

COTTONWOOD HEIGHTS

RESOLUTION No. 2023-63

A RESOLUTION APPROVING AN AGREEMENT WITH SALT LAKE COUNTY FOR TIER II ZAP FUNDING (COTTONWOOD HEIGHTS ARTS COUNCIL, 2023-2024)

WHEREAS, Salt Lake County (the “*County*”) has imposed a sales and use tax pursuant to UTAH CODE ANN. §59-12-701, *et seq.*, and has enacted an ordinance (Chapter 3.07, SALT LAKE COUNTY CODE OF ORDINANCES) and policies governing distribution of the revenues collected by such tax, which commonly are referred to as the “Zoo, Arts & Parks Funds” (“*Funds*”); and

WHEREAS, the Cottonwood Heights Arts Council (the “*Arts Council*”), an agency of the city of Cottonwood Heights (the “*City*”), has applied for and is qualified to receive a portion of the Funds pursuant to the governing statutes, ordinances and policies; and

WHEREAS, for that purpose, the County and the City desire to enter into the agreement that is attached as an exhibit hereto (the “*Agreement*”) for the purpose of effecting such grant of Funds to the Arts Council; and

WHEREAS, the City’s city council (the “*Council*”) met in regular session on 5 December 2023 to consider, among other things, approving the City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the Agreement is hereby approved and ratified, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2023-63, shall take effect immediately upon passage.

PASSED AND APPROVED this 5th day of December 2023.

ATTEST:

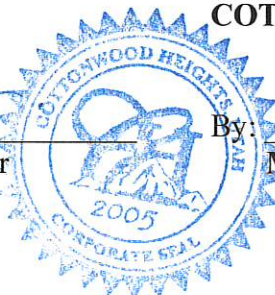
COTTONWOOD HEIGHTS CITY COUNCIL

By:

Paula Melgar, Recorder

By:

Michael T. Weichers, Mayor



VOTING:

Michael T. Weichers	Yea ☒	Nay ☐
Matt Holton	Yea ☒	Nay ☐
J. Scott Bracken	Yea ☒	Nay ☐
Shawn E. Newell	Yea ☒	Nay ☐
Ellen Birrell	Yea ☒	Nay ☐

DEPOSITED in the office of the City Recorder this 5th day of December 2023.

RECORDED this ___ day of December 2023.

**Cottonwood Heights
Cottonwood Heights Arts Council
16,910.00**

2023 Tier II Contract

Salt Lake County Contract #: ZAP22023035
District Attorney No. SFK 23CIV001623
(Approved for Use October 30, 2023, until December 31, 2023)

**SALT LAKE COUNTY
TIER II
ZOO, ARTS AND PARKS FUNDING AGREEMENT
Between
SALT LAKE COUNTY
And
Cottonwood Heights**

THIS AGREEMENT is effective the date of the last person to sign below by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah ("COUNTY"), and **Cottonwood Heights** a Utah non-profit organization or a governmental entity, whose mailing address is **2277 E. Bengal Blvd. , 2277 E. Bengal Blvd. , Cottonwood Heights , UT 84121** ("RECIPIENT").

WHEREAS, the COUNTY has imposed a local sales and use tax, pursuant to Utah Code Ann. §§ 59-12-701, et seq., 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 by this tax, which revenues are referred to as the "Zoo, Arts & Parks Funds" ("Funds"). WHEREAS, RECIPIENT has applied for and is qualified to receive a portion of the Funds pursuant to the statute, ordinance, and policies.

