

Interlocal Cooperative Agreement

THIS INTERLOCAL COOPERATIVE AGREEMENT (this “*Agreement*”) is made effective _____ 2019 by and between the **SALT LAKE CITY**, a municipal corporation of the state of Utah (“*Salt Lake*”) and **MILLCREEK**, a municipal corporation of the state of Utah (“*Millcreek*”). Salt Lake and Millcreek are each referred to herein as a “*Party*” and are collectively referred to herein as the “*Parties*.”

RECITALS:

A. Two certain parcels of real property located near Millcreek are presently situated within the corporate limits of Salt Lake (the parcels are hereafter collectively referred to as the “*Property*”). Maps showing the boundaries of the Property are attached hereto as exhibit “A.”

B. The Property is adjacent to portions of the common boundary between Salt Lake and Millcreek as illustrated in exhibit “A.”

C. Millcreek has requested that pursuant to Utah Code Ann. § 10-2-419 the common boundary between Millcreek and Salt Lake be adjusted to cause the Property to be included within the corporate limits of Millcreek.

D. Salt Lake has agreed to adjust the common boundary between Salt Lake and Millcreek with respect to the Property provided that (1) certain real and personal property taxes generated from the Property be remitted to Salt Lake, (2) certain point of sale sales taxes from sales transactions associated with the Property be remitted to Salt Lake, and (3) Millcreek shall not encourage and/or support legislation to change the boundaries between Millcreek and Salt Lake with respect to an area known as the Brickyard.

E. The Parties desire to enter into an “interlocal agreement” pursuant to the authority granted in the Interlocal Cooperation Act (Utah Code Ann. § 11-13-101, *et seq.*) (the “*Interlocal Act*”), and more specifically Utah Code Ann § 11-13-215 that provides in part that a city may, at the discretion of the local governing body, share its tax and other revenues with other cities.

F. The Parties are “public agencies” and cities for purposes of the Interlocal Act, and, consequently, are authorized to enter into this Agreement.

G. The Parties have determined that it is mutually advantageous to enter into this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and in compliance with and pursuant to the terms hereof and the provisions of the Interlocal Act, the Parties hereby agree as follows:

Section 1. **Boundary Adjustment.**

A. Unless, at or before the hearing described in Utah Code Ann. §10-2-419 (2)(b), a written protest to the adjustment is properly filed by a person described in Utah Code Ann. § 10-2-419 (3)(d)(i) or (ii), the Parties agree that on or before _____ each party will adopt an

ordinance approving the adjustment of their common boundaries for the area identified in the Property as further described and depicted in exhibit “A”. The Parties agree to promptly pursue all requirements/filings to consummate the boundary adjustment contemplated herein.

- B. The Parties also agree to execute any easements necessary to preserve Salt Lake’s unencumbered access to utilities within the new Millcreek boundary, which easements will be recorded at the time of the filings to consummate the boundary adjustments.

Section 2. **Revenue/Tax Sharing.** Millcreek agrees to pay to Salt Lake a total aggregate amount of \$610,000.00 (“Revenue Share”) payable in ten consecutive equal payments of \$61,000.00 each, beginning on February __, 2020, and continuing on the same day of February of each year thereafter until paid in full. Millcreek’s obligation to pay the Revenue Share is specifically conditioned on the boundary adjustment being effective as set forth in Utah Code Ann. § 10-2-425.

Section 3. **Legislation.** Millcreek agrees not to encourage and/or support legislation to change the boundaries between Millcreek and Salt Lake with respect to an area known as the Brickyard, and Millcreek acknowledges that this understanding is a material consideration and is integral to the willingness of the Parties to enter into this Agreement.

Section 4. **Conflict Resolution.** In the event of a dispute between the Parties regarding this Agreement, the Parties agree (without limiting any and all other legal and equitable remedies) that representatives of each of the Parties will meet as soon as practical to discuss and attempt to resolve the dispute. If the Parties do not agree, then the dispute shall be resolved pursuant to Section 9 below.

Section 5. **Indemnity.** The Parties are governmental entities under the “Governmental Immunity Act of Utah” (Utah Code Ann. § 63G-7-101, *et seq.*) (the “*Immunity Act*”). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each of the Parties is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. No Party waives any defenses otherwise available under the Immunity Act nor does any Party waive any limits of liability currently provided by the Immunity Act.

Section 6. **Term.** This Agreement shall be effective immediately upon its full execution and delivery. This Agreement shall terminate on _____ if the boundary adjustments described in Section 1 have not been completed by that date. If not sooner terminated, this Agreement shall terminate on 30 June 2069.

Section 7. **Additional Interlocal Act Issues.**

(a) **No Separate Entity.** This Agreement does not create a separate legal/interlocal entity.

(b) **Joint Board.** As required by Utah Code Ann. § 11-13-207, the parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of one representative from each party. Any real or personal property used in the parties’ cooperative undertaking herein shall be acquired, held, and disposed of as determined by the joint

board. Voting of the joint board shall be based on one vote per representative. The powers of the joint board are those described in this Agreement.

(c) Financing Joint Cooperative Undertaking and Establishing Budget. The functions to be performed by the joint or cooperative undertaking are those described in this Agreement. There is no financing of joint or cooperative undertaking and no budget shall be established or maintained. Either party may withdraw from the joint or cooperative undertaking described in this Agreement only upon termination of the Agreement.

Section 8. **Notice.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within two business 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 City: Salt Lake City
Attn: Salt Lake City Mayor's Office
451 S. State Street, Room 306
Salt Lake City, Utah 84114-5474

With a copy to: Salt Lake City Council Office
451 S. State Street, Room 304,
Salt Lake City, Utah 84114-5476

With a copy to: Salt Lake City Attorney
451 S. State Street, Room 505A
Salt Lake City, Utah 84114-5478

Millcreek: MILLCREEK
Attn. Jeff Silvestrini
3330 South 1300 East
Millcreek, UT 84106

With a copy to: John N. Brems
BREMS LAW
c/o 3330 South 1300 East
Millcreek, UT 84106

Section 9. **Claims and Disputes.** Claims, disputes and other issues between the Parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, each of the Parties shall continue to perform its obligations hereunder during the pendency of such dispute.

Section 10. **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

Section 11. **Pronouns and Plurals**. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

Section 12. **Applicable Law**. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

Section 13. **Integration**. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings concerning the subject matter of this Agreement.

Section 14. **Time**. Time is the essence of this Agreement.

Section 15. **Survival**. All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

Section 16. **Waiver**. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

Section 17. **Rights and Remedies**. The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provision(s) hereof.

Section 18. **Severability**. In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

Section 19. **Litigation Expenses**. If any action, suit or proceeding is brought by a party concerning this Agreement, each party shall bear its own costs and expenses.

Section 20. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 21. **Approval by Attorneys**. This Agreement shall be submitted to the authorized attorneys for each of the Parties for approval in accordance with Utah Code Ann. § 11-13-202.5.

IN WITNESS WHEREOF, each of the Parties, by resolution duly adopted by its council, has caused this Agreement to be signed by its mayor and attested by its recorder.

ATTEST:

SALT LAKE CITY

Cindi Mansell, Recorder
Date signed: _____

By: _____
Jacqueline M. Biskupski, Mayor
Date signed: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____
Jaysen Oldroyd, Senior City Attorney

ATTEST:

MILLCREEK

Elyse Greiner, Recorder
Date signed: _____

By: _____
Jeff Silvestrini, Mayor
Date signed: _____

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-202.5:

By: _____
John N. Brems, City Attorney
Date signed: _____

Exhibit A
(Maps showing the common boundary between Salt Lake and Millcreek)