

# COTTONWOOD HEIGHTS

## ORDINANCE NO. 224-A

### AN ORDINANCE APPROVING A GENERAL PLAN AMENDMENT FOR REALTY AT 8559-8595 SOUTH WASATCH BLVD.

**WHEREAS**, the “Municipal Land Use, Development, and Management Act,” UTAH CODE ANN. §10-9a-101 *et seq.*, as amended (the “Act”), provides that each municipality shall prepare and adopt a comprehensive, long-range general plan; and

**WHEREAS**, the Act requires the municipality’s planning commission to prepare the general plan and submit it to the municipality’s legislative body; and

**WHEREAS**, the Act also provides certain procedures for the municipality’s legislative body to adopt and amend the general plan; and

**WHEREAS**, on 26 July 2005, following full compliance with the procedures for formulation, public hearing and recommendation specified in UTAH CODE ANN. §§10-9a-401 through -404, the city council (the “Council”) of the city of Cottonwood Heights (the “City”) enacted its Ordinance No. 24 adopting a general plan (with all previous amendments, the “Plan”) for the City; and

**WHEREAS**, as authorized by statute, the Plan includes a land use element and an official map (collectively, the “*Land Use Element*”) allocating to each parcel of land in the City a specific land use designation authorized by the Plan; and

**WHEREAS**, in response to an application (the “*Application*”) by Christian and Shellee Neff to amend (the “*Amendment*”) the Land Use Element affecting certain realty located at approximately 8559-8595 South Wasatch Blvd. in the City from Low Density Residential to Medium Density Residential, on 18 June 2014, following all required notices, a public hearing was held before the Planning Commission concerning the proposed Amendment, where citizens were given the opportunity to provide written or oral comment concerning the Amendment; and

**WHEREAS**, a photocopy of the Amendment to the Land Use Element of the Plan proposed by the Application is attached as an exhibit to this ordinance and is incorporated herein by this reference; and

**WHEREAS**, on 18 June 2014, following the public hearing on the Amendment, the Planning Commission unanimously voted to recommend that the Council deny the Amendment, and thereafter recommended that the Council deny the Amendment; and

**WHEREAS**, the Council met in regular meeting on 8 July 2014 to consider, among other things, approving and adopting the Amendment to the Land Use Element of the Plan; and

**WHEREAS**, at such public meeting, the Council accepted additional public comment concerning the Amendment; and

**WHEREAS**, after careful consideration of the recommendations of the Planning Commission, the comments at the public hearings and public meetings, and other pertinent information, and otherwise being fully advised, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to amend the Plan by adopting the Amendment to the Land Use Element as proposed by the Application, and to ratify the Plan, as so amended, as the City's general plan;

**NOW, THEREFORE, BE IT ORDAINED** by the city council of the city of Cottonwood Heights as follows:

Section 1. ***Adoption of New Plan.*** The Council hereby adopts the attached Amendment to the Land Use Element, and hereby ratifies the Plan, as so amended, as the City's general plan. From and after the effective date of this ordinance (this "*Ordinance*"), the Plan shall be deemed amended as specified by the Amendment for all purposes.

Section 2. ***Future Amendment of General Plan.*** Pursuant to the authority granted in the Act, the Council shall have, and hereby expressly reserves, the right to hereafter further amend the Plan at any time or from time to time hereafter for any purpose upon recommendation by the Planning Commission following all appropriate public notices and hearings required by the Act.

Section 3. ***Action of Officers.*** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this Ordinance, whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 4. ***Severability.*** All parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 5. ***Repealer.*** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 6. ***Effective Date.*** This Ordinance, assigned no. 224-A, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's Recorder, or such later date as may be required by Utah statute.

**PASSED AND APPROVED** this 8<sup>th</sup> day of July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr., Mayor**

**ATTEST:**

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**Kory Solorio**, Recorder

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___	Nay ___
Michael L. Shelton	Yea ___	Nay ___
J. Scott Bracken	Yea ___	Nay ___
Michael J. Peterson	Yea ___	Nay ___
Tee W. Tyler	Yea ___	Nay ___

**DEPOSITED** in the Recorder's office this 8<sup>th</sup> day of July 2014.

**POSTED** this \_\_\_ day of July 2014.

# COTTONWOOD HEIGHTS

## ORDINANCE NO. 224-D

### AN ORDINANCE DENYING A GENERAL PLAN AMENDMENT FOR REALTY AT 8559-8595 SOUTH WASATCH BLVD.

**WHEREAS**, the “Municipal Land Use, Development, and Management Act,” UTAH CODE ANN. §10-9a-101 *et seq.*, as amended (the “*Act*”), provides that each municipality shall prepare and adopt a comprehensive, long-range general plan; and

**WHEREAS**, the Act requires the municipality’s planning commission to prepare the general plan and submit it to the municipality’s legislative body; and

**WHEREAS**, the Act also provides certain procedures for the municipality’s legislative body to adopt and amend the general plan; and

**WHEREAS**, on 26 July 2005, following full compliance with the procedures for formulation, public hearing and recommendation specified in UTAH CODE ANN. §§10-9a-401 through -404, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) enacted its Ordinance No. 24 adopting a general plan (with all previous amendments, the “*Plan*”) for the City; and

**WHEREAS**, as authorized by statute, the Plan includes a land use element and an official map (collectively, the “*Land Use Element*”) allocating to each parcel of land in the City a specific land use designation authorized by the Plan; and

**WHEREAS**, in response to an application (the “*Application*”) by Christian and Shellee Neff to amend (the “*Amendment*”) the Land Use Element affecting certain realty located at approximately 8559-8595 South Wasatch Blvd. in the City from Low Density Residential to Medium Density Residential, on 18 June 2014, following all required notices, a public hearing was held before the Planning Commission concerning the proposed Amendment, where citizens were given the opportunity to provide written or oral comment concerning the Amendment; and

**WHEREAS**, a photocopy of the Amendment to the Land Use Element of the Plan proposed by the Application is attached as an exhibit to this ordinance and is incorporated herein by this reference; and

**WHEREAS**, on 18 June 2014, following the public hearing on the Amendment, the Planning Commission unanimously voted to recommend that the Council deny the Amendment, and thereafter recommended that the Council deny the Amendment; and

**WHEREAS**, the Council met in regular meeting on 8 July 2014 to consider, among other things, approving and adopting the Amendment to the Land Use Element of the Plan; and

**WHEREAS**, at such public meeting, the Council accepted additional public comment concerning the Amendment; and

**WHEREAS**, after careful consideration of the recommendations of the Planning Commission, the comments at the public hearings and public meetings, and other pertinent information, and otherwise being fully advised, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to deny the Amendment to the Land Use Element as proposed by the Application, due, *inter alia*, to the incompatibility of the land use proposed by the Application with surrounding land uses;

**NOW, THEREFORE, BE IT ORDAINED** by the city council of the city of Cottonwood Heights as follows:

Section 1. **Denial of Amendment.** The Council hereby denies the proposed Amendment to the Land Use Element.

Section 2. **Future Amendment of General Plan.** Pursuant to the authority granted in the Act, the Council shall have, and hereby expressly reserves, the right to hereafter amend the Plan at any time or from time to time hereafter for any purpose upon recommendation by the Planning Commission following all appropriate public notices and hearings required by the Act.

Section 3. **Action of Officers.** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this Ordinance, whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 4. **Severability.** All parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 5. **Repealer.** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 6. **Effective Date.** This Ordinance, assigned no. 224-D, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's Recorder, or such later date as may be required by Utah statute.

**PASSED AND APPROVED** this 8<sup>th</sup> day of July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr., Mayor**

**ATTEST:**

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**Kory Solorio**, Recorder

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___	Nay ___
Michael L. Shelton	Yea ___	Nay ___
J. Scott Bracken	Yea ___	Nay ___
Michael J. Peterson	Yea ___	Nay ___
Tee W. Tyler	Yea ___	Nay ___

**DEPOSITED** in the Recorder's office this 8<sup>th</sup> day of July 2014.

**POSTED** this \_\_\_ day of July 2014.

# COTTONWOOD HEIGHTS

## ORDINANCE NO. 225-A

### AN ORDINANCE APPROVING THE RE-ZONE OF REAL PROPERTY LOCATED AT 8559-8595 SOUTH WASATCH BLVD. FROM R-1-8 (RURAL SINGLE FAMILY) TO R-2-8 (RESIDENTIAL MULTI-FAMILY) AND AMENDING THE ZONING MAP

**WHEREAS**, the “Municipal Land Use, Development, and Management Act,” UTAH CODE ANN. §10-9a-101 *et seq.*, as amended (the “Act”), provides that each municipality may enact a land use ordinance and a zoning map establishing regulations for land use and development; and

**WHEREAS**, pursuant to the Act, the municipality’s planning commission shall prepare and recommend to the municipality’s legislative body, following a public hearing, a proposed land use ordinance and a zoning map, or amendments thereto, that represents the planning commission’s recommendations for zoning the area within the municipality; and

**WHEREAS**, the Act also provides certain procedures for the municipality’s legislative body to adopt or amend the land use ordinance and zoning map for the city; and

**WHEREAS**, on 14 July 2005, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) enacted its Ordinance No. 25 adopting a land use ordinance for the City and codifying such ordinance as Title 19 of the City’s code of ordinances (the “*Code*”); and

**WHEREAS**, pursuant to its Ordinance No. 25, the Council also adopted a zoning map for the City (the “*Zoning Map*”); and

**WHEREAS**, on 18 June 2014, the City’s planning commission (the “*Planning Commission*”) held a public hearing on a zone change application by Christian and Shellee Neff requesting the re-zone of a parcel of real property located at 8559-8595 South Wasatch Blvd. in the City (the “*Property*”) from R-1-8 (Rural Single Family) to R-2-8 (Residential Multi-Family), at which time all interested parties were given the opportunity to provide written or oral comment concerning the proposed re-zone; and

**WHEREAS**, such public hearing before the Planning Commission was preceded by all required legal notices; and

**WHEREAS**, on 18 June 2014, following the public hearing, the Planning Commission unanimously recommended denial of such proposed re-zone of the Property, and forwarded such recommendation to the Council for final action; and

**WHEREAS**, on 8 July 2014, the Council met in regular meeting to consider, among other things, such proposed re-zone of the Property; and

**WHEREAS**, after careful consideration of the recommendation of the Planning Commission, comments at the public hearing and other public meetings where such proposed re-zone was discussed, and recommendations of City staff, the Council has determined that it is in the

best interest of the health, safety and welfare of the citizens of the City to approve the re-zone of the Property as specified below;

**NOW, THEREFORE, BE IT ORDAINED** by the city council of the city of Cottonwood Heights as follows:

Section 1. **Approval of Re-zone.** The Council hereby re-zones the Property from R-1-8 (Residential Single Family) to R-2-8 (Residential Multi-Family).

Section 2. **Adoption of Amended Zoning Map.** The Council hereby amends the City’s zoning map to reflect the re-zone of the Property effected by this ordinance (this “*Ordinance*”), and hereby adopts the amended zoning map that is attached as an exhibit hereto as the City’s current zoning map.

Section 3. **Action of Officers.** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this Ordinance, whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 4. **Severability.** All parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 5. **Repealer.** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 6. **Effective Date.** This Ordinance, assigned no. 225-A, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City’s recorder, or such later date as may be required by Utah statute.

**PASSED AND APPROVED** this 8<sup>th</sup> day of July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr., Mayor**

**ATTEST:**

\_\_\_\_\_  
**Kory Solorio, Recorder**

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___	Nay ___
Michael L. Shelton	Yea ___	Nay ___
J. Scott Bracken	Yea ___	Nay ___
Michael J. Peterson	Yea ___	Nay ___
Tee W. Tyler	Yea ___	Nay ___

**DEPOSITED** in the Recorder's office this 8<sup>th</sup> day of July 2014.

**POSTED** this \_\_\_ day of July 2014.

# COTTONWOOD HEIGHTS

## ORDINANCE NO. 225-D

### AN ORDINANCE DENYING THE RE-ZONE OF REAL PROPERTY LOCATED AT 8559-8595 SOUTH WASATCH BLVD. FROM R-1-8 (RURAL SINGLE FAMILY) TO R-2-8 (RESIDENTIAL MULTI-FAMILY)

**WHEREAS**, the “Municipal Land Use, Development, and Management Act,” UTAH CODE ANN. §10-9a-101 *et seq.*, as amended (the “Act”), provides that each municipality may enact a land use ordinance and a zoning map establishing regulations for land use and development; and

**WHEREAS**, pursuant to the Act, the municipality’s planning commission shall prepare and recommend to the municipality’s legislative body, following a public hearing, a proposed land use ordinance and a zoning map, or amendments thereto, that represent the planning commission’s recommendations for zoning the area within the municipality; and

**WHEREAS**, the Act also provides certain procedures for the municipality’s legislative body to adopt or amend the land use ordinance and zoning map for the city; and

**WHEREAS**, on 14 July 2005, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) enacted its Ordinance No. 25 adopting a land use ordinance for the City and codifying such ordinance as Title 19 of the City’s code of ordinances (the “*Code*”); and

**WHEREAS**, pursuant to its Ordinance No. 25, the Council also adopted a zoning map for the City (the “*Zoning Map*”); and

**WHEREAS**, on 18 June 2014, the City’s planning commission (the “*Planning Commission*”) held a public hearing on a zone change application by Christian and Shellee Neff requesting the re-zone of a parcel of real property located at 8559-8595 South Wasatch Blvd. in the City (the “*Property*”) from R-1-8 (Rural Single Family) to R-2-8 (Residential Multi-Family), at which time all interested parties were given the opportunity to provide written or oral comment concerning the proposed re-zone; and

**WHEREAS**, such public hearing before the Planning Commission was preceded by all required legal notices; and

**WHEREAS**, on 18 June 2014, following the public hearing, the Planning Commission unanimously recommended denial of such proposed re-zone of the Property, and forwarded such recommendation to the Council for final action; and

**WHEREAS**, on 8 July 2014, the Council met in regular meeting to consider, among other things, such proposed re-zone of the Property; and

**WHEREAS**, after careful consideration of the recommendation of the Planning Commission, comments at the public hearing and other public meetings where such proposed re-zone was discussed, and recommendations of City staff, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to deny the re-zone of the

Property as specified below due to, *inter alia*, the non-compliance of such requested re-zone with the land use element of the City's general plan;

**NOW, THEREFORE, BE IT ORDAINED** by the city council of the city of Cottonwood Heights as follows:

Section 1. ***Denial of Re-zone.*** The Council hereby denies the requested re-zone of the Property from R-1-8 (Residential Single Family) to R-2-8 (Residential Multi-Family).

Section 2. ***Action of Officers.*** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this Ordinance, whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 3. ***Severability.*** All parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 4. ***Repealer.*** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 5. ***Effective Date.*** This Ordinance, assigned no. 225-D, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's recorder, or such later date as may be required by Utah statute.

**PASSED AND APPROVED** this 8<sup>th</sup> day of July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr., Mayor**

**ATTEST:**

\_\_\_\_\_  
**Kory Solorio, Recorder**

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___ Nay ___
Michael L. Shelton	Yea ___ Nay ___
J. Scott Bracken	Yea ___ Nay ___
Michael J. Peterson	Yea ___ Nay ___
Tee W. Tyler	Yea ___ Nay ___

**DEPOSITED** in the Recorder's office this 8<sup>th</sup> day of July 2014.

**POSTED** this \_\_ day of July 2014.

COTTONWOOD HEIGHTS

RESOLUTION No. 2014-43

A RESOLUTION APPROVING AN AGREEMENT FOR  
BUILDING SERVICES WITH SUNRISE ENGINEERING, INC.  
(2014-16)

**WHEREAS**, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) met in regular session on 8 July 2014 to consider, among other things, approving an “Agreement for Building Services” (the “*Agreement*”) with Sunrise Engineering, Inc. (“*Sunrise*”) whereunder Sunrise would provide, among other things, plan review and building inspection services to the City as specified in the Agreement through 30 June 2016; and

**WHEREAS**, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City’s entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2014-43, shall take effect immediately upon passage.

**PASSED AND APPROVED** effective 8 July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr.**, Mayor

**ATTEST:**

\_\_\_\_\_  
**Kory Solorio**, Recorder

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___ Nay ___
Michael L. Shelton	Yea ___ Nay ___
J. Scott Bracken	Yea ___ Nay ___
Michael J. Peterson	Yea ___ Nay ___
Tee W. Tyler	Yea ___ Nay ___

**DEPOSITED** in the office of the City Recorder this 8<sup>th</sup> day of July 2014.

**RECORDED** this \_\_\_ day of July 2014.

# COTTONWOOD HEIGHTS

## RESOLUTION No. 2014-44

### A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH SALT LAKE COUNTY FOR TRCC FUNDING (BUTLER MIDDLE SCHOOL AUDITORIUM)

**WHEREAS**, Salt Lake County (the “*County*”) receives funds (“*TRCC Funds*”) pursuant to the Tourism, Recreation, Cultural, Convention, and Airport Facilities Tax Act, UTAH CODE ANN. §§ 59-12-601 *et seq.* (the “*TRCC Act*”); and

**WHEREAS**, the TRCC Act provides that TRCC Funds may be used, among other things, for the development, operation, and maintenance of publicly owned or operated cultural facilities; and

**WHEREAS**, on 4 December 2014, the city of Cottonwood Heights (the “*City*”) entered into an interlocal agreement with Canyons School District (the “*District*”) whereunder the City agreed to reimburse the District for the cost of increasing the size of the auditorium (the “*Auditorium*”) being constructed in the new Butler Middle School building from 750 seats to 1,000 seats, in order to provide a larger venue for City-sponsored events such as plays, performances, meetings, debates and the like; and

**WHEREAS**, the City then applied for and requested TRCC Funds from the County to satisfy part of such reimbursement obligation to the District; and

**WHEREAS**, the County appropriated TRCC Funds for such purpose as part of its 2014 budget; and

**WHEREAS**, the City and the County are “public agencies” for purposes of the Utah Interlocal Cooperation Act, UTAH CODE ANN. §§ 11-13-101 *et seq.* (the “*Cooperation Act*”), and are authorized by the Cooperation Act to act jointly and cooperatively on the basis of mutual advantage in order to provide facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

**WHEREAS**, the Cooperation Act also authorizes a public agency to share its tax and other revenues with other public agencies; and

**WHEREAS**, for that purpose, the County and the City desire to enter into the agreement that is attached as an exhibit hereto (the “*Agreement*”) for the purpose of effecting the grant of \$315,000 in TRCC Funds to the City for use in partially reimbursing the District for the cost of increasing the size of the Auditorium, on the terms and conditions specified in the Agreement; and

**WHEREAS**, the City’s city council (the “*Council*”) met in regular session on 8 July 2014 to consider, among other things, approving the City’s entry into the Agreement; and

**WHEREAS**, the Council has reviewed the form of the Agreement and, after careful consideration, has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the city council of Cottonwood Heights that the Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2014-44, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 8<sup>th</sup> day of July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr., Mayor**

**ATTEST:**

\_\_\_\_\_  
**Kory Solorio, Recorder**

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___	Nay ___
Michael L. Shelton	Yea ___	Nay ___
J. Scott Bracken	Yea ___	Nay ___
Michael J. Peterson	Yea ___	Nay ___
Tee W. Tyler	Yea ___	Nay ___

**DEPOSITED** in the office of the City Recorder this 8<sup>th</sup> day of July 2014.

**RECORDED** this \_\_\_ day of July 2014.

**INTERLOCAL COOPERATION AGREEMENT**

*between*

**SALT LAKE COUNTY**  
for its Department of Community Services

*and*

**COTTONWOOD HEIGHTS**

**THIS INTERLOCAL COOPERATION AGREEMENT** (this “**Agreement**”) is entered into by and between **SALT LAKE COUNTY**, a body corporate and politic of the State of Utah, for and on behalf of the Department of Community Services (“**COUNTY**”) and the city of **COTTONWOOD HEIGHTS**, a Utah municipality (“**RECIPIENT**”). **COUNTY** and **RECIPIENT** may collectively be referred to hereinafter as “the Parties.”

