

SALT LAKE COUNTY
Standard Form Contract No. 16-05263, Approved 1-Jan-2016, Expires 31-May-2017
TIER I
ZOO, ARTS AND PARKS FUNDING AGREEMENT
Between
SALT LAKE COUNTY
And
«OrganizationDBA»

THIS AGREEMENT is made and entered into this _____ day of _____, 2016 by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah ("COUNTY"), and «OrganizationOrganization_Name», a non-profit organization, whose mailing address is «OrganizationMailingStreet1», «OrganizationMailingStreet2», «OrganizationMailingCity», «OrganizationMailingState», «OrganizationMailingZip» ("RECIPIENT").

WHEREAS, the COUNTY has imposed a local sales and use tax, pursuant to Utah Code Ann. §§ 59-12-701, et seq., (1953, as amended) and has enacted an ordinance, Chapter 3.07, Salt Lake County Code of Ordinances, 2005, as well as policies governing distribution of the revenues collected pursuant to this tax, which revenues are referred to as the "Zoo, Arts & Parks Funds" ("Funds");

WHEREAS, the administration of Funds is through the County's Zoo, Arts & Parks Program ("ZAP Program");

WHEREAS, RECIPIENT has applied for and is qualified to receive a portion of the Funds pursuant to the statute, ordinance, and policies through the ZAP Program;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions contained in this Agreement, and the payment of the percentage of Funds as specified, the parties agree as follows:

1. SCOPE OF AGREEMENT:

In exchange for receipt of these Funds, RECIPIENT agrees to the following uses and limitations of uses for the Funds:

- A. Funds shall be expended within Salt Lake County for the ongoing operating expenses of RECIPIENT as further defined herein and pursuant to Utah Code Ann. §§ 59-12-701, et seq. (1953 as amended); Chapter 3.07 Salt Lake County Code of Ordinances, 2005; and those policies, applications and standards established by Salt Lake County to administer the distribution of the Funds.
- B. Funds may not be expended for the following non-qualifying expenditures, outlined more fully in Countywide Policy No. 1031 (2012): capital construction expenses; acquisition of real property or any interest in real property; depreciation related to real property; payments into an endowment corpus; any expenditures or activities outside of Salt Lake County; fund-raising expenditures related to capital or endowment campaigns; loan or interest payments; rent in excess of 6%; direct political lobbying; salary expenses above the program cap of \$95,000 per individual; grants or re-grants; sold cost of goods expenses over the cap; bad

debt expense; depreciation or amortization of any asset; non-deductible tax penalties; any operating expenses that are utilized in calculating federal unrelated business income tax; expenditures not directly related to the RECIPIENT'S primary purpose; and for theatre disciplines royalty or commission expenditures over the cap.

- C. RECIPIENT agrees to submit an Actual Use/Evaluation report detailing how Funds were expended. RECIPIENT understands that Funds may be withheld due to inadequate, incomplete, or non-submitted Actual Use/Evaluation report.
- D. RECIPIENT agrees to acknowledge Salt Lake County Zoo, Arts and Parks program in writing and orally, including acknowledging Salt Lake County Zoo, Arts and Parks at events for which Funds have been utilized. RECIPIENT further agrees to use its best efforts to use the official Salt Lake County Zoo, Arts & Parks logo on written material such as playbills, brochures, advertisements, flyers, banners, websites and newsletters. RECIPIENT may use other acknowledgments as appropriate, such as announcements from the stage, in media releases, on supertitles, on pre-event videos, etc. If RECIPIENT has a website, the Zoo, Arts and Parks logo shall be displayed on the donor/sponsor page or other prominent page of the website.
- E. RECIPIENT shall provide COUNTY with a copy of programs or other printed material acknowledging the COUNTY and the Zoo, Arts & Parks program.
- F. RECIPIENT agrees to provide COUNTY with press releases and other public relations material designed to promote RECIPIENT'S programs and projects. Submission by email is preferred at PRZAP@slco.org.
- G. RECIPIENT agrees that if it produces a free or reduced-admission-fee program, the terms of admission shall be extended to all citizens of the State of Utah and shall not be restricted to citizens of Salt Lake County. RECIPIENT further agrees to publicly announce (in some manner) that this has been sponsored by the Salt Lake County Zoo, Arts and Parks Program (using this or similar wording) and to inform the COUNTY'S Representative, named below, of such an event in advance and in a timely manner.
- H. RECIPIENT agrees to use the www.nowplayingutah.com (NPU) website to promote its events. This arts and cultural calendar has been created by the ZAP Program, the Utah Division of Arts and Museums and Visit Salt Lake in order to benefit Utah's arts and cultural community and individuals interested in attending arts and cultural events. RECIPIENT shall provide its publicity materials to NPU in a timely manner and shall promote the NPU website among its constituents, patrons, audiences, etc., including linking to NPU from RECIPIENT'S website. RECIPIENT also agrees to list artist profiles on NPU.
- I. RECIPIENT agrees to provide tickets to any non-fundraising event, without charge and within reason, as requested by COUNTY'S Representative to enable the Tier I Advisory Board to better review and evaluate RECIPIENT'S organization and programs. RECIPIENT is highly encouraged to extend to Tier I Advisory Board

