

2003

Holladay City Council v. Mayor Dennis Larkin : Reply Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

HOLLADAY CITY COUNCIL,

Petitioner and Appellee,

v.

MAYOR DENNIS LARKIN,

Respondent and Appellant.

**JOINT RESPONSE OF
APPELLANT/RESPONDENT
AND INTERVENOR/CO-APPELLANT
TO BRIEF OF HOLLADAY CITY
COUNCIL AND BRIEF OF
INTERVENOR HOLLADAY
CITIZENS FOR PROGRESS**

Appeal No. 20030592

AN APPEAL FROM THE DECISION OF JUDGE L.A. DEVER

THIRD DISTRICT COURT, SALT LAKE COUNTY

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UTAH SUPREME COURT

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PAT BARTHOLOMEW
CLERK OF THE COURT

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SUMMARY OF ARGUMENT

In this joint reply to the briefs of both Petitioner/Appellee Holladay City and Intervenor Holladay Citizens for Progress we refer to Respondent/Appellant and its and its Intervenor collectively as “Appellant.” We refer to Petitioner/Appellee as the “City” and to its Intervenor as the “Intervenor,” and to both collectively as “Appellees.”

Appellees contends that the City Council had the authority to unilaterally pass Resolution 03-34, calling for an August 5, 2003 Special Election to reorganize the municipal government of Holladay City and that the Mayor was powerless to participate in the passing of the resolution through vote, veto, approval or disapproval. Careful reading of the arguments advanced in support of these conclusions reveals that the City’s

position hangs on: 1) the proposition that there is a bright-line separation between “legislative” and “executive” function, and that a resolution to call a special election for municipal reorganization is purely “legislative”; and three *non-sequiturs*: 1) “governing body” equals “city council”; 2) “separate branches” of government equal separate “governing bodies”; and 3) “legislative body of a political subdivision” equals “municipality” or “governing body.” It is only after these issues are clarified that one can reach the question of the Mayor’s authority to approve or disapprove Resolution 03-34 or, conversely, the authority of the City Council to pass the resolution over his objections. If these three propositions fail, then it follows in a logical progression that the mayor does have the power to impact the passage of a resolution for a special election for municipal reorganization. The only question then remaining is whether, and how, he used it. The Appellant has a appropriately plead and preserved a constitutional argument as to the facial invalidity of the change in form statutes for municipal government.

ARGUMENT

I. THE UTAH CODE MANDATES THE PARTICIPATION OF THE MAYOR IN A RESOLUTION CALLING FOR A SPECIAL ELECTION FOR REORGANIZATION.

A. FOR PURPOSES OF SECTION 10-3-1203(3) “GOVERNING BODY” AND “CITY COUNCIL” ARE NEITHER EQUIVALENT NOR INTERCHANGABLE.

1. Section 10-1-104(3) Clearly Distinguishes “Governing Body” from “City Council” and the District Court Erred in “Bypassing” that Section.

Appellees concede that the district court “bypassed” the section 10-1-104(3) definition that “‘Governing body,’ means collectively the legislative body and the executive of any municipality.” Statutes, however, are provided for the Court’s guidance, and all the principles of statutory construction require first resort to the plain language of the statute. The court could hardly adjudicate the meaning of section 10-3-1203(3)(a) without confronting the statute that clearly and unambiguously supplies the meaning of “governing body.” In so doing, the court committed clear error.

Appellees do address the statutory definition. First, Intervenor overlooks the caveat “unless otherwise provided” that precedes the definitions of governing body for forms of municipal government *other* than the council-mayor form adopted by Holladay City. Intervenor misleadingly quotes section 10-1-104(3)(b) as follows: “‘Unless otherwise provided, . . . in a city of the . . . fourth . . . class, the governing body is *the city council.*’ (Emphasis added).” Brief of Intervenor Holladay Citizens for Progress, p.9 nt.2. It appears that Intervenor thereby seeks to imply that the city council is defined as the governing body. However, by adopting the council-mayor form, an Alternative Form of Government under part 12, Holladay City has “otherwise provided” and thus none of the provisional definitions apply. The statute does *not* state that in a council-mayor form of municipal government the city council is the governing body.

2. **Plain Reading of Section 10-3-1203(3)(a) Does Not Authorize the City Council to Pass a Resolution Placing the Question of Municipal Reorganization on the Ballot in a Special Election.**

The City misleadingly states that “[n]otwithstanding the limitations of the Election Code, the Act *specifically authorizes* the *City Council* to enter, by resolution, on the ballot of a special election the question regarding a change in form of government.

Utah Code Ann. § 10-3-1203.” Brief of Appellee p.13 (emphasis added). The City compounds this deception by stating “ Subsection 10-3-1203(3)(a) *specifies* that the question may be put on the ballot by resolution of the *City Council*.” Brief of Appellee p. 20 (emphasis added).

On the contrary, section 10-2-1203(3)(a) makes no mention of the city council. The statute specifies instead that the resolution shall be “passed by the governing body of the municipality or by initiative” Whether or not “city council” and “governing body” are interchangeable is the central question before the Court. If section 10-3-1203(3)(a) gave statutory authorization for the city council to act unilaterally, the parties would not be having this debate. Appellees have made no persuasive argument that when the Legislature wrote “governing body” it meant to write “city council.” Appellant wishes to emphasize in the strongest possible terms that however section 10-3-1203(3)(a) may be *interpreted*, it does *not* “specify” or “specifically authorize” that this or any other city council may act unilaterally in passing a resolution for a special election regarding a change in the form of government. To the contrary, the language of 10-3-1203(a), in combination with the 10-1-104(3) definition of “governing body” is sufficiently clear to resist alternate interpretations. *See City of South Salt Lake v. Salt Lake County*, 925 P.2d 954, 957 (Utah 1996) (court looks outside the statute for guidance “only when [it] find[s] ambiguity in the statute’s plain language”) (quoting *World Peace Movement of Am. v. Newspaper Agency Corp.*, 879 P.2d 253, 259 (Utah 1994)).

Under the plain language of the Utah Code: 1) a resolution calling for a special election for municipal organization must be passed by the governing body, Utah Code Ann. § 10-3-1203(3)(a); 2) in a council-mayor form of government the governing body is

the legislature and the executive, Utah Cod Ann. § 10-1-104(3); and 3) the mayor is the executive, Utah Code Ann. 10-3-1219(2). It then logically follows that mayor, as part of the governing body, must have a voice in the passing of the resolution.

B. A REVIEW OF THE LEGISLATIVE HISTORY OF THE RELEVANT STATUTES DOES NOT HELP DEFINE THE INTENT OF THE LEGISLATURE IN REGARD TO UTAH CODE ANN. SECTION 10-3-1203 AND USE OF “GOVERNING BODY”

A general rule of statutory construction is that legislative activity in regard to a particular statute is only relevant if the statute in question is ambiguous or unclear as to its intent, *City of South Salt Lake, Supra at 957*. Although we believe that such is not the case in applying all the statutes in this case, the Appellant did examine the legislative archives, particularly the general sessions in 1975 and 1977, and found no significant legislative history to clarify intent in the discussions regarding Section 10-3-1203, “governing body” or related statutes.

C. “SEPARATE BRANCHES” OF GOVERNMENT ARE NOT EQUIVALENT TO SEPARATE “GOVERNING BODIES.”

Appellees repeatedly rely on the separation of powers discussion in *Martindale v. Anderson*, 581 P.2d 1022, 1026 (Utah 1998) for the proposition that “under such optional form of government there is not a single ‘governing body,’ as is contemplated by the Act, because the executive and legislative powers have been completely separated into two distinct branches.” Thus, the City assumes more than *Martindale* ever contemplated. In its discussion of branches, the *Martindale* court did not refer to different governing “bodies.” Indeed, none of the federal or state governments after which *Martindale*

teaches that the council-mayor form is patterned have imposed on their citizenry such an ungainly hybrid. Moreover, all of the statutory “governing body” language is couched in the singular. Nowhere do we find a reference to governing “bodies.”

The difference between two separate and independent branches of one government and two entirely separate governing bodies is as distinct as the difference between two branches of one tree and two separate trees. Yet Appellees miss this difference in their interpretation both of the case law and of section 10-3-101 of the Utah Code. That section states that “[e]ach municipality shall have a governing body which shall exercise the legislative and executive powers of the municipality unless the municipality is organized with separate executive and legislative branches of government.” Plain reading of this statute indicates simply that while in an undifferentiated government functions would be exercised without regard to their nature, in a government having executive and legislative branches there would be a division of labor. There is no need to complicate this simple statute by invoking a new and unwieldy form of government. In the statement, “[i]n other words, the legislature intended that municipalities choosing the council-mayor system not be governed by a “single governing body,” Intervenor presumes too much upon the intention of the Legislature. If the Legislature had intended that the municipal legislature and executive constitute separate “governing bodies,” it would have specified, in statutes such as section 10-3-1203 to *which* governing body it referred. The lack of any such specification is *prima facie* evidence that in this instance the Legislature did not use “governing body” in any generic sense.

D. SECTION 20A-1-203, THE ELECTION CODE, PRECLUDES A CITY COUNCIL FROM CALLING A SPECIAL ELECTION FOR MUNICIPAL REORGANIZATION

Section 20A-1-203 provides that

- (5) (a) The *legislative body* of a local political subdivision may call a local special election *only* for:
- (i) a vote on a bond or debt issue;
 - (ii) a vote on a voted leeway program . . . ;
 - (iii) a referendum authorized by Title 20A, Chapter 7, Part 6;
 - (iv) an initiative authorized by Title 20A, Chapter 7, Part 5; or
 - (v) if required or authorized by federal law, a vote to determine whether or not Utah's legal boundaries should be changed.

(Emphasis added.) By its plain language section 20A-1-203 prohibits the legislative body, here the City Council, from initiating a special election for **municipal** reorganization. Appellees, however, argue that the 10-3-1204 instruction that “[a]ll existing statutes governing municipalities shall remain applicable except as provided in this part” somehow allows section 10-3-1203 to override the Election Code. Brief of Appellee p. 20-21.

1. “Legislative Body” of a Local Political Subdivision in Section 20A-1-203 (the Election Code) does not Mean “Municipality” or “Governing Body” as Used in Section 10-2-1203(3)(A).

Appellees’ argument is fatally flawed because the only manner in which the section 12-3-1204 “except as provided in this part” could touch the election code would be if the two statutes contained contradictory provisions regarding the same body. This would require that “the legislative body of a local political subdivision” somehow be the same entity as either the “municipality” or the “governing body” of section 10-3-1203(3)(a). As discussed above, however, the legislative body is, by definition, part of

but not the same as the “governing body.” Section 10-1-104(5) provides that “‘Municipality’ means a city [of the various classes] or a town, as classified in Section 10-2-301.” Therefore, the “local political subdivision” is the municipality itself. The “legislative body” of the political unit is a component of the municipality, but cannot be the municipality *per se*.

2. Section 10-3-1203 Cannot Override the Election Code Because that Code Does Not Authorize the “Legislative Body” to Call a Special Election for Reorganization.

In the absence of identity between the “legislative body of a local political subdivision” and either “municipality” or “governing body,” the City’s reasoning that section 10-3-1203 overrides the election code rests upon the flawed proposition that section 10-3-1203(3)(a) “specifies that the question may be put on the ballot by resolution of the City Council.” Brief of Appellee p. 20. As discussed above, however, this statement is a misleading and flatly inaccurate restatement of the statute. Section 10-3-1203(3)(a) bestows upon the City Council no such power, but reserves it exclusively for the “governing body.” Moreover, the election code illustrates the Legislature’s ability to distinguish between the various components of municipal government, and to name the one it chooses.

II. MAYOR LARKIN PROPERLY DISAPPROVED THE RESOLUTION.

As established above, Appellees’ three foundational assumptions have failed. Therefore, by statutory mandate Mayor Larkin was required to participate in the passing of Resolution 03-34 as part of the governing body of Holladay City. This puts before the Court the identification of the mechanisms for participation available to the Mayor and the factual determination of whether he properly employed these.

A. THE MAYOR'S APPROVAL OR DISAPPROVAL OF A RESOLUTION IS NOT CONTINGENT UPON A VOTE IN CITY COUNCIL MEETING.

Section 10-3-1219(g), denying the mayor in a council-mayor government a vote in city council meeting, does not negate the mayor's ability to approve or disapprove actions of the city council. Otherwise, it would render inoperative section 10-3-1214, which requires the mayor to approve or disapprove levies and ordinances, and sets forth specific procedures for doing so. Moreover, as illustrated in the Addendum, Mayor Larkin has both approved and disapproved a number of resolutions, all of which was accomplished without a city council vote. Both the law and actual practice have established that the Mayor's ability to act upon levies, ordinances and resolutions is not constrained by his lack of a vote.

B. THE MAYOR'S DISAPPROVAL OF RESOLUTION 03-34 DID NOT REQUIRE VETO POWER; MOREOVER SECTION 10-4-404 DOES NOT NECESSARILY DENY THE MAYOR A VETO.

Section 10-3-1214 includes a provision for disapproval by letter, which Mayor Larkin employed in reference to Resolution 03-34. Such a procedure requires no resort to veto power. If veto power were necessary, however, section 10-4-404 does not definitively deny it. That section provides, "The mayor of any municipality shall have no power to veto any act of the governing body unless otherwise specifically authorized by statute." Part 4, however, is arguably meant to apply to only traditional forms of Utah local government, as evidenced by the inconsistency of sections 10-2-401 through 403 with the provisions of part 12, the Alternate Forms of Government Act. Section 10-3-404 itself cannot apply to a council-manager form of government as that form has no mayor.

Therefore, it is uncertain at best, whether section 10-3-404 even speaks to the mayor in the alternate form of government designated as council-mayor.

C. MAYOR LARKIN DID NOT APPROVE RESOLUTION 03-34 BY “FAILING” TO VOTE OR BY EXPRESS STATEMENT.

The Mayor’s behavior with regard to Resolution 03-34 presents a factual issue, which will not be overturned except in the absence of substantial evidence. The district court’s finding that the Mayor “failed to vote” is supported by the fact that indeed he did not vote. However, as an experienced municipal officer, Mayor Larkin was well aware of the limitations on his participation in city council meeting. An individual cannot be held accountable for “failing” to exercise a prerogative the he does not possess. Absent the power to vote, the Mayor did employ the appropriate alternative procedure by serving the Council with a letter of disapproval, delivered within 15 days of the vote on the Resolution, and outlining the reasons for his position. Therefore, the Mayor’s “failure” to vote, even if supported by evidence, is simply a red herring, and not relevant to the legality of the resolution.

The district court also found that the Mayor “approved” Resolution 03-34 on the basis of the statement “let’s put it on the ballot,” taken entirely out of context. Even a minimally attentive reading of the Minutes of the July 19, 2003 Meeting of the Holladay City Council reveals that this and other similar statements were made not in reference to the August 5, 2003 election, but to a more prudently timed election, to be held after ample opportunity for study and discussion. First Brief of Appellant Exhibit B p.13-14, 16-17. It is to the Mayor’s credit that he supported an opportunity for the citizens to express their preference. The issue of a later election, however, is not before the Court. The only election at issue is the August 5, 2003 election called by Resolution 03-34.

Regarding that election the Mayor stringently expressed his concern and disapproval, stating "I think that August 5th is absolutely ridiculous. This is a ram rod job. I think it's the wrong thing to do." (*Id.* at 13-14) Therefore, the court's determination that the Mayor approved Resolution 03-34, calling for the August 5, 2003 election, is not supported by substantial evidence and should be amended.

Under the provisions of the Utah Code Mayor Larkin was required to participate in the passing of Resolution 03-34 and he did so, by properly disapproving the resolution. Therefore, Resolution 03-34 was not passed by the governing body of Holladay City and the August 5, 2003 election is rendered null and void as unlawful.

III. THE MAYOR OF THE CITY OF HOLLADAY HAS HISTORICALLY BEEN REQUIRED TO APPROVE RESOLUTIONS ADOPTED BY THE CITY COUNCIL BUT WAS NOT PERMITTED TO DO SO IN THIS CASE.

