

COTTONWOOD HEIGHTS

RESOLUTION NO. 2014-53

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH SALT LAKE COUNTY (OLD MILL FENCE MAINTENANCE EASEMENT)

WHEREAS, the city of Cottonwood Heights (the “*City*”) has established the “Big Cottonwood” public trail (the “*Trail*”) from the terminus of the “Holladay Trail” at the City’s boundary near the “Knudsen Corner” intersection of I-215 and Holladay Blvd., to the Bonneville Shoreline Trail in Big Cottonwood Canyon; and

WHEREAS, Salt Lake County (the “*County*”) owns approximately 10.87 acres of real property (the “*Property*”) located at approximately 6660 South Big Cottonwood Canyon Road, Cottonwood Heights, Utah; and

WHEREAS, a portion of the Trail crosses the Property along the rear boundaries of the residential properties located between 3123-3195 East Walker Mill Drive in the City (collectively, the “*Affected Properties*”); and

WHEREAS, in connection with its establishment of the Trail, the City erected a precast concrete fence (the “*Fence*”) to provide a visual barrier between the Trail and the back yards of the Affected Properties, as described in a series of “Fence Agreement” documents (the “*Fence Agreements*”) that are dated effective 15 September 2010 and are between the City and the various owners of the Affected Properties; and

WHEREAS, although the Fence Agreements authorized the City to enter the Affected Properties in order to construct and maintain the Fence, they also require the City to seek to obtain a replacement easement from the County authorizing the City to use a portion of the Property to allow access for workmen, materials, vehicles and equipment as needed to construct, repair, maintain and replace the Fence in the future; and

WHEREAS, the County has agreed to cooperate with the City’s request for such accommodation, and is willing to grant an easement across the Property for the purposes, and on the terms and conditions, specified in a certain proposed interlocal agreement between the City and the County, a copy of which is annexed hereto (the “*Agreement*”); and

WHEREAS, the City and the County are “public agencies” for purposes of the Utah Interlocal Cooperation Act, UTAH CODE ANN. §§ 11-13-101 *et seq.* (the “*Cooperation Act*”), and are authorized by the Cooperation Act to act jointly and cooperatively on the basis of mutual advantage in order to provide facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the Cooperation Act also provides that any public agency may convey property to or acquire property from any other public agency for consideration as may be agreed upon; and

WHEREAS, the City's municipal council (the "Council") met in regular session on 26 August 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; 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 citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the Agreement 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. 2014-53, shall take effect immediately upon passage.

PASSED AND APPROVED this 26th day of August 2014.

COTTONWOOD HEIGHTS CITY COUNCIL

By 
Kelvyn H. Cullimore, Jr., Mayor

ATTEST:


Kory Solorjo, 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 26th day of August 2014.

RECORDED this 26 day of August 2014.

Interlocal Cooperation Agreement

THIS INTERLOCAL COOPERATION AGREEMENT (this "*Agreement*") is made effective _____ 2014 by SALT LAKE COUNTY, a body corporate and politic of the state of Utah ("*County*"), and COTTONWOOD HEIGHTS, a Utah municipality ("*City*").

RECITALS:

A. County and City are public agencies for purposes of the Interlocal Cooperation Act (UTAH CODE ANN. §11-13-101, *et seq.*) (the "*Interlocal Act*").

B. UTAH CODE ANN. §11-13-202 provides that any two or more public agencies may enter into an agreement with one another for joint or cooperative action.

C. UTAH CODE ANN. §11-13-214 provides that any public agency may convey property to or acquire property from any other public agency for consideration as may be agreed upon.

D. City has established the "Big Cottonwood" public trail (the "*Trail*") from the terminus of the "Holladay Trail" at the City's boundary near the "Knudsen Corner" intersection of I-215 and Holladay Blvd., to the Bonneville Shoreline Trail in Big Cottonwood Canyon.

E. County owns approximately 10.87 acres of real property (the "*Property*") located at approximately 6660 South Big Cottonwood Canyon Road, Cottonwood Heights, Utah. A portion of the Trail crosses the Property along the rear boundaries of the residential properties located between 3123-3207 East Walker Mill Drive in the City (collectively, the "*Affected Properties*").

F. In connection with its establishment of the Trail, City constructed a precast concrete fence (the "*Fence*") to provide a visual barrier between the Trail and the back yards of the Affected Properties, as described in a series of "Fence Agreement" documents (the "*Fence Agreements*") that are dated effective 15 September 2010 and are between City and the various owners of the Affected Properties.