**RECITALS:**

- A. The **COUNTY** is a county existing pursuant to Article XI, Section 1 of the Utah Constitution, and the Department of Community Services is a department of the **COUNTY** pursuant to Salt Lake County Ordinances, § 2.15.010.
- B. **RECIPIENT** is a municipality and a political subdivision of the State of Utah as provided for in Utah Code Ann. §§ 10-1-201 & 202, 1953 as amended.
- C. The **COUNTY** receives funds (“**TRCC Funds**”) pursuant to the Tourism, Recreation, Cultural, Convention, and Airport Facilities Tax Act, Utah Code Ann. §§ 59-12-601 *et seq.* (the “**TRCC Act**”). The **TRCC Act** provides that **TRCC Funds** may be used, among other things, for the development, operation, and maintenance of publicly owned or operated cultural facilities.
- D. The Canyons School District (the “**District**”) recently constructed a new building to house the Butler Middle School located at 7530 South 2700 East, Cottonwood Heights, Utah. The **District**’s original plans for this new building included an auditorium (“**Auditorium**”) with approximately 750 fixed seats. To provide a venue of increased size for events sponsored by **RECIPIENT**, such as plays, performances, meetings, debates and the like, **RECIPIENT** requested that **District** increase the capacity of the **Auditorium** to approximately 1,000 fixed seats. The **District** agreed, conditioned on **City**’s agreement to pay the increased costs attributable to the expansion.
- E. On December 4, 2012, **RECIPIENT** and the **District** entered into an interlocal cooperation agreement wherein **RECIPIENT** agreed to reimburse the **District** for the cost of increasing the capacity of the **Auditorium** to 1,000 fixed seats. In return, the **District** agreed to

grant RECIPIENT first priority use of the Auditorium on certain days of the year and second priority use on other days.

F. RECIPIENT then applied for and requested TRCC Funds from COUNTY to satisfy part of its reimbursement obligation to the District for increased construction costs attributable to the Auditorium expansion. The County Council appropriated TRCC Funds for such purpose as part of its budget for the 2014 year.

G. The Parties are “public agencies” as defined by the Utah Interlocal Cooperation Act, Utah Code Ann. §§ 11-13-101 *et seq.* (the “Cooperation Act”), and, as such, are authorized by the Cooperation Act to enter into this Agreement to act jointly and cooperatively on the basis of mutual advantage in order to provide facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. Additionally, Section 11-13-215 of the Cooperation Act authorizes a county, city, town, or other local political subdivision to share its tax and other revenues with other counties, cities, towns, or local political subdivisions.

H. The Parties have determined that it is mutually advantageous to enter this Agreement and believe that COUNTY’s assistance under this Agreement will contribute to the prosperity, moral well-being, peace, and comfort of Salt Lake County residents.

### **A G R E E M E N T:**

**NOW THEREFORE**, in consideration of the premises and in compliance with and pursuant to the terms hereof and the provisions of the Cooperation Act, the Parties hereby agree as follows:

#### **1. COUNTY OBLIGATIONS.**

A. Contribution of TRCC Funds. Subject to the conditions set forth in Paragraph 1B below, COUNTY shall grant to RECIPIENT TRCC Funds in the amount of three hundred fifteen thousand dollars (\$315,000.00) on or before December 15, 2014.

B. Requirements for Disbursement. COUNTY shall have no obligation to disburse TRCC Funds to RECIPIENT under this Agreement unless and until the following conditions have been satisfied.

(i) Matching Funds. RECIPIENT has certified to COUNTY that it has satisfied its reimbursement obligation to the District for expansion of the Auditorium at Butler Middle School, except for the amount that may be contributed to RECIPIENT under this Agreement (i.e., \$315,000.00).

(ii) Adoption of Free Speech Policy. RECIPIENT has certified to COUNTY that it has, in accordance with the Salt Lake County Cultural Facilities Support Program Guidelines and Criteria, established defined procedures and policies for booking, advertising, and presenting cultural activities at the Auditorium that are distinguishable

from the District's procedures and policies in an effort to protect/preserve the right of the public for free speech during RECIPIENT's use of the Auditorium.

C. Past Due Balances. Any past due balances owed to COUNTY may first be deducted before any distribution of funds to RECIPIENT.

## **2 . RECIPIENT OBLIGATIONS.**

A. Acknowledgement. RECIPIENT acknowledges that the TRCC Funds provided to RECIPIENT under this Agreement are COUNTY public funds received pursuant to the TRCC Act and Salt Lake County Code of Ordinances §3.10.030, 3.10.040, and 3.10.051, and therefore must be used for the development, operation, and maintenance of publicly owned or operated cultural facilities.

B. Allowable Uses and Limitation on Use. In exchange for receipt of the TRCC Funds from COUNTY, RECIPIENT shall use the TRCC Funds as follows:

(i) RECIPIENT shall use the TRCC Funds provided under this Agreement to satisfy a portion of its reimbursement obligation to the District for increased construction costs attributable to the expansion of the Auditorium at Butler Middle School. RECIPIENT shall expend all TRCC Funds received under this Agreement for this purpose prior to December 31<sup>st</sup> of the year in which the TRCC Funds are received.

(ii) RECIPIENT shall not expend the TRCC Funds provided under this Agreement on: (a) any activities outside of Salt Lake County other than marketing activities, (b) fund-raising expenditures related to capital or endowment campaigns, grants or re-grants; (c) direct political lobbying, (d) bad debt expense, (e) non-deductible tax penalties, (f) operating expenses that are utilized in calculating federal unrelated business income tax; or (g) in any other manner that would be inconsistent with the use stated in Paragraphs 2A and 2B of this Agreement.

C. Reporting Requirements.

(i) Within six months of expending the TRCC Funds provided under this Agreement, RECIPIENT shall submit to COUNTY a completed copy of the Disbursement of Funds Report, attached hereto as **EXHIBIT A**, detailing how the TRCC Funds were expended.

(ii) If RECIPIENT does not fully expend the TRCC Funds received under this Agreement by the deadline specified in Paragraph 2B(i) above, RECIPIENT shall return any remaining TRCC Funds to COUNTY prior to May 1<sup>st</sup> of the following year.

D. Public Funds and Public Monies:

(i) RECIPIENT agrees that the TRCC Funds are "public funds" and "public monies," meaning monies, funds, and accounts, regardless of the source from which they

are derived, that are owned, held, or administered by the State or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. Said funds shall maintain the nature of “public funds” while in RECIPIENT’s possession.

(ii) RECIPIENT, as the recipient of “public funds” and “public monies” pursuant to this and other agreements related hereto, expressly agrees that it, its officers, and its employees are obligated to receive, keep safe, transfer, disburse and use these “public funds” and “public monies” as authorized by law and this Agreement for TRCC qualifying purposes in Salt Lake County. RECIPIENT understands that it, its officers, and its employees may be criminally liable under Utah Code Ann. § 76-8-402 for misuse of public funds or monies. RECIPIENT expressly agrees that COUNTY may monitor the expenditure of public funds by RECIPIENT.

(iii) RECIPIENT agrees not to make TRCC Funds or proceeds from such funds available to any public officer or employee or in violation of the Public Officers’ and Employees’ Ethics Act, Utah Code Ann. §§ 67-16-1, *et seq.* (1953, as amended).

E. Right to Verify and Audit. COUNTY reserves the right to verify application and evaluation information and to audit the use of TRCC Funds and the accounting of the use of TRCC Funds received by RECIPIENT under this Agreement. If COUNTY requests an audit, RECIPIENT agrees to cooperate fully with COUNTY and its representatives in the performance of the audit.

F. Noncompliance. RECIPIENT agrees that COUNTY may withhold funds or require repayment of TRCC Funds from RECIPIENT for noncompliance with this Agreement, for failure to comply with directives regarding the use of public funds, or for misuse of public funds or monies.

### **3 . GENERAL PROVISIONS:**

A. Interlocal Cooperation Act. In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

(i) This Agreement shall be authorized by a resolution of the legislative body of each Party pursuant to and in accordance with the provisions of Section 11-13-202.5 of the Cooperation Act.

(ii) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney in behalf of each Party pursuant to and in accordance with Section 11-13-202.5 of the Cooperation Act.

(iii) A duly executed original counterpart of this Agreement shall be filed

immediately with the keeper of records of each Party pursuant to Section 11-13-209 of the Cooperation Act.

(iv) The term of this Agreement shall not exceed fifty (50) years pursuant to Section 11-13-216 of the Cooperation Act.

(v) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action done pursuant to this Agreement, and for any financing of such costs.

(vi) No separate legal entity is created by the terms of this Agreement and no facility or improvement will be jointly acquired, jointly owned, or jointly operated by the Parties under this Agreement.

(vii) Pursuant to Section 11-13-207 of the Cooperation Act, the COUNTY's Representative (designated below) and RECIPIENT's Representative (designated below) are hereby designated as the joint administrative board for all purposes of the Cooperation Act.

**B. Representatives.**

(i) County Representative. COUNTY designates Erin Litvack (or the current Director of Salt Lake County's community services Department) as the COUNTY's representative to assist in the administrative management of this Agreement and to coordinate performance of this Agreement. Said representative shall monitor and evaluate the performance of this Agreement by RECIPIENT and shall enforce COUNTY's rights and responsibilities under this Agreement.

(ii) Recipient Representative. RECIPIENT designates John Park (or the current City Manager of RECIPIENT) as RECIPIENT's representative in its performance of this Agreement. The RECIPIENT Representative shall have the responsibility of working with the COUNTY to coordinate the performance of its obligations under this Agreement.

C. Notices. Any notice or other communication required or permitted to be given under this Agreement shall be deemed sufficient if given by a written communication and shall be deemed to have been received upon personal delivery, actual receipt, or within three (3) days after such notice is deposited in the United States mail, postage prepaid, and certified and addressed to the parties as set forth below:

**Salt Lake County**  
  
Erin Litvack  
Community Services Department Director  
2001 South State Street, N-2100  
Salt Lake City, Utah 84190

**Cottonwood Heights**  
  
John Park  
City Manager  
COTTONWOOD HEIGHTS  
1265 East Fort Union Blvd., Suite 250  
Cottonwood Heights, UT 84047

D. Term of the Agreement. This agreement shall be effective upon execution by both Parties and shall continue through December 31, 2014 unless terminated earlier as provided in Paragraphs 3I, 3M, and 3O below. All covenants made by RECIPIENT shall survive the expiration or termination date of this Agreement if, at that time, any TRCC Funds paid to RECIPIENT remain unexpended, and such covenants shall continue to bind RECIPIENT until all such TRCC Funds are expended or returned to COUNTY. The obligations in Paragraphs 2D, 2E, and 2F above shall survive the expiration or termination date of this Agreement.

E. No Obligations to Third Parties. The parties agree that RECIPIENT's obligations under this Agreement are solely to the COUNTY and that the COUNTY's obligations under this Agreement are solely to RECIPIENT. This Agreement shall not confer any rights to third parties unless otherwise expressly provided for under this Agreement. All conditions to the obligations of COUNTY to make disbursements hereunder are imposed solely and exclusively for the benefit of COUNTY and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that COUNTY will not make disbursements in the absence of strict compliance with any or all thereof and no other person, under any circumstances, will be deemed to be a beneficiary of such conditions, any or all of which may be waived in whole or in part by COUNTY at any time if COUNTY, in its sole discretion, deems it advisable to do so.

F. Agency. No agent, employee, or servant of RECIPIENT or COUNTY is or shall be deemed to be an agent, employee, 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. RECIPIENT 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.

G. Liability and Indemnification. RECIPIENT 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 RECIPIENT, 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, RECIPIENT's breach of this Agreement or any acts or omissions of or by RECIPIENT, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement. RECIPIENT agrees that its duty to indemnify and defend 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.

H. Governmental Immunity. Each of COUNTY and RECIPIENT is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Immunity Act"), Utah Code Ann. §§ 63G-7-101, *et seq.* The Parties agree that COUNTY and RECIPIENT shall only be liable within the parameters of the Immunity Act. Nothing

contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in the Immunity Act or the basis for liability as established in the Immunity Act.

I. Non-Funding Clause.

(i) COUNTY intends to request the appropriation of funds to be paid for the services provided by RECIPIENT 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 RECIPIENT, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

(ii) If funds are not appropriated to fund performance by COUNTY under this Agreement, COUNTY shall promptly notify RECIPIENT of said non-funding and the termination of this Agreement. However, in no event, shall COUNTY notify RECIPIENT of said non-funding later than 30 (thirty) days after the expiration of the fiscal year for which funds were last appropriated.

J. Required Insurance Policies. Both Parties to this Agreement shall maintain insurance or self-insurance coverage sufficient to meet their obligations hereunder and consistent with applicable law.

K. 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 RECIPIENT 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 RECIPIENT's operations under this Agreement, or authorizes funding or payments to RECIPIENT pursuant to this Agreement.

L. Ethical Standards. RECIPIENT represents that it has not: (a) provided an illegal gift in connection with this Agreement 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 Agreement 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 in connection with this Agreement 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 in connection with this Agreement, 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.

M. Termination.

(i) COUNTY may terminate this Agreement for convenience by providing thirty (30) days written notice specifying the nature, extent and effective date of the termination. However, COUNTY may not terminate this agreement once the TRCC Funds are provided and have been expended as provided for by this Agreement.

(ii) COUNTY may terminate this Agreement for cause if RECIPIENT breaches or fails to comply with the terms of this Agreement and fails to cure any default or breach after seven (7) days written notice from COUNTY. COUNTY shall give RECIPIENT written notice by certified mail specifying the cause and the effective date of termination. The effective date of termination may be the day RECIPIENT receives written notice from COUNTY, subject to the above-mentioned time period to cure the default or breach.

(iii) COUNTY may terminate this Agreement for the following non-inclusive reasons: (a) RECIPIENT no longer plans to use the TRCC Funds for the purposes and in the manner specified in this Agreement; or (b) RECIPIENT no longer qualifies for receipt of TRCC Funds; or (c) RECIPIENT was determined to be qualified based upon the submission of erroneous information. If RECIPIENT was determined to be qualified based upon the submission of erroneous information, COUNTY may require RECIPIENT to return all Funds paid to RECIPIENT based upon the erroneous information.

(iv) The rights of the Parties provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

N. Default. If either party defaults in the performance of the Agreement, or any of its covenants, terms, conditions or provisions, the defaulting party shall pay all costs and expenses, not including attorney's fees, which may arise or accrue to the non-defaulting party from enforcing the Agreement.

O. 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 sixty (60) days, COUNTY shall have the right to terminate this Agreement without liability or penalty effective upon written notice to the other party.

P. 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.

Q. Compliance with Laws. The Parties shall comply with all applicable statutes, laws, rules, regulations, licenses, certificates and authorizations of any governmental body or authority in the performance of its obligations under this Agreement, including, but not limited to, those laws requiring access to persons with disabilities as well as the laws governing non-discrimination against all protected groups and persons in admissions and hiring.

R. Records. Financial records, supporting documents, statistical records and all other records pertinent to this Agreement and the TRCC Funds provided under this Agreement must be kept readily available for review by COUNTY from time to time upon COUNTY's request. Such records must be retained and maintained for a minimum of three (3) years after the end of a budget period. If questions still remain, such as those raised as a result of an audit, records must be retained until completion or resolution of any audit in process or pending resolution. Such records are subject to the Utah Government Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 *et seq.* (1953, as amended).

S. Assignment and Transfer of TRCC Funds. RECIPIENT shall not assign or transfer its duties of performance nor its rights to compensation under this Agreement. RECIPIENT shall use the TRCC Funds provided pursuant to this Agreement exclusively and solely for the purposes set forth in the Agreement.

T. Time. The parties stipulate that time is of the essence in the performance of this Agreement.

U. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties, and no statements, promises, or inducements made by either party, or agents for either party, that are not contained in this written Agreement shall be binding or valid; and this Agreement may not be enlarged, modified or altered, except in writing, signed by the Parties.

V. Severability. COUNTY and RECIPIENT 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 void, voidable, unenforceable, or invalid, prohibited, or unenforceable under applicable law, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement, but this Agreement shall be construed as if such void, voidable, unenforceable, or invalid provision had never been set forth herein.

W. 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. Venue for any and all legal actions arising hereunder shall lie in the District Court in and for the County of Salt Lake, State of Utah.

X. Warrant of Signing Authority. The person or persons signing this Agreement on behalf of RECIPIENT warrants his or her authority to do so and to bind RECIPIENT. COUNTY may require RECIPIENT to return all TRCC Funds paid to RECIPIENT based upon a breach of warranty of authority.

**IN WITNESS WHEREOF**, the Parties execute this Agreement.

**SALT LAKE COUNTY:**

**COTTONWOOD HEIGHTS CITY:**

By \_\_\_\_\_  
Mayor Ben McAdams or Designee

By \_\_\_\_\_  
Mayor Kelvyn H. Cullimore Jr.

