
M E M O R A N D U M

DATE: September 22, 2009
TO: City Council Members
FROM: Jennifer Bruno, Deputy Director
RE: Interlocal Agreement for County ownership interest in capital improvements funded by the County GO Bond at the Tracy Aviary

Attached is a resolution authorizing the Mayor to sign an interlocal agreement between Salt Lake City and Salt Lake County that allows the County to have an ownership interest in certain Tracy Aviary capital improvements funded by County-issued General Obligation Bonds.

POTENTIAL MOTIONS (FOR COUNCIL CONSIDERATION TONIGHT)

1. [**"I move that the Council"**] Adopt a resolution authorizing the Mayor to sign the attached interlocal agreement with Salt Lake County, relating to the Tracy Aviary bonds of Salt Lake County.
2. [**"I move that the Council"**] Not adopt a resolution authorizing the Mayor to sign the attached interlocal agreement with Salt Lake County, relating to the Tracy Aviary bonds of Salt Lake County. .

KEY ELEMENTS

- A. In 2008 the Friends of the Tracy Aviary requested that Salt Lake County issue \$19.3 million in general obligation bonds to finance certain large-scale capital projects at the Aviary. Voters approved this by a margin of 68%.
- B. In order to satisfy the statutory requirements of a general obligation bond, the County must acquire an ownership interest in the items funded by the bond.
- C. Because the City is the owner of the Tracy Aviary and any capital improvements on Aviary property, an interlocal agreement must be executed giving the County a certain ownership interest in the capital improvements funded by the bond.
- D. The Aviary Master Plan (which will guide how bond proceeds are spent) was prepared with close participation by the Public Services Department. *Note: This Master Plan has not been formally adopted through any City planning process.*
- E. Terms of the Agreement:
 1. The County will have a 40% ownership interest in only the improvements funded by the County-issued bond. The City will have a 60% ownership interest.
 2. The County's ownership interest will run for the life of the bond and any refinancing, not to exceed 21 years.
 3. At the termination of the County's ownership interest, the County will turn over any ownership interest to the City without any further consideration by the City.
- B. Bond proceeds will not be used to make *all* improvements identified in the Master Plan (\$1.5 million in matching funds are required to issue the last \$6.1 million in bonds). Improvements identified to be funded with bond proceeds:

1. Renovation of Wilson Pavilion to include an indoor conservation pavilion;
2. Construct a new Mexico/Panama Rainforest Exhibit
3. Construct a new education program center;
4. Renovate existing bird show complex
5. Construct a new entry area that becomes a visible feature in the park, and ties to the concession and amusement ride area.


BACKGROUND

Salt Lake City is the owner of the Tracy Aviary and all of its physical assets (including birds). Salt Lake City has put the Friends of Tracy Aviary under a Land Lease and Management Agreement to operate and manage the facility. Prior to 1994 the City Managed the Facility.

Note: Changes to the Interlocal Cooperation Act by the 2003 Legislature allow the Mayor to execute interlocal agreements without approval of the City Council except when the interlocal agreement includes any of the following:

- Acquires or transfers real property
- Construction of a facility or improvements to real property
- Bonding
- Sharing taxes or other revenue
- Agreements that includes an out-of-state public agency
- Agreements that require budget adjustments to the City's current or future budgets
- Creation of an interlocal agency

COUNCIL TRANSMITTAL



David Everitt, Chief of Staff

Date Received

Date Sent to Council Sept. 11, 2009

TO: Salt Lake City Council
Carlton Christensen, Chair

DATE: September 10, 2009

FROM: Rick Graham, Director of Public Services 

SUBJECT: Interlocal Agreement between Salt Lake City and Salt Lake County that allows the County to have an ownership interest in Tracy Aviary capital improvements funded by County issued general obligation bonds.

STAFF CONTACT: Rick Graham, Director
Public Services Department
801 - 535-7774

Boyd Ferguson, Senior Attorney
801 - 535-7796

Tim Brown, Executive Director
Friends of Tracy Aviary
801 - 596-8500

DOCUMENT TYPE: Resolution

RECOMMENDATION: It is recommended that the City Council adopt the Resolution that authorizes Mayor Becker to sign the Interlocal Agreement.

BUDGET IMPACT: None. All funds expended are Salt Lake County bond proceeds.

BACKGROUND/DISCUSSION:

Salt Lake City is the owner of the Tracy Aviary and all its physical assets, including the bird stock. Salt Lake City has put the Friends of Tracy Aviary under a Land Lease and Management Agreement to operate and manage the Tracy Aviary facility. Prior to 1994, the City operated and managed the Aviary.

