CITY OF SOUTH SALT LAKE REDEVELOPMENT AGENCY

RESOLUTION NO. R2013-01

A RESOLUTION APPROVING A RIPARIAN AREA LEASE AGREEMENT AND A MILLCREEK POND AREA IN-KIND SERVICES MAINTENANCE AGREEMENT WITH THE MILLCREEK HOMEOWNERS ASSOCIATION.

WHEREAS, the City of South Salt Lake Redevelopment Agency owns certain real property known as Millcreek Pond, subject to reservation of easement and restrictive covenants by Salt Lake County; and

WHEREAS, the Millcreek Pond Homeowners' Association desires to protect the beautiful and natural area surrounding the Mill Creek Pond as natural wetlands; and

WHEREAS, the Association is willing to provide maintenance services to the premises, in accordance with all laws and regulations applicable to the property; and

WHEREAS, the Agency recognizes the value of those services to be rendered, and the benefit which will be conferred on the property through the Association's maintenance activities; and

WHEREAS, the Agency and Association are willing to enter into lease and maintenance agreements for the preservation of the premises,

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE GOVERNING BOARD OF THE CITY OF SOUTH SALT LAKE REDEVELOPMENT AGENCY as follows:

1. The Millcreek Riparian Area Lease Agreement, effective January 1, 2013 until January 1, 2018, the draft of which accompanies this resolution, is approved and shall be executed for and on behalf of the Agency by the Chair and Secretary of the Agency Board.

2. The Millcreek Pond Area In-Kind Services Maintenance Agreement, effective January 1, 2013, the draft of which accompanies this resolution, is approved and shall be executed for and on behalf of the Agency by the Chair and Secretary of the Agency Board.

3. This Resolution shall take effect upon adoption.

APPROVED AND ADOPTED by the governing body of the City of South Salt Lake Redevelopment Agency, this 27th day of March, 2013.

BY THE CITY COUNCIL:

Boyd L. Marshall

Boyd Marshall, *Chair*

ATTEST:

Craig D. Burton, *Secretary*

CITY OF SOUTH SALT LAKE CORPORATE Seal REDEVELOPMENT AGENCY


CITY OF SOUTH SAN JOSE
REDEVELOPMENT AGENCY
CORPORATE
SEAL

Exhibit A

Legal Description of the Premises

BEG N 516.94 FT & E 549.16 FT FR SW COR LOT 2, BLK 30, 10 AC PLAT A, BIG FIELD SUR; N 53^48 02" W 75.76 FT; S 71^ W 150 FT; NW LY ALG CURVE TO R 91.46 FT; N 21^27 06" E 38.74 FT; N 10^01 48" E 43.85 FT; N 28^27 29" W 25.1 FT; N 60^47 29" W 20.6 FT; S 32^24 47" W 43.59 FT; N 86^ W 64.54 FT; NE LY ALG CURVE TO R 193.52 FT M OR L; N 29^30 E 90 FT; N 70 FT; N 52^31 36" E 35.11 FT; S 15^24 24" E 17.18 FT; S 9^30 W 18.3 FT; S 1^40 E 34 FT; S 25^10 E 18.8 FT; S 15^30 E 18.7 FT; S 16^50 W 34.5 FT; S 16 FT; S 30^20 W 69.5 FT; S 4^50 W 36.1 FT; S 14^ E 20.6 FT; S 35^30 E 17.2 FT; S 69^30 E 17.1 FT; N 85^10 E 24.1 FT; N 80^50 E 50.6 FT; S 84^20 E 20.1 FT; S 61^ E 20.6 FT; S 28^40 E 25.1 FT; S 14^40 E 39.3 FT; S 36^ E 27.3 FT; S 69^30 E 17.1 FT; E 20 FT; N 69^30 E 25.6 FT; N 75^ E 26.9 FT; N 57^50 E 60.2 FT; N 36^50 E 25 FT; S 73^ E 24.1 FT; S 20^50 E 22.5 FT; S 45^ E 82 FT; S 52^30 E 42.8 FT; S 7 FT; W 73.93 FT FT TO BEG.

