

# COTTONWOOD HEIGHTS

## RESOLUTION NO. 2014-31

### A RESOLUTION APPROVING AN AGREEMENT WITH SALT LAKE COUNTY FOR ZAP FUNDING (COTTONWOOD HEIGHTS ARTS COUNCIL, 2014-2015)

**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 10 June 2014 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

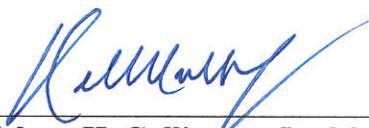
**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City’s entry into the Agreement as proposed;

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

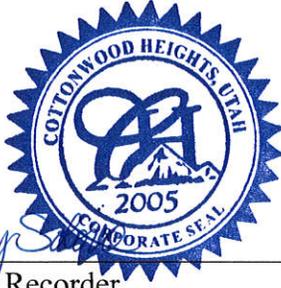
This Resolution, assigned no. 2014-31, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 10<sup>th</sup> day of June 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By   
Kelvyn H. Cullimore, Jr., Mayor

ATTEST:



*Kory Solorio*

Kory Solorio, Recorder

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

**DEPOSITED** in the office of the City Recorder this 10<sup>th</sup> day of June 2014.

**RECORDED** this 11 day of June 2014.

620985.1

SALT LAKE COUNTY  
Standard Form Contract No. 14-00973, Approved 1-Jul-2014, Expires 30-Jun-2017  
LOCAL ARTS AGENCY ADVANCEMENT INITIATIVE  
ZOO, ARTS AND PARKS FUNDING AGREEMENT  
Between  
SALT LAKE COUNTY  
And  
City of Cottonwood Heights/ Cottonwood Heights Arts Council

THIS AGREEMENT is made and entered into by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah ("COUNTY"), and **City of Cottonwood Heights/ Cottonwood Heights Arts Council**, either a Utah municipality or a Utah non-profit organization, whose mailing address is 1265 East Fort Union Blvd, Suite 250, Cottonwood Heights, UT, 84047 ("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 COUNTY's Local Arts Agency Advancement Initiative, which is part of the Zoo, Arts & Parks Program ("ZAP Program");

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. CONSIDERATION**

- A. Subject to the conditions set forth in Paragraph 1D below, COUNTY shall contribute ZAP Funds to RECIPIENT an amount up to **\$14,000.00** per year for up to three (3) years, starting with the 2014 year and ending with the 2016 year. Of this amount, up to \$10,000.00 shall be used each year to pay the wage and benefits of an employee dedicated to managing RECIPIENT's Local Arts Agency (the "LAA Employee"). The remaining funds, up to \$4,000.00, shall be used each year for expenses associated with the professional education and training of the LAA Employee.
- B. For the 2014 year, COUNTY shall make the ZAP Funds available to RECIPIENT on or before December 31, 2014. For the 2015 and 2016 years, COUNTY shall make the ZAP Funds available to RECIPIENT upon receiving verification that RECIPIENT has satisfied the conditions outlined in Paragraph 1D below.

