**State of Utah DGO/DFCM Legislative Pass-Through Funding Agreement for the Weber County Sports Complex Ice Sheet DFCM Project Number 20400300**

AGREEMENT BETWEEN the Division of Facilities Construction and Management of the Department of Government Operations (hereinafter “DFCM”) and the Weber County Sports Complex Ice Sheet (hereinafter “Recipient.”)

Amount of Funding: $800,000

Authorizing Legislation: 2022 House Bill #3, Item #158; Utah Code 63J-1-220

Pursuant to the authorizing Legislation, DFCM hereby agrees to provide $800,000 to Recipient for the following purpose: Weber County Sports Complex Ice Sheet Expansion & Renovation Design.

In consideration of the funds to be received by Recipient, the Parties (DFCM and Recipient) agree to the following:

1. Recipient agrees to only use the funds for the purpose described above. If Recipient does not use the funding in accordance with this Agreement, the State of Utah and DFCM reserve all rights in law and equity to obtain a return of the funding, including the legal rate of interest and reasonable attorney fees and costs expended in obtaining the return of such funding. Prior to any request for a return of the funds, DFCM will provide a letter to Recipient. If the Recipient fails to recommit the funding in writing for the purpose described in this Agreement and commence curative action within ten (10) days of receipt of the letter from DFCM requesting such return, then the Recipient shall immediately return the funds that were not properly used for the purpose described in this Agreement along with the reasonable costs and attorney fees incurred by DFCM in its effort to recapture the funds; all as specified in said DFCM letter.

2. Recipient shall provide an annual written description and an itemized report to DFCM (“WDIR”), with each WDIR to be delivered in writing to DFCM at 4315 S. 2700 W., 3rd Floor Taylorsville, UT 84129, Attn. Dave Williams no later than October 1st for each year including a final WDIR for the year of which the funds are completely expended. Said WDIR provided by the Recipient shall include an itemized report detailing the description of the purpose of the funds, the expenditure of the state money, or the intended expenditure of any state money that has not been spent as well as a final written itemized report when all the state money is spent. The WDIR shall be in sufficient detail to identify how the pass-through funds are being used by the Recipient. The following are examples of the minimum requirements of the WDIR:

(a) A detailed description of goods or services provided by the Recipient. The description should provide meaningful information on what is to be accomplished with the funds provided.

(b) The total dollar amount provided and expended.

(c) For each activity, a financial report at the category level of expenditure of how the funds are expended (i.e., personnel services, in-state travel, out-of-state travel, current expense, etc.).

3. DFCM reserves the right to request additional detail in the WDIR and Recipient shall comply promptly with such additional detail.

4. DFCM shall comply with any procurement process required for the transfer of funds when applicable. If the Recipient has been identified by the Legislature or if the funds are not for a procurement item for DFCM or the State of Utah, then the Recipient shall comply with all conditions of the provisions of the funds as specified by the Utah Legislature and comply with any procurement laws that may apply or be set forth in such conditions. The Division of Purchasing and General Services shall be consulted in regard to any questions regarding the procurement law requirements.

**5. LAWS AND REGULATIONS:** At all times during this Agreement, Recipient and all goods obtained and/or services performed pursuant to this Agreement shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If the Recipient receives federal funds, either in whole or in part, then any federal regulation related to the federal funding will supersede any conflicting provision in this Agreement.

**6. RECORDS ADMINISTRATION:** Recipient shall maintain or supervise the maintenance of all records necessary to properly account for Recipient’s performance and the payments made by DFCM to Recipient under this Agreement. These records shall be retained by Recipient for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Recipient agrees to allow, at no additional cost, the State of Utah, federal auditors, and/or DFCM staff, access to all such records.

**7. NOT PART OF STATE OR DFCM:** Recipient, in its performance of services or provisions of goods with the funds received pursuant to this Agreement, shall act in an independent capacity and not as officers or employees or agents of DFCM or the State of Utah. Recipient’s representations or performance shall in no way lead to any liability or responsibility of DFCM or the State of Utah.

 **8.** **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Immediately upon written notice delivered to Recipient, this Agreement and/or any transfer of funds under this Agreement may be reduced, terminated and/or modified in whole or in part at the sole discretion of DFCM, if DFCM 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 Recipient’s financial circumstance materially affects the ability of Recipient to perform under this Agreement; or (ii) that a change or probable change in available funds affects DFCM’s ability to pay under this Agreement. A change or probable change in available funds as used in this paragraph includes, but is not limited to, a change or probable change in Federal or State funding, whether as a result of a legislative act, a legislative failure to act, or by order of the President or the Governor. If a written notice is delivered under this paragraph 8, DFCM and the State of Utah will not be liable for any funding, performance, commitments, compensatory, consequential, or liquidated damages, penalties, expenses and/or costs of any nature whatsoever arising under and/or related to this Agreement and/or arising out of, related to and/or caused by a change or probable change in available funds. Recipient acknowledges and agrees that the Utah Legislature may modify, terminate and/or reduce funding under this Agreement at any time and any actions taken by Recipient under this Agreement in reliance on the funding currently provided herein is at Recipient’s sole risk.