Dated: \_\_\_\_\_, 2014

Dated: July 8, 2014

**ATTEST:**

By \_\_\_\_\_  
Kory Solorio, Recorder

*Approved by:*

DEPARTMENT OF COMMUNITY SERVICES

By \_\_\_\_\_  
Erin Litvack  
Department Director

Dated: \_\_\_\_\_, 2014

*Approved as to Form and Legality:*

*Approved as to Form and Legality:*

SALT LAKE COUNTY  
DISTRICT ATTORNEY:

COTTONWOOD HEIGHTS CITY  
ATTORNEY:

By \_\_\_\_\_  
Deputy District Attorney

By \_\_\_\_\_  
Wm. Shane Topham, City Attorney

Dated: \_\_\_\_\_, 2014

Dated: July 8, 2014

# **EXHIBIT A**

## **Disbursement of Funds Report**

**1200**

**FORM B**

**RECIPIENT ORGANIZATION'S  
DISBURSEMENT OF FUNDS  
REPORT**

*This report is to be filed with the Council and Mayor's Offices within six months of receipt of the money. If further contributions are desired, the report must be filed with the Council and Mayor by September 1<sup>st</sup> of each year.*

Name of Organization: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Amount: \$ \_\_\_\_\_

Date Received: \_\_\_\_\_

Please describe how the money was spent; include who was helped, what other contributions were made to your program, etc.:

# COTTONWOOD HEIGHTS

## RESOLUTION No. 2014-45

### A RESOLUTION APPROVING ENTRY INTO A VEHICLE REPURCHASE OPTION AGREEMENT WITH GARFF ENTERPRISES, INC. FOR POLICE VEHICLES AND ASSOCIATED EQUIPMENT

**WHEREAS**, the city of Cottonwood Heights (“*City*”) formed the Cottonwood Heights Police Department (the “*CHPD*”) to provide law enforcement within City, and desires to provide vehicles and associated equipment (collectively, the “*Vehicles*”) for the CHPD’s use in performing that essential governmental function; and

**WHEREAS**, City desires to lease (rather than purchase) the Vehicles and have the option to rotate the Vehicles every two years to better assure dependability and reduced maintenance costs; and

**WHEREAS**, Zions First National Bank (“*Zions Bank*”) has proposed to lease the Vehicles to City for a two-year term under that certain “Government Lease-Purchase Agreement” (the “*Lease*”) between Zions Bank, as lessor, and City, as lessee. The Lease effectively will result in the City’s purchase of the Vehicles upon expiration of the Lease, likely between 1 July 2016-1 September 2016 (the “*Repurchase Date*”); and

**WHEREAS**, Garff Enterprises, Inc. (“*Garff*”) owns one or more new motor vehicle dealerships and desires to supply the Vehicles to Zions Bank for City’s ultimate use under the Lease; and

**WHEREAS**, City is willing to enter into the Lease only if, *inter alia*, Zions Bank irrevocably agrees to purchase the Vehicles from Garff, and Garff irrevocably agrees to repurchase from Zions Bank or City, as applicable, upon termination of the Lease, such of the Vehicles as City designates, on the terms and conditions specified in a certain “Vehicle Repurchase Option Agreement” (the “*Repurchase Agreement*”) contemplated between City and Garff; and

**WHEREAS**, Garff has expressed its willingness to enter into and perform under the Repurchase Agreement in order to induce City to enter into the Lease with Zions Bank, and thereby to induce Zions Bank to purchase the Vehicles from Garff for lease to the City; and

**WHEREAS**, City’s municipal council (the “*Council*”) met in regular session on 8 July 2014 to consider, among other things, approving City’s entry into the Repurchase Agreement; and

**WHEREAS**, the Council has reviewed the form of the Repurchase Agreement, a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of City and its efficient administration, and the health, safety and welfare of City's residents, to approve City's entry into the Repurchase Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the city council of the city of Cottonwood Heights as follows:

Section 1. **Approval of Repurchase Agreement.** The form, terms and provisions of the Repurchase Agreement are hereby approved in substantially the form attached to this Resolution, with such insertions, omissions and changes as shall be approved by City's mayor in consultation with City's manager and attorney. The execution of the Repurchase Agreement shall be conclusive evidence of such approval, and City's mayor and recorder are hereby authorized and directed to execute and deliver the Repurchase Agreement on City's behalf to the other parties thereto.

Section 2. **Other Actions Authorized.** City's officers and employees shall take all actions necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated thereby, including, without limitation, the execution and delivery of any and all other documents required to be delivered in connection with the Repurchase Agreement.

Section 3. **Appointment of Authorized Representatives.** City's manager and the manager's designee in writing from time to time are hereby designated to act as authorized representatives of City for purposes of the Repurchase Agreement until such time as the Council designates any other or different authorized representative(s) for purposes of the Repurchase Agreement.

Section 4. **Severability.** If any section, paragraph, clause or provision of this resolution (this "*Resolution*") shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. **Repealer.** All orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any order, resolution or ordinance or part thereof.

This Resolution, assigned no. 2014-45, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 8<sup>th</sup> day of July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr.,** Mayor

**ATTEST:**

\_\_\_\_\_  
**Kory Solorio,** Recorder

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___	Nay ___
Michael L. Shelton	Yea ___	Nay ___
J. Scott Bracken	Yea ___	Nay ___
Michael J. Peterson	Yea ___	Nay ___
Tee W. Tyler	Yea ___	Nay ___

**DEPOSITED** in the office of the City Recorder this 8<sup>th</sup> day of July 2014.

**RECORDED** this \_\_\_ day of July 2014.

## Vehicle Repurchase Option Agreement

**THIS VEHICLE REPURCHASE OPTION AGREEMENT** (this “*Agreement*”) is made effective 15 July 2014 between the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 (“*City*”), and **GARFF ENTERPRISES, INC.**, a Utah corporation whose address 405 South Main Street, Suite 1200, Salt Lake City, UT 84111 (“*Garff*”).

### RECITALS:

A. City is in the process of re-outfitting its police department (the “*CHPD*”) with approximately 42 motor vehicles for use by CHPD officers and employees, which vehicles are particularly described on the attached exhibit. The vehicles so described, together with any other mutually-agreed additions to such list, are called the “*Vehicles*” in this Agreement.

B. City desires to lease (rather than purchase) the Vehicles and the option to rotate the Vehicles every two years to better assure dependability and reduced maintenance costs.

C. Zions First National Bank (“*Lessor*”) has proposed to lease the Vehicles to City for a two- year term under that certain “Government Lease-Purchase Agreement” (the “*Lease*”) to be dated 15 July 2014 between Lessor, as lessor, and City, as lessee. The Lease effectively will result in the City’s purchase of the Vehicles upon expiration of the Lease, likely between 1 July 2016-1 September 2016 (the “*Repurchase Date*”).

D. Garff owns one or more new motor vehicle dealerships and desires to supply the Vehicles to Lessor for City’s ultimate use.

E. City is willing to enter into the Lease only if, *inter alia*, (1) Lessor irrevocably agrees to initially purchase the Vehicles from Garff, and (2) Garff irrevocably agrees to repurchase from Lessor (or from City, if required by the Lease) such of the Vehicles as City designates, at City’s option, for the Repurchase Price (defined below) on the Repurchase Date.

F. To induce City to enter into the Lease with Lessor, and to induce Lessor to thereupon purchase the Vehicles from Garff, Garff desires to irrevocably agree to repurchase such of the Vehicles as City designates, at City’s option, for the Repurchase Price on the Repurchase Date as specified in this Agreement.

G. The parties desire to set forth herein their entire agreement concerning the repurchase of the Vehicles and all related dealings between City and Garff. This Agreement shall supersede all prior negotiations or agreements between the parties, oral and/or written, concerning the subject matter of this Agreement.

## **A G R E E M E N T:**

**NOW, THEREFORE,** in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Vehicles.** City hereby irrevocably agrees (a) to cause Lessor to purchase from Garff or its affiliated dealership(s) the Vehicles specified on the attached exhibit (as the same may be amended from time to time), and (b) to lease the Vehicles from Lessor as specified in the Lease.

Section 2. **Duty to Repurchase.** To induce City to act as provided in section 1 above, Garff hereby irrevocably agrees to repurchase from Lessor, City or any other seller under the Lease such of the Vehicles as City designates, at City's option, on or after (as designated by City) the Repurchase Date, subject to the following requirements:

(a) **Vehicles Repurchased.** The Vehicles to be repurchased to Garff hereunder shall be those Vehicles designated by City, at City's option, from time to time, which may include none, some or all of the Vehicles identified on the attached exhibit.

(b) **Purchase Price.** The Repurchase Price to be paid by Garff for all of the Vehicles totals \$855,176.54. If City elects to require Garff to repurchase less than all of the Vehicles, then the total Repurchase Price to be paid by Garff shall be appropriately reduced by agreement of City and Garff in connection with closing of Garff's repurchase from City of the balance of the Vehicles.

(c) **Mileage.** If a Vehicle has over 36,000 odometer miles, the Repurchase Price for that Vehicle shall be reduced by a charge of twenty cents (\$.20) per excess mile.

(d) **Condition.** Each Vehicle shall be in condition to pass standard Utah State motor vehicle safety and emissions inspections of the type annually required for each registered motor vehicle. City may, at its option and cost, obtain and supply such current inspections to Garff on the Repurchase Date. City shall be responsible for repairing, at City's cost, any defects caused by City's use of a Vehicle which prevent the Vehicle from passing such inspections.

(e) **Equipment.** Each Vehicle is equipped with manufacturer-installed, "factory" equipment ("*Factory Equipment*"); additional equipment installed by Vehicle Lighting Solutions (such as police emergency lighting, sirens, prisoner cages, computer mounting equipment, K-9 cages, weapons storage vaults) ("*VLS Equipment*"); and other equipment and items, such as decals ("*Other Items*"). Each Vehicle shall be surrendered by City with all Factory Equipment attached and in good working condition. All VLS Equipment shall be removed from the Vehicles prior to their surrender at City's cost, for re-use on City's future vehicles. All Other Items also shall be removed from the Vehicles at City's cost prior to their surrender.

(f) **Body/Glass Damage.** Body damage to a Vehicle (except for reasonable wear), excessive holes not attributable to equipment installations previously agreed to by Garff, and broken or chipped glass shall be repaired at City's cost.

(g) Closing. Closing of Garff's repurchase of Vehicles hereunder shall be at such time, on such date, and at such place in Salt Lake County, Utah as City may specify upon at least five business days' prior notice to Garff.

Section 3. Possible Future Lease. Upon termination and satisfaction of the Lease, Garff and City may elect to enter into a new lease/re-purchase transaction with Lessor (or another lessor) to provide a new pool of vehicles for the CHPD on such terms and conditions as may be mutually agreed by such parties at that time, the parties acknowledging that pricing may be affected by factors such as then-current interest rates and intervening variances in the cost of vehicles and equipment.

Section 4. Condition Precedent. The performance of each party's obligations hereunder is conditioned on full execution and delivery of the Lease by City and Lessor effectively contemporaneously herewith.

Section 5. City's Representations and Warranties. City hereby represents and warrants to Garff as follows, and covenants that the same are true and accurate as of the date hereof:

(a) Status. City is a Utah municipality that is duly organized, validly existing and in good standing. City is empowered by applicable law, and by resolution of its city council, to enter into and perform under this Agreement.

(b) Binding Agreement. Upon its full execution and delivery, this Agreement and the obligations contemplated herein shall be legal, valid and binding obligations of City and shall be enforceable against City in accordance with their respective terms.

(c) Other Agreements. The execution and delivery of this Agreement and the consummation of the transactions provided for herein will not result in a breach of or constitute a default under any agreement or instrument to which City is a party or by which City is bound, in a manner which would impair the consummation of this Agreement or the performance of City's obligations hereunder.

(d) Suits and Proceedings. There are no suits or proceedings pending or threatened in any court or before any administrative board, commission, or by any federal, state or other governmental department or agency, which directly or indirectly affect or involve City and which, if determined adversely, would have an adverse effect on the transactions contemplated by this Agreement.

(e) Third Party Approvals. Except as otherwise specified herein, no consents or approvals of any third party or parties are required prior to the execution, delivery and performance by City of this Agreement and any other documents contemplated hereby.

Section 6. Garff's Representations and Warranties. Garff hereby represents and warrants to City as follows, and covenants that the same are true and accurate as of the date hereof:

(a) Status. Garff is a Utah corporation that is duly organized, validly existing and in good standing. Garff is empowered by applicable law and corporate approvals to enter into and perform under this Agreement.

(b) Binding Agreement. Upon its full execution and delivery, this Agreement and the obligations contemplated herein shall be legal, valid and binding obligations of Garff and shall be enforceable against Garff in accordance with their respective terms.

(c) Other Agreements. The execution and delivery of this Agreement and the consummation of the transactions provided for herein will not result in a breach of or constitute a default under any agreement or instrument to which Garff is a party or by which Garff is bound, in a manner which would impair the consummation of this Agreement or the performance of Garff's obligations hereunder.

(d) Suits and Proceedings. There are no suits or proceedings pending or threatened in any court or before any administrative board, commission, or by any federal, state or other governmental department or agency, which directly or indirectly affect or involve Garff and which, if determined adversely, would have an adverse effect on the transactions contemplated by this Agreement.

(e) Third Party Approvals. Except as otherwise specified herein, no consents or approvals of any third party or parties are required prior to the execution, delivery and performance by Garff of this Agreement and any other documents contemplated hereby.

Section 7. **Default**. If either party fails to perform any of its obligations hereunder and such condition is not cured within ten days after written notice thereof by the other, such party shall be in default hereunder and the non-defaulting party shall be entitled to proceed at law and in equity to enforce its rights under this Agreement.

Section 8. **Indemnity**. City is a governmental entity under the "Governmental Immunity Act of Utah" (UTAH CODE ANN. §63G-7-101, *et seq.*) (as amended from time to time, the "*Immunity Act*"). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each of the parties is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. Neither party waives any defenses or claims otherwise available under the Immunity Act nor does any party waive any limits of liability now or hereafter provided by the Immunity Act.

Section 9. **Additional Provisions**. The following provisions also are integral to this Agreement:

(a) Survival of Representations and Warranties. The respective obligations of the parties made in this Agreement, all exhibits hereto, and all certificates and documents delivered pursuant hereto, shall survive any closings contemplated by this Agreement.

(b) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(c) Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(d) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(e) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(f) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(g) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(h) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) Attorneys' Fees. In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. All notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing.

(l) Brokers. Garff represents and warrants to City that no broker or finder acted for it or is entitled to any fee or commission in respect of the transactions contemplated hereby. Garff shall indemnify and hold City harmless in respect of any breach of the foregoing representation and warranty. Similarly, City represents and warrants to Garff that no broker or finder acted for City or is entitled to any fee or commission in respect of the transactions contemplated hereby. City shall indemnify and hold Garff harmless in respect of any breach of the foregoing representation and warranty.

(m) Time of Essence. Time is the essence of this Agreement.

(n) Costs. All costs and expenses, including attorneys' fees, incurred by each party in conjunction with this Agreement shall be paid by the party that incurred such costs and expenses.

(o) Assignment. Neither Garff nor City may assign its rights, or delegate its duties, under this Agreement to any third party without the prior written consent of City or Garff, as applicable. Any purported assignment without such consent shall be void from inception. Further, an approved assignment shall not effect any release of the assignor without a specific written acknowledgment of such release signed by the non-assigning party.

**DATED** effective the date first written above.

**CITY:**

**ATTEST:**

**COTTONWOOD HEIGHTS**, a Utah municipality

By: \_\_\_\_\_  
**Kory Solorio**, Recorder

By: \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr.**, Mayor

**GARFF:**

**GARFF ENTERPRISES, INC.**, a Utah corporation

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Exhibit to  
Vehicle Repurchase Option Agreement

(Attach Description of Vehicles)

New Build Out 2014  
By Assignment

Unit Number	Division	Model	VIN	Color	Markings	Package	Veh Price	Options	VLS Cost
15-01	Admin	F150	1FTFW1ET6EKE00660	Pale Grey	Unmarked	VLS6218	\$27,905.00	\$2,080.00	\$5,142.95
15-02	Admin	Gr Cherokee	1C4RJFBGXEC550992	Granite Crysta	Unmarked		\$32,165.00	\$5,158.00	\$2,674.14
15-03	Admin	F150	1FTFW1ET5EKE07972	Blue Jeans	Unmarked	VLS6986	\$27,905.00	\$2,080.00	\$7,343.81
15-04	Det	Challenger	2C3CDYBT8EH311335	Grey	Unmarked	VLS6925	\$38,050.00	\$0.00	\$2,519.05
15-05	Det	Edge	2FMDK4JC9EBB01258	Sunset	Unmarked	VLS6987	\$32,513.81	\$0.00	\$2,604.05
15-06	Det	F150	1FTFW1ET4EKE03010	Silver	Unmarked	VLS6988	\$27,905.00	\$2,080.00	\$5,194.36
15-07	Det	300	2C3CCARG6EH341923	Granite	Unmarked	VLS6925	\$28,220.00	\$1,025.00	\$2,519.05
15-08	Det	Maxima	1N4AA5AP2EC481729	Pearl White	Unmarked	VLS6925	\$25,200.63	\$0.00	\$2,519.05
15-09	Det	Frontier	1N6AD0EV9EN766006	Blue	Unmarked	VLS6989	\$26,198.00	\$0.00	\$3,739.05
15-10	SRO	F150	1FTFW1ET7EKE00649	Red	Unmarked	VLS6988	\$27,905.00	\$2,080.00	\$5,194.36
15-11	SRO	Charger	2C3CDXKT3EH320244	Black	Marked	VLS6815	\$23,424.00	\$3,560.00	\$7,362.10
15-12	Patrol/Sgt	Explorer	1FM5K8D85FGA28810	Black	Marked		\$30,193.81	\$0.00	\$7,035.69
15-13	Patrol/Sgt	F150	1FTFW1ET2EKE58569	Black	Marked	VLS6213	\$27,905.00	\$2,080.00	\$8,130.46
15-14	Patrol/Sgt	F150	1FTFW1ET5EKE58565	Black	Marked	VLS6213	\$27,905.00	\$2,080.00	\$8,130.46
15-15	Patrol/Sgt	F150	1FTFW1ET0EKE58568	Black	Marked	VLS6813	\$27,905.00	\$2,080.00	\$8,338.79
15-16	Patrol/Sgt	F150	1FTFW1ET8EKE58561	Black	Marked	VLS6213	\$27,905.00	\$2,080.00	\$8,130.46
15-17	Patrol/Sgt/K9	F150	1FTFW1ET3EKE58564	Black	Marked	VLS6214	\$27,905.00	\$2,080.00	\$13,651.63
15-18	Patrol/K9	F150	1FTFW1ET1EKE58563	Black	Marked	VLS6214	\$27,905.00	\$2,080.00	\$13,651.63
15-19	Patrol/K9	F150	1FTFW1ET2EKE58572	Black	Marked	VLS6214	\$27,905.00	\$2,080.00	\$13,651.63
15-20	Patrol/Traffic	Explorer	1FM5K8D87FGA28811	Black	Marked	VLS6991	\$30,193.81	\$0.00	\$7,918.59
15-21	Patrol Traffic	Explorer	1FM5K8D89FGA28812	Black	Marked	VLS6991	\$30,193.81	\$0.00	\$7,918.59
15-22	Patrol/SWAT	F150	1FTFW1ET9EKE58567	Black	Marked	VLS6812	\$27,905.00	\$2,080.00	\$8,897.07
15-23	Patrol/SWAT	F150	1FTFW1ET9EKE58570	Black	Marked	VLS6812	\$27,905.00	\$2,080.00	\$8,897.07
15-24	Patrol/SWAT	F150	1FTFW1ET0EKE58571	Black	Marked	VLS6812	\$27,905.00	\$2,080.00	\$8,897.07
15-25	Patrol/SWAT	F150	1FTFW1ET7EKE58566	Black	Marked	VLS6213	\$27,905.00	\$2,080.00	\$8,130.46
15-26	Patrol	Charger	2C3CDXKT9EH320250	Black	Marked	VLS6815	\$23,424.00	\$3,560.00	\$7,362.10
15-27	Patrol	Charger	2C3CDXKT4EH320253	Black	Marked	VLS6815	\$23,424.00	\$3,560.00	\$7,362.10
15-28	Patrol	Charger	2C3CDXKT6EH320254	Black	Marked	VLS6815	\$23,424.00	\$3,560.00	\$7,362.10
15-29	Patrol	Charger	2C3CDXKT8EH320255	Black	Marked	VLS6815	\$23,424.00	\$3,560.00	\$7,362.10
15-30	Patrol	Charger	2C3CDXKTXE320256	Black	Marked	VLS6815	\$23,424.00	\$3,560.00	\$7,362.10
15-31	Patrol	Charger	2C3CDXKTXE320259	Black	Marked	VLS6815	\$23,424.00	\$3,560.00	\$7,362.10
15-32	Patrol	Charger	2C3CDXKTXE320260	Black	Marked	VLS6815	\$23,424.00	\$3,560.00	\$7,362.10
15-33	Patrol	Charger	2C3CDXKTXE320261	Black	Marked	VLS6815	\$23,424.00	\$3,560.00	\$7,362.10





