

LEROY W. HOOTON, JR.
DIRECTOR

SALT LAKE CITY CORPORATION

DEPARTMENT OF PUBLIC UTILITIES
WATER SUPPLY AND WATERWORKS
WATER RECLAMATION AND STORMWATER

ROSS C. "ROCKY" ANDERSON
MAYOR

COUNCIL TRANSMITTAL

To: Rock Fluhart, Chief Administrative Officer

May 13, 2005

RE: Interlocal Cooperation Agreement between Salt Lake County and Salt Lake City for the "Mill Creek Fireflow Project."

Recommendation: That the Council approve the Interlocal Cooperation Agreement and forward it to the Mayor for execution on behalf of the City.

Availability of Funds: 2005/2006 Budget

Discussion: Salt Lake City ("City") entered into exchange agreements with three mutual irrigation companies ("Company or Companies") during the 1920's, whereby the Companies exchanged their water rights in Mill Creek with the City, in return for replacement irrigation water and culinary water delivered into a distribution system to serve their stockholders. The Companies' stockholders pay for the culinary water at City rates.

The City has fully honored the exchange agreements; however, there has been disagreement between the City and the Companies over the issue of upgrading the water distribution system(s) for increased capacity to meet modern fire hydrant flow requirements. In 1991 the fire code changed to require 1,000 gallons per minute @ 40 psi, and again in 2001 to 1,500 gallons per minute @ 40 psi. The exchange contracts are not clear regarding fire protection. Salt Lake County (the "County") has statutory responsibility for fire protection within the unincorporated area of the County served by the City, and has been responsible for fire hydrants since a 1978 lawsuit between the City and the County.

In 1993, the Department of Public Utilities (DPU) and the Salt Lake County Fire Department conducted a hydrant fire flow study, which indicated that much of the system(s) fire flows were below the standard. DPU attempted to negotiate with the three Companies to finance system improvements to bring the fire flows up to the new standard. On May 4, 1995, the DPU briefed and notified the Salt Lake City Council that the negotiations had failed.

In 2000, the DPU and the Salt Lake County Public Works Department renewed discussions to find a solution to the Mill Creek fire flow dilemma. DPU conducted additional studies to model the water distribution system(s) and determine system(s) improvements to meet the 1,500 gallons per minute @40 psi standard. In 1993, the Salt Lake County Council ("County Council") formed a "Water Task Committee" to study the matter. On April 13, 2004 the County Council gave the go ahead to form a Mill Creek

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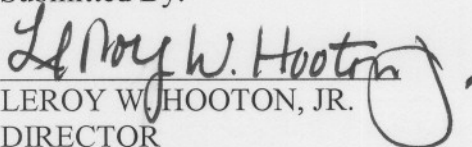
Fire District ("SID"). There have been numerous newspaper articles on the subject, mailed notifications and a public meeting on April 20, 2005.

The Mill Creek Fireflow Project Interlocal Agreement consists of the following elements:

1. The SID is bounded generally by 700 East on the eastern boundary, 2900 East on the eastern boundary, 2700 South on the northern boundary and 3900 South on the southern boundary. The City and the County will install approximately 100,000 linear feet of 8 and 12-inch pipes, approximately 350 new fire hydrants, approximately 2,000 service lateral connections (from the main to the meter), and all other equipment, pipes, improvements and work necessary to improve water flow to 1,500 gallons per minute from each hydrant. The hydrant spacing will be approximately every 500 linear feet for all properties in the area.
2. The total estimated cost of the SID is \$17,776,000. The City's share is \$3,093,000.
3. The City will pay the County \$10,000 for the salvaged fire hydrants.
4. At the completion and acceptance of the Project, improvements relating to Special County Mains shall be owned by the City; all Project improvements relating to Private Mains shall be owned by the County; all Project Improvements relating to Company Mains shall be owned jointly by the City and County on a 57 percent City and 43 percent County basis. Upon full payment of the bonds issued to finance the County's contribution, the County will convey at no additional costs to the City, all right, title and interest of the County in and to the Project Improvements, other than fire hydrants and related appurtenances.
5. The City will take over the maintenance and replacement of private and Company mains and service connections (between the main and meter) located within dedicated streets within the SID. This is a departure from prior practice, and will result in an integrated system that will be upgraded over time as standards change, in the same manner as all other portions of the City's system, both within and outside of the City.
6. The City, the County, the Salt Lake Valley Fire Service Area and the Unified Fire Authority will enter into a separate Interlocal Agreement regarding the maintenance of County fire hydrants, pursuant to which the Unified Fire Authority will pay DPU for such maintenance services on the same basis as the Salt Lake City Fire Department pays DPU for similar work within the City, plus a 35% factor reflecting the Special County rate differential.

