Council Meeting of October 28, 2015

Agenda Item No. 6C

REQUEST FOR COUNCIL ACTION

SUBJECT: Approve Resolution 15-195, authorizing the Mayor to execute contract documents for the Tier II "Zoo, Arts, and Parks" Funding between the City of West Jordan (West Jordan Arts Council) and Salt Lake County

SUMMARY: The West Jordan Arts Council has received ZAP Tier II funding for the 2012 tax funding cycle in the amount of approximately $11,000. The projects include City Band, West Jordan Symphony and Mountain West Chorale concerts, youth theatre performances and workshops, one major musical, three small plays, literary contest and readings, and on-going exhibits in the Schorr Gallery.

FISCAL IMPACT:

The West Jordan Arts Council has received ZAP Tier II funding for the 2015 tax funding cycle in the amount of approximately $11,000.

MOTION RECOMMENDED:

"I move to approve Resolution 15-195, authorizing the Mayor to execute contract documents for the Tier II "Zoo, Arts, and Parks" Funding between Salt Lake County and City of West Jordan/West Jordan Arts Council."

Roll Call vote required

Prepared by:
Arlene Farley
Senior Executive Assistant

Recommended by:

Mark R. Palesh
City Manager

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 15-195

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR "ZOO, ARTS, AND PARKS" FUNDING BETWEEN THE CITY OF WEST JORDAN/WEST JORDAN ARTS COUNCIL AND SALT LAKE COUNTY

WHEREAS, the City Council of the City of West Jordan desires to enter into an agreement between Salt Lake County for "Zoo, Arts, and Parks" funding; and

WHEREAS, the Mayor is authorized to execute this agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is authorized and directed to execute the attached agreement entitled as follows:

Tier II Zoo, Arts and Parks Funding Agreement

Section 2. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah this 28th day of October 2015.

KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council	"AYE"	"NAY"
Councilmember Haaga	_____	_____
Councilmember Hansen	_____	_____
Councilmember McConnehey	_____	_____
Councilmember Nichols	_____	_____
Councilmember Rice	_____	_____
Councilmember Southworth	_____	_____
Mayor Rolfe	_____	_____

SALT LAKE COUNTY
Standard Form Contract No. 15-04224, Approved 16-Nov-2015, Expires 31-Aug-2016
TIER II
ZOO, ARTS AND PARKS FUNDING AGREEMENT
between
SALT LAKE COUNTY
and
City of West Jordan / West Jordan Arts Council

THIS AGREEMENT is made and entered into this ____ day of _____, 2015 by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah ("COUNTY"), and City of West Jordan / West Jordan Arts Council either a Utah non-profit organization or an agency of a municipality, whose mailing address is 8000 S. Redwood Rd., West Jordan, UT 84088 ('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 uses and limitations of uses for the Funds:

   A. Funds shall be expended within Salt Lake County as set forth with greater specificity in RECIPIENT'S application (Exhibit 1) and, if applicable, COUNTY'S additional requirements letter (Exhibit 2), 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: 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 submit an Evaluation report detailing how Funds were expended.

D. RECIPIENT agrees to acknowledge the Zoo, Arts and Parks program ("ZAP Program") in writing and orally, including acknowledging the ZAP Program at every event in 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.

E. RECIPIENT shall provide COUNTY with a copy of programs or other printed material acknowledging the COUNTY and the ZAP Program with the Evaluation report.

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 inform the COUNTY'S Representative, named below, of such an event 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, 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 must supply its publicity materials to NPU in a timely manner. RECIPIENT must also use its best efforts to promote the NPU website to its constituents, patrons, audiences, etc. This includes 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 II Advisory Board to better review and evaluate RECIPIENT'S organization and programs. RECIPIENT is encouraged to extend the Tier II Advisory Board an invitation to at least one event per year without charge.

J. In compliance with County Ethics Code 2.07.207 and as outlined in the ZAP Event Attendance Program available on the COUNTY's website, 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 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.

M. 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.

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 quarterly 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 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, 2005; and the COUNTY'S Policy #1031. Payment of Funds to RECIPIENT for the ZAP fiscal year 2015 shall be approximately $12,000 of the funds designated for Tier II qualifying organizations. This amount is based on 2015 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 2015 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 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 2015 application. 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 2015 application, 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. 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, COUNTY agrees that its review and/or disclosure of said records shall be governed according to the COUNTY'S rights and responsibilities under the Utah Government Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 et. seq. If said records disclose that RECIPIENT is in violation of this Agreement, the COUNTY may make such use and disclosure of said 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 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 for Funds 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:
RECIPIENT agrees to 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 Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

If RECIPIENT is a governmental entity in the State of Utah, subject to the Act, the parties agree that RECIPIENT shall only be liable within the parameters of the Governmental Immunity Act and that nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

9. INSURANCE:
RECIPIENT shall maintain such insurance as is appropriate and in accordance with industry standards and recommendations for the events, programs and operations it conducts.

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. 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 such 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.

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

A. RECIPENT 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. The rights and remedies of the COUNTY 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. 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, U.C.A., (1953, as amended); and Chapter 3.07, Salt Lake County Code of Ordinances, 2005, 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.

[Intentionally Left Blank – Signature Page Follows]

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

SALT LAKE COUNTY

By: _____
Mayor Ben McAdams or Designee

City of West Jordan / West Jordan Arts Council
RECIPIENT

By: _____

Name: _____

Title: _____

Approved as to Form:

/s/Stephen M. Barnes
Stephen M. Barnes
Deputy District Attorney

Date: 09-16-2015

APPROVED AS TO LEGAL FORM
West Jordan City Attorney
By: Janet Allen Date: 10-15-15