New Build Out 2014  
By Assignment

\$34,346.10	\$18,000.00	\$16,346.10
\$34,346.10	\$18,000.00	\$16,346.10
\$34,346.10	\$18,000.00	\$16,346.10
\$34,346.10	\$18,000.00	\$16,346.10
\$34,346.10	\$18,000.00	\$16,346.10
\$34,487.06	\$21,000.00	\$13,487.06
\$34,487.06	\$21,000.00	\$13,487.06
\$33,124.04	\$21,000.00	\$12,124.04
		\$602,706.28
		\$301,353.14

# COTTONWOOD HEIGHTS

## RESOLUTION No. 2014-46

### A RESOLUTION APPROVING ENTRY INTO A GOVERNMENTAL LEASE-PURCHASE AGREEMENT WITH ZIONS FIRST NATIONAL BANK FOR THE LEASE OF POLICE VEHICLES AND ASSOCIATED EQUIPMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF ALL RELATED DOCUMENTS AND THE TAKING OF ALL REQUIRED ACTIONS

**WHEREAS**, the city of Cottonwood Heights (the “*City*”) is a Utah municipality authorized by Utah law to lease property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

**WHEREAS**, the City formed the Cottonwood Heights Police Department (“*CHPD*”) to provide law enforcement within the City, and desires to purchase vehicles and associated equipment (collectively, the “*Vehicles*”) for CHPD’s use in performing that essential governmental function; and

**WHEREAS**, in order to purchase the Vehicles, the City proposes to enter into a “Governmental Lease Purchase Agreement” (with all related documents and exhibits, the “*Agreement*”) with Zions First National Bank (the “*Lessor*”); and

**WHEREAS**, the City’s municipal council (the “*Council*”) met in regular session on 8 July 2014 to consider, among other things, approving the City’s entry into the Agreement; and

**WHEREAS**, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the City and its efficient administration, and the health, safety and welfare of the City’s residents, to approve the City’s entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the city council of the city of Cottonwood Heights as follows:

Section 1. **Approval of Agreement.** The form, terms and provisions of the Agreement are hereby approved in substantially the form attached to this resolution (this “*Resolution*”), with such insertions, omissions and changes as shall be approved by the City’s mayor in consultation with the City’s manager and attorney. The execution of the Agreement shall be conclusive evidence of such approval, and the City’s mayor and recorder are hereby authorized and directed to execute and deliver the Agreement on the City’s behalf to the other parties thereto.

Section 2. **Other Actions Authorized.** The City's officers and employees shall take all actions necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated thereby, including, without limitation, the execution and delivery of acceptance certificates, IRS forms and any tax certificate and agreement and all other documents as contemplated in the Agreement. The City's officers and employees are further authorized and directed to take all actions necessary in conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Agreement.

Section 3. **No General Liability.** Nothing contained in this Resolution, the Agreement, or any related document or instrument shall be construed with respect to the City as incurring a pecuniary liability or charge upon the general credit of the City or against its taxing power, nor shall the breach of any agreement contemplated by this Resolution, the Agreement, or any related documents or instrument impose any pecuniary liability upon the City or any charge upon its general credit or against its taxing power, except to the extent that the rental payments or purchase payments payable under the Agreement are special limited obligations of the City as provided in the Agreement.

Section 4. **Appointment of Authorized Representatives.** The City's manager and the manager's designee in writing from time to time are hereby designated to act as authorized representatives of the City for purposes of the Agreement until such time as the Council designates any other or different authorized representative(s) for purposes of the Agreement.

Section 5. **Severability.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, or provision shall not affect any of the remaining provisions of this Resolution.

Section 6. **Repealer.** All orders and resolutions or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any order, resolution or ordinance or part thereof.

This Resolution, assigned no. 2014-46, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 8<sup>th</sup> day of July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr., Mayor**

**ATTEST:**

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**Kory Solorio**, Recorder

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___	Nay ___
Michael L. Shelton	Yea ___	Nay ___
J. Scott Bracken	Yea ___	Nay ___
Michael J. Peterson	Yea ___	Nay ___
Tee W. Tyler	Yea ___	Nay ___

**DEPOSITED** in the office of the City Recorder this 8<sup>th</sup> day of July 2014.

**RECORDED** this \_\_\_ day of July 2014.

# **INVOICING PROCEDURES**

**Re: Governmental Lease-Purchase Dated July 15, 2014**

**With**

**Cottonwood Heights, Utah**

Please provide us with the name, address, and phone number of the appropriate personnel we can contact regarding invoicing and payments:

(Name of Contact)	Steve Fawcett, Director of Finance
(Address)	1265 East Fort Union Blvd. Suite 250 Cottonwood Heights, UT 84047
(Phone)	(801) 944-7012
(Fax)	(801) 944-7005
(Email)	sfawcett@cottonwoodheights.utah.gov

**GOVERNMENTAL LEASE-PURCHASE  
AGREEMENT**

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**Name and Address of Lessee:**

**Cottonwood Heights  
1265 East Fort Union Blvd. Suite 250  
Cottonwood Heights, Utah 84047**

**Lessor:**

**Zions First National Bank  
One South Main Street  
Salt Lake City, Utah 84111**

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1. LEASE. Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the personal property described in the Supplement attached to this Governmental Lease and hereby made a part hereof (collectively the "Lease") upon the terms and conditions set forth in this Lease (such property together with all replacements, repairs and additions incorporated therein or affixed thereto being referred to herein as "Equipment"). The execution by Lessee of this Lease shall evidence a determination by the Lessee that the Equipment is essential to its proper, efficient and economic operation, that Lessee desires to enter into this Lease for the acquisition of that Equipment under the terms hereof, that the Equipment is necessary for the governmental functions of Lessee, and that Lessor is neither the manufacturer nor a dealer or merchant of said Equipment, but has agreed to provide the funding for and on behalf of Lessee for the acquisition of said Equipment under the terms hereof at the specific request of Lessee.

2. DELIVERY AND ACCEPTANCE. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a Delivery and Acceptance Certificate (herein so called) in the form to be provided by Lessor.

3. TERM. The term of this Lease shall begin the date the Equipment is accepted by Lessee (the "Acceptance Date") and shall continue unless earlier terminated as provided herein. The Acceptance Date shall be recorded on the Supplement.

4. RENT. Lessee shall pay as rent for the full term of this Lease or until such rent is fully paid, the amount shown in the Supplement as Total Rent, and a portion of each rent payment is paid as, and represents the payment of interest and Exhibit "A" attached to the Supplement sets forth the interest component of each rent payment during the term. The Total Rent shall be payable in installments each in the amount of the basic rental payment set forth in Exhibit A to the Supplement plus any applicable sales and use tax thereon.

Except as provided in Section 5, the obligation of Lessee to make rent payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between Lessee and Lessor or any other person, Lessee shall make all rent payments and other payments required hereunder when due and shall not withhold any rent payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such rent payments or other payments required under this Lease. Lessee's obligation to make rent payments or other payments during the Lease term shall not be abated through accident or unforeseen circumstances. However, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder; and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor. Lessee and Lessor acknowledge and agree that the obligation of the Lessee to pay rent hereunder constitutes a current special obligation of the Lessee payable exclusively from current and legally available funds and shall not in any way be construed to be an indebtedness of the Lessee within the meaning of any constitutional or statutory limitation or requirement applicable to the Lessee concerning the creation of indebtedness. Lessee reasonably believes that funds can be obtained sufficient to make all rent payments during the term of the Lease and hereby covenants that the officer of Lessee responsible for budget preparation shall request the required appropriation for each fiscal year during the term of this Lease from the governing body of

Lessee and exhaust all available administrative reviews and appeals in the event such portion of the budget is not approved.

5. NON-APPROPRIATION OF FUNDS. If, notwithstanding the making in good faith of a request to the governing body of Lessee for funds to pay its obligations hereunder for any ensuing fiscal year in accordance with appropriate procedures and Section 4 hereof, such governing body does not appropriate funds to be paid to Lessor for the Equipment, Lessee may upon prior written notice to Lessor effective 60 days after the giving of such notice or upon the exhaustion of the funding authorized for the then current fiscal year, whichever is later, return the Equipment to Lessor at Lessee's expense and thereupon be released of its obligation to make all rental payments to Lessor due after the close of the fiscal year for which funds were appropriated, provided: (i) the Equipment is returned to Lessor freight prepaid and insured to any location in the continental United States designated by Lessor in the same condition as when first delivered to Lessee, reasonable wear and tear resulting solely from authorized use thereof excepted, (ii) the foregoing notice states the failure of the governing body to appropriate the necessary funds as reason for cancellation, and (iii) the notice is accompanied by payment of all amounts then due to Lessor under this Lease. In the event Lessee returns the Equipment pursuant to the terms of this Section 5, Lessor shall retain all sums paid hereunder by Lessee.

6. REPRESENTATIONS AND WARRANTIES OF LESSEE. Lessee represents and warrants and, so long as this Lease is in effect or any part of Lessee's obligations to Lessor remain unfulfilled, shall continue to represent and warrant, that:

- (a) Lessee is a state, a possession of the United States, the District of Columbia, or a political subdivision of any of the foregoing. If Lessee is incorporated, it is duly organized and existing under the constitution and laws of its jurisdiction of incorporation and will do or cause to be done all things necessary to preserve and keep such organization and existence in full force and effect.
- (b) Lessee has been duly authorized by the constitution and laws of the applicable jurisdiction and by a resolution of its governing body (which resolution, if requested by Lessor, is attached hereto) to execute and deliver this Lease and to carry out its obligations hereunder.
- (c) All requirements have been met, and procedures have occurred in order to ensure the enforceability of this Lease, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Lease.
- (d) The Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee. In order to preserve the status of this Lease and the Advances as other than "private activity bonds" as described in Sections 103(b)(1) and 141 of the Code, as long as this Lease and any proceeds are outstanding and unpaid:
  - (I) none of the proceeds from this Lease or any facilities or assets financed therewith shall be used for any "private business use" as that term is used in Section 141(b) of the Code and defined in Section 141(b)(6) of the Code;
  - (II) the Lessee will not allow any such "private business use" to be made of the proceeds of this Lease or any facilities or assets financed therewith; and
  - (III) none of the Lease Payments due hereunder shall be secured in whole or in part, directly or indirectly, by any interest in any property used in any such "private business use" or by payments in respect of such property, and shall not be derived from payments in respect of such property.
- (e) Lessee has funds available and properly appropriated to pay rent until the end of its current appropriation period. Lessee has never terminated, or threatened to terminate, a lease-purchase or similar agreement for failure of its governing body to appropriate funds sufficient to perform its obligations thereunder for any fiscal year.

- (f) This Lease constitutes a valid, legal and binding obligation of Lessee enforceable against Lessee in accordance with the terms hereof.
- (g) No use will be made of the proceeds of this Lease or any funds or accounts of the Lessee which may be deemed to be proceeds of this Lease, which use, if it had been reasonably expected on the date of the execution of this Lease, would have caused this Lease to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code.
- (h) The obligations of the Lessee under this Lease are not federally guaranteed within the meaning of Section 149(b) of the Code.
- (i) Lessee will take no action that would cause the interest portion of the rent payments to become includible in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the Code) and Treasury Regulations promulgated there under (the Regulations), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the rent payments does not become includible in gross income of the recipient for federal income tax purposes under the Code and Regulations.
- (j) There are no legal or governmental proceedings or litigation pending, or to the best knowledge of the Lessee threatened or contemplated (or any basis therefor) wherein an unfavorable decision, ruling, or finding might adversely affect the transaction contemplated in or the validity of this Lease.
- (k) The Lessee has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any municipal lease of the same general nature as this Lease, or under any of its bonds, notes, or other obligations of indebtedness for which its revenues or general credit are pledged.
- (l) During the Term of this Lease, the Lessee covenants and agrees to provide the Lessor as soon as practicable when they are available: (i) a copy of the Lessee's final annual budget for each fiscal year; (ii) a copy of the Lessee's most recent financial statements; and (iii) any other financial reports the Bank may request from time to time.

7. **WARRANTIES.** Lessee agrees that it has selected each item of Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor. LESSOR MAKES NO WARRANTY WITH RESPECT TO THE EQUIPMENT, EXPRESSED OR IMPLIED, AND LESSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE EQUIPMENT. Lessee agrees to make rental and other payments required hereunder without regard to the condition of the Equipment and to look only to persons other than Lessor such as the manufacturer, vendor or carrier thereof should any item of Equipment for any reason be defective. So long as no Event of Default has occurred and is continuing, Lessor agrees, to the extent they are assignable, to assign to Lessee, without any recourse to Lessor, any warranty received by Lessor.

8. **TITLE.** Upon acceptance of the Equipment by Lessee hereunder, title to the Equipment will vest in the Lessee; provided, however, that (i) upon the occurrence of an Event of Default, as that term is defined in Section 20 hereof, (ii) in the event that the purchase option has not been exercised prior to the expiration date thereof, or (iii) in the event this Lease is terminated by Lessee pursuant to the provisions of Section 5 hereof, title will immediately vest in Lessor or its assignee. For as long as title to the Equipment is in Lessee, Lessee at its expense shall protect and defend the title and keep it free of all liens other than the rights of Lessee hereunder, and claims and liens created by or arising through Lessor. The Equipment shall remain personal property regardless of its attachment to realty and Lessee agrees to take such action at its expense as may be necessary to prevent any third party from acquiring any interest in the Equipment as a result of its attachment to realty.

9. **SECURITY AGREEMENT; FURTHER ASSURANCES.** To secure the performance of all Lessee's obligations hereunder, Lessee hereby grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, repairs, replacements and modifications thereto or therefor, including all after-acquired equipment of Lessee, and on any proceeds therefrom. Lessor is hereby authorized to file financing statements to

perfect such security interest in accordance with the Uniform Commercial Code. Lessee agrees to execute or deliver such additional documents, including, without limitation, financing statements, opinions of counsel, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment or for the confirmation or perfection of this Lease and Lessor's rights hereunder.

10. **LAWS AND TAXES.** Lessee shall comply with all laws and regulations relating to the Equipment and its use and shall promptly pay when due all sales, use, property, excise and other taxes and all license and registration fees now or hereafter imposed by any governmental body or agency upon the Equipment or its use or the rentals hereunder excluding, however, any taxes on or measured by Lessor's net income. Upon request by Lessor, Lessee shall prepare and file at its expense all tax returns relating to taxes for which Lessee is responsible hereunder which Lessee is permitted to file under the laws of the applicable taxing jurisdiction.

11. **LESSEE NEGLIGENCE.** Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents to the maximum extent permitted by law.

12. **ASSIGNMENT.** Without Lessor's prior written consent, Lessee will not sell, assign, sublet, pledge, or otherwise encumber or permit a lien arising through Lessee to exist on or against any interest in this Lease or the Equipment or remove the Equipment from its location referred to above. Lessor may assign its interest in this Lease and sell or grant a security interest in all or any part of the Equipment without Lessee's consent. Lessee hereby appoints Lessor as Lessee's agent for purposes of maintaining a written record of all such assignments.

13. **INSPECTION.** Lessor may inspect the Equipment at any time and from time to time during regular business hours.

14. **REPAIRS.** Lessee will use the Equipment with due care and for the purpose for which it is intended. Lessee will maintain the Equipment in good repair, condition and working order and will furnish all parts and services required therefore, all at its expense. All such parts when furnished shall immediately become part of the Equipment for all purposes hereof.

15. **LOSS OR DAMAGE.** In the event any item of Equipment shall become lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of any item of Equipment, Lessee shall promptly pay Lessor (a) the amount of all rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment, plus (b) the amount stated in the Supplement or Exhibit A thereto as the Termination Balance. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer. Any insurance or condemnation proceeds received shall be credited to Lessee's obligation under this Section and Lessee shall be entitled to any surplus.

16. **INSURANCE.** Lessee shall obtain and maintain on or with respect to the Equipment at its own expense (a) liability insurance against liability for bodily injury and property damage with a minimum limit of \$500,000 combined single limit and (b) physical damage insurance insuring against loss or damage to the Equipment in an amount not less than the full replacement value of the Equipment or the amount stated in the Supplement or an exhibit thereto as the Termination Balance whichever is greater. Lessee shall furnish Lessor with certificate of insurance evidencing the issuance of a policy or policies to Lessee in at least the minimum amounts required herein, naming Lessor as an additional insured thereunder for the liability coverage and as loss payee for the property damage coverage. Each such policy shall be in such form and with such insurers as may be satisfactory to Lessor,

and shall contain a clause requiring the insurer to give to Lessor at least 10 days prior written notice of any alteration in the terms of such policy or the cancellation thereof, and a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirement thereof.

