

License Agreement Between Salt Lake County and TreeUtah of Salt Lake City

This Agreement is between Salt Lake County, a body corporate and politic of the State of Utah (“County”) and TreeUtah of Salt Lake City, a Utah non-profit corporation, with its principal place of business at 824 S. 400 West, B121, Salt Lake City, UT 84101 (“Licensee”). County and Licensee may be referred to jointly as “the Parties.”

RECITALS

A. Whereas, County, through its Parks and Recreation Division, owns several parks throughout Salt Lake County as well as acres of undeveloped open space (collectively referred to herein as the “Property”); and

B. Whereas, Licensee is a non-profit entity with a mission to improve Utah’s quality of life for present and future generations by enhancing the environment through tree planting, education, and stewardship; and

C. Whereas, Licensee desires access to the Property to further its mission of planting trees; and

D. Whereas, County supports Licensee’s mission to plant trees and, subject to the terms and conditions of this Agreement, is willing to grant a license allowing for access over, across, under, and above the area of the Property for Licensee, its employees, volunteers and contractors to plant trees and, during the establishment period for trees planted, to water and monitor tree plantings.

AGREEMENT

NOW, THEREFORE, on the stated Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereinafter set forth, the mutual benefits to the parties to be derived here from, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

**ARTICLE I
INCORPORATED TERMS AND DEFINITIONS**

In addition to other defined terms set forth above and below, and as used throughout this Agreement, the following capitalized terms shall have the meanings indicated below:

“Establishment Period” means the 60-day long period after a tree is planted.

“Losses” mean any losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys’ fees, expert witness fees, court costs, amounts paid in

settlement, judgments, interest or other costs resulting from: (a) loss of or damage to the property of any party or third person; (b) death or personal injury to the agents of any party or to any third person; or (c) the cleanup or other requirements regarding any incident involving Hazardous Materials.

“Party” and “Parties” mean County and Licensee, respectively.

“Project” means a distinct episode in which Licensee engages tree planting at a location specified in advance and approved by the County and limited to the number and species of trees approved by County’s Representative in advance.

“Third Person” means any individual, corporation or legal entity other than County and Licensee.

“Utility” and “Utilities” mean and include all properties, facilities, utilities, crossings, encroachments, lines and similar appurtenances located within the Property by permissive or prescriptive authority including, but not limited to, pipelines, tubelines, water and gas mains, electrical conduits, wires, fiber optics, communication lines, sewer pipes, overhead wiring and supporting structures and appurtenances, and all other structures.

“Work” means planting trees, monitoring them and watering them during their Establishment Period. “Work” shall also include the removal of trees that have died before their Establishment Period has ended.

ARTICLE II USE OF THE PROPERTY; LICENSE

2.1. In consideration of the covenants, conditions and agreements herein contained, County hereby grants to Licensee, without any warranty whatsoever, a non-exclusive license (hereinafter the “License”) allowing for access over, across, under, and above the area of the Property for Licensee, its employees, volunteers and contractors to plant trees and, during the Establishment Period for trees planted, to water and monitor tree plantings. Licensee shall have no property interest whatsoever in the Property, and Licensee is granted only the License referred to herein.

2.2. Only those motorized vehicles needed to plant trees and to water them during their Establishment Period may be allowed on the Property. County expressly reserves the right to prohibit any use of the Property which is incompatible with County’s operations.

ARTICLE III PLANTING, CARETAKING & REPORTING

3.1 It is understood and agreed to by the Parties that Licensee anticipates exercising the rights conferred under this Agreement to periodically plant trees in County parks as trees become available and as Licensee has the human resource capacity to undertake the Work.

3.2 It is further understood that Licensee may not commence any Project under this Agreement before notifying a representative from County's Division of Parks and Recreation. The County, through its representative, shall be informed of the species of tree Licensee desires to plant and the number of trees to be planted. Before Licensee may commence a Project, County's Representative shall approve of the species and number of trees to be planted. Further, County's Representative shall notify Licensee of a specific location on County's Property Licensee may undertake its Project. County hereby designates Mr. Dustin Wiberg as its Representative for purposes of this Agreement.