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

1. SCOPE OF AGREEMENT:

In exchange for receipt of the Funds specified in Paragraph 3 below, RECIPIENT agrees to the following terms and uses for the Funds:

- A. Funds shall be expended within Salt Lake County as set forth with greater specificity in RECIPIENT'S Application Form (Exhibit 1) and, if applicable, COUNTY'S additional requirements letter (Exhibit 3), incorporated herein by reference, and as further defined and set forth herein and pursuant to Utah Code Ann. §§ 59-12-701, et seq.; 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: capital construction expenses, acquisition of real property or any interest in real property, depreciation or amortization of any asset including real property, improvement to real property, payments into an endowment corpus, expenditures outside of Salt Lake County, fund-raising expenditures related to capital or endowment campaign, repayment of loans or interest thereon, grants or re-grants, scholarships, interest payments, direct political lobbying, expenditures not directly related to RECIPIENT's primary purpose, non-deductible tax penalties, bad debt expense, and any operating expenses that are utilized in calculating federal unrelated business income tax.
- C. RECIPIENT agrees to update the contacts for their organization through the online grantor management system (currently Zoomgrants) and directly to ZAP program staff in a timely manner.
- D. RECIPIENT agrees to submit an Evaluation Report detailing how Funds were expended on or before March 31, 2025. RECIPIENT understands that current and future Funds may be withheld due to an inadequate, incomplete, or non-submitted Actual Use/Evaluation Report.

- E. RECIPIENT agrees to acknowledge the Salt Lake County Zoo, Arts and Parks program ("ZAP Program") in writing and orally, including acknowledging the Salt Lake County ZAP Program at events for which Funds have been utilized. RECIPIENT further agrees to use its best efforts to use the official Zoo, Arts & Parks logo on written material such as playbills, brochures, appropriate 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. RECIPIENT shall follow the guidelines in Exhibit 2, ZAP Logo Usage and Acknowledgment Guide.
- F. RECIPIENT shall provide COUNTY with a copy of programs or other printed material acknowledging the COUNTY and the ZAP Program with the Evaluation Report under Subparagraph 1D above.
- G. 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.
- H. 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.
- I. 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, 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.
- J. 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 II Advisory Board to better review and evaluate RECIPIENT'S organization and programs. RECIPIENT is encouraged to extend to Tier II Advisory Board members an invitation to at least one event per year without charge for evaluation purposes. RECIPIENT shall use the ZAP invitation form, found on the ZAP website, to submit invitations to the Tier II Advisory Board.
- K. In compliance with County Ethics Ordinance 2.07.207 and as outlined in the ZAP Event Attendance Program available on the COUNTY's website, RECIPIENT may make one non-fundraising 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. RECIPIENT shall use the ZAP invitation form, found on the ZAP website, to submit invitations to the elected or appointed officials.
- L. 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 County Ethics Code 2.07 and Public Employees Ethics Act, Utah Code Ann. §§ 67-16-1, et. seq.
- M. COUNTY may sponsor an event that highlights the ZAP Program and showcases the recipients of ZAP funding. If the COUNTY sponsors such an event and RECIPIENT is invited to participate, RECIPIENT will use its best efforts to reasonably participate as requested.
- N. The RECIPIENT agrees that, although it may not be a "public body" as defined by the Utah Open and Public Meeting statute, Utah Code Ann. §§ 52-4-101, et. seq., because RECIPIENT receives public funds, it will use its best efforts to adhere to the spirit of the statute by making its board meetings open to the public.
- O. COUNTY provides synchronous and asynchronous training for all recipients. RECIPIENT agrees that at least one representative from the organization will complete the training on an annual basis.
- P. Salt Lake County has invested in tracking real-time data on the services it provides. The ZAP Program collects data that highlights grantee activities with the intent of sharing it through internal dashboard systems. RECIPIENT agrees to participate by providing data upon request. The data will be similar to information requested in the ZAP Application Form, 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 in 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 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. CONTRIBUTION:

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, 2001; and the COUNTY'S Policy #1031. Payment of Funds to RECIPIENT for the ZAP fiscal year 2023 shall be approximately \$ 16910.00 of the funds designated for Tier II qualifying organizations. This amount is based on 2023 ZAP revenue projections and the Tier II Advisory Board's recommendation as approved by the Salt Lake County Council. Actual amount distributed to RECIPIENT may be decreased if 2023 ZAP revenues differ from those projected. The COUNTY recognizes that if a RECIPIENT is awarded less funding than requested, the project as described in the Application Form may be scaled back commensurately. Funds may be distributed in several payments. Any past due balances owed to a county facility or agency may first be deducted before any distribution of FUNDS 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 RECIPIENT, and shall not be renewable. It is understood that the Funds received by RECIPIENT under this Agreement will be expended and accounted for within either RECIPIENT'S fiscal year or the time period indicated in its 2023 Application Form. All covenants made by RECIPIENT will survive the expiration or termination date of this Agreement if, at that time, any Funds paid to RECIPIENT under this Agreement remain unexpended, and such covenants shall continue to bind RECIPIENT until all such Funds are expended or returned to COUNTY.

If all Funds received under this Agreement are not expended during RECIPIENT'S fiscal year or time period indicated in its 2023 Application Form, 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 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 a professional manner and form 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 competent legal authority to be records of the COUNTY, the parties agree 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 disclose 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.

RECIPIENT'S acts, made through any of RECIPIENT'S officers, agents or employees are made without any suggestion, direction, or management whatsoever by the COUNTY, the COUNTY'S Representative, or any other of COUNTY'S officers, agents or employees. The parties stipulate that the Funds provided to RECIPIENT under this Agreement do not give COUNTY any authority whatsoever over the manner and method by which RECIPIENT carries out its purposes. To the extent that any actions taken by RECIPIENT violate the understanding between the parties, as expressed in RECIPIENT'S Application Form and in this Agreement, COUNTY shall have the rights provided under this Agreement to withdraw funding and demand reimbursement of Funds previously expended by RECIPIENT.

8. INDEMNIFICATION:

- A. Unless RECIPIENT is a governmental entity in 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, Utah Code Ann. §§ 63G-7-101 et. seq. (the "Act"). 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 a governmental entity in 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 et. seq. (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 maintain insurance in accordance with industry standards and as is reasonably appropriate for the type of events, programs and operations RECIPIENT conducts.

10. NO OFFICER OR EMPLOYEE INTEREST:

RECIPIENT understands and represents 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. The 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 expended funds previously paid to 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 II 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 its 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.
- 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 the 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 ZAP 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 laws, federal, state or local, which 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 to RECIPIENT by the COUNTY, and are incorporated into this Agreement by reference, being made a part hereof as exhibits:

- A. Application Form – (Exhibit 1)
- B. ZAP Logo Usage and Acknowledgement Guide – (Exhibit 2)
- C. Additional Requirements Letter, if applicable – (Exhibit 3)

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, U.C.A., (1953, as amended); and Chapter 3.07, Salt Lake County Code of Ordinances, 2001, as amended; and County Policy #1031.

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 District Attorney's Office, any alteration without the approval of the 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:

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

authority.

21. **STANDARD FORM:**

Any alteration of the standard form language without approval of the attorney shall render this agreement void and without effect. Any changes to this agreement must be pre- approved as to from by the District Attorney's Office.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year recited above.

Documents

[Exhibit I: 2023 Tier II Application](#)

Cottonwood Heights

Mike Weichers
11/9/2023 1:38:08 PM
mweichers@ch.utah.gov
209.141.120.226

Salt Lake County

Daniel Stergios, ZAP Grant and
Communications Coordinator
11/9/2023 2:55:50 PM
dstergios@slco.org 69.162.231.52

[Exhibit II: Logo and Acknowledgement
Guide](#)

Mike Weichers
11/9/2023 1:38:33 PM
mweichers@ch.utah.gov
209.141.120.226

Daniel Stergios, ZAP Grant and
Communications Coordinator
11/9/2023 2:55:52 PM
dstergios@slco.org 69.162.231.52

Signatures

Please sign using your full name

Salt Lake County

Cottonwood Heights

Mike Weichers
11/9/2023 1:38:59 PM
mweichers@ch.utah.gov 209.141.120.226

By:
Mayor or Designee

Jason Yocom
11/28/2023 10:30:04 AM
jyocom@slco.org 136.38.108.152

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Attest:

Paula Melton, Recorder