ALSO BEG N 516.95 FT & E 658.11 FT FR SW COR SD LOT 2; N 9 FT; N 29^40 E 26.1 FT; NW LY ALG CURVE TO L 86.83 FT; N 69^50 W 121.1 FT; N 17.7 FT; N 45^ W 36.84 FT; N 52^ W 45.6 FT; N 79^20 W 32.6 FT; S 45^ W 50.9 FT; S 54^30 W 34.4 FT; N 13^35 39" E 61.51 FT; N 89^47 29" W 42.03 FT; W LY ALG A 50 FT RADIUS CURVE TO R 26.99 FT; S 35^41 05" W 58.28 FT; N 51^20 W 26.46 FT; N 35^30 W 17.2 FT; N 5^40 E 20 FT; N 14^ W 16.5 FT; N 42^ W 26.9 FT; N 5^50 E 39.2 FT; N 35 FT; N 28^40 E 25.1 FT; N 4^20 E 26.1 FT; N 22^20 W 23.8 FT; N 57^20 W 29.7 FT; N 37^40 W 23.4 FT; N 52^ E 12.35 FT; S 57^ E 85 FT; S 4^ E 140 FT; SE LY ALG CURVE TO L 75.05 FT; E 55 FT M OR L; N LY ALG CURVE TO L 58.47 FT M OR L; NE LY ALG CURVE TO R 58.47 FT; E 55 FT; SE LY ALG CURVE TO R 24.59 FT; S 89^51 W 14.42 FT; S 3^30 W 130 FT; S 68^43 44" E 153.02 FT; S 10^30 W 42 FT M OR L; S 9^10 W 58.51 FT; SW LY ALG CURVE TO R 8.42 FT TO BEG. LESS THAT PORTION INSIDE JORDAN VALLEY WATER (BOND ONLY). 0.18 AC.

MILLCREEK RIPARIAN AREA LEASE AGREEMENT

1. Leased Premises. The Redevelopment Agency of the City of South Salt Lake ("Agency") hereby leases to the Millcreek Pond Homeowners' Association ("Association") certain real property, situated in the City of South Salt Lake ("City,") County of Salt Lake, State of Utah, commonly known as the riparian area around the Millcreek Pond, more particularly described in Exhibit A attached hereto and incorporated herein (the "Premises"). The Premises surround the Millcreek Pond which is owned and controlled by Salt Lake County for flood control purposes. Under this Lease the Association will have authority over and responsibility to maintain the Premises as an urban riparian area that provides habitat for a riparian ecosystem that is rare and unique in the area. This lease shall have a term from January 1, 2013 until January 1, 2018, plus option terms as set forth herein, unless such lease is terminated as provided herein.

2. Mill Creek Pond Homeowners Association. The Mill Creek Pond Home Owners Association is a Utah Non-Profit Corpororation which has been created by property owners adjacent to the Premises to protect and preserve the beautiful, natural area around the Mill Creek Pond as a natural wetlands area, and to secure the area from unwanted criminal activity and trespassing on private property adjacent to the Premises. As neighbors of the Premises members of the Association have a heightened interest in caring for and maintaining the riparian ecosystem that exists at the Premises.

3. Rental Payments. Association agrees to pay to the Agency as rental for the Premises, $1,000.00 annually. The parties may, by separate written agreement, agree to "In-Kind" maintenance services of the Premises by the Association which maintain and improve the Premises and its riparian ecosystem and thereby providing a benefit to the Agency, the City and the public generally. A breach of an Agreement by the Association to provide any "In-Kind" services to the Premises shall constitute a breach of this Lease Agreement. Any and all In-Kind services, provided by the Association must comply with the flood control functions of Millcreek Pond and the Premises and all flood and other easements on the Premises and shall include services which directly reduce the City's costs of maintaining the riparian ecosystem of the Premises and must directly benefit the taxpayers of the City and the public. Services, as currently provided by the Association, i.e. in-kind services, will be such services that reduce the cost of maintenance by the City or improves the riparian ecosystem of the Premises.