Contact Person: LeRoy W. Hooton, Jr. (483-6768) or Jeff Niermeyer (483-6785).

Submitted By:


LEROY W. HOOTON, JR.
DIRECTOR

Attachments

RESOLUTION NO. _____ OF 2005
AUTHORIZING THE APPROVAL OF AN
INTERLOCAL COOPERATION AGREEMENT
BETWEEN SALT LAKE CITY CORPORATION AND
SALT LAKE COUNTY REGARDING THE
MILL CREEK FIREFLOW PROJECT

* * *

WHEREAS, Title 11, Chapter 13, Utah Code Ann., 1953, allows public entities to enter into cooperative agreements to provide joint undertakings and services; and

WHEREAS, the attached agreement has been prepared to accomplish said purposes;

THEREFORE, BE IT RESOLVED by the City Council of Salt Lake City, Utah, as follows:

1. It does hereby approve the execution and delivery of the following:

AN INTERLOCAL COOPERATION AGREEMENT BETWEEN SALT LAKE CITY CORPORATION AND SALT LAKE COUNTY, RELATING TO THE CREATION OF A COUNTY IMPROVEMENT DISTRICT TO FINANCE A PORTION OF THE COSTS OF CERTAIN WATER SYSTEM IMPROVEMENTS IN THE MILL CREEK AREA OF THE COUNTY; THE PAYMENT BY SALT LAKE CITY OF A PORTION OF THE COSTS OF SUCH IMPROVEMENTS; THE CONSTRUCTION, OPERATION, MAINTENANCE AND OWNERSHIP OF SUCH IMPROVEMENTS; AND RELATED MATTERS.

2. The effective date of the agreement shall be the date it is signed by all parties to the agreement.

3. Ross C. Anderson, Mayor of Salt Lake City, Utah, or his designee, is hereby authorized to approve said agreement on behalf of Salt Lake City Corporation, subject to such minor changes which do not materially affect the rights and obligations of the City thereunder and as shall be approved by the Mayor, his execution thereof to constitute conclusive evidence of such approval.

Passed by the City Council of Salt Lake City, Utah, this _____ day of _____, 2005.

SALT LAKE CITY COUNCIL


By: _____
CHAIRPERSON

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 5/31/05
By [Signature]

ATTEST AND COUNTERSIGN:

CHIEF DEPUTY CITY RECORDER

APPROVED AS TO FORM:



SENIOR SALT LAKE CITY ATTORNEY

RESOLUTION Interlocal Mill Creek Fireflow Project

INTERLOCAL COOPERATION AGREEMENT
(MILL CREEK FIREFLOW PROJECT)

*

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THIS INTERLOCAL COOPERATION AGREEMENT (MILL CREEK FIREFLOW PROJECT), dated as of _____, 2005 (this "Agreement"), by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah (the "County"), and SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah (the "City"),

WITNESSETH:

WHEREAS, reference is hereby made to that certain geographic area within unincorporated Salt Lake County identified on Exhibit A attached hereto, which is referred to herein as the "Mill Creek Area;" and

