

City Council Staff Report

August 7, 2019

Applicant: Mapleton City
Prepared by: Cory Branch,
City Administrator
Public Hearing: No
Attachment: Proposed
Interlocal Cooperation
Agreement

REQUEST

Consideration of a Resolution authorizing the Mayor to sign an Interlocal Cooperation Agreement with Springville City for the purposes of agreeing to the terms for Judge Fenstermaker to be the judge for each cities respective Justice Court.

BACKGROUND DESCRIPTION

Several years ago, Mapleton City and Springville City both selected Judge Fenstermaker to be the judge for each cities respective Justice Court. The parties agreed at that time that Springville City would hire and pay the salary and benefits for the Judge and Mapleton City would reimburse Springville City for its share of the services.

The parties have worked together to pay the Judge's salary and benefits for all these years without a written contract. The purpose of this Agreement is to formalize in writing the parties agreement. The annual cost to Mapleton is \$22,884. The Judge will work 6 hours per week for Mapleton.

This Item came before the City Council on June 5, 2019. The Item was continued requesting that Staff review when the Judge is due for re-election in order to have the terms of the proposed Agreement be consistent with the date of re-election. As shown in Section 2 of the proposed Agreement the effective date and duration will be from July 1, 2019 to January 1, 2022 consistent with the re-election date.

STAFF RECOMMENDATION

Staff recommends approval of the proposed Interlocal Cooperation Agreement.

INTERLOCAL COOPERATION AGREEMENT

(Judge)

THIS INTERLOCAL COOPERATION AGREEMENT (the "Agreement"), is made and entered into by and between SPRINGVILLE CITY, a political subdivision of the State of Utah, with an address at 110 South Main Street, Springville, Utah 84663, and MAPLETON CITY, a political subdivision of the State of Utah, with an address at 125 West Community Center Way, Mapleton, Utah, 84664.

RECITALS

- A. Pursuant to the provisions of the Utah Interlocal Cooperation Act, Utah Code Annotated, Section 11-13-101, et seq., public agencies, including political subdivisions of the State of Utah as defined therein, are authorized to enter into mutually advantageous agreements for joint or cooperative action and to exchange services that they are each authorized by statute to provide.
- B. Several years ago, Mapleton City and Springville City both selected Judge Fenstermaker (the "Judge") to be the judge for each cities' respective Justice Courts. The parties decided at that time that Springville City would hire and pay the salary and benefits for the Judge and Mapleton City would reimburse Springville City for its share of the services the Judge provides Mapleton City.
- C. The agreement that the parties reached with respect to how much each city pays the Judge is that the Judge is paid for 35 hours of work. Of that 35 hours, Springville City pays for 29 hours (82.9%) and Mapleton City pays for 6 hours (17.1%).
- D. The parties have worked together to pay the Judge's salary and benefits for several years without a written contract. The purpose of this Agreement is to formalize in writing the parties' agreement.
- E. The governing bodies of Springville City and Mapleton City have by resolution agreed to adopt this Agreement.

NOW, THEREFORE, be it mutually covenanted and agreed as follows, each of the parties accepting as consideration for this Agreement the mutual promises and agreements of the other:

Section 1. Purpose.

This Agreement has been established and entered into between Springville City and Mapleton City for the purpose of agreeing to the terms under which the parties will mutually pay for the services of Judge Fenstermaker.

Section 2. Effective Date and Duration.

a. The governing body of each party shall approve this Agreement as required by the Interlocal Cooperation Act. This Agreement shall become effective on the date that both parties approve, execute and file it with the person who keeps the records of each party.

b. The term of this Agreement shall be from July 1, 2019 to January 1, 2022 ("Initial Term"). Unless one of the parties provides the other party with a written notice of the party's intent to

terminate the agreement at least thirty (30) days prior to January 1, 2022, the parties agree that the term of this Agreement will automatically extend after the Initial Term for an additional six (6) years. After the Initial Term, either party may terminate this agreement at any time for any reason or no reason by providing the other party with a written 90-day notice of termination.

c. This Agreement shall be reviewed as to proper form and compliance with applicable law by an attorney for each of the parties.

d. This Agreement supersedes and replaces any and all previous agreements between the parties.

Section 3. Administration of Interlocal Cooperation Agreement.

The parties to this Agreement do not contemplate nor intend to establish a separate legal or administrative entity under the terms of this Agreement. The parties agree that, pursuant to Section 11-13-207 of the Utah Code Annotated, Springville City's City Recorder or her designee shall act as the administrator responsible for the administration of this Agreement and shall have all powers provided by Springville City rule, ordinance, or practice, as is necessary to administer and carry out this Agreement. The parties further agree that this Agreement does not anticipate nor provide for any organizational change in the parties.

Section 4. Judge Services/Equipment. Each party shall be responsible for their own justice court, including, without limitation, the Judge (when the Judge is working in or for the respective party's justice court), the facilities, and any and all equipment necessary to properly operate their justice court.

Section 5. Service Payments.