4. Renewal Options. Provided that this Lease has not been terminated and all terms and conditions of this Agreement have been met, and the Association is not in default of this Lease, the Association shall have a minimum of three five year renewal options based on the same terms and conditions of this Lease except for the rental amount, which may be renegotiated at time of renewal. The Association may exercise each Option by giving the

Agency sixty (60) days written notice, prior to the expiration of this Lease Agreement of its intent to renew.

5. Acknowledgments and Association Responsibilities. The parties acknowledge that the Premises represent a valuable riparian ecosystem and resource for the Agency, the City, and their residents. Consequently, the Association is charged with maintaining the riparian and ecological values associated with the Premises and not compromising those values. Consistent with this intent the following actions are required by the Association:

   a) At least annually, the Association will host a one-day educational event for the public to showcase the riparian values in the Premises. Such opportunities will be made known and available to local in-city schools by a representative of the Association, and be by appointment only. The Association shall ensure that the Premises are continually and consistently maintained with ecological integrity, including keeping the Premises free of debris, stream garbage, trash, pollution, and any other non-natural materials;

   b) The Association shall monitor and prohibit the discharge/release of any harmful or illegal substance or material into the pond associated with the Premises, and to immediately report to the City Engineer any such discharge whether accidental or intentional;

   c) The Association shall seek to keep the Premises free of noxious weeds and invasive species; and continue maintain the Premises, consistent with the goals set forth herein preserving a natural riparian area with ecological integrity, in a condition similar to the condition of the past 3 years. The Association shall not plant or introduce any vegetation, shrubs, or trees into the Premises; and

   d) The Association shall take reasonable steps to protect the integrity of the stream bank, take no action which would increase the likelihood of erosion into the pond and shall advise the County and Agency of any noticeable erosion caused by flooding or heavy rainfall.

6. Legal Compliance. The Association is charged with and understands its responsibility to know and comply with all federal, state, and local laws regulations relating to the maintenance of riparian property adjacent to a water way and to comply with all such regulations and laws. The Association agrees not to violate any wetlands, stream alteration, health, building or zoning laws, ordinances or regulations of any government authority applicable to the premises, and shall obtain all required federal, state, and local permits and licenses and shall comply with all federal, state, and local statutes and regulations as may apply. The Association shall not permit the premises to be used at any time for any unlawful purpose or allow any nuisance to arise or exist on the premises.

7. Fencing. The Association understands and agrees that the Agency has provided fencing as per the Association's submission for the Premises and as such will limit public access to the Premises. Such fencing and access restrictions have been approved by the Agency under the following conditions:

   a) Any signs placed on the Premises warning the public of access restrictions will be provided by the Agency, with input from the Association; and

   b) The Agency, the City, Salt Lake County, the Mosquito Abatement District, and other government agencies (as appropriate) shall have access to the Premises.

8. Common Area. The Premises shall be held, operated, and maintained as a common area for all owners or Associations of property adjacent to the premises. No adjacent property owner or Association will be limited or restricted in his or her access to or use of the Premises by the Association. An adjacent property owner or Association who is not a member of the Association shall enjoy the same benefits of access and use of the premises as an Association member. The Association shall assure that no adjacent property owner or Association occupies, seeks, or otherwise controls any of the premises to exclude other adjacent owners or Association. The Association understands and agrees that the premises may not be used for the storage of any personal property or equipment owned by the Association, any adjacent property owner or Association, or any other person or entity.

9. Insurance. During the Term of this Lease the Association shall obtain and maintain a policy of liability insurance from an insurer, licensed to do business in the state of Utah, in an amount of not less than $1,000,000. Such policy of insurance shall name the Agency and the City as additional insured. A current certificate of insurance shall be provided to the Agency by the Association during the term of this lease and any extensions to provide liability insurance.