In 2008 Friends of Tracy Aviary requested that Salt Lake County issue general obligation bonds to finance renewal and revitalization capital projects at the Aviary facility. In November, 2008, County voters approved (68% favored the bond) the issuance of bonds totaling \$19.3 million. The County must acquire an ownership interest in the property in order to satisfy the statutory requirements for issuance of bonds. Since the City is the owner of the property it must enter into an Interlocal Agreement to set the conditions and term of the County's interest. The County's ownership interest shall be a term of years not to exceed the term of the bond issuance. At the end of the term the County shall convey all ownership interest in the improvements to the City without additional consideration from the City. The County is prepared to issue the bonds; and Tracy Aviary is prepared to begin design development plans for the improvements.

Friends of Tracy Aviary has prepared a Master Plan for the Aviary that will be used as the guide for the bond financed improvements. The Public Services Department, which manages the Aviary for the City, was a party to the preparation of the Master Plan. The Master Plan has not been formally adopted through any City planning process. The current plan is to use the bond proceeds to fund the following site improvements: renovate the Wilson Pavilion to include an indoor Conservation Pavilion; construct a new Mexico/Panama Rainforest Exhibit; construct a new education program center; renovate the existing bird show complex; and construct a new entry area that becomes a visible and accessible feature in the park and ties together with the park concession and amusement ride area.

The County bond proceeds will not fund all the improvements identified in the master plan but, will represent the largest one-time publically funded capital improvement at the Aviary since it was dedicated. It is unlikely the City, as the Aviary owner, would ever be able to make a one-time capital funding contribution equal to the County's without going to its residents for bond authorization.

PUBLIC PROCESS: County-wide bond election process.

RESOLUTION NO. _____ OF 2009

Authorizing the approval of an interlocal cooperation agreement
between Salt Lake County, Utah and Salt Lake City Corporation
relating to the Tracy Aviary bonds of Salt Lake County

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, effective on the date it is executed by both parties,
between Salt Lake County, Utah and Salt Lake City Corporation relating to the Tracy
Aviary bonds of Salt Lake County.

2. Ralph Becker, Mayor of Salt Lake City, Utah, or his designee, is hereby
authorized to approve, execute, and deliver said agreement on behalf of Salt Lake City
Corporation, in substantially the same form as now before the City Council and attached
hereto, subject to such minor changes which do not materially affect the rights and
obligations of the City thereunder as the Mayor on behalf of the City shall approve, his
execution thereof to constitute conclusive evidence of such approval.

Passed by the City Council of Salt Lake City, Utah, this _____ day of
_____, 2009.

SALT LAKE CITY COUNCIL

By: _____
CHAIRPERSON

ATTEST:

CITY RECORDER

APPROVED AS TO FORM:



SENIOR CITY ATTORNEY

HB_ATTYY-#9894-v1-Resolution_approving_interlocal_agreement_with_Salt_Lake_County_re_Tracy_Aviary_bonds.DOC

Salt Lake City Contract No. _____
County Contract No. _____

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
SALT LAKE CITY CORPORATION
AND
SALT LAKE COUNTY**

THIS INTERLOCAL COOPERATION AGREEMENT is made and entered into the ____ day of _____, 2009, by and between SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah (the "City"), and SALT LAKE COUNTY, a body corporate and politic of the State of Utah (the "County").

WITNESSETH:

WHEREAS, the City owns an aviary known as the Tracy Aviary ("Aviary") located on real property owned by the City within the City's Liberty Park;

WHEREAS, the City has entered into a Management Agreement and a Lease Agreement with the Friends of Tracy Aviary, a Utah nonprofit corporation (the "Friends"), whereby Friends agreed to continue operating and managing the Aviary which was, prior to 1994, operated and managed by the City;

WHEREAS, Friends has requested that the County issue general obligation bonds to finance renewal and revitalization projects at the Aviary facility;

WHEREAS, the County placed the question of the issuance of these bonds on the general election ballot for a vote by the voters in Salt Lake County in accordance with the requirements of the Local Government Bonding Act;

WHEREAS, the voters have approved the issuance of these bonds, and the County must acquire an ownership interest in the property in order to satisfy the statutory requirements for issuance of such bonds;

WHEREAS, the City desires to acknowledge and agree that the County has or will have an ownership interest in the improvements to be made to the Tracy Aviary facility with the bond proceeds; and

NOW, THEREFORE, in consideration of the promises and covenants hereinafter contained, it is agreed by and between the parties as follows:

1. Project. The City acknowledges and agrees that the County has or will have an ownership interest in those improvements and projects proposed in the Aviary's renewal and revitalization project (the "Project"), more particularly described in its Master Plan, Site Plan: Phase II, attached to this Agreement as Exhibit "A", and more specifically those improvements funded with the proceeds from the proposed general obligation bonds issuance ("Improvements"). The City understands and acknowledges that the County and the Aviary contemplate that the renewal and revitalization projects at the Aviary facility will be completed in phases. The initial phase will include improvements to the Wilson Pavilion Renovation and the Bird Holding structure. The City further agrees to execute and deliver to the County such additional documents that do not materially adversely affect the City's rights or obligations, to satisfy the statutory requirements for issuance of the bonds by the County. The City's obligation to grant the County this ownership interest and deliver appropriate recordable documentation will be enforceable upon the issuance of the bonds.

