

RESOLUTION NO. _____

DATE _____

A RESOLUTION OF THE SALT LAKE COUNTY COUNCIL APPROVING
AND AUTHORIZING EXECUTION OF FUNDING AGREEMENT BETWEEN
SALT LAKE COUNTY AND UTAH OPEN LANDS CONSERVATION
ASSOCIATION TO FUND THE PURCHASE OF REAL PROPERTY

RECITALS

A. The County and Utah Open Lands have jointly been working to acquire a parcel of undeveloped real property, known as Parcel No. 10-27-252-001, located in Emigration Canyon, approximately 7 miles northeast of Salt Lake City, on the east side of Salt Lake County at approximately 1304 N. Killyons Canyon, Emigration Canyon, Utah 84108 (the “Property”).

B. On November 12, 2021, the Salt Lake County Open Space Advisory Board met to recommend that the County acquire the Property.

C. Based upon that recommendation, Utah Open Space made an offer to purchase the Property from Vince and Karen Rogers (the “Rogers”) for \$155,000 (“Purchase Price”), which was accepted by the Rogers.

D. Utah Open Space has secured \$80,000 to purchase the Property and the County needs to contribute the remaining \$75,000 toward the Purchase Price to complete the transaction.

E. In exchange for the County’s contribution, Utah Open Lands has agreed to convey the Property to the County.

F. The County and Utah Open Lands have prepared a Funding Agreement memorializing the terms and conditions of their agreement.

G. The County Council believes that the terms and conditions of the Agreement will contribute to the prosperity, moral well-being, peace, and comfort of Salt Lake County residents.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Salt Lake County Council that the attached Agreement is approved in substantially the form attached hereto as Exhibit 1,

and that the Mayor is authorized to execute the same.

APPROVED and ADOPTED this _____ day of _____, 2021.

SALT LAKE COUNTY COUNCIL

By: _____
Steve DeBry, Chair

ATTEST:

Sherrie Swensen
Salt Lake County Clerk

Council Member Alvord voting	_____
Council Member Bradley voting	_____
Council Member Bradshaw voting	_____
Council Member DeBry voting	_____
Council Member Granato voting	_____
Council Member Winder-Newton voting	_____
Council Member Snelgrove voting	_____
Council Member Stringham voting	_____
Council Member Theodore voting	_____

APPROVED AS TO FORM:

Timothy J. Bywater
Deputy District Attorney

EXHIBIT 1
(Funding Agreement)

FUNDING AGREEMENT
Between
SALT LAKE COUNTY
And
UTAH OPEN LAND CONSERVATION ASSOCIATION

THIS FUNDING AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2021, by the between SALT LAKE COUNTY, a body corporate and politic of the State of Utah (“County”) and UTAH OPEN LANDS CONSERVATION ASSOCIATION, a Utah non-profit corporation (“Utah Open Lands”). County and Utah Open Lands are referred collectively to as the “Parties”.

RECITALS

A. The Parties are jointly working to acquire a parcel of undeveloped real property, known as Parcel No. 10-27-252-001, located in Emigration Canyon, approximately 7 miles northeast of Salt Lake City, on the east side of Salt Lake County at approximately 1304 N. Killyons Canyon, 84108 (the “Property”).

B. The Parties have identified a means to acquire the Property, maintain it as open space, and protect it from development.

C. Utah Open Lands has entered into an Agreement to Purchase Real Estate (“Purchase Agreement”) with the seller, who has agreed to sell the Property to Utah Open Lands for \$155,000 (“Purchase Price”). A copy of the Purchase Agreement is attached as Exhibit A.

D. Utah Open Lands has secured \$80,000 to purchase the Property and the County has agreed to fund the remaining \$75,000.

E. In exchange for the County’s \$75,000 contribution to purchase the Property, Utah Open Lands has agreed to convey the Property to the County at closing.

