COTTONWOOD HEIGHTS

RESOLUTION NO. 2021-61

A RESOLUTION APPROVING ENTRY INTO AN INTERLOCAL AGREEMENT WITH SALT LAKE COUNTY FOR CIVIL FORFEITURE ACTION LEGAL SERVICES

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, the City employs peace officers who are authorized by the City to seize property and contraband under the Forfeiture and Disposition of Property Act, UTAH CODE ANN. §§ 24-1-101 to 24-4-119 (the "*Forfeiture Act*"); and

WHEREAS, when the City seeks to forfeit seized property or contraband, the Forfeiture Act requires the City to present the matter to a prosecuting attorney, who may commence a civil action to forfeit the property or contraband; and

WHEREAS, the Salt Lake County District Attorney (the "*District Attorney*") is a prosecuting attorney under UTAH CODE ANN, § 24-1-102(22) and is permitted, under UTAH CODE ANN. § 17-18a-405(2), to act as legal counsel to the City regarding civil actions for the forfeiture of property or contraband; and

WHEREAS, the City desires for the County, through the District Attorney, to provide legal services related to the forfeiture of property or contraband seized by the City's peace officers pursuant to the Forfeiture Act ("*Civil Forfeiture Action Legal Services*"); and

WHEREAS, the County is willing to so act through the District Attorney; and

WHEREAS, the City and the County therefore jointly desire to enter into an interlocal agreement (the "*Agreement*") whereunder the County, through the District Attorney, will provide Civil Forfeiture Action Legal 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 16 November 2021 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;

This Resolution, assigned no. 2021-61, shall take effect immediately upon passage.

PASSED AND APPROVED this 16th day of November 2021.

COTTONWOOD HEIGHTS CITY COUNCIL

By _____
Michael J. Peterson, Mayor

ATTEST:

_____
Paula Melgar, Recorder

VOTING:

Michael J. Peterson	Yea ✓	Nay ___
Douglas Petersen	Yea ✓	Nay ___
J. Scott Bracken	Yea ✓	Nay ___
Tali C. Bruce	Yea ___	Nay ___ excused
Christine Watson Mikell	Yea ___	Nay ___ excused

DEPOSITED in the office of the City Recorder this 16th day of November 2021.

RECORDED this 17 day of November 2021.

County Contract No. _____
DA Log No. 21-XXXXX

INTERLOCAL COOPERATION AGREEMENT

between

SALT LAKE COUNTY

and

COTTONWOOD HEIGHTS

For Legal Services in Civil Forfeiture Actions

THIS INTERLOCAL COOPERATION AGREEMENT (this "Agreement"), dated effective the 12th day of November 2021, is entered into by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah, on behalf of its District Attorney's Office (the "Attorney"); and the city of **COTTONWOOD HEIGHTS**, a municipal corporation of the State of Utah, on behalf of its Cottonwood Heights Police Department (the "Agency"). The Attorney and the Agency may each be referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

A. The Attorney and the Agency are "public agencies" as defined by the Utah Interlocal Cooperation Act, UTAH CODE §§ 11-13-101 to -608 (the "Interlocal Act"), and as such, are authorized to enter into agreements to act jointly and cooperatively in a manner that will enable them to make the most efficient use of their resources and powers.

B. The Agency employs peace officers who are authorized by the Agency to seize property and contraband under the Forfeiture and Disposition of Property Act, UTAH CODE ANN. §§ 24-1-101 to 24-4-119 (the "Forfeiture Act").

C. When the Agency seeks to forfeit seized property, the Forfeiture Act requires it to present the matter to a prosecuting attorney, who may commence a civil action to forfeit the property.

D. The Salt Lake County District Attorney is a prosecuting attorney under UTAH CODE ANN, § 24-1-102(22) and is permitted, under UTAH CODE ANN. § 17-18a-405(2), to act as legal counsel to the Agency regarding civil actions for the forfeiture of property or contraband.

E. The Attorney and the Agency now desire to enter into this Agreement for the provision of legal services related to the forfeiture of property seized by the Agency pursuant to the Forfeiture Act.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties represent and agree as follows:

ARTICLE I
LEGAL SERVICES

1.1 INDEPENDENT CONTRACTOR. The Attorney will provide services as an independent contractor with full responsibility to discharge all of the obligations of an independent contractor under federal, state and local laws, including, but not limited to, those obligations relating to employee supervision, benefits and wages, taxes, unemployment compensation and insurance, social security, workers' compensation, and disability pensions and tax withholdings.

