

PARC TAX RECIPIENT AGREEMENT
Cultural Organization

This Agreement is executed in duplicate this ____ day of _____, 2016, by and between the City of American Fork, a municipal corporation and political subdivision of the State of Utah, with its principal offices located at 51 East Main Street, American Fork, Utah 84003, (the “City”), and _____ (the “Recipient”).

RECITALS

WHEREAS, Section 59-12-1401(et.seq.) of the Utah Code allows cities to impose a 0.1% sales tax to finance (1) the ongoing operational expenses of specified types of cultural arts organizations, and (2) specified types of publicly owned recreational and cultural facilities; and

WHEREAS, in November, 2014, American Fork City voters voted in favor of imposing the 0.1% sales tax to support cultural arts and recreation in American Fork (the “Parks, Arts, Recreation Culture Tax” or “PARC Tax”); and

WHEREAS, on December 9, 2014, the American Fork City Council enacted the PARC Tax by ordinance, for a term of eight years; and

WHEREAS, the American Fork City Council adopted policies and procedures governing the distribution of PARC Tax revenues, including eligibility requirements, application procedures and award procedures; and

WHEREAS, the Recipient applied for PARC Tax revenues from the City and went through a thorough application review process by the City; and

WHEREAS, on _____, the American Fork City Council enacted an ordinance authorizing the distribution of Fiscal Year 20__/20__ (“FY 20__/20__”) PARC Tax revenues to various entities, contingent on the entities entering into a contract with the City governing the distribution and use of the PARC Tax revenues; and

WHEREAS, the American Fork City Council authorized the distribution of some of the FY 20__/20__ PARC Tax revenues to Recipient; and

WHEREAS, the purpose of this Agreement is to establish the terms for Recipient’s receipt and use of FY 20__/20__ PARC Tax revenues.

NOW, THEREFORE, in consideration of the mutual covenants of the parties as hereinafter set forth, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the City and Recipient mutually agree as follows:

1. **Term.** The term of this Agreement shall be from July 1, 20__ to September 1, 20__ (the “Term”). Either party may enforce its rights under this Agreement after the expiration of the Term and/or after termination of the Agreement.
2. **PARC Tax Revenues.** The City agrees to pay Recipient \$_____ of the FY 20__/20__ PARC Tax revenues (the “Funds”).
 - 2.1. **Payment Time.** The City shall pay the Funds to Recipient within fifteen (15) days of the date that both parties sign this Agreement, but in no event sooner than July 1, 20__.
 - 2.2. **Interest on Funds.** Recipient agrees that any interest or dividends earned on the Funds will be treated as part of Recipient’s grant, and will be used in the same manner that Funds may be used pursuant to this Agreement.
 - 2.3. **No Transfer or Assignment.** Recipient acknowledges that it shall not transfer or assign the Funds to another entity, but shall use them for the purposes set forth in this Agreement.
 - 2.4. **Future Years.** Recipient acknowledges that future years’ PARC Tax revenues will be awarded based on merit and availability of funds. Receipt of PARC Tax Funds for FY 20__/20__ does not guarantee PARC Tax funding for Recipient in future years.
 - 2.5. **Compliance with Agreement.** Recipient agrees to comply with all requirements of this Agreement.
3. **Use of PARC Tax Revenues.** Recipient acknowledges that the use of PARC Tax revenues is regulated by State law, City ordinance, and the City’s policies and procedures. Recipient agrees to the following regarding Recipient’s status and the use of the Funds:
 - 3.1. **Recipient Status.** Recipient makes the following certifications regarding its status and agrees to maintain such status for the entire Term.
 - 3.1.1. **Status as Cultural Organization.** Recipient certifies that it is a private nonprofit organization having as its primary purpose the advancement and preservation of (i) natural history, (ii) art, (iii) music, (iv) theater, (v) dance, or (vi) cultural arts, including literature, a motion picture, or storytelling, and that it will maintain such status for the entire Term. Recipient certifies that it is *not* (a) an agency of the state, (b) a political subdivision of the state, (c) an educational institution whose annual revenues are derived more than 50% from state funds, or (d) a radio or television broadcasting network or station, cable communications system, newspaper or magazine.
 - 3.1.2. **Status as an American Fork Entity.** Recipient certifies that it has a significant presence in the City of American Fork, that it manages and presents in the City of American Fork, and that it will maintain such status for the entire Term.

- 3.1.3. **Status as Non-profit.** Recipient certifies that it is a private non-profit entity, and that it will retain such status for the entire Term. For purposes of this Agreement, “non-profit” shall mean an organization or corporation that is not organized, created, operated or maintained to generate a profit or distribute income to its members, directors, or officers.
- 3.1.4. **Status as 501(c)(3).** Recipient certifies that it is currently certified by the Internal Revenue Service as a qualified 501(c)(3) organization, and that it will retain such status for the entire Term.