F. The Parties, wishing to memorialize their arrangement, enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Conveyances and Deposits:

Upon the terms and subject to the conditions set forth herein, Utah Open Lands will deliver or cause to be delivered \$80,000 of the Purchase Price into escrow, and the County hereby agrees to deliver or cause to be delivered \$75,000 of the Purchase Price into escrow. Upon closing, the escrow agent will cause a Special Warranty Deed to be recorded conveying the Property to the County and to disperse the funds held in escrow as set forth in a closing statement approved by the

Parties.

2. Consideration

The Parties agree that the County's \$75,000 contribution toward the Purchase Price of the Property constitutes adequate consideration for Utah Open Lands to convey the Property to the County.

3. Duration and Termination

This Agreement shall take effect upon execution and terminate upon the performance by the parties of all the obligations described herein. The parties intend that their respective delivery of funds to the escrow agent shall be accomplished as soon as possible. This Agreement shall terminate upon the Parties performing their respective obligations described herein, namely each Party depositing its share of the Purchase Price into escrow, the funds being distributed to the seller pursuant to the closing statement, and when a Special Warranty Deed conveying the Property to the County is recorded.

4. General Provisions. The following provisions are also integral parts of this Agreement:

(a) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy, or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Time of Essence. Time is the essence in this Agreement.

(i) Interpretation. This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah.

(j) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within three (3) days after such notice is deposited in the United States mail, certified mail postage prepaid and addressed to the parties at their respective addresses.

(k) Exhibits and Recitals. The Recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

(l) Governmental Immunity. The Parties understand that the County is a governmental entity under the Governmental Immunity Act, UTAH CODE ANN. § 63G-7-101, *et seq.* (the “*Immunity Act*”). Consistent with the terms of the Immunity Act, the Parties agree that each party is responsible and liable for any wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. The County does not waive any defenses or limits of liability otherwise available under the Immunity Act and all other applicable law, and the County maintains all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

(m) Ethical Standards. The parties hereto represent that they have not: (a) provided an illegal gift or payoff to any officer or employee, or former officer or employee, or to any relative or business entity of an officer or employee, or relative or business entity of a former officer or employee of the other party hereto; (b) retained any person to solicit or secure this Agreement upon any contract, 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 County’s Ethics, Gifts and Honoraria ordinance (Chapter 2.07, SALT LAKE COUNTY CODE OF ORDINANCES [2001]); or (d) knowingly influenced, and hereby promise that they will not knowingly influence, any officer or employee or former officer or employee to breach any of the ethical standards set forth in State statute or County ordinances.

IN WITNESS WHEREOF, the parties have subscribed their names and seals the day and year first above written.

[SIGNATURES ON THE FOLLOWING PAGE]

SALT LAKE COUNTY

By _____
Mayor Jennifer Wilson or Designee

Approved as to Form and Legality:

By _____
Timothy J. Bywater
Deputy District Attorney

[Additional Signatures on Following Page]

UTAH OPEN LAND ASSOCIATION

By _____
Executive Director or Designee

Exhibit A

(Real Estate Purchase Agreement)

AGREEMENT TO PURCHASE REAL PROPERTY

THIS AGREEMENT TO PURCHASE REAL PROPERTY (the "Agreement") is made and entered as of 11/05/2021, by and between **Utah Open Lands Conservation Association** having an address of 1488 South Main Street, Salt Lake Buyer, UT 84115, hereinafter "Buyer", and Vince and Karen Rogers, whose address for the purpose of this agreement is hereinafter "Seller".

RECITALS

WHEREAS, Seller has fee title to land known as Rogers Killyon Property located in Killyon Canyon, Emigration Canyon, Salt Lake County, (hereinafter "Property"); and

WHEREAS, the Buyer desires to purchase and the Seller desires to sell the approximately .67 acres as identified through a survey and legal description attached to this agreement as Exhibit A;

WHEREAS, the Buyer is a 501(c) 3 organization whose charitable entity status requires that the organization follow requirements under that law and whose interest in purchasing the Property is for the benefit of the public.