The ownership interest will be as a tenant in common with the City only as to the Improvements to be made at the Aviary facility with the County's bond proceeds. The County's interest as a tenant in common will be 40% as to the Improvements and the City's interest as a tenant in common will be 60% as to the Improvements. Further, the City will act as the County's agent as to the County's tenancy in common interest and said tenancy in common between the City and the County shall be for the term of the bonds including any refinancing, but not to exceed 21 years. Upon the termination of this Agreement and in consideration of the City's forgoing acknowledgment and agreement that the County has an ownership interest in the Improvements, the County, shall convey all of its ownership interest in the Improvements to the City without additional consideration from the City.

The County acknowledges the "Tracy Aviary Management Agreement" dated July 1, 2009, between the City and the Friends of Tracy Aviary for the operation and maintenance of the Aviary. To the extent that the ownership interest to be granted under Section 2 below to the County under this Agreement modifies the ownership interest or creates a shared ownership interest with the City in the Improvements, the City acknowledges and agrees to that modification. The City further acknowledges and agrees to cooperate with the Friends of Tracy Aviary for the renewal of the management agreement prior to its expiration in order to continue the management relationship between the City and the Aviary for the term of the bonds being issued by County to fund the Improvements.

2. Grant of Property Interest. The County and City agree that, if required for issuance of the bonds, the City also agrees to grant the County an additional property interest to the Improvements for the term of the bonds issued to finance or refinance the Improvements, and the County will pay the City an annual payment of \$1.00 per year for the term of this Agreement.

3. Duration and Termination. This Agreement shall take effect upon execution by both Parties and shall terminate within 21 years of execution of this Agreement or upon full retirement of the County's bond debt issued to finance or refinance the Improvements at the Aviary facility, whichever date is sooner.

4. Liability and Indemnification. Both parties are governmental entities under the Governmental Immunity Act of Utah, Utah Code Ann. § 63-30d-101, et seq. Consistent with the

terms of this Act, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Governmental Immunity Act.

5. Interlocal Cooperation Act Requirements. In satisfaction of the requirements of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the "Act), and in connection with this Agreement, the parties agree as follows

- a. This Agreement shall be approved by each party pursuant to Section 11-13-202.5 of the Act;
- b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to Section 11-13-202.5 of the Act;
- c. A duly executed original counterpart of this Agreement shall be filed with keeper of records of each party, pursuant to Section 11-13-209 of the Act;
- d. Except as otherwise specifically provided herein, each party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs; and
- e. No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the mayors of the City and the County. No real or personal property shall be acquired jointly by the parties as a result of this Agreement. To the extent that a party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such party shall do so in the same manner that it deals with other property of such party.

6. Counterparts. This Agreement may be executed in counterparts by the City and the County.

7. County Ethical Standards. City represents that it has not: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) 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 of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County's Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

8. Governing Law. This Agreement shall be governed by the laws of the State of

Utah both as to interpretation and performance.

9. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either party or agents for either party that are not contained in this written contract shall be binding or valid; and this Agreement may not be enlarged, modified, or altered except in writing, and signed by the parties.

10. Amount of the Bond and Use of Proceeds. The County and City agree that the amount of the bonds shall not exceed \$19.6 million and that the proceeds less the costs of issuance shall be used solely to finance the Improvements at the current location of the Aviary facility in Salt Lake City. The City acknowledges that the voters approved a general obligation bond issuance in the amount of \$19.6 million dollars, with the Aviary only being able to access the last \$6.1 million after it raises \$1.5 million in moneys, pledges and/or in-kind donations from other sources.

11. Aviary Agreement Not to Leave its Current Location. The Parties' obligations under this Agreement are conditioned on the Aviary having first entered into an agreement with the City substantially in the form of Exhibit "B" not to leave its current location in Salt Lake City during the term of the bonds issued pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have subscribed their names and seals the day and year first above written.

SALT LAKE COUNTY

By _____
Mayor Peter Corroon or Designee

STATE OF UTAH)
 :ss
County of Salt Lake)

On this _____ day of _____, 2009, personally appeared before me _____, who being by me duly sworn did say that (s)he is the _____ of the Salt Lake County, Office of the Mayor, and that the foregoing instrument was signed on behalf of the Salt Lake County, by authority of law.

[SEAL]

NOTARY PUBLIC
Residing in Salt Lake County, Utah

Approved as to Form and Legality:
Salt Lake County District Attorney

By _____
Deputy District Attorney
Date _____

SALT LAKE CITY CORPORATION

By _____
MAYOR

ATTEST:

City Recorder

APPROVED AS TO FORM AND LEGALITY:

Senior Salt Lake City Attorney
Date _____