1.2 LEGAL SERVICES. The Attorney shall initiate and represent the Agency in civil asset forfeiture proceedings conducted under the Forfeiture Act. In providing services under this Agreement, the Attorney shall perform the role and duties of a prosecuting attorney, as that term is defined and used in the Forfeiture Act. The Agency agrees to perform the role and duties of an agency, as that term is defined and used in the Forfeiture Act. Each Party affirms that it understands, and agrees to perform, its respective responsibilities under the Forfeiture Act. Each Party agrees to hold the other harmless for claims that arise from its own failure to perform its responsibilities under the Forfeiture Act.

1.3 REQUESTS FOR FORFEITURE. The services provided by the Attorney under this Agreement shall be performed in accordance with individual requests for forfeiture, which the Agency shall present to the Attorney each time the Agency seeks to forfeit property that it has seized under the Forfeiture Act. Each request for forfeiture shall: (a) be in writing (which writing may be made via electronic means); (b) be provided to the Attorney within 45 days after the date on which the property was seized; (c) describe the property that the Agency is seeking to forfeit; (d) include a copy of all reports, supporting documents, and other evidence that is necessary for the Attorney to determine the legal sufficiency for filing a forfeiture action; and (e) be signed or acknowledged by Lt. Dan Bartlett or any other designee of the Agency's Manager or Chief of Police. The Attorney shall decline or accept, in writing, the Agency's request for forfeiture within 75 days after the date on which the property is seized. The Attorney's attorney-client relationship with the Agency regarding a particular request for forfeiture shall begin as soon as the Attorney accepts the request. The Attorney reserves the sole discretion to accept or decline any individual request for forfeiture.

1.4 FORFEITURE ACTIONS. The Attorney shall initiate a civil forfeiture proceeding for the property described in each request for forfeiture that it accepts. Such proceedings shall be brought in Utah's Third District Court and shall identify the Agency as the plaintiff. The Attorney shall conduct the litigation consistent with its own legal expertise, experience, and in accordance with all relevant federal, state and local laws, including the Forfeiture Act and the Utah Rules of Civil Procedure, which it shall interpret through generally recognized principles of statutory construction.

1.5 GENERAL COUNSEL. The Agency affirms that it has appointed, and will continue to retain through the duration of this Agreement, its own attorney who will be responsible for providing general counsel and legal advice to the Agency. The scope of services and representation provided by the Attorney under this Agreement expressly does not include advising the Agency in: (a) the negotiation of, or assent to, this Agreement; (b) the Agency's performance of its obligations under this Agreement; or (c) the Agency's performance of its duties under the provisions of the Forfeiture Act related to property seizures, innocent owner claims, and training requirements. The Attorney may not provide legal services directly to Agency officials and

representatives.

1.6 SETTLEMENTS.

1.7 PROFESSIONAL CONDUCT.

A. In the provision of legal services under this Agreement, the Attorney will observe federal, state and local law, and abide by the Utah Rules of Professional Conduct.

B. The Parties recognize the need, and hereby agree, to collaborate together in good faith to ensure that their respective attorneys comply with their duty of professional conduct identified in paragraph A., above, noting heightened alert for potential for conflicts of interest.

1.8 CONFLICTS OF INTEREST. Based on the Attorney's limited representation of the Agency, the Parties do not anticipate conflicts of interest. Nevertheless, a conflict of interest may arise between the Parties during the course of this Agreement. Should the Attorney identify a conflict of interest, it will immediately notify the duly appointed counsel for the Agency. Should the Agency's duly appointed counsel identify a conflict of interest, it will immediately notify the Attorney. If a determination is made that a potential conflict is present or imminent, the Attorney and the duly appointed counsel for the Agency will each determine the most prudent course of action given their respective party's interests, i.e., whether to discontinue the action(s) or relationship creating the conflict or whether to waive such conflict in writing after full disclosure between the parties. In the event the potential conflict cannot be resolved to the satisfaction of both clients or in accord with ethical obligations of the Attorney, the Attorney will withdraw its representation of the Agency to the extent allowed by the Utah Rules of Professional Conduct. Heightened risk of such a condition exists when a lawsuit names both the Attorney and the Agency as parties (or notices of claim are filed against both), which relates to services provided by the Attorney on behalf of the Agency. The Agency agrees and understands that pursuant to statutory authority, the District Attorney's Office may continue to represent Salt Lake County and the State of Utah in the matter and all other matters if it can do so in conformity with the Utah Rules of Professional Conduct.