WHEREAS, the Mill Creek Area is comprised of the historic service areas of three mutual irrigation water companies, namely the East Mill Creek Water Company, the Lower Mill Creek Irrigation Company and the White Ditch Irrigation Company (each a "Company"); and

WHEREAS, the City owns and operates a culinary water treatment and distribution system, consisting of dams, reservoirs, storage tanks, water treatment plants, raw and finished water conveyance facilities, valves, pumps, distribution pipelines and related and appurtenant facilities (collectively, the "System"); and

WHEREAS, culinary water service within the Mill Creek Area is provided by the City through the utilization of portions and elements of the System, including portions of the System which are situated within the Mill Creek Area, together with other pipelines and related facilities owned by the Companies, and privately-owned pipelines and related facilities which are situated in dedicated public rights-of-way, or private streets in cases where the City has been granted and has accepted all necessary easements (such portions of the System, and other pipelines and facilities, to the extent identified as such on the map attached hereto as Exhibit A, being referred to herein collectively as the "Mill Creek Area Facilities"); and

WHEREAS, such culinary water service is provided, in part, to satisfy the requirements of three water exchange agreements, as amended from time to time (the "Exchange Agreements"), between the City and each of the Companies; and

WHEREAS, fire protection service within the Mill Creek Area is currently provided for by the County, pursuant to applicable Utah law; and

WHEREAS, the County desires to upgrade and augment certain of the Mill Creek Area Facilities to achieve (i) fire hydrant spacing of approximately 500 feet throughout the Mill Creek Area, and (ii) a fire flow of approximately 1,500 gallons per minute; and

WHEREAS, various capital improvements to the Mill Creek Area Facilities have been recommended to achieve such fire hydrant spacing and fire flow capacity ; and

WHEREAS, disputes over certain provisions of the Exchange Agreements and applicable statutes have historically precluded agreement among the City, the County and the Companies regarding allocation of the costs and expenses of capital improvements to portions of the Mill Creek Area Facilities; and

WHEREAS, the County has proposed the creation of a Special Improvement District (the "SID"), pursuant to Title 17A, Chapter 3, Part 2, Utah Code Annotated (the "SID Act"), to finance a portion of the costs and expenses of acquiring and constructing the proposed capital improvements, with the balance of such costs and expenses being contributed by the City through its water enterprise fund; and

WHEREAS, in connection with the proposed capital improvements to portions of the Mill Creek Area Facilities, the County proposes to make improvements to the County streets and drainage facilities affected by such project; and

WHEREAS, prior to initiating the process of creating the SID, the parties desire to document their understanding regarding the financing of the proposed capital improvements, the ownership, operation and maintenance obligations with respect to the Mill Creek Area Facilities, and related matters; and

WHEREAS, the parties desire to enter into this Agreement for such purpose; and

WHEREAS, this Agreement is entered into in compliance with the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated (the "Interlocal Act"),

NOW THEREFORE, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

Section 1. Project Description. A general description of the proposed capital improvements to the Mill Creek Area Facilities (the "Project Improvements"), is attached hereto as Exhibit B. The design, acquisition and construction of the Project Improvements are referred to herein as the "Project."

Section 2. Project Schedule. The Project shall be constructed in phases over a two-year period, commencing during calendar year 2005, with a view to minimizing disruption and inconvenience to the neighborhoods affected by the Project.

Section 3. Project Construction. (a) Subject to the provisions of this Section 3, the County shall be the contracting party for the Project and the "owner" of the Project for all purposes of the contract documents. Selection of the design engineer and the contractor shall be made by the County, in accordance with its standard procurement requirements and procedures; provided that the County shall consult with, and obtain the consent of, the City in connection with such selection. The City shall have design and construction inspection approval authority over the Project, which authority shall be documented in the construction documents to the satisfaction of the City; provided that the County shall be the sole formal source of contact with the contractor.