- C. Professional education and training fund expenses will be mutually agreed upon by the COUNTY and RECIPIENT. RECIPIENT will pay for the education and training funds initially and will then be reimbursed by the COUNTY. Reimbursement will require a receipt (may be digitally submitted).
- D. COUNTY's obligation to contribute ZAP Funds to RECIPIENT each year under this Agreement is contingent upon RECIPIENT contributing Matching Funds toward the Local Arts Agency Advancement Initiative each year and using such Matching Funds to pay the wage and benefits of its LAA Employee, as described in Paragraph 1A above. Matching Funds means RECIPIENT's own funds in an amount equal to at least the amount of COUNTY's contribution to RECIPIENT each year under this Agreement.
- E. To the extent RECIPIENT uses its LAA Employee to perform work or functions unrelated to the Local Arts Agency Advancement Initiative, RECIPIENT shall use its own funds to pay for the LAA Employee's wage and benefits and may neither use Funds received under this Agreement or the Matching Funds described under Paragraph 1D above.
- F. The payment of Funds to RECIPIENT under Paragraph 1A shall be paid as set forth in Chapter 3.07, Salt Lake County Ordinances, 2005; and the COUNTY'S Policy #1031. The amount specified in Paragraph 1A is based on future ZAP revenue projections and the Tier II Advisory Board's recommendation as approved by the Salt Lake County Council. Actual amounts distributed to RECIPIENT each year may be decreased if future ZAP revenues differ from those projected. Funds may be distributed in several payments each year.
- G. In exchange for receipt of Funds from COUNTY under this Agreement, RECIPIENT agrees to do the following:
  - i. RECIPIENT agrees to account for these Funds as well as its Matching Funds in their Evaluation report submitted with their annual Tier II Application/Evaluation detailing how Funds were expended.
  - ii. RECIPIENT agrees to acknowledge the Zoo, Arts and Parks Local Arts Agency Advancement Initiative ("ZAP LAAA Initiative") on their website, in any annual reports, and as appropriate to the RECIPIENT.

## 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. EFFECTIVE DATE:

- A. This Agreement shall be for a term of three (3) years, 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 RECIPIENT'S fiscal year.
- B. If all Funds received under this Agreement each year are not expended during RECIPIENT'S fiscal year or time period indicated in their application, RECIPIENT agrees to account for the Funds in the succeeding fiscal year pursuant the terms and conditions of this Agreement.
- C. 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.

### 4. INTERLOCAL COOPERATION ACT:

If RECIPIENT is a governmental entity in the State of Utah the following provisions apply:

- A. The Parties agree to review, adopt, execute, and retain this Agreement in accordance with the requirements of the Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the "Cooperation Act").
- B. The Parties agree that this Agreement does not establish an interlocal entity or a joint or cooperative undertaking as described in the Cooperation Act.

### 5. NON-FUNDING CLAUSE:

- A. COUNTY intends to request the appropriation of funds to be paid for the services provided by RECIPIENT under this Agreement. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the COUNTY's obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the COUNTY as to succeeding fiscal years and shall terminate and become

null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of RECIPIENT, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

- B. If funds are not appropriated to fund performance by COUNTY under this Agreement, COUNTY shall promptly notify RECIPIENT of said non-funding and the termination of this Agreement. However, in no event, shall COUNTY notify RECIPIENT of said non-funding later than 30 (thirty) days after the expiration of the fiscal year for which funds were last appropriated.

**6. 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.

**7. 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.

**8. 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.

**9. INDEMNIFICATION:**

- A. 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.
- B. To the extent permitted by law, 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, directly 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.
- C. 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.
- D. 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.

**10. 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.

**11. 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.

**12. TERMINATION:**

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

- i. RECIPIENT no longer qualifies for receipt of funding as a Tier II organization under the COUNTY'S ZAP Program;
  - ii. 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;
  - iii. If the financial health of RECIPIENT is in such jeopardy that organizational dissolution is inevitable.
- C. The rights and remedies of the COUNTY are in addition to any other rights and remedies provided by law or under this Agreement.

**13. 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.

**14. 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.

**15. 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.

**16. 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. 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. SEVERABILITY:**

COUNTY and RECIPIENT agree that where possible, each provision of this Agreement shall be interpreted in such a manner as to be consistent and valid under applicable law; but if any provision of this Agreement shall be void, voidable, unenforceable, or invalid, prohibited, or unenforceable under applicable law, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement, but this Agreement shall be construed as if such void, voidable, unenforceable, or invalid provision had never been set forth herein.

**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 on the date indicated below.

SALT LAKE COUNTY

By: \_\_\_\_\_  
Mayor Ben McAdams or Designee

Date: \_\_\_\_\_

City of Cottonwood Heights/ Cottonwood Heights Arts  
Council  
RECIPIENT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

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

Date: May 19, 2014