WHEREAS, Buyer has secured funding both in cash and pledges and requires additional time to finalize funding source requirements for those committed dollars, but wishes to move forward with the eventual purchase of the Property;

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, it is agreed by and between the Parties that Buyer hereby offers to purchase the Property described below upon the following terms and conditions:

1. THE PROPERTY:

Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the Property as described in Exhibit "A" to this Agreement subject to the terms and conditions of this Agreement:

2. PURCHASE PRICE:

Buyer shall pay Seller, at the Closing, the sum of **One Hundred and Fifty-Five Thousand Dollars (\$155,000.00)** as the purchase price for fee title to the Property provided an appraisal verifies the value of the Purchase Price. The sum of \$155,000 shall be less the Earnest money. Buyer agrees to no later than November 17, 2021 pay a sum of \$15,000 non refundable Earnest money which shall be applied to the the Purchase Price. Seller shall pay the cost of a policy of title insurance and any recording fees attributable to any curative title documentation. Seller and Buyer shall each pay their own closing costs incidental to conveying the Property to the Buyer. The purchase price shall include all improvements, hereditaments, and appurtenances thereunto belonging or otherwise appertaining to the Property together with all right, title, and interest in and to any streets, roads, avenues, alleys, alleyways, or rights-of-way abutting or in anywise appertaining to the Property herein described.

3. TITLE:

(a) Seller shall provide to Buyer, at Seller's expense, a Commitment for Title Insurance from Sutherland Title,.

(b) Seller represents and warrants that it has good and marketable title to the Property.

(c) During the period from execution of this Agreement until the closing, Seller shall not further encumber, or permit others to encumber, the Property, nor shall Seller convey rights or interests in the Property to third parties.

4. PHYSICAL CONDITION OF PROPERTY:

Seller warrants to the best of its knowledge that Seller is neither aware of, nor the cause of any release, presence, disposal or clean-up of any hazardous materials, contaminants or pollutants on, over, under, from, or affecting the Property. Seller also warrants to the best of its knowledge that Seller is not aware of any mine tailings, open shaft hazards, underground storage tanks or any materials containing or producing poly-chlorinated biphenyls or asbestos affecting the Property and that there have been no surface or subsurface conditions which constitute, or with the passage of time may constitute, a public or private nuisance.

5. ACCESS TO PROPERTY:

Seller hereby authorizes, for the period between acceptance and closing, the Buyer or its contractor, agents or employees to enter upon the Property for the purpose of conducting geotechnical investigations and site surveys, including, but not limited to, a Phase I Environmental Assessment, to determine the environmental and physical properties of the site. The Buyer agrees to hold the Seller harmless and defend and indemnify the Seller from any and all damages and liabilities associated with or arising from Buyer's investigations or site surveys of the Property and the Buyer agrees to conduct this assessment no later than November 15, 2021.

6. CONDITIONS PRECEDENT :

The following are conditions precedent to Buyer's obligation to purchase the Property, each of which must be satisfied fully, in Buyer's sole subjective opinion, or waived in writing by Buyer before Buyer shall be obligated to purchase the Property and all such conditions precedent must continue to be satisfied (if not waived) as of any date of closing hereunder. Both Parties agree to exercise due diligence in attempting to satisfy such conditions precedent and Seller agrees to execute any documents necessary or convenient thereto. The conditions precedent are:

(a) Buyer has received a commitment for title insurance from the Title Company and copies of documents constituting exceptions to title on the Property and has approved the same and the state of title generally.

(b) The Title Company is prepared to issue to Buyer or Buyer's nominee, upon the closing, an ALTA (or equivalent extended coverage)

Owner's Policy of title insurance in the full amount of the Purchase Price, insuring fee simple title to the Property, to be vested in Buyer or Buyer's nominee, subject only to Permitted Exceptions. Buyer shall pay the cost of the portion of the premium attributable to an ALTA extended coverage Owner's Policy of title insurance and Seller shall pay the portion of the premium attributable to a standard coverage Owner's Policy of title insurance.