10. Association a Functioning Organization. The Agency expects the Association to be a functioning nonprofit organization. In the event the Association becomes nonfunctional this Lease may be terminated by the Agency. As evidence of such functioning, the Association agrees to submit the following at least annually to the City Engineer:

   a) Current rosters of the Association's Board of Directors, including committee assignments or Board duties;

   b) A current copy of the Association's by-laws, policies, and procedures;

   c) A copy of the most recent 990 Tax Return filed with the IRS, signed by the Board President.

11. Safe Premises. The Association agrees to keep the premises safe and secure. The Association shall work with the Police Department of South Salt Lake in developing a protocol for reporting and investigating of unlawful activity on the premises.

12. Control of Level of Mill Creek Pond. Association acknowledges that only Salt Lake County has the right to control the water level of Mill Creek Pond and the Association shall not take any action to adjust the control gates or stop logs to control or change the water levels of Mill Creek Pond.

13. Maintenance by Agency, City or County. The Agency on behalf of itself, the City and Salt Lake County, specifically reserves the right to perform any maintenance, upkeep, repair or improvement to the Premises that the City the Agency or Salt Lake County chooses to do at the expense of the Agency the City or Salt Lake County.

14. Access by Agency, City and County. The Agency, the City and Salt Lake County shall be provided a key to all locked gates by the Association and may access the Premises at any time without notice to the Association.

15. Termination by Agency. The Agency has determined that the Premises are not necessary for and surplus to the needs of the Agency or the City. In the event the Agency determines that the Premises are needed for other uses that are incompatible with this Lease, the Agency may terminate the Lease by giving 180 day notice to the Association.

16. Default. If the Association shall default in the fulfillment of any of the terms or conditions of this Lease, the Agency may, at its option, immediately terminate the Lease by giving the Association a written 30 day notice of termination. Upon such notice, the Lease shall expire. If the Agency does not terminate the Lease upon any default by the Association, the Agency may require the Association to cure any default upon the terms and conditions specified by the Agency.

17. Time of the Essence. Time is of the essence of this Lease and every term, covenant and condition herein contained.

18. No Hold Over. The Association understands that it may not hold over at expiration of or termination of this Lease.

19. Attorney Fees and Costs. In the event the Agency or the Association shall enforce the terms of this Lease by suit or otherwise, the prevailing party shall recover all costs and expenses incident thereto including a reasonable attorney's fee, from the losing party.

20. No Assignment. The Association may not assign this Lease in whole or in part, or sublet all or any part of the premises.

21. Indemnification. The Association shall indemnify and hold the Agency and City harmless against any expense, loss or liability paid, suffered or incurred as the result of

any breach of this Lease by the Association, or caused by the acts of Association's agents, invitees, servants, employees, contractors, customers, visitors or licensees, or as the result of Association's use or occupancy of the Premises. The Association agrees to indemnify and hold the Agency and City harmless from all claims of injury to persons from any cause whatsoever, arising out of the Association's occupancy and use of the premises.

22. County Flood Easement. The Association recognizes and acknowledges that the Premises is subject to a Reservation of Easement and Restrictive Covenants in favor of and held by Salt Lake County. A copy of such Reservation of Easement and Restrictive Covenants is attached hereto as **Exhibit B**, and incorporated by this reference. The Association shall comply with all of the terms and conditions of the Reservation of Easement and Restrictive Covenants attached as **Exhibit B.**

23. Permits. The Association recognizes and acknowledges that any maintenance work and all other activities on the Premises must comply with various federal, state, county, and municipal permits. The Association shall comply with all of the terms and conditions of such permits.

24. Maintenance. The Association shall be solely responsible for any routine maintenance, upkeep and expenses of the Premises during the term of this Lease.