The appellant in this case brought to the attention of the lower court by copies of resolution documents from Holladay City appended to Appellant /Respondents briefs and in oral argument to the court.¹ Neither the Petitioner or Intervenor objected to the documents. All of the resolutions included a section for the approval of the mayor except Resolution No 03-34 the important one to change the form of city government.² Counsel

¹ Resolution No. _____ were an addendum to the **Respondents Reply Memorandum**. Resolution 03-35 was provided to the court and counsel as part of oral argument on July 15, 2003. Resolution 03-35 was scheduled for a vote on June 27, 2003 but was tabled therefore no Mayoral approval was required.

² The section of the resolution requiring Mayor approval reads as follows:

" **PRESENTED** to the Mayor of Holladay for her (his) approval this _____ day of _____ 2003.

APPROVED this _____ day of _____, 2003

for the Petitioner, in response, indicated that all the other resolutions were merely ceremonial or ministerial. As seen from Addendum A, that argument is inaccurate. It is apparent that the City of Holladay and more particularly, the City Council, have historically viewed the Mayor as having a role in the process of resolution approval. The one resolution that clearly requires his participation as a member of the governing body contains no such approval section . Copies of those resolutions are in Addendum A to this brief.

The City cites *Biddle v. Washington Terrace City*, 993 P.2d 875, 879 (Utah 1999) for the proposition that “statutory construction presumes that the expression of one should be interpreted as the exclusion of another.” *Id.* (cites omitted) and argues that, therefore, the section 10-3-1214 mandate that “every ordinance or tax levy passed by the council shall be presented to the mayor for his approval or disapproval” precludes the Mayor from approving or disapproving Resolution 03-34. Brief of Appellee p. 16. This argument is misplaced, however. Appellant has not argued that the Mayor has the authority to approve *every* resolution. Under *Biddle* section 10-3-1214 may plausibly be read as excluding a blanket requirement for mayoral approval of all resolutions, but that is not the issue before the Court in this appeal.

As Appellees have noted, in the choice between a more general and a more specific statute, the more specific applies. *See Biddle*, 993 P.2d at 879 (citations omitted). Section 10-3-1203(30(a) includes a specific requirement for approval of a resolution for a special election by the governing body, which under the clear provisions of the Utah Code includes the mayor in a council-mayor government. Furthermore, as noted

Dennis P. Larkin, Mayor”

immediately above, the Mayor routinely approves and disapproves not “every” resolution, but nevertheless a substantial number and variety. This practice is proof that section 10-3-1214 does not preclude the mayor from approving or disapproving resolutions as specifically authorized.

Appellees also contend that the Legislature could have expressed its desire for mayoral approval of a special election by requiring that the election be called by ordinance. Brief of Appellee, p. 21-22. There were, obviously, a number of options open to the Legislature. In this case, the Legislature evidently determined that a special election for municipal reorganization is more appropriate for resolution than ordinance, and expressed its desire for two-pronged approval by specifying “governing body.”

IV. THE ARGUMENT THAT BOTH THE PETITIONER/APPELLEE AND THE INTERVENOR, HOLLADAY CITIZENS FOR PROGRESS, MAKE THAT THE ADOPTING OF A RESOLUTION IS A LEGISLATIVE PROCESS IS MISPLACED AND IRRELEVANT.

The Appellee and Intervenor argue that the process of adopting a resolution is an exclusive legislative action. Aside from being somewhat irrelevant to the principal issue of this case, it is important to note the following in regard to this legislative process argument.

A. IF ADOPTING A RESOLUTION IS UNIQUELY LEGISLATIVE, WHY HAS THE CITY OF HOLLADAY ALWAYS REQUIRED MAYORAL APPROVAL ON RESOLUTIONS THEY HAVE PREVIOUSLY ADVANCED?

The argument above details the history of the City of Holladay in regard to Council resolutions. It seems somewhat incongruous that petitioner and intervenor would

advance the argument that the Mayor can't be involved in a uniquely legislative process in light of their own client's requirement in resolutions that the mayor approve the same.

B. THE EXECUTIVE HAS ALWAYS PLAYED A PART IN THE LEGISLATIVE PROCESS AT ALL LEVELS OF GOVERNMENT.

Each branch of government at all levels share some of the power of the other. Legislative power is shared with the Executive and to a certain extent with the Judiciary. The legislative function is not unique to legislative bodies. Executives review and veto or reject legislative actions and frequently recommend changes. The Executive and Judiciary make significant bodies of law, many times substantive, in the rule making process. In Utah, the governor determines when a legislative special session is to be called and what legislative matters may be addressed. The Executive branch is not devoid of a role in the legislative process and should not be eliminated as a major component in our case in adopting a resolution to change the form of city government.

V. THE CHARACTERIZATION OF THE RESOLUTION AT ISSUE AS LEGISLATIVE OR POLICY MAKING IGNORES THE REAL QUESTION OF THE ROLE OF MAYOR AS PART OF THE GOVERNING BODY IN THIS UNIQUE PROCESS OF CHANGE OF FORM OF MAYOR-COUNCIL FORM OF GOVERNMENT.

The Intervenor, Holladay Citizens for Progress, cites several cases that suggest the process to set a special election is purely legislative. These cases are distinguishable from our current Utah statute, Section 10-3-1203, in that they all require that a "legislative body" set the election or administer the election and do not use the term "governing body". In *Soules v. Kauaians for Nukoli Campaign*, 623 F. Supp. 657, 661 (D. Hawaii 1995) The court in that case noted in referring to the Hawaii Constitution that:

“Article V, § 5.07(C) is one such constitutional provision, and it allocates the power to set special elections to the *County Council*.” (emphasis added)

The *Kelsh v. Jaeger*, 641 N.W. 2d 100 (N.D. 2002) case involved the issue of delegation of legislative authority in an election after redistricting a legislative senate district. This is clearly distinguishable from the circumstances of a governing body requirement for a special election. *Stroger v. RTA*, 778 N.E.2d 683, 694 (Ill. 2002) deals with the appointment power to a transit board and the statutory scheme in Illinois that provided for appointments by both legislative and executive bodies.

The Court stated:

“[T]he creation of officers, the **delegation and regulation of the powers and duties of officers and the prescribing of the manner of their appointment or election are legislative functions, which are restrained only by the Constitution.**”

This is clearly not the issue in this case. The Appellee or Intervenor cites to no authority where the legislature has delegated to a “governing body” the power to call a special election and held that to be a uniquely legislative prerogative.

The Intervenor, Holladay Citizens for Progress, also emphasize the **importance** of the people to be able to change their government and refer to Article I, Section 2 of the Utah Constitution.

“All political power is inherent *in the people*: and all free governments **are** founded on their authority for their equal protection and benefit, **and they have the right to alter or reform their government as the public welfare may require.**”(emphasis added)

They cite this Article for the proposition that the process to change the form of local government is a legislative process. Nothing in this section suggests that. Importantly it places that power “in the people”. Interpreting the application of “governing body” to this

process to require the Mayor to play a role in the approval of a resolution does not violate this provision. Of note, is that “the people” did not initiate this process although permitted to do so under Section 10-3-1203 (3)(a) in the form of an initiative. Our request of the Court is not to vacate that process but to void a process where a simple majority of a legislative body in a true separation of powers form of government can begin a process to eliminate the executive branch. The initiative process should remain as a valid method to begin a change in the form of government.

VI. THE CONSTITUTIONAL ISSUES WERE RAISED BY APPELLANT/RESPONDENT IN THE LOWER COURT AND ARE PROPERLY BEFORE THE SUPREME COURT

The Appellee, on the first page of his brief suggests, in the Statement of Jurisdiction section, the “[t]he Supreme Court does not have jurisdiction over Appellant’s counterclaims, as the trial court has not ruled on such claims”. The claims in question raised in Appellant/Respondent’s Answer and Counterclaim and Temporary Restraining Order Request, July 11, 2003, and outlined in Appellant/Respondent’s Memorandum in Support of Motion to Dismiss, Counterclaim and Temporary Restraining Order Request, Argument Three and Four, dated July 11, 2003. The Appellee acknowledges these pleadings on Page 9 of his brief and cites no further authority on this jurisdictional issue. The Petitioner/Respondent did not answer the counterclaim and constitutional arguments or address these issues in memoranda or argument in the lower court.

The lower court on page 3 its order of July 18, 2003 dismissed the pending motions of the Respondent and the Intervenors by stating “[f]or the reasons, the motions

to dismiss are denied.” The lower court’s review of the status of the case on page one of the order indicates that the court had reviewed the memoranda of the parties, including the Respondent’s Memorandum on the Counterclaim and constitutional issues. It is reasonable to conclude that the lower court dealt with and denied the constitutional claims of the Appellant/Respondent. The Appellant certainly raised these issues in the lower court and the fact the opposing parties or the court did not respond or responded inadequately should not preclude an appellant review of these important constitutional matters, *Peterson v. Sunrider Corp.*, 48 P3rd 918 (Utah 2002) Alternatively, it could be considered plain error or an exceptional circumstance under the expedited time requirements of this case that the lower court failed to address this is and this court should accept jurisdiction of this element of the case, *Cassidy v. Salt Lake County Civil Service*, 976 P2d 607(Utah 1999). In addition, an appellate court has inherent authority to raise issues not developed in the lower court if they are necessary to a proper decision, *Kaiserman Associates, Inc. v. Francis Town*, 977 P.2d 462 (Utah 1998).

VII. COUNSEL FOR THE PETITIONER /APPELLE AND INTERVENOR, HOLLADAY CITIZENS FOR PROGRESS, INAPPROPRIATELY ADVANCE THE FEDERAL AND STATE CONSTITUTIONAL COMPARISON IN CALLING FOR A CHANGE OF GOVERNMENT.

Both the Appellee and the Intervenor, Holladay Citizens for Progress, citing *Martindale v. Anderson, Supra.* appear to suggest that since the court in *Martindale* stated that the legislature’s creation of a “strong mayor-council” form in 1955 and further advanced in 1975 and 1977, established a true separation of powers form on the model of the federal and state constitutions, some further analogies could be drawn. See page 15

and 16 of the Intervenor, Holladay Citizens for Progress, brief. Intervenor suggested that the parties also raised the constitutional analogy in the change of government and amendment of constitutions. In a true separation of powers model and, particularly, a constitutional process, it would be inconceivable that the legislative branch, by resolution of a simple majority, could require a vote to do away with the executive branch. We challenge the Appellee and Intervenor to find such a situation. In addition, to place a constitutional amendment at the federal and state level to begin a process to modify the constitutions and alter the form of state and federal constitutional government (eliminating a branch of government) requires a two thirds vote of both houses of the legislative body, Article XXIII, Section 1 of the Utah Constitution³, Article V. U.S. Constitution. Of course, in the City of Holladay a simple majority of the City Council has proposed such a result. For these reason, it may be understandable the legislature required that the full governing body including the mayor approve such a resolution.

**VIII. IT IS POSSIBLE FOR THE COURT TO CONCLUDE THAT THE
STAUTORY SCHEME AT ISSUE IS SO INCOMPLETE OR
AMBIGUOUS THAT THE COURT SHOULD FIND IT VOID AND REFER
THE SUBJECT BACK TO THE LEGISLATURE FOR
CONSIDERATION.**

All parties in this case advocate to the court that the legislative process to change the form of government in cities in Utah is clear and understandable. Unfortunately, the sides disagree as to what the intent of the legislature was in requiring a “governing body” to approve a resolution to start the process. There is undoubtedly, little direction after the resolution is adopted in regard to the election process and the notice required to be given

³ Of note is that this section of the Constitution requires two months of notices to the electorate and publication of the full amendment before an election.

to the voters in the city. It appears that the legislature began a process and forgot to complete it. They did provide for a much clearer and less ambiguous process in addressing counties in Utah that want to change their form of government. See argument on pages 28 and 29 of the Appellant Brief. It is reasonable to conclude that the legislative approach is ambiguous and incapable of being given effect.

When faced with a confusing statutory scheme, this Court has not been hesitant to return the legislative effort to the Legislature for clarification and declare the statute void, *Nowes v. Ogden*, 169 P2d 108 (Utah 1946), *Skaggs Drug Center, Inc v. Ashley*, 484 P2d 723 (Utah 1971).

CONCLUSION

The arguments advanced by the Appellee's in briefs to the Court are not persuasive and misconstrue the plain language of the statutes that require the Mayor in a Mayor-Council form of government, as a member of the governing body, to approve a resolution for a vote on a change of form of government in a municipality. The Mayor may approve or disapprove a resolution as he or she has historically done in the City of Holladay. The Mayor clearly did so in this case. The statutes in question are facially unconstitutional in that they fail to provide an adequate notice to the voters in a city of a pending election to change the form of government.

RESPECTFULLY SUBMITTED this 29th day of August, 2003.

WILLIAM R. HYDE, Attorney at Law

William R. Hyde

Victoria L. Romney
Attorneys for Appellant/Respondent
Mayor Dennis Larkin

TESCH GRAHAM P.C.

Joseph E. Tesch
Kraig J. Powell
Attorneys for Intervenor
Holladay Preservation League

CERTIFICATE OF SERVICE

I, Adam Diener, hereby certify that on the 29th day of August, 2003, I

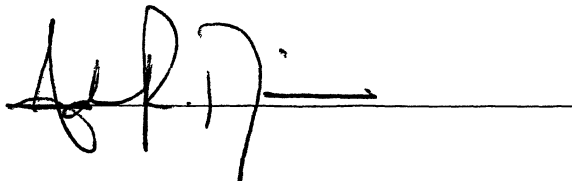
delivered foregoing Joint Response Brief to:

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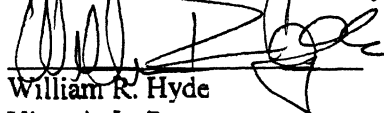
A handwritten signature in black ink, appearing to read 'Adam Diener', is written over a horizontal line.

CONCLUSION

The arguments advanced by the Appellee's in briefs to the Court are not persuasive and misconstrue the plain language of the statutes that require the Mayor in a Mayor-Council form of government, as a member of the governing body, to approve a resolution for a vote on a change of form of government in a municipality. The Mayor may approve or disapprove a resolution as he or she has historically done in the City of Holladay. The Mayor clearly did so in this case. The statutes in question are facially unconstitutional in that they fail to provide an adequate notice to the voters in a city of a pending election to change the form of government.

RESPECTFULLY SUBMITTED this 29th day of August, 2003.

WILLIAM R. HYDE/ Attorney at Law



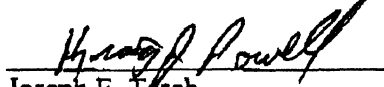
William R. Hyde

Victoria L. Romney

Attorneys for Appellant/Respondent

Mayor Dennis Larkin

TESCH GRAHAM P.C.



Joseph E. Tesch

Kraig J. Powell

Attorneys for Intervenor

Holladay Preservation League

ADDENDUM

Tab 1

CITY OF HOLLADAY

RESOLUTION No. 01-17 A RESOLUTION ALLOCATING CDBG FUNDING FOR THE 2001-02 FISCAL YEAR

WHEREAS, the City of Holladay was approved to receive \$52,000 in CDBG funding from Salt Lake County for the 2001-02 fiscal year; and

WHEREAS, the City of Holladay placed an ad in the Salt Lake Tribune and Deseret News soliciting potential projects for CDBG funding; and

WHEREAS, the City Council held a public hearing on March 29, 2001 to receive citizen input on the proposed projects that were received; and

WHEREAS, the City Council has determined that it is in the best interest, safety and welfare of Holladay citizens to expend the funding for the good of it's low to moderate income citizens; and

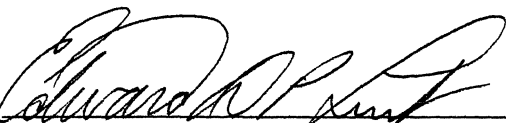
WHEREAS, these funds will not become available for expenditure until July 1, 2001.

NOW, THEREFORE, BE IT RESOLVED by the Holladay City Council as follows:

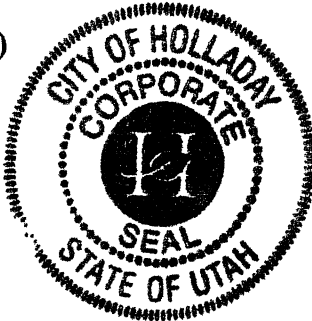
1. **Travelers Aid:** The Holladay City Council hereby allocates \$1,500 from the 2001-02 CDBG funding for costs associated with operating the Salt Lake Community Shelter.
2. **Community Emergency Winter Housing:** The Holladay City Council hereby allocates \$500 from the 2001-02 CDBG funding for costs associated with operating the winter emergency shelter in Midvale.
3. **City of Holladay:** The Holladay City Council hereby allocates \$50,000 from the 2001-02 CDBG funding for studies associated with business licensing and storm drainage needs of the City.
4. **Effective Date:** This Resolution shall become effective immediately upon adoption.

