

RESOLUTION NO. _____

DATE _____

RESOLUTION OF THE SALT LAKE COUNTY COUNCIL APPROVING THE
NAMING RIGHTS AGREEMENT WITH SALT LAKE COUNTY
FOUNDATION FOR THE SOUTHWEST VALLEY ARTS CENTER

RECITALS

A. Salt Lake County (“County”) is in the planning stages for the construction of the Southwest Valley Arts Center (“Center”); and

B. The Center will be an arts center that includes performance spaces and stages, backstage areas, loading dock, public plaza, exhibit space, lobbies, ticket offices, concession spaces, restrooms and other typical art and theater spaces to be constructed at the southwest corner of Grandville Avenue and Lake Avenue (currently part of two larger parcels, Tax ID Nos. 26-24-17-800-10000 and 26-24-17-800-30000) in South Jordan City, Salt Lake County, State of Utah

C. County desires the assistance of Larry H. & Gail Miller Family Foundation (“Miller Foundation”) to fund a portion of the construction of the Center; and

D. The Miller Foundation desires to contribute to the construction of the Center in exchange for naming rights.

E. The Miller Foundation is required to make its contribution to 501(c)(3).

F. County is willing to facilitate this by selling naming rights to Salt Lake County Foundation (“SLCo Foundation”) pursuant to the Agreement attached as Exhibit A and allowing SLCo Foundation to sell the naming rights pursuant to the agreement attached Exhibit 1, to the Agreement attached as Exhibit A Naming Contract.

G. WHEREAS, SLCo Foundation will transfer all proceeds received from the Naming Contract, within 10 days of receipt to County. In consideration of such transfer County will assume the obligations of Foundation set forth in the Naming Contract.

H. County and SLCo Foundation desire that the Center be named the “Larry H. & Gail Miller Family Arts Center”;

I. Although not required, the Arts & Culture Advisory Committee unanimously approved recommending to the Council that the Southwest Valley Arts Center be named the “Larry H. & Gail Miller Family Arts Center”;

J. Pursuant to Salt Lake County Code of Ordinances 2.48.030 D. the County held a public hearing on October 22, 2024, at 4:00 p.m. in order to solicit public comments regarding the naming the Southwest Valley Arts Center; and

K. County and SLCo Foundation have prepared the attached Agreement outlining how they will work together to implement the financing and naming of the Center.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Salt Lake County Council that the attached Agreement is hereby approved; and the Mayor is hereby authorized to execute the original of said authorized and approved Agreement, a copy of which is attached as Exhibit 1, and by this reference made a part of this Resolution.

IT IS FURTHER RESOLVED by the Salt Lake County Council that the Mayor is hereby authorized to execute, acknowledge and agree to the agreement attached as Exhibit 1 to the Agreement, attached as Exhibit A.

APPROVED and ADOPTED this _____ day of _____, 2024.

SALT LAKE COUNTY COUNCIL

By: _____
Laurie Stringham, Chair

ATTEST:

Lannie Chapman
Salt Lake County Clerk

Reviewed and Advised
as to Form and Legality

Senior Deputy District Attorney

Council Member Alvord voting	_____
Council Member Bradley voting	_____
Council Member Bradshaw voting	_____
Council Member Granato voting	_____
Council Member Harrison voting	_____
Council Member Stewart voting	_____
Council Member Stringham voting	_____
Council Member Theodore voting	_____
Council Member Winder Newton voting	_____

EXHIBIT A

**CONTRACT FOR NAMING RIGHTS OF THE
SOUTHWEST VALLEY
ARTS THEATRE**

This Naming Rights Contract (“**this Contract**”) is dated, made, and entered into as of the _____ day of _____ 2024, between SALT LAKE COUNTY a body corporate and politic of the state of Utah (“**County**”) and SALT LAKE COUNTY FOUNDATION, a Utah Non-Profit Corporation (“**Foundation**”). County and Foundation are collectively referred to in this Contract as the “**Parties**,” and each a “**Party**”.

WITNESSETH:

WHEREAS the Southwest Valley Arts Center (“**Center**”) will be an arts center that includes performance spaces and stages, backstage areas, loading dock, public plaza, exhibit space, lobbies, ticket offices, concession spaces, restrooms and other typical art and theater spaces to be constructed at the southwest corner of Grandville Avenue and Lake Avenue (currently part of two larger parcels, Tax ID Nos. 26-24-17-800-10000 and 26-24-17-800-30000) in South Jordan City (the “**City**”), Salt Lake County (the “**County**”), State of Utah.

WHEREAS, the Center will be owned and operated by County.

WHEREAS, County has the exclusive right to name the Center and any portion thereof, and to contract from time to time with Foundations and sponsors with respect to such naming (“**Naming Rights**”), and County is offering naming rights to the Center and a variety of spaces within the Center to contribute to payment of the costs associated with constructing the Center.

WHEREAS, Larry H. & Gail Miller Family Foundation desires to contribute to the construction of the Center in exchange for naming rights.

WHEREAS, Larry H. & Gail Miller Family Foundation is required to make its Contribution to 501(c)(3).

