



11 April 2023

JENNY WILSON
Salt Lake County Mayor

ROBIN B CHALHOUB
Community Services
Department Director

**PARKS & RECREATION
DIVISION**

Martin Jensen
Division Director

Salt Lake County
Government Center
2001 South State Street
Suite S4-700
Salt Lake City UT 84190
385-468-1800

Dear Mayor Jenny Wilson,

Please review and sign the attached Donation Agreement and 1006 declaration of Donation form signed by DAI Utah for park improvements at Decker Lake Park.

DAI Utah, a local real estate development group, is currently constructing residential housing directly south of Decker Lake Park. As part of their development, West Valley City is requiring they contribute to park development for their new community. Since WVC does not have a park in the vicinity of the new development, the city suggested the developer reach out to the county about contributing to the construction of amenities at Decker Lake Park.

The total amount of donation: \$540,000.

The agreement has been prepared and reviewed as to form by the District Attorney's office.

Please let me know if you have any questions or concerns.

Thank you,

A handwritten signature in cursive script that reads 'Martin Jensen'.

Martin Jensen
Division Director
Parks and Recreation

CC: Andrea De Paz
Walt Gilmore
Andrea Sorensen

**DONATION AGREEMENT
BETWEEN
SALT LAKE COUNTY AND DECKER LAKE QOZB, LLC**

This Donation Agreement is between Salt Lake County, a body corporate and politic of the State of Utah ("County") and Decker Lake QOZB, LLC, a Utah limited liability company with its principal place of business at 14034 S. 145 E STE 204, Draper, Utah 84020 ("Donor"). County and Donor may be referred to as "the parties."

RECITALS

A. Donor is constructing a multi-residential development known as H2O Lofts at approximately 2882 S. Decker Lake Drive, West Valley City, Utah 84120 (the "Development").

B. Donor desires to provide \$540,000.00 in funding (the "Donation") to the County to design and construct park amenities to include a playground, at least four pickleball courts, and at least two pavilions with picnic tables (the "Project") near the Development on property owned by the County located at about 2300 W. Research Way, West Valley City, Utah 84120 (the "Property") which Property is also known as Salt Lake County Parcel No. 15-27-101-014.

C. County wishes to accept the Donation and design and construct the Project.

THEREFORE, the parties covenant and agree as follows:

AGREEMENT

1. DONOR'S OBLIGATIONS

1.1. Within 45 days of the Effective Date, Donor will comply with the requirements and procedures set out in Salt Lake Countywide Policy 1006 seeking acceptance of the Donation by the Salt Lake County Council. The Donor will ensure that the terms and conditions of this Agreement shall be noted in the "Other provisions or restrictions" section of the Declaration of Donation form to be completed in accordance with the Salt Lake Countywide Policy 1006.

1.2. If the Salt Lake County Council accepts the Donation pursuant to the terms of this Agreement and the Declaration of Donation form, Donor will transfer the Donation to County in a single lump sum within 45 days of the Council's acceptance. If the Council rejects the Donation, this Agreement will terminate effective the date of the Council's rejection.

2. COUNTY'S OBLIGATIONS

2.1. Within eighteen (18) months of the County's receipt of Donor's Donation, County will design, complete construction, and cause the Project to be built on the Property consistent with all applicable state and local laws.

2.2. County will only use the Donation for any costs or expenses associated with design and construction of the Project.

2.3. County shall prioritize the design and construction of the amenities within the project as follows. First, County shall use the funds from the Donation to design and construct the four pickleball courts prior to constructing the remainder of the Project. Second, and as remaining funds from the Donation allow after completion of the four pickleball courts, design and construct the pavilions and picnic tables.

2.4. County will own and maintain the Project.

3. **EFFECTIVE DATE/TERM.** The date this Agreement is signed by the last party to sign (as indicated by the date accompanying that party's signature) is deemed the "Effective Date." This Agreement will Terminate upon final completion of the Project, unless otherwise terminated as provided herein.

4. **INDEPENDENT CONTRACTOR AND TAXES.** The relationship of County and Donor 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 Donor of employer and employee, partners, or joint venturers. The parties agree that their respective obligations under this Agreement are solely to the other Party. 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 Donor 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. Donor 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. Donor 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 Donor is an independent contractor.

