

REGIONAL SERVICE DELIVERY–COUNTY/MUNICIPAL PARTNERSHIPS

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I. GENERAL CONSIDERATIONS IN SELECTING A CONTRACTING MODEL.

A. Cost–the saga of shrinking budgets and revenues.

1. Economies of Scale.
2. Reduction in Equipment and Personnel Costs.
3. OPEB

B. Loss of Local Control–Political Considerations.

1. Loss of Staff/Equipment.
 - a. Difficulty and cost of re-entry into service delivery.
 - b. Becoming a price taker for core service.
2. Daily administrative control vested in another entity.
3. Perceived loss of civic identity (we just aren't a city without our own police/fire force).
4. Citizens belief that government is further separated from them.
5. Hostility to expanding service providers–turf and money issues.

C. Need for Long or Short Term Stability in Service Delivery.

D. Need for Sense of Ownership to Protect Investment and Stability (*“No one ever washed a rental car” (anon.)*).

II. EXISTING CONTRACT/PARTNERSHIP MODELS.

A. Intergovernmental Service Contracts.

These are contracts not conforming to the Interlocal Cooperation Act requirements that

are entered into pursuant to the general contracting powers of the municipality or county. The validity of this type of contracting was specifically recognized by the Utah Supreme Court in Utah County v. Ivie, 137 P.3d 797 (Utah, 2006).

1. **Municipal Contracting Authority.**

UCA Sec. 10-1-202.

1. Municipalities may sue and be sued, enter into contracts and by ordinance adopt a municipal name and seal which may be changed from time to time.

2. **County Contracting Authority.**

UCA Sec. 17-50-302.

“(1) (a) Except as provided in Subsection (1)(b), a county may:...

(ii) provide a service, exercise a power, or perform a function that is reasonably related to the safety, health, morals, and welfare of county inhabitants, except as limited or prohibited by statute”.

N.B. Before performing any of the above services or exercising any of the above powers in another county, the county is required to:

“first enter(ing) into an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, or other contract with the other county to perform the action, provide the service, exercise the power, or perform the function.”
(UCA Sec. 17-50-302(1)(b))

B. Interlocal Cooperation Act Agreements. (UCA 11-13-101 et seq.)

These agreements are suited for long term ventures, creation of separate governmental entities responsible for service delivery, sharing of liability and combining the efforts of multiple jurisdictions in complex ventures.

1. **Authority for and Scope of Intergovernmental Cooperation Act Contracting.**

UCA Sec. 11-13-202.

“(1) Any two or more public agencies may enter into an agreement with one another

under this chapter:

1. (a) for joint or cooperative action;
- (b) to provide services that they are each authorized by statute to provide;
- © to exchange services that they are each authorized by statute to provide;
- (d) for a public agency to provide law enforcement services to one or more other public agencies, if the public agency providing law enforcement services under the interlocal agreement is authorized by law to provide those services, or to provide joint or cooperative law enforcement services between or among public agencies that are each authorized by law to provide those services; or
- (e) to do anything else that they are each authorized by statute to do.”

2. Advantages of Interlocal Cooperation Agreements/Agencies.

- a. Length of Duration–up to fifty years.
- b. Ability to create a separate governmental (interlocal) entity with rule making and other governmental powers to carry out the work.
- c. Ability to establish governing boards with weighted voting or proportional representation.
- d. Ability to transfer assets with consideration not tied to fair market value.
- e. The shared service is removed from daily political issues of the participating entities–particularly if funded by fees or separate revenues of the new public agency.
- f. Specifically authorizes horizontal and vertical revenue sharing.
- g. Approval of an interlocal agreement is not subject to referendum.

3. Requirements for Adoption.

UCA Sec. 11-13-206.

- a. In writing and specify:
 - I. The duration of the agreement
 - ii. Whether it creates an interlocal entity and its composition,

organization and nature, the powers delegated to it, its governing board and the method of selection

iii. The purpose(s) of the agreement.

iv. The manner of financing and budgeting for the activity.

v. the method(s) to be employed in terminating the agreement and disposing of its property.

vi. If appropriate, the designation of an administrator or joint administrative board.

UCA Sec. 11-13-202.5

a. Approval of the Executive Officer or body of the entity.

b. Approval of the Legislative Body if:

I. Requires current or future fiscal year budget adjustment.

ii. Includes an out of state entity as a party to the agreement.

iii. Provides for the public agency to construct/acquire a facility or improvement to real property.

iv. Provides for the issuance of bonds.

v. Creates an interlocal entity.

vi. Provides for revenue sharing.

c. Approval of the entity attorney as to form and compliance with applicable law.

UCA Sec. 11-13-209

Agreement must be filed with Recorder/Clerk of the parties in order to take effect.

UCA Sec. 11-13-219 (Publication)

Publication of the Agreement or a Notice of Agreement is discretionary but if it is published the period to contest the enactment is limited to thirty days after the date of publication.

C. Special Service Districts. UCA Sec. 17D-1-101 et seq.

These Limited Purpose Local Government Entities are separate bodies corporate and politic that operate under the general control of the municipal or county legislative body that created it. This strengthens local control and reduces the risk of governance conflicts but also

may reduce the sense of ownership by partner entities that have representation on the Administrative Control Board since only some of the governance powers may be delegated to an Administrative Control Board appointed by the legislative body. Special Service Districts may, subject to an election, issue bonds.

