

# COTTONWOOD HEIGHTS

## RESOLUTION NO. 2014-72

### A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH MIDVALE CITY FOR MAINTENANCE OF STREET IMPROVEMENTS (1300 EAST / UNION PARK AVENUE ISLANDS)

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

**WHEREAS**, the legal boundary between the City and Midvale extends along much of the centerline of 1300 East and Union Park Avenue from I-215 to Creek Road (the “*Section*”), and each of such municipalities is responsible for repairs and maintenance to its portion of the Section; and

**WHEREAS**, pursuant to Resolution 2013-40, the City and Midvale entered into an interlocal cooperation agreement whereunder they cooperatively caused certain improvements and repairs to the roadways and median islands (the “*Islands*”) located in the Section; and

**WHEREAS**, the City and Midvale now have determined that it will be in their best interests for landscaping in the Islands to be performed by a common contractor, with the parties sharing the cost of that work (the “*Work*”); and

**WHEREAS**, pursuant to the authority granted in the Interlocal Cooperation Act, the City and Midvale desire to enter into an “interlocal agreement” (the “*Agreement*”) whereunder the Work will be performed on a cost-sharing basis as provided therein.

**WHEREAS**, the city council (the “*Council*”) of the City met in regular session on 11 November 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**, the city attorney of the City has approved the form of the Agreement as required by *Utah Code Ann.* §11-13-202.5(3); and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the City’s residents to approve the City’s entry into the Agreement as proposed in order to make efficient use of the City’s resources;

**NOW, THEREFORE, BE IT RESOLVED** by the city council of Cottonwood Heights that the attached Agreement with Midvale is hereby 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. 2014-72, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 11<sup>th</sup> day of November 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**



**ATTEST:**

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

  
**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 11<sup>th</sup> day of November 2014.

**RECORDED** this 12 day of November 2014.

**INTERLOCAL AGREEMENT BETWEEN  
MIDVALE CITY AND THE CITY OF COTTONWOOD HEIGHTS  
FOR THE LANDSCAPING ALONG UNION PARK BLVD.**

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between MIDVALE CITY, a Utah Municipal corporation (“Midvale”) and the city of COTTONWOOD HEIGHTS, a Utah Municipal corporation (“Cottonwood Heights”); Midvale and Cottonwood Heights each being hereinafter referred to as the “Party” in the singular and collectively as the “Parties” in the Plural.

**RECITALS**

- A. WHEREAS, Midvale and Cottonwood Heights are public agencies as defined by the Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 to 314 (1953 as amended) (the “Act”); and
- B. WHEREAS, the Parties are authorized under the Act, to enter into an agreement with one another for joint or cooperative action; and
- C. WHEREAS, the legal boundary between Cottonwood Heights and Midvale extends along much of the centerline of 1300 East and Union Park Avenue from I-215 to Creek Road, and each of the Parties is responsible for repairs and maintenance of its improvements along such centerline; and
- D. WHEREAS, consequently, the Parties have a mutual interest in the beauty of the landscaping of the traffic islands along 1300 East and Union Park Avenue beginning on the South side of the I-215 interchange and ending at the North side of the Creek Road intersection (the “Islands”); and
- E. WHEREAS, the Parties acknowledge that the Parties can recognize cost savings and economies of scale by coordinating cost sharing and reimbursements between the Parties for the landscaping of the Islands;

NOW, THEREFORE, the Parties, in consideration of the promises and covenants contained in this Agreement, the receipt of which is acknowledged, covenant and agree as follows:

**AGREEMENT**

1. **PROJECT.**

Midvale and Cottonwood Heights agree to cooperate and fund the landscape maintenance costs for the Islands (the “Project”).

2. **RESPONSIBILITIES OF THE PARTIES:**

Each party agrees to pay \$210.00 each month between April and September to fund the Project.

3. **RESPONSIBILITIES OF MIDVALE:**

- A. Midvale agrees to enter into an agreement with A to Z Landscaping, Inc. for performance of the Project.

B. Midvale agrees to pay for the water needed to maintain the Project landscaping.

4. RESPONSIBILITIES OF COTTONWOOD HEIGHTS

A. Cottonwood Heights agrees to deliver \$210.00 to Midvale on or before the first day of each month between April and September.

B. Cottonwood Heights agrees to include "Union Park Blvd. Median Landscaping" in the memo line of said payments.

5. EFFECTIVE DATE

The Agreement shall become effective on the date hereof (the "Effective Date").

6. TERM OF AGREEMENT

The anticipated term of this Agreement is five (5) years from the Effective Date.

7. TERMINATION.

Either Party may terminate this Agreement without cause upon 30 days' prior written notice to the other Party in accordance with Section 16. Said termination shall not be construed as a breach of or default under this agreement and said termination shall be without penalty, additional payment, or other charges of any kind whatsoever to the Parties and no right or action or damages or the relief shall accrue to the benefit of the other Party as to this agreement or any portion thereof, which may so terminate and become null and void.