3.3 All Work completed by Licensee on the Property shall be performed in a good and workmanlike manner in compliance with all applicable laws and ordinances, and in a safe condition. The parties acknowledge that County assumes no responsibility for work completed by Licensee, its employees, volunteers and contractors. Licensee shall ensure that its trees and Work are adequate to enable the trees to establish and not die and Licensee shall implement any necessary or appropriate features or devices to that end.

3.4 Various utilities may exist on, over and under the surface of the Property. Prior to commencing a Project, Licensee shall properly investigate and determine the location of all such Utilities within the area. Licensee shall make arrangements for the protection of all Utilities and shall plant no tree on the Property that may adversely affect any Utility.

3.5 Except as authorized in this Agreement or as may be immediately required for (and only at the actual time of) performance of any Work contemplated under this Agreement, and then only for as long as necessary to complete the Work, Licensee shall not place, or permit to be placed, any material of any kind on the Property.

3.6 Licensee shall complete its Work in compliance with all applicable requirements imposed by a Governmental Authority including, without limitation, the requirements of the Occupational Safety and Health Administration, and the Utah Department of Environmental Quality. Licensee shall also complete its Work in compliance with all applicable environmental laws. Licensee shall take all suitable precautions to prevent any interference with the operation of any County or third person installations or facilities. All costs and expenses of such violation and/or appeals shall be the sole and separate responsibility of Licensee.

3.7 If, in connection with the performance of any Work, Licensee or its Contractor damages any County facilities or improvements, Licensee shall repair or replace such facilities with the same or similar materials, if available, as reasonably required by County, consistent with applicable Federal and State laws and regulations and to the satisfaction of the County.

3.8 Upon completion of any Work by Licensee, Licensee shall restore all impacted surfaces on the Property to their prior condition including, but not limited to, replacing any soil that was removed and thoroughly compacting it level with the adjacent surface of the ground and restoring any property that Licensee disturbed or removed from the Property.

3.9 As between the parties, Licensee shall be solely responsible for the safe completion of the Work, and for any and all safety, liability and security issues necessary, as determined by the Licensee.

3.10 Within 30 days of the end of any calendar year during the Term of this Agreement, Licensee shall provide County with a summary of the plantings it made during the previous year, pursuant to this Agreement. The summary shall include: the number of trees planted; the number of volunteer hours used to plant trees; and the estimated total value of the trees planted.

ARTICLE IV LICENSEE TO BEAR ALL COSTS RELATED TO THE WORK

Licensee shall be solely responsible for any and all costs incurred with respect to any Work as described in this Agreement. Such costs shall include, without limitation, the cost of any modifications to County's Property resulting from the Work and other equipment and infrastructure that may be necessary to accommodate or facilitate the Work.

ARTICLE V IF WORK IS TO BE PERFORMED BY CONTRACTOR

If a contractor is to perform any Work contemplated in this Agreement, then the Licensee shall cause its contractor to comply with all applicable provisions of this Agreement. Any and all contractors used by Licensee to do the Work are subject to the approval of County, which approval shall not be unreasonably withheld, conditioned or delayed. Under no circumstances shall Licensee's contractor be allowed on the Property without first providing County proof of insurance. Any and all Work on the Property to be undertaken and/or completed on behalf of Licensee must be completed by a licensed contractor, and is subject to the application procedures, safety concerns, insurance, and other requirements outlined herein.

ARTICLE VI INDEMNITY AND RELEASE

6.1 Licensee acknowledges that the Property is used by County for a public park. Licensee acknowledges and agrees that as between the parties, Licensee is solely responsible for the safety of persons on or near the location of Licensee's Projects, including trespassers.

6.2 As additional consideration for this Agreement, Licensee agrees to protect, defend, release, indemnify and hold harmless County, and any affiliates, successors, contractors, officers, trustees, agents and employees of County (the "County Indemnitees") from and against any and all Losses proximately caused by: (1) the use or operation of the Property by Licensee, its agents, invitees, or the public at large; (2) the prosecution of any Work in or materially affecting the Property by Licensee or any employees, volunteers, contractors or agents of Licensee; (3) negligence in undertaking the Work by Licensee or any employees, volunteers, contractors or agents of Licensee; or (5) Licensee's breach of any provision of this Agreement.

