

TIER I
ZOO, ARTS AND PARKS FUNDING AGREEMENT
Between
SALT LAKE COUNTY
And
(Organization)

THIS AGREEMENT is made and entered into this _____ day of _____, 2008 by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah "COUNTY"), and **(Organization)** a non-profit organization, with mailing address at **(Address, City, State, ZIP)** ("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, 2001, 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, 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 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.; Chapter 3.07 Salt Lake County Code of Ordinances, 2001; and those policies, applications and standards as 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 related to real property; payments into an endowment corpus, expenditures outside of Salt Lake County; fund-raising expenditures related to capital or endowment campaign, grants, re-grants or loans; interest payments; in-kind expenses including facilities and materials; direct political lobbying; expenditures not directly related to the 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. The RECIPIENT agrees to submit an Actual Use/Evaluation report detailing how Funds were expended.
- D. The RECIPIENT agrees to acknowledge COUNTY in writing and orally and by using the official Zoo, Arts & Parks logo on written material including but not limited to all playbills, brochures, advertisements, flyers, banners and newsletters. RECIPIENT may use other acknowledgment as appropriate.
- E. The RECIPIENT shall provide COUNTY with a copy of programs or other printed material acknowledging the COUNTY and the Zoo, Arts & Parks program.
- F. The RECIPIENT agrees to provide COUNTY with press releases and other public relations material designed to promote the RECIPIENT'S programs and projects and crediting the COUNTY'S Zoo, Arts & Parks program.
- G. The 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) to promote its events. This new arts and cultural calendar has been created by the ZAP program, Utah Arts Council and Salt Lake Convention and Visitors Bureau 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 their constituents, patrons, audiences, etc. This includes linking to NPU from RECIPIENT'S website. RECIPIENT also agrees to list artist profiles on NPU.
- I. RECIPIENT further agrees to provide tickets to any event, within reason, without charge, in a number reasonably requested by said representative for the purposes of evaluation by volunteers or advisory board members.
- J. 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.
- K. The RECIPIENT agrees that although it is not a "public body" as defined by the Utah Open and Public Meeting Act, Utah Code Ann. §§ 52-4-1 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.
 - 2. Give not less than 24 hours prior to the meeting, public notice of the agenda, date time and place of the regular board meeting.

3. Make available copies of the agenda at each regular board meeting.
4. Open its regular board meeting to the public, except that it reserves 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.

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 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, 2001. Payment of Funds to RECIPIENT for the fiscal year **2008**, shall be **(percent)** of the funds designated for Tier I qualifying organizations.

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

4. EFFECTIVE DATE:

This Agreement shall be for a term of one (1) year 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 a manner and form approved 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, 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. §§ 63-2-101 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. The 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 agrees to indemnify, defend and save harmless the RECIPIENT, its officers, agents and employees from and against any and all claims, damages, losses and expenses, including attorney's fees and costs, arising out of the negligent or wrongful acts or failure to act by COUNTY, its officers, agents, or employees during COUNTY'S performance of the Agreement.

COUNTY is a body corporate and politic of the State of Utah, subject to the Utah Governmental Immunity Act ("Act"), Utah Code Ann. §§ 63-30d-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.

9. INSURANCE:

RECIPIENT shall, at its sole cost and expense, secure and maintain during the term of this Agreement, including all renewal or additional terms, the following minimum insurance coverage:

9.1 GENERAL INSURANCE REQUIREMENTS FOR ALL POLICIES.

- A. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (ii) be maintained for a period of at least three (3) years

following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the County.

- B. All policies of insurance shall be issued by the Utah State Division of Risk Management or by insurance companies licensed to do business in the State of Utah and either:
 - (1) Currently rated A- or better by A.M. Best Company;
 - OR—
 - (2) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended.
- C. RECIPIENT shall furnish certificates of insurance, acceptable to the County, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.
- D. In the event any work is subcontracted, RECIPIENT shall require its subcontractor, at no cost to the County, to secure and maintain all minimum insurance coverage required of the RECIPIENT.
- E. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, RECIPIENT shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by the County, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to the County.
- F. All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing (30) days prior written notice to the County in a manner approved by the County District Attorney.
- G. In the event RECIPIENT fails to maintain and keep in force any insurance policies as required herein, County shall have the right at its sole discretion to obtain such coverage and reduce payments to RECIPIENT for the costs of said insurance.

9.2 REQUIRED INSURANCE POLICIES.

RECIPIENT agrees to secure and maintain the following required policies of insurance in accordance with the general insurance requirements set forth in the preceding subsection:

- 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. In the event any work is subcontracted, RECIPIENT shall require its subcontractor(s) similarly to

provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

- B. Commercial general liability insurance on an occurrence form with the County as an additional insured, 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.

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 the RECIPIENT to fulfill its obligations under this Agreement. The COUNTY shall provide written notice of termination of this Agreement by delivering to the RECIPIENT a Notice of Termination specifying the basis for the termination and the effective date of the termination. Upon receipt of the notice, the RECIPIENT shall immediately deliver to the COUNTY all unused funds previously paid to RECIPIENT under this Agreement.

- A. The COUNTY may terminate this Agreement if as the RECIPIENT no longer qualifies for receipt of funding as a Tier I organization under the County's ZAP Program.
- B. If RECIPIENT was determined to be qualified based upon the submission of erroneous information, COUNTY may terminate this Agreement, and may require RECIPIENT to return all Funds paid to RECIPIENT based upon the erroneous information.
- C. 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, 2001; or (d) knowingly influenced, and hereby promises that it will not

knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

13. COUNTY REPRESENTATIVE:

COUNTY hereby appoints the Program Manager 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 the 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 to RECIPIENT by the COUNTY, and are incorporated into this Agreement by reference, being made part hereof as exhibits:

- A. Application Form with attachments – (Exhibit 1)
- B. Verification of 501(c) 3 – (Exhibit 2)
- C. Additional Requirements Letter (Optional) – (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, of the Utah Code, and Chapter 3.07, Salt Lake County Code of Ordinances, 2001, as amended.

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 and this Agreement may not be enlarged, modified or altered, except in writing, signed by the parties.

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.

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

SALT LAKE COUNTY

By: _____
Mayor Peter Corroon or Designee

STATE OF UTAH)
 :SS
County of Salt Lake)

On this _____ day of _____, 2008, personally appeared before me _____, who being by me duly sworn did say that she/he is the _____ of Salt Lake County, Office of the Mayor, and that the foregoing instrument was signed by Salt Lake County by authority of law.

[SEAL]

NOTARY PUBLIC
Residing in Salt Lake County, Utah

RECIPIENT

By: _____
Title: _____

STATE OF UTAH)
 :SS
County of Salt Lake)

On the _____ day of _____, 2008, personally appeared before me _____, who being by me duly sworn, did say that she/he is the _____ of _____ and that foregoing instrument was signed on behalf of said corporation by authority of its bylaws and (s)he acknowledged to me that said corporation executed the same.

[SEAL]

NOTARY PUBLIC
Residing in Salt Lake County, Utah