Mapleton City shall pay Springville City an amount equal to 17.1% of the Judge's salary and benefits based on the Judge working 6 of her 35 hours a week in and/or for the Mapleton City Justice Court. In the event that the percentage of hours between the parties' justice courts changes, the parties agree that they will reevaluate what each party is paying towards the Judge's salary and benefits and make appropriate adjustments.

Section 6. Termination

Prior to the end of the initial term of this Agreement, it shall only be terminated by the mutual consent of both parties. After the initial term, any party may terminate this Agreement by giving the other party a 180-day written notice of termination. This Agreement shall automatically terminate should any federal, state, or local law, regulation or rule governing justice courts or justice court judges make it unlawful or reasonably unfeasible for this Agreement to continue. Furthermore, this Agreement shall automatically terminate should the Judge's position on the bench in either of the parties' justice courts terminate.

Section 7. Manner of Holding, Acquiring or Disposing of Property

Each party shall be responsible for the risk of loss (including without limitation, theft, destruction, disappearance of, or damage) for that equipment and facilities the party is responsible for as outlined in Section 4 of this Agreement. Upon termination of this Agreement, each party shall retain the property that it is responsible for as outlined in Section 4 of this Agreement.

Section 8. Indemnification

The parties to this Agreement are both governmental entities subject to the Governmental Immunity Act. Each party agrees to defend, indemnify and save harmless the other party for damages, claims, suits, and actions arising out of the negligent acts of its own officers or agents in connection with this Agreement. The obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act, provided said Act applies to the action giving rise to the protections of this paragraph. This paragraph shall not be construed as a waiver of the protections of the Governmental Immunity Act.

Section 9. Filing of Agreement

A copy of this Agreement shall be placed on file in the Office of the City Recorder of each party and shall remain on file for public inspection during the term of this Agreement.

Section 10. Notice of Default; Corrective Action

The failure of either party to comply with each and every term and condition of this Agreement shall constitute a breach of this Agreement. Either party shall have thirty (30) days after receipt of written notice from the other of any breach to correct the conditions specified in the notice, or if the corrections cannot be made within the thirty (30) day period, within a reasonable time if corrective action is commenced within ten (10) days after receipt of the notice.

Section 11. Rights and Remedies

In the event of any breach hereunder and after the lapse of the cure period as per Section 10 of this Agreement, the non-breaching party shall have all the rights and remedies available under the laws of the State of Utah in effect. The rights and remedies of the parties hereto shall not be mutually exclusive but shall be cumulative in all effects. The respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

Section 12. Governing Law, Jurisdiction, and Venue

All questions with respect to the construction of this Agreement and all rights and liability of the parties hereto shall be governed by the laws of the State of Utah. Jurisdiction and venue for the enforcement of this Agreement shall be found in the courts of Utah County, State of Utah.

Section 13. Costs of Enforcement

In the event of a breach of this Agreement, the non-breaching party shall be entitled to recover from the breaching party all of the non-breaching party's costs (including, but not limited to, court fees and expert witness costs) and attorneys' fees associated with the enforcement of this Agreement.

Section 14. Notice

Any written notice which must or may be given relating to this Agreement shall be sufficient if mailed postage prepaid, registered or certified mail, in the United States mail addressed to a party at the address given above. Notice shall be mailed to the attention of each City's Administrator at the above addresses. Either party may notify the other to designate a different address for mailing.

Section 15. Miscellaneous

A. Severability. In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, 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, unless the severance of such condition, covenant, or other provision defeats the essential purposes of this Agreement, in which case this Agreement shall be considered invalid or void in its entirety. 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.

B. Entire Agreement. This Agreement contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by the parties. All prior understandings, negotiations, or agreements are merged herein and superceded hereby.

C. Amendments. This Agreement may be modified only by a writing signed by each of the parties hereto.

D. Not Assignable. This Agreement is specific to the parties hereto and is therefore not assignable.

E. Captions. The captions to the various Sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.

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

G. Gender and Number. The singular number includes the plural whenever the context so indicates. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, limited liability company, partnership, or other legal entity when the context so requires.

H. Waiver or Forbearance. No delay or omission in the exercise of any right or remedy by any party hereto shall impair such right or remedy or be construed as a waiver. Any waiver of any breach must be in writing and shall not be a waiver of any other breach concerning the same or any other provision of this Agreement.

- SIGNATURES ON FOLLOWING PAGE -

IN WITNESS WHEREOF, the parties have signed and executed this Agreement, after resolutions duly and lawfully passed, on the dates listed below.

DATED this ____ day of _____, 2019.

SPRINGVILLE CITY

By: _____
RICHARD J. CHILD, Mayor

ATTEST:

By: _____
KIM RAYBURN, City Recorder

**APPROVED AS TO FORM AND COMPATIBILITY
WITH THE LAWS OF THE STATE OF UTAH:**

JOHN A. PENROD,
Springville City Attorney

DATED this ____ day of _____, 2019.

MAPLETON CITY

By: _____
DALLAS HAKES, Mayor

ATTEST:

By: _____
CAMILLE BROWN, City Recorder

**APPROVED AS TO FORM AND COMPATIBILITY
WITH THE LAWS OF THE STATE OF UTAH:**

Attorney for Mapleton City