3.2. **Use of Funds.** Recipient agrees to the following regarding its use of the Funds:

- 3.2.1. **Allowed Use of Funds.** Recipient agrees to use the Funds for the specific purposes, programs and activities set forth on Exhibit “A”, which is attached hereto and incorporated herein by reference. No other uses of the Funds are allowed, unless the Recipient receives prior written approval from the City. Recipient shall use the Funds during the Term.
- 3.2.2. **General Legal Requirements for Use of Funds.** Recipient acknowledges that State law, City ordinance, and City policies govern the use of PARC Tax revenues. Without expanding Recipient’s allowed uses of the Funds set forth in Section 3.2.1, Recipient agrees that it will comply with the following general requirements regarding the use of the Funds:
 - 3.2.2.1. **Qualifying Expenditures.** Recipient agrees that the Funds will be used to help defray Recipient’s operating expenses during the Term.
 - 3.2.2.2. **Non-qualifying Expenditures.** Recipient agrees that none of the Funds shall be used for any of the following purposes:
 - 3.2.2.2.1. **Capital Construction Costs.** Capital construction expenses, including capital acquisition, improvements to real property or depreciation of real property;
 - 3.2.2.2.2. **Endowment.** Payments into an endowment corpus;
 - 3.2.2.2.3. **Non-American Fork.** Expenditures for programs conducted outside of the City of American Fork;
 - 3.2.2.2.4. **Non-Public.** Activities not available to the general public;
 - 3.2.2.2.5. **Fundraising.** Fundraising expenses related to capital or endowment campaigns;
 - 3.2.2.2.6. **Loan Payments.** Repayments of loans and/or interest thereon;

- 3.2.2.2.7. **Lobbying.** Expenditures for direct political lobbying on any level;
 - 3.2.2.2.8. **Grants.** Grants, meaning the distribution of funds to outside groups, institutions, organizations or other units;
 - 3.2.2.2.9. **Bad Debt.** Bad debt expense;
 - 3.2.2.2.10 **Tax Penalties.** Any type of tax penalty;
 - 3.2.2.2.11 **Unrelated Business Income Tax.** Any activities that would be subject to the federal unrelated business income tax;
 - 3.2.2.2.12 **Other Expenses.** Other expenses not related to Recipient’s primary cultural purpose and any expenses not listed on Exhibit “A” unless approved by the City in writing.
- 3.2.3. **Ethics Act.** Recipient agrees that no Funds or proceeds from the Funds shall be made available to any employee, elected official or appointed officer of the City, and that the Funds will not be used in violation of the Municipal Officers’ and Employees’ Ethics Act (U.C.A. §10-3-1301, et. seq.).
4. **Credit to PARC Program.** To help American Fork residents recognize how PARC Tax revenues are being spent, Recipient agrees to provide credit to the PARC Program as follows:
- 4.1. **PARC Logo.** Recipient shall use its best efforts to ensure that all playbills, advertisements, brochures, flyers, banners, news releases, programs, publications, and other printed and electronic materials describing activities or events that are funded in full or in part by PARC Tax revenues, bear the PARC logo.
 - 4.2. **Size of PARC Logo.** Recipient will use its best efforts to utilize the PARC logo in a size and manner that is easily identified. The PARC logo should not be smaller than 1" x 1.25" in size.
 - 4.3. **Announcement.** If Recipient provides waived or discounted admission with PARC Funds, Recipient shall publicly announce (in some manner) that the event or activity has been sponsored by the City of American Fork PARC Program.
 - 4.4. **Copy of Programs to City.** The Recipient shall provide the City with a copy of all programs and other printed materials in which the Recipient acknowledges the use of PARC Tax funding. Recipient shall provide the programs and other printed materials to the City with the written reports described in Section 5.1.
 - 4.5. **Copy of Press Releases to City.** The Recipient shall provide the City with a copy of all press releases and other public relations materials in which Recipient acknowledges the use of PARC Tax funding. Recipient shall provide the press

releases and other public relations materials to the City with the written reports described in Section 5.1.

5. **Reporting/Audit Requirements.**

5.1. **Written Reports.** Each Recipient shall submit to the City a written report (the “Final Report”) detailing how it expended the Funds during the Term. The Recipient shall submit the Final Report on or before August 31, 20___. Recipient agrees to completely and accurately provide all information requested by the applicable report form.

5.2. **Effect on Future Funding.** Recipient acknowledges that future PARC funding may be withheld from Recipient due to inadequate, incomplete, or non-submitted reports.

5.3. **Presentation to City Council.** If requested by the City Council, Recipient agrees to make a presentation to the City Council regarding how Recipient used the Funds and how American Fork residents benefitted from Recipient’s use of the Funds.