6.3 Except to the extent that County's negligence was a contributing factor to losses incurred by Licensee, Licensee hereby releases County from, and agrees not to seek recourse against County with respect to, any claims, damages, fees, expenses or other losses proximately caused by third persons including, without limitation, third persons having licenses or other interests in the Property.

6.4 The provisions of this Article shall survive the termination of this Agreement.

6.5 County is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah ("Act"), Utah Code Ann. §§ 63G-7-101 to -904 (2017). The Parties agree that County shall only be liable within the parameters of the Act. Nothing contained in this Agreement shall be construed in any way to modify the limits of liability set forth in the Act or the basis for liability as established in the Act.

ARTICLE VII INSURANCE

7.1 County represents that it is self-insured pursuant to the provisions of Utah Code Ann. § 63G-7-801 (2017).

7.2 Licensee shall, at its sole cost and expense, secure and maintain during the duration of this Agreement, the following minimum insurance coverage:

GENERAL INSURANCE REQUIREMENTS FOR ALL POLICIES:

A. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (ii) be maintained for a period of at least three (3) years following the end of the Term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to County.

B. All policies of insurance shall be issued by insurance companies licensed to do business in the State of Utah and either:

- (i) Currently rated A- or better by A. M. Best Company,
- OR—
- (ii) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended.

C. Licensee shall furnish certificates of insurance, acceptable to County, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.

D. In the event any work is subcontracted, Licensee shall require its subcontractor, at no cost to County, to secure and maintain all minimum insurance coverages required of Licensee

hereunder.

E. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, Licensee shall provide a new certificate of insurance within thirty (30) days after being notified thereof in writing by County, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to County.

F. All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing thirty (30) days prior written notice to County in a manner approved by the Salt Lake County District Attorney or his designee.

G. In the event Licensee fails to maintain and keep in force any insurance policies as required herein, County shall have the right at its sole discretion to obtain such coverage and reduce payments to Licensee for the costs of said insurance.

7.3 REQUIRED INSURANCE POLICIES:

Licensee agrees to secure and maintain the following required policies of insurance in accordance with the general insurance requirements set forth in the preceding subsection:

A. Workers' compensation and employer's liability insurance as required by the State of Utah unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as individuals and/or as sole proprietors as well as corporations, limited liability companies, joint ventures, and partnerships. In the event any work is subcontracted, Licensee shall require its subcontractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

B. Commercial general liability insurance on an occurrence form with the County as an additional insured, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general policy aggregate. The policy shall protect the County, Licensee, and any subcontractor from claims for damages for personal injury or death, and from claims for property damage that may arise from Licensee's operations under this Agreement, whether performed by Licensee itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

C. Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, in the minimum amount of \$1,000,000 per occurrence.

7.4 Failure to maintain insurance as required shall entitle, but not require County to terminate this License immediately.

ARTICLE VIII CLAIMS AND LIENS FOR LABOR AND MATERIALS; TAXES

8.1 Licensee shall fully pay for all materials joined or affixed to the Property in connection with the Work, and for all labor performed with respect to the Work. Licensee shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee.

8.2 Licensee shall promptly pay or discharge all taxes, charges and assessments assessed or levied upon, in respect to, or on account of the Work to prevent the same from becoming a charge or lien upon the Property and so that any taxes, charges and assessments levied upon or with respect to such property shall not be increased because of any improvements, appliances, or fixtures connected therewith.

**ARTICLE IX
TERM & TERMINATION**

9.1 This License shall remain in effect for five years from the date of execution unless earlier terminated.

9.2 Termination of this Agreement for any reason shall not affect any of the rights, liabilities, indemnities or obligations of the parties which accrued prior to termination.