17. RETURN OF THE EQUIPMENT. Upon the termination of this Lease pursuant to Section 5 or Section 21 hereof Lessee will immediately deliver the Equipment to Lessor in the same condition as when delivered to Lessee, ordinary wear and tear excepted, at such location within the continental United States as Lessor shall designate. Lessee shall pay all transportation and other expenses relating to such delivery.

18. ADDITIONAL ACTION. Lessee will promptly execute and deliver to Lessor such further documents and take such further action as Lessor may request in order to more effectively carry out the intent and purpose of this Lease. Lessee will furnish, from time to time on request, a copy of Lessee's latest annual balance sheet and income statement.

19. DEFAULT. Each of the following events shall constitute an "Event of Default" hereunder: (a) Lessee shall fail to pay when due any installment on basic rent; (b) Lessee shall fail to observe or perform any other agreement to be observed or performed by Lessee hereunder and the continuance thereof for 10 calendar days following written notice thereof by Lessor to Lessee; (c) any warranty, representation or statement made or furnished to Lessor by or on behalf of Lessee proves to have been false or misleading in any material respect; or (d) Lessee shall voluntarily file, or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under the federal or state bankruptcy code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver, or liquidator shall be appointed of it or all of a substantial part of its assets.

20. REMEDIES. Whenever any event of default referred to in Section 20 hereof shall have happened and be continuing with respect to the Equipment, Lessor shall have the right at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(a) Lessor, with or without terminating this Lease may declare all rent payments due or to become due during the fiscal year in effect when the default occurs to be immediately due and payable by Lessee, whereupon such rent payments shall be immediately due and payable.

(b) Lessor, with or without terminating this Lease, may repossess the Equipment by giving Lessee written notice to deliver the Equipment to Lessor, whereupon Lessee shall do so in the manner provided in Section 17; or in the event Lessee fails to do so within 10 days after receipt of such notice, Lessor may enter upon Lessee's premises where the Equipment is kept and take possession of the Equipment and charge Lessee for costs incurred in repossessing the Equipment, including reasonable attorneys' fees. Lessee hereby expressly waives any damages occasioned by such repossession. If the Equipment or any portion of it has been destroyed or damaged beyond repair, Lessee shall pay the applicable Termination Balance of the Equipment as set forth in the Supplement or Exhibit A thereto (less credit for proceeds of insurance remaining after subtraction of Lessor's costs with respect to the collection thereof), to Lessor. Notwithstanding the fact that Lessor has taken possession of the Equipment, Lessee shall continue to be responsible for the rent payments due during the fiscal year then in effect. If this Lease has not been terminated, Lessor shall return the Equipment to Lessee at Lessee's expense when the event of default is cured.

(c) If Lessor terminates this Lease and takes possession of the Equipment, Lessor shall within 30 days thereafter use its best efforts to sell the Equipment or any portion thereof in a commercially reasonable manner at public or private sale in accordance with applicable state laws. Lessor shall apply the proceeds of such sale to pay the following items in the following order: (i) all costs incurred in securing possession of the Equipment; (ii) all expenses incurred in completing the sale; (iii) the applicable Termination Balance of the Equipment; and (iv) the balance of any rent payments owed by Lessee during the fiscal year then in effect. Any sale proceeds remaining after the requirements of clauses (i), (ii), (iii) and (iv) have been met may be retained by Lessee.

(d) If the proceeds of sale of the Equipment are not sufficient to pay the balance of any rent payments owned by Lessee during the fiscal year then in effect Lessor may take any other remedy available at law or in equity to require Lessee to perform any of its obligations hereunder.

21. NOTICES. Any written notice hereunder to Lessee shall be deemed to have been given when delivered personally or deposited in the United States mails, postage prepaid, addressed to Lessee at its address set forth above or at such other address as may be last known to Lessor.

22. PREPAYMENT. This Lease maybe prepaid in whole, but not in part, and on any date with 45 days written notice to Lessor, upon payment of all rent payments then due.

23. SURVIVAL. Lessee's obligations under Section 10 shall survive termination of this Lease.

24. MISCELLANEOUS. Any provision of this Lease, which is unenforceable in any jurisdiction shall, as to jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Lease, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. This Lease shall in all respects be governed by, and construed in accordance with, the substantive laws of the state in which the Lessee is located.

Dated: July 15, 2014

**Lessee: Cottonwood Heights, Utah**

**Attest:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: Mayor

Its: City Recorder

**Lessor: Zions First National Bank**

By: \_\_\_\_\_

Its: Vice President

Zions First National Bank  
One South Main Street  
Salt Lake City, Utah 84111

**Certificate of Insurance**

Coverage is provided for the following Named Insured:

Name of Insured

Cottonwood Heights

Street Address

1265 East Fort Union Blvd. Suite 250

City

Cottonwood Heights

State

Utah

Zip

84047

**DETAILED DESCRIPTION AND LOCATION OF EQUIPMENT COVERED**

Governmental Lease Purchase dated July 15, 2014 for list of vehicles for City use

**DESCRIPTION OF COMPREHENSIVE GENERAL LIABILITY INSURANCE**

Insurance Company (not agency)

Policy Number

Effective Date

Expiration Date

**BODILY INJURY LIABILITY**

Single Claim / Each Occurrence  
\$500,000.00

Aggregate

**PROPERTY DAMAGE LIABILITY**

Each Occurrence

Aggregate

\_\_\_\_\_, its successors and assigns, is endorsed as an Additional Insured on the Comprehensive General Liability insurance described above:  Yes  No

**DESCRIPTION OF COMPREHENSIVE GENERAL LIABILITY INSURANCE**

Insurance Company

Policy Number

Effective Date

Expiration Date

The Physical Damage Insurance issued in the amount of \_\_\_\_\_ consists of:

Fire and Extended Coverage including Vandalism, Malicious Mischief and Theft

All Risk Insurance with the following exceptions:

\_\_\_\_\_, its successors and assigns, is endorsed as Loss Payee on the Physical Damage Insurance described above:  Yes  No

The Policy, as to the interest of Loss Payee, shall not be invalidated by any act of omission or commission or neglect or misconduct of the Named Insured at any time, not by any foreclosure or other proceeding or notice of sale relating to the insured property, not by any change in the title or ownership thereof or the occupation of the premises for purposes more hazardous than are permitted by the Policy provided, that in case the Named Insured shall fail to pay any premium due under the Policy, Loss Payee may, at its option, pay such premium.

The Policy may be canceled at any time by either Insurer or Named Insured according to its provisions, but in any such case the Policy shall continue in full force and effect for the exclusive benefit of loss Payee for ten days after written notice to Loss Payee of such cancellation and shall then cease.

Lease dated July 15, 2014

Agency Name

Street Address

City

State

Zip

Signature of Agent

Agent Telephone Number

Date

## **DELIVERY AND ACCEPTANCE CERTIFICATE**

TO: Zions First National Bank

RE: GOVERNMENTAL LEASE-PURCHASE AGREEMENT DATED JULY 15, 2014 AND SUPPLEMENT DATED JULY 15, 2014

FOR: VEHICLES

I am duly qualified and acting as the officer identified below of Cottonwood Heights, Utah (the "Lessee"); and, with respect to the Governmental Lease-Purchase Agreement dated July 15, 2014 and Supplement thereto dated July 15, 2014 (the "Lease"), by and between Lessee and Zions First National Bank (the "Lessor"), that:

1. The equipment described in the Lease (the "Vehicles") will be delivered and installed in accordance with Lessee's specifications and has been accepted by Lessee as of the Acceptance Date shown on the Supplement.
2. The rent payments provided for in such Supplement or Exhibit A thereto shall commence payments July 15, 2015 and thereafter, in the amounts shown thereon.
3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all rent payments required to be paid under the Lease during the current fiscal year of Lessee, and such moneys will be applied in payment of all rent payments due and payable during such current fiscal year.
4. Lessee is exempt from all personal property taxes and is exempt from sales and/or use taxes with respect to the Equipment and the rent payments.
5. During the Lease term the Equipment will be used by Lessee to perform essential governmental functions. Such functions are:

Police protection and transportation within Cottonwood Heights, Utah and elsewhere in accordance with applicable mutual aid agreements, interlocal agreements, police policies and Utah law.

6. To my actual knowledge without due diligence, there is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the lease; the proper authorization, approval and execution of the Lease and other documents contemplated thereby; the appropriation of moneys, or any other action taken by Lessee to provide moneys, sufficient to make rent payments coming due under the Lease in Lessee's current fiscal year; or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.

Dated: July 15, 2014

Cottonwood Heights, Utah  
Lessee

By: \_\_\_\_\_

Name: Kelvyn H. Cullimore, Jr.

Title Mayor

Attest:

By: \_\_\_\_\_

Name: Kory Solorio

Title: City Recorder

EXHIBIT A – PAYMENT SCHEDULE

Payment Date	Principal	Coupon	Interest	Total Debt Service
7/15/2015	\$ 315,612.10	1.24%	\$14,387.90	\$ 330,000.00
7/15/2016	844,702.23	1.24%	10,474.31	855,176.54
Total	\$1,160,314.33		\$24,862.21	\$1,185,176.54

**INCUMBENCY CERTIFICATE**

I do hereby certify that I am the duly elected or appointed and acting City Recorder of Cottonwood Heights, Utah, a political subdivision or agency duly organized and existing under the laws of the State of Utah, that I have custody of the records of such entity, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of such entity holding the offices set forth opposite their respective names. I further certify that (1) the signatures set opposite their respective names and titles are their true and authentic signatures and (2) such officers have the authority on behalf of such entity to enter into that certain Governmental Lease-Purchase Agreement dated July 15, 2014 and Supplement thereto between such entity and Zions First National Bank (Lessor).

NAME	TITLE	SIGNATURE
<u>Kelvyn H. Cullimore, Jr.</u>	<u>Mayor</u>	_____
<u>Kory Solorio</u>	<u>City Recorder</u>	_____

IN WITNESS WHEREOF, I have duly executed this certificate this \_\_\_\_ day of July, 2014.

\_\_\_\_\_  
CITY RECORDER



1		Ford Explorer
1		Ford Explorer
1		Ford Explorer

Location of Equipment (if different from Lessee's address)		<b>SCHEDULE OF RENT PAYMENTS</b>		
Cottonwood Heights		Basic Rental Payments Per the Amortization	Number of Payments 2	Advance Payments 0
Acceptance Date July 15, 2014				
Term in months 24 Months		Interest Rate 1.24%	First Payment Due 7/15/2015	Final Purchase Option Price \$1.00
Rental Payment Period (check one) <input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Annually		FINANCE AMOUNT: \$1,160,314.33  TOTAL RENT: \$1,185,176.54		
<input type="checkbox"/> Quarterly <input type="checkbox"/> Other – see additional provisions				
Additional Provisions: Two annual payments per the amortization schedule: the first on July 15, 2015, and the remaining balance on July 15, 2016				

LESSOR: Zions First National Bank

LESSEE: Cottonwood Heights, Utah

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Kelvyn H. Cullimore, Jr., Mayor

Its \_\_\_\_\_

Kory Solorio, City Recorder

Date \_\_\_\_\_

Date \_\_\_\_\_

COTTONWOOD HEIGHTS

RESOLUTION No. 2014-47

A RESOLUTION APPROVING ENTRY INTO AN AGREEMENT WITH GSBS, PC  
D/B/A GSBS ARCHITECTS FOR ARCHITECTURAL SERVICES  
(MUNICIPAL CENTER PROJECT)

**WHEREAS**, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) met in regular session on 8 July 2014 to consider, among other things, approving the City’s entry into an AIA Document B101-2007 SP (the “*Agreement*”) with GSBS, PC d/b/a GSBS Architects (“*Provider*”), whereunder Provider would provide architectural, engineering and other services in connection with City’s municipal center project as described in the Agreement; and

**WHEREAS**, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City’s entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2014-47, shall take effect immediately upon passage.

**PASSED AND APPROVED** effective 8 July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr., Mayor**

**ATTEST:**

\_\_\_\_\_  
**Kory Solorio, Recorder**

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___	Nay ___
Michael L. Shelton	Yea ___	Nay ___
J. Scott Bracken	Yea ___	Nay ___
Michael J. Peterson	Yea ___	Nay ___
Tee W. Tyler	Yea ___	Nay ___

**DEPOSITED** in the office of the City Recorder this 8<sup>th</sup> day of July 2014.

**RECORDED** this \_\_\_ day of July 2014.

# DRAFT AIA® Document B101™ - 2007 SP

## Standard Form of Agreement Between Owner and Architect, for use on a Sustainable Project

AGREEMENT made as of the « » day of May in the year Two Thousand Fourteen  
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

Cottonwood Heights, a Utah municipality  
1265 East Fort Union Blvd., Suite 250  
Cottonwood Heights, UT 84047

and the Architect:  
(Name, legal status, address and other information)

GSBS, P.C. d/b/a GSBS Architects  
375 West 200 South, Suite 100  
Salt Lake City, UT 84101

for the following Project:  
(Name, location and detailed description)

Cottonwood Heights Municipal Center  
4.7 acres at approximately 2300 East Bengal Blvd.  
Cottonwood Heights, UT

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information: SEE ATTACHED EXHIBIT A.

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, anticipated Sustainable Objective, incentive programs the Owner intends to pursue, and other information relevant to the Project.)*

§ 1.2 Subject to amendment by the Owner as provided herein, the Owner's anticipated dates for commencement of construction, and Substantial Completion of the Work as defined in Section 9.8.1 of AIA Document A201™-2007 SP, as modified, are set forth below:

- .1 Commencement of construction date:

**1 March 2015**

- .2 Substantial Completion date:

**1 June 2016**

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall, when appropriate, adjust the terms of this Agreement accordingly.

§ 1.4 The Services are subject to the Owner-approved Stated Limitation on Cost of the Work (SLCW) specified in attached Exhibit A. Unless otherwise expressly provided in this Agreement, the Architect shall perform the Services in a manner that will render a Cost of the Work that does not exceed the most current Owner-approved SLCW.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. Such professional services shall include all those necessary for the complete design and construction documentation of the Project. The Architect agrees that the total Fee stated in Article 11 represents adequate and sufficient compensation for its timely provision of all professional services (including those of its consulting structural, mechanical, electrical, plumbing and civil [or other] consulting engineers) necessary to meet this obligation, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being: (a) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "Owner-provided"; and (b) the cost of those engineering or consulting Services that become necessary due to Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect).

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect warrants that it, and the individual architects and engineers it employs on the Project, are licensed to practice Architecture (or Engineering, as the case may be) in the state of Utah. Nothing in this Agreement shall be construed to authorize performance by the Architect at a standard of care that is reduced from the legally-required standard and which is expected of architects practicing under similar circumstances and conditions. Nothing in this Agreement shall be construed to eliminate or diminish the Architect's responsibility for compliance of its design, its Construction Documents, and its Services provided with the foregoing standard of care. In particular, the actions of Owner, as the city with jurisdiction over construction of the Project, or its employees or agents (including its building official) in reviewing and approving Construction Documents prepared by the Architect shall not diminish the Architect's responsibility for assuring that such Construction Documents comply with applicable laws and standards.

§ 2.3 The Architect shall identify in writing a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall, at its cost, maintain for the duration of this Agreement the insurance coverage specified on attached Exhibit B, which includes, without limitation, the following insurance:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

«\$1,000,000 per claim/\$2,000,000 general aggregate limit »

.2 Automobile Liability

«Included in the General Liability Coverage. The Architect does not own any vehicles. »

.3 Workers' Compensation

As required by applicable law

.4 Professional Liability

\$2.5 Million combined single limit per occurrence

.5 Excess Liability

\$5 Million

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES AND SUSTAINABILITY SERVICES

§ 3.1 The Architect's Basic Services consist of the professional services necessary for the complete design and construction documentation of the Project, including programming; architecture; landscape architecture; interior design (but not furniture selection); lighting design; audio-visual systems design; telecommunications/data systems design; sustainable design; "as constructed" record drawings(based on information provided by others); civil, structural, mechanical, plumbing, electrical and any other necessary engineering; and detailed cost estimating at each phase of design. The Architect's Basic Services also shall include regularly meeting (typically, monthly) with Owner's city council to discuss issues, status and strategy, and participating in no more than four community "open house" events concerning the Project. The Architect agrees that the Basic Services Fee under Article 11 represents adequate compensation for its timely provision of all the Basic Services necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being (a) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "Owner-provided"; and (b) the cost of those engineering or consulting Services that become necessary due to Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect). The Architect's Sustainability Services consist of those described in Section 3.3. Services not set forth in Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and written information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 If the Owner makes a directive or substitution of which the Architect professionally and reasonably disapproves, the Architect shall immediately, directly address such issue with the Owner. If resolution of such disagreement does not occur, then the Architect may promptly register its continuing disapproval of such matter, whereupon the Architect shall not be responsible for such directive or substitution by the Owner made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall prepare designs and documents in compliance with applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 Scope of Architect's Basic Services

#### § 3.2.1 Schematic Design Phase Services

§ 3.2.1.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services and shall prepare designs and documents in accordance with the applicable standard of care.

§ 3.2.1.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any

inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.1.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.1.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.1.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may, if requested by the Owner, include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.1.5.1 In providing the Sustainability Services under Section 3.3, the Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.1.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.1.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3. The Architect shall provide for the Owner's approval a detailed estimate of the Cost of the Work based upon the Schematic Design package produced by the Architect, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on the Cost of the Work (SLCW) as set forth on attached Exhibit A, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.2.1.7 The Architect shall submit the Schematic Design Documents, and the Sustainability Plan prepared in accordance with Section 3.3.4.1, to the Owner, and request the Owner's approval.

### § 3.2.2 Design Development Phase Services

§ 3.2.2.1 Based on the Owner's approval of the Schematic Design Documents and the Sustainability Plan, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.2.2.2 The Architect shall provide for the Owner's approval a detailed estimate of the Cost of the Work based upon the Design Development package produced by the Architect, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on the Cost of the Work (SLCW), and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.2.2.3 The Architect shall submit the Design Development Documents to the Owner, including the estimate required under Section 3.2.2.2 above, and request the Owner's approval.

### § 3.2.3 Construction Documents Phase Services

§ 3.2.3.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements, the budget for the Cost of the Work and the Sustainability Plan, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the materials, systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.2.5.4.

§ 3.2.3.2 The Architect shall incorporate into the Construction Documents the requirements of governmental authorities having jurisdiction over the Project.

§ 3.2.3.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) the Sustainability Plan. The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.2.3.4 Upon completion of the Construction Documents, the Architect shall provide for the Owner's approval a written, itemized estimate of the Cost of the Work, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on the Cost of the Work (SLCW) as set forth on attached Exhibit A, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.2.3.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work or the Sustainability Plan, take any action required under Section 6.5, and request the Owner's approval.