(b) The Project shall include, among other things, work associated with street repair, including trench materials, backfill, compaction, and asphalt overlay of the "T" patch required for new water pipeline construction. The County may elect, on a street-by-street basis, to perform additional work consisting of a complete asphalt overlay of streets where pipeline work is to be done, and/or storm drain work in streets affected by the Project. The County shall pay all costs associated with any street overlay or storm drain work; provided that to the extent that the County performs work as part of its street overlay work which would otherwise have been performed as part of the Project, the County shall be reimbursed for such work out of the Project budget. Work required for the full street overlays may be included in the same construction contract for the waterline improvements, or may be performed by the County crews.

Section 4. Project Budget. (a) A proposed estimated budget for the Project is attached hereto as Exhibit C. The City agrees, subject to Sections 5 and 11 hereof, to contribute funds in the amount of \$3,093,000 to the Project. The County agrees, subject to Sections 5 and 11 hereof, to secure the balance of the needed funds, in the amount of \$10,919,000, through the proposed SID, and from other available sources. The City's contribution shall be paid to the County prior to commencement of the acquisition and construction of the Project by the County. The amounts set forth above are estimates only, based on the estimated costs and expenses set forth in Exhibit C. Such amounts shall be adjusted proportionately to reflect any increase or decrease in the costs and expenses of the Project, as determined prior to the adoption of the Assessment Ordinance by the County. In addition, any cost overruns or other amounts required to be paid by the County pursuant to Section 17A-3-213(2) of the SID Act shall be shared by the City and County in the same proportion as the amounts set forth above bear to the estimated cost of the Project as set forth on Exhibit C. Likewise, any cost savings shall be shared by the City and the County on the same basis. In addition to the foregoing, the City shall pay to the County the amount of \$10,000 in exchange for the salvaged fire hydrants from the Mill Creek Area.

(b) In the event of a final, non-appealable ruling by a court of competent jurisdiction which (i) has the effect of abating all or any portion of the SID assessments

imposed by the County to fund its portion of the Project costs, as outlined above, or (ii) gives rise to a claim against the County, which ruling is based on a determination by such court that the City has a pre-existing, contractual responsibility to pay the costs proposed to be paid through such assessments, then the City agrees to reimburse the County to the full extent of such abated assessments, subject to subjection to Section 11 hereof.

Section 5. Creation of SID. The County shall use its best reasonable efforts to accomplish the creation of the SID. In the event the SID is not created, the mutual undertakings and financial obligations of the City and the County contained herein shall be null and void, and this Agreement shall automatically terminate.

Section 6. Ownership. Upon completion and acceptance of the Project Improvements, the same shall be owned by the County and the City as follows: (i) all Project Improvements relating to "Special County Mains," as identified on the map attached hereto as Exhibit A, shall be owned by the City, (ii) all Project Improvements relating to "Private Mains" identified on Exhibit A shall be owned by the County, (iii) all Project Improvements relating to "Company Mains" identified on Exhibit A shall be owned jointly by the City and the County on a 57% City, 43% County basis, and (iv) notwithstanding the foregoing, all Project Improvements consisting of fire hydrants and related appurtenances shall be owned by the County or the County's assigns. Upon full payment of the bonds issued to finance the County's contribution, including any refunding bonds, and at no additional cost to the City, all right, title and interest of the County in and to the Project Improvements (other than fire hydrants and related appurtenances) shall transfer from the County to the City, and the City shall thereafter be the sole owner of the same, it being the express intent of the parties that such conveyance shall be accomplished automatically by virtue and operation of this Agreement, without further action taken by either party. Nevertheless, the County agrees to adopt, execute, deliver and/or file such further evidence of conveyance of the Project Improvements as the City may reasonably request.