1. Allowable Purposes. (UCA Sec. 17D-1-201)

Special Service Districts can be formed to provide water, sewerage, drainage, flood control, garbage collection and disposal, health care, transportation, recreation fire protection including emergency medical services, ambulance, search and rescue, Firewise Communities programs and planning, correctional and rehabilitative facilities and programs, street lighting, consolidated 911 and emergency dispatch, animal shelter and control, receipt of federal mineral lease funds, extended police protection (county of the 1st class) and control of earth movement or landslide .

2. District Creation. (UCA 17D-1-203 through 208)

- a. Petition of Registered Voters (10%) or Property Owners (10% of assessed value).
- b. Resolution of legislative body proposing the district creation.
- c. Publication of Notice of Proposed District Creation
- d. Public Hearing
- e. Expiration of Protest Period and lack of “adequate protests”
- f. Adoption of Resolution establishing district
- g. Transmittal to Lt. Governor and Recordation of Certificate of Incorporation.

3. Administrative Control Board. (UCA Sec. 17D-1-301 through 306)

- a. Appointment. The Administrative Control Board is elected or appointed as determined by the creating entity legislative body. ACB members have four year terms.
- b. Delegation of Powers.. The delegation of governance authority may be revoked at any time an may include all administrative powers except:
 - I. Annexation of additional territory
 - ii. Designation of contracts subject to UCA 11-39-101 et seq.

- iii. Levying taxes.
- iv. Issuing bonds payable from property tax.
- v. Calling an election for the authorization of property tax or issuance of bonds.
- vi. Levying of assessments.
- vii. Issuing interim warrants or bonds payable from assessments.
- viii. Convening a board of equalization.

D. Basic Local Districts (UCA 17B-1-101 et seq.)

Local Districts operate as governmental entities (political subdivisions and bodies corporate and politic) completely separate from the creating entity or entities. Generally approved by a popular election, the local district possesses taxing and bonding power and, additionally, may raise revenue from fees. The powers are not derivative of the creating entity or entities and except for certain law enforcement districts, require no other governmental approval for their execution. The utilization of the separate taxing provisions allows the shifting of the costs of the shared services from the county or municipal accounts to the district's. It frees taxing capacity for the participating local governments but moves direct control over the services from the participating entity to a separate board of trustees on which the participating entity has representation. For core services such as law enforcement, fire and emergency response it negates the need to compete for funds with other governmental functions since there is a separate dedicated funding source.

1. Allowable Purposes. (UCA 17B-1-202)

Basic local districts may be created to offer a variety of services. The authorized purposes include airports, cemeteries, fire protection, paramedic, and emergency services, consolidated 911 and emergency dispatch, garbage collection and disposal, health care, health department and/or hospital operation, libraries, mosquito and insect abatement, parks and/or recreation facilities or services, sewage system operation, construction and maintenance of right of ways including curb, gutter, sidewalk, street, road, water line, sewage line, storm drain, electricity lines, communication lines natural gas lines or street lighting, transportation including public transit, wholesale or retail water and related systems, law enforcement services, animal control services, burying of utility lines, and the control or abatement of earth movement.

2. District Creation. (UCA 17B-1-201 et seq)

a. Resolutions or Petitions. (UCA 17B-1-203)

- I. Resolution(s) of Legislative body of creating entity or entities.
- ii. Petition of Registered Voters (33% of registered voters in area as a whole and each participating entity that cast votes in the last general gubernatorial election

iii. Petition of Property Owners equal to 33% of the total land area and 25% of the value of the privately owned land within the proposed district as a whole and in each participating entity. (n.b. No petition may be filed until the petitioners have filed a Notice of the Proposed Creation with entities in which the proposed district is located to determine whether those entities are willing to provide the proposed service(s) UCA 17B-1-204).

iv. Resolution of the Board of Trustees of an existing local district (only to provide a component element that the district is not currently providing of an existing service that is offered by the district.

b. Publication and Mailing of Notice of the Proposed District Creation. (UCA 17B-1-211)

c. Public Hearing. (UCA 17B-1-210)

d. Protest Period (UCA 17B-1-213)

e. If insufficient protests are filed, adoption of Resolution by legislative bodies of creating entities creating district. (UCA 17B-1-213) or scheduling of an election of one is required (UCA 17B-1-214)

f. Certification by Lt. Governor and recording in each county of the notice of impending boundary action, certificate of incorporation, approved final plat, and certified copies of each adopted Resolution.

E. Hybrid Entities.

Salt Lake and, to a limited extent, Utah Counties have seen the combination of shared service vehicles in the creation of hybrid entities that provide the flexibility of an interlocal cooperation act agreement in the creation and governance of the service delivery entity with the establishment of a local district to provide a funding source for some or all of the participating entities. Examples of this hybrid approach are the Unified Police Department (in Salt Lake County) and the Unified Fire Department (in Salt Lake and Utah Counties). Participation in the local district is not required and non-participating members pay their costs of service through general governmental revenues (local taxes or service fees). Customarily the local district assumes responsibility for the service costs of the entities in the district and the capital improvements required for district members.