1.9 CONSIDERATION. In consideration for the services provided under this Agreement, the Agency shall pay the Attorney the legal costs associated with the litigation of each forfeiture proceeding and 20% of the value of all forfeited property. Payments under this section will be due within 30 days after the later of: (a) an invoice from the Attorney to the Agency, which shall include a copy of an order from the court declaring property forfeited to the Agency; and (b) a notice from the Attorney to the Agency signifying that an employee of the Attorney is certified by the Utah Prosecution Council as an asset forfeiture specialist, as described in Utah Code § 24-4-119.

ARTICLE II
TERM OF AGREEMENT

2.1 EFFECTIVE DATE AND TERM. This Agreement shall be effective upon the last of the following events to occur: (a) approval of the Agreement as provided in UTAH CODE ANN. § 11-13-202.5(1); (b) delivery of the Agreement to an attorney representing the Attorney and an attorney representing the Agency for review as to proper form and compliance with applicable

law; and (c) the filing of the signed Agreement with the keeper of records of each of the Parties. The Agreement shall continue in full force and effect for an initial term of one year. This Agreement thereafter shall be automatically extended for successive one-year periods until such time as this Agreement is terminated by a Party as provided in Paragraph 2.3.

2.2 AMENDMENTS. This Agreement may be amended, changed, modified, altered and renewed only by an instrument in writing, signed by both Parties.

2.3 TERMINATION. This Agreement may be terminated for convenience, in whole or in part, by either Party upon at least 30 days prior written notice to the other Party. Upon such termination, the Attorney shall be paid for all services provided up to the date of termination in accordance with Paragraph 1.9. Upon termination, the Attorney will provide to the Agency's attorney the Attorney's files for the Agency's pending cases, litigation materials (such as pleadings, motions, discovery and legal memoranda), correspondence, depositions, expert opinions, business records, exhibits, potential evidence, and witness statements, but shall not include the Attorney's work product such as mental impressions, research notes, legal theories, internal memoranda, and unfiled pleadings.

2.4 NON-FUNDING. The Attorney intends to request the appropriation of funds necessary to provide the services under this Agreement. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the Attorney's obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the Attorney as to succeeding fiscal years and shall terminate and become null and 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 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 the Agency, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

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

ARTICLE III
NOTICES

3.1 WRITTEN NOTICE. For purposes of communicating and maintaining ongoing contract management, written notices may be provided to the Parties at the following addresses and contact persons, or to such other address or to such other contact person as shall be specified in any notice given:

AGENCY:

COTTONWOOD HEIGHTS, Attn. City Manager
2277 East Bengal Blvd.
Cottonwood Heights, UT 84121

With a copy to:
Wm. Shane Topham
JONES WALDO
170 South Main Street, 15th Floor
Salt Lake City, UT 84101

ATTORNEY:
SALT LAKE COUNTY DISTRICT ATTORNEY
35 East 500 South
Salt Lake City, UT 84111

A written notice shall be effective immediately upon delivery as noted above or on the third business day after deposit in the United States mail, first class postage pre-paid, addressed as stated above.

ARTICLE IV
LIABILITY

4.1. GOVERNMENTAL IMMUNITY ACT. The Attorney and the Agency are governmental entities under the Governmental Immunity Act of Utah, UTAH CODE ANN. § 63G-7-101 to -904 (the "Immunity Act"). Consistent with the terms of the Immunity Act, as provided therein, it is mutually agreed that each Party is responsible for its own wrongful or negligent acts which are committed by its agents, officials, or employees. Neither Party waives any defense otherwise available under the Immunity Act nor does either Party waive any limit of liability currently provided by the Immunity Act. Each Party agrees to notify the other of the receipt of any notice of claim under the Immunity Act for which one Party may have an obligation to defend, indemnify, and hold harmless the other Party within thirty days of receiving the notice of claim. The Parties also agree to notify each other of any summons and/or complaint served upon the said Party, if the other Party may have an obligation to defend, indemnify, and hold harmless the first Party, at least ten days before an answer or other response to the summons and/or complaint may be due.

4.2 INSURANCE. The Attorney represents that it is self-insured pursuant to UTAH CODE ANN. § 63G-7-801.

ARTICLE V
DISPUTE RESOLUTION

5.1 CLAIMS AND DISPUTES. In the event of a claim or dispute between the Parties regarding this Agreement, the Parties agree (without limiting any and all other legal and equitable remedies) that a representative of the Agency will meet as soon as practical with a representative of the Attorney to discuss and attempt to resolve such dispute.