Section 7. Maintenance and Operation. (a) Except as provided in subsection (b) below with respect to fire hydrants, the City shall assume responsibility, at it's cost, for the ongoing operation, maintenance, repair and replacement of all Mill Creek Area Facilities, including the Project Improvements, for as long as the Mill Creek Area constitutes part of the City's culinary water service area, to the fullest extent it may legally do so. The operation, maintenance, repair and replacement of the Mill Creek Area Facilities (other than fire hydrants and related appurtenances), shall be performed and accomplished by the City in accordance with generally applicable standards, policies, practices, procedures, rules, regulations, ordinances, statutes and other applicable law, as the same shall be in effect from time to time, and on the same basis as operation, maintenance, repair and replacement is performed and accomplished by the City with respect to the System within all other portions of the City's culinary water service area, both within and outside of the City.

(b) By separate Interlocal Agreement, dated on or about the date hereof (the "Fire Hydrant Maintenance Agreement"), the City and the County have

documented their mutual agreement regarding the maintenance of fire hydrants and related appurtenances within all unincorporated areas of the County, including the Mill Creek Area, and payment of the costs of such maintenance. The maintenance of such portions of the Mill Creek Area Facilities, including Project Improvements, which constitute fire hydrants and related appurtenances, shall be governed by the terms of the Fire Hydrant Maintenance Agreement.

(c) The City's ability to fully integrate the Mill Creek Area Facilities into the System constitutes the main inducement to the City to undertake the financial burden of ongoing operation, maintenance, repair and replacement costs and expenses related to the Mill Creek Area Facilities. Accordingly, and notwithstanding subsection (a) above, in the event it is determined, either by a court of competent jurisdiction, or by the City under credible threat of litigation and following the advice of legal counsel, that (i) the City is not able to fully control the operation, maintenance, repair or replacement of any portion of the Mill Creek Area Facilities, or (ii) any of the City's obligations under this Section 7 are deemed superseded by or contrary to the City's obligations under the Exchange Agreements or other contracts, rules, regulations or other law, then the City's obligations under this Section 7 regarding the ongoing operation, maintenance, repair and replacement of the Mill Creek Area Facilities shall, at the option of the City, be null and void, in their entirety, and the operation, maintenance, repair and replacement of the Mill Creek Area Facilities shall thereafter be governed by the applicable terms of the Exchange Agreements and any other applicable contracts, ordinances, statutes, laws, rules, regulations, decrees or court orders.

Section 8. Term. Subject to Section 5 hereof, this Agreement shall remain in effect for fifty (50) years, unless otherwise agreed by the parties.

Section 9. Interlocal Act Requirements. In satisfaction of the requirements of the Interlocal Act in connection with this Agreement, the parties agree as follows:

(a) This Agreement shall be authorized by resolution or ordinance of the legislative body of each party, pursuant to Section 11-13-202.5(1)(b) of the Interlocal Act;

(b) The resolution or ordinance of a party's legislative body approving this Agreement shall specify the effective date of this Agreement, pursuant to Section 11-13-202.5(2) of the Interlocal Act.

(c) A duly executed original counterpart of this Agreement shall be filed with the keeper of records of each party pursuant to Section 11-13-209 of the Interlocal Act.

(d) The Mayor of the City and the Mayor of the County are designated as the joint administrators of this Agreement for all purposes of the Act, pursuant to Section 11-13-207(1) of the Interlocal Act.

(e) The disposition of real or personal property upon partial or complete termination shall be governed by applicable law.

(f) This Agreement shall be submitted to the attorney authorized to represent the City and the County, respectively, for review as to proper form and compliance with applicable law, pursuant to Section 11-13-202.5(3) of the Interlocal Act.

(g) In satisfaction of Section 11-13-207(2) of the Interlocal Act, the parties agree that the acquisition, holding, and disposition of real and personal property used in the joint undertaking shall be governed by the provisions of Section 4 hereof, and by the provisions of applicable law.