**9. PUBLIC INFORMATION:** Recipient agrees that this Agreement, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah’s Government Records Access and Management Act (GRAMA). Recipient gives DFCM and the State of Utah express permission to make copies of this Agreement, related sales orders or documents of any sort, related pricing documents, and invoices in accordance with GRAMA. DFCM and the State of Utah are not obligated to inform Recipient of any GRAMA requests for disclosure of this Agreement, related purchase orders or documents of any sort, related pricing documents, or invoices.

**10. ASSIGNMENT:** Recipient may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Agreement, in whole or in part, without the prior written approval of DFCM.

**11. DISPUTE RESOLUTION:** Prior to either Party filing a judicial proceeding, the Parties agree to participate in the mediation of any dispute. DFCM, after consultation with Recipient, may appoint an expert or panel of experts to assist in the resolution of a dispute. If DFCM appoints such an expert or panel, DFCM and Recipient agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

**12. SEVERABILITY:** Subject to paragraph 8, to the extent the purpose of the funds provided by the Utah Legislature can still be reasonably accomplished, the invalidity or unenforceability of any provision, term, or condition of this Agreement shall not affect the validity or enforceability of any other provision, term, or condition of this Agreement, which shall remain in full force and effect.

**13.** **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties and supersedes any and all other prior and contemporaneous agreements and understandings between the Parties, whether oral or written.

**14.** **LAWS AND VENUE.** This Agreement shall be interpreted under the laws of the State of Utah. Venue for any legal proceeding shall be in Salt Lake County, State of Utah.

Each signatory below represents that he/she has the full authorization to enter into this Agreement and complete the duties and responsibilities identified in this Agreement.

[signature page to follow]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DFCM Date

Approved as to form:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Assistant Attorney General

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approved as to Availability of Funds

DFCM, State of Utah

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECIPIENT Date

Weber County

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Departmental Approval Date

Weber County Culture, Parks, and Recreation

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest

**October 17, 2022**

**To: DFCM**

**Re: Commitment to Funding Request supporting State of Utah DGO/DFCM Legislative Pass-Through Funding Agreement for the Weber County Sports Complex Ice Sheet DFCM Project Number 20400300**

Weber County requests $800,000 from DFCM to be used as Pass Through Funding through DFCM Project Number 20400300 to be paid to Contract 2022-04-07 between Weber County and Elliott Workgroup to complete Phase 2 Design Documents to be used at a later date to renovate and expand Weber County Sports Complex Ice Sheet and make the venue “Games Ready” as described in the Olympic Readiness Initiative 2022 House Bill #3, Item #158; Utah Code 63J-1-220.

As agreed upon between Weber County and the Salt Lake - Utah Committee for the Games as referenced in Contract # 2022-07-13 signed by Salt Lake- Utah Committee For The Games President & CEO Fraser Bullock and informal documents received by Colin Hilton, President & CEO of the Olympic Legacy Foundation and acting representative of the Olympic Readiness Initiative 2022 House Bill #3, Item #158; Utah Code 63J-1-220 the State and Local Funding is to be divided and contributed in the following terms by the State of Utah and Local Funding:

2022

State: $800,000 for design docs paid for by DGO/DFCM Legislative Pass-Through Funding Agreement for the Weber County Sports Complex Ice Sheet DFCM Project Number 20400300, also referenced as Phase 2 of our existing Elliot Work Group Contract # 2022-04-07.

Local funding: $0

2023

State: $2 Million

Local Funding: $0

2024

State: 3.2 Million

Local funding: $4 Million

Salt Lake- Utah Committee For The Games may request additional funding through the Utah State Legislature during the 2023 or any future session to complete a North-End expansion which includes more seating than the initial 1,300 requested be added to the Facility. The financial responsibility of this specific portion of the Facility will be the responsibility of Salt Lake- Utah Committee For The Games and may be paid using State of Utah Legislative awarded funds, privately contributed funds, or existing funds held by Salt Lake- Utah Committee For The Games or it’s associates.

The State of Utah Legislature may also award additional funds to be received by Weber County and held for pass-through funding by DGO/DFCM via the 2022 Olympic Readiness Initiative, future Olympic Readiness Initiative requests and Weber County via their legislative session, or any regular or special legislative session held in the future, to reduce the cost of goods and services as they relate to an expansion and remodel of the Facility.

The Facility is experiencing a heavy and immediate need for locker room remodel, including but not limited to refurbishing locker room spaces to be used by girls playing in Weber County Programs and visiting the Facility. Weber County may begin locker room remodel in 2023 to provide safe and equitable facilities for girl’s players and Facility visitors.

A second heavy and immediate need for the Facility is replacing aging and unsafe Facility mechanical and ice plant equipment and systems. A mechanical and Ice Plant equipment analysis has been completed by Elliot Workgroup and its associates and a comprehensive list of freestanding equipment and Facility systems may be used to begin replacing equipment and systems at the Facility.

In the event that a successful 2030 or 2034 Olympic Games Bid is not furnished, Weber County may voluntarily elect to continue with, or suspend actual remodel and construction until an appropriate date. Per 2022 House Bill #3, Item #158; Utah Code 63J-1-220, DFCM may receive $6 Million in funds from the State of Utah and hold these funds in their entirety in the case the County elects to begin or complete construction on the Facility at an appropriate time as it relates to the Facilities greatest need or a successful 2030 or 2034 Olympic Game Bid.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECIPIENT Date

Weber County

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Departmental Approval Date

Weber County Culture, Parks, and Recreation

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest