

RESOLUTION NO. _____

DATE: _____

**A RESOLUTION OF THE SALT LAKE
COUNTY COUNCIL AUTHORIZING ACCEPTANCE OF FUNDS FROM
THE LARRY H. & GAIL MILLER FAMILY FOUNDATION
CONDITIONED UPON RENAMING OF CERTAIN
COUNTY-OWNED SOFTBALL COMPLEXES
& AUTHORIZING SAID RENAMING**

WHEREAS, Salt Lake County through its Division of Parks and Recreation (“Division”) owns and operates the Larry H. Miller Softball Complex at Big Cottonwood Park located at 4300 South 1300 East Millcreek, Utah and the Valley Regional Complex at Gary C. Swensen Regional Park located at 5130 South 2700 West in Taylorsville, Utah; and

WHEREAS, both complexes were built in the early 1970’s and feature four softball fields, one little league field, a press box and stadium seating; and

WHEREAS, the Division desires to update and upgrade the complexes by the spring of 2022; and

WHEREAS, the Division has been in negotiations with the Larry H. & Gail Miller Family Foundation to contribute Five Million Dollars (\$5,000,000.00) towards the upgrading of the complexes in exchange for the complexes to bear the “Larry H. Miller” name during the useful life of the complexes, as more specifically detailed in the attached agreement; and

WHEREAS, the consistent with Salt Lake County Code of Ordinances subsection 2.48.050 B., the Council finds it in the best interests of the County to accept the Foundation’s contribution in exchange for renaming the Complexes as detailed in the attached agreement.

NOW, THEREFORE, be it resolved by the Salt Lake County Council that the Mayor of Salt Lake County may use her discretion to execute the attached agreement accepting a contribution of \$5,000,000.00 from the Larry H. and Gail Miller Family Foundation and agreeing to change the name of Valley Regional Complex at Gary C. Swensen Regional Park to

the Larry H. Miller Softball Complex at Cary C. Swenson Valley Regional Park and agreeing to continue calling the Big Cottonwood Complex the Larry H. Miller Softball Complex at Big Cottonwood Park.

DATED this ___ day of _____, 2019.

SALT LAKE COUNTY

By _____
Richard Snelgrove, Chair

ATTEST:

Salt Lake County Clerk

Voting:

- Council Member Bradley voting ____
- Council Member Bradshaw voting ____
- Council Member Burdick voting ____
- Council Member DeBry voting ____
- Council Member Ghorbani voting ____
- Council Member Granato voting ____
- Council Member Jensen voting ____
- Council Member Snelgrove voting ____
- Council Member Winder Newton ____

Approved as to form:

By: *Megan L. Smith*
Megan L. Smith
Deputy District Attorney

AGREEMENT

Between

SALT LAKE COUNTY
On behalf of its Parks and Recreation Division

And

LARRY H. AND GAIL MILLER FAMILY FOUNDATION

This Agreement is made and entered into this 26 day of February, 2019, by and between SALT LAKE COUNTY, a body corporate and politic of the State of Utah on behalf of its Parks and Recreation Division ("County") and LARRY H. AND GAIL MILLER FAMILY FOUNDATION, ("LHM"). County and LHM are sometimes referred to in this Agreement individually as a "Party" or collectively as the "Parties."

RECITALS

Whereas, LHM is a private charitable foundation organized to further the charitable intent established by the board of directors of the Foundation, which includes giving to groups and programs that seek to improve the quality of life for women and children in the Salt Lake County area; and

Whereas, County owns and operates the Larry H. Miller Softball Complex at Big Cottonwood Park ("Big Cottonwood Complex") located at 4300 South 1300 E. Millcreek, Utah, 84124, and the Valley Regional Complex at Gary C. Swensen Regional Park ("Valley Regional Complex") located at 5130 South 2700 West, Taylorsville, Utah, 84118 (collectively referred to herein as "the Complexes"); and

Whereas, both the Complexes were built in the early 1970's and feature four softball fields, one little league field, a press box and stadium seating; and

Whereas, County desires to partner with LHM to update and upgrade the Complexes with work to be complete by the spring of 2022; and

Whereas, LHM desires to partner with County by contributing \$5M over the next three years towards updating and upgrading the Complexes in exchange for the Complexes to both bear the Larry H. Miller name during their lifetimes.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Contribution. LHM hereby agrees to contribute a sum of Five Million Dollars (\$5,000,000.00) to County in the following installments: LHM shall contribute One Million Dollars (\$1,000,000.00) upon execution of this Agreement; Two Million Dollars (\$2,000,000.00) upon County's completion of upgrades and updates to the Big Cottonwood Complex in 2020 and Two Million Dollars (\$2,000,000.00) upon County's commencement of work to upgrade and update the Valley Regional Complex in 2021. Upon payment of the third and final installment, LHM shall have no further financial obligation to County and County shall not expect any additional contribution from LHM under this Agreement.