members and one guest an invitation to at least one event or admission per year without charge.

- J. In compliance with County Ethics Code 2.07.207 and as outlined in the ZAP Event Attendance Program, RECIPIENT may make one performance or event per year available to elected or appointed officials through said Representative for the purpose of enabling the official to better evaluate and review the organization, programming and attendance at the event.
- K. It is understood and agreed that no Funds or proceeds from Funds will be made available to any public officer or employee or in violation of the Public Employees Ethics Act, Utah Code Ann. §§ 67-16-1, et. seq.
- L. COUNTY may sponsor an event that highlights the Zoo, Arts and Parks Program and showcases the recipients of ZAP funding. If the COUNTY sponsors such an event and the RECIPIENT is invited to participate, RECIPIENT will use its best efforts to reasonably participate as requested.
- M. RECIPIENT agrees that although it is not a "public body" as defined by the Utah Open and Public Meetings Act, Utah Code Ann. §§ 52-4-101, et seq., because RECIPIENT receives public funds, it will adhere to the spirit of the statute by making its board meetings open to the public. Accordingly, RECIPIENT agrees to:
 - 1. Give public notice of its regular board meetings yearly and place meeting information on RECIPIENT'S website in a timely and accessible manner.
 - 2. Give not less than 24 hours prior notice of the date, time and place of the regular board meeting and public notice of the agenda.
 - 3. Make available copies of the agenda at each regular board meeting.
 - 4. Open its regular board meetings to the public, except that RECIPIENT shall reserve the right to close such meetings (or portions of such meetings) for matters such as:
 - a. Discussion of the character, professional competence, or physical or mental health of an individual;
 - b. Strategy sessions to discuss collective bargaining;
 - c. Strategy sessions to discuss pending or reasonably imminent litigation;
 - d. Strategy sessions to discuss the purchase, exchange, sale or lease of real property;
 - e. Discussions involving the creditworthiness of individuals seeking real estate loans;
 - f. Discussion regarding deployment of security personnel;
 - g. Discussions involving investigative proceedings conducted by governmental bodies/agencies;
 - h. Discussion involving fund raising from specific individuals or groups;and

5. Keep minutes of both open and closed meetings.
- N. COUNTY is preparing an online training for all recipients. When this training becomes available RECIPIENT agrees that at least one representative from the organization will complete the training on an annual basis.
- O. Salt Lake County has invested in a dashboard system that highlights real-time data on the services it provides. The ZAP Program provides data to the Salt Lake County Dashboard that highlights grantee activities. RECIPIENT agrees to participate in the dashboard project by providing data upon request. The data will be similar to information requested in the ZAP application, such as attendance, free admissions, expenditures, and staffing.

