

COTTONWOOD HEIGHTS

RESOLUTION NO. 2014-61

A RESOLUTION APPROVING ENTRY INTO AN INTERLOCAL COOPERATIVE AGREEMENT WITH MURRAY CITY FOR CONVEYANCE OF A SPILLMAN-COMPATIBLE COMPUTER SERVER

WHEREAS, UTAH CODE ANN. 11-13-202 and other provisions of the Interlocal Cooperation Act (UTAH CODE ANN. 11-13-101 *et seq.*) (the “*Act*”) provide that any two or more public agencies may enter into an agreement with one another for joint or cooperative action; and

WHEREAS, section 11-13-214 of the Act provides that a public agency may convey property to another public agency for consideration as may be agreed upon; and

WHEREAS, the city of Cottonwood Heights (the “*City*”) and Murray City (“*Murray*”) are public agencies for purposes of the Act and, as contiguous municipalities, the City and Murray often collaborate on various issues of common interest; and

WHEREAS, the City owns a surplus IBM Power 720 server (model 8202-E4B, serial number 06E8CCP) (the “*Server*”), which is suitable for use in municipal law enforcement activities using Spillman software; and

WHEREAS, Murray is in need of a Spillman-compatible server, and desires to obtain the Server from the City; and

WHEREAS, the City desires to convey the Server (a) in consideration of Murray allowing the City’s police officers to use Murray’s police “shooting range” on such basis as Murray deems acceptable, and (b) to enhance law enforcement capabilities in the geographical area of the Salt Lake Valley where the City and Murray are located; and

WHEREAS, consequently, it is proposed that Murray and the City jointly will enter into an interlocal cooperative agreement (the “*Agreement*”) whereunder the City will convey the Server to Murray on the terms and conditions specified in the Agreement; and

WHEREAS, the City’s municipal council (the “*Council*”) met in regular session on 14 October 2014 to consider, among other things, approving the City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement with Murray be, and hereby is, approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2014-61, shall take effect immediately upon passage.

PASSED AND APPROVED this 14th day of October 2014.

COTTONWOOD HEIGHTS CITY COUNCIL

By *Kelly Murray*
Kelvyn H. Cullimore, Jr., Mayor

ATTEST:



Kory Solorio
Kory Solorio, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken <i>Absent</i>	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 14th day of October 2014.

RECORDED this 15 day of October 2014.

Interlocal Cooperation Agreement

THIS INTERLOCAL COOPERATION AGREEMENT (this "*Agreement*") is made effective 23 September 2014 by and between **MURRAY CITY CORPORATION**, a Utah municipal corporation ("*Murray*"), and **COTTONWOOD HEIGHTS**, a Utah municipal corporation ("*Cottonwood Heights*").

RECITALS:

A. UTAH CODE ANN. 11-13-202 and other provisions of the Interlocal Cooperation Act (UTAH CODE ANN. 11-13-101 *et seq.*) (the "*Act*") provide that any two or more public agencies may enter into an agreement with one another for joint or cooperative action.

B. Section 11-13-214 of the Act provides that a public agency may convey property to another public agency for consideration as may be agreed upon.

C. The parties are public agencies for purposes of the Act. As contiguous municipalities, Murray and Cottonwood Heights collaborate on various issues pursuant to other interlocal agreements between them.

E. Cottonwood Heights owns a surplus IBM Power 720 server (model 8202-E4B, serial number 06E8CCP) (the "*Server*"), which is suitable for use in municipal law enforcement activities using Spillman software.

E. Murray is in need of a Spillman-compatible server, and desires to obtain the Server from Cottonwood Heights.

F. Cottonwood Heights desires to convey the Server (1) in consideration of Murray allowing Cottonwood Heights' police to use Murray's police "shooting range" on such basis as Murray deems acceptable, and (2) to enhance law enforcement capabilities in the geographical area of the Salt Lake Valley where Cottonwood Heights and Murray are located.

G. The parties desire to memorialize their agreement concerning Cottonwood Heights' conveyance of the Server to Murray for the purposes, and on the terms and conditions, specified in this Agreement.