G. Although the Fence Agreements authorized City to enter the Affected Properties in order to construct and maintain the Fence, they also require City to seek to obtain a replacement easement from County authorizing City to use a portion of the Property to allow access for workmen, materials, vehicles and equipment as needed to construct, repair, maintain and replace the Fence in the future.

G. County desires to cooperate with City's request for such accommodation, and is willing to grant an easement across the Property for the purposes, and on the terms and conditions, specified in this Agreement.

AGREEMENT:

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

Section 1. **Grant of Easement.** County shall grant and convey to City the non-exclusive ten foot wide easement (the “*Easement*”) over and across the Property described in Exhibit “A” attached hereto and made a part hereof. The purpose of the Easement is to allow City (including its employees, agents and contractors), at City’s cost, to construct, re-construct, install, maintain, use, operate, inspect, replace and repair the Fence. Any rights of ingress and egress over and across adjacent and contiguous property owned by County which are not covered by other easements must be obtained in writing from the Salt Lake County Flood Control Division. This Agreement does not authorize City to construct any additional improvements on the Property.

Section 2. **Protection of Infrastructure.** A flood control basin, a dam, a spillway and related improvements (collectively, the “*Infrastructure*”) on the Property are integral components of County’s flood control system. The parties intend that the existence and use of the Easement on the Property shall not in any way interfere with County’s use of the Infrastructure or the utility of the Property and the Infrastructure for County’s flood control purposes. City’s use of the Easement shall at all times preserve the structural integrity and utility of the Infrastructure, and City shall not adversely impact any of the Infrastructure in any way through use of the Easement.

Section 3. **No Other Use.** The Easement is granted for the limited purposes specified in Section 1, above. City disclaims any right to use the Easement or any other portion of the Property for any other purpose(s).

Section 4. **No Interference; Reservation of Rights.** County reserves and retains for itself and its successors, assigns and designees (a) the right to reasonably cross the Easement; and (b) the right to reasonably use the Easement for any and all purposes which do not materially interfere with City’s use of the Easement as provided herein.

Section 5. **Duration.** The Easement granted herein shall be perpetual in duration.

Section 6. **Covenants Run with Land.** The Easement shall (a) create an equitable servitude on the Property in favor of City; (b) constitute a covenant running with the land; (c) bind every person having any fee, leasehold or other interest in any portion of the Property at any time or from time to time; and (d) inure to the benefit of and be binding upon County and City, their respective successors and their assigns.

Section 7. **Indemnity.** City and County are governmental entities under the Utah Governmental Immunity Act (UTAH CODE ANN. §63-30d-101, *et seq.*) (the “*Immunity Act*”). Consistent with the Immunity Act, each party shall be responsible and liable for its own wrongful or negligent acts which are committed by it or by its own officials (whether elected or appointed), employees or contractors (“*its related parties*”). Neither party waives any defenses otherwise available under the Immunity Act nor does any party waive any limits of liability now or hereafter provided by the Immunity Act.

Subject to the foregoing, City shall defend, indemnify, save and hold harmless County and its related parties from and against any and all demands, liabilities, claims, damages, actions or proceedings, in law or in equity, including reasonable attorney’s fees and costs of suit, relating to or arising from the actions of City or its related parties in connection with City’s use of the

Easement under this Agreement, except to the extent that such demands, claims, actions or proceedings may result from the negligence, violation of this Agreement, or misconduct of County or its related parties.

Section 8. **Additional Interlocal Act Issues.**

(a) **No Separate Entity.** This Agreement does not create a separate legal/interlocal entity.

(b) **Joint Board.** As required by UTAH CODE ANN. §11-13-207, the parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of County's mayor or designee and City's manager or designee. Any real or personal property used in the parties' cooperative undertaking herein shall be acquired, held, and disposed of as determined by such joint board.

(c) **Financing Joint Cooperative Undertaking and Establishing Budget.** There is no financing of joint or cooperative undertaking and no budget shall be established or maintained.

(d) **Termination.** This Agreement may be partially or completely terminated only through a writing, signed by both parties, effecting such termination.

(e) **Approval by Attorneys.** This Agreement shall be submitted to the authorized attorneys for City and County for approval in accordance with UTAH CODE ANN. §11-13-202.5.

Section 9. **General Provisions.** The following provisions are also integral parts of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Time of Essence. Time is the essence of this Agreement.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) Attorneys' Fees. If any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy proceeding.

(k) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above.

IN WITNESS WHEREOF, County by resolution of its city council, a certified copy of which is attached hereto, caused this Agreement to be signed by its mayor and attested by its recorder, and City by resolution duly adopted by its city council, a certified copy of which is attached hereto, caused this Agreement to be signed by its mayor and attested by its recorder.