2. PUBLIC FUNDS AND PUBLIC MONIES:

- A. Definitions: "Public funds" and "public monies" mean monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the State or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. Said funds shall maintain the nature of "public funds" while in Recipient's possession.
- B. Recipient's Obligation: RECIPIENT of "public funds" and "public monies" pursuant to this and other contracts related hereto, expressly understands that it, its officers, and employees are obligated to receive, keep safe, transfer, disburse and use these "public funds" and "public monies" as authorized by law and this Agreement for ZAP qualifying activities to Salt Lake County. RECIPIENT understands that it, its officers, and employees may be criminally liable under Utah Code Ann. § 76-8-402, for misuse of public funds or monies. RECIPIENT expressly understands that COUNTY may monitor the expenditure of public funds by RECIPIENT.
- C. COUNTY reserves the right to verify application and evaluation information and to audit the use of Funds and the accounting of the use of Funds received by RECIPIENT under this Agreement. If an audit is requested by the COUNTY, RECIPIENT shall cooperate fully with COUNTY and its representatives in the performance of the audit.
- D. RECIPIENT expressly understands that County may withhold funds or require repayment of funds from RECIPIENT for contract noncompliance, failure to comply with directives regarding the use of public funds, or for misuse of public funds or monies.

3. CONSIDERATION:

Payment of Funds to RECIPIENT and the amounts thereof shall be determined and paid as set forth in Chapter 3.07, Salt Lake County Ordinances, 2005 and Countywide Policy

No. 1031 (2012). Payment of Funds to RECIPIENT for the fiscal year **2016**, shall be «Disbursement_Percentage_Tier_I» of the funds designated for Tier I qualifying organizations.

The percentage of this Agreement may be modified by COUNTY if an organization within the 2016 pool of Tier I organization is deemed not in compliance with the contract and is removed from the pool.

Any past due balances owed to a COUNTY facility or agency may first be deducted before any distribution of FUNDS is made to RECIPIENT.

4. EFFECTIVE DATE:

This Agreement shall be for a term of one (1) year, beginning on the date of the first distribution of funds to the RECIPIENT and ending after the final payment is made (before or during May of 2017), and shall not be renewable.

If all Funds received under this Agreement are not expended during the RECIPIENT'S current fiscal year, RECIPIENT agrees to account for the Funds in the succeeding fiscal year pursuant the terms and conditions of this Agreement.

All covenants made by RECIPIENT shall survive the expiration date of this Agreement if any Funds paid to RECIPIENT under this Agreement remain unexpended and shall continue to bind RECIPIENT until all such Funds are expended.

5. MAINTENANCE AND AVAILABILITY OF RECORDS:

RECIPIENT agrees to maintain detailed and accurate records of the use of all Funds that it receives under this Agreement. RECIPIENT further agrees to retain said records and make them available for review by the COUNTY from time to time upon the COUNTY'S request. Said records shall be maintained by RECIPIENT for a period of five (5) years from the date of their creation. All records shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP) and, if so requested, in a manner and form specified by the Salt Lake County Auditor's Office. The parties hereby stipulate that ownership of all records that are the subject of this paragraph shall rest with RECIPIENT. However, to the extent that such records are deemed by the Salt Lake County District Attorney's Office to be records of the COUNTY, the parties agrees that the COUNTY'S review and/or disclosure of said records will be governed by the Utah Government Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 et. seq. If any records obtained by the COUNTY reveal that RECIPIENT is in violation of this Agreement, the COUNTY may make use of and disclosure such records as it deems appropriate to protect its rights under this Agreement and to protect the public's interest in the proper expenditure of public funds.

6. ASSIGNMENT AND TRANSFER OF FUNDS:

It is understood and agreed that RECIPIENT shall not assign or transfer its rights or receipt of Funds under this Agreement, any interest therein, or claim hereunder. The Funds provided under this Agreement shall be used exclusively and solely by RECIPIENT for the purposes set forth in this Agreement.

7. INDEPENDENT ENTITY:

It is understood and agreed that RECIPIENT'S status in relation to COUNTY is that of an independent entity. No officer, employee, or agent of the RECIPIENT or the COUNTY is intended to be an officer, employee, or agent of the other party. The RECIPIENT and the COUNTY will each be solely and entirely responsible for its acts and for the acts of its officers, employees, or agents during the performance of this Agreement.

