

INTERLOCAL COOPERATION AGREEMENT

between

SALT LAKE COUNTY

and

KEARNS METRO TOWNSHIP

This Interlocal Cooperation Agreement (“**Agreement**”) is entered into on this 28th day of April 2020, by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah acting on behalf of Salt Lake County Library Services (the “**County**”) and **KEARNS METRO TOWNSHIP**, a municipal corporation of the State of Utah (the “**Metro Township**”). The County and the Metro Township may each be referred to herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

- A. The County and the Metro Township are “public agencies” as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the “**Interlocal Act**”), and, as such, are authorized by the Interlocal Act to enter into this Agreement to act jointly and cooperatively in a manner that will enable them to make the most efficient use of their resources and powers. Additionally, Section 11-13-215 of the Interlocal Act authorizes a county, city, town, or other local political subdivision to share its tax and other revenues with other counties, cities, towns, local political subdivisions, or the state.
- B. The County is constructing a new library along the road of 5375 South, between 4320 West and 4220 West, Kearns, UT 84118. The County records contain no recorded document confirming that the portion of 5375 South between 4320 West and 4220 West was ever dedicated to the public (the “**Subject Road**”).
- C. The Subject Road has been used as a public road since 1965. The County desires to quiet title to the Subject Road as a thoroughfare dedicated to public use.
- D. Under Utah Code Ann. § 72-5-104(2), a road is “dedicated and abandoned” to public use when it is “continuously used as a public thoroughfare for a period of 10 years.” Pursuant to the statute, the Metro Township is the relevant “highway authority” possessing jurisdictional authority over the Subject Road. Accordingly, the Metro Township has ultimate responsibility for asserting a public-use dedication by means of a quiet title action under Utah Code Ann. § 72-5-104 (“**Quiet Title Action**”).

- E. The County has asked the Metro Township to file the Quiet Title Action on its behalf and is willing to reimburse all legal fees, costs, and expenses reasonably incurred in the prosecution of such action.
- F. Consequently, the County and the Metro Township now desire to enter into this Agreement providing for the reimbursement of all legal fees, costs, and expenses reasonably incurred by the Metro Township in prosecuting the Quiet Title Action on the County's behalf.

AGREEMENT

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

1. **Performance of Legal Services.** The Metro Township agrees to perform all necessary legal work, including any appeal from an unfavorable court decision, in connection with the prosecution of the Quiet Title Action under this Agreement.
2. **Scope of Legal Services.** All legal work herein provided by the Metro Township shall pertain solely to the prosecution of the Quiet Title Action. No other legal services shall be covered or required under this Agreement.
3. **Price of Legal Fees.** The Metro Township has retained the legal services of the Salt Lake City law firm of SMITH HARTVIGSEN, PLLC (the "**Law Firm**") in prosecuting the Quiet Title Action. The County agrees to pay the following hourly rates for all legal services herein rendered by the Law Firm:

<u>Attorney:</u>	<u>Hourly Rate:</u>
Nathan S. Bracken (<i>Kearns Metro City Attorney</i>)	\$215
Other Partners / Of Counsel	\$190 – \$295
Associates	\$160 – \$185
Law Clerks	\$125 – \$145
Paralegals	\$120 – \$140

4. **Reimbursement of Legal Fees and Expenses.** The County agrees to reimburse all legal fees, including any court costs and litigation expenses, reasonably and actually incurred by the Metro Township in prosecuting the Quiet Title Action on the County's behalf (collectively, the "**Expenses**") pursuant to the following:
 - a. The Metro Township will submit to the County an itemized invoice each month that describes with reasonable specificity the Expenses the Metro Township has incurred in the Quiet Title Action during the preceding month, provided that the

Metro Township will not be required to submit an invoice if the Metro Township did not incur any legal fees or expenses in the preceding month.