5.4. **Records.** The Recipient agrees to keep and maintain detailed and accurate records of its use of all Funds that it receives pursuant to this Agreement and its compliance with the requirements of this Agreement. Recipient further agrees to retain such records and to make them available for review by the City or the City’s representatives as the City may request. Recipient shall provide the City with copies of any records regarding Recipient’s use of the Funds and Recipient’s compliance with this Agreement, if requested by the City. Recipient shall maintain all records related to its use of the Funds and its compliance with this Agreement for at least five (5) years from the end of the Term. To the extent that any of the records become records of the City, Recipient acknowledges that the records will be subject to the requirements of the Utah Government Records Access and Management Act (GRAMA). If the records reveal that Recipient is in violation of this Agreement, the City may make such use and disclosure of the records as necessary to protect its rights under this Agreement and to protect the public’s interest in the proper expenditure of public funds.

5.5. **Record Inspections/Audits.** The City reserves the right to inspect the Recipient’s financial records and/or audit Recipient’s use of the Funds to ensure that Recipient has used the Funds as required by this Agreement and applicable law. Recipient agrees to cooperate with the City and the City’s representatives in the performance of the inspection and/or audit.

6. **Termination of Agreement.** Either party may terminate this Agreement based on the other party’s failure to perform the terms of the Agreement. (Recipient may terminate for non-payment by the City and the City may terminate for Recipient’s failure to comply with any of the requirements of this Agreement.) Termination shall occur as follows:

6.1. **Written Notice.** The terminating party shall give the other party written notice of its intent to terminate and of the grounds for the termination (the “Notice of Default”).

The terminating party shall deliver the Notice of Default by United States mail, postage prepaid and registered or certified with return receipt requested, or by delivery by a nationally recognized over-night delivery service.

- 6.2. **Cure.** Following receipt of the Notice of Default, the noticed party shall have thirty (30) days to cure the default described in the Notice of Default. If the noticed party cures the default to the satisfaction of the terminating party, then the parties shall continue performing under this Agreement.
 - 6.3. **Termination.** If the noticed party fails to cure the default as described in paragraph 6.2, then the terminating party may, without prejudice to any other rights or remedies of that party, terminate this Agreement.
 - 6.4. **Unspent Funds.** If the City terminates this Agreement based on Recipient's failure to comply with any of the terms of the Agreement, Recipient shall immediately deliver to the City any unused or unspent Funds, including interest or dividends earned on the Funds. Recipient shall also, if applicable, return expended funds to the City pursuant to Section 7 of this Agreement.
7. **Return of Funds.** Recipient shall return to the City (1) the dollar amount of any Funds not used as required by this Agreement, (2) the dollar amount of any Funds used contrary to the requirements of this Agreement, and (3) the dollar amount of any Funds expended after Recipient failed to meet any of the Recipient Status requirements listed in Section 3 of this Agreement. If Recipient is required to return Funds to the City, the Recipient shall also return to the City any interest or dividends earned on the Funds. The City may request a return of Funds at any time, including after expiration of the Term or termination of the Agreement. The City's right to a return of Funds is in addition to other rights and remedies that may be available to the City under law, equity, or this Agreement.
 8. **Indemnification.** The Recipient shall indemnify and hold the City and its officers, officials, employees, agents and volunteers harmless from and against all claims, damages, losses and expenses (including attorney's fees), arising out of or resulting from the Recipient's acts or failures to act in performing this Agreement. The Recipient shall not be liable for the City's own negligent acts.
9. **General Provisions.**
 - 9.1. **Lawful Agreement.** The parties represent that they have lawfully entered into this Agreement, having complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation.
 - 9.2. **Entire Agreement.** This Agreement represents the entire agreement of the parties and supersedes and replaces all prior understandings and agreements of the parties, whether written or oral, related to the use of City funds or PARC tax revenues to support Recipient's operations or activities.
 - 9.3. **Utah Law.** This Agreement shall be interpreted pursuant to Utah law.

- 9.4. **Time of Essence.** Time shall be of the essence of this Agreement.
- 9.5. **Attorney's Fees.** If any party retains, uses or consults an attorney because of the default, breach or failure to perform of any other party to the Agreement, or to enforce or defend its rights under this Agreement, then the non-breaching or non-defaulting party shall be entitled to a reasonable attorney's fee, whether or not the matter is actually litigated.
- 9.6. **Interpretation of Agreement.** Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include any other and all genders. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.
- 9.7. **No Presumption.** All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any Court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.
- 9.8. **Amendments.** This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.
- 9.9. **No Assignment.** No party shall pledge or assign this Agreement without the prior written consent of the other party.
- 9.10. **Binding Agreement.** This Agreement shall be binding on the heirs, successors, administrators and assigns of each of the parties.
- 9.11. **Separate Entities.** The parties acknowledge that the City and Recipient are independent entities. Recipient does not represent the City or have authority to act on behalf of the City. Neither party shall hold itself out as a representative or agent of the other.

[Signature Page Follows]

SIGNED and ENTERED INTO this _____ day of _____, 201____.

CITY OF AMERICAN FORK

By: James H. Hadfield, Mayor

ATTEST:

Terilyn Lurker, City Recorder

RECIPIENT

By:
Its:

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this _____ day of _____,
201____, by _____.

NOTARY PUBLIC

(Seal)
My commission expires: _____
Residing at: _____