WHEREAS, County is willing to facilitate this by selling naming rights to Foundation and allowing Foundation to sell the naming rights pursuant to the contract attached as Exhibit 1 “**Naming Contract**” and incorporated by this reference.

WHEREAS, Foundation will transfer all proceeds received from the Naming Contract, within 10 days of receipt to County. In consideration of such transfer County will assume the obligations of Foundation set forth in the Naming Contract.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. FOUNDATION CONTRIBUTION

1.1. The Foundation's monetary obligation is Twenty-Five Million dollars (\$25,000,000). The Foundation will pay the County according to the following schedule:

Up to \$10,000,000 on or before December 31, 2024

Up to \$5,000,000 on or before December 31, 2025

Up to \$5,000,000 on or before December 31, 2026

Up to \$5,000,000 on or before December 31, 2027

1.2. Foundation will be considered in default of this Contract if Foundation fails to make any payments within 10 days of receipt of its payment under the Naming Contract, which is anticipated to be the scheduled date of such payment as provided in Section 1.1.

2. GRANT OF NAMING RIGHTS.

2.1. The County hereby grants to Foundation during the Term (as defined in the Agreement, attached as Exhibit 1) the exclusive license to name the Center pursuant to the terms and conditions of this Agreement. As of the Effective Date, the official name of the Center shall be the " Larry H. & Gail Miller Family Arts Center ("Center"), a Salt Lake County Facility " (the "Center Name"), unless amended or changed in accordance with this Agreement, and the Center shall be referred to in all marketing and promotional materials, signage and other related areas as the " Larry H. & Gail Miller Family Arts Center". Both parties agree to use commercially reasonable efforts, contractually or otherwise, to require third parties to include the contracted Center Name in all advertising or other dissemination of information regarding the Center. The County shall have the obligation to use the Center Name in any contract negotiated in the future and in all instances in which business is conducted or information is released, and a reference is made to the Center. In no event shall the Center Name be changed or altered by Foundation without the prior written approval of the County. Such approval, however, shall not be unreasonably withheld, delayed, or conditioned. Center Name may be abbreviated for certain uses as provided for in the Naming Contract.

2.2. Notwithstanding the grant of Naming Rights, the County shall have the unlimited right to offer, grant, sell or otherwise convey the right to name any subordinate portion of the Center (the "Subordinate Naming Rights") to any third party.

3. ASSUMED OBLIGATIONS

3.1. For the consideration outlined in section 1., above, County as owner and operator of the Center will assume all obligations of Foundation under the Naming Contract.

4. GENERAL

4.1. Notice.

4.1.1. All notices and other communications required or permitted by this Contract will be in writing and given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the County: SALT LAKE COUNTY,
2001 S STATE ST STE N2-100
Salt Lake City, UT 84190
Attn: Salt Lake County Mayor

To the Foundation: SALT LAKE COUNTY FOUNDATION,
2001 S STATE ST STE N2-100
Salt Lake City, UT 84190
Attn: Salt Lake County Mayor.

4.1.2. **Change of Address; Date Notice Deemed Given.** A change of address, fax number, or Person to receive notice may be made by either Party by written notice given to the other Party. Any notice or other communication under this Contract will be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it will be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

4.2. **No Third-Party Rights Created.** This Contract is intended for the benefit of the County and the Foundation and not any other Person. Nothing in this Contract will create a contractual relationship with or a cause of action in favor of a third party against any Party and no third party will be deemed a third-party beneficiary of this Contract or any provision of this Contract.

4.3. **Governing Law.** This Contract and all other documents to be entered into in connection with the transactions contemplated in this Contract will be governed by, and construed and enforced in accordance with, the substantive laws of the State of Utah without regard to its principles of conflicts of law.

4.4. **Jurisdiction and Venue.** WITH RESPECT TO ALL MATTERS ARISING OUT OF OR RELATING TO THIS CONTRACT, THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL OR STATE COURTS LOCATED IN THE STATE OF UTAH, SALT LAKE COUNTY, AND WAIVE ANY OBJECTION BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT TO ANY ACTION INSTITUTED IN STATE COURTS IN SALT LAKE COUNTY, UTAH, OR THE FEDERAL DISTRICT COURTS IN SALT LAKE COUNTY, UTAH. FOR THE AVOIDANCE OF DOUBT, IF AN ACTION IS INSTITUTED IN STATE COURTS IN SALT LAKE COUNTY, THE

FOREGOING SHALL NOT PRECLUDE A PARTY FROM SEEKING TO REMOVE SUCH ACTION TO THE FEDERAL DISTRICT COURTS IN SALT LAKE COUNTY.

4.5. **Binding Effect; Successors.** Each Party binds itself and its successors and authorized assigns to the other and to the successors and authorized assigns of the other Party with respect to all covenants and other terms of this Contract.

4.6. **Severability.** Whenever possible, each provision of this Contract will be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof only will be ineffective without in any manner invalidating or affecting the remaining provisions of this Contract or the valid portion of such provision, which provisions are deemed severable.

4.7. **Descriptive Headings; References.** The descriptive headings in this Contract are for convenience only and will not control or affect the meaning or construction of any provision of this Contract. Except as otherwise expressly set forth in this Contract, a reference in this Contract to a Section is to the referenced Section of this Contract.