PASSED AND APPROVED by the City Council of Holladay, Utah, this 19th day of April 2001.

HOLLADAY CITY COUNCIL

By 
Edward D.P. Lunt, Chairman

(SEAL)



VOTING:

Edward D. P. Lunt	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Grant G. Orton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Steven R. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Sandy Thackeray	Absent	

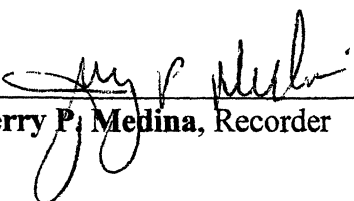
PRESENTED to the Mayor of Holladay for her approval this 19th day of April 2001.

APPROVED this 20 day of April 2001.



Liane Stillman, Mayor

ATTEST:



Jerry P. Medina, Recorder

DEPOSITED in the Recorder's office this 20 day of April 2001.

RECORDED this 20 day of April 2001.

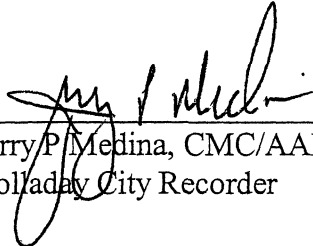
CERTIFICATE OF FILING

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

I, Jerry P Medina, do hereby certify that I am the duly appointed, qualified and acting City Recorder for the City of Holladay, State of Utah, and do further certify that the foregoing is a true and correct copy of Resolution No. 01-17 entitled "*Allocating CDBG Funding for the 2001-02 Fiscal Year*" duly adopted by the City of Holladay, by the City Council thereof at a meeting duly called and held in Holladay, Utah, on the 19th day of April, 2001, at the hour of 6:00 o'clock p.m. of said day.

Dated this 20th day of April 2001.

S E A L:



Jerry P Medina, CMC/AAE¹
Holladay City Recorder



CITY OF HOLLADAY

RESOLUTION NO. 01-19 A RESOLUTION APPROVING AN APPOINTMENT TO FILL A MIDTERM VACANCY ON THE HOLLADAY CITY COUNCIL

WHEREAS, Daniel Bay Gibbons was duly elected in November 1999 as a member of the city council (the "*City Council*") of the City of Holladay (the "*City*") representing Council District 5, with an initial term to expire in January 2004 in accordance with state law; and

WHEREAS, Mr. Gibbons resigned as a member of the City Council effective 4 April 2001;
and

WHEREAS, *Utah Code Ann.* §20A-1-510 governs the filling of mid-term vacancies in the City Council; and

WHEREAS, pursuant to said statute, the City Council is empowered to select a replacement member for the vacancy on the City Council occasioned by Mr. Gibbon's resignation; and

WHEREAS, because the vacancy occurred at least 14 days before the deadline for filing for election under applicable law, an election to fill the vacated seat shall occur in November 2001 in conjunction with the regular election of certain other municipal officers and, accordingly, the replacement member of the City Council designated below shall remain as a member of the City Council only until such replacement or his successor is elected and qualified in accordance with state law; and

WHEREAS, the City Council, having fully complied with all notice and other requirements specified in *Utah Code Ann.* §20A-1-510, met in regular session on 3 May 2001 to consider, among other things, appointing a replacement member of the City Council representing Council District 5 to fill the vacancy on the City Council occasioned by the resignation of Mr. Gibbons; and

WHEREAS, after careful consideration, the City Council has determined that it is in the best interests of the health, safety and welfare of the inhabitants of the City to appoint Jeff Fishman to such position; and

WHEREAS, the City Council has examined the qualifications of such person and is otherwise familiar with him;

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby appoints Jeff Fishman as a member of the City Council representing Council District 5, to act until his replacement elected in the municipal election scheduled for November 2001 is duly elected and qualified.

This Resolution, assigned no. 01-19, shall take effect immediately on passage and acceptance as provided herein.

PASSED AND APPROVED this 3rd day of May 2001.

HOLLADAY CITY COUNCIL



By: 
Edward D. P. Lunt, Chairman

VOTING:

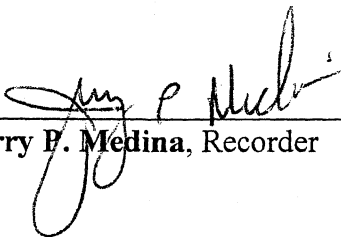
Edward D. P. Lunt	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Grant G. Orton	Yea	<input type="checkbox"/>	Nay	<input checked="" type="checkbox"/>
Steven R. Peterson	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
Sandy Thackeray	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>

PRESENTED to Mayor of Holladay for her approval this 3rd day of May 2001.

APPROVED this 3 day of May 2001.


Liane Stillman, Mayor

ATTEST:


Jerry P. Medina, Recorder

(Seal)

DEPOSITED in the Recorder's office this 4 day of May 2001.

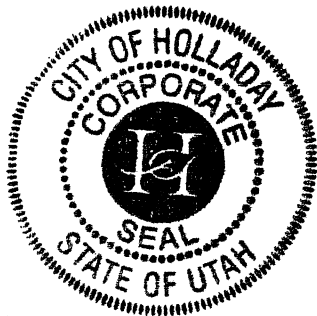
CERTIFICATE OF POSTING

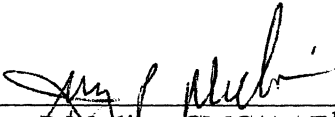
STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

I, Jerry P Medina, do hereby certify that I am the duly appointed, qualified and acting City Recorder for the City of Holladay, State of Utah, and do further certify that the foregoing is a true and correct copy of Resolution No. 01-19 entitled "*Approving an Appointment to Fill a Midterm Vacancy on the Holladay City Council*" duly adopted by the City of Holladay, by the City Council thereof at a meeting duly called and held in Holladay, Utah, on the 3rd day of May, 2001, at the hour of 6:00 o'clock p.m. of said day.

Dated this 3rd day of May 2001.

S E A L:





Jerry P Medina, CMC/AAE¹
Holladay City Recorder

ORDINANCE 02-17

AN ORDINANCE ANNEXING PROPERTY LOCATED BETWEEN
APPROXIMATELY HIGHLAND DRIVE TO 2300 EAST BETWEEN 3900
SOUTH AND 4500 SOUTH TO THE CITY.

BE IT ORDAINED BY THE CITY OF HOLLADAY MUNICIPAL COUNCIL AS FOLLOWS:

PREAMBLE

A majority of the owners of certain real property described below have filed a petition, and an accurate plat prepared by a licensed surveyor, with the City Recorder to annex such real property to the City. The petition has been signed by the owners of at least one-third (1/3) of the value of said real property as shown by the last assessment roll. The property consists of approximately 264.79 acres and lies contiguous to the corporate boundaries of the City. The City of Holladay Municipal Council accepted the petition for annexation for further consideration and, within thirty days of such acceptance, the City Recorder reviewed the petition and certified that the petition meets the requirements for annexation as provided by Sections 10-2-403(2), (3) and (4) of the Utah Code. A notice was published once a week for three successive weeks, beginning no later than ten days after receipt of the notice of certification, in a newspaper of general circulation the area proposed for annexation and the unincorporated area within 1/2 mile of the area proposed for annexation as provided by Section 10-2-406 of the Utah Code. Within twenty days of the City of Holladay Municipal Council's receipt of the notice of certification, written notices were mailed to the affected entities as provided by Section 10-2-406(1)(b) of the Utah Code. No protests to the annexation petition were filed during the protest period specified. Whereas, a public hearing was held on June 20, 2002 pursuant to published notice.

Section 1. Purpose. The purpose of this Ordinance is to annex property located between approximately Highland Drive to 2300 East between 3900 South and 4500 South to the City.

Section 2. Enactment.

- (1) The real property more particularly described in Paragraph 2, below, is hereby annexed to the City, and the corporate limits of the City are hereby extended accordingly.
- (2) The real property which is the subject of this Ordinance is described as follows:

PARCEL A

Beginning at the Salt Lake County Monument at the intersection of Highland Drive and 3900 South Street. Running thence along the centerline of 3900 South Street South 89°57'40" East 195.0 feet; thence within the Canal right of way

South 16° 22' East 560.0 feet; thence South 22° 30' 57" East 228.70 feet more or less to the centerline of 3990 South Street; thence South 53° 55' 13" East 197.99 feet; thence South 20° East 400.0 feet, more or less to the centerline of Woodside Drive extended on the North boundary line of Woodside Heights Addition No. 2; thence South 65° East 192.0 feet more or less to the centerline of Severn Drive; thence along the centerline of South Woodside Drive the following 8 courses: South 20°00' East 232.0 feet to the beginning of a curve; thence around a 180.0 foot radius curve to the left (Delta = 84°20') 300.54 feet; thence North 64°20' East 50.0 feet to the beginning of a curve; thence around a 750 foot radius curve to the right (Delta = 33°00'00") 431.97 feet; thence South 82°40' East 15.0 feet to the beginning of a course; thence around a 750.0 foot radius curve to the left (Delta = 21°20') 279.25 feet; thence around a 325.0 foot radius curve to the right (Delta = 39°56') 211.447 feet; thence South 69°00' East 52.0 feet more or less to the centerline of Woodside Drive ; thence along the centerline of Woodside Drive South 418.0 feet more or less to the centerline of Gunderson Lane; thence along the centerline of Gunderson Lane the following 4 courses: South 45°55' West 48.0 feet more or less to a P.I.; thence South 74°59'30" West 611.27 feet to the beginning of a curve; thence around a 421.63 foot radius curve to the left (Delta = 25°52'15") 190.38 feet; thence South 49°07'15" West 307.86 feet to the intersection of Gunderson Lane and Holladay Blvd; thence along the centerline of Holladay Blvd. the following courses: South 80°46'50" East 123.93 feet to a Salt Lake County Monument; thence South 48°36'10" East 989.60 feet; thence South 32°00'40 East 577.950 feet to the centerline of Lincoln Lane; thence South 31°52'00" East 1167.40 feet, more or less to a Salt Lake County Monument at the centerline of 4500 South Street and City of Holladay boundary line; thence along the City of Holladay boundary line and the centerline of 4500 South Street North 89°53'10" West 2037.527 feet more or less to a county monument at the intersection of 4500 South Street and Highland Drive; thence along the centerline of Highland Drive the following 6 courses; North 16°01'30" West 213.187 feet; thence North 14°04'30" West 710.54 feet to a Salt Lake County Monument at the intersection of Lincoln Lane and Highland Drive; thence North 05°26'00" West 690.690 feet to a Salt Lake County Monument; thence North 07°33'30" West 679.020 feet to a Salt Lake County Monument at the intersection of Highland Drive and Holladay Blvd; thence North 11°07'00" West 663.20 feet to a Salt Lake County Monument which is South 77°04' East 35.71 feet from the North Quarter corner of Section 4, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence North 14°24'30" West 1822.14 feet to a Salt Lake County Monument at the intersection of Highland Drive and 3900 South Street and the point of beginning.

PARCEL B

Beginning at a point South 14°24'30" East 774.08 feet and North 89°53' East 246.03 feet from the Salt Lake County Monument at the intersection of Highland Drive and 3900 South Street. Running thence along the centerline of 3990 South Street North 89°53' East 10.0 feet to the beginning of a curve; thence around a

125.0 foot radius curve to the left (Delta 41°34'30") 90.70 feet; thence North 48°18'30" East 48.24 feet to the beginning of a curve; thence around a 125.0 foot radius curve to the right (Delta = 42°) 91.63 feet; thence South 89°41'30" East 83.01 feet to the beginning of a curve; thence around the 300.0 foot radius curve to the left (Delta = 17°38'00") 92.33 feet; thence North 72°40'30" East 185.25 feet to the beginning of a curve; thence around a 500.0 foot radius curve to the right (Delta = 11°21'30") 99.12 feet; thence North 84°02'00" East 188.57 feet to the beginning of a curve; thence around a 1000.0 foot radius curve to the right (Delta = 05°31'10") 96.33 feet; thence North 89°33'10" East 351.39; thence North 89°33'10" East 338.21 feet more or less to the West boundary line of Lot 56 Woodside Heights Addition No. 2; thence South 00°19'40" East 66.0 feet more or less to the centerline of Eldorado Drive; thence along the centerline of El Dorado Drive North 84°02'00" East 175.82 feet to the beginning of a curve. Running thence along the centerline of Eldorado Drive the following 5 courses; thence around a 195.175' radius curve to the right (Delta = 25°58'00") 88.45 feet; thence South 70°00'00" East 136.664 feet to the beginning of a curve; thence around the 264.894 foot radius curve to the left (Delta = 15°) 69.35 feet; thence South 85°00'00" East 238.987 feet to the beginning of a curve; thence around a 824.241 foot radius curve to the left (Delta = 06° 15') 80.495 feet; thence North 88°45'00" East 196.215 feet more or less to the intersection of El Dorado Drive and 2000 East Street; thence along the centerline of 2000 East Street South 00°05'00" West 1121.283 feet to the Southeast corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian; thence South 00°05'00" West 16.83 feet; thence South 32°39'00" East 848.26 feet more or less to a County Monument at the intersection of 2000 East and Lincoln Lane; thence along the centerline of Lincoln Lane South 43°51'30" West 750.18 feet to the intersection of Lincoln Lane and 2010 East (Dunes Way); thence along the centerline of 2010 East Street South 46°08'30" East 58.0 feet to the beginning of a curve; thence around a 109.55 foot radius curve to the right (Delta = 13°18'30") 25.445 feet; thence South 32°50' East 318.13 feet to the beginning of a curve; thence around a 227.72 foot radius curve to the left (Delta = 34°37'00") 137.71 feet; thence around a 250.0 foot radius curve to the right (Delta = 26°55'00") 117.44 feet to the beginning of a curve; thence around a 200.0 foot radius curve to the left (Delta 21°16'10") 74.236 feet; thence South 61°50'10" East 37.48 feet; thence along the centerline of Albright Drive South 35°54 East 1338.40 feet more or less to the centerline of 4500 South Street and the City of Holladay boundary line which point is South 89°37'30" East 242.46 feet from a Salt Lake County Monument; thence along the City of Holladay boundary line along the centerline of 4500 South Street North 89°37'30" West 242.46 feet to the Salt Lake County Monument; thence along the centerline of 4500 South Street North 89°27'00" West 1056.91 feet to a County Monument at the intersection of 4500 South and Holladay Blvd; thence along the centerline of Holladay Blvd. North 31°52'00" West 1167.40 feet, more or less to the intersection of Holladay Blvd. and Lincoln Lane; thence along the centerline of Holladay Blvd. North 32°00'40" West 577.95 feet; thence along the centerline of Holladay Blvd. North 48°36'10" West 989.62 feet; thence along the centerline of Holladay Blvd. North 80°46'50" West 123.93

feet to the intersection of Holladay Blvd. and Gunderson Lane; thence along the centerline of Gunderson Lane North 49°07'15" East 404.70 feet; thence along the centerline of Gunderson Lane North 74°59'30" East 718.11 feet; thence along the centerline of Gunderson Lane North 45°55' East 48.0 feet; thence along the centerline of Woodside Drive North 418.0 feet more or less to the intersection of the Woodside Drive and South Woodside Drive; thence along the centerline of South Woodside Drive the following 9 courses: North 69°00'00" West 52.0 feet to the beginning of a curve; thence around a 325.0 foot radius curve to the left (Delta = 39°56') 211.447 feet; thence around a 750 foot radius curve to the right (Delta = 21°20') 279.25 feet; thence North 82°40'00" West 15.0 feet to the beginning of a curve; thence around a 750.0 foot radius curve to the left (Delta = 33°) 431.97 feet; thence South 64°20'00" West 50.0 feet to the beginning of a curve; thence around the 180.0 foot radius curve to the right (Delta = 84°20') 300.54 feet; thence North 20°00'00" West 232.0 feet, more or less to the centerline of Severn Drive; thence North 65°00'00" West 192.0 feet; thence North 20° West 400.0 feet; thence North 53° 55' 13" West 197.99 feet to the point of beginning.