2. County's Obligations. In consideration for the contribution from LHM, County shall:

- a. Update and upgrade the facilities at the Complexes, with new bleachers, shelter and press area with construction to be complete by March 31, 2022; and
- b. Rename the Valley Regional Complex as follows: "Larry H. Miller Softball Complex at Gary C. Swensen Valley Regional Park;" and
- c. During the lifespan of the updated and upgraded Complexes, the County shall ensure the Complexes are named, with appropriate signage, as follows:
 - i. The Big Cottonwood Complex shall continue to be named, with appropriate signage at and about the Complex, "Larry H. Miller Softball Complex at Big Cottonwood Park" and
 - ii. The Valley Regional Complex shall be named, with appropriate signage at and about the Complex "Larry H. Miller Softball Complex at Gary C. Swensen Valley Regional Park;" and
- d. Return to LHM any funds it has contributed to upgrade and update the Complexes that the County has not spent no later than March 31, 2023 or upon substantial completion of construction, whichever is sooner.

3. Effective Date/Term. This Agreement shall be effective upon execution by both parties and shall continue until March 31, 2023 ("Term").

4. Independent Contractor and Taxes. The relationship of County and LHM under this Agreement shall be that of an independent contractor status. Each Party shall have the entire responsibility to discharge all of the obligations of an independent contractor under federal, state and local law, including but not limited to, those obligations relating to employee supervision, benefits and wages; taxes; unemployment compensation and insurance; social security; worker's compensation; disability pensions and tax withholdings, including the filing of all returns and reports and the payment of all taxes, assessments and contributions and other sums required of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship between County and LHM of employer and employee, partners or joint venturers.

The Parties agree that LHM's obligations under this Agreement are solely to the County, and that County's obligations under this Agreement are solely to LHM. This Agreement shall not confer any rights to third parties unless otherwise expressly provided for under this Agreement.

5. Agency. No agent, employee or servant of LHM or County is or shall be deemed to be an employee, agent or servant of the other Party. None of the benefits provided by each Party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party. LHM and County shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement. LHM and County shall each make all commercially reasonable efforts to inform all persons with whom they are involved in connection with this Agreement to be aware that LHM is an independent contractor.

6. County Representative. County hereby appoints Martin Jensen as County Representative to assist in the administrative management of this Agreement and to coordinate performance of the services to be provided by LHM under this Agreement.

7. LHM Representative. LHM shall designate a representative and make known to the County the name and title of this representative within its organization who is authorized to act as LHM's representative in its performance of this Agreement. LHM's Representative shall have the responsibility of working with the County to coordinate the performance of its obligations under this Agreement.

8. Standard of Performance, Professionalism. LHM acknowledges the standard of performance and professionalism required in the performance of its services under this Agreement. LHM agrees to perform the services under this Agreement with the level of professionalism expected in its industry/profession in the community. Further, LHM, while performing its obligations under this Agreement, will conduct itself in such a manner that will promote the best interests of the County. LHM further agrees that it will not accept any fee or financial remuneration from any entity or person for its performance under this Agreement.

9. Indemnification. LHM agrees to indemnify, hold harmless and defend the County, its officers, agents and employees from and against any and all losses, damages, injuries, liabilities, and claims, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, negligent acts or omissions by LHM, its agents, representatives, officers, employees or subcontractors in the performance of this Agreement.

10. **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 (2018). 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.

11. **Insurance.** County represents that it is self-insured pursuant to the provisions of Utah Code Ann. § 63G-7-801 (2018).

12. **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 proceeds resulting from the performance of this Agreement. During the Term of this Agreement, no officer or employee of LHM or any lineal descendant of Larry H. and Gail Miller, or spouse of such descendent, shall serve on any County board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises LHM's operations, or authorizes funding or payments to LHM.

13. **Ethical Standards.** LHM represents that it has not: (a) provided an illegal gift 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 Code of Ordinances § 2.07 (2011); 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. **Campaign Contributions.** The Salt Lake County campaign finance disclosure ordinance limits campaign contributions by contractors to County candidates. Salt Lake County Code of Ordinances § 2.72A (2018). LHM acknowledges and understands those limitations on campaign contributions mean that any person, business, corporation or other entity that enters into a contract or is engaged in a contract with the County is prohibited from making campaign contributions in excess of \$100 to County candidates during the term of the contract and during a single election cycle as defined in the ordinance. LHM further acknowledges that violation of those provisions governing campaign contributions may result in criminal sanctions as well as termination of this Agreement.

15. **Termination.**

A. County shall have the right to terminate this Agreement in whole, or in part from time to time, for County's convenience or because of LHM's failure to fulfill its obligations under this

Agreement. Likewise, LHM shall have the right to terminate this Agreement in whole, or in part from time to time, if County fails to fulfill its obligations under this Agreement. To exercise its right to terminate pursuant to this Section 15, either Party shall deliver to the other Party a Notice of Termination specifying the extent to which performance of services under this Agreement is terminated, and the date upon which such termination becomes effective.