### § 3.2.4 Bidding or Negotiation Phase Services

#### § 3.2.4.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### § 3.2.4.2 Competitive Bidding

§ 3.2.4.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.2.4.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.2.4.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.2.4.3 Negotiated Proposals

§ 3.2.4.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.2.4.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.2.4.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.2.5 Construction Phase Services

#### § 3.2.5.1 General

§ 3.2.5.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201–2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project (as modified). Architect shall actively assist and within its professional expertise, advise Owner in revising and issuing the AIA Document A201–2007 SP, and modifications thereto, in accordance with Owner’s instructions and consistent with the duties of the Architect set forth in the modified A201—2007 SP. The Owner and the Architect shall amend this Agreement to reflect any material changes in the Services required by those instructions.

§ 3.2.5.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and in the A201—2007 SP, as modified. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work, except as provided in Section 3.2.5.2.

§ 3.2.5.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.2.5.2 Evaluations of the Work

§ 3.2.5.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the portion of the Work completed, and to reasonably determine if the Work observed is being performed in a manner indicating that the Work will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Without limiting the generality of the foregoing, the Architect shall keep the Owner informed of the progress and quality of the Work by a written report each month until time of Substantial Completion.

§ 3.2.5.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. If the Architect does not reject non-conforming Work, the Architect shall demand in writing that the Contractor bring the non-conforming Work into compliance with the Contract Documents, and, if the Contractor fails to do so expeditiously, the Architect shall report that failure to the Owner in a writing stating (a) the problem (b) the reasons for the actions taken by the Architect; (c) what, if any, response was received from the Contractor; and (d) what actions by the Owner and/or the Contractor are needed or expected. The Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in

good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.2.5.2.3 The Architect shall interpret and advise the Owner of that interpretation concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Nothing in this Agreement or in the A201—2007 SP, as modified, shall make a decision of the Architect binding on the Owner in the absence of the Owner's express written approval thereof.

§ 3.2.5.2.4 Interpretations of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Where approved in writing by the Owner in advance, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.2.5.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201—2007 SP, as modified, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.2.5.3 Certificates for Payment to Contractor

§ 3.2.5.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.2.5.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.2.5.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.2.5.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.2.5.4 Submittals

§ 3.2.5.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.2.5.4.2 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals (such as Shop Drawings, Product Data and Samples) as necessary to verify their conformance with the requirements of the Work as indicated in the Contract Documents. The Architect's review of such submittals is not for the purpose of confirming dimensions or quantities in those submittals except to the extent that the Contractor has requested the Architect's assistance to determine certain dimensions because those indicated in the Construction Documents conflict with existing field conditions or because the dimensions in the Construction Documents contain erroneous, inconsistent or incomplete information or dimensions for which clarifications are needed which can be supplied by the Architect.. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.2.5.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Nothing in this Agreement shall be construed as authorization by the Owner to the Architect to delegate design responsibility. Except for delegation to consulting engineers who are responsible to, and in privity with, the Architect, any delegation of design responsibility by the Architect must be specifically authorized in writing, in advance, by the Owner, which authorization can be withheld by the Owner for any reason. Notwithstanding the foregoing, the Architect anticipates, and the Owner authorizes delegation of the design through the use of performance specifications for the following: Fire protection, stair structures, guard rails, and curtain wall systems.

§ 3.2.5.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect shall acknowledge the receipt of each Contractor-generated Request for Information (RFI) within seven days after receiving it. The Architect shall issue a written answer for each RFI simultaneously to the Contractor and the Owner (along with necessary descriptive drawings, specifications, or other documents) with the promptness necessary to avoid unnecessary delay or cost to the Project. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.2.5.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### § 3.2.5.5 Changes in the Work

§ 3.2.5.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. All authorizations for minor change in the Work shall be in writing, or confirmed by the Architect in writing within 24 hours of authorizing the change. Immediately upon authorizing a minor change in the Work, the Architect shall provide written notice to the Owner describing the change and confirming that such change will not affect the Contract Sum or Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.2.5.5.2 The Architect shall maintain records relative to changes in the Work.

#### § 3.2.5.6 Project Completion

§ 3.2.5.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Verification that the Project has achieved the Sustainable Objective, or the actual achievement of the Sustainable Objective, shall not be a condition precedent to the Architect's issuance of a Certificate of Substantial Completion.

§ 3.2.5.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.2.5.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.2.5.6.4 The Architect shall forward to the Owner the following information received from the Contractor:

- (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment;
- (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any

other documentation required of the Contractor under the Contract Documents, except for Sustainability Documentation which by its nature must be completed after Substantial Completion.

§ 3.2.5.6.5 Prior to the expiration of ten months from the date of Substantial Completion, the Architect shall, without additional compensation, conduct an inspection with the Owner to review the operations and performance of the Project facilities; record any non-conforming Work; and submit a detailed written report of nonconforming Work to the Contractor, with a copy to the Owner.

### § 3.3 Scope of Architect's Sustainability Services

§ 3.3.1 In conjunction with the services described in Sections 3.1 and 3.2, the Architect shall provide the Sustainability Services described in this Section 3.3.

#### § 3.3.2 Sustainability Certification Agreements

If the anticipated Sustainable Objective set forth in the Initial Information includes a Sustainability Certification, the Architect shall provide the Owner with copies of all agreements required by the Certifying Authority to register the Project and pursue the Sustainability Certification. The Owner and Architect will review and confirm that the terms of those agreements are acceptable to the Owner before moving forward with the Sustainability Services under Section 3.3. The Owner agrees to execute all documents required by the Certifying Authority to be executed by the Owner, including any documentation required to establish the authority of the Architect as an agent of the Owner for the limited purpose of pursuing the Sustainability Certification.

#### § 3.3.3 Sustainability Workshop

No later than the conclusion of the Schematic Design Phase Services, the Architect shall conduct a Sustainability Workshop with the Owner and, as requested by the Architect, with the Owner's consultants and the Architect's consultants, during which the participants will: review and discuss potential Sustainability Certifications; establish the Sustainable Objective; discuss potential Sustainable Measures to be targeted; examine strategies for implementation of the Sustainable Measures; and discuss the potential impact of the Sustainable Measures on the Project schedule and the Owner's program and budget.

#### § 3.3.4 Sustainability Plan Services

§ 3.3.4.1 Following the Sustainability Workshop, the Architect shall prepare a Sustainability Plan based on the Sustainable Objective and targeted Sustainable Measures.

§ 3.3.4.2 The Architect shall perform those Sustainable Measures identified as the responsibility of the Architect in the approved Sustainability Plan and any approved changes to the Sustainability Plan. If the Sustainability Plan requires the Architect to provide services beyond those based on the Initial Information, those services shall be provided pursuant to Section 4.3.1.1.

§ 3.3.4.3 Subject to Section 4.3.3, the Architect shall make adjustments to the Sustainability Plan as the design and construction of the Project progresses to reflect any approved changes.

#### § 3.3.5 Design Phases

§ 3.3.5.1 The Architect shall prepare Schematic Design Documents, Design Development Documents and Construction Documents that incorporate the Sustainable Measures identified in the Sustainability Plan, as appropriate.

§ 3.3.5.2 As part of the Sustainable Measures, the Project may require the use of materials and equipment that have had limited testing or verification of performance. The Architect may be unable to determine whether the materials or equipment will perform as represented by the manufacturer or supplier. The Architect shall discuss with the Owner the proposed use of such materials or equipment and potential effects on the Sustainable Objective that may occur if the materials or equipment fail to perform in accordance with the manufacturer's or supplier's representations. The Owner will render a written decision regarding the use of such materials or equipment in a timely manner. In the event the Owner elects to proceed with the use of such materials or equipment, the Architect shall be permitted to reasonably rely on the manufacturer's or supplier's representations and shall not be responsible for any damages arising from failure of the material or equipment to perform in accordance with the manufacturer's or supplier's representations.

### § 3.3.6 Construction Phase

§ 3.3.6.1 The Architect shall advise and consult with the Owner regarding the progress of the Project toward achievement of the Sustainable Measures. Based on site visits performed in accordance with Section 3.2.5.2.1 and other information received from the Contractor, the Architect shall promptly notify the Owner of known deviations from the Contract Documents and defects or deficiencies in the Work that the Architect recognizes will impact achievement of Sustainable Measures. The Architect shall meet with the Owner and Contractor to discuss alternatives to remedy the condition.

§ 3.3.6.2 If the Architect determines that implementation of a proposed change in the Work would materially impact a Sustainable Measure or the Sustainable Objective, the Architect promptly shall notify the Owner, who may authorize further investigation of such change.

§ 3.3.6.3 Subject to Section 4.3.2.2, the Architect shall provide responses to the Contractor's request for information to describe how a product, material or equipment was intended to satisfy the requirements of a Sustainable Measure or contribute toward achievement of the Sustainable Objective.

### § 3.3.7 Project Registration and Submissions of Sustainability Documentation to the Certifying Authority

§ 3.3.7.1 If the Sustainable Objective includes a Sustainability Certification, the Architect, as agent for the Owner, shall perform the services set forth in this Section 3.3.7.

§ 3.3.7.2 The Architect shall register the Project with the Certifying Authority. Registration fees and any other fees charged by the Certifying Authority, and paid by the Architect, shall be a reimbursable expense under Section 11.9.1 of this Agreement and shall be credited against any initial payment received pursuant to Section 11.11.1.1.

§ 3.3.7.3 The Architect shall collect the Sustainability Documentation from the Owner and Contractor; organize and manage the Sustainability Documentation; and, subject to Section 4.3.3, submit the Sustainability Documentation to the Certifying Authority as required for the Sustainability Certification process.

§ 3.3.7.4 Subject to Section 4.3.3, and provided the Architect receives timely notice from the Owner or Certifying Authority, the Architect shall prepare and file necessary documentation with the Certifying Authority to appeal a ruling or other interpretation denying a requirement, prerequisite, credit or point necessary to achieve the Sustainability Certification.

§ 3.3.7.5 Subject to Section 4.3.3, the Architect shall prepare and submit the application for certification of the Project to the Certifying Authority, including any required supporting documentation, in accordance with the Sustainability Plan.

§ 3.3.7.6 Subject to Section 4.3.3, the Architect shall prepare responses to, and submit additional documentation required by, comments or questions received from the Certifying Authority.

§ 3.3.7.7 Any certification, declaration or affirmation the Architect makes to the Certifying Authority shall not constitute a warranty or guarantee to the Owner or the Owner's contractors or consultants.

## ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services or Sustainability Services but may be required for the Project. The Owner may request the following, or other, Additional Services of the Architect. Additional Services (whether or not listed below in this Section 4.1) requested by the Owner will be confirmed in writing. If the Owner requests any services that the Architect believes to be outside the scope of Basic Services, the Architect shall, before performing those services, inform the Owner in writing of the Architect's belief that the requested services are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing those requested Services. If the Owner then agrees in writing to direct the Architect to perform such Additional Services, then the Owner shall compensate the Architect as provided in Section 11.4. For those Additional Services specifically designated in the table below as the Architect's responsibility, the Owner shall compensate the Architect as provided in Section 11.3.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Architect	4.2.1
§ 4.1.2 Multiple preliminary designs	not provided	
§ 4.1.3 Measured drawings	not provided	
§ 4.1.4 Existing facilities surveys	not provided	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	not provided	
§ 4.1.6 Building Information Modeling (E203™–2012)	Architect	4.2.2
§ 4.1.7 Civil engineering	Architect	4.2.3
§ 4.1.8 Landscape design	Architect	4.2.4
§ 4.1.9 Architectural Interior Design	Architect	4.2.5
§ 4.1.10 Value Analysis (B204™–2007)	not provided	
§ 4.1.11 Detailed cost estimating	Architect	4.2.6
§ 4.1.12 On-site project representation (B207™–2008)	not provided	
§ 4.1.13 Conformed construction documents	not provided	
§ 4.1.14 As-Designed Record drawings	Not provided	
§ 4.1.15 As-Constructed Record drawings	Architect	4.2.7
§ 4.1.16 Post occupancy evaluation	not provided	
§ 4.1.17 Facility Support Services (B210™–2007)	not provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner’s consultants	Architect	4.2.8
§ 4.1.20 Telecommunications/data design	Architect	4.2.9
§ 4.1.21 Security Evaluation and Planning	Architect	4.2.10
§ 4.1.22 Commissioning (B211™–2007)	Not Provided	
§ 4.1.23 Fast-track design services	Not Provided	
§ 4.1.24 Historic Preservation (B205™–2007)	Not Provided	
§ 4.1.25 Furniture, Furnishings, and Equipment Design (B253™–2007)	Owner	
§ 4.1.26 Regional or Urban Planning (B212™–2010)	Not Provided	
§ 4.1.27 Owner-requested traffic consulting	Additional Service	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

§4.2.1 The Architect shall review the space list provided by the Owner and provide recommendations based on its professional expertise. The Architect shall meet with the Owner to conduct a visioning workshop and to review the space list and discuss any recommendations and adjustments. The Architect shall prepare a revised space list, including net square footages, circulation and net to gross factors to arrive at an overall projected gross square footage for the Project. Architect will provide evaluation of space needs and participate in a benchmarking tour. On the basis of these activities, Architect will develop a building program for the Project that includes required spaces, space sizes and space characteristics; site utility and functional requirements.

§4.2.2 (INTENTIONALLY OMITTED).

§4.2.3 The Architect will provide civil engineering for the Project. Services of the civil engineer are limited to the design of service connections to existing utilities within or directly adjacent to the Project site, grading and on-site improvements.

§4.2.4 The Architect will provide landscape architecture for the Project, limited to the design of planting, irrigation and hardscape on the Project site.

§4.2.5 The Architect will provide architectural interior design services limited to the design, selection and specification of materials and finishes for the Project.

§4.2.6 The Architect will provide estimates of the Cost of the Work at the completion of Programming, Schematic Design, Design Development and Construction Documents phases. The estimates for Programming and Schematic Design will utilize square footage basis methodology. The estimates for Design Development and Construction documents will utilize quantity surveyed, CSI 16 Division format.

§4.2.7 The Architect will prepare as-constructed record drawings from unverified information provided by others. The Architect will not warrant or be responsible for the completeness of said information. The Architect will provide the record drawings in one (1) digital form and one (1) paper copy.

§4.2.8 The Architect will coordinate its services with the services provided by the Owner and the Owner's consultants.

§4.2.9 The Architect will provide the design of telecommunication/data design limited to the design of raceway and termination for cabling. The Owner will provide the design of telecommunication and data equipment and service.

§4.2.10 The Architect will provide security planning appropriate for a facility of this type, including consideration of physical assault, access control and video surveillance systems.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.4 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following, or any other, Additional Services until the Architect receives the Owner's written authorization.

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .4 (Intentionally Omitted)
- .5 (Intentionally Omitted)
- .6 (Intentionally Omitted)
- .7 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .8 (Intentionally Omitted)
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction,
- .10 (Intentionally Omitted)
- .11 Changing or editing previously prepared Instruments of Service, including the Sustainability Plan, necessitated by the Certifying Authority's changes in the requirements necessary to achieve the Sustainability Certification; or
- .12 Assistance to the Owner or Contractor with preparation of Sustainability Documentation for which the Owner or Contractor is responsible pursuant to the Sustainability Plan,
- .13 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .14 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

- .15 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

#### § 4.3.2 (INTENTIONALLY OMITTED).

§ 4.3.3 The Architect shall provide services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 «Three» ( «3» ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 «Seventy-five» ( «75» ) visits to the site by the Architect over the duration of the Project during construction
- .3 «Four» ( «4» ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «Two» ( «2» ) inspections for any portion of the Work to determine final completion
- .5 «Two» ( «2» ) adjustments to the Sustainability Plan
- .6 «Six» ( «6» ) meetings during the Design and Construction Phases required to define, develop and incorporate the Sustainable Measures into the Contract Documents
- .7 «Three» ( «3» ) submittals to the Certifying Authority
- .8 «Three» ( «3» ) responses to the Certifying Authority's comments and questions
- .9 «Two» ( «2» ) appeals to the Certifying Authority pursuant to Section 3.3.7.4
- .10 «Five» ( «5» ) meetings with the Owner and Contractor, pursuant to Section 3.3.6.1, to discuss alternatives to remedy deviations from the Contract Documents or defects or deficiencies in the Contractor's Work
- .11 «Twenty-four» ( «24» ) meetings with City council to report on the progress of the project.

§ 4.3.4 Except as otherwise provided in Section 4.3.5, if the services covered by this Agreement have not been completed within «Thirty-three» ( «33» ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

§ 4.3.5 If the Sustainability Services required of the Architect by Section 3.3 have not been completed within «Twelve» ( «12» ) months after the date of Substantial Completion, through no fault of the Architect, extension of the Architect's services under Section 3.3 beyond that time shall be compensated as Additional Services.

§ 4.3.6 The Architect shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Architect shall perform in a manner consistent with the obligations of the Architect as stated in this Agreement, in the Contract for Construction and in the General Conditions of the Contract for Construction.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce any statutory lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality. Nothing in this §5.2 shall diminish the Architect's duty to prepare designs and Construction Documents so that the Project can be built within the Stated Limitation on Cost of the Work (SLCW) specified on Exhibit A.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner may change its designated representative upon written notice to the Architect, and the Owner may limit or modify the scope of authority of its designated representative in like manner. The Owner shall render decisions

and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees (of 3" or greater caliper); and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Architect shall coordinate its Services and those of its Consultants with services provided by the Owner, and the Owner shall require its consultants to cooperate with such coordination. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials, where needed for performance of the Work and where the need is not the result of the Architect's negligence or failure to perform.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service; provided, however, that nothing in this Agreement shall be construed to require the Owner to investigate for the purpose of becoming aware of any faults or defects, or to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect's Services.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall endeavor to promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.13 Based on the Owner's approval of the Sustainability Plan and any approved changes to the Sustainability Plan, the Owner shall perform those Sustainable Measures identified as the responsibility of the Owner in the Sustainability Plan, or as otherwise required by the Contract Documents. The Owner shall require that each of its contractors and consultants performs the contractor's or consultant's services in accordance with the Sustainability Plan.

§ 5.14 The Owner shall provide to the Architect any information requested by the Architect that is relevant and necessary for achievement of the Sustainable Objective, including: design drawings; construction documents; record drawings; shop drawings and other submittals; operation and maintenance manuals; master plans; building operation

costs; building operation budgets; pertinent records relative to historical building data, building equipment and furnishings; and repair records.

§ 5.15 The Owner shall comply with the requirements of the Certifying Authority as they relate to the ownership, operation and maintenance of the Project both during construction and after completion of the Project.

§ 5.16 The Owner shall be responsible for preparing, filing, and prosecuting appeals to the Certifying Authority, or taking any other actions determined by the Owner to be necessary or desirable, arising from the revocation or reduction of an awarded Sustainability Certification.

