

Dated October 20, 2025

Re: Interlocal Agreement with Monticello City for Inspection Services

Commissioners Harvey, Stubbs & Maughan & Monticello City:

According to Utah Code Annotated 11-13-202.5(3), any agreement that has been approved by the commission will not take effect until it has been reviewed, approved, and signed by the County Attorney.

The Monticello City Contract for Inspection Services was included on the agenda several meetings ago; however, I did not approve it for the reasons outlined in this document. Although I attempted to have it placed on the agenda for the last meeting, Mack declined to do so. So I am sending it to each of you and to Monticello City directly to ensure that it is placed on the agenda.

**I. Review of City and County Responsibilities for Building Inspection Services
(contributed by Bart Kunz).**

Utah gives local jurisdictions the responsibility to inspect projects under Utah Code section 15A-1-207(1). And in *DeBry v. Noble*, 888 P.2d 428, 441-42 (Utah 1995), the Utah Supreme Court described building inspections as a core governmental function. A narrow exception to this responsibility occurs when a local government collects a fee for a building inspection but does not conduct the inspection promptly.

If a municipality or county collects a fee, the municipality or county “shall ensure that the construction project receives a prompt inspection.” Utah Code sections 10-9a-542(2)(a) & 17-27a-537(2)(a). But if a county or municipality can’t provide a building inspection within 3 business days after receiving a request and collecting a fee, the applicant may engage a third-party inspection firm from a list. Utah Code section 15A-1-105 requires the county to keep a list. Utah Code section 17-27a-537(2)(b). (The municipal counterpart appears in MLUDMA at 10-9a-542(2)(b). Interestingly, the MLUDMA version has a carveout that the county version lacks, requiring the municipality to conduct the inspection on the date set by the applicant if it is more than three days after the application.)

Under 15A-1-105, a municipality or county must maintain a “third-party inspection firm list.” For counties of the first through **fourth** class (and municipalities located therein), the list must include at least three firms.¹ If an applicant engages a third-party firm because the municipality or county can’t get to the inspection in time, the applicant must notify the government which

¹ For counties of the fifth or sixth class (and municipalities located therein), the list needs just one firm

firm it is hiring, the third-party inspector submits the report to the government, and the government pays the cost of the inspection, so long as it doesn't exceed the original request. Utah Code section 15A-1-105(2). The government is not liable for such inspections. Utah Code section 15A-1-105(4).

The reports are supposed to be submitted to the "local regulator," which is defined in the State Construction Code as a political subdivision, not necessarily a building inspector or building official. Utah Code section 15A-1-202(12). (Note that section 15A-1-105 refers to section 15A-1-102 for the definition, but that section lacks any such definition.)

Incidentally, section 15A-1-105(1)(d)(ii) allows building inspectors from adjacent cities and counties to be third-party inspectors. So, a county inspector might be able to pick up some extra work from a neighboring jurisdiction.

Consequently, while building inspections may be a topic of an interlocal agreement under Utah Code section 11-13-212, ***a local government should take care if it chooses to enter into such an interlocal agreement with an adjacent jurisdiction using its own building inspector if its inspector could have otherwise separately and independently contracted for such work.***

Given the above, the best approach given the statutory language of Utah Code Section 11-13-212 would be to have Monticello City contract directly with a building inspector (which can be the same inspector as the county has engaged).

II. Other Issues with the Agreement.

1. The Agreement does not comply with the statutory language for creating interlocal agreements.

2. According to the Agreement, the City Manager and the City Planning and Zoning Director are the two administrators of the Agreement. No one from the County is named as a joint administrator. It is odd that the County is providing the City a service and the City is the administrator of the interlocal. It would make more sense to have the county act as the administrator since they are providing the service (or have a joint administrator from the County and the City. Also, the Agreement needs to clarify the powers of the joint administrator, especially if it is the city. Does the city schedule the building inspector? Those types of items should be addressed.