B. In the event County terminates this Agreement, all contributions paid by LHM for the performance of this Agreement shall be accounted for and County shall reimburse LHM that sum. In the event either Party terminates this Agreement, County shall not be required to carry out any further obligations to LHM, nor shall LHM be required to carry out any further obligations to County.

16. Compliance with Laws. Each party agrees to comply with all federal, state and local laws, rules and regulations in the performance of its duties and obligations under this Agreement. Any violation by either Party of applicable law shall constitute an event of default under this Agreement.

17. Non-Discrimination. LHM and any agent of LHM shall comply with all federal, state and county laws, rules and regulations governing discrimination and they shall not discriminate in the engagement or employment of any professional person or any other person qualified to perform the services required under this Agreement.

18. Notice to Retirees of Utah Retirement Systems ("URS"). County is a URS "participating employer." Entering into an agreement with County may affect a URS retiree's retirement benefits including, but not limited to, cancellation of the retiree's "retirement allowance" due to "reemployment" with a "participating employer" pursuant to Utah Code Ann. § 49-11-504 to -505 (2018). In addition, LHM is required to immediately notify County if LHM is a retiree of URS; or an owner, operator, or principal of LHM is a retiree. LHM shall refer the URS retiree to the URS Retirement Department at 801-366-7770 or 800-695-4877 for all questions about post-retirement employment regulations.

19. Labor Regulations & Requirements. LHM agrees to comply with all applicable provisions of Title 34 of the Utah Code, and with all federal, state and local labor laws applicable to LHM's performance of its obligations under this Agreement. LHM shall indemnify and hold County harmless from and against any and all claims for liability arising out of any violation of this paragraph or the laws referenced by LHM, its agents or employees.

20. Government Records Access Management Act. LHM acknowledges that County is a governmental entity subject to the Utah Government Records Access and Management Act ("GRAMA"), Utah Code Ann. §§ 63G-2-101 to -901 (2018). As a result, County is required to disclose certain information and materials to the public, upon request. LHM agrees to timely refer all requests for documents, materials and data in its possession relating to this Agreement and its performance to the County Representative for response by County.

Generally, any document submitted to County is considered a "public record" under GRAMA. Any person who provides to the County a record that the person believes should be protected under subsection 63G-2-305(1) or (2) shall provide both: (1) a written claim of business confidentiality and (2) a concise statement of reasons supporting the claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury.

21. Assignment. LHM shall not assign or transfer its duties of performance under this Agreement, without the prior written approval of County. County reserves the right to assert any claim or defense it may have against LHM and against any assignee or successor-in-interest of LHM.

22. Notices. All notices to be given under this Agreement shall be made in writing and shall be deemed given upon personal delivery, upon the next business day immediately following the day sent if sent by overnight express carrier, or upon the third business day following the day sent if sent postage prepaid by certified or registered mail, return receipt requested, to the parties at the following addresses (or to such other address or addresses as shall be specified in any notice given):

COUNTY: Contracts Administrator
 Salt Lake County
 2001 South State, Suite N4-500
 Salt Lake City, Utah 84190-3100

LHM: General Counsel
 9350 South 150 E. #1000
 Salt Lake City, UT 84101

23. Time. The Parties stipulate that time is of the essence in the performance of this Agreement. The time set forth for performance in this Agreement shall be strictly followed and any default in performance according to the times required shall be a default of this Agreement and shall be just cause for immediate termination by County of this Agreement and pursuit of any remedy allowed by this Agreement and by law.

24. Entire Agreement. County and LHM acknowledge and agree that this Agreement constitutes the entire integrated understanding between County and LHM, and that there are no other terms, conditions, representations or understanding, whether written or oral, concerning the rights and obligations of the parties to this Agreement except as set forth in this Agreement. This Agreement may not be enlarged, modified or altered, except in writing, signed by the parties.

25. Governing Law. It is understood and agreed by the Parties hereto that this Agreement shall be governed by the laws of the State of Utah and the ordinances of Salt Lake County, both as to interpretation and performance. All actions, including but not limited to court proceedings,

administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within the jurisdiction of the State of Utah.

26. Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties is not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile shall be deemed an original signed copy of this Agreement.

27. Interpretation. County and LHM 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 invalid, prohibited or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

28. No Limitations of Rights. The rights and remedies of the Parties hereto are in addition to any other rights and remedies provided by law or under this Agreement. The Parties agree that the waiver of any breach of this Agreement by either Party shall in no event constitute a waiver as to any future breach.

(Signature page to follow)

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

Salt Lake County

By: _____
Mayor or Designee

Division Approval:

By: *Math Jensen*
Director or Designee

Department Approval:

By: *Spelly M. Yocum*
Director or Designee

Approval as to Form:

By: *Megan Smith*
Megan L. Smith
Deputy District Attorney

Larry H. and Gail Miller Family Foundation

By: *Gail Miller*
Title: *Director*