4.8. **Counterparts.** This Contract (and each amendment, modification and waiver in respect of it) may be executed in any number of counterparts, and each such counterpart hereof will be deemed to be an original instrument, but all such counterparts together will constitute but one instrument. Delivery of an executed counterpart of a signature page of this Contract (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission will be effective as delivery of a manually executed original counterpart of each such instrument.

4.9. **No Inference Against Author.** Each Party acknowledges that this Contract was fully negotiated by the Parties and agrees, therefore, that no provision of this Contract will be interpreted against any Party because such Party or its counsel drafted such provision.

4.10. **Survival.** The expiration of the Benefit Period does not affect or in any way limit the provisions of this Contract that are by their terms or nature intended to survive the expiration of the Benefit Period. Further, all representations and warranties set forth in this Contract will survive the execution and delivery of this Contract, will remain in full force and effect throughout the Benefit Period and will be deemed to be made continuously throughout the Benefit Period.

4.11. **Waiver.** No action or failure to act by the County or the Foundation will constitute a waiver of any of its rights or remedies that arise out of this Contract, nor will such action or failure to act constitute approval of or acquiescence in a breach of this Contract, except as may be specifically agreed by the Parties in writing.

4.12. **Performance of Government Functions.** Nothing contained in this Contract will be deemed or construed so as to in any way estop, limit or impair County from exercising or

performing any regulatory, policing, legislative, governmental, or other powers or functions, including but not limited to ordinances respecting signs.

4.13. **Modifications; Entire Contract.** A modification of this Contract is not valid unless signed by both Parties and otherwise in accordance with requirements of law. This Contract contains the entire agreement between the Parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the Parties, other than as set forth or referenced in this Contract.

Foundation further agrees that it will not amend or modify Naming Contract without first obtaining County's written approval of such amendment or modification.

4.14. **COUNTY Third Party Contracts.** The County will have the right to assign by contract or otherwise any of its responsibilities as described in this Contract provided that any such assignment will not relieve the County from its liabilities and responsibilities under this Contract. If there is a proposal under which the County would assign this Contract or any of its responsibilities as set forth in this Contract to a third party, the County will give the Foundation written notice of the proposed assignment. To the extent this Contract refers to County or places certain responsibilities on County, the County will be liable for any failure County to fulfill its responsibilities.

4.15. **Non-Funding Clause.** It is understood and agreed by the parties hereto that funds are not presently available for performance of this Agreement by County beyond December 31, the close of the County's current fiscal year. County's obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated for continued operation of Center or performance due under this Agreement. In the event no funds or insufficient funds are appropriated and budgeted in any fiscal year by the County for operation of Center or performance due under this Agreement, for the current or any succeeding fiscal year, this Agreement shall create no obligation on County as to such current or 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. In the event of a reduction in appropriations, this Agreement shall terminate and become null and void on the last day before the reduction becomes effective, except as to those portions of for operation of Center or performance due under this Agreement agreed upon for which funds shall have been appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or an event of default under this Agreement and said termination shall be without penalty, additional payments, or other expense to County of any kind whatsoever. No right of action for damages or other relief shall accrue to the benefit of Foundation, its successors or assigns, as to this Agreement, or any portion thereof, which may so terminate and become null and void.

4.16. **Governmental Immunity.** County is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), Utah Code Ann. §§ 63G-7-101 to -904 (2011). The parties agree that Salt Lake 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.

4.17. **Reservation of Rights.** All rights not specifically granted to Foundation by County shall be and remain the property of Salt Lake County to be used in any manner as it may deem appropriate.

4.18. **Force Majeure.** Neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract, when and to the extent such failure or delay is caused by any: (a) acts of God; (b) flood, fire, or explosion; (c) war, terrorism, invasion, riot, or other civil unrest; (d) embargoes or blockades in effect on or after the date of this Contract; (e) national or regional emergency; (f) strikes, labor stoppages or slowdowns, or other industrial disturbances; (g) passage of law or governmental order, rule, regulation, or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota, or other restriction or prohibition; or (h) national or regional shortage of adequate power, telecommunications, or transportation facilities (each of the foregoing, a “**Force Majeure**”), in each case, provided that (i) such event is outside the reasonable control of the affected party; (ii) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (iii) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure.

4.19. **Representations and Warranties.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering; (b) it has the full right, power, and authority to enter into this Contract to grant the rights granted hereunder, and to perform its obligations hereunder; (c) the execution of this Contract by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and (d) when executed and delivered by both parties, this Contract will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

4.20. **Termination.** Either party may terminate this Contract, immediately upon written notice to the other party if: the other party materially breaches this Contract, and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice thereof.

[Signature Page Follows]

IN WITNESS HEREOF, the Parties have executed this Contract on the date set forth above.

COUNTY

By: _____

Name: _____

Title: _____

SALT LAKE COUNTY FOUNDATION

By: K. Wayne Cushing

Name: K. Wayne Cushing

Title: Treasurer/Board Member

Reviewed and Advised as
to Form and Legality

Craig J.