§ 5.17 Unless the Architect is to provide commissioning services pursuant to Section 4.1.22, the Owner shall provide the services of a commissioning agent that shall be responsible for commissioning of the Project.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect and its consultants as part of the Basic Services, represent the Architect's judgment as a design professional familiar with the construction industry.

§ 6.3 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work.

§ 6.4 The Architect's Estimate of the Cost of the Work shall be projected to the scheduled date for completion of the Bidding or Negotiation Phase of Services.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's Stated Limitation on the Cost of the Work (SLCW), the Architect shall analyze its design and inform the Owner of more cost-effective ways to build and of any related compromises to quality of construction. However, when those conditions occur at the end of the Construction Documents Phase of Services (or if the Contractor's Guaranteed Maximum Price for the Work exceeds the SLCW) as a result, in whole or in part, of some negligence by the Architect, the Owner may compel one or more of the following measures: (a) approve an increased SLCW, in which case the Architect's compensation shall be fixed at the previously approved SLCW or the Architect's most recent Estimate of the Cost of the Work, whichever is less; (b) reject the design and/or Construction Documents, in which case the Owner's reproduction and delivery costs and other costs related to the rejected bidding or negotiations shall be deducted from the Architect's compensation; (c) direct the Architect to revise the design and/or the Construction Documents in a manner that is agreeable to the Owner and that conforms to the SLCW, in which case those Services shall be provided by the Architect at no cost to the Owner and the cost of reissuance of documents shall be borne solely by the Architect; (d) revise the program or the Scope of Work, in which case those Services shall be provided by the Architect at no cost to the Owner and the cost of reissuance of documents (and resulting damages suffered by the Owner) shall be borne solely by the Architect; or (5) terminate this Agreement, in which case the Architect shall be compensated as otherwise provided herein for Services properly performed through the date of termination and reimbursable expenses less the Owner's reproduction and delivery costs and other costs and damages related to the Architect's failure to design in accordance with the SLCW. If amounts remaining within fees due to the Architect are insufficient to cover the Owner's costs and damages resulting from the Architect's negligent provision of Services or other failure to perform, then the Architect shall immediately compensate the Owner for the difference.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal for reasons not related in whole or in part to the Architect's fault, the Owner shall, at the Owner's discretion:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work;
- .5 instruct the Architect to modify its design and the Construction Documents so the Cost of the Work will fall within the Owner-designated Stated Limitation on the Cost of the Work; or
- .6 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, as an Additional Service pursuant to §4.3 , shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project and to allow the Certifying Authority to publish the Instruments of Service, or any other information, in accordance with the policies and agreements required by the Certifying Authority. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes, including requirements of a Certifying Authority, in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Solely for the purpose of obtaining or maintaining the Sustainability Certification, the Architect also grants the Owner a nonexclusive license to submit the Architect's Instruments of Service, directly or through third parties, to the Certifying Authority to comply with the requirements imposed by the Certifying Authority and further grants the Owner a nonexclusive license to allow the Certifying Authority to publish the Instruments of Service in accordance with the policies and agreements required by the Certifying Authority. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The licenses granted under this section permit the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statute of limitations shall commence to run, either upon the date of Substantial Completion (for acts or failures to act occurring before Substantial Completion of which the Owner was aware) or upon the Owner's discovery of the acts, omissions, events or circumstances giving rise to delay or damages to the Owner or the Project, whichever occurs later; provided that in no case shall an action be brought more than ten years after the date of Substantial Completion. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by proceeds received by the claimant from property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007 SP, General Conditions of the Contract for Construction for use on a Sustainable Project, as modified. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Owner waives consequential damages resulting from failure of the Project to achieve the Sustainable Objective, or failure to achieve one or more Sustainable Measures, including unachieved energy savings, unintended operational expenses, lost financial or tax incentives, or unachieved gains in worker productivity.

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by a mutually-acceptable, qualified mediator. A request for mediation shall be made in writing and delivered to the other party to the Agreement. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

§ 8.3 through §8.3.3 (INTENTIONALLY OMITTED).

### § 8.3.4 Consolidation or Joinder

§ 8.3.4.1 The Architect waives all objections to joinder of the Architect as a party to any Project-related mediation or litigation in which the Owner is joined or is otherwise positioned as a party or in which the Architect's conduct or its performance of professional services is in any way relevant to the subject of a dispute. The Architect also agrees to prepare or modify all documents used or prepared by the Architect (including, without limitation, agreements between the Architect and its Consultants and any AIA Document A133 2009 SP, AIA Document A201 2007 SP, or similar) to reflect such waiver.

§ 8.3.4.2 (INTENTIONALLY OMITTED).

§ 8.3.4.3 (INTENTIONALLY OMITTED).

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give at least 20 days' prior written notice to the Owner before suspending services, which notice shall detail the Architect's specific reason(s) for its intended termination and shall state with specificity the means by which the Owner may cure the alleged reason(s). If a suspension of services is deemed justified by a court of competent jurisdiction, whether before or after such suspension occurs, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services following a suspension of services which is then or thereafter deemed justified by a court of competent jurisdiction, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. Services shall otherwise be performed continuously and expeditiously, including during the pendency of disputes.

§ 9.2 The Owner may suspend the Project at any time for convenience upon at least ten days' prior written notice to the Architect. If the Owner suspends the Project for convenience or otherwise without cause, the Architect shall be compensated for services fully and satisfactorily performed prior to notice of such suspension. When and if the Project is resumed by the Owner, the Architect shall be equitably compensated for the Architect's demonstrated actual costs to remobilize to continue performance when Services are recommenced at the Owner's written request, and the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than ten days' prior written notice and opportunity to cure (i.e.—to recommence the Project) to the Owner.

§ 9.4 Either party may terminate this Agreement upon not less than 20 days' prior written notice and opportunity to cure should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Any such notice of termination shall detail the specific reason(s) for the intended termination and shall state with specificity the means by which the notice recipient may cure the alleged reason(s).

§ 9.5 This Agreement also may be terminated by the Owner, with or without cause, or for the Owner's convenience, upon at least ten days' prior written notice to the Architect. If the Owner purports to terminate this Agreement for cause, but that cause subsequently is found to be insufficient to support termination, such termination shall be deemed one of convenience.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services fully and satisfactorily performed prior to termination, together with Reimbursable Expenses then due.

§ 9.7 (INTENTIONALLY OMITTED).

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.10.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be deemed to be made in, and governed by, the laws of the state of Utah. Venue of any litigation relating to this Agreement shall be the Third District Court of Salt Lake County, Utah. The Architect shall incorporate this forum selection clause into all agreements with consultants, engineers, and other persons or entities (of any tier) providing Project-related services who, as Project participants, are in direct or indirect privity with the Architect.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project, as modified, unless a contrary definition is set forth in, or inferable from, this Agreement.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect may not assign its interests or delegate its obligations under this Agreement without the Owner's prior written consent, which the Owner may withhold in its sole, unfettered discretion. The Owner reserves the right, upon written notice to the Architect, to assign and delegate this Agreement to a lender providing financing for the Project or to other persons or entities who are ready and capable of performing the Owner's obligations under this Agreement if the assignee(s) agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.3.1 The Services to be provided by the Architect hereunder are deemed to be personal in nature. The Architect shall appoint to Project leadership those persons listed in Exhibit A hereto (Project Team). The Architect shall not make material changes to the Project Team without the Owner's prior written approval. If circumstances beyond the Architect's reasonable control dictate changes to the Project Team, then the Architect shall submit the credentials of the Architect's proposed replacement Project Team member(s) for Owner's approval, which shall not be unreasonably withheld or delayed. Nothing herein shall, however, be construed to limit the Owner's right to terminate this Agreement due to an unapproved change in the Project team, and any termination by the Owner due to an unapproved change in the Project Team shall be deemed a justifiable Termination for Cause.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least five business days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least five business days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect may include in its portfolio or promotional materials photographs and site plans of the Project; provided, however, that images used may not include any confidential or proprietary information (such as floor plans, area and cost information, security apparatus or measures, or other program-specific information) without the Owner's prior written consent, which the Owner may withhold in its sole discretion.

§ 10.8 Except as provided by the Utah Government Records Access and Management Act, Utah Code Ann. 63G-2-101 et seq., if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) the Certifying Authority or such other persons or entities that need to receive such information in order for the Owner or Architect to fulfill their obligations under this Agreement.

§ 10.9 The Owner and Architect acknowledge that achieving the Sustainable Objective is dependent on many factors beyond the Architect's control, such as the Owner's use and operation of the Project; the Work provided by the Contractor or the work or services provided by the Owner's other contractors or consultants; or interpretation of credit requirements by a Certifying Authority. Accordingly, although the Architect shall diligently the appropriate standard of care to assure that the Project will achieve the Sustainable Objective, the Architect does not warrant or guarantee that the Project will achieve the Sustainable Objective.

§ 10.10 Time is the essence of this Agreement.

§ 10.11 No action or failure to act by the Owner or the Architect shall constitute a waiver of any right or duty afforded under this Agreement, nor shall any such action or failure to act constitute any approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

§ 10.12 This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

§ 10.13 If any one or more of the provisions (or any part thereof) contained in this Agreement are for any reason held to be illegal, invalid or otherwise unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision (or part thereof) of this Agreement.

§ 10.14 In the event of any conflict or inconsistency between this Agreement and the AIA Document A201—2007 SP that is referred to in this Agreement, the provisions of this Agreement shall control.

§ 10.15 This Agreement may be executed and delivered by facsimile, by email, or by other electronic means, with the same legal effect as manual execution and physical delivery.

#### ARTICLE 11 COMPENSATION

§ 11.1 For full and satisfactory performance of the Architect's Services described under Sections 3.1, 3.2 and 4.1, the Owner shall compensate the Architect the total sum of six percent (6.0%) of the Cost of the Work (i.e., the construction cost). For example, if the Cost of the Work is \$7.0 Million, then the total compensation to be paid by the Owner for the Architect's Basic Services would be \$420,000.

§ 11.2 For the Architect's Sustainability Services described under Section 3.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Included in the amount described in §11.1.

§ 11.3 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

Included in the amount described in §11.1.

Any Owner-requested traffic consulting shall be provided by the Architect for a fixed fee of \$9,000 to \$13,000, depending on scope.

§ 11.4 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

The Architect's fees for any Additional Services that may arise during the course of the Project shall not exceed the reasonable and customary fees then charged in Salt Lake County, Utah for similar services, and shall be negotiated in good faith by the parties before the Architect commences performing any such Additional Services. Subject to the foregoing, Architect's fees for any additional service shall be based on the Architect's current hourly rate schedule, attached to this Agreement as Exhibit C. The hourly rate schedule is subject to annual adjustment in accordance with Architect's normal practices.

§ 11.5 Compensation for Additional Services of the Architect's consultants when not included in Section 11.3 or 11.4, shall be the amount invoiced to the Architect plus zero percent (0%), or as otherwise stated below:

§ 11.6 Where compensation for Basic Services described in Sections 3.1 and 3.2 is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Programming Phase:	seven and one-half	Percent (	7.5	%)
Schematic Design Phase:	fourteen	percent (	14	%)
Design Development Phase:	eighteen and one-half	percent (	18.5	%)
Construction Documents	thirty-three	percent (	33	%)

Phase:				
Bidding or Negotiation Phase:	four	percent (	4	%)
Construction Phase:	twenty-three	percent (	23	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6.1 Where compensation for the Sustainability Services described in Section 3.3 is also based on a stipulated sum or percentage of the Cost of the Work, the Sustainability Services shall be compensated in accordance with the schedule set forth in Section 11.6 unless otherwise provided below:

*(If different than Section 11.6, insert the compensation schedule for Sustainability Services based on a stipulated sum or percentage of the Cost of the Work.)*

§ 11.7 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.6 based on (1) the lowest bona fide bid or negotiated proposal falling within the Owner's Stated Limitation of the Cost of the Work, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work approved by the Owner for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed by the Architect in accordance with this Agreement whether or not the Construction Phase is commenced.

§ 11.8 The hourly billing rates for Additional Services performed by the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

<< >>

Employee or Category

Rate

§ 11.9 Compensation for Reimbursable Expenses

§ 11.9.1 Reimbursable Expenses are in addition to compensation for Basic, Sustainability and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Authorized out-of-town travel and subsistence;
- .2 Authorized Project websites and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Expedited delivery services (i.e., FedEx or courier services);
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings (over two), models, mock-ups, professional photography, and presentation materials requested by the Owner and not included in any Basic, Additional or Expanded Fee under this Agreement;
- .8 (INTENTIONALLY OMITTED);
- .9 All sales taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Additional expenses for Project specific software or other equipment or materials necessary to achieve, or directly related to, the Sustainable Objective, with prior written approval from the Owner;
- .12 Registration fees and any other fees charged by the Certifying Authority; and
- .13 Presentation materials required for submission to the Certifying Authority or as otherwise necessary to achieve the Sustainable Objective, with prior written approval from the Owner.

§ 11.9.2 For Reimbursable Expenses, the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0%) of the expenses incurred.

#### § 11.10 Compensation for Use of Architect's Instruments of Service

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner's payment to the Architect for the Services provided by the Architect up to the date of termination shall be deemed to grant to the Owner from the Architect and its Consultants a non-exclusive license for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using, maintaining, altering and adding to the Project.

#### § 11.11 Payments to the Architect

##### § 11.11.1 (INTENTIONALLY OMITTED).

§ 11.11.1.1 If a Sustainability Certification is part of the Sustainable Objective, the Owner shall pay when due any registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect shall give the Owner at least ten business days' prior written notice of the due date and amount of any such payments to the Certifying Authority.

§ 11.11.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed and as described in Section 11.6. Payments are due and payable within 30 days after the Owner's receipt of an accurate, adequately documented and approved invoice from the Architect. Interest on any amounts due from the Owner to the Architect, or from the Architect to the Owner, as applicable, shall bear interest from the due date until paid at a rate equal to the lesser of (a) six percent (6%) per annum, or (b) that fluctuating rate of interest announced from time to time by Zions Bank, N.A. (or its successor) as its "prime" or "reference" commercial lending rate of interest.

§ 11.11.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

§ 11.11.4 The Architect shall present to the Owner each month a statement of Additional Services and Reimbursable Expenses incurred for the preceding month. The Architect expressly waives any right to payment for (a) Additional Services which are not billed by the Final Completion Date; and (b) Reimbursable Expenses when (i) the expense was incurred over 90 days before the Owner receives the Architect's invoice initially requesting reimbursement of the expense, or (ii) the invoice for that expense is not accompanied by detailed documentation establishing the Project-related nature of the expense. Unless otherwise expressly authorized by the Owner, all monthly bills for Basic Services, Reimbursable Expenses and Additional Services shall be delivered to the Owner in a consolidated, monthly itemized statement. Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any defect or omission in the design of the Project or in the Construction Documents, including, without limitation, errors, omissions, or inconsistencies in the Architect's Instruments of Service.

§ 12.2 The Architect shall indemnify and hold harmless the Owner for, from and against any and all damages, losses, claims, demands, suits, actions, proceedings, obligations, debts, liabilities, costs and fees (including, without limitation, attorney's fees, costs of suit and defense costs) that are attributable to, based on, or arise as a result of, in whole or in part, the negligent performance of, or the negligent omission or failure to perform, professional services by the Architect, its employees, its agents or its Consultants. The Architect further shall indemnify and hold harmless the Owner from any damages, fees, expenses and costs (including, without limitation, attorney's fees and costs of court or mediation) incurred by the Owner in defending against claims against the Owner by the Contractor or others asserting that such claims arose or resulted, in whole or in part, from the wrongful conduct, actions or failures to act of the Architect, its employees, its agents, or its Consultants.

§ 12.3 The Architect acknowledges that the Project will serve as the Owner's city hall/municipal center; that the Owner's lease of its current city hall/municipal center will expire on 30 June 2016; and that the Owner will incur substantial economic damages, loss of productivity and disruption if the Architect does not perform the Services in a timely manner and otherwise in accordance with the terms of this Agreement.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect, unless such amendment by unilateral action of the Owner is expressly provided for in this Agreement or is self-executing by the terms of this Agreement. Individual handwritten modifications of this Agreement shall be ineffective unless each such modification is initialed by the Owner and the Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007 SP, Standard Form Agreement Between Owner and Architect, for use on a Sustainable Project, as modified.
- .2 (INTENTIONALLY OMITTED).
- .3 Other documents: Exhibit A, Initial Information, and Exhibit B, Insurance Requirements, Exhibit C, Architect’s current hourly rate schedule.

This Agreement entered into as of the day and year first written above.

**OWNER:**

**COTTONWOOD HEIGHTS, a Utah municipality**

**ARCHITECT:**

**GSBS, P.C., a Utah corporation d/b/a GSBS ARCHITECTS**

\_\_\_\_\_  
**Kelvyn H. Cullimore, Jr., Mayor**  
\_\_\_\_\_

\_\_\_\_\_  
**Kevin B. Miller, President**  
\_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
**Kory Solorio, Recorder**

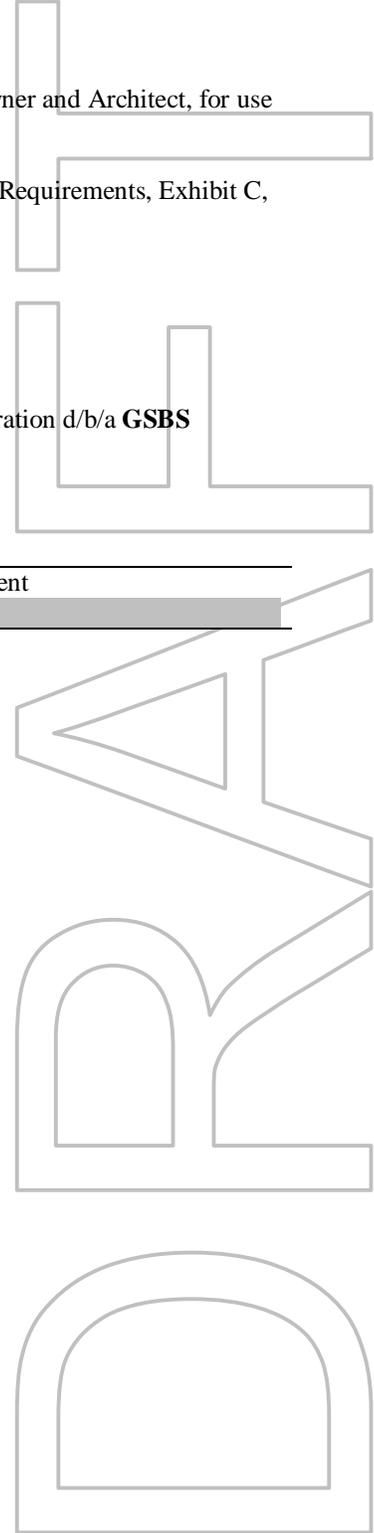


Exhibit “A”  
to AIA Document B101—2007 SP

**PROJECT:**

Cottonwood Heights Municipal Center  
4.7 acres at approximately 2300 East Bengal Blvd.  
Cottonwood Heights, UT

**OWNER:**

Cottonwood Heights, a Utah municipality  
1265 East Fort Union Blvd., Suite 250  
Cottonwood Heights, UT 84047

**ARCHITECT:**

GSBS, P.C., d/b/a GSBS Architects  
375 West 200 South, Suite 100  
Salt Lake City, UT 84101

**ARTICLE A.1  
PROJECT INFORMATION**

**§A.1.1 Program.** The Project is the Owner’s municipal center/city hall, to be constructed on approximately 4.7 acres of ground located on the Northwest corner of the intersection of 2300 East and Bengal Blvd. in Cottonwood Heights, Salt Lake County, Utah. The Project will include a building containing approximately \_\_45,000 square feet and all necessary site improvements (including parking areas, sidewalks, lighting, landscaping, irrigation, etc.). The Project must incorporate a 50-year minimum design life, and will be evaluated both on form and function.