Section 10. Representations Regarding Ethical Standards For Salt Lake City Officers And Employees And Former Salt Lake City Officers and Employees. The County represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

Section 11. Obligations Not a Debt. It is not the intention of either party hereto to create "debt" within the meaning of Article XIV of the Utah Constitution. Accordingly, any obligations of such parties provided for herein which require the expenditure of funds beyond the current fiscal year of such parties shall be subject to annual appropriation.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this _____ day of _____, 2005.

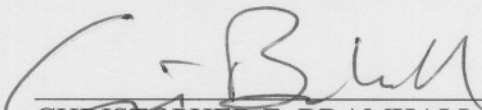
SALT LAKE CITY CORPORATION

By _____
MAYOR

ATTEST:

CHIEF DEPUTY CITY RECORDER

Approved as to form and legality:



CHRISTOPHER E. BRAMHALL
Senior City Attorney

SALT LAKE COUNTY

By _____
Title: _____

Approved as to form and legality:

KARL HENDRICKSON
Deputy District Attorney

STATE OF UTAH)
 : ss.
County of Salt Lake)

On the ____ day of _____, 2005, personally appeared before me _____ and _____, who being by me duly sworn, did say that they are the Mayor and Deputy City Recorder, of SALT LAKE CITY CORPORATION, and that the foregoing instrument was signed in behalf of said municipal corporation by authority of a resolution of its City Council; and said persons acknowledged to me that said municipal corporation executed the same.

NOTARY PUBLIC, residing in
Salt Lake County, Utah

My Commission Expires:

STATE OF UTAH)
 : ss.
County of Salt Lake)

On the ____ day of _____, 2005, personally appeared before me _____ and _____, who being by me duly sworn, did say that they are the _____ and _____, of SALT LAKE COUNTY, and that the foregoing instrument was signed in behalf of said _____

by authority of a resolution of its County Council; and said persons acknowledged to me that said _____ executed the same.

NOTARY PUBLIC, residing in
Salt Lake County, Utah

My Commission Expires:

DOCS/Mill Creek Interlocal 4-26-05 Draft

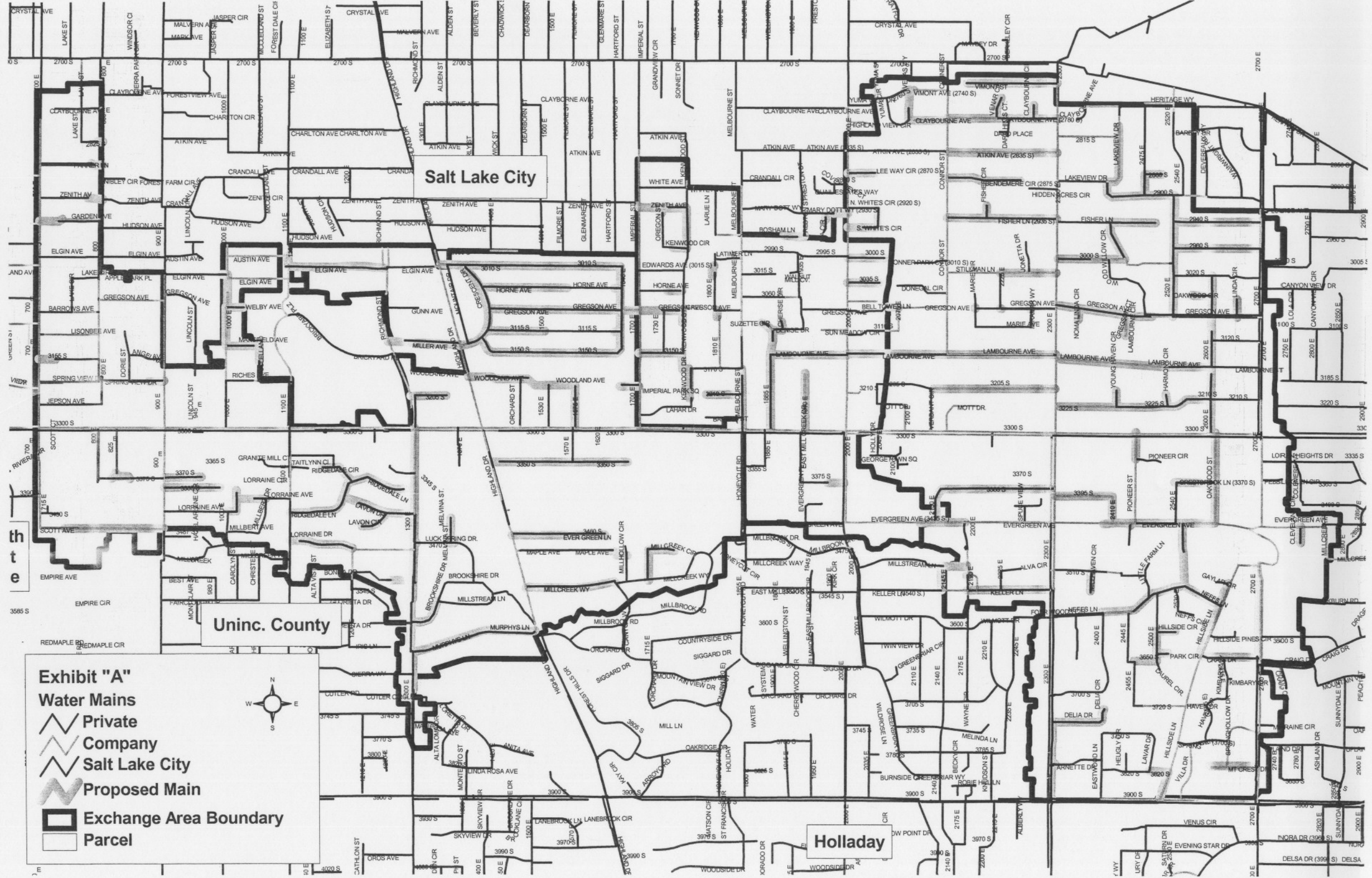


Exhibit "A"

Water Mains

- Private
- Company
- Salt Lake City
- Proposed Main
- Exchange Area Boundary
- Parcel



Salt Lake City

Uninc. County

Holladay

Exhibit B

General Project Description

Within an area generally bounded by 700 East on the Western boundary, 2900 East on the Eastern boundary, 2700 South on the Northern boundary and 3900 South on the Southern boundary, the County and Salt Lake City shall cause to have installed approximately 100,000 linear feet of 8" and 12" pipe, approximately 350 new or replaced fire hydrants, approximately 2000 service lateral connections, and all other equipment, pipes, improvements and work necessary to improve water flow for fire hydrant protection in the area to approximately 1,500 gallons per minute from each hydrant and to provide hydrants approximately every 500 linear feet for all properties in the area. As part of the improvements, certain water mains and other water lines, service connections and hydrants will be removed, replaced or extended within the boundaries of the area.

Exhibit C

Estimated Millcreek Special Improvement District Budget Summary

County SID Bond Related Costs

SID Creation	\$70,000	
Bond Counsel	Included in COI below	
Costs of Issuance (COI) of the Bond	\$300,000	
County Design	\$395,000	
County Main Lines Construction, Hydrants, & Contingency	\$9,700,000	
County Construction Management	<u>\$511,000</u>	
	Subtotal	\$10,976,000

Salt Lake City Contribution

Salt Lake City Main Lines Construction, Laterals, and Contingency proportions	\$3,000,000	
Salt Lake City Credit	<u>\$100,000</u>	
	Subtotal	\$3,100,000

Salt Lake County Funds Contributed

Overlay	\$1,200,000	
Appeals Board	<i>Absorbed in the</i>	
Appeals	<i>Administrative costs</i>	
Administration (over 10 years)	\$1,500,000	
Guaranty Fund	\$1,000,000	
	Subtotal	<u>\$3,700,000</u>

Total Estimated Costs **\$17,776,000**