Wangsgard

Craig Wangsgard

Senior Deputy District Attorney

Digitally signed by Craig J.
Wangsgard
Date: 2024.10.07 15:09:35
-06'00'

EXHIBIT 1

CONTRACT FOR NAMING RIGHTS OF THE
TITLE OF THE
LARRY H. & GAIL MILLER
FAMILY ARTS THEATRE

**CONTRACT FOR NAMING RIGHTS OF THE
TITLE OF THE
LARRY H. & GAIL MILLER FAMILY
ARTS CENTER**

This Naming Rights Contract (“**this Contract**”) is dated, made, and entered into as of the _____ day of _____ 2024, between SALT LAKE COUNTY FOUNDATION, a Utah Non-Profit Corporation (“**Foundation**”) and LARRY H. & GAIL MILLER FAMILY FOUNDATION, a private charitable foundation (“**Donor**”). Foundation and Donor are collectively referred to in this Contract as the “**Parties**,” and each a “**Party**.” As used in this Contract, unless otherwise defined herein, terms that are capitalized will have the meanings set forth in Section 1 (Definitions) of this Contract.

WITNESSETH:

WHEREAS the “Larry H. & Gail Miller Family Arts Center (“**Center**”), a Salt Lake County Facility” will be an arts center that includes performance spaces and stages, backstage areas, loading dock, public plaza, exhibit space, lobbies, ticket offices, concession spaces, restrooms and other typical art and theater spaces to be constructed at the southwest corner of Grandville Avenue and Lake Avenue (currently part of two larger parcels, Tax ID Nos. 26-24-17-800-10000 and 26-24-17-800-30000) in South Jordan City (the “**City**”), Salt Lake County (the “**County**”), State of Utah.

WHEREAS, the Center will be owned and operated by the County.

WHEREAS, County will construct, own and operate the Center, as outlined in the Amended and Restated Donation Agreement and Joint Escrow Instructions.

WHEREAS, County has the exclusive right to name the Center and any portion thereof, and to contract from time to time with donors and sponsors with respect to such naming (“**Naming Rights**”), and County is offering naming rights to the Center and a variety of spaces within the Center to contribute to payment of the costs associated with the planned approximately \$90.3 million dollar development budget for the Center.

WHEREAS, Donor is required to make its Donor Contribution to 501(c)(3) foundation and Foundation and County are willing to facilitate this requirement by County selling naming rights to Foundation.

WHEREAS, on or before the first Contribution date, Foundation will secure naming rights for the Center from County under substantially the same terms and conditions as outlined herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

1.1. “**Benefit Period**” is defined as the period for which the naming rights and other benefits described herein will be in effect.

1.2. “**Cure Period**” means 30 days after a non-defaulting Party has provided to the defaulting Party written notice warning of the possible termination of this Contract for a material breach if the defaulting Party does not cure such material breach within 30 days.

1.3. “**Donor Contribution**” is Twenty-Five million dollars (\$25,000,000) for the term of the Benefit Period and as further defined in Section 3.

1.4. “**Donor’s Name**” means the exact name to be used on the signage allowed under this Contract to be designated by the Donor at a later date prior to the opening of the Center.

1.5. “**Events of Default**” is defined in Section 9 (Events of Default and Remedies).

1.6. “**Opening Date**” means the first date that the Center opens on a permanent basis for its first Performance to the general public.

1.7. “**Operator**” means Salt Lake County Arts & Culture who will be solely responsible for all operations of the Center.

1.8. “**Performance**” means a single show, concert, or event at the Center.

1.9. “**Person**” includes an individual, corporation, limited liability company, firm, partnership, association, organization, entity, unit of government, and any group acting as a unit.

1.10. “**Section**” means any of the numbered sections of this Contract.

1.11. The “**Center**” means the arts center that includes performance spaces and stages, backstage areas, loading dock, lobbies, exhibit space, classrooms, ticket offices, concession spaces, restrooms and other typical art and theater spaces to be constructed at the southwest corner of Grandville Avenue and Lake Avenue (currently part of two larger parcels, Tax ID Nos. 26-24-17-800-10000 and 26-24-17-800-30000) in South Jordan City, Salt Lake County, State of Utah. The Center shall not include parking garages, parking lots, or parking spaces, other than those in the loading dock and adjacent parking contained within the same parcel.

2. _____. The Parties acknowledge that Foundation has not yet acquired naming rights to Center, but will do so prior to any contribution due, as outlined in paragraph 3. The parties further acknowledge that any naming rights agreement between Foundation and County will be substantially similar to the terms and conditions of this Contract, with the addition of the clauses contained in this paragraph 2.