AGREEMENT:

NOW, THEREFORE, the parties agree as follows:

Section 1. **Conveyance of Server.** Cottonwood Heights hereby **sells, assigns, conveys** and **transfers** the Server to Murray. Such conveyance is "**AS IS, WHERE IS,**" with all faults, and without any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose. The foregoing exclusion of warranties does not include the warranty of title to the Server, however, and Cottonwood Heights warrants that it is the owner of the Server and has the right to convey legal title to the Server to Murray as provided in this Agreement.

Section 2. **Additional Act Provisions.** In compliance with the requirements of the Act and other applicable law:

(a) No Separate Entity. The parties agree that they do not by this Agreement create an interlocal entity.

(b) Joint Board. As required by UTAH CODE ANN. Section 11-13-207, the parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of Murray's Mayor or designee and Cottonwood Heights' Manager or designee. Any real or personal property used in the parties' cooperative undertaking herein shall be acquired, held, and disposed of in accordance with this Agreement.

(c) Financing and Joint Cooperative Undertaking and Establishing Budget. There is no financing of joint or cooperative undertaking and no budget shall be established or maintained.

(d) Attorney Review. This Agreement shall be reviewed as to proper form and compliance with applicable law by the authorized attorneys for Murray and Cottonwood Heights in accordance with UTAH CODE ANN. Section 11-13-202.5.

(e) Copies. Duly executed original counterparts of this Agreement shall be filed with the keeper of the records of each party pursuant to UTAH CODE ANN. Section 11-13-209.

Section 3. **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.

(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 provision 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) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties.

(g) Time of Essence. Time is of the essence in this Agreement.

(h) Interpretation. This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah.

(i) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received:

(i) Upon personal delivery or actual receipt thereof; or

(ii) Within three (3) days after such notice is deposited in the United States mail, certified mail postage prepaid and addressed to the parties at their respective addresses.

(j) 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 the Agreement.

(k) Governmental Immunity. Both parties are governmental entities under the Governmental Immunity Act, UTAH CODE ANN. Section 63G-7-101 *et. seq.* (the “*Immunity Act*”). Consistent with the terms of the Immunity Act, the parties agree that each party is responsible and liable for the wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses or limits of liability otherwise available under the Immunity Act and all other applicable law, and both parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable laws.

(l) Ethical Standards. The parties represent that they have not:

(i) Provided an illegal gift or payoff to any officer, 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; or

(ii) 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; or

(iii) Breached any ethical standards set forth in State statute or municipal ordinance; or

(iv) Knowingly influenced, and hereby certify that they will not knowingly influence, any officer or employee to breach any of the ethical standards set forth in the State statute or municipal ordinances.

IN WITNESS WHEREOF, Murray, by Resolution duly adopted by its City Council, caused this Agreement to be signed by its Mayor and attested by its City Recorder; and

Cottonwood Heights, by Resolution of its City Council, caused this Agreement to be signed by the Mayor and attested by its City Recorder.

ATTEST:

COTTONWOOD HEIGHTS

Kory Solorio, City Recorder

Kelvyn H. Cullimore, Jr., Mayor

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me on this 14th day of October 2014 by **Kelvyn H. Cullimore, Jr.** and **Kory Solorio** as the Mayor and the Recorder, respectively, of Cottonwood Heights, a Utah municipality.

NOTARY PUBLIC

Approved and reviewed as to proper form and compliance with applicable law:

Wm. Shane Topham,
Cottonwood Heights City Attorney
Date: 14 October 2014

ATTEST:

MURRAY CITY CORPORATION

Jennifer Kennedy, City Recorder

David Ted Eyre, Mayor

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me on this ___ day of September 2014 by **David Ted Eyre** and **Jennifer Kennedy** as the Mayor and the Recorder, respectively, of **MURRAY CITY CORPORATION**, a Utah municipal corporation and political subdivision.

Notary Public

Approved and reviewed as to proper form and compliance with applicable law:

Frank Nakamura, City Attorney
Date: __ September 2014