

# COTTONWOOD HEIGHTS

## RESOLUTION NO. 2015-10

### A RESOLUTION APPROVING ENTRY INTO AN INTERLOCAL AGREEMENT WITH SALT LAKE COUNTY FOR ELECTION SERVICES (2015 PRIMARY AND GENERAL ELECTIONS)

**WHEREAS**, the Interlocal Cooperation Act, UTAH CODE ANN. §11-13-101 *et. seq.* (the “*Interlocal Cooperation Act*”), provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

**WHEREAS**, Salt Lake County (the “*County*”) and the city of Cottonwood Heights (the “*City*”) are public agencies for purposes of the Interlocal Cooperation Act; and

**WHEREAS**, County desires to provide the services (“*Election Services*”) of its Clerk’s office, Elections Division, to the City for the purpose of assisting the City to conduct its 2015 primary and general municipal elections; and

**WHEREAS**, the City is in need of such Election Services; and

**WHEREAS**, the City and the County jointly desire to enter into an interlocal agreement (the “*Agreement*”) whereunder the County will provide Election Services to the City on the terms and conditions specified in the Agreement; and

**WHEREAS**, the City’s municipal council (the “*Council*”) met in regular session on 24 February 2015 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 the County 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; and

**BE IT FURTHER RESOLVED** by the city council of Cottonwood Heights that the City selects the “Vote By Mail Election” option on Exhibit “B” to the Agreement.

This Resolution, assigned no. 2015-10, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 24<sup>th</sup> day of February 2015.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By   
Kellvyn 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	Yea	<input checked="" 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 24<sup>th</sup> day of February 2015.

**RECORDED** this 25 day of February 2015.

**SALT LAKE COUNTY CLERK ELECTIONS DIVISION  
INTERLOCAL COOPERATION AGREEMENT**

**COTTONWOOD HEIGHTS**

**-AND-**

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

**FOR MUNICIPAL ELECTION**

THIS AGREEMENT is made and entered into the \_\_\_\_ day of February, 2015, by and between the city of COTTONWOOD HEIGHTS ("City"), and SALT LAKE COUNTY, a political subdivision of the State of Utah ("County"), on behalf of the Salt Lake County Clerk's Office, Elections Division.

**WITNESSETH:**

WHEREAS, the County desires to provide the services of its Clerk's office, Elections Division, to the City for the purpose of assisting the City in conducting the City's 2015 primary and general municipal elections; and

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

WHEREAS, the governing bodies of the Parties are public agencies and are, therefore, authorized by the Utah Interlocal Cooperation Act, §11-13-101, et seq., Utah Code Ann., 1953 as amended, 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; and

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

1. **Term.** County shall provide election services described below to the City commencing on the date this Agreement is executed and terminating on December 31, 2015. Either party may cancel this Agreement upon thirty (30) days written notice to the other party. Upon such cancellation, each party shall retain ownership of any property it owned prior to the date of this Agreement, and the City shall own any property it created or acquired pursuant to this Agreement.

2. **Scope of Work.** The services to be provided by the Salt Lake County Clerk's Office, Elections Division shall be as set forth in the Scope of Work, attached hereto and incorporated by reference as Exhibit "A." Generally, the County Clerk shall perform the listed election functions as set forth in Exhibit "A" and as needed to ensure implementation of the City's 2015 primary and general municipal election. **City hereby selects the "Vote By Mail Election" option under Exhibit "B."**

3. **Legal Requirements.** The County and the City understand and agree that the 2015 City primary and general municipal election is the City's election. The City shall be responsible for compliance with all legal requirements for these elections. The City agrees to translate ballot issues, if any, into Spanish. The County will provide the remaining Spanish translations for the ballot and other election materials. County agrees to work with the City in complying with all legal requirements for the conduct of these elections and conduct these elections pursuant to the direction of the City, except as provided in this Agreement and Exhibit "A." County agrees to disclose and maintain election results through its website merely as a courtesy and convenience to the City. The City, not the County, is responsible to resolve any and all election questions, problems, and legal issues that are within the City's statutory authority.

4. **Cost.** In consideration of the services performed under this Agreement, the City shall pay the County an amount not to exceed the estimate given to the City by the County, attached as Exhibit "B." The County shall provide a written invoice to the City at the conclusion of the elections, and the City shall pay the County from the invoice within thirty days of receiving it. 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 City's election, the City shall pay the County's cost 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 City to exceed the estimate given to the City 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 City and the County are governmental entities and subject to the Governmental Immunity Act of Utah, Utah Code Ann. §§ 63G-7-101, *et seq.*, 1953, as amended ("Act"). Nothing in this Agreement shall be deemed a waiver of any rights, statutory limitations on liability, or defenses applicable to the City or the County under the 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 City. This Agreement shall not confer any rights to third parties.