2.1. Non-Funding Clause. It is understood and agreed by the parties hereto that funds are not presently available for performance of this Agreement by the Salt Lake County beyond December 31, the close of the Salt Lake County's current fiscal year. Salt Lake County's obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated

for continued operation of Center or performance due under this Agreement. In the event no funds or insufficient funds are appropriated and budgeted in any fiscal year by the Salt Lake County for operation of Center or performance due under this Agreement, for the current or any succeeding fiscal year, this Agreement shall create no obligation on Salt Lake County as to such current or 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. In the event of a reduction in appropriations, this Agreement shall terminate and become null and void on the last day before the reduction becomes effective, except as to those portions for operation of Center or performance due under this Agreement agreed upon for which funds shall have been appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or an event of default under this Agreement and said termination shall be without penalty, additional payments, or other expense to Foundation of any kind whatsoever. No right of action for damages or other relief shall accrue to the benefit of Donor, its successors or assigns, as to this Agreement, or any portion thereof, which may so terminate and become null and void.

2.2. Governmental Immunity. Salt Lake County is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the “Act”), Utah Code Ann. §§ 63G-7-101 to -904 (2011). The parties agree that Salt Lake 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.

2.3. Reservation of Rights. All rights not specifically granted to Foundation by Salt Lake County shall be and remain the property of Salt Lake County to be used in any manner as it may deem appropriate.

3. DONOR CONTRIBUTION

3.1. The Donor Contribution is Twenty-Five Million dollars (\$25,000,000). The Donor will pay the Donor Contribution to the Foundation according to the following schedule:

Up to \$10,000,000 on or before December 31, 2024

Up to \$5,000,000 on or before December 31, 2025

Up to \$5,000,000 on or before December 31, 2026

Up to \$5,000,000 on or before December 31, 2027

3.2. Donor will be considered in default of this Contract if Donor fails to make any of the Donor Contribution payments within 30 days of the scheduled date of such payment as provided in Section 3.1.

3.3. Unless this Contract is terminated earlier, the Donor Contribution will not be adjusted except as provided for in this Contract.

4. CENTER TERMINATION

4.1. If the construction and completion of the Center is for any reason permanently cancelled or indefinitely suspended, this Contract will be voided and the Foundation will remit a full refund to Donor of any Donor Contributions paid plus interest realized by Foundation on the Donor Contributions within 30 days from the time written notice and demand are received by Foundation from Donor. If at any point before or after completion of the Center and before the expiration of the Center's useful life, as defined in Section 5.1, the County or Foundation desire to modify the intended purpose of the Center defined herein, the County or Foundation shall give notice to Donor as soon as such modification is contemplated and seek Donor's written permission to modify the purpose and Donor further agrees that such written permission will not unreasonably be withheld.

4.2. **Force Majeure.** Neither party will be liable or responsible to the other party, or be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract, when and to the extent such failure or delay is caused by any: (a) acts of God; (b) flood, fire, or explosion; (c) war, terrorism, invasion, riot, or other civil unrest; (d) embargoes or blockades in effect on or after the date of this Contract; (e) national or regional emergency; (f) strikes, labor stoppages or slowdowns, or other industrial disturbances; (g) passage of law or governmental order, rule, regulation, or direction, or any action taken by a governmental or public authority, including but not limited to imposing an embargo, export or import restriction, quota, or other restriction or prohibition; or (h) national or regional shortage of adequate power, telecommunications, or transportation facilities (each of the foregoing, a "**Force Majeure**"), in each case, provided that (i) such event is outside the reasonable control of the affected party; (ii) the affected party provides prompt notice to the other party, stating the period of time the occurrence is expected to continue; and (iii) the affected party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure.

5. BENEFIT PERIOD

5.1. The Benefit Period regarding naming rights will commence on the Opening Date and will continue for the useful life of the Center, which shall be no less than thirty (30) years. The Benefit Period regarding the other benefits described herein will commence at 9:00 AM on the date the Center opens to the general public on a permanent basis and will remain in effect as long as the programs described, or similar programs, associated with the Center exists; or

5.1.1. The date the Donor terminates this Contract as a result of an Event of Default by the Foundation; or

5.1.2. The date the Foundation terminates this Contract as a result of an Event of Default by the Donor.

6. NAMING AND SIGNAGE IN RECOGNITION OF CONTRIBUTION

6.1. **Center Name.** During the Benefit Period, the Donor's name will be the only and exclusive name used as the Center name except as the Center name may be abbreviated as provided in Section 8 of this Contract. Donor's name will be the only and exclusive name used as the Center name on the exterior of the building. Donor understands and agrees that the County Council must

approve the name and the Foundation will, in its sole discretion, reject any proposed name including but limited to the following if such name were:

- 6.1.1. likely to cause confusion with an existing named location within Salt Lake County, Utah;
- 6.1.2. the name of an entity associated with tobacco, alcohol, firearms, obscenity, or a sexually oriented business;
- 6.1.3. the name of a religious or political organization;
- 6.1.4. the name of a religious leader, unless such leader being honored is recognized solely for the leader's civic contribution;
- 6.1.5. to have or result in an inappropriate acronym, short form, or modification;
- 6.1.6. discriminatory or derogatory in any way;
- 6.1.7. to relate to or create a controversial situation within the county; or
- 6.1.8. to uniquely recognize a single individual for a contribution similar or identical to a contribution made by others within a particular group associated with that individual.
- 6.1.9. any name agreed to by the Parties must be followed by “a Salt Lake County Facility”.