6. **COUNTY REPRESENTATIVE.** County will appoint a County Representative to assist in the administrative management of this Agreement and to coordinate performance of the services to be provided by Donor under this Agreement.

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

8. **INDEMNIFICATION.** The Donor agrees to hold harmless and indemnify the County, its officers, agents, and employees from and against any and all actual or threatened claims, losses, damages, injuries, and liabilities of, to, or by third parties, including the Donor, its subcontractors, or the employees of either, 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, the Donor's breach of this agreement or any acts or omissions of or by the Donor, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this agreement. The Donor agrees that its duty to indemnify the County under this agreement includes litigation and court costs, expert witness fees, and any sums expended by or assessed against the County for the

defense of any claim or to satisfy any settlement, arbitration award, or verdict paid or incurred on behalf of the County.

9. **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 (as in effect at any given time). 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.

10. **NON-FUNDING CLAUSE.** County intends to request the appropriation of funds to be paid to fulfill its obligations under this Agreement. Upon thirty days written notice delivered to Donor, this Agreement may be terminated in whole or in part at the sole discretion of the County if the County reasonably determines that: (i) a change in federal or state legislation or applicable laws materially affects the ability of either party to perform under the terms of this Agreement; or (ii) that a change in the available funds affects the County's ability to perform under this Agreement. A change of available funds as used in this paragraph includes, but is not limited to, a change in federal, state, or Salt Lake County funds, whether as a result of legislative act or by order of the chief executive. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Donor, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void. Within 45 calendar days of such termination, County will return to Donor any funding from the Donation that not been obligated by the County for work in the Project in compliance with Section 2.2.

11. **NO OFFICER OR EMPLOYEE INTEREST.** It is understood and agreed that no officer or employee of the County has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer or employee of Donor or any member of their families shall serve on any County board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises Donor's operations, or authorizes funding or payments to Donor.

12. **ETHICAL STANDARDS.** Donor 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 (as in effect at any given time); or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in State statute or Salt Lake County ordinances.

13. **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 (as in effect at any given time). Donor acknowledges and understands those limitations on campaign contributions mean that any person, business, corporation, or other entity that is engaged in any contract with the County on the date of the contribution or has contracted with the County at any time during a one-year period prior to the date of the contribution 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. Donor further acknowledges that violation of those provisions

governing campaign contributions may result in criminal sanctions as well as termination of this Agreement.

14. **AFFIDAVITS**. Upon the execution of this Agreement and if requested by the County, Donor shall submit a sworn affidavit from each officer, employee, or agent of Donor who has been in contact or communicated with any officer, agent, or employee of County during the past calendar year concerning the provision of these goods and services. The affidavit shall contain the following statement:

"I do solemnly swear that neither I, nor to the best of my knowledge, any member of my firm or company, have either directly or indirectly restrained free and competitive bidding by entering into any Agreement, participated in any collusion, or otherwise taken any action unauthorized by the governing body of the County, or in violation of applicable law."

15. TERMINATION

15.1. **Termination for Default**. County may terminate this Agreement for an "Event of Default" as defined, upon written notice from County to Donor.

15.2. **Termination by Donor for Default**. Donor may terminate this Agreement for an Event of Default upon written notice from Donor to County.

15.3. **Event of Default**. As used in this Agreement, the term "Event of Default" means (a) a party fails to make any payment herein when the same becomes due and such failure continues for a period of 30 (thirty) days after written notice to the party failing to make such payment; (b) a party fails to perform any of its material obligations and such failure continues for a period of 30 (thirty) days after written notice to such defaulting party; or (c) any material representation or warranty of a party contained in this Agreement proves to be untrue or incorrect in any material respect when made.

15.4. **Force Majeure**. Neither party shall be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of that party, e.g., acts of God, fires, floods, strikes, or unusually severe weather. If such condition continues for a period in excess of 60 days, Donor or County shall have the right to terminate this Agreement without liability or penalty effective upon written notice to the other party.

15.5. **No Limitation 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.

15.6. **Termination for Convenience**. This Agreement may be terminated by County for any reason or for no reason, upon not less than 30 days' prior written notice to the Donor delivered in accordance with Section 29 stating County's intention to terminate this Agreement. Donor agrees that the County's termination for convenience will not be deemed a termination for default nor will it entitle Donor to any rights or remedies provided by law or this Agreement for breach of contract by the County or any other claim or cause of action. Notwithstanding the foregoing, within 45 calendar days of such termination for convenience by the County, County will return to Donor any funding from the Donation that not been obligated by the County for work in the Project in compliance with Section 2.2.