PARCEL C

Beginning at the Salt Lake County Monument at the intersection of Highland Drive and 3900 South Street. Running thence along the centerline of 3900 South Street South 89°57'40" East 195.0 feet; thence within the Canal right of way South 16°22' East 560.0 feet; thence South 22°28'13" East 228.70 feet more or less to the centerline of 3990 South Street; thence South 53°55'13" East 197.99 feet; thence South 20°N East 400.0 feet, more or less to the centerline of Woodside Drive extended on the North boundary line of Woodside Heights Addition No. 2; thence South 65°N East 192.0 feet more or less to the centerline of Severn Drive; thence along the centerline of South Woodside Drive the following 8 courses: South 20°N00' East 232.0 feet to the beginning of a curve; thence around a 180.0 foot radius curve to the left (Delta = 84°N20') 300.54 feet; thence North 64°N20' East 50.0 feet to the beginning of a curve; thence around a 750 foot radius curve to the right (Delta = 33°N00'00") 431.97 feet; thence South 82°N40' East 15.0 feet to the beginning of a course; thence around a 750.0 foot radius curve to the left (Delta = 21°N20') 279.25 feet; thence around a 325.0 foot radius curve to the right (Delta = 39°N56') 211.447 feet; thence South 69°N00' East 52.0 feet more or less to the centerline of Woodside Drive; thence along the centerline of a Woodside Drive South 418.0 feet more or less to the centerline of Gunderson Lane; thence along the centerline of Gunderson Lane the following 4 courses: South 45°N55' West 48.0 feet more or less to a P.I.; thence South 74°N59'30" West 611.27 feet to the beginning of a curve; thence around a 421.63 foot radius curve to the left (Delta = 25°N52'15") 190.38 feet; thence South 49°N07'15" West 307.86 feet to the intersection of Gunderson Lane and Holladay Blvd; thence along the centerline of Holladay Blvd. the following courses: South 80°N46'50" East 123.93 feet to a Salt Lake County Monument; thence South 48°N36'10" East 989.60 feet; thence South 32°N00'40" East 577.950 feet to the centerline of Lincoln Lane; thence South

31N52'00" East 1167.40 feet, more or less to a Salt Lake County Monument at the centerline of 4500 South Street and City of Holladay boundary line: thence along the City of Holladay boundary line and the centerline of 4500 South Street North 89N53'10" West 2037.527 feet more or less to a county monument at the intersection of 4500 South Street and Highland Drive; thence along the centerline of Highland Drive the following 6 courses: North 16N01'30" West 213.187 feet; thence North 14N04'30" West 710.54 feet to a Salt Lake County Monument at the intersection of Lincoln Lane and Highland Drive; thence North 05N26'00" West 690.690 feet to a Salt Lake County Monument; thence North 07N33'30" West 679.020 feet to a Salt Lake County Monument at the intersection of Highland Drive and Holladay Blvd; thence North 11N07'00" West 663.20 feet to a Salt Lake County Monument which is South 77N04' East 35.71 feet from the North Quarter corner of Section 4, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence North 14N24'30" West 1822.14 feet to a Salt Lake County Monument at the intersection of Highland Drive and 3900 South Street and the point of beginning. Contains 72.21 acres.

PARCEL D

Beginning at a point South 14N24'30" East 774.08 feet and North 89N53' East 246.03 feet from the Salt Lake County Monument at the intersection of Highland Drive and 3900 South Street. Running thence along the centerline of 3990 South Street North 89N53' East 10.0 feet to the beginning of a curve: thence around a 125.0 foot radius curve to the left (Delta 41N34'30") 90.70 feet; thence North 48N18'30" East 48.24 feet to the beginning of a curve; thence around a 125.0 foot radius curve to the right (Delta = 42N) 91.63 feet; thence South 89N41'30" East 83.01 feet to the beginning of a curve; thence around the 300.0 foot radius curve to the left (Delta = 17N38'00") 92.33 feet; thence North 72N40'30" East 185.25 feet to the beginning of curve; thence around a 500.0 foot radius curve to the right (Delta = 11N21'30") 99.12 feet; thence North 84N02'00" East 188.57 feet to the beginning of a curve; thence around a 1000.0 foot radius curve to the right (Delta = 05N31'10") 96.33 feet; thence North 89N33'10" East 351.39 feet; thence North 89N33'10" East 338.21 feet more or less to the West boundary line of Lot 56 Woodside Heights No. 2; thence South 00N19'40" East 66.0 feet more or less to the centerline of Eldorado Drive; thence along said centerline North 84N02'00" East 175.82 feet to the beginning of a curve: thence along the centerline of Eldorado Drive the following 5 courses; thence around a 195.175' radius curve to the right (Delta = 25N58'00") 88.45 feet; thence South 70N00'00" East 136.664 feet to the beginning of a curve; thence around the 264.894 foot radius curve to the left (Delta = 15N) 69.35 feet; thence South 85N00'00" East 238.987 feet to the beginning of a curve; thence around a 824.241 foot radius curve to the left (Delta = 06N15') 80.495 feet; thence North 88N45'00" East 196.215 feet more or less to the intersection of El Dorado Drive and 2000 East Street; thence along the centerline of 2000 East Street South 00N05'00" West 1121.283 feet to the Southeast corner of Section 33, Township 1 South Range 1 East, Salt Lake Base and Meridian; thence South 00N05'00" West 16.83 feet; thence South 32N39'00"

East 848.26 feet more or less to a County Monument at the intersection of 2000 East and Lincoln Lane; thence along the centerline of Lincoln Lane South 43N51'30" West 750.18 feet to the intersection of Lincoln Lane and 2010 East (Dunes Way); thence along the centerline of 2010 East Street South 46N08'30" East 58.0 feet to the beginning of a curve; thence around a 109.55 foot radius curve to the right (Delta = 13N18'30") 25.445 feet; thence South 32N50' East 318.13 feet to the beginning of a curve; thence around a 227.72 foot radius curve to the left (Delta = 34N37'00") 137.71 feet; thence around a 250.0 foot radius curve to the right (Delta = 26N55'00") 117.44 feet to the beginning of a curve; thence around a 200.0 foot radius curve to the left (Delta 21N16'10") 74.236 feet; thence South 61N50'10" East 37.48 feet; thence along the centerline of Albright Drive South 35N54 East 1338.40 feet more or less to the centerline of 4500 South and the City of Holladay boundary line which point is South 89N37'30" East 242.46 feet from a Salt Lake County Monument; thence along the City of Holladay boundary line along the centerline of 4500 South Street North 89N37'30" West 242.46 feet to the Salt Lake County Monument; thence along the centerline of 4500 South Street North 89N27'00" West 1056.91 feet to a County Monument at the intersection of 4500 South and Holladay Blvd; thence along the centerline of Holladay Blvd. North 31N52'00" West 1167.40 feet, more or less to the intersection of Holladay Blvd. and Lincoln Lane; thence along the centerline of Holladay Blvd. North 32N00'40" West 577.95 feet; thence along the centerline of Holladay Blvd. North 48N36'10" West 989.62 feet; thence along the centerline of Holladay Blvd. North 80N46'50" West 123.93 feet to the intersection of Holladay Blvd. and Gunderson Lane; thence along the centerline of Gunderson Lane North 49N07'15" East 404.70 feet; thence along the centerline of Gunderson Lane North 74N59'30" East 718.11 feet; thence along the centerline of Gunderson Lane North 45N55' East 48.0 feet; thence along the centerline of Woodside Drive North 418.0 feet more or less to the intersection of Woodside Drive and South Woodside Drive; thence along the centerline of South Woodside Drive the following 9 courses: North 69N00'00" West 52.0 feet to the beginning of a curve; thence around a 325.0 foot radius curve to the left (Delta = 39N56') 211.447 feet; thence around a 750 foot radius curve to the right (Delta = 21N20') 279.25 feet; thence North 82N40'00" West 15.0 feet to the beginning of a curve; thence around a 750.0 foot radius curve to the left (Delta = 33N) 431.97 feet; thence South 64N20'00" West 50.0 feet to the beginning of a curve; thence around the 180.0 foot radius curve to the right (Delta = 84N20') 300.54 feet; thence North 20N00'00" West 232.0 feet, more or less to the centerline of Seven Drive; thence North 65N00'00" West 192.0 feet; thence North 20N West 400.0 feet; thence North 53N55'13" West 197.99 feet to the point of beginning. Contains 72.32 acres.

(3) The City's zoning map and master plans shall be amended to include the real property described above in Paragraph 2. All parcels shall retain the zoning classification and designation as existed in Salt Lake County on the date of passage of this Ordinance.

(4) The City Recorder shall file a certified copy of this Ordinance and an original plat setting forth the property so annexed with the County Recorder of Salt Lake County, Utah.

(5) A copy of the Ordinance and plat shall be deposited in the Office of the City Recorder and published as required by law.

(6) The appropriate amendment to the articles of incorporation shall be filed with the office of the lieutenant governor.

Section 3. Effective Date. This Ordinance shall become effective on October 1, 2002.

CITY OF HOLLADAY MUNICIPAL COUNCIL

By: _____
Steven R. Peterson, Council Chairman

VOTING:

HUGO DIEDERICH	YEA ____ NAY ____
EDWARD LUNT	YEA ____ NAY ____
GRANT ORTON	YEA ____ NAY ____
STEVEN R. PETERSON	YEA ____ NAY ____
SANDY THACKERAY	YEA ____ NAY ____

PASSED, APPROVED AND ADOPTED by the City of Holladay Municipal Council on this _____ day of _____, 2002.

CITY OF HOLLADAY MUNICIPAL COUNCIL

Steven Peterson
Chairman

ATTEST:

Jerry Medina
City Recorder

Transmitted to the Office of the Mayor of the City of Holladay on this _____ day of _____, 2002.

MAYOR'S ACTION: Approved

DATED this _____ day of _____, 2002.

Dennis P. Larkin
Mayor

ATTEST:

Jerry Medina
City Recorder

CERTIFICATE OF PUBLICATION

I hereby certify that this Ordinance or a summary hereof was published according to law on the _____ day of _____, 2002.

City Recorder

City of Holladay

Resolution No. 02-24 A Resolution Transferring Funds Between Departments in the General and Capital Projects Funds

WHEREAS, the Holladay City Council met in regular session on May 16, 2002 to consider, among other things, transferring funds between departments in both the General and Capital Projects Funds; and

WHEREAS, the General Fund expenditures were not increased therefore no public hearing is required by law; and

WHEREAS, the Capital Projects expenditures were not increased either; and

WHEREAS, the purpose of these transfers are to more accurately reflect actual expenditures compared to budget during the current fiscal year; and

WHEREAS, this transfer is made pursuant to the provisions of Section 10-6-125, Utah Code Annotated, as amended;

WHEREAS, this transfer is done with the provision that no appropriation for debt retirement and interest, reduction of deficit or other appropriation required by law or ordinances is reduced by this resolution;

NOW, THEREFORE, BE IT RESOLVED by the Holladay City Council that the budget for the 2001-02 fiscal year is hereby amended as outlined in the attached Exhibit.

PASSED AND APPROVED by the City Council of Holladay, Utah, this 16th day of May 2002.

HOLLADAY CITY COUNCIL

By: _____
Sandy Thackeray, Council Vice Chairman

(S E A L)

VOTING:

Hugo Diederich	Yea ___ Nay ___
Edward Lunt	Yea ___ Nay ___
Grant Orton	Yea ___ Nay ___
Steven R. Peterson	Absent
Sandy Thackeray	Yea ___ Nay ___

PRESENTED to the Mayor of the City of Holladay for his approval this ____ day of May 2002.

APPROVED this ____ day of May 2002.

Dennis P. Larkin, Mayor

ATTEST:

Jerry Medina, City Recorder

DEPOSITED in the office of the City Recorder this ____ day of May 2002.

RECORDED this ____ day of May 2002.

CITY OF HOLLADAY

RESOLUTION No. 02-33
ADOPTING AN AMENDED COUNCIL INTENT DOCUMENT FOR
FISCAL YEAR 2002/2003

WHEREAS, the Council Intent Document for Fiscal Year 2002/2003 was adopted on June 6, 2002 in conjunction with the 2002/2003 Budget; and

WHEREAS, clarifications need to be made to said document;

NOW THEREFORE, BE IT RESOLVED by the Municipal Council of the City of Holladay that the Council Intent for Fiscal Year 2002/2003 be amended as set forth in *Exhibit A* incorporated herein for all purposes.

This Resolution, assigned No. 02-33, shall take effect immediately upon passage and acceptance as provided herein.

PASSED AND APPROVED this 11th day of July, 2002.

HOLLADAY CITY COUNCIL

By

Steven R. Peterson, Chairman

[SEAL]

VOTING:

HUGO F. DIEDERICH	YEA	___	NAY	___
EDWARD D.P. LUNT	YEA	___	NAY	___
GRANT G. ORTON	YEA	___	NAY	___
STEVEN R. PETERSON	YEA	___	NAY	___
SANDY THACKERAY	YEA	___	NAY	___

PRESENTED to the Mayor of Holladay for his approval this 11th day of July 2002.

APPROVED this 11th day of July 2002.

By _____
Dennis P. Larkin, Mayor

ATTEST:

By _____
Jerry P. Medina, Recorder

DEPOSITED in the Recorder's office this 11th day of July 2002.

Double underscore indicates insertion.
| indicates deletion.

Draft of June 5, 2002
July 7, 2002

CITY OF HOLLADAY

AMENDED
FISCAL YEAR 2002/2003

COUNCIL INTENT

REVENUES

- (1) The Council has not raised or increased tax revenue except for new growth.
- (2) The amount of estimated revenue from sales tax is \$2,046,000.
- (3) The amount of estimated revenue from property tax is \$2,675,544.

PERSONNEL

(1) The Council has funded the performance evaluation program sufficiently for a five percent (5%) merit raise for general city employees. Such program will be implemented beginning July 1, 2002. This program is subject to the completion of the study as outlined in the study section of this document.

(2) The Council has funded an employee assistance program at no cost to the employee.

(3) The Council has funded the following new positions:

- Executive Secretary to the Mayor 20 hrs. per week.
 (Exempt Position)
- Community Development Director Additional 20 hrs. per week.
 Becomes a full-time position

(4) The Council has authorized the following amounts for contract services:

- | | | |
|-----------------------------|----------------|-------------------------------|
| (a) Animal Control | \$65,000.00 | 32 hours of coverage per week |
| (b) Police Service Contract | \$1,628,854.00 | (14 f.t.e.) |
| (b) Fire Service Contract | \$1,108,212.00 | (14.5 f.t.e.) |

(5) One-half (1/2) of the liaison to the City Council's time is allocated to provide assistance and support for the City Recorder/Administrator.

(6) The sum appropriated for the City newsletter may not be expended until a communication web site policy has been adopted by the Council.

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(7) Capital Improvement Projects:

The following capital improvement projects are approved:

(1) Wayman Pond Storm Water Project \$ 505,200

(2) Property acquisition and other to-be-identified capital projects 2,620,000

No monies may be expended from this line item without express approval of the Council.

(3) Fire Hydrant Replacement 200,000

No monies may be expended until agreements have been approved by the Council and executed with the various water companies pertaining to responsibilities regarding maintenance, repair and related costs.

(4) Striping of Walkways 35,000

(5) Stratton Place Park - Trails and Landscaping 20,000

(6) Olympus Jr. High Traffic Control Device 61,500
(included in general fund)

(7) Sidewalk Replacement and ADA Compliance 10,000

(8) Power line trenching (line relocations) in the Holladay Village Center as per the engineering plans by Forsgren and Associates 90,000

(9) Traffic Calming 35,000

(10) Miscellaneous Storm Drain Projects 67,000
(including Applewood)

Total: \$3,643,700

All appropriations in the Capital Improvement Fund are subject to the following restrictions and guidelines:

(1) All excess or unused monies in any particular project or line item may not be expended without specific Council approval. Without such approval, such monies shall revert to the Capital Improvement Fund Balance.

(2) All projects are intended to be completed during Fiscal Year 2002/2003 subject only to construction and engineering restraints.

AmIntent _____ Council Intent _____

(3) All projects should be initiated as quickly as possible while incorporating sound engineering and compliance with applicable building and purchasing requirements.