- b. The County will pay an invoice issued pursuant to paragraph 4(a) within thirty (30) days of receiving the invoice from the Metro Township. Failure by the County to pay an invoice within thirty (30) days of receipt, or within any other timeframe agreed upon by the Parties, will result in the assessment of appropriate interest at the agreed rate of one and one-half percent (1½%) per month of the unpaid balance. Additionally, if the amounts owing become 90 days overdue, the Metro Township may cease work on the Quiet Title Action until payment has been received.
 - c. The Parties agree that the total amount of Expenses shall not exceed \$20,000.00 unless the Parties agree otherwise in writing. The Metro Township shall notify the County in writing no later than thirty days prior to the time that the Metro Township reasonably anticipates that Expenses will exceed the \$20,000.00 threshold to request approval of additional Expenses. Neither Party may unreasonably withhold, condition, or delay its approval to such an agreement.
 - d. If the County disputes any Expense or invoice, it will provide the Metro Township with a written notice explaining the reasons for the dispute. Such notice, if timely filed before payment on the Expense or invoice is due, will prevent the accrual of any interest. If the Parties are unable to resolve the dispute within sixty (60) days of the date of County's notice, and unless otherwise mutually agreed upon in writing, the Parties will submit the matter to formal mediation before any judicial action may be initiated thereon, unless an immediate court order is needed or a statute of limitations period will run before mediation can be reasonably completed. The Parties will endeavor to reasonably agree upon a mediator and will mediate the dispute in good faith. Each Party will be responsible for their own costs and will split the cost of the mediator between them by dividing the total costs of the mediator by the number of Parties involved. In the event the parties do not agree upon a mediator, each party will name a mediator and such two mediators will name a third mediator. The Parties will be bound to mediate the dispute with the third mediator.
5. **Liability, Indemnification, and Governmental Immunity.**

- a. Both Parties are governmental entities under the Governmental Immunity Act of Utah, Utah Code Ann. §§ 63G-7-101 *et seq.*, as amended (the “**Immunity Act**”). There shall be no indemnity obligations between the Parties. Subject to and consistent with the terms of the Immunity Act, each Party shall be liable for its own negligent acts or omissions, or those of its authorized employees, officers, and agents while engaged in the performance of its obligations under this Agreement. Neither Party shall have any liability whatsoever for any negligent act or omission

of the other Party, its employees, officers, or agents. Neither Party waives any defenses or limits of liability available under the Immunity Act and other applicable law. Both Parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

- b. The County represents that it has not: (a) provided an illegal gift or payoff to any Metro Township officer or employee, or former Metro Township officer or employee, or to any relative or business entity of a Metro Township officer or employee, or relative or business entity of a former Metro Township officer or employee; (b) retained any person to solicit or secure this Agreement 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 Salt Lake County's Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; 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 ordinances.
- c. The Metro Township acknowledges the prohibition of campaign contributions by contractors to County candidates, pursuant to Chapter 2.72A, Salt Lake County Code of Ordinances, 2001. The Metro Township also acknowledges and understands this prohibition means that any person, business, corporation, or other entity that enters into a contract or is engaged in a contract with the County is prohibited from making campaign contributions to County candidates. The Metro Township further acknowledges that violation of this prohibition may result in criminal sanctions as well as termination of this Agreement. The Metro Township represents, by executing this Agreement, that it has not made or caused others to make any campaign contribution to any County candidate in violation of the above-referenced County ordinance.

6. **Non-Funding Clause.**

- a. The County intends to request the appropriation of funds to be paid for the work and services provided by the Metro Township under this Agreement. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the County's obligation for performance of this Agreement beyond that date shall be void. This Agreement shall create no obligation on the County as to succeeding fiscal years and shall terminate and become void 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 or default of this Agreement and said termination shall be without penalty, whatsoever, and no cause of action for

damages or other relief shall accrue to the benefit of the Metro Township, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become void.

- b. If County funds are not appropriated to fund the performance of legal services under this Agreement, the County shall promptly notify the Metro Township of said non-funding and the termination of this Agreement. However, in no event shall the County notify the Metro Township of said non-funding later than thirty (30) days after expiration of the fiscal year for which funds were last appropriated.
7. **Notices:** All notices and other communications, required or permitted to be given hereunder, will be in writing and will be deemed to have been duly given and delivered as of the date the notice is sent, if delivered by mail or email to the following, which the Parties may change from time to time in writing:

If to the County:

Jim Cooper, Director
Salt Lake County Library Services
Salt Lake City, Utah 84119
8030 South 1825 West
West Jordan, Utah 84088
jimcooper@slcolibrary.org

With a copy to:

Salt Lake County District Attorney, Civil Division
c/o R. Christopher Preston, Deputy District Attorney
35 East 500 South
Salt Lake City, Utah 84111
RPreston@slco.org

If to Metro Township:

Kelly Bush, Mayor
4956 West 6200 South, Suite 527
Kearns, Utah 84118
lobkb973@hotmail.com

With a copy to:

Nathan Bracken, City Attorney
257 E. 200 S., Suite 500
Salt Lake City, Utah 84111
nbracken@SHutah.law

8. **No Third-Party Beneficiary.** Nothing in this Agreement shall create or be read or interpreted to create any rights in or obligations in favor of any person or entity not a

party to this Agreement. Except for the parties to this Agreement, no person or entity is an intended third-party beneficiary under this Agreement.

9. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation, and due diligence regarding the relevant facts upon which this Agreement is based, and each Party relies upon its own understanding of the relevant law and facts, information, and representations, after having completed its own due diligence and investigation.
10. **Interlocal Cooperation Act.** In satisfaction of the requirements of the Interlocal Act in connection with this Agreement, the Parties agree as follows:
 - a. This Agreement shall be authorized and adopted by resolution of the legislative body of each Party pursuant to and in accordance with the provisions of 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 in behalf of each Party pursuant to and in accordance with the Section 11-13-202.5(3) of the Interlocal Act;
 - c. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Interlocal Act; and
 - d. The Salt Lake County Library Board of Directors is hereby designated the “administrator” for all purposes of this Agreement, pursuant to Section 11-13-207(1)(a)(i) of the Interlocal Act.
11. **Entire Agreement.** This Agreement constitutes the entire Agreement of the Parties and supersedes all prior understandings, representations, or agreements of the Parties regarding the subject matter in this Agreement.
12. **Modification and Amendment.** Any modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and signed by all Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.
13. **Necessary Acts of Cooperation.** Each of the Parties hereto agrees to cooperate in good faith with the other, to execute and deliver such further documents, to adopt any resolutions, to take any other official action, and to perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transaction contemplated under this Agreement.

14. **Required Approvals and Consent.** Neither Party will unreasonably withhold, condition, or delay its consent for any approvals required herein.
15. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah, and any actions between the Parties arising out of the relationship contemplated by this Agreement will be brought in Salt Lake County, Utah.
16. **Captions.** The captions of any articles, paragraphs or sections hereof are made for convenience only and will not control or affect the meaning or construction of any other provisions hereof.
17. **Interpretation.** The term “including” when used herein shall be deemed in each case to be followed by the words “without limitation.”
18. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, and if the rights or obligations of any Party hereto under this Agreement will not be materially and adversely affected thereby, the Parties agree as follows:
 - a. Such holding or action shall be strictly construed;
 - b. Such provision shall be fully severable;
 - c. This Agreement shall be construed and enforced as if such provision had never comprised a part hereof;
 - d. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and
 - e. In lieu of such illegal, invalid, or unenforceable provision, the Parties hereto shall use commercially reasonable efforts to negotiate in good faith a substitute, legal, valid, and enforceable provision that most nearly effects the Parties' original intent in entering into this Agreement.
19. **Authorization.** Each of the Parties hereto represents and warrants to the other that the warranting Party has taken all steps, including the publication of public notice where necessary, in order to authorize the execution, delivery, and performance of this Agreement by each such Party.
20. **Incorporation of Recitals.** The recitals set forth above are hereby incorporated by reference as part of this Agreement.

21. **Legal Review.** The Parties represent and agree that they had full opportunity to review this Agreement and that they accept the terms hereof. The rule that such an agreement is to be construed against its drafter will not be applied to this Agreement.
22. **Counterparts.** This Agreement may be executed in any number of counterparts, but all such counterparts will be deemed but one original Agreement for all intents and purposes.
23. **Default.** If either Party believes the other is in default under any provision of this Agreement, the Party claiming default will provide seven (7) days' written notice to the other Party to the address provided herein outlining said default with specificity before the Party claiming a default may exercise any right or remedy that it may have under this Agreement, at law or in equity, during which time the notified Party will have the right to cure or remedy the alleged default if not disputed, provided that this Paragraph will not apply to disputes arising over any Reimbursable Expenses, which are governed by Paragraph 4(c).

ENTERED into as of the day and year first above written.

SALT LAKE COUNTY

Mayor or Designee

Department Approval

Jim Cooper, Director
Salt Lake County Library Services

Attorney Review for the County:

The undersigned, as counsel for the Salt Lake County Library Services, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

R. Christopher Preston, *Counsel for Salt Lake County*

ADDITIONAL SIGNATURE PAGE TO INTERLOCAL AGREEMENT

KEARNS METRO TOWNSHIP

Kelly Bush
Chair/Mayor

ATTEST:

Sherrie Swensen
Kearns Metro Township Clerk/Recorder

Attorney Review for the Metro Township:

The undersigned, as city attorney for Kearns Metro Township, Utah, has reviewed the foregoing Interlocal Agreement and finds it to be in proper form and in compliance with applicable state law.

Nathan S. Bracken, *Kearns Metro City Attorney*