District Attorney or designee and the City Attorney or designee. 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 it administers.
- c. **Approval of Agreement.** This Agreement shall be approved by each party, pursuant to Utah Code Ann. § 11-13-202.5.
- d. **Attorney Review.** This Agreement shall be reviewed as to proper form and compliance with applicable law by the authorized attorneys for County and City in accordance with Utah Code § 11-13-202.5 and § 17-18a-504.

- e. Copies. Duly executed original counterparts of this Agreement shall be filed with the keeper of records of each party, pursuant to Utah Code § 11-13-209.
8. General Provisions. The following provisions are also integral parts of this Agreement:
- a. Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Parties hereto.
  - b. Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.
  - c. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.
  - d. Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement.
  - e. Waiver of Breach. Any waiver by either Party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.
  - f. Cumulative Remedies. The rights and remedies of the Parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy, or priority allowed by law.
  - g. Amendment. This Agreement may not be modified except by an instrument in writing signed by the Parties.
  - h. Time of Essence. Time is the essence in this Agreement.
  - i. Interpretation. This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah.
  - j. Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, certified mail postage prepaid and addressed to the Parties at the following addresses:

<p>COUNTY:</p> <p>Salt Lake County  District Attorney's Office  35 East 500 South, 5<sup>th</sup> Floor  Salt Lake City, Utah 84114  (385) 468-7700  Attn: Sim Gill  Email: <a href="mailto:Sgill@slco.org">Sgill@slco.org</a></p> <p>WITH A COPY TO:</p> <p>Salt Lake County District Attorney's  Office – Civil Division  35 East 500 South, 5<sup>th</sup> Floor  Salt Lake City, Utah 84114  (385) 468-7700  Attn: Ralph Chamness  Email: <a href="mailto:rhamness@slco.org">rhamness@slco.org</a></p>	<p>CITY:</p> <p>Salt Lake City Corporation  City Attorney  451 South State Street, Suite 505A  PO Box 145478  Salt Lake City, Utah 84114-5478  (801) 535-7610  Attn: Margaret D. Plane  Email: <a href="mailto:Margaret.Plane@slcgov.com">Margaret.Plane@slcgov.com</a></p> <p>WITH A COPY TO:</p> <p>Salt Lake City Attorney's Office  451 South State Street, Suite 505A  P.O. Box 145478  Salt Lake City, Utah 84111-5478  (801) 535-7788  Attn: E. Russell Vetter  Email: <a href="mailto:Rusty.Vetter@slcgov.com">Rusty.Vetter@slcgov.com</a></p>
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k. Exhibits and Recitals. The Recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

l. Governmental Immunity. Both Parties are governmental entities under the Governmental Immunity Act, Utah Code Ann. § 63G-7-101, *et seq.* (the “Immunity Act”). Neither Party waives any defenses or limits of liability otherwise available under the Immunity Act and all other applicable laws, both Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

m. Ethical Standards. The Parties hereto represent that they have not: (a) provided an illegal gift or payoff to any officer or employee, or former officer or employee, or to any relative or business entity of an officer or employee, or relative or business entity of a former officer or employee of the other Party hereto; (b) retained any person to solicit or secure this Agreement upon any contract, 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, the County's Ethics, Gifts and Honoraria ordinance (Chapter 2.07, Salt Lake County Code of Ordinances [2001]), or the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (d) knowingly influenced, and hereby promise that they will not knowingly influence, any



officer or employee or former officer or employee to breach any of the ethical standards set forth in State statute, County ordinances, or the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

n. Integration. This Agreement, including exhibits, constitutes the entire agreement of the Parties and supersedes all prior understandings, representations or agreements of the Parties regarding the subject matter in this document.

o. Independent Contractor-No Third Party Beneficiaries. The relationship of County and City under this Agreement shall be that of an independent contractor status. Nothing contained in this Agreement shall be construed to create the relationship between County and Contractor of employer and employee, partners or joint ventures. The parties agree that each party's obligations under this Agreement are solely to the other party. This Agreement shall not confer any rights to third parties unless otherwise expressly provided for under this Agreement.

p. Non-Funding Clause. City intends to request the appropriation of funds to be paid for the Prosecutor's Office services provided by County for City under this Agreement. If funds are not available beyond June 30 of any effective fiscal year of this Agreement, County's obligation for performance of this Agreement beyond that date shall automatically be terminated. This Agreement shall create no obligation on City as to succeeding fiscal years and shall terminate on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of County, its successors, or its assigns, as to this Agreement, or any portion thereof, which shall automatically terminate.