6.2. **Signage.**

6.2.1. The Foundation will install or cause County to install, prior to the beginning of the Benefit Period, and keep in good repair during the Benefit Period, interior and exterior signs, which shall be in accordance with County style requirements, displaying the Center name. The signage design and materials will be selected by County in consultation with, and with approval from, Donor. The precise location of the signage will be made in consultation with, and with approval from County and Donor. Such approval will not be unreasonably withheld by County or Donor.

6.2.2. Donor’s name will be listed on special signage memorializing the names of early donors and sponsors and placed in a prominent location within the Center. Donor's name will be listed on this signage in the order of size of commitment and the date on which commitments from all naming rights donors are received.

6.2.3. Donor’s Name and Center name with accompanying text/visuals/photos will be displayed in a prominent location within the Center lobby; this will include background on the Donor's significant business/philanthropic/historic roles in Utah, the community and the arts statewide. Such display will be subject to County approval, not to be unreasonably withheld.

7. MEMBERSHIP

7.1. The Donor will be awarded up to four memberships in the highest level of any membership program (or similar programs if available) that may be established by Operator during the benefits period. The memberships will be held in the names of the Trustees of the Donor, which may be updated from time-to-time, and will remain in effect as long as there is any membership programs established and maintained by Operator, associated with the Center. Regardless of whether a membership program exists, Donor's Trustees will each be entitled to the following benefits, which shall be administered by the office of the President of the Donor. Donor acknowledges there may be no membership programs established by the Operator during the benefits period.

7.1.1. **Advance Access to Best Available Seats for the Season Subscription.** If season subscription packages are offered for sale to the public, then the Donor's Trustees will each have the right of first refusal to purchase season subscription packages for up to eight of the best available seats within a limited period of time at the beginning of subscription on-sale for each performing season and prior to the general public offering. If the Donor fails to exercise this right within the annual period of opportunity, the seats will be returned to the general pool. The customary terms and conditions of these ticket sales are subject to the Salt Lake 's season ticket sales policies and procedures. Donor acknowledges there may be no Season Subscription programs established by the Operator during the benefits period.

7.1.2. **Advance Access to Best Available Seats for Individual Shows.** If there are a substantial number of tickets offered for sale to the general public for shows, and subject to the ability of County, using reasonable efforts to secure rights from show promoters for advance purchases, the Donor's officers will each be given the right to purchase up to eight tickets for the best available seats to each show in advance, but no later than one month prior to the show date. If there are not sufficient tickets available for naming rights sponsors entitled to advance access to best available seats, then the number of tickets offered to Donor will be reduced proportionately. The customary terms and conditions of these ticket sales are subject to the County 's ticket sales policies and procedures.

7.1.3. **Access to the Lounges.** If Operator operates a VIP lounge, The Donor's Trustees and ticketed guests will have access to the Lounges, if any, during hours of operation. Access to and services received within the Lounge will be subject to the adoption of formal operating rules. Standard Lounge policies and procedures and food and beverage charges will apply, but the Donor's officers will not be charged annual membership fees otherwise applicable to users of the Lounge. Donor acknowledges there may be no VIP Lounges operated during the benefits period.

7.1.4. **Use of the Center for Private Events.** With advance reservations coinciding with the Center's booking procedures, the Donor will have the right to utilize the Center rent-free for up to two private events each season year beginning on September 1 and ending on August 31, not exceeding two calendar days. The Donor officers will pay for food and beverage, cleaning, event equipment, staffing costs and any other event related expenses Standard Center policies and procedures will apply.

7.1.5. **Preferred Parking.** Donor Trustees will have access to the highest level of preferred parking available at Center and provided by Operator. The Donor's Trustees will comply with the standard preferred parking policies and procedures. Donor acknowledges there may be no preferred parking provided by Operator during the benefits period.

7.1.6. **Special Concierge Service.** A special single point of contact concierge will be provided to assist the Donor with booking tickets, making Lounge reservations, and accessing benefits of the program.

8. USE OF THE DONOR'S NAME

8.1. During the Benefit Period, the Donor's Name will also be used as follows:

8.1.1. **Website Link.** The Foundation will cause the County to create and maintain a website for the Center. Website will include a page acknowledging Center naming rights donors and sponsors, including the Center name with a link to the Donor's website, if desired by the Donor.

8.1.2. **Group Donor and Sponsor Acknowledgment.** Where the Center naming rights donors and sponsors are acknowledged as a group in select Center advertising that is under the control of the County, the Center name may be abbreviated. Where spaces in the Center are fully described, it will be referred to as the full Center name.

8.1.3. **Facility Guides and Information Packets.** Where the County issues Center facility guides or information packets depicting the Center and the facilities, Center name may be abbreviated. Donor and County shall work together to establish a style guide for abbreviated uses. Where spaces in the Center are fully described, it will be referred to as the full Center name.

9. SUBORDINATE NAMING RIGHTS

9.1. Notwithstanding the grant of Naming Rights, County shall have the unlimited right to offer, grant, sell or otherwise convey the right to name any subordinate portion of the Center (the "Subordinate Naming Rights") to any third party.