8. INDEMNIFICATION:

A. Unless RECIPIENT is an agency of the State of Utah or an institution of higher education of the State of Utah, the Parties agree to the following indemnification provisions:

RECIPIENT shall indemnify, defend and save harmless the COUNTY, its officers, agents and employees, from and against any and all claims, damages, losses and expenses, including attorney's fees and legal costs, arising out of any and all of RECIPIENT'S, or its officers', agents', or employees' negligent or wrongful acts or failures to act which occur during the term of the Agreement, or, if Funds are not fully expended during the term of this Agreement, during the period of time in which RECIPIENT expends Funds made available under this Agreement.

COUNTY is a body corporate and politic of the State of Utah, subject to the Utah Governmental Immunity Act ("Act"), Utah Code Ann. §§ 63G-7-101, et. seq. (1953, as amended). The Parties agree that COUNTY shall only be liable within the parameters of the Act. Nothing contained in this Agreement shall be construed, in any way, to modify the limits of liability set forth in the Act or the basis for liability as established in the Act.

B. If RECIPIENT is an agency of the State of Utah or an institution of higher education of the State of Utah, the Parties agree to the following indemnification provision:

Both Parties are governmental entities under the Governmental Immunity Act of Utah, §§ 63G-7-101 to -904 (2011), as amended (the "Act"). There are no indemnity obligations between these parties. Subject to and consistent with the terms of the Act, the COUNTY and the RECIPIENT shall be responsible for their own negligent acts or omissions, or those of their authorized employees, officers, and agents while engaged in the performance of the obligations under this Agreement, and neither the COUNTY nor the RECIPIENT shall have any liability whatsoever for any negligent act or omission of the other Party, its employees, officers, or agents. Neither Party waives any defenses or limits of liability available under the Act and other applicable law. Both Parties maintain all privileges, immunities, and other rights granted by the Act and all other applicable law.

9. INSURANCE:

RECIPIENT shall, at its sole cost and expense, secure and maintain during the term of this Agreement or until the Funds are fully expended by the RECIPIENT, whichever is later, the following insurance:

- A. Workers' compensation and employer's liability insurance as required by the State of Utah unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations, limited liability companies, joint ventures and partnerships.
- B. Commercial general liability insurance on an occurrence form in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate. The policy shall protect the County, RECIPIENT, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from RECIPIENT's operations under this Agreement, whether performed by RECIPIENT itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

If RECIPIENT is a governmental entity, RECIPIENT may satisfy the requirements of this section by maintaining self-insurance in lieu of purchasing commercial general liability insurance.

In the event RECIPIENT fails to maintain and keep in force any insurance as required herein, the COUNTY may terminate this Agreement and cease payments to RECIPIENT.

10. NO OFFICER OR EMPLOYEE INTEREST:

It is understood and agreed that no officer or employee of the COUNTY has or shall have any pecuniary interest, direct or indirect, in this Agreement or the Funds distributed.

11. TERMINATION:

The COUNTY may terminate this Agreement as a result of the failure of RECIPIENT to fulfill its obligations under this Agreement. COUNTY shall provide written notice of termination of this Agreement by delivering to RECIPIENT a Notice of Termination specifying the basis for the termination. Upon RECIPIENT's receipt of a Notice of Termination, RECIPIENT shall have 30 days in which to cure the basis for termination set forth in such Notice of Termination. If RECIPIENT fails to cure such basis for termination within the 30-day period, COUNTY may terminate this Agreement. Upon termination of this agreement, RECIPIENT shall immediately deliver to the COUNTY all unused Funds previously paid to RECIPIENT under this Agreement, and the COUNTY may, in its sole discretion, seek repayment of all Funds improperly expended by RECIPIENT under this Agreement.