Non-Departmental:

The \$100,000 sum appropriated for "unforeseen emergency" may not be expended by the executive branch until the Council has been notified in writing at least fifteen days in advance of its intended purpose and amount of expenditure and the council has passed an appropriation resolution. Emergencies excepted.

STUDIES AUTHORIZED AND FUNDED

(1) A study is authorized to examine the status of water companies located within the City limits and to investigate the possibility and feasibility of entering into agreements with the companies for long term water utilization and service.

The study shall be completed and presented to the City Council by January 1, 2003.

(2) Preparation of a personnel system for City employees including job descriptions and corresponding compensation schedule.

This study shall be presented to the City Council by January 1, 2003.

(3) The hiring of a consultant to prepare a proposed general land use plan amendment for areas to be annexed during calendar year 2002.

Included in this study is a general review of the zoning ordinance with proposed changes and modifications.

Both studies to be completed and delivered to the Planning Commission and Council by March 1, 2003.

(4) Traffic Engineering Study concerning 4500 South Highland, 4800 South Highland and 6200 South Holladay Boulevard area.

(5) Village Center Plan.

(6) Future (6-year) Capital Improvement Plan.

(7) Parks and Recreation Plan including Holladay Elementary, Holladay Boulevard at 6200 South, and open space plans for the future.

The total amount budgeted for studies listed herein is \$159,500.

The Council reserves the right to approve the scope of the respective "Request for Proposal" applicable to each study.

Amended Intent _____ Council Item _____

CITY OF HOLLADAY

RESOLUTION NO. 03-34

A RESOLUTION PROVIDING FOR THE HOLDING OF A SPECIAL ELECTION IN THE CITY OF HOLLADAY, UTAH, FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED ELECTORS THEREOF THE QUESTION: SHALL THE CITY OF HOLLADAY, UTAH, ADOPT THE COUNCIL-MANAGER FORM OF MUNICIPAL GOVERNMENT?

*** *** ***

WHEREAS, it has been determined by the Municipal Council of the City of Holladay, Utah to provide the residents of the City with the opportunity of selecting an optional form of government as provided by Section 10-3-1201, *et seq.*, Utah Code Annotated, 1953, as amended; and

WHEREAS, it is desired to submit the question of the adoption of the council-manager form of government to the vote of the qualified electors of the City in the form of a ballot hereinafter provided;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Municipal Council of the City of Holladay, Salt Lake County, Utah, as follows:

Section 1. On the 5th day of August, 2003, there shall be held in the City of Holladay, Utah, a special election between the hours of 7:00 o'clock a.m. and 8:00 o'clock p.m., at which time there shall be submitted to the qualified electors of said City the proposition appearing in the form of ballot set out in Section 5 hereof.

Section 2. For purposes of said special election, the regular election districts of the City shall be and are hereby combined into the Special Election Consolidated Districts, and the voting places for each of said Special Election Consolidated Districts at said election shall be as specified and enumerated in the form of Notice of Election set out in Section 4 hereof. The election judges are to serve at the voting place so established for each Special Election

Consolidated District, each election judge shall be a qualified elector of the City, and shall be appointed by the Municipal Council.

Section 3. Such special election shall be conducted and registration therefor shall be in conformity with the laws of the State of Utah, and the officials of said City and the election judges for each consolidated election district in said City, shall be and are hereby authorized and directed to perform and do all things necessary to the proper calling and conducting of such election and to canvass the results thereof.

Section 4. Notice of said election shall be published once a week during three (3) consecutive weeks; the first publication thereof shall not be less than twenty-one (21) days nor more than thirty-five (35) days before the special election and shall be published in *The Salt Lake Tribune*, a newspaper published and of general circulation in Holladay, Utah. Such notice shall be in substantially the following form:

ELECTION NOTICE

TO ALL QUALIFIED ELECTORS

OF THE CITY OF HOLLADAY, UTAH

TAKE NOTICE that on the 5th day of August, 2003, a special election will be held in the City of Holladay, Utah, at the places set out below for the purpose of submitting to the voters of said City the following proposition:

PROPOSITION

SHALL THE CITY OF HOLLADAY, UTAH, ADOPT THE COUNCIL-MANAGER FORM OF MUNICIPAL GOVERNMENT TO TAKE EFFECT JANUARY 5, 2004 AT 12:00 NOON M.S.T., AS FOLLOWS:

1. The City of Holladay shall adopt the optional form of municipal government known as the council-manager form as prescribed in Section 10-3-1201, *et seq.*, Utah Code Annotated, 1953, as amended.

2. The council comprised of six (6) members one of whom shall be the mayor, who shall exercise the legislative authority of the City. The City of Holladay shall be divided into five (5) council districts substantially equal in population. One non-partisan candidate shall be elected from each council district for a four-year term. The mayor shall be elected at large. The mayor shall preside at all meetings of the council and shall have a vote in all council proceedings. The mayor shall be the chief ceremonial officer of the municipality and shall represent the municipality in all its external relationships. A quorum for conducting the business of the City shall be four members.

3. The council shall exercise the legislative powers of the city government, including adopting of ordinances, setting levies, adopting municipal budgets, reviewing municipal administration, conducting administrative and public hearings, and performing all duties that may be required of it by law.

4. The council shall be a part-time legislative body and shall meet at least twice monthly. Compensation of the council members, officers and employees of the City shall be set by the council.

5. The council shall appoint an independent auditor to perform the functions and fulfill the responsibilities set forth in the Uniform Municipal Fiscal Procedures Act.

6. The council shall appoint by a two-thirds vote of its membership a manager who shall be the chief executive officer of the municipality.

7. The Manager shall exercise control of all departments within the municipal government; meet with and make recommendations to the council; and shall perform such other duties required and permitted by law.

* * *

Said special election will be held in the Special Election Consolidated Districts, comprised of the following regular election districts at the following polling places, and will be conducted by election judges to be appointed by the Municipal Council:

SPECIAL ELECTION CONSOLIDATED DISTRICT	COMPRISING REGULAR ELECTION DISTRICTS NOS.	POLLING PLACE
1		
2	(To be completed by the Recorder as Authorized)	
3		
4		
5		

The voting at such special election shall be by ballot, which ballots will be furnished by the City Recorder of the City of Holladay, Utah, to the judges of election to be by them furnished to the voters.

The polls at each polling place will be open from 7:00 o'clock a.m. to 8:00 o'clock p.m.

There will be no special registration of voters for the special election and the official register last made or revised shall constitute the register for such election; except that the County Clerk of Salt Lake County will register as provided by law, at a place designated by the County Clerk during regular office hours, on the first and second Tuesdays prior to the said special election, any person eighteen (18) years of age or older who on the day of election will be a qualified voter.

The County Clerk will make available at each of the above described polling places, a registration list or copy thereof listing all registered voters entitled to use such voting place.

Absent-voter ballots may be obtained by any person otherwise eligible to vote at the special election but who, on the day of the election, expects to be temporarily absent from Salt Lake County or who is disabled, by making application, within thirty (30) days next preceding the special election, wither in person or by mail at the office of the City Recorder, 4707 South Holladay Boulevard, Holladay, Utah.

Notice is further given that on or before August 12, 2003, that being a day not sooner than seven (7) days and not later than fourteen (14) days after said special election, the municipal council will meet at its regular meeting place in the City Hall at 5:30 o'clock p.m., and canvass the returns and declare the results of said special election.

Section 4.1 Present elected officials of the City, whose positions would no longer exist as a result of the adoption of the council-manager form of government, shall be paid their present salaries until the date on which their terms would have expired, if they hold no office in the new government for which they are regularly compensated. The position of strong mayor will be eliminated and replaced by a part-time mayor who serves as a member of the council.

At their option, former council members with unexpired terms as of January 5, 2004, may serve as the council member of the district in which they reside for the remainder of their term of office. Such former council members shall declare in writing their intent to serve as a council member from the district in which they reside and file the same with the City Recorder, prior to the candidacy filing deadline provided in State law for council candidates, thereby giving notice that no election for a council member will be held in such district.

In the event a former council member elects to serve as a member of the council, as set forth in Section 4.2, the former council member shall serve until such time as the council member's elected term would have expired and a successor shall be chosen by the council, as provided by law, to fill the remainder of the four-year term applicable to said district.

Section 4.2. The territory embraced within the corporate limits of the City of Holladay shall be and the same is hereby divided into five (5) council districts bounded and described as herein set forth.

DISTRICT ONE: One council member shall be elected to represent District 1, comprised of the following voting precincts: 4000, 4001, 4002, 4003, 4004 and 4005 which is also described within the following geographic boundaries: District One's boundaries begin at the corner of Highland Drive and 3900 South running thence south along Highland Drive to Murray-Holladay Road, thence east along Murray-Holladay Road to Holladay Blvd., thence north along Holladay Blvd. to 4500 South, thence east along 4500 South to Albright Drive, thence north along Albright Drive to Lincoln Lane, thence northeast along Lincoln Lane to 2000 East, thence north along 2000 East to 3900 South and thence west along 3900 South to Highland Drive.

DISTRICT TWO: One council member shall be elected to represent District 2, comprised of the following voting precincts: 4007, 4009, 4011 and 4013 which is also described within the following geographic boundaries: District Two's boundaries begin at the corner of 2000 East and 3900 South, running thence south along 2000 East to Lincoln Lane, thence west along Lincoln Lane to Albright Drive, thence south along Albright Drive to 4500 South, thence east along 4500 South to 2700 East, thence north along 2700 East to 3900 South and thence west along 3900 South to 2000 East.

DISTRICT THREE: One council member shall be elected to represent District 3, comprised of the following voting precincts: 4004, 4006, 4008 and 4014 which is also described within the following geographic boundaries: District Three's boundaries begin at the corner of 4500 South and Holladay Blvd., running thence south along Holladay Blvd. to Valley View Avenue, thence east along Valley View Avenue to Wander Lane, thence south along Wander Lane to Valley View Avenue, thence east along Valley View Avenue to Naniloa Drive, thence south along Naniloa Drive to Casto Lane, thence east along

Casto Lane to I-215, thence north along I-215 to 4430 South, thence west along 4430 South continuing where 4430 South turns to 4500 South continuing west to Holladay Blvd.

DISTRICT FOUR: One council member shall be elected to represent District 4, comprised of the following voting precincts: 4010, 4012, 4016 and 4018 which is also described within the following geographic boundaries: District Four's boundaries begin at the corner of Highland Drive and Murray-Holladay Road, running thence south along Highland Drive to Walker Lane, thence east along Walker Lane to Haven Lane, thence north along Haven Lane to Lewis Avenue, thence northeast along Lewis Avenue to Holladay Blvd., thence north along Holladay Blvd. to Casto Lane, thence east along Casto Lane to Naniloa Drive, thence north along Naniloa Drive to Valley View Avenue, thence west along Valley View Avenue to Wander Lane, thence north along Wander Lane to Valley View Avenue, thence west along Valley View Avenue to Holladay Blvd., thence north along Holladay Blvd. to Murray-Holladay Road.

DISTRICT FIVE: One council member shall be elected to represent District 5, comprised of the following voting precincts: 4020, 4022, 4024, 4025, 4026, 4027, 4028 and 4029 which is also described within the following geographic boundaries: District Five's boundaries begin at the corner of Highland Drive and Walker Lane, running thence south along Highland Drive to Vine Street, thence southwest along Vine Street to Highland Drive, thence south along Highland Drive to I-215, thence east along I-215 to 6200 South, thence southeast along 6200 South to 3000 East, thence south along 3000 East to the southern boundary of Canyon Cove, thence east along the southern boundary of Canyon Cove to the eastern boundary of Canyon Cove, thence north along the eastern boundary of Canyon Cove to the northern boundary of Canyon Cove, thence west along the northern boundary of Canyon Cove to Wasatch Blvd., thence north along Wasatch Blvd. to I-215.

Terms of office for the members and council are as follows:

Council members representing Districts 2, 4 and 5 shall be elected for a four-year term effective January 5, 2004.

Council members representing Districts 1 and 3 terms of office shall expire on January 2, 2006 and shall subsequently be elected to a four-year term.

Section 4.3. The term of office of the strong mayor shall end on January 5, 2004. The mayor shall be paid at the same rate until the date on which his

term would have expired. The office of mayor would be filled with an election in November, 2003, for an initial term of two (2) years and a four-year term thereafter.

Section 5. The necessary ballot boxes, paraphernalia, equipment, supplies and ballots to be used in voting upon the proposition submitted at such special election shall be prepared and furnished by the City Recorder to the judges of election to be furnished by them to the voters. The ballots to be used at the special election shall comply in all respects with the requirements of Section 5 of Chapter 7 of Title 20A of the Utah Code Annotated, 1953, and Section 1203 of Chapter 3 of Title 10 of the Utah Code Annotated, 1953, and shall be in substantially the following form:

BALLOT NUMBER _____

JUDGE'S INITIAL _____

OFFICIAL BALLOT FOR THE CITY OF HOLLADAY, UTAH

SPECIAL ELECTION

August 5, 2003

City Recorder

PROPOSITION

SHALL THE CITY OF HOLLADAY, UTAH, ADOPT THE COUNCIL-
MANAGER FORM OF MUNICIPAL GOVERNMENT TO TAKE EFFECT
JANUARY 5, 2004?

1. The City of Holladay shall adopt the optional form of municipal government known as the council-manager form as prescribed in Section 10-3-1201, *et seq.*, Utah Code Annotated, 1953, as amended.

2. The council comprised of six (6) members one of whom shall be the mayor, who shall exercise the legislative authority of the City. The City of Holladay shall be divided into five (5) council districts substantially equal in population. One non-partisan candidate shall be elected from each council district for a four-year term. The mayor shall preside at all meetings of the council and shall have a vote in all council proceedings. The mayor shall be the chief ceremonial officer of the municipality and shall represent the municipality in all its external relationships.

3. A manager, appointed by a two-thirds vote of the full membership of the council, shall be the chief executive officer of the municipality. The manager may appoint and remove administrative assistants including a chief administrative officer. He will also, with the advice and consent of the council, appoint department heads, statutory officers, commissions, boards and committees of the municipality except as may be otherwise specifically limited by law.

4. The manager shall exercise control of all departments within the municipal government; meet with and make recommendations to the council; and shall perform such other duties required and permitted by law.

5. The council shall appoint an independent auditor to perform the functions and fulfill the responsibilities set forth in the Uniform Municipal Fiscal Procedures Act.

6. The council shall exercise the legislative powers of the city government, including adopting ordinances, setting mill levies, adopting municipal budgets, reviewing municipal administration, conducting administrative and public hearings, and performing all duties that may be required of it by law.

7. The council shall be a part-time legislative body and shall meet at least twice monthly. Compensation of the council members and employees of the City shall be set by the council.

YES _____>

NO _____>

To vote in favor of changing the form of city government, place a cross (X) in the space after the word "YES".

To vote against changing the form of city government, place a cross (X) in the space after the word "NO".

Section 6. The City's Recorder, and his staff, are hereby authorized and requested by the City council to expeditiously undertake all actions necessary to accomplish the foregoing purposes, including, without limitation, arranging for polling places, election judges, the printing and tabulation of ballots, and the providing of all necessary legal notices.

Section 7. Only registered, qualified electors of the City of Holladay eighteen (18) years of age or older shall be permitted to cast a vote at such special election.

Section 8. Any person applying for a ballot at the polling place designated for the conduct of such election at which such person is entitled to vote, whose qualifications to vote are challenged for cause by any one or more of the election officials, or by any other person, at the time the ballot is applied for shall receive a ballot and be permitted to vote if (1) such person is shown on the registration lists as a registered voter in the City of Holladay and (2) such person takes an oath before one of the election officials that such person is a qualified elector of the City of Holladay and the grounds for such challenge are untrue.

In the case of any such challenge or challenges, the election judge shall keep two complete lists of all challenges as provided in Part 2, Chapter 3, Title 20A Utah Code Annotated, 1953, as amended.

Section 9. Any qualified elector of the City of Holladay who has complied with the law in regard to registration and who on the day of the special election is disabled or temporarily absent from the City of Holladay may vote at the special election by making application within thirty (30) days preceding the election for an absent-voter ballot, either in person or by mail, at the office of the City Recorder. Absent-voter ballots must be received at the office of the City Recorder before the closing of the polls on August 5, 2003, or clearly postmarked on the day preceding the election (August 4, 2003), and received in the office of the City Recorder before

noon on August 12, 2003, the day of the official canvass following the election, in order to be counted.