10. EVENTS OF DEFAULT AND REMEDIES

10.1. **Event of Default by Donor and Foundation Remedies.**

10.1.1. **Event Default by Donor.** The Donor will have committed an Event of Default if the Donor commits a material breach of any of its obligations under this Contract and fails to cure the material breach within the Cure Period as defined in 1.2 supra; provided, however, that if the material breach is of a nature that the Donor could not reasonably be expected to cure the material breach within the Cure Period, then the Donor will have an additional amount of time to cure that is reasonable, given the nature of the material breach.

10.1.2. **Termination by Foundation.** If the Donor commits an Event of Default, Foundation will have available to it all legal and equitable rights afforded by law or this

Contract, including the right of specific performance, unless provided otherwise in this Contract. Foundation without prejudice to any other rights or remedies it may have, may terminate this Contract for an Event of Default by Donor by giving written notice of termination to the Donor.

10.2. **Event of Default by Foundation and Donor Remedies.**

10.2.1. **Event of Default by Foundation.** Foundation will have committed an Event of Default if the Foundation commits a material breach of any of its obligations under this Contract and fails to cure the material breach within the Cure Period; provided, however, that if the material breach is of a nature that the Foundation could not reasonably be expected to cure the material breach within the Cure Period, then the Foundation will have an additional amount of time to cure that is reasonable, given the nature of the material breach; and further provided that the Benefit Period will be extended by the same number of days that the material breach is not cured.

10.2.2. **Termination by Donor.** If the Foundation commits an Event of Default, Donor will have available to it all legal and equitable rights afforded by law or this Contract, including the right of specific performance, unless provided otherwise in this Contract. The Donor, without prejudice to any other rights or remedies it may have, may terminate this Contract for an Event of Default by Foundation by giving written notice of termination to the Foundation. Except as otherwise provided in Section 4.1 of this Agreement, if Donor terminates this Contract for any Event of Default by Foundation, then Donor will be entitled to a refund of Donor Contribution payments made in advance for the period after the date of termination. The refund owed by Foundation to Donor will be the unamortized portion of the Donor Contribution, calculated on a straight-line basis, measured using the value of the Donor Contribution amortized for a full 10 years, less the portion of the Donor Contribution allocable to the time from the Opening Date through the date of termination. The Foundation will pay any such refund it owes to Donor within thirty (30) days from the date Donor makes a written claim for a refund to the Foundation. That payment will be without prejudice to any rights the Foundation or Donor may have that arise out of this Contract.

10.3. **Attorneys' Fees and Costs.** Any non-defaulting Party will have the right to recover from the defaulting Party any reasonable costs the non-defaulting Party incurs in enforcing its rights under this Contract, including but not limited to its reasonable attorneys' fees, provided that such Party is the prevailing Party.

10.4. **Damages.** Notwithstanding anything to the contrary contained in this Contract, neither Party will in any event be entitled to recover from the other Party any consequential, special, or punitive damages for any breach of this Contract.

11. **ASSIGNMENT**

11.1. Donor will not assign, transfer, hypothecate, or pledge any of its benefits, rights or interests under this Contract or delegate any of its duties or obligations under this Contract without the prior written consent of the Foundation which consent will not be unreasonably withheld conditioned or delayed.

12. TRANSFER OF OWNERSHIP OF CENTER

12.1. County shall have the right to transfer its ownership in the Center including any or all of its rights and obligations under this Contract to a third party. This Contract will continue in effect, so that Donor will continue to perform under the Contract, and the transferee of County's ownership or rights under this Contract will have the rights and obligations of County under the Contract that accrue after the transfer of title. County will not be liable for any obligations of the Center owner that accrue after the transfer of title, but any obligations of County that accrued before the transfer of title will remain the County's obligations. Where this Contract specifies that the County Mayor has a particular function, but that function is intended only in order to carry out the County's obligations as described in this contract, the new owner will be responsible for assigning such functions to the persons, entities, or agencies as it deems appropriate. In the event of County transferring its ownership in the Center, there will be no change or diminution in the rights or benefits of the Donor.

13. GENERAL

13.1. Notice.

13.1.1. All notices and other communications required or permitted by this Contract will be in writing and given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the Foundation: SALT LAKE COUNTY FOUNDATION,
2001 S STATE ST STE N2-100
Salt Lake City, UT 84190
Attn: Salt Lake County Mayor

To the Donor: LARRY H. & GAIL MILLER FAMILY FOUNDATION,
9350 South 150 East, Suite 1000
Sandy, Utah 84070
Attn: President.

13.1.2. **Change of Address; Date Notice Deemed Given.** A change of address, fax number, or Person to receive notice may be made by either Party by written notice given to the other Party. Any notice or other communication under this Contract will be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it will be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

13.2. **No Third-Party Rights Created.** This Contract is intended for the benefit of the Foundation and the Donor and not any other Person. Nothing in this Contract will create a contractual relationship with or a cause of action in favor of a third party against any Party and no third party will be deemed a third-party beneficiary of this Contract or any provision of this Contract.

13.3. **Governing Law.** This Contract and all other documents to be entered into in connection with the transactions contemplated in this Contract will be governed by, and construed and enforced in accordance with, the substantive laws of the State of Utah without regard to its principles of conflicts of law.