3. More than likely, the County will not be insured by UCIP because of the indemnification provisions in the Agreement. UCIP does not provide coverage for liability a member has accepted by way of a contract. UCIP uses standard industry language in its agreements with its members. The industry does not allow its insureds to obligate the insurer to provide coverage to other entities by way of a contract, and neither does UCIP. If the County agrees to indemnify and defend the City for claims made against the City, that obligation will fall on the county and UCIP will not provide a defense to the City or pay any claims against the City.²

4. The Agreement references the San Juan County Building Department but there is no such legal entity and hence no official governing docs/powers, etc.

III. COMPLIANCE WITH STATUTE

The Agreement references the interlocal agreement act and says the Agreement is made pursuant to the act but it fails to specifically state whether it creates a separate interlocal entity as required by Utah Code Annotated, §11-13-202 & §11-13-206.

Interlocal Agreements must comply with the Interlocal Cooperation Act, codified in Title 11, Chapter 13. There are different requirements depending on whether the Agreement create an interlocal entity.:

1(b) IF the agreement creates an interlocal entity, it must contain:

- (i) the precise organization, composition, and nature of the interlocal entity;
- (ii) the powers delegated to the interlocal entity;
- (iii) the manner in which the interlocal entity is to be governed; and
- (iv) subject to Subsection (2) [below], the manner in which the members of its governing board are to be appointed or selected;

Regardless of whether it creates a separate entity, the Agreement must contain:

1(a) its duration

(c) its purpose

² FYI, under the State Procurement Act, any contract that requires the state to indemnify another party in a contract is considered invalid and unenforceable. UCIP recommends member Counties to adopt the same position that the County will not agree to indemnify or defend any other party to a contract.

- (d) the manner of financing the joint or cooperative action and of establishing and maintaining a budget for it;
- (e) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;
- (f) the process, conditions, and terms for withdrawal of a participating public agency from the interlocal entity or the joint or cooperative undertaking;

(g)

- (i) whether voting is based upon one vote per member or weighted; and
 - (ii) if weighted voting is allowed, the basis upon which the vote weight will be determined;

(2) Each agreement under Section 11-13-203 or 11-13-205 that creates an interlocal entity shall require that Utah public agencies that are parties to the agreement have the right to appoint or select members of the interlocal entity's governing board with a majority of the voting power.

If the Agreement does not create an interlocal entity, then the provisions of Section 11-13-206 still apply but there are additional provisions. The Agreement must provide for:

- (a) the joint or cooperative undertaking to be administered by:
 - (i) an administrator; or
 - (ii) a joint board with representation from the public agencies that are parties to the agreement;
- (b) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;
- (c) the functions to be performed by the joint or cooperative undertaking; and,
- (d) the powers of the joint administrator.

The Agreement lacks some of these statutory provisions entirely and others could be more detailed.

CONCLUSION

A review of the County's responsibilities includes the following:

1. Counties and municipalities must have their own building inspectors, either as employees, contract employees, or by interlocal agreement (though these agreements can present difficulties). A building official can also be the building inspector or some other county official.
2. The County must ensure that builders/owners who reside in the County receive a prompt inspection (3 days or less). The City must also ensure that its builders/owners receive a prompt inspection (3 days or less) ³.
3. If the County fails to meet that deadline, the builder/owner may engage a third party inspector from a list provided by the County. The County must maintain a third party inspection list. For counties of the first through **fourth** class (and municipalities located therein), the list must include at least **three** firms
4. The County needs to designate a "local regulator". "Local regulator" means a political subdivision of the state that is empowered to engage in the regulation of construction, alteration, remodeling, building, repair, installation, inspection, or other activities subject to the codes. "Local regulator" may include the local regulator's designee. §15A-1-202(12)
5. The Commissioners need to decide if they want to have Monticello City contract with its own building inspector or if the County wants to enter into an interlocal agreement, remembering the caution set out in Utah State Code, §11-13-212, - a local government should take care if it chooses to enter into such an interlocal agreement with an adjacent jurisdiction using its own building inspector if its inspector could have otherwise separately and independently contracted for such work.
6. If the County desires to enter into an interlocal agreement with the City for inspection services, then the Agreement needs to be revised to comply with the statutory provisions as more fully set forth in Sections II and III above.

Dated this ____ day of October, 2025.

San Juan County Attorney's Office

/s/ Mitchell D Maughan
County Attorney

³ This assumes that the County or the City charges a fee.