5.2 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 rights or remedies provided in this Agreement shall not preclude the exercise of any other right or remedy.

ARTICLE VI
MISCELLANEOUS

6.1 INTERLOCAL ACT. For the purpose of satisfying specific requirements of the Interlocal Act, the Parties agree as follows:

A. The Parties do not, nor intend to, create an interlocal entity or a joint or cooperative undertaking by this Agreement. To the extent this Agreement requires administration other than as set forth herein, the Salt Lake County District Attorney and the Agency's chief executive officer (whether manager or mayor, as applicable under the Agency's then form of municipal government) are hereby designated as the joint administrative board for all purposes of the Interlocal Act.

B. Each Party will acquire, hold, and dispose of its own real and personal property and there will be no jointly owned property upon the partial or complete termination of this Agreement, including the termination of any service to be provided hereunder.

C. 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.

6.2 FORCE MAJEURE. Neither Party will be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises after this Agreement becomes effective. "Event of Force Majeure" means an event beyond the control of the Attorney or the Agency that prevents a Party from complying with any of its obligations under this Agreement, including but not limited to: (a) an act of God (such as, but not limited to, fires, explosions, earthquakes, drought, pandemic, tidal waves and floods); (b) war, acts or threats of terrorism, invasion, or embargo; or (c) riots or strikes. If an Event of Force Majeure persists for a period in excess of sixty days, the Attorney may terminate this Agreement without liability or penalty, effective upon written notice to the Agency.

6.3 ETHICAL STANDARDS. The Agency represents that it has not: (a) provided an illegal gift in connection with this Agreement to any officer or employee, or former officer or employee, of the Attorney or to any relative or business entity of a officer or employee of the Attorney, or relative or business entity of a former officer or employee of the Attorney; (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 in connection with this Agreement set forth in state statute or § 2.07, SALT LAKE COUNTY CODE OF ORDINANCES; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, in connection with this Agreement, any officer or employee of the Attorney or former officer or employee of the Attorney to breach any of the ethical standards set forth in state statute or Salt Lake County ordinances.

6.4 ENTIRE AGREEMENT. This Agreement and the documents referenced herein, if any, constitute the entire Agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either Party, or agents for either Party, that

are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

6.5 GOVERNING LAW AND VENUE. The laws of the State of Utah govern all matters arising out of this Agreement. Venue for any and all legal actions arising hereunder will lie in the District Court in and for Salt Lake County, State of Utah.

6.6 NO OBLIGATIONS TO THIRD-PARTIES. The Parties agree that the Attorney's obligations under this Agreement are solely to the Agency and that the Agency's obligations under this Agreement are solely to the Attorney. The Parties do not intend to confer any rights to third-parties unless otherwise expressly provided for under this Agreement.

6.7 AGENCY. No officer, employee, or agent of the Attorney or the Agency is intended to be an officer, employee, or agent 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 officers, employees, or agents of the other Party. The Attorney and the Agency will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of this Agreement.

6.8 NO WAIVER. The failure of either Party at any time to require performance of any provision or to resort to any remedy provided under this Agreement will in no way affect the right of that Party to require performance or to resort to a remedy at any time thereafter. Additionally, the waiver of any breach of this Agreement by either Party will not constitute a waiver as to any future breach.

6.9 SEVERABILITY. If any provision of this Agreement is found to be illegal or unenforceable in a judicial proceeding, such provision will be deemed inoperative and severable, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

6.10 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.

6.11 COUNTERPARTS. This Agreement may be executed in counterparts and all so executed will constitute one agreement binding on all the Parties, it being understood that all Parties need not sign the same counterpart. Further, executed copies of this Agreement delivered by facsimile or email will be deemed an original signed copy of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, each Party hereby signs this Agreement on the dates set forth below.

SALT LAKE COUNTY

_____
Mayor Jennifer Wilson or Designee

Dated: _____, 20 ____

Agency Approval:
Salt Lake County District Attorney

_____

Title _____

Date: _____, 20 ____

Approved as to Form and Legality:

_____
Deputy District Attorney

COTTONWOOD HEIGHTS

_____
Michael J. Peterson, Mayor
Date: 16 November 2021

Attest:

_____
Paula Melgar, City Recorder
Date: 16 November 2021

Approved as to Form and Legality:

Wm. Shane Topham

_____
Wm. Shane Topham, City Attorney