All absent-voter ballots received by the City Recorder prior to the day of the special election shall be delivered by the City Recorder to the judges of election of the consolidated district in which the absent voter resides on the day of election.

Any other absent-voter ballots shall be delivered to the place of the official canvass of the special election at 8:00 o'clock a.m. on the day of the official canvass following the election if such absent-voter ballots were received at the office of the City Recorder before the closing of polls on election day or were clearly postmarked on the day preceding election day and received in the office of the City Recorder before 8:00 o'clock a.m. on the day of the official canvass following the election. The City Recorder is directed to prepare the necessary absent-voter ballots, applications and envelopes as required by law for voting by absent and disabled electors.

Section 10. Immediately after the polls are closed the judges appointed to conduct the election shall proceed to count and canvass the votes, and shall promptly thereafter certify the result to the municipal council, and the said municipal council shall meet as a Board of Canvassers no sooner than seven (7) days and no later than fourteen (14) days after the date of said election, to-wit: On Tuesday, the 12th day of August, 2003, at the hour of 5:30 o'clock p.m., at its regular meeting place in the City Hall in the City of Holladay, Utah.

If the majority of the votes cast at such election are in favor of such proposition, then the Municipal Council shall cause an entry of that fact to be made upon its minutes, and thereupon this Municipal Council shall be authorized and directed to do all things necessary to provide for the adoption of the council-manager form of government as provided by Section 10-3-1201, *et seq.*, Utah Code Annotated, 1953, as amended, to take effect the 5th day of January, 2004.

Section 11. Immediately after the adoption of this resolution the City Recorder shall furnish a certified copy hereof to the County Clerk of Salt lake County. The County Clerk shall, in accordance with the provisions of Section 20A-101 *et seq.*, Utah Code Annotated, 1953, register at a place designated by the County Clerk during regular office hours, on the second and first Tuesdays prior to said special election in the same manner as provided by law for registration by registration agents, any person who on the day of the special election will be a qualified elector.

The County Clerk shall also make available, or cause the registration agents therein to make available, at each polling place herein established for the conduct of said election, registration lists, or copies thereof, listing all registered electors entitled to use such voting place.

Section 12. Immediately after its adoption this Resolution shall be signed by the Council Chair and City Recorder, shall be recorded in a book kept for that purpose and shall take immediate effect.

Given by order of the Municipal Council of the City of Holladay, this _____ day of June, 2003.

PASSED AND APPROVED this _____ day of June, 2003.

HOLLADAY CITY COUNCIL

By _____
Sandy Thackeray, Chair

[SEAL]

VOTING:

HUGO F. DIEDERICH	YEA	___	NAY	___
EDWARD D.P. LUNT	YEA	___	NAY	___
GRANT G. ORTON	YEA	___	NAY	___
STEVEN R. PETERSON	YEA	___	NAY	___
SANDY THACKERAY	YEA	___	NAY	___

ATTEST:

By _____
Jerry Medina, Recorder

DEPOSITED in the office of the City Recorder this _____ day of June, 2003.

RECORDED this _____ day of June, 2003.

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

I, Jerry Medina, hereby certify that I am the duly qualified and acting City Recorder of the City of Holladay, Salt Lake County, Utah.

I further certify that the above and foregoing constitutes a true and correct copy of the minutes of a regular public meeting of the municipal council of the City of Holladay, including a resolution adopted at said meeting, held on _____, 2003, as said minutes and resolution are officially of record in my possession.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and affixed the seal of said City this _____ day of June, 2003.

City Recorder

[SEAL]

CITY OF HOLLADAY

RESOLUTION No. 03-35

A RESOLUTION APPROVING THE INTERLOCAL COOPERATION AGREEMENT
WITH SALT LAKE COUNTY FOR LAW ENFORCEMENT SERVICES
AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, the City desires to contract with Salt Lake County for Law Enforcement Services; and

WHEREAS, the parties are public agencies and are therefore authorized by the Utah Interlocal Cooperation Act, Section 11-13-1, *et seq.*, U.C.A., to enter into agreements with each other which will enable them to make the most efficient use of their powers;

NOW THEREFORE, BE IT RESOLVED by the City Council that the attached Interlocal Cooperation Agreement between Salt Lake County and the City of Holladay for Law Enforcement Services is hereby approved, and that the City's Mayor and City Recorder are authorized to execute and deliver the Agreement on behalf of the City

This Resolution, assigned No. 03-35, shall take effect immediately upon passage and acceptance as provided herein.

PASSED AND APPROVED this _____ day of June, 2003.

HOLLADAY CITY COUNCIL

By _____
Sandy Thackeray, Chairman

[SEAL]

VOTING:

HUGO F. DIEDERICH	YEA	___	NAY	___
EDWARD D.P. LUNT	YEA	___	NAY	___
GRANT G. ORTON	YEA	___	NAY	___
STEVEN R. PETERSON	YEA	___	NAY	___
SANDY THACKERAY	YEA	___	NAY	___

PRESENTED to the Mayor of Holladay for his approval this _____ day of June, 2003.

APPROVED this ____ day of June, 2003.

By _____
Dennis P. Larkin, Mayor

ATTEST:

By _____
Jerry P. Medina, Recorder

DEPOSITED in the Recorder's office this ____ day of June, 2003.

**RENEWAL AND RESTATED AGREEMENT FOR
LAW ENFORCEMENT SERVICES
BETWEEN SALT LAKE COUNTY
AND THE CITY OF HOLLADAY**

THIS RENEWAL AND RESTATED AGREEMENT FOR LAW ENFORCEMENT SERVICES (this "*Agreement*") is made effective July 1, 2003 by and between SALT LAKE COUNTY, a body corporate and politic of the state of Utah (the "*County*"), and the CITY OF HOLLADAY, a municipal corporation of the State of Utah (the "*City*") (the County and the City are collectively referred to herein as the "*Parties*").

RECITALS:

A. The Parties entered into an agreement for law enforcement services (the "*Original Agreement*") effective July 1, 2000.

B. The Parties entered into a renewal of the Original Agreement effective July 1, 2001 ("*Renewal Agreement*").

C. The Parties restated and renewed the Original Agreement effective July 1, 2002.

D. It is the intent of the Parties that law enforcement services will be provided on a cost basis.

E. The Parties have had significant discussion regarding the cost basis of law enforcement services.

F. The Original Agreement also provides, among other things, that if the Parties desire to extend the term of the Original Agreement (as extended by the Renewal Agreement) for an annual renewal period authorized in the Original Agreement, then a revised *Exhibit A* be adopted that reflects the contract price for such period.

G. The Parties desire to modify the original annual renewal to a three (3) year term subject to budgetary constraints.

F. The Parties desire to extend the term of the Original Agreement (as extended by the Renewal Agreement) for an additional one year renewal period as contemplated therein, and to study the cost basis of law enforcement services.

G. The Parties have determined that it is mutually advantageous to renew and restate the Original Agreement pursuant to the authority granted in UTAH CODE ANN. § 11-13-1, *et seq.* ("*Interlocal Cooperative Act*").

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertaking of the Parties, and in compliance with and pursuant to the provisions of the Interlocal Cooperation Act, the Parties hereby agree as follows:

1. ***Scope of Services to be Provided.*** Unless the level and type of law enforcement services is modified pursuant to section 16 hereof, the County shall provide the following law enforcement services to the City throughout the term of this Agreement: (a) law enforcement services specified on *Exhibit A*; (b) law enforcement services funded out of the County's general fund; (c) law enforcement services which are regularly and routinely provided without fee to all areas of the County, including incorporated cities; (d) "mutual aid" (as described below); and (e) assistance in implementing a "reserve" program for the City, if requested by the City.

The County and the City disagree about the County's obligation to house in the County's jail facility persons arrested or convicted for violations of City's ordinances. The provision of jail services during the term of this Agreement shall not be considered a waiver by either party of any claim, defense or cause of action concerning jail services heretofore or hereafter provided by the County.

The County and the City disagree about the costs and expenses to be included in the cost basis for law enforcement services, the allocation of costs for law enforcement services between the general fund and municipal fund, and the costs and services to be included in the term "detective investigative services" as used in UTAH CODE ANN. § 17-34-1, *et seq.* This Agreement shall not be considered a waiver by either party of any claim, defense, or course of action concerning the cost of law enforcement services.

The Parties acknowledge that the County is a party to the multi-jurisdictional mutual aid agreement that is attached hereto as *Exhibit B* (the "*Mutual Aid Agreement*"). Throughout the term of this Agreement, the County shall provide "back-up support" and aid (including available K-9 unit coverage) to the City as if the City was a signatory to the Mutual Aid Agreement, and the Deputies (defined below) providing services to the City hereunder shall be available as reasonably necessary to provide "back-up support" and aid to the County as if the City was a signatory to the Mutual Aid Agreement. Coverage and personnel assigned to the City shall not be required to provide support to outside agencies except as provided in the Mutual Aid Agreement.

All such law enforcement services as provided in this Agreement shall be collectively referred to as "*Law Enforcement Services.*" Such services shall be provided in a manner to comply with the Model for Law Enforcement Services (*Exhibit C*).

2. ***Funding Through County's General Fund or Otherwise.*** The Parties acknowledge that some services provided by the County through the Sheriff are funded through the County's general fund or otherwise, and are routinely and regularly provided without charge to other cities and towns located in the County. Such services include, without limitation,

services for special events such as public events, celebrations and parades. The County shall provide such services to the City without charge upon reasonable advance notice from the City if such services are regularly and routinely provided without charge to other cities and towns located in the County. Nothing contained herein shall, however, obligate the County to provide services to the City without charge that are funded through the County's general fund if the County ceases to routinely and regularly provide such services without charge to other cities and towns located in the County.

3. *Personnel Assigned to Area Located within the City Limits.* Continuously throughout the term of this Agreement, the County shall provide the following Law Enforcement Services within the City Limits:

a. *Line Deputies, Directed Enforcement Deputies, Traffic Specialists Deputies, Detectives, and Cross Guards.* All personnel and equipment necessary to provide, as outlined in Exhibit A, (i) 13 full-time (40 hours per week; 52 weeks per year) line deputies, (ii) one full-time (40 hours per week; 52 weeks per year) COP deputy, (iii) 500 additional traffic enforcement hours; (iv) two full-time (40 hours per week, 52 weeks per year) traffic enforcement deputies, (v) one full-time (40 hours per week, 52 weeks per year) detectives to perform detective investigative services concerning property crimes occurring in the City, and (vi) 10 crossing guards (vii) pooled services allocation (the 13 full-time deputies, two directed enforcement deputies, and the two detectives shall be collectively referred to as "*Deputies*").

b. *Specific Assignment of Deputies.* The Parties understand that crimes and calls for Law Enforcement Services are not evenly distributed throughout the day, week or month. Accordingly, the representative of the Sheriff directing Law Enforcement Services within the City Limits as set forth in section 3(h) hereof may assign the Deputies to work times consistent with patterns of criminal behavior and calls for Law Enforcement Services within the City. Such assignment shall be in accordance with commonly accepted police patrol practices and comply with the management principle of "committing the most resources to the greatest need."

c. *Certification.* All Deputies shall have the same certification, meet the same requirements, and, on average, have substantially the same level of experience and service record as other deputies regularly employed by the Sheriff.

d. *Exclusive Assignment.* The County shall develop and maintain in effect policies to ensure that the Deputies will work exclusively within the City Limits or on cases originating within the City Limits; provided, however, that the Deputies may be called on to assist other law enforcement officials in the unincorporated county or police officers in adjoining municipalities consistent with the mutual aid standards set forth in the Mutual Aid Agreement attached hereto as *Exhibit B*.

e. *Liaison.* The County also shall provide a captain to act as liaison with the City to coordinate and oversee the delivery of Law Enforcement Services, attend public safety citizen committee meetings and provide a monthly briefing to City officials.

f. *City Meetings.* In addition to the Deputies provided hereunder, the County shall provide a deputy to attend upon request all municipal council meetings or other public hearings held by the City.

g. *Additional Deputies.* The County shall reasonably assign any and all additional law enforcement personnel to the City on a *pro rata* basis as if the City were part of the unincorporated County that may result from any applicable law enforcement grants, provided that the City shall reimburse the County for its applicable share of any required local government match.

h. *Separate Division or Precinct.* If requested by the City, the County shall establish a separate division or precinct for Law Enforcement Services provided to the City and/or other similar situated “contract cities.” It is anticipated that such separate division or precinct shall maintain a separate budget and cost accounting, and provide for the assignment of a lieutenant with the responsibility and authority to prioritize, assign and supervise Law Enforcement Services. Further to the extent practicable, Deputies assigned to the City shall maintain such assignment throughout the term hereof.

i. In the absence of the “Chief” for 15 consecutive calendar days, the Salt Lake County Sheriff’s Department shall appoint a deputy of equal or greater rank to perform such functions until the “Chief” returns to work.

Section 4 Services Performed in a Professional, Reasonable Manner. The Law Enforcement Services shall be provided by the County in a professional, reasonable, responsive, ethical manner in compliance with all laws and any and all applicable standards of performance. Subject to the foregoing, the exact nature of how the Law Enforcement Services are to be provided, the discipline of personnel, and other matters incidental to providing the Law Enforcement Services shall remain with the County. There are no third party beneficiaries to this Agreement and the standards set forth in this Section 4 shall not be construed to provide a cause of action to any citizen or third-party based on the duties set forth herein.

Section 5. Conflict Resolution. In the event of a dispute between the Parties regarding Law Enforcement Services or this Agreement, the Parties agree (without limiting any and all other legal and equitable remedies) that a representative of the City will meet as soon as practical with a representative of the County to discuss and attempt to resolve such dispute. If a resolution is not forthcoming, then the aggrieved party may file a discrepancy report with the mayor of the City or the Sheriff (as the case may be). The discrepancy report shall be in writing and shall contain a detailed description of the dispute and the aggrieved party’s proposed resolution of the dispute. The other party (*i.e.*, the party receiving the discrepancy report) shall then have ten (10) days to notify the aggrieved party in writing of its agreement or disagreement with the proposed solution of the dispute described in the discrepancy report. If the Parties do not agree, then the dispute shall be resolved pursuant to section 18 hereof.

Section 6. Equipment and Facilities.

a. *Equipment.* For the purpose of performing the Law Enforcement Services, the County shall furnish and supply all necessary labor, supervision, training, equipment, communication facilities, uniforms, badges, firearms, and other items of equipment necessary and incidental to a modern, well-equipped police force.

b. *Facilities.* For the purpose of performing the Law Enforcement Services, the City agrees to provide no more than one office located in City Hall for use by the County for the delivery of Law Enforcement Services. The County shall staff such office with a deputy of the Sheriff's office of the rank of lieutenant. The office (or the complete elimination thereof) and the location of such office in City Hall may be modified and adjusted from time to time as the City assesses and evaluates its needs. Utilities, local telephone costs and janitorial services necessary to operate such office shall be paid by the City. The County shall use its best efforts to limit the use of such office for the performance of duties outside the City Limits.

c. *Other Substations Located within the City Limits.* The County currently operates one substation located at 1580 East 3900 South, Suite #1 and Cottonwood Mall. Throughout the term of this Agreement, the County shall continuously maintain and operate at least one substation located within the corporate limits of the City at a location mutually agreed upon by the parties.

Section 7. Reports, Documentation and Notice of Performance. The County shall provide the following reports and notices:

a. *Documentation.* On a monthly basis or more frequently if requested by City, the County shall provide documentation, in a form and substance as determined by the City, from time to time, subject to and in compliance with Utah's Government Records Access and Management Act ("GRAMA") and other applicable federal, state and local laws. It is anticipated that the documentation will include the following:

(i) *Report - Department.* A map showing the geographical location of offenses (grouped by type of offense), a report detailing the total number of monthly (or more frequent) offenses (in plain English), the number of calls by time and day, response times and status of any asset seizure with respect to an incident of investigation located within City Limits.

(ii) *Reports - Pooled Services.* A report detailing the services provided on a monthly (or more frequent) basis by the County that would be considered as pooled services, including time, day and locations by jurisdiction. For purposes of this Agreement, "pooled services" means SWAT, homicide/robbery investigation, K-9, crime lab, neighborhood narcotics unit, family victims, intelligence/CIU/gang unit, warrants and fugitives unit, support services division, sheriff's executive administration, and administrative services division.