Buyer agrees that it will notify Seller in writing that each of the above conditions has, in Buyer's sole subjective opinion, been satisfied, waived or remains unsatisfied within a reasonable time after receipt of each item required by these conditions precedent.

7. SELLER'S COVENANT, REPRESENTATIONS AND WARRANTIES:

Seller hereby covenants, represents, and warrants (which are deemed restated and remade as of closing) to Buyer as follows:

(a) Title. Seller has good and marketable fee simple title to the Property.

(b) Hazardous Materials. To the best of Seller's knowledge, with respect to the Property, or (pursuant to the protocol of the American Society of Testing Materials for Phase I Assessments) within two thousand feet (2,000) from either of them, that (i) no "Hazardous Material" is or has been transported to or from, or generated, placed, held, released, located, stored, or disposed of on, under, or at them; (ii) neither of them nor any part of any improvements and equipment thereon contains any asbestos or polychlorinated biphenyls; (iii) Seller has not received any notice of any action or proceeding relating to any Hazardous Material or any release or threatened release thereof on, under or at them or any notice contrary to (i) and (ii) above; and (iv) no underground or above ground storage tanks are or have been located on any of them. "Hazardous Material" means any substance or material defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "restricted hazardous waste", "toxic substances" or "known to cause cancer or reproductive toxicBuyer", (or words of similar import) petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment, or natural resources.

(c) Pending Assessments and Eminent Domain. Seller has no knowledge and has received no notice of any pending proceeding for the imposition of any special assessment, or the formation of a special assessment district, or for a condemnation proceeding which would affect in any manner any portion of the Property.

(d) No Litigation or Other Breach. No litigation, administrative or other proceeding, order or judgment is pending or outstanding, or to Seller's knowledge, threatened against or relating to any portion of the Property.

8. CLOSING:

Closing shall occur on a date mutually convenient to Buyer and Seller between **December 1, 2021** and no later than **December 15, 2021**. Buyer shall make every reasonable effort to close on the Property on or around **December 1, 2021**, however the Parties recognize the Buyers reliance upon sources of funding from governmental entities and the associated procedures these entities are required to follow as a reasonable reason for Buyer's inability to close prior to **December 15, 2021**. The Parties may by mutual written consent extend or shorten this period. On the closing date, Seller and Buyer shall cause the following to occur through the Escrow:

(a) Seller shall convey to the Buyer, by Special Warranty Deed in a form and substance satisfactory to the Buyer, title to the Property. The title to the Property shall be free and clear of all assessments, liens (including tax liens both delinquent and current year obligations prorated to the date of closing) or encumbrances of any sort, except for those encumbrances which are shown as Permitted Exceptions to commitment for title insurance as set forth in Paragraph 3 of this Agreement.

(b) The purchase price specified in Paragraph 2 of this Agreement shall be paid and delivered to Seller as follows: (i) at the closing date.

(c) Title Company shall issue a title insurance policy with liability equal to the Purchase Price, insuring Buyer that title to the Property is vested in Buyer subject only to the lien of real property taxes and assessments not yet due or payable, all public and private utility easements and exceptions to title to which Buyer has not objected pursuant to the aforementioned paragraphs or has objected and has subsequently waived such objections in writing delivered to the Title Company.

(d) Title Company shall pay any delinquent tax obligation and Seller's share of the current year's prorated tax obligation to the Salt Lake County Treasurer's Office with said payment being borne by the Seller.

(e) Buyer and Seller shall have performed each and all of the covenants, conditions, agreements and promises to be performed by it hereunder.

(f) All obligations, covenants, representations and warranties contained in this Agreement shall be merged at closing and discharged by the closing and recordation of the deed from Seller to Buyer.