The COUNTY may terminate this Agreement for the following non-inclusive reasons:

- A. RECIPIENT no longer qualifies for receipt of funding as a Tier I organization under the County's ZAP Program;
- B. RECIPIENT was determined to be qualified based upon the submission of erroneous information, and may require RECIPIENT to return all Funds paid to RECIPIENT based upon the erroneous information;

- C. RECIPIENT fails the minimum financial health test and their financial health plan is not accepted by the County ;
- D. RECIPIENT fails to supply adequate financial health reports (if required by this Agreement);
- E. If the financial health of RECIPIENT is in such jeopardy that organizational dissolution is inevitable; or
- F. Any actions taken by RECIPIENT violate the understanding between the parties, as expressed in RECIPIENT'S Application Form and in this Agreement

The parties agree that rights and remedies of COUNTY in this section are in addition to any other rights and remedies provided by law or under this Agreement.

12. ETHICAL STANDARDS:

RECIPIENT represents that it has not: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in State statute or Salt Lake County's Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2005; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

13. COUNTY REPRESENTATIVE:

COUNTY hereby appoints the Program Director of the COUNTY'S Zoo, Arts and Parks Program as COUNTY Representative to assist in the administration of this Agreement and the Funding provided by this Agreement. Said Representative shall ensure performance of this Agreement by RECIPIENT and assist RECIPIENT in obtaining information and access to COUNTY or other government offices, if necessary for RECIPIENT'S performance of this Agreement, and if such assistance is requested by RECIPIENT. Additionally, said Representative shall monitor and evaluate the performance of this Agreement by RECIPIENT, but shall not assume any supervisory or management role over RECIPIENT or any of RECIPIENT'S officers, agents or employees during RECIPIENT'S ordinary course of business or in RECIPIENT'S expenditure of Funds provided by this Agreement, other than to enforce COUNTY'S rights and responsibilities under this Agreement.

14. COMPLIANCE WITH LAWS:

RECIPIENT agrees that it, its officers, agents and employees will comply with all federal, state and local laws, rules and regulations that govern and apply to its operations and in particular those laws created to protect the rights of individuals, including, but not limited

to, those laws requiring access for persons with disabilities as well as the laws governing non-discrimination against all protected groups and persons in admissions and hiring.

15. ADDITIONAL DOCUMENTS:

The following documents shall be submitted by RECIPIENT to the COUNTY prior to any Funds being disbursed and are incorporated into this Agreement by reference, being made part hereof as exhibits:

- A. Application Form– (Exhibit 1)
- B. Additional Requirements Letter, if applicable – (Exhibit 2)

16. INTERPRETATION:

The entire agreement among the parties shall consist of this Agreement and the documents set forth above in paragraph 15. All documents are complementary and the provisions of each document shall be equally binding upon the parties. In the event of an inconsistency between any of the provisions of said documents, the inconsistency shall be resolved by giving precedence first to this Agreement, and then to the other documents in the order set forth in paragraph 15 above. Further, this Agreement shall be interpreted to be consistent with Title 59, Chapter 12, Part 7 of the Utah Code, as amended; and Chapter 3.07, Salt Lake County Code of Ordinances, 2005, as amended; and Countywide Policy No. 1031 (2012).

17. ENTIRE AGREEMENT:

This Agreement contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agents for either party that are not contained in this written agreement shall be binding or valid. This Agreement may not be enlarged, modified or altered, except in writing, signed by the parties. Moreover, as a standard form contract approved by the Salt Lake County District Attorney's Office, any alteration to this Agreement without the approval of the Salt Lake County District Attorney's Office shall render the Agreement void and without effect.

18. SURVIVAL:

All covenants made by RECIPIENT shall survive the expiration date of this Agreement if any Funds paid to RECIPIENT under this Agreement remain unexpended and shall continue to bind RECIPIENT until all such Funds are expended.

19. GOVERNING LAWS:

It is understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Utah and Salt Lake County, both as to interpretation and performance.

20. WARRANT OF AUTHORITY:

The person signing this Agreement warrants his or her authority to do so and authority to bind RECIPIENT. RECIPIENT understands that COUNTY may require RECIPIENT to return all Funds paid to RECIPIENT based upon a breach of a warrant of authority.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year recited below.

SALT LAKE COUNTY

By: _____
Mayor Ben McAdams or Designee

Date: _____

«OrganizationDBA»
RECIPIENT

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

/s/ Stephen M. Barnes
Stephen M. Barnes
Deputy District Attorney
Date: 02/11/2016