25. Wetlands. The Association recognizes that the Premises are located in a flood plain. As such, the Association shall prohibit the construction of any new permanent structures on the Premises. The Association shall also prohibit the use of pesticides, storage of motor vehicles, housing of animals, storage of hazardous waste, dumping of yard wastes, and anything that alters the existing landscape.

IN WITNESS WHEREOF, the parties hereto have executed this Lease to be effective as of January 1, 2013.

Millcreek Pond Homeowners' Association

Printed Name:
Title: Chair

Redevelopment Agency of the City of South Salt Lake:

Boyd L. Marshall

Boyd Marshall, Chair

Exhibit "B"

RESERVATION OF EASEMENT
AND
RESTRICTIVE COVENANTS

(to be included as part of conveyance
by Salt Lake County)

1. RESERVATION OF EASEMENT. A perpetual easement is hereby reserved in favor of the grantor, Salt Lake County, for ingress and egress and for the use, construction, maintenance, and operation of a flood channel and flood and storm water detention basin in, over, across and upon the property herein conveyed. This easement shall not prohibit the grantee, its successors or assigns, from using said property provided such use shall not interfere with or be detrimental to the operation, maintenance, and designed storage capability of the flood and storm water detention basin.

2. RESTRICTIVE COVENANTS. The following restrictive covenants agreed to by the grantee herein shall run with the land and shall bind the grantee, its successors and assigns; and all parties claiming by, through, or under them shall be taken to hold, agree, and covenant with the grantor of the property herein conveyed to conform to and observe said restrictive covenants as to the use of said property:

(a) Detention Basin Restrictive Covenants. All property which lies within the detention basin area, described

in exhibit "A" attached hereto and incorporated herein, shall be subject to the following restrictive covenants:

(i) This property is hereby designated for use as a flood control channel, a flood and storm water detention basin and greenbelt area and shall not be used or occupied for any other use or purpose inconsistent with this designation.

(ii) No changes or modifications shall be made by the grantee, its successors or assigns, to flood control structures or facilities in the detention basin area.

(iii) No changes or modifications shall be made by the grantee, its successors or assigns, to the landscape in the detention basin area unless prior written approval is obtained from the Salt Lake County Flood Control Division and City-County Health Department Bureau of Water Quality. As used herein, the term "landscape" includes, but is not limited to, grading, excavation, irrigation, plant materials (grasses, shrubs, trees, etc.), animal habitat, and soil.

(iv) No structures or other facilities shall be constructed or placed by the grantee, its successors or assigns, in the flood control channel or in the detention basin area unless prior written approval is obtained from the Salt Lake County Flood Control Division and City-County Health Department Bureau of Water Quality. As used herein, the phrase "structures or other facilities" includes, but is not limited to, bridges, walkways, recreational facilities, and any other structures or facilities which may interfere with flood control activities and water quality.

(v) No activity shall be carried on, nor shall anything be done by the grantee, its successors or assigns, in the detention basin area which may be or become a nuisance or annoyance by reason of unsanitary or unsafe conditions.

(b) Wetland Area Restrictive Covenants. All property which lies within the restricted wetland area, described in exhibit "B" attached hereto and incorporated herein, shall be subject to the following restrictive covenants:

(i) This property is hereby designated for use as a water pollution control basin and restricted wetland area and wildlife habitat and shall not be used or occupied for any other use or purpose inconsistent with this designation.

(ii) Because this property is situated within the flood and storm water detention basin and greenbelt area previously described, the restrictive covenants set forth above in paragraphs 2(a)(i) through (v) are equally applicable to this property.

(iii) No removal of wetland plant materials shall be allowed, except for purposes of harvesting and thinning every four years or as necessary to maintain pollutant uptake efficiency, which removal shall be performed by the Salt Lake County Flood Control Division and City-County Health Department Bureau of Water Quality in coordination with the Area-Wide Water Quality Planning Agency.

(iv) No removal or alteration of wetland plant or animal species shall be allowed, except as occurs naturally through the process of natural selection and survival, unless

prior written approval is obtained from the Area-Wide Water Quality Planning Agency.