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.

Donor certifies it is in compliance with Utah Code Ann. 63G-27-201 (2021) and will remain in compliance for the duration of this Agreement. Any violation by Donor of applicable law shall constitute an Event of Default under this Agreement and Donor shall be liable for and hold the County harmless and indemnify the County pursuant to the terms of paragraph 9 above. Donor is responsible, at its expense, to acquire, maintain, and renew during the term of this Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Agreement.

17. **NON-DISCRIMINATION**. Donor and any agent of Donor agree that they 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 Title 49 Chapter 11 (as in effect at any given time). In addition, Donor is required to immediately notify County if a retiree of URS is the contractor; or an owner, operator, or principal of the contractor. Donor 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 AND REQUIREMENTS**. Donor agrees to comply with all federal, state, and local labor laws. Donor shall indemnify and hold County harmless against any and all claims for liability arising out of any violation of this paragraph or the laws referenced by Donor, its agents, or employees.

20. **CONFIDENTIALITY**. Donor shall hold all information provided to it by County for the purposes of its performance of this Agreement, whether provided in written or other form, in strict confidence, shall make no use thereof other than for the performance of the Agreement, and shall not release any of said information to any third party, any member of Donor’s firm who is not involved in the performance of services under the Agreement, or to any representative of the news media without prior written consent of County. Materials, information, data, reports, plans, analyses, budgets and similar documentation provided to or prepared by Donor in performance of this Agreement shall also be held confidential by Donor. County shall have the sole obligation or privilege of releasing such information as required by law.

21. **GOVERNMENT RECORDS ACCESS MANAGEMENT ACT**. Donor 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. As a result, County is required to disclose certain information and materials to the public, upon request. Donor 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 U.C.A §§ 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.

22. **ASSIGNMENT**. Donor shall not assign or transfer its duties of performance nor its rights to compensation under this Agreement, without the prior written approval of County. County reserves the right to assert any claim or defense it may have against Donor and against any assignee or successor-in-interest of Donor.

23. **SUBCONTRACTING**. Donor agrees that it shall not subcontract to provide any of the services under this agreement or execute performance of its obligations under this agreement without prior express written consent of County.

24. **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, N4-600
Salt Lake City, UT 84190-3100

DONOR: Decker Lake QOZB, LLC
Attn: Bryan Flamm
14034 South 145 East, Suite 204
Draper, UT 84020

25. **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 either party of this Agreement and pursuit of any remedy allowed by this Agreement and by law.

26. **ENTIRE AGREEMENT**. County and Donor acknowledge and agree that this Agreement constitutes the entire integrated understanding between County and Donor, 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.

27. **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.

28. **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 are 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.

29. **INTERPRETATION**. County and Donor 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.

30. **GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA**. If any GIS data is created or maintained under this Agreement, Donor agrees to comply with Countywide Policy 1013 – Standards for Geographic Information System.

31. **PAYMENT CARD DATA**. If, under this Agreement, Donor processes payment card transactions on behalf of County, Donor agrees to comply with the Payment Card Industry's Data Security Standard and Countywide Policy 1400-7 - Payment Card Industry Data Security Standard.

32. **RECITALS**. The recitals are hereby incorporated into this Agreement.

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

SALT LAKE COUNTY

Signature: _____

Print Name: _____

Title: _____

Date: _____

Division Review

Signature: Martin Jensen

Department Review

Signature: _____

Reviewed as to form and legality for Salt Lake County

David A. Johnson
2023.03.27
'00'06- 16:49:04



Signature: _____

DONOR

Decker Lake OOZB, LLC

A Utah limited liability company

Signature: _____

Print Name: BRYAN FLAMM

Title: MANAGER

Date: 4/10/2023

The individual signing above hereby represents and warrants that they are duly authorized to execute and deliver this Agreement on behalf of the Donor by authority of law and that this Agreement is binding upon the Donor. A person who makes a false representation of authority may be subject to criminal prosecution under Utah Code Ann. § 76-8-504 (1973).