(iii) *Reports - Detectives.* A report detailing the total number of monthly (or more frequent) cases (in plain English) assigned to the Detectives, location of underlying incident, number of arrests, cases cleared, cases worked and court appearances.

(iv) *Financial.* A monthly (or more frequent) report detailing and documenting direct cost, indirect cost, overhead, and cost of pooled services. Overhead includes, but is not limited to, allocations with respect to Council, Auditor, District Attorney, Information Services, purchasing, personnel and insurance.

(v) *Other.* Such additional information as the City may from time to time reasonably request.

b. *Annual Report.* The County shall provide an annual report and present such report to the City at a regularly scheduled City meeting held during the month of February. The annual report shall summarize the information from the monthly reports, demonstrate the performance level of the Sheriff over the previous year, and demonstrate that the County has complied with all of its obligations under this Agreement. The report will contain solely public information appropriately disclosed under GRAMA. Performance and emphasis goals will be presented and discussed for the next year in anticipation of renewal of this Agreement.

c. *Notice of Internal Investigations and Exceptional Behavior.* The County promptly shall notify the City of (i) any written complaints received by the County regarding the Law Enforcement Services; (ii) any internal investigation that is initiated regarding Deputies that arise out of an incident reasonably related to the City; and (iii) the final disposition of any such investigations. The County need not provide such notice if the County reasonably deems such notice to be a violation of any merit provisions, privacy act, GRAMA or where such notice would jeopardize the investigation or safety of any Deputies. The County also shall provide copies of any documents demonstrating exceptional behavior on the part of any Deputies. These documents will be used to measure the performance of the County in fulfilling its obligations under this Agreement.

d. *Survey.* Each month, the County, through its Community Oriented Policing Program, will provide personal visits to 35 or more randomly-selected complainants (victims) and solicit responses in the form of a survey. The form and content of the survey, the number of visits and the selection process may be changed from time to time as determined by the City. The results of the surveys will be summarized, prepared and presented by the County to the City on a quarterly basis.

e. *Additional Disclosure and Policy Development.* From time to time upon request, the County shall provide private, controlled or protected information under GRAMA. The Parties shall jointly develop and implement a policy for communicating and safeguarding such information.

Section 8. Employment Status.

a. *Official Status.* The County shall have complete control and discretion over the Deputies and all personnel providing the Law Enforcement Services. The Deputies and personnel shall at all times be and remain employees of the County.

b. *Salary and Wages.* The City shall not have any obligation or liability for the payment of any salaries, wages or other compensation to the Deputies or any of the other personnel providing the Law Enforcement Services.

c. *Employment Benefits.* The Deputies or any of the other personnel providing Law Enforcement Services shall be County employees, and shall be and remain County employees. No such law enforcement personnel shall have any City benefits for services provided hereunder.

Section 9. Indemnity. The City and the County are governmental entities under the "Utah Governmental Immunity Act" (*Utah Code Ann. § 63-30-1, et seq.*) (the "Act"). Consistent with the terms of the Act, and as provided herein, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Act nor does any party waive any limits of liability currently provided by the Act. The County shall defend, indemnify, save and hold harmless the City, including its elected and appointed officers, and employees, from and against any and all demands, liabilities, claims, damages, actions, and/or proceedings, in law or equity, including reasonable attorney's fees and costs of suit, relating to or arising from the County providing Law Enforcement Services to the City, except where such demands, claims, actions or proceedings may result from the negligence or misconduct of the City, its elected or appointed officers or employees. Similarly, the City shall defend, indemnify, save and hold harmless the County, including its elected and appointed officers and employees, from and against demands, claims, actions and/or proceedings, in law or equity, including reasonable attorney's fees and costs of suit, relating to or arising from actions of the City's elected and appointed officers or employees, the County's enforcement of City ordinances that are alleged to be unconstitutional, or improper disclosure by the City of private, controlled, or protected information under the provisions of GRAMA.

Section 10. Term. This Agreement shall be effective at 12:00:01 a.m. on July 1, 2003, and unless renewed or sooner terminated as provided for herein, shall terminate at 11:59:59 p.m. June 30, 2004.

Section 11. Termination and Renewal. Notwithstanding anything to the contrary, either party may terminate this Agreement at any time, with or without cause, by giving 180 days prior written notice to the other party. If the City desires to renew this Agreement for any succeeding one-year period on the same terms and conditions as set forth in this Agreement, except the Contract Price, the City shall notify the County not later than March 15th, or as soon thereafter as practical, immediately preceding the expiration of this Agreement of its desire to renew this Agreement. No later than April 15th of such year, or as soon thereafter as practical, the County shall notify the City in writing of its intent to accept such renewal together with a

revised *Exhibit A*. The revised *Exhibit A* shall reflect the adjusted Contract Price for such period. The governing bodies of the County and the City shall then finalize negotiations concerning, and may grant final approval of, such renewal. Otherwise, this Agreement shall terminate on June 30th of such year.

Section 12. Payment for Services. The City shall pay the base amount as provided in section 14 (the “*Base Contract Price*”) set forth on attached *Exhibit A* for Law Enforcement Services. The City shall pay an additional amount as provided in Section 14 (the “*Additional Amount*”), if any, for Law Enforcement Services in an amount that is substantiated by the documents referenced in section 7 and as mutually agreed by the Parties. Notwithstanding the possible payment of the Additional Amount, in no event shall the total payment for Law Enforcement Services during the term of this Agreement exceed \$1,610,937.00.

Section 13. Notice to City of Changes in Subsequent Year Contract Price and Change in Key Personnel. If a proposed expenditure decision (or a series of proposed expenditure decisions when viewed as a whole would reasonably constitute one decision) of the County or the Sheriff would likely result in the Contract Price for any subsequent year to increase by more than 5%, or if the County or the Sheriff proposes to re-assign a deputy that is assigned to provide Law Enforcement Services to the City of the rank of sergeant, lieutenant or captain to any other responsibility, then the County and/or the Sheriff shall notify the City of such decision(s) and consult with the City regarding such decision(s).

Section 14. Remittance.

(a) **Base Contract Price.** The City shall remit one-quarter (25%) of the Base Contract Price on a quarterly basis to:

Salt Lake County Auditor (“*Auditor*”)
2001 South State Street, Room N2200
Salt Lake City, UT 84190-1100

The payment due for the quarter ending March 31 of a given year shall be due and payable April 20 of the same year. The payment due for the quarter ending June 30 of a given year shall be due and payable July 20 of the same year. The payment due for the quarter ending September 30 of a given year shall be due and payable October 20 of the same year. The payment due for the quarter ending December 31 of a given year shall be due and payable January 20 of the next year. If the date a payment is due and payable is (i) a legal holiday, (ii) a Saturday, (iii) a Sunday, or (iv) another day on which weather or other conditions have made the office of the Auditor inaccessible, then the payment shall be due and payable on the next day which is not one of the aforementioned days. If any payment is not remitted to the Auditor when due, the County shall be entitled to recover interest thereon. Said interest shall be at the rate of one percent (1%) per calendar month and shall begin to accrue on the date the remittance is due and payable.

(b) *Additional Amount.* The City shall remit the Additional Payment, if any, to the Auditor on or before July 21, 2003. If any payment is not remitted to the Auditor when due, the County shall be entitled to recover interest thereon. Said interest shall be at the rate of one percent (1%) per calendar month and shall begin to accrue on the date the remittance is due and payable.

Section 15. Forfeiture. As part of the Law Enforcement Services, the Sheriff may be involved in a forfeiture of property. Upon an award of forfeited property to the County with respect to an incident or investigation located within the City Limits, the County shall cause an equitable share (as determined by a court of competent jurisdiction, rules, regulations or otherwise) of such forfeited property to be used for controlled substance law enforcement purposes within the City Limits. Such funds shall not be used contrary to Utah law.

Section 16. Change in Level of Services. The City may modify (increase or decrease) the level of Law Enforcement Services if the City provides thirty (30) days prior written notice to the County of such change and the County subsequently approves or disapproves such change or modification and a modified rate schedule. The County agrees to use its best efforts to provide any requested increase in Law Enforcement Services. The amount due for such increase or decrease shall accrue as of the date the modified Law Enforcement Services become effective and shall be due and payable as provided in sections 12 and 13 hereof.

Section 17. Notices. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within two days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties as set forth below.

County: Salt Lake County Sheriff
2001 South State, S-2700
Salt Lake City, UT 84190

with a copy to: Commander East Patrol
2300 East 4600 South
Holladay, UT 84117

Salt Lake District Attorney's Office
2001 South State, S-3600
Salt Lake City, UT 84190

City: Mayor Dennis P. Larkin
4707 South Holladay Boulevard
Holladay, UT 84117

with a copy to: H. Craig Hall
Chapman and Cutler
50 South Main Street, Suite 900
Salt Lake City, UT 84144-0402

Section 18. Claims and Disputes. Claims, disputes and other issues between the Parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing during any such litigation, the County shall continue to provide Law Enforcement Services and the City shall continue to make payments to the County in accordance with the terms of this Agreement.

Section 19. Titles and Captions. All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

Section 20. Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

Section 21. Applicable Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

Section 22. Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

Section 23. Time. Time is the essence hereof.

Section 24. Survival. All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

Section 25. Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

Section 26. *Rights and Remedies.* The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

Section 27. *Severability.* In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

Section 28. *Litigation Expenses.* If any action, suit or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the nonprevailing party.

Section 29. *Exhibits and Recitals.* All exhibits annexed to this Agreement and Recitals included herein are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such exhibits and writings.

Section 30. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the County, by resolution of its Council, a certified copy of which is attached hereto, caused this Agreement to be signed by its mayor or designee and attested by its Clerk, and the 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.

SALT LAKE COUNTY

By _____
Mayor Nancy Workman or designee
Date Signed: _____

ATTEST:

Sherrie Swensen, Salt Lake County Clerk,
or designee
Date Signed: _____

CITY OF HOLLADAY

By _____
Dennis P. Larkin, Mayor
Date Signed: _____

ATTEST:

APPROVED AS TO FORM:

Jerry Medina, City Recorder
Date Signed: _____

City Attorney

APPROVED BY SALT LAKE COUNTY SHERIFF

By _____
Aaron D. Kennard
Salt Lake County Sheriff

EXHIBIT C

MODEL FOR LAW ENFORCEMENT IN THE CITY OF HOLLADAY

PURPOSE:

The structure of this model is an attempt to cover the circumstances the City would encounter by starting a police department. There may be additional resource requests associated with this model. Overall cost is considered, taking into account exigent circumstances and span of control.

This model is flexible and is submitted as an outline for guidance.

The control and administration of law enforcement services rests with the executive branch of government of the City. The chief law enforcement supervisor shall be the lieutenant assigned to the City. The "Chief" shall be subject to the following:

- (1) Selected by the Mayor with input from the Council.
- (2) Shall report to the Mayor or City Administrator.
- (3) Shall be responsible for all personnel assigned to the city, including patrol.
- (4) Shall remain as "Chief" for a minimum of twenty-four months unless one of the following events occur:
 - (A) Promotion.
 - (B) Removed for cause.
 - (C) Change in City administration.
 - (D) Request for transfer (only after 24 months).
 - (E) Irreconcilable differences.

ACCOUNTABILITY

Accountability of all people assigned to Holladay

Deputies willing to accept "ownership" for City

"Non performers" to be held accountable or replaced

Commitment to work in City for minimum of 12 months, preferably 24 months or longer with the following exceptions:

- (A) Promotion.
- (B) Career Advancement.
- (C) Transfer to detectives.
- (D) Special Operations, etc.

Each Deputy responsible for police functions as assigned

C.O.P. assignments

COMMUNITY ORIENTED POLICING

The City of Holladay is a Community Oriented Policing operation

Restructure Traffic enforcement with COP

Replace COP “program” with philosophy

Integrate traffic enforcement with COP

Each Deputy responsible for police functions as assigned

C.O.P. assignments

Traffic enforcement

Response to alarm drops and provide vacation property checks

VICE control part of Pooled Services (shared)

Assign responsibility to VICE not C.O.P.

Demitries

Cottonbottom

Cruisers

Rivers

Tuscany

Gepettos

Maggie MaGees

Loco Lizard

Pooled Service Budget

IDENTITY

Deputies to have “City of Holladay” on uniform (possible rocker) to match existing patch

Visibility

All cars assigned to Holladay to be marked

Except Chief (Lt.) and Detective

Larger “CITY OF HOLLADAY” on cars. Same location, instead of the current stripes on the rear quarter, entire quarter panel used.

Out of Cars meeting business owners and citizens, personalized service, get to know and get involved with community.

Bicycles

Business cards to pass to citizens for posting in home, “Beat Cops”

RESOLUTION NO. 03-36

A RESOLUTION providing for the holding of a special bond election in the City of Holladay, Salt Lake County, Utah, at the same time as the municipal general election, for the purpose of submitting to the qualified electors thereof the question of the issuance and sale of General Obligation Bonds of the City in an amount not to exceed \$4,000,000; and providing for related matters.

WHEREAS, the City of Holladay, Salt Lake County, Utah (the “City”) desires to raise money for the purpose of paying the costs of acquiring underdeveloped open space and trails, and providing amenities, and the City does not have on hand sufficient funds for this purpose; and

WHEREAS, the City is authorized pursuant to the Utah Municipal Bond Act, Chapter 14 of Title 11 of the Utah Code Annotated 1953, as amended (the “*Utah Code*”), to call an election to submit to the qualified electors of the City the question as to whether the City should issue its general obligation bonds for the purposes set forth above; and

WHEREAS, the City desires to hold a special bond election at the same time as the municipal general election to submit to the qualified electors of the City the question of the issuance of such bonds for said purposes;

NOW, THEREFORE, Be It Resolved by the City Council of the City of Holladay, Salt Lake County, Utah, as follows:

Section 1. In the judgment of the City Council of the City, it is advisable that a special bond election be called and held in the City to submit to the qualified electors of the City the question of whether general obligation bonds of the City, in an amount not to exceed

\$4,000,000, shall be issued and sold for the purpose of acquiring underdeveloped open space and trails, and providing amenities.

Section 2. The question shall be submitted at a special bond election of qualified electors of the City, and such special bond election (the “*Special Bond Election*”) is hereby called to be held in the City at the same time as the municipal general election on Tuesday, November 4, 2003. The question shall be submitted in substantially the form set out in the form of ballot label appearing in Section 6 hereof.

Section 3. The Special Bond Election shall be held in the regular voting precincts of Salt Lake County, Utah (the “*County*”) in which qualified electors of the City reside, at the polling places within the precincts specified in the form of notice of election set out in Section 7 hereof. In accordance with the provisions of Section 11-14-4 of the Utah Code, the election officials who have been otherwise appointed under the provisions of general law to conduct the municipal general election to be held within the City on the same day shall conduct the Special Bond Election.

Section 4. The judges of election in the respective voting precincts, in accordance with Section 20A-5-605 of the Utah Code, are hereby directed to arrive at their respective polling places not later than 6:30 a.m. on the day of the Special Bond Election and then to open the voting devices and examine them to see that they are in proper working order for the conduct of the Special Bond Election and otherwise to fulfill their responsibilities in accordance with Section 20A-5-605 of the Utah Code.

Section 5. At the Special Bond Election the polls shall be opened at the hour of 7:00 a.m. on the day of the Special Bond Election and shall be closed at the hour of 8:00 p.m. on that same day.