(c) Maintenance. Grantor shall be responsible for all maintenance relating to the flood control channel, flood control detention basin and other flood control facilities placed upon the property herein conveyed, including but not limited to maintenance made necessary due to storm water storage and/or flood damage. Grantee, its successors or assigns, shall be responsible for all other maintenance of said property.

(d) Invalidation of Restrictive Covenants. Invalidation of any of these conditions, covenants, etc., or any part thereof by judgments or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

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MILLCREEK POND AREA IN-KIND SERVICES MAINTENANCE AGREEMENT

1. Area Subject To Agreement. The Redevelopment Agency of the City of South Salt Lake ("Agency") owns certain real property described in the attached Exhibit A and commonly known as the Millcreek Pond ("Premises"). Members of the Millcreek Pond Homeowners' Association ("Association") own property that is adjacent to the Premises and have an interest in improving and maintaining the Premises.

2. Credit For In-Kind Credit For Services. Beginning on January 1, 2013 and continuing annually thereafter until this Agreement is terminated the Association will provide in-kind services similar to those it has done for the past 4 years without compensation or any claim to maintain and improve the Premises and thereby providing a benefit to the Agency and the City of South Salt Lake ("City.")

3. Annual Work Plan. Prior to March 1 of each year the Association shall create and distribute an annual work plan for all planned in-kind services to be performed on the Premises ("The Annual Work Plan"). The Annual Work Plan shall be provided to the Agency, the City and Salt Lake County Flood Control.

4. Compliance with Restrictive Covenants and Permits. Prior to performing in-kind services on the Premises the Association shall give written notice to Salt Lake County Flood Control (With a copy to the City Engineer.) and obtain any and all permits; whether federal, state, county or municipal, required to perform the desired in-kind services, as well as receive prior written approval from Salt Lake County Flood Control of the in-kind services to be performed, to assure compliance with Reservation of Easement and Restrictive Covenants in favor of and held by Salt Lake County and federal, state, county and municipal law, ordinance or regulation. A copy of such Reservation of Easement and Restrictive Covenants is attached hereto as Exhibit A, and incorporated by this reference.

5. No Cash Value. The services provided by the Association to the Agency to maintain and improve the Premises shall have no cash value and the only compensation that the Association is entitled to is to have its in-kind services credited against any amount owing by the Association to the Agency or the City. In the event there are no amounts owing by the Association to the Agency or the City the in-kind services shall be considered to be a donation by the Association and its members.

6. Indemnification. The Association shall indemnify and hold the Agency and the City harmless against any expense, loss or liability paid, suffered or incurred as the result of any actions performed under, or breach of, this Agreement by the Association, or caused by the acts of Association's agents, invitees, servants, employees, contractors, customers,

visitors or licensees, or as the result of Association's use, maintenance, or occupancy of the Premises. The Association agrees to indemnify and hold the Agency and the City harmless from all claims of injury to persons from any cause whatsoever, arising out of the Association's improvement, occupancy, maintenance, or use of the Premises. Termination. This Agreement may be terminated by 30 days written notice, including notice mailed, e-mailed or hand delivery, by either Party to the other.

7. Delivery of Notices.

If to the Agency or City:

Public Works Director
220 E. Morris Ave., Ste. 200
South Salt Lake City, UT 84115

If to the Association:

President, Millcreek Homeowner's Association
3162 Park Court
South Salt Lake, UT 84106

& Secretary, Millcreek Homeowner's Association
535 East 3195 South
South Salt Lake, UT 84106

If to Salt Lake County Flood Control:

Engineering Manager, Salt Lake County Flood Control
2001 South State St, #N3300
Salt Lake City, UT 84114

IN WITNESS WHEREOF, the parties hereto have executed this Maintenance Agreement to be effective as of January 1, 2013.

Millcreek Pond Homeowners' Association

Printed Name:
Title: Chair

Redevelopment Agency of the City of South Salt Lake:

Boyd Marshall, Chair