[Signature pages follow.]

SALT LAKE COUNTY

By: _____
Mayor or Designee

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this ___ day of _____, 2014, personally appeared before me _____, who being duly sworn, did say that (s)he is the _____ of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, bu authority of law.

Notary Public

Approved As To Form and Legality:



Adam Miller, Deputy District Attorney
Date: Aug 21, 2014

COTTONWOOD HEIGHTS, a Utah municipality

By _____
Kelvyn H. Cullimore, Jr., Mayor

ATTEST:

Kory Solorio, City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me on _____ 2014 by **Kelvyn H. Cullimore, Jr.** and **Kory Solorio** as the mayor and the recorder, respectively, of **COTTONWOOD HEIGHTS**, a municipality and political subdivision of the State of Utah.

Notary Public

Approved As To Form and Legality:

Wm. Shane Topham, City Attorney
Date: _____, 2014

Exhibit "A" to
Interlocal Cooperation Agreement

WHEN RECORDED, MAIL TO:

Cottonwood Heights
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

Affects Parcel No. 22-23-401-001

PERPETUAL ACCESS EASEMENT

SALT LAKE COUNTY, a body corporate and politic of the State of Utah, Grantor, does hereby grant and convey to COTTONWOOD HEIGHTS, a Utah municipal corporation, Grantee, its successors and assigns, for the sum of Ten Dollars and other good and valuable consideration, receipt of which is hereby acknowledged, a non-exclusive perpetual access easement 10.0 feet in width over and across the following described property for purposes of inspecting, maintaining, repairing, and replacing an existing precast concrete fence. Any rights of ingress and egress over and across adjacent and contiguous property owned by Grantor that are not covered by other easements must be obtained in writing from the Salt Lake County Flood Control Division.

SEE EXHIBIT "A"

WITNESS the hand of said GRANTOR this _____ day of _____, 2014.

GRANTOR: Salt Lake County

By: _____
Mayor or Designee

By: _____
Sherrie Swensen, Salt Lake County Clerk

STATE OF UTAH)
 :SS
County of Salt Lake)

APPROVED AS TO FORM
District Attorney's Office
By: _____
Deputy District Attorney
Adam Miller
Print Name
Date: 21 Aug 2014

On this _____ day of _____, 2014, personally appeared before me _____, who being duly sworn, did say that (s)he is the _____ of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, by authority of law.

[SEAL]

NOTARY PUBLIC
Residing in Salt Lake County, Utah

STATE OF UTAH)
 :SS
County of Salt Lake)

On this ____ day of _____, 2014, personally appeared before me _____, who being by me duly sworn, did say and acknowledge that (s)he is the _____ of Salt Lake County, and that the foregoing instrument was signed by her (him) on behalf of Salt Lake County, by authority of a Resolution of the Salt Lake County Council.

[SEAL]

NOTARY PUBLIC
Residing in Salt Lake County, Utah

(EXHIBIT A)

An access easement being part of an entire tract of land located in the Southeast Quarter of Section 23, Township 2 South, Range 1 East, Salt Lake Base and Meridian; said entire tract was conveyed to Salt Lake County (22-23-401-001), per that Warranty Deed recorded in Book 4138 Page 127 in the Office of the Salt Lake County Recorder. Said access easement is a strip of land, 10.00 feet wide, lying perpendicularly distant northerly from that portion of the southerly boundary line of said entire tract, described as follows:

Beginning at the southwesterly corner of said entire tract, which point is 900 feet S. $0^{\circ}54'10''$ W. along the center of section line from the center of said Section 23, which point is the northwest corner of Lot 23 of the Old Mill Estates Plat A Subdivision, as platted and recorded in Book 89-9 Page 94 in the Office of said Recorder; thence East 831 feet along the southerly boundary line of said entire tract and the north boundary line of said Old Mill Estates Plat A Subdivision and the north boundary line of the Old Mill Estates Plat B Subdivision as platted and recorded in Book 90-8 Page 100 in the Office of said Recorder, and an extension thereof, to the easterly boundary line of said entire tract, being the **Point of Terminus**.

The sidelines of said strip of land to be lengthened or shortened to begin on the west boundary line and terminate on the easterly boundary line of said entire tract.

The above described access easement contains 8,322 square feet in area or 0.191 acres, more or less.

BASIS OF BEARING: The Basis of Bearing is S. $0^{\circ}54'10''$ W. between the center section monument and the South Quarter Corner monument in said Section 23