Section 6. Voting at the Special Bond Election shall be by electronic voting system, and the City Recorder of the City (the "*City Recorder*") is hereby authorized and directed to perform and do, and to cause to be performed and done, all things necessary to conduct the Special Bond Election in accordance with the provisions of this Resolution, Title 20A of the Utah Code and Chapter 14 of Title 11 of the Utah Code. The County Clerk of the County (the "*County Clerk*") is hereby requested for and on behalf of the City to assist the City Recorder to enable him to perform and do all such things necessary to conduct the Special Bond Election. The necessary ballot boxes, ballots, paraphernalia, equipment and supplies to be used in voting upon the proposition shall be prepared and furnished by the City and the City Recorder to the boards of election, to be furnished by them to the voters. The ballot cards to be used at the Special Bond Election (a) shall be suitable for use in the voting and counting devices in which they are intended to be placed, (b) shall comply in all respects with the requirements of Sections 20A-6-102 and 20A-6-402 of the Utah Code, including, but not limited to, the requirements (i) that each ballot card shall have an attached perforated stub on which shall be printed the words "Official Ballot, (initial) Judge", and (ii) the ballot stubs shall be numbered consecutively, and (c) shall be organized to record the votes relating to the Special Bond Election as well as votes relating to other propositions and offices being voted upon at the municipal general election. The ballot labels to be used at the Special Bond Election shall

comply in all respects with the requirements of Sections 11-14-10, 20A-6-102 and 20A-6-402 of the Utah Code. The ballot labels to be used at the Special Bond Election shall be separate from ballot labels to be used for other propositions and offices being voted upon at the municipal general election, and shall be in substantially the following form:

OFFICIAL BALLOT LABEL FOR
CITY OF HOLLADAY, SALT LAKE COUNTY, UTAH
SPECIAL BOND ELECTION

November 4, 2003

(Facsimile Signature)

City Recorder, City of Holladay

CITY PROPOSITION NUMBER _____

Shall the City of Holladay, Utah be authorized to issue general obligation bonds in an amount not to exceed \$4,000,000 payable and due in no more than 20 years from the date or dates of said bonds to acquire underdeveloped open space and trails, and provide amenities?

FOR THE ISSUANCE OF BONDS _____----->

AGAINST THE ISSUANCE OF BONDS _____----->

To vote in favor of the above bond issue, punch through the ballot card in the numbered space indicated to the right of the words "FOR THE ISSUANCE OF BONDS." To vote against the bond issue, punch through the ballot card in the numbered space indicated to the right of the words "AGAINST THE ISSUANCE OF BONDS."

Section 7. The Special Bond Election shall be called by publishing once a week during at least three (3) consecutive weeks a notice of election, signed by the City Recorder, the first publication to be not less than twenty-one (21) days nor more than thirty-five (35) days before the date set for the Special Bond Election, in *The Salt Lake Tribune* and the *Deseret News*, newspapers of general circulation in the City. *The Salt Lake Tribune* and the *Deseret News* and are hereby designated pursuant to Section 11-14-21 of the Utah Code as the “official newspapers” of the City for purposes of publication of the “Notice of Special Bond Election” hereinafter set forth and for purposes of any other notices to be published in accordance with the Utah Municipal Bond Act, as amended. The notice shall be in substantially the following form:

NOTICE OF SPECIAL BOND ELECTION

CITY OF HOLLADAY, SALT LAKE COUNTY, UTAH

PUBLIC NOTICE IS HEREBY GIVEN that a special bond election will be held in the City of Holladay, Salt Lake County, State of Utah (the "*City*"), at the same time as the municipal general election, on Tuesday, November 4, 2003, at which special bond election there shall be submitted to the qualified, registered voters residing within the City the following question:

CITY PROPOSITION NUMBER _____

Shall the City of Holladay, Utah be authorized to issue general obligation bonds in an amount not to exceed \$4,000,000 payable and due in no more than 20 years from the date or dates of said bonds to acquire underdeveloped open space and trails, and provide amenities?

The special bond election shall be held at the regular voting precincts of Salt Lake County, at the following polling places within such voting precincts, and the election officials to serve at each polling place shall be those who have been otherwise appointed under the provisions of general law to conduct the municipal general election. Voters are advised to vote at the special bond election at the polling place for the regular voting precinct in which they reside. The polling places are as follows:

REGULAR
VOTING
PRECINCT NO.

POLLING PLACE LOCATION

The voting at the special bond election shall be by ballots used in connection with an electronic voting system. The ballots will be furnished by the City Recorder's office to the judges of election, to be by them furnished to the qualified electors of the City.

The polls at each polling place shall be opened at the hour of 7:00 a.m. and will be kept open until and will be closed at the hour of 8:00 p.m.

There is to be no special registration of voters for the special bond election and the official register of voters last made or revised shall constitute the register for the special bond

election, except that all persons who reside within the City and are registered to vote in the municipal general election to be held on Tuesday, November 4, 2003, shall be considered registered to vote in the special bond election. The County Clerk of Salt Lake County will make registration lists or copies of such lists available at each of the above-described polling places for use by registered electors entitled to use such voting place.

Absentee ballots may be obtained by any person otherwise eligible to vote at the special bond election but who (a) is physically, emotionally, or mentally impaired; (b) will be serving as an election judge or who has election duties in another voting precinct; (c) is detained or incarcerated in a jail or prison as a penalty for committing a misdemeanor; (d) has a legal disability; (e) is prevented from voting in a particular location because of religious tenets or other strongly-held personal values; (f) is called for jury duty in state or federal court; or (g) otherwise expects to be absent from the voting precinct in which the eligible voter resides during the hours the polls are open in Salt Lake County on the day of the special bond election, by making application in the manner and within the time provided by law, either by mail or in person, at the office of the City Recorder, located at 4707 South Holladay Boulevard, Holladay, Utah 84117.

Any eligible voter who is hospitalized or otherwise confined to a medical or long-term care institution after the deadline for filing an application for an absentee ballot in the manner and within the time provided by law may obtain an absentee ballot by sending another person to obtain the absentee ballot on his or her behalf at the office of the City Recorder, located at 4707 South Holladay Boulevard, Holladay, Utah 84117.

NOTICE IS FURTHER GIVEN that on _____, November ____, 2003, at _____ [a.m.][p.m.], of the County Government Center, 2001 South State Street, in Salt Lake City, Utah, there will be conducted a test of the automatic tabulating equipment to be used to tabulate the results of the November 4, 2003 special bond election to be held in the City on the issuance and sale of \$4,000,000 bonds of the City. This test is open to public observation in accordance with the provisions of Section 20A-4-104, Utah Code Annotated 1953, as amended.

PUBLIC NOTICE IS FURTHER GIVEN that on Tuesday, November 11, 2003, that being a day not later than ten days after the special bond election, the City Council of the City of Holladay will meet in the City Council Chambers located at 4707 South Holladay Boulevard, in the City of Holladay, Utah, at 6:00 p.m. and will canvass the returns and declare the results of the special bond election during such meeting.

Pursuant to applicable provisions of the Utah Municipal Bond Act, the period allowed for any contest of the special bond election shall end forty (40) days after November 11, 2003 (the date on which the returns of the election are to be canvassed and the results thereof declared). No such contest shall be maintained unless a complaint is filed with the Clerk of the Third Judicial District Court in and for Salt Lake County within the prescribed forty (40) day period.

The ballot labels to be used at the special bond election shall be separate from ballot labels to be used for other propositions and offices being voted upon at the municipal general election, and shall be in substantially the following form:

OFFICIAL BALLOT LABEL FOR
CITY OF HOLLADAY, SALT LAKE COUNTY, UTAH
SPECIAL BOND ELECTION

November 4, 2003

/s/ Jerry P. Medina
City Recorder, City of Holladay

CITY PROPOSITION NUMBER ____

Shall the City of Holladay, Utah be authorized to issue general obligation bonds in an amount not to exceed \$4,000,000 payable and due in no more than 20 years from the date or dates of said bonds to acquire underdeveloped open space and trails, and provide amenities?

FOR THE ISSUANCE OF BONDS _____----->

AGAINST THE ISSUANCE OF BONDS _____----->

To vote in favor of the above bond issue, punch through the ballot card in the numbered space indicated to the right of the words "FOR THE ISSUANCE OF BONDS." To vote against the bond issue, punch through the ballot card in the numbered space indicated to the right of the words "AGAINST THE ISSUANCE OF BONDS."

IN WITNESS WHEREOF, the City Council of the City of Holladay, Salt Lake County, State of Utah, has caused this notice to be given this 19th day of June, 2003.

City Recorder
City of Holladay, Salt Lake County, Utah

Section 8. Only qualified, registered voters of the City who are eighteen (18) years of age or older shall be permitted to cast a vote at the Special Bond Election.

Section 9. Any person applying for a ballot at any polling place designated for the conduct of the Special Bond Election, whose qualifications to vote are challenged for cause by

any one or more of the election officials or by any other person at the time the ballot is applied for, shall receive a ballot and be permitted to vote if (a) such person is shown on the registration lists as a registered voter of the City and (b) such person takes an oath in the form in which such oath is set forth in Section 10 hereof, sworn to before one of the election officials, that he or she is a qualified elector of the City.

In the case of any such challenge or challenges, the election officials at each polling place shall keep a list showing the name of each person challenged, the grounds for such challenge and whether or not such person was permitted to vote. Such lists shall be made in duplicate by the election officials at each polling place, and after the polls shall have been closed a duplicate list shall be returned to the City Council by the election officials, so that such duplicate list will be available to the City Council when it canvasses the election results.

Section 10. The oath referred to in Section 9 hereof shall be in substantially the following form:

ELECTOR'S OATH

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

The undersigned, having been first duly sworn upon oath, deposes and says under the pains and penalties of perjury, as follows:

That I am a citizen of the United States; that I am 18 years of age or older; that I am now and have been a resident of the State of Utah for not less than 30 days; that I am a resident of Salt Lake County and of the regular voting precinct of the City of Holladay, Utah in which I am offering to vote; that I am a duly registered voter of Salt Lake County and I am a qualified voter of and reside within the confines of the City of Holladay, Utah; and that I have not previously voted at the special bond election being held on November 4, 2003, in the City of Holladay, Utah.

Signature of Elector

Address of Elector

I, the undersigned, Judge of Election, hereby certify that the person whose signature appears above, signed the foregoing statement on November 4, 2003, immediately after I administered to him or her an oath in the following words:

“You do solemnly swear (or affirm) that you have read the oath to which you are about to subscribe your signature and that the facts recited therein are true and correct, so help you God (or under the pains and penalties of perjury).”

Judge of Election

Each of the election officials appointed to conduct the Special Bond Election is expressly authorized to administer such oath in accordance with the provisions of Section 11-14-6 of the Utah Code.

Section 11. Pursuant to the provisions of Part 3, Chapter 3, Title 20A of the Utah Code, any qualified elector of the City who resides within the confines of the City, who has complied with the law in regard to registration and who is an absent elector may vote at the Special Bond Election by making application in the manner and time provided by law for an absentee ballot, either in person or by mail, or by proxy in the case of a hospitalized voter, at the office of the City Recorder, located at 4707 South Holladay Boulevard, Holladay, Utah 84117. Absentee ballots of hospitalized voters must be received at the office of the City Recorder before the closing of the polls on the day of the Special Bond Election in order to be counted. All other absentee ballots must be received at the office of the City Recorder before the closing of the polls on the day of the Special Bond Election or clearly postmarked before November 4, 2003, the day on which the Special Bond Election will be held, and received in the office of the City Recorder before 12:00 Noon on Tuesday, November 11, 2003, the day of the official canvass following the Special Bond Election, in order to be counted. Whenever possible, valid absentee ballots shall be delivered or mailed to the appropriate regular voting precinct judges of election by the City Recorder in order that they may be processed at such voting precinct on the day of the Special Bond Election. If the City Recorder is unable to determine the regular voting precinct to which a valid absentee ballot should be sent, or if valid absentee ballots are received too late for delivery on the day of the Special Bond Election to the judges of election, the City

Recorder shall retain them in a safe place and shall deliver the absentee ballots to the place of the official canvass of the Special Bond Election by 12:00 Noon on the day of the official canvass following the Special Bond Election if such absentee ballots were received at the office of the City Recorder before the closing of the polls on the day of the Special Bond Election or were clearly postmarked before the day of the Special Bond Election and received in the office of the City Recorder before 12:00 Noon on the day of the official canvass following the Special Bond Election.

The City Recorder is hereby requested, authorized and directed to prepare the necessary absentee ballots, applications and envelopes as required by law for voting by absent electors and hospitalized voters and to take such actions with respect to the counting thereof as permitted by Part 3, Chapter 3, Title 20A of the Utah Code.

Section 12. Immediately after the polls are closed and the last qualified voter has voted, the judges appointed to conduct the Special Bond Election shall place (a) all voted ballots in a ballot container for delivery to the counting center designated by the County Clerk, (b) all unused ballots in a container and sealed for return to the County Clerk and (c) the voting devices in their containers and sealed for return to the County Clerk. The judges of election shall also prepare in duplicate a report of the number of voters who have voted at the respective polling places, the original copy of which report shall be placed in the ballot container for delivery to the counting center and a duplicate copy of which shall be returned to the City Council prior to the date set to canvass the returns of the Special Bond Election. In accordance with Section 11-14-11 of the Utah Code, the City Recorder is hereby requested to make returns to the City Council

of the votes cast at the Special Bond Election in order to enable the City Council to meet and canvass the returns of the Special Bond Election and to declare the results thereof.

Section 13. In accordance with the provisions of Section 20A-4-104 of the Utah Code, the City Recorder shall direct under the observation of the public, the counting of the votes cast on the foregoing proposition by automatic tabulating equipment at the counting center. The return printed by the automatic tabulating equipment when absentee ballots cast at the Special Bond Election have been added thereto and when certified by the City Council, shall constitute the official return of each voting precinct.

Section 14. The City Council shall meet as a Board of Canvassers within ten (10) days after the date of the Special Bond Election on Tuesday, November 11, 2003, at or about the hour of 6:00 p.m., in the City Council Chambers, located at 4707 South Holladay Boulevard, in the City of Holladay, Utah, and if the majority of the votes cast at the Special Bond Election are in favor of such proposition submitted, then the City Council shall cause an entry of that fact to be made upon its minutes, and thereupon the City shall be authorized and directed to issue such bonds.

Section 15. Immediately after the adoption of this Resolution and at least 30 days before the election, the City Recorder shall furnish a certified copy hereof to the County Clerk. The County Clerk shall, in accordance with the provisions of Section 11-14-7 of the Utah Code, consider all persons registered to vote in the municipal general election to be held on the day of the Special Bond Election, as registered to vote in the Special Bond Election. The County Clerk shall make registration lists or copies of such lists available at each polling place herein

established for the conduct of the Special Bond Election for use by registered electors entitled to use such voting place.

Section 16. Prior to the start of the counting of the ballots, the automatic tabulating equipment shall be tested to ascertain that it will accurately count the votes cast at the Special Bond Election. Such test shall be conducted in accordance with the provisions of Section 20A-4-104 of the Utah Code. Public notice of the time and place of the test shall be given at least forty-eight (48) hours before the test by publication one time in *The Salt Lake Tribune* and the *Deseret News* of a notice in substantially the form set forth in the form of notice of election set out in Section 7 hereof.

Section 17. This Resolution is a declaration of official intent under Treas. Reg. Section 1.150-2. In satisfaction of the requirements thereof:

(a) The City Council is planning to raise money for the purpose of paying the costs of acquiring underdeveloped open space and trails, and providing amenities.

(b) Expenditures relating to paying the costs of acquiring underdeveloped open space and trails, and providing amenities (y) have been paid within sixty days prior to the passage of this Resolution or (z) will be paid on or after the passage of this Resolution (the "*Expenditures*").

(c) The City Council reasonably expects to reimburse the Expenditures with proceeds of general obligation bonds to be issued by the City.

(d) The maximum principal amount of such bonds expected to be issued for the Expenditures is an amount not to exceed \$4,000,000.

Section 18. All acts and resolutions in conflict with this Resolution or any part thereof are hereby repealed.

Section 19. Immediately after its adoption, this Resolution shall be signed by the Mayor and the City Recorder, shall be recorded in a book kept for that purpose and shall take immediate effect.

ADOPTED AND APPROVED this 19th day of June, 2003.

HOLLADAY CITY COUNCIL

By _____
Sandy Thackeray, Chair

[SEAL]

VOTING:

HUGO F. DIEDERICH	YEA	___	NAY	___
EDWARD D.P. LUNT	YEA	___	NAY	___
GRANT G. ORTON	YEA	___	NAY	___
STEVEN R. PETERSON	YEA	___	NAY	___
SANDY THACKERAY	YEA	___	NAY	___

PRESENTED to the Mayor of Holladay for his approval this 19th day of June, 2003.

APPROVED this 19th day of June, 2003.

ATTEST:

By _____
Jerry Medina, Recorder

By _____
Dennis P. Larkin, Mayor

DEPOSITED in the office of the City Recorder this _____ day of June, 2003.

RECORDED this _____ day of June, 2003.