If funds are not appropriated for a succeeding fiscal year to fund performance by County under this Agreement, City shall promptly notify County of said non-funding and the termination of this Agreement, and in no event, later than 30 (thirty) days prior to the expiration of the fiscal year for which funds were appropriated.

[Signature page to follow]

**IN WITNESS WHEREOF**, the City, by resolution duly adopted by its City Council, caused this Agreement to be signed by its Mayor and attested by its City Recorder; and the County, by resolution of its County Council, caused this Agreement to be signed by the Mayor, or his designee.

**SALT LAKE COUNTY**

By: \_\_\_\_\_  
Mayor or Designee

**Approved As To Form:**

\_\_\_\_\_  
*Sim Gill*  
Sim Gill, District Attorney  
Date: June 29, 2018

**SALT LAKE CITY**, a Utah municipal corporation

By \_\_\_\_\_  
Jackie Biskupski, Mayor

**ATTEST:**

\_\_\_\_\_  
City Recorder

**Approved As To Form:**

\_\_\_\_\_  
Margaret D. Plane  
Salt Lake City Attorney  
Date: \_\_\_\_\_, 2018

## Schedule A

FY 17-18 Payment of \$162,377 in the schedule below is for May & June 2017. All other fiscal year totals are annual payments in the schedule below. Payments are to be made on a quarterly basis for one fourth of the annual total. Payments are comprised of Lease Cost, Management Fee and Operating Costs as noted. Operating costs and Lease Cost are based on 29 full time employees and may be adjusted if the number of full time Salt Lake City employees increases or decreases.

### LEASE FEE

County Fiscal Year	DA Portion County Bond	SLC Building 79% of bond	Lease Cost Based on 29 FTE	Quarterly	SLCFY 17-18	SLCFY 18-19	SLCFY 19-20	SLCFY 20-21	SLCFY 21-22	SLCFY 22-23	SLCFY 23-24	SLCFY 24-25	SLCFY 25-26	SLCFY 26-27
2018	4,191,283	3,311,113	387,187	96,797	64,531	193,593								
2019	4,824,787	3,811,582	445,709	111,427		222,855	222,855							
2020	4,819,287	3,807,236	445,201	111,300			222,601	222,600						
2021	4,822,014	3,809,391	445,453	111,363				222,726	222,726					
2022	4,804,234	3,795,345	443,811	110,953					221,905	221,905				
2023	4,822,140	3,809,491	445,465	111,366						222,732	222,732			
2024	4,801,902	3,793,502	443,595	110,899							221,798	221,798		
2025	4,804,345	3,795,433	443,821	110,955								221,910	221,910	
2026	4,811,360	3,800,974	444,469	111,117									222,234	222,234
2027	4,809,528	3,799,527	444,300	111,075										222,150
SLC Fiscal Year Total					64,531	416,448	445,455	445,326	444,632	444,638	444,530	443,708	444,144	444,384

### MANAGEMENT FEE

Management Fee 1% increase July 1st each year	55,264	223,267	225,499	227,754	230,032	232,332	234,655	237,002	239,372	241,766
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### OPERATING FEE

Operating Costs (based on 29 Full Time Employees) .5% increase on Jan 1st each year														
2018					42,582	127,745								
2019						128,383	128,383							
2020							129,021	129,021						
2021								129,659	129,659					
2022									130,312	130,312				
2023										130,964	130,964			
2024											131,617	131,617		
2025												132,269	132,269	
2026													132,936	132,936
2027														133,589
SLC Fiscal Year Total					42,582	256,128	257,404	258,680	259,971	261,276	262,581	263,886	265,205	266,525

### ANNUAL FEES

Total Lease Cost/Management Fee/Operating Cost per SLC FY	162,377	895,883	928,357	931,760	934,634	938,246	941,766	944,596	948,721	952,674
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