8. NON-FUNDING.

The Parties acknowledge that funds are not presently available for the performance of this Agreement beyond the end of each Party's fiscal year, which is June 30, 2015. Each Party's obligation for performance for this Agreement beyond that date is contingent upon funds being appropriated for payment due under this Agreement. If no funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriations due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on the Party as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds are appropriated and budgeted. Said termination shall not be construed as a breach of or default under this agreement and said termination shall be without penalty, additional payment, or other charges of any kind whatsoever to the Parties and no right or action or damages or the relief shall accrue to the benefit of the other Party as to this agreement or any portion thereof, which may so terminate and become null and void.

9. DISCRIMINATION.

The Parties agree that no person shall, on the grounds of race, color, national origin, religion, age, disability, genetic information, gender, gender identity, pregnancy, sexual orientation, marital status and military or veteran status, be excluded from participation in, be denied the benefits of, be subject of discrimination, or discriminated against for employment resulting from this Agreement.

10. MODIFICATION AND NOVATION.

The Parties hereby agree that this Agreement shall not be subject to change, addition, or erasure or any other modification or novation except by the mutual written agreement signed by the Parties hereto.

11. ENTIRE AGREEMENT.

This Agreement and the applicable laws, regulations and policies referenced herein, constitute the entire Agreement between the Parties regarding the subject matter hereof and is intended to be a final expression of their agreement. No promise, representation, warranty or covenant not included in this document has been or is relied upon by any Party. Each Party has relied upon its own examination of the full Agreement and the counsel of its own advisors.

12. INDEMNIFICATION.

Both Parties are governmental entities under the Utah Governmental Immunity Act, Utah Code Ann. §§ 63G-7-101, et seq. (2011, as amended) (the "Act"). Consistent with the terms of the Act, it is mutually agreed that each Party is responsible and liable for its own wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither Party waives any defenses otherwise available under the Act.

13. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the Parties, and their successors and assigns.

14. NON-WAIVER.

A waiver by either Party of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such waiver shall not affect the waiving Party's rights with respect to any other or further breach.

15. SEVERABILITY.

It is understood and agreed upon by the Parties hereto that if any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalid, illegal, or unenforceable provision shall not affect any other provision of this Agreement, and this agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

16. NOTICES.

All notices, consents, waivers or other instruments of communication required to be given under this Agreement shall be deemed properly given if, delivered personally or sent by registered or certified mail, postage prepaid, to the following addresses.

MIDVALE:                      Midvale City  
   Attn. City Manager  
   7505 South Holden Street  
   Midvale, UT 84047

Copy to: Midvale City  
Attn. City Attorney  
7505 South Holden Street  
Midvale, UT 84047

COTTONWOOD HEIGHTS: City of Cottonwood Heights  
Attn: City Manager  
1265 East Fort Union Blvd. #250  
Cottonwood Heights, UT 84047

Copy to: Wm. Shane Topham  
Callister Nebeker & McCullough  
10 East South Temple, 9<sup>th</sup> Floor  
Salt Lake City, UT 84133

17. THIRD PARTIES.

Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person, board or entity, other than the Parties hereto and their successors, any right or remedies of this Agreement, as a third-party beneficiary or otherwise.

18. HEADINGS.

The headings used in this Agreement are for convenience only and in no way define, limit or describe the scope of this Agreement or the intent of any provision.

19. APPROVAL BY ATTORNEY.

This Agreement shall be submitted to the authorized attorneys for the Midvale and Cottonwood Heights for approval in accordance with the Interlocal Cooperation Act, Utah Code Ann. § 11-13-202.5(3).

20. RATIFICATION.

This Agreement shall be approved by Midvale and Cottonwood Heights, through appropriate action, in accordance with the Interlocal Cooperation Act, Utah Code Ann. § 11-13-202.5.

21. NO INTERLOCAL ENTITY.

Pursuant to the Interlocal Cooperation Act, Utah Code Ann. § 11-13-206(b), the Parties agree that they do not, by this Agreement, create an interlocal entity.

22. JOINT BOARD.

Pursuant to the Interlocal Cooperation Act, Utah Code Ann. § 11-13-207, the Parties agree that the cooperative undertakings under this Agreement shall be administered by a joint board consisting of the Midvale mayor (or designee) and the Cottonwood Heights manager (or designee). Any real and personal property acquired by the Parties' cooperative undertaking herein shall be acquired, held, and disposed by each Party pursuant to applicable laws and ordinances.

IN WITNESS WHEREOF, Midvale City, by resolution duly adopted by its municipal council, a certified copy of which is attached hereto, authorized this Agreement to be signed by its mayor and attested by its recorder, and Cottonwood Heights, by resolution duly adopted by its municipal council, a certified copy of which is attached hereto, authorized this Agreement to be signed by its mayor and attested by its recorder.

MIDVALE CITY

By: \_\_\_\_\_  
JoAnn B. Seghini, Mayor

ATTEST:

By: \_\_\_\_\_  
Rori L. Andreason, MMC  
City Recorder

Date signed: \_\_\_\_\_

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-9

By: \_\_\_\_\_  
Chad L. Woolley  
City Attorney

Date signed: \_\_\_\_\_

COTTONWOOD HEIGHTS

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

ATTEST:

By: \_\_\_\_\_  
Kory Solorio  
City Recorder

Date signed: \_\_\_\_\_

APPROVED IN ACCORDANCE WITH UTAH CODE ANN. § 11-13-9

By: \_\_\_\_\_  
Wm. Shane Topham  
City Attorney

Date signed: \_\_\_\_\_