7. **Indemnification.** Subject to the provisions of the Act, the City 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 or omission of City, 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 City shall maintain and keep control over all records created pursuant to this Agreement and to the elections relevant to this Agreement. The City 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, 1953, as amended, and all other relevant local, state and federal laws.

9. **Service Cancellation.** If the Agreement is canceled by the City as provided above, the City shall pay the County on the basis of the actual services performed according to the terms of this Agreement. Upon cancellation of this Agreement by either party, the County shall submit to the City 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.

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 City or County is or shall be deemed to be an employee, agent or servant of the other party. None of the benefits provided by each 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. City and 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, City or 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, N-2100  
Salt Lake City, Utah 84190

and

Ms. Dahnelle Burton-Lee  
Chief Deputy  
Salt Lake County Clerk's Office  
2001 South State, Suite S-2200  
Salt Lake City, Utah 84190-1050  
Email: [dburton-lee@slco.org](mailto:dburton-lee@slco.org)

City

John Park  
Cottonwood Heights City Manager  
1265 East Fort Union Blvd., Suite 250  
Cottonwood Heights, UT 84047  
Email: [jpark@ch.utah.gov](mailto:jpark@ch.utah.gov)

and

Wm. Shane Topham  
Cottonwood Heights City Attorney  
CALLISTER NEBEKER & McCULLOUGH  
10 East South Temple, 9th Floor  
Salt Lake City, UT 84133  
Email: [wstopham@cnmlaw.com](mailto:wstopham@cnmlaw.com)

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 3, 2015, certain decisions by the County referenced in Exhibit A may not be subject to review by the City. It is therefore understood by the Parties that the County acts 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 out 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 City 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 City's operations, or authorizes funding or payments to City.

17. **Ethical Standards.** City 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 Salt Lake County Code of Ordinances § 2.07; 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.

18. **Interlocal Agreement.** In satisfaction of the requirements of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (“Interlocal Act”), in connection with this Agreement, the City and the County (for purposes of this section, each is a “party” and collectively the “parties”) agree as follows:

- (a) This Agreement shall be approved by each party, pursuant to § 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 § 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 done 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, and 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 City Representatives
  - (1) 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.

(2) City designates the City's Manager as the City's representative in its performance of this Agreement. The City'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 City 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.

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

CITY:

COTTONWOOD HEIGHTS

ATTEST:

By: \_\_\_\_\_  
Kory Solorio, Recorder

By: \_\_\_\_\_  
Kelvyn H. Cullimore, Jr., Mayor

Approved as to form:

\_\_\_\_\_  
Wm. Shane Topham, City Attorney

SALT LAKE COUNTY

Agreed to:

By \_\_\_\_\_  
Mayor Ben McAdams or Designee

By \_\_\_\_\_  
Sherrie Swensen, County Clerk

Approved as to form:

\_\_\_\_\_  
Paula Smith, Deputy District Attorney

**Exhibit "A"**  
**2015 Municipal Elections**  
**Scope of Work**

The County shall provide to the City an Official Register as required by Utah Code Ann. § 20A-5-401, U.C.A. (as amended). The City shall perform all administrative functions related to candidate filing requirements and all other requirements of Utah Code Ann. § 20A-9-203 (as amended), including all administrative functions related to financial disclosure reporting.

The City agrees to the consolidation of all election administrative functions to ensure the successful conduct of multiple, simultaneous municipal elections and the County agrees to conduct a vote by mail/consolidated polls election for the City.

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 City recognizes that such decisions, made for the benefit of the whole, may not be subject to review by the City.

Services the County will perform for the City 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
- Absentee Ballot administration
- Updating state and county websites
- Tabulating, reporting, auditing and canvassing election results
- Conducting recounts as needed
- All notices and mailings required by law (except those required by Utah Code Ann. § 20A-9-203)
- Direct payment of all costs associated with the election to include poll workers, training, polling places, rovers.

The City 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 primaries, the number of jurisdiction participating as well as any direct costs incurred.

The City will be invoiced for its pro-rata share of the actual costs of the elections 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 election, the scope of services and associated costs, and the method of calculating those costs, will remain unchanged.

**Exhibit "B"**  
**2015 Election Estimate**  
**Cottonwood Heights**

Below is the good faith estimate for the upcoming *2015 Municipal Election* for the city of Cottonwood Heights. The city will be billed for actual costs, which will not exceed this estimate.

Assumptions for providing this estimate consist of the following:

- A. Active voters (as of 12/5/2014): 9,065
- B. Permanent Vote by Mail voters (as of 12/5/2014): 2,922
- C. Worst case primary election.
- D. General election for the 2015 offices below.

<b>2015 Offices</b>	<b>Estimate</b>
Council #1	
Council #2	
Vote By Mail Election	\$35,534.80
Consolidated Polls Election	\$37,509.59

Your estimate for traditional polls would have been \$39,886. However, we are not offering that option this year.