13.4. **Jurisdiction and Venue.** WITH RESPECT TO ALL MATTERS ARISING OUT OF OR RELATING TO THIS CONTRACT, THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL OR STATE COURTS LOCATED IN THE STATE OF UTAH, SALT LAKE COUNTY, AND WAIVE ANY OBJECTION BASED ON VENUE OR FORUM NON CONVENIENS WITH RESPECT TO ANY ACTION INSTITUTED IN STATE COURTS IN SALT LAKE COUNTY, UTAH, OR THE FEDERAL DISTRICT COURTS IN SALT LAKE COUNTY, UTAH. FOR THE AVOIDANCE OF DOUBT, IF AN ACTION IS INSTITUTED IN STATE COURTS IN SALT LAKE COUNTY, THE FOREGOING SHALL NOT PRECLUDE A PARTY FROM SEEKING TO REMOVE SUCH ACTION TO THE FEDERAL DISTRICT COURTS IN SALT LAKE COUNTY.

13.5. **Binding Effect; Successors.** Each Party binds itself and its successors and authorized assigns to the other and to the successors and authorized assigns of the other Party with respect to all covenants and other terms of this Contract.

13.6. **Severability.** Whenever possible, each provision of this Contract will be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or portion thereof, is prohibited by law or found invalid under any law, such provision or portion thereof only will be ineffective without in any manner invalidating or affecting the remaining provisions of this Contract or the valid portion of such provision, which provisions are deemed severable.

13.7. **Descriptive Headings; References.** The descriptive headings in this Contract are for convenience only and will not control or affect the meaning or construction of any provision of this Contract. Except as otherwise expressly set forth in this Contract, a reference in this Contract to a Section is to the referenced Section of this Contract.

13.8. **Counterparts.** This Contract (and each amendment, modification and waiver in respect of it) may be executed in any number of counterparts, and each such counterpart hereof will be deemed to be an original instrument, but all such counterparts together will constitute but one instrument. Delivery of an executed counterpart of a signature page of this Contract (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission will be effective as delivery of a manually executed original counterpart of each such instrument.

13.9. **No Inference Against Author.** Each Party acknowledges that this Contract was fully negotiated by the Parties and agrees, therefore, that no provision of this Contract will be interpreted against any Party because such Party or its counsel drafted such provision.

13.10. **Late Payments.** If any amount payable by a Party under this Contract is not paid on the due date, such unpaid amount will bear interest from the due date until paid at one half percent (.5%) per month on the amount of the payment past due (or, if less, the maximum rate then permitted by law), calculated on a simple interest basis for the actual number of days past due.

13.11. **Survival.** The expiration of the Benefit Period does not affect or in any way limit the provisions of this Contract that are by their terms or nature intended to survive the expiration of the Benefit Period. Further, all representations and warranties set forth in this Contract will survive the execution and delivery of this Contract, will remain in full force and effect throughout the Benefit Period and will be deemed to be made continuously throughout the Benefit Period.

13.12. **Waiver.** No action or failure to act by the Foundation or the Donor will constitute a waiver of any of its rights or remedies that arise out of this Contract, nor will such action or failure to act constitute approval of or acquiescence in a breach of this Contract, except as may be specifically agreed by the Parties in writing.

13.13. **Performance of Government Functions.** Nothing contained in this Contract will be deemed or construed so as to in any way estop, limit or impair County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions, including but not limited to ordinances respecting signs.

13.14. **Modifications; Entire Contract.** A modification of this Contract is not valid unless signed by both Parties and otherwise in accordance with requirements of law. This Contract contains the entire agreement between the Parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the Parties, other than as set forth or referenced in this Contract.

13.15. **FOUNDATION Third Party Contracts.** The Foundation will have the right to assign by contract or otherwise any of its responsibilities as described in this Contract provided that any such assignment will not relieve the Foundation from its liabilities and responsibilities under this Contract. If there is a proposal under which the Foundation would assign this Contract or any of its responsibilities as set forth in this Contract to a third party, the Foundation will give the Donor written notice of the proposed assignment. To the extent this Contract refers to County or places certain responsibilities on County, the Foundation will be liable for any failure County to fulfill its responsibilities.

13.16. **Representations and Warranties.** Each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering; (b) it has the full right, power, and authority to enter into this Contract to grant the rights granted hereunder, and to perform its obligations hereunder; (c) the execution of this Contract by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and (d) when executed and delivered by both parties, this Contract will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

[Signature Page Follows]

IN WITNESS HEREOF, the Parties have executed this Contract on the date set forth above.

LARRY H. & GAIL MILLER FAMILY FOUNDATION

By: 

Name: Don Stirling

Title: President

SALT LAKE COUNTY FOUNDATION

By: 

Name: K. Wayne Cushing

Title: Treasurer / Board Member

Acknowledged and Agreed
By Salt Lake County

By: _____

Name: _____

Title: Mayor or Designee

Reviewed and Advised as
to Form and Legality

Craig J.
Wangsgard

Digitally signed by Craig J.
Wangsgard
Date: 2024.10.07 15:11:48
+06'00'

Craig Wangsgard
Senior Deputy District Attorney