9. DEFAULT:

If either party defaults under any provision of this Agreement, the other party shall have such rights and remedies as provided herein and by applicable law.

10. POSSESSION:

Possession shall be transferred by Seller to Buyer on the closing date. Any personal property of Seller shall be removed from the Property prior to closing.

11. SUCCESSORS AND ASSIGNS:

Seller shall not assign its rights nor delegate its duties hereunder to any person or entity without the express written consent of Buyer.

12. BROKERS:

Buyer represents and warrants to Seller that no broker has been used in connection with this transaction. If the Seller is represented by an agent/broker in connection with this transaction and the Seller is responsible for all cost associated with that representation. Seller shall indemnify and hold the Buyer harmless from and against all brokerage commissions or finder's fees, and claims therefor, payable in connection with the sale of the Property and resulting out of the acts or omissions of such indemnifying party.

13. NOTICES:

(a) Regular Notice. All notices, demands, statements, waivers, approvals or other communications required or permitted to be given hereunder, shall be delivered or sent to the party intended at the address set forth below. Notices to both Parties shall be sufficient if sent certified mail postage prepaid, or overnight delivery service for which a delivery receipt is required, addressed to Seller or Buyer as follows (or at such other address as parties may notify each other of in writing):

Tracy Burton
via email: tracy.burton@utahhomes.com

Wendy Fisher, Utah Open Lands
via email: wendy@utahopenlands.org

(b) Effectiveness of Notice. Notices sent by certified mail or overnight express delivery shall be effective on the date on which such notice was received.

(c) Facsimile Notice. Notice may be sent by facsimile. Facsimile notice shall be effective on the date of transmission, provided that a confirmation establishing the successful transmission of the notice is sent by first class mail, postage prepaid, along with a copy of the notice no later than 24 hours after the facsimile notice is transmitted.

(d) Saturdays, Sundays and Legal Holidays. If the time for response to any notice expires on Saturday, Sunday or a legal holiday in the State of Utah, the time shall be extended to the next working day.

14. THIRD PARTY BENEFICIARIES:

This Agreement is for the sole benefit of the Seller and Buyer. There are no third party beneficiaries to this Agreement. Only the Parties hereto are intended to benefit from and be entitled to enforce the terms of this Agreement.

15. UTAH LAW:

This Agreement shall be construed under Utah law.

16. ENTIRE AGREEMENT:

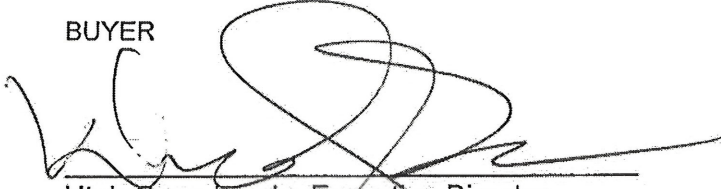
This Agreement constitutes the entire and exclusive agreement between the Parties relative to the matters referred to herein, and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof, and also supersedes any escrow instructions executed by the Parties hereto to the extent they do not expressly amend, modify, supersede or cancel, and are inconsistent with, any terms or provision of this Agreement. No agent or representative of the Parties has any right to make any guarantees, warranties or representations except as herein contained. This Agreement may be altered, amended, superseded or revoked only by an instrument in writing signed by both Buyer and Seller or, in the case of a waiver, by the party waiving compliance. If any provision of this Agreement is held invalid, the other provisions herein shall not be affected thereby.

17. PARAGRAPH CAPTIONS:

The captions and phrases as to the contents of particular paragraphs are inserted herein only as a matter of convenience and for reference and in no way are intended to be part of this Agreement or in any way to define, limit or describe the scope or intent of the particular paragraph to which they refer.

DATED this 5 day of November, 2021.

BUYER



Utah Open Lands, Executive Director

Seller

VRR 11-5-2021

Vince Rogers, Owner

Karen Rogers
Karen Rogers, Owner