**ARTICLE X
SURRENDER UPON TERMINATION**

Upon termination of this Agreement howsoever, County may, but shall not be obligated to, take whatever steps County deems necessary, in County's sole discretion, to reasonably return the Property surrounding any Work Licensee has undertaken, at Licensee's sole cost and expense, to its preexisting state. Such steps may include, without limitation, the right to remove improvements. Licensee shall reimburse County for the reasonable costs incurred in any work performed under this Article within 180 days after receipt of an invoice therefor. In the event County removes Work pursuant to this Article, County shall in no manner be liable to the Licensee or any third party for any damage sustained by Licensee, or for any third-party claims made for or on account thereof. The provisions of this Article shall survive the termination of this Agreement.

**ARTICLE XI
AGREEMENT NOT TO BE ASSIGNED**

Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or the License herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of County, shall terminate this Agreement.

ARTICLE XII

SUCCESSORS AND ASSIGNS

Subject to the provisions of the previous Article hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

ARTICLE XIII SEVERABILITY

This Agreement is executed by the parties under current interpretation of any and all applicable federal, state, county, municipal, or other local statutes, ordinances, or laws. Furthermore, each and every separate division hereof shall have independent and severable status from each other division, or combination thereof, for the determination of legality, so that if any separate division herein is determined to be unconstitutional, illegal, in violation of trade or commerce, in contravention of public policy, void, invalid or unenforceable for any reason, that separate division shall be treated as a nullity but such holding or determination shall have no effect upon the validity or enforceability of each and every other division, or other combination thereof.

ARTICLE XIV NOTICES

Except where other forms of notice are specifically provided under the provisions of this Agreement, all notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the addresses set forth herein. Addresses for notice may be changed by giving ten (10) days written notice of the change in the manner set forth herein.

In the case of a notice or communication to County:

Attention: Contracts Administrator
 Salt Lake County
 2001 South State, Suite, N-4500
 Salt Lake City, Utah 84190-3100

With Copy to: Attn: Associate Director of Park Planning
 Division of Parks and Recreation
 Salt Lake County
 2001 S. State Street, S4-700
 Salt Lake City, Utah 84190

In the case of a notice or communication to Licensee:

TreeUtah of Salt Lake City.
Attn: 740 South 300 West
Salt Lake City, UT 84104

Or addressed in such other way with respect to any party as that party may, from time to time, designate in writing dispatched as provided in this Article. All notices, demands, requests, or other communications under this Agreement shall be deemed properly served and to have been duly given: (a) on the date of delivery, if delivered personally on the party to whom notice is given; or (b) on receipt, if mailed to the party to whom notice is to be given by registered or certified mail, return receipt requested, postage prepaid and properly addressed.

**ARTICLE XV
NO IMPLIED WAIVER.**

The waiver by County of Licensee's breach of any condition, covenant or agreement herein contained shall not impair any future ability of County to avail itself of any remedy or right set forth in this Agreement. Neither the right of supervision by County, nor the exercise or failure to exercise such right, nor the approval or failure to disapprove, nor the election by County to repair or reconstruct all or any part of the work contemplated by this Agreement shall be deemed a waiver of any of the obligations of Licensee contained or set forth in this Agreement.

**ARTICLE XVI
ENTIRE AGREEMENT – COUNTERPARTS**

This Agreement shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by the authorized representatives of each party. This Agreement may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

**ARTICLE XVII
FORUM SELECTION AND CHOICE OF LAW**

This Agreement shall be construed and interpreted under the laws of the State of Utah and the parties agree that any action or proceeding brought concerning this Agreement may be brought only in the courts of Salt Lake County, Utah, and each party hereto hereby consents to the jurisdiction of such courts.

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

Salt Lake County:


Signature: _____
Mayor or Designee

Date: _____

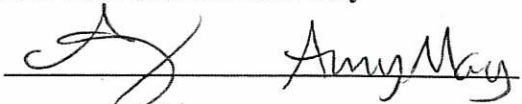
Division Approval

Signature:  _____
Director or Designee

Reviewed as to form and legality

Digitally signed by David A. Johnson
Signature: 'Date: 2022.06.27 15:21:11 -06'00 

Licensee: TreeUtah of Salt Lake City

Signature:  _____

Title: Executive Director

Date: 9-9-22

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