

AGREEMENT
Between
SALT LAKE COUNTY
And
SPENCER MILLERBERG

This Agreement is entered into this 11 day of January, 2020, between Salt Lake County, a body corporate and politic of the State of Utah (“County”) and Spencer Millerberg (“Donor”). County and Donor may be referred to jointly as “the Parties.”

RECITALS

A. Whereas, County recognizes the extraordinary population growth on the west side of the Salt Lake Valley and anticipates further growth in the next decade; and

B. Whereas, County further recognizes a need for localized recreation amenities to keep pace with the growth and to relieve pressure on use of the Valley’s east-side trails; and

C. Whereas, the sport of mountain biking is experiencing a growth in popularity at the high school level and Utah ranks the highest nationwide in numbers of high school mountain bike riders; and

D. Whereas, although the County has a vast network of trails developed on the eastside of the Salt Lake Valley, there have only been two primitive trail systems developed on the west side in the past decade; and

E. Whereas, Donor desires to enter into an agreement with County to provide funds for County to design and construct new trails in the Butterfield Canyon area of Salt Lake County (referred to herein as the “Butterfield Trails”) and

F. Whereas, County desires to accept Donor’s contribution, subject to the terms and conditions set forth in this Agreement.

THEREFORE, in exchange for valuable consideration, including the mutual covenants contained in this Agreement, the Parties covenant and agree as follows:

1. DONOR’S OBLIGATION

Donor shall Contribute One Hundred Fifty Thousand Dollars (\$150,000.00) to County within sixty (60) days of the date County notifies Donor that it has secured all rights necessary to construct and operate the Butterfield Trails on third-party property, toward the construction of between ten and twelve miles of multi-use, non-paved trails in the Butterfield Canyon area of

Salt Lake County (“Butterfield Trails – Phase I”).

Subject to County notifying Donor that it has secured all rights necessary to construct and operate the Butterfield Trails on third-party property, Donor shall also contribute Fifty Thousand Dollars (\$50,000.00) to County no later than November 1, 2021, in a single installment toward the construction of one-way, use-specific trails in the Butterfield Canyon area of Salt Lake County (“Butterfield Trails – Phase II”)

2. COUNTY’S OBLIGATION

A. Within six months of obtaining all rights necessary to construct and operate the Butterfield Trails on third-party property, County shall commence construction of Butterfield Trails – Phase I with a qualified contractor selected according to County’s procurement policies and ordinances. If County does not commence such construction by July 1, 2022, then County shall return Fifty Thousand Dollars (\$50,000.00) to Donor.

B. Beginning no later than May 1, 2022, commence construction of the Butterfield Trails – Phase II with a with a qualified contractor selected according to County’s procurement policies and ordinances, so long as County has secured all legal rights necessary to construct said Project on property owned by third parties.

C. Seek Donor approval, which may not be unreasonably withheld, of design concepts for the Butterfield Trails projects prior to commencing construction.

D. Apply for grant funds from third-party providers to contribute toward Butterfield Trails Phase I.

E. Allow trails resulting from the Butterfield Trails Phase I project to be used for practice and races by high school mountain biking teams.

F. Complete construction of the Butterfield Trails – Phase I Project no later than December 31, 2021.

G. Complete construction of the Butterfield Trails – Phase II Project no later than December 31, 2023.

F. Upon completion of the Butterfield Trails – Phase I and Butterfield Trails – Phase II projects, own, operate, and maintain the trails according to County standards.

3. County shall incorporate the following elements into the Butterfield Trails – Phase I or the Butterfield Trails – Phase II projects (as indicated below). The County agrees that if it does not incorporate the elements identified below into the Butterfield Trails project, it shall return all funds contributed by Donor and shall not be entitled to any further contributions under this Agreement:

A. Phase I:

- bike;
- i. Alignments for hiking, equestrians, and some downhill-only mountain
- ii. Lower practice loop;
- iii. Sustainable trail building principles;
- iv. Trailhead/starting area for mountain bikes/racers to allow riders to line up four riders across; and approximately two acres of open space for pit-zones;
- v. Trailhead and access for hikers and equestrians;
- vi. Design of trails 2 to 4 main trails plus connector trails;
- vii. Four to six-mile loops for riders with inner practice loop trails for passing at start, finish and along routes;
- viii. Three hundred to six hundred-foot climbs for each loop;
- ix. Emergency medical access at intervals along the trail system;
- x. Signage for all trail systems;
- xi. Metal plaque at bottom of trail acknowledging donor contribution into perpetuity;
- xii. A minimum of ten (10) acres of parking at the base of Butterfield Canyon. A portion that can fit a minimum of fifty (50) cars must have road base/ gravel to allow for frequent parking for recreation users with the remainder allotted as overflow parking to be used 4-6X per year during races;
- xiii. Restroom facilities at the base of the trailheads;

B. Phase II:

- i. At least two smaller parking lots that can accommodate a minimum of 12 cars and trail access points at a higher elevation in Butterfield Canyon.

4. EFFECTIVE DATE/TERM

This Agreement shall be effective upon execution by both Parties and shall remain in effect until December 31, 2025. This Agreement may be extended for up to Five (5) additional one-year term extensions.

5. 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 Donor's obligations under this Agreement are solely to the County. This Agreement shall not confer any rights to third Parties unless otherwise expressly provided for under this Agreement.

6. 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.

7. COUNTY REPRESENTATIVE

County hereby appoints Walt Gilmore as 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.

8. 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.

9. STANDARD OF PERFORMANCE/PROFESSIONALISM

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

10. INDEMNIFICATION

Donor agrees to indemnify, hold harmless, and defend 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 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, Donor's breach of this Agreement.. Donor agrees that its duty to defend and indemnify the County under this Agreement includes all attorney's fees, 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.

11. 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. 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.

12. NON-FUNDING CLAUSE.

County intends to request the appropriation of funds to be paid for the performance required under this Agreement. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the County's obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the County as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Donor, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

If funds are not appropriated for a succeeding fiscal year to fund performance by County under this Agreement, County shall promptly notify Donor of said non-funding and the termination of this Agreement, and in no event, later than 30 (thirty) days prior to the expiration of the fiscal year for which funds were appropriated.

13. 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.

14. 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; 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.

15. 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. Donor 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. Donor further acknowledges that violation of those provisions governing campaign contributions may result in criminal sanctions as well as termination of this Agreement.

16. TERMINATION

16.1 Termination for Default. County may terminate this Agreement for an “Event of Default” as defined, upon written notice from County to Donor.

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

16.3 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 hereto 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.

16.4 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.

16.5 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.

16.6 Termination for Convenience. County reserves the right to terminate this Agreement, in whole or in part, at any time during the Term or any Additional Terms whenever

County determines, in its sole discretion that it is in the County's interest to do so. If County elects to exercise this right, County shall provide written notice to Donor at least 30 (thirty) days prior to the date of termination for convenience. Upon such termination, Donor shall be paid for all services up to the date of termination. 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.

17. 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 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 defend the County from and against any and all liability arising out of or connected with the violation, to include all attorney fees and costs incurred by the County as a result of the violation. 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.

18. 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.

19. LABOR REGULATIONS AND REQUIREMENTS

Donor agrees to comply with all applicable provisions of Title 34 of the Utah Code, and with all applicable federal, state and local labor laws. Donor 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 Donor, its agents or employees.

20. 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.

21. 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.

22. OWNERSHIP OF WORK PRODUCT

All work performed by County under this Agreement shall become the sole property of the County. Ownership of the work shall apply regardless of the form of the work product including, but not limited to, writings, drawings, reports, any form of video or audio, etc.

23. 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 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.

24. 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.

25. 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.

26. 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, N-4500
 Salt Lake City, Utah 84190-3100

DONOR: Spencer Millerberg
 1956 W. Taylor View Dr.
 South Jordan, UT 84095

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

[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

Date: _____

APPROVED AS TO FORM

Division Approval

By: Megan L. Smith
Megan L. Smith

By: _____
Director or Designee

Donor

By: SM

Title: Spencer Millerberg

Date: Jan 11, 2021