The parties acknowledge that the foregoing information is preliminary, is subject to change during the course of the Project, and should not be construed as limiting the Architect’s Services under this Agreement.

**§A.1.2 Physical characteristics.**

**§A.1.3 Budget.** The Owner’s initial Stated Limitation on Cost of the Work (the “SLCW”) is \$\_\_\_\_\_. The SLCW may be adjusted during the course of design and construction of the Project as specified in the AIA Document B101—2007 SP (the “B101”) to which this exhibit (this “Exhibit”) is attached.

**§A.1.4 Scheduling.**

Programming	1 to 2 months (May 6 - June 30, 2014)
Schematic Design	1.5 to 2 months (July 1 – August 15, 2014)

Design Development	2.5 months (August 16 – October 31, 2014)
Construction Documents	3 months (November 1, 2014 – January 31, 2015)
Bidding	1 month (February 1 – February 28, 2015)
Construction	12-14 months (March 1, 2015 – June 1, 2016)

**§A.1.5 Delivery Method.** The Owner intends to use the CM/GC approach as the procurement or delivery method for the Project.

**§A.1.5.1** The parties do not contemplate a Project delivery scheme in which the Owner engages multiple prime contractors and in which the Scope of Work is subdivided into multiple independent packages for the purpose of bidding, negotiation, or construction. The Services, if any, of the Architect that are required to subdivide the Scope of Work into independent packages of Contract Documents for bidding or negotiation purposes or as a basis for the Owner’s engagement of multiple prime contractors shall be considered Additional Services if pre-approved by the Owner as provided in the B101. When, however, the Scope of Work is subdivided for bidding and construction purposes by a construction manager or another contractor or professional consultant engaged by the Owner, and the Architect is not required to prepare independent packages of Construction Documents, any Services incidental to such subdivision shall be considered Basic Services of the Architect.

**§A.1.5.2** Nothing in this Article shall reduce the applicable standard of care or the completeness of the Construction Documents merely because a Contractor is selected by a process of negotiation as opposed to competitive bidding, or for any other reason.

**§A.1.6 Sustainable Objective.** Either LEED “Certified” or LEED “Silver,” provided that Owner may, at its sole option, decide to not seek LEED certification of any type, in which event Architect shall, throughout the planning and design process, advise Owner concerning the sustainability/efficiency materials, techniques and processes that likely would be required for LEED certification at those levels, and to incorporate into the Project such of those items as Owner may direct, as part of Architect’s Basic Services. The goal of such an approach would be for the completed Project to have similar sustainability/efficiency as a LEED certified project, while avoiding the delay and additional cost (estimated at \$30,000 - \$40,000) of actual LEED certification.

**§A.1.7 Incentive Programs.** None currently identified.

**§A.1.8 Other Information.**

## ARTICLE A.2 PROJECT TEAM

**§A.2.1 Owner’s Representative.** The Owner designates John W. Park, City Manager, or his designee in writing, as the Owner’s representative in accordance with Section 5.3 of the B101. The Manager is not authorized to increase the SLCW by over \$\_\_\_\_\_ without prior approval or ratification by Owner’s city council.

**§A.2.2 Owner’s Additional Reviewers.** To be decided by the Owner.

§A.2.3 **Owner's Consultants**. To be decided by the Owner.

§A.2.4 **Architect's Representative**. The Architect designates D. Scott Henriksen, or his designee in writing, as the Architect's representative in accordance with Section 2.3 of the B101.

§A.2.5 **Architect's Consultants and Team**. The Architect will retain the consultants identified in Sections A2.5.1 through A2.5.3, and will utilize the key team identified in Section A.2.5.4:

§A.2.5.1 Architect's Consultants for Basic Services (*insert list*):

.1 **Structural Engineer:**

Calder Richards Consulting Engineers

634 South 400 West

Suite 100

Salt Lake City, UT 84101

.2 **Mechanical Engineer:**

Colvin Engineering Associates

244 West 300 North

Suite 200

Salt Lake City, UT 84103

.3 **Electrical Engineer:**

Spectrum Engineers

324 South State Street

Suite 400

Salt Lake City, UT 84111

.4 **Other:**

---

Parametrix

7186 South Highland Drive

Salt Lake City, UT 84121

**§A.2.5.2** Architect's Consultants for Additional Services (*insert list*):

Audio/Visual – Spectrum Engineers

**§A.2.5.3** Architect's Consultants for Sustainability Services (*insert list*):

None

**§A.2.5.4** The following persons are designated by the Architect as key members of the Architect's Project Team (*insert list*):

D. Scott Henriksen, AIA, PIC

Valerie Nagasawa, AIA, PM

David Brems, FAIA, Project Designer

Jesse Allen, AIA, Landscape Architect

4850-4340-8668, v. 1

# Exhibit “B” to AIA Document B101

## Insurance Requirements

The Architect shall procure and maintain for the duration of this Agreement (or longer, if specified) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Architect, its agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Architect and is not to be charged back to the Owner as an additional service.

### A. MINIMUM LIMITS OF INSURANCE.

The Architect shall maintain limits no less than:

1. Professional Liability: covering the Architect’s negligent acts, errors and omissions in its performance of professional services with policy limits of not less than \$2,500,000 per claim and in the aggregate. The Architect shall maintain this coverage until the later of (a) expiration of any warranty period covering the Project, or (b) 36 months after the date of Termination of this Agreement.

2. Automobile Liability: None, based on the Architect’s representation that it owns no vehicles.

3. Worker’s Compensation: Worker’s compensation limits as required by applicable law for all employees and other persons.

4. Commercial General Liability: \$1,000,000.00 combined single limit per occurrence for personal injury and property damage; \$2,000,000.00 annual aggregate. Broad Form Commercial General Liability is required (ISO 1993 or better). Personal injury, premises-operations, products-completed operation, independent contractors and subcontractors fire legal liability and, when appropriate, coverages for explosion, collapse and underground (XCU) hazards.

5. Excess Liability. \$5,000,000.00.

### B. DEDUCTIBLES AND SELF-INSURED RETENTIONS.

Any deductibles, self-insured programs or retentions must be declared to and approved by the Owner. If the Architect desires to provide self-insurance, or if there is any deductible, in excess of ten percent (10%) of the required coverage amount, then the Architect shall either (a) cause the insurer to reduce or eliminate such deductible or self-insured retention as respect to the Owner, its officers, officials and employees; or (b) procure a bond acceptable to the Owner guaranteeing payment of losses and related investigations, claim distribution and defense expenses.

### C. NOTICE OF INCIDENT OR ACCIDENT.

The Architect shall agree to promptly disclose to the Owner all incidents or occurrences of accident, injury, and/or property damage covered by the insurance policy or policies.

### D. OTHER INSURANCE PROVISIONS.

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages.

(a) The Owner, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Architect; products and completed operations of the Architect; premises owned, leased, hired or borrowed by the Architect. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officers, officials, employees or volunteers.

(b) The Architect=s insurance coverage shall be a primary insurance as respects to the Owner, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees or volunteers shall be in excess of the Architect=s insurance and shall not contribute with it.

(c) The Architect=s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer=s liability.

2. Worker=s Compensation and Employer=s Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the Owner, its officers, officials, employees and volunteers for losses arising from work performed by the Architect for the Owner.

3. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after thirty (30) days= prior written notice (from the insurer) by first class U.S. mail, postage prepaid, has been given to the Owner.

E. ACCEPTABILITY OF INSURERS.

Insurance is to be placed with insurers with a Bests= rating of no less than A:VII, unless approved by the Manager.

F. VERIFICATION OF COVERAGE.

The Architect shall furnish the Owner with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided before work commences. The Owner reserves the right to require complete, certified copies of all required insurance policies, with all endorsements, at any time.

G. SUBCONTRACTORS.

The Architect shall include all subcontractors as insureds under its policy or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

# STANDARD HOURLY BILLING RATES

May 1, 2011



ARCHITECT	Architect 1	\$225.00
	Architect 2	\$145.00
	Architect 3	\$115.00
	Architect 4	\$95.00
SUSTAINABILITY & ENERGY CONSULTING SERVICES	Sustainability Services/Energy Specialist 1	\$145.00
	Sustainability Services/Energy Specialist 2	\$125.00
	Sustainability Services/Energy Specialist 3	\$95.00
	Sustainability Services/Energy Specialist 4	\$80.00
ILLUSTRATOR/ GRAPHIC DESIGNER	Architectural Illustrator *	\$125.00
	Graphic Designer 1 *	\$115.00
	Graphic Designer 2 *	\$75.00
ARCHITECTURAL TECHNICIAN	Architectural Technician 1	\$95.00
	Architectural Technician 2	\$85.00
	Architectural Technician 3	\$65.00
	Architectural Technician 4	\$55.00
	Architectural Technician 5	\$45.00
LANDSCAPE ARCHITECT	Landscape Architect 1	\$145.00
	Landscape Architect 2	\$115.00
	Landscape Architect 3	\$95.00
	Landscape Architect 4	\$65.00
INTERIOR DESIGNER	Interior Designer 1	\$90.00
	Interior Designer 2	\$75.00
	Interior Designer 3	\$55.00
	Interior Designer 4	\$45.00
OFFICE TECHNICIAN	Office Technician 1	\$55.00
	Office Technician 2	\$45.00
	Office Technician 3	\$35.00

\* A surcharge will be billed in addition to Standard Hourly Rate for computer renderings, models, mock-ups & graphic presentations. Charge to be determined at the time of the request for specific services.

Hourly rates are subject to periodic adjustment.

375 WEST 200 SOUTH  
SALT LAKE CITY, UT 84101

7291 GLENVIEW DRIVE  
FORT WORTH, TX 76180

P. 801.521.8600  
F. 801.521.7913

P. 817.589.1722  
F. 817.595.2916



COTTONWOOD HEIGHTS

RESOLUTION No. 2014-48

A RESOLUTION APPROVING ENTRY INTO AN AMENDMENT  
TO AGREEMENT FOR PUBLIC WORKS SERVICES  
WITH TERRACARE ASSOCIATES, LLC

**WHEREAS**, in or about October 2013, the city of Cottonwood Heights (“*City*”) entered into an “Agreement for Public Works Services” (the “*Agreement*”) with TerraCare Associates, LLC (“*Contractor*”) whereunder Contractor agreed to provide public works services to City on the terms and conditions specified in the Agreement; and

**WHEREAS**, the parties subsequently have agreed to amend the Agreement as specified in that certain “First Amendment to Agreement for Public Works Services” (the “*Amendment*”); and

**WHEREAS**, City’s city council (the “*Council*”) met in regular session on 8 July 2014 to consider, among other things, approving City’s entry into the Amendment; and

**WHEREAS**, the Council has reviewed the form of the Amendment, a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of City’s residents to approve City’s entry into the Amendment as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the city council of Cottonwood Heights that the attached Amendment with Contractor is hereby approved, and that City’s mayor and recorder are authorized and directed to execute and deliver the Amendment on behalf of City.

This Resolution, assigned no. 2014-48, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 8<sup>th</sup> day of July 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr., Mayor**

**ATTEST:**

\_\_\_\_\_  
**Kory Solorio, Recorder**

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea ___ Nay ___
Michael L. Shelton	Yea ___ Nay ___
J. Scott Bracken	Yea ___ Nay ___
Michael J. Peterson	Yea ___ Nay ___
Tee W. Tyler	Yea ___ Nay ___

**DEPOSITED** in the office of the City Recorder this 8<sup>th</sup> day of July 2014.

**RECORDED** this \_\_\_ day of July 2014.

# First Amendment to Agreement for Public Works Services

**THIS FIRST AMENDMENT TO AGREEMENT FOR PUBLIC WORKS SERVICES** (this “*Amendment*”) is made and entered into effective \_\_ June 2014 between the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 (“*City*”), and **TERRACARE ASSOCIATES, LLC**, a Colorado limited liability company whose address is 9742 Titan Park Circle, Littleton, CO 80125 (“*Contractor*”). City and Contractor are each referred to herein as a “*Party*” and are collectively referred to as the “*Parties*.”

## **RECITALS:**

A. Effective \_\_ October 2013, the Parties entered into an “Agreement for Public Works Services” (the “*Agreement*”) whereunder Contractor agreed to provide, and City agreed to purchase, snow management and other public works services on the terms and conditions specified in the Agreement.

B. The Parties now desire to amend the Agreement as provided herein.

## **AGREEMENT:**

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

Section 1. **Defined Terms.** Except as otherwise specified in this Amendment, all capitalized “defined terms” in this Amendment shall have the same meanings as in the Agreement.

Section 2. **Amendment to Total Annual Fees.** The Agreement (specifically including, without limitation, Subsections 2.1 and 8.1 of the Agreement) specifies the Total Annual Fees to be paid by City to Contractor during any July 1<sup>st</sup> through June 30<sup>th</sup> fiscal year. The Parties hereby amend the Agreement to:

(a) Reduce the Total Annual Fees to be paid by City to Provider during the Initial Period from \$1,450,000 to \$1,400,000, which is a reduction of \$50,000; and

(b) Reduce the Total Annual Fees to be paid by City to Provider during any fiscal year (a “*Subsequent Year*”) following the Initial Period from \$2,292,279 to \$1,492,279, which is a reduction of \$800,000 per year; provided, however, that such reduced Total Annual Fees during any Subsequent Year shall remain subject to increase in accordance with any intervening changes in the Consumer Price Index as generally explained in Section 8.1 of the Agreement. For example, if (a) the Consumer Price Index for the effective date of the Agreement is 100, and (b) the Consumer Price Index for 30 June 2015 is 103, then the CPI-adjusted Total Annual Fees payable to Contractor under the Agreement for the period of 1 July 2015 through 30 June 2016 would be  $\$1,492,279 \times 103/100 = \$1,537,047$ .

Consequently, all references in the Agreement (including its exhibits) to \$1,450,000 shall be deemed modified and amended to instead be references to \$1,400,000, and all references in the

Agreement to \$2,292,279 shall be deemed modified and amended to instead be references to \$1,492,279.

The Parties also shall cooperate to make any modifications to the Exhibits to the Agreement that are reasonably appropriate in view of the reduction of the Total Annual Fees hereunder.

Section 3. **Amendment to Subsection 2.6.** Subsection 2.6 of the Agreement is hereby amended to add a new second paragraph following the end of current Subsection 2.6, reading in its entirety as follows:

The Parties acknowledge that Contractor intends to enhance its technical and logistical capability to perform certain Services (including, without limitation, certain Base Services) which City needs. (Examples include concrete flatwork and some aspects of asphalt work). If Contractor's technical and logistical capabilities and expertise hereafter increase, then the Parties shall negotiate in good faith to include such newly-available Services in the annual Work Plan, and to correspondingly increase the compensation to be paid to Contractor hereunder; provided, however, that Contractor first establishes to City's reasonable satisfaction that Contractor is, indeed, ready, willing and capable of providing such Services in a good, workmanlike, finished and efficient manner that is equivalent (in cost and results) to provision of such Services by the Salt Lake County Public Works Department (or its successor).

Section 4. **Amendment to Exclusivity Provisions.** The Agreement (specifically including, without limitation, Subsection 2.7 and Exhibit "A") is hereby amended to omit, delete and discharge any responsibility of City to obtain any specific Services from or through Contractor, subject to City's duty to continue to utilize Contractor to perform Services of a type and quantity sufficient to justify continued payment of the required Total Annual Fees to Contractor.

Section 5. **Amendment to Subsection 10.1.** Subsection 10.1 of the Agreement, which currently reads in its entirety as follows:

10.1. **Termination Without Cause.** Each Party may terminate this Agreement without cause as provided in this Subsection 10.1 and without any obligation to comply with Section 20, as follows:

(a) **By City.** City may terminate this Agreement without cause or for City's convenience ("*without cause*") at any time after 30 June 2014 upon at least one year's prior written notice to Contractor. City also may effectively terminate this Agreement without cause by notifying Contractor at least six months before expiration of the Initial Term or the first Renewal Term, as applicable, of City's refusal to extend the Term for a Renewal Term, as provided in Subsection 9.2, above. Notwithstanding anything in this Agreement to the contrary, City may also terminate this Agreement with no advance notice if (i) a Bankruptcy Act (defined below) occurs with respect to Contractor; or (ii) any transfer of a controlling interest in Contractor (meaning over a 50% members interest, either singly or cumulatively in a series of related transactions) to any individual or entity that is not a member of Contractor (a "*Current Member*") as

of the Effective Date, any transfer of a controlling interest in any Current Member, or any other reorganization or change of controlling ownership of Contractor such that the Current Members no longer control Contractor. Contractor promptly shall notify the City Manager in writing if such a change in ownership or control occurs at any time during the Term.

Notwithstanding the foregoing, however, City acknowledges that a controlling interest in Contractor currently is owned by an equity investment firm (the “*Current Owner*”) which may elect to sell and convey most or all of such controlling interest to another equity investment firm during the term of this Agreement. City hereby consents to such transfer so long as it does not result in any material changes to the day-to-day management and operations of Contractor.

(b) By Contractor. Contractor may terminate this Agreement without cause at any time after 30 June 2014 upon at least one year’s prior written notice to City. Contractor also may effectively terminate this Agreement without cause by notifying City at least six months before expiration of the Initial Term or the first Renewal Term, as applicable, of Contractor’s refusal to extend the Term for a Renewal Term, as provided in Subsection 9.2, above.

Is hereby amended to read in its entirety as follows:

10.1. Termination Without Cause. Each Party may terminate this Agreement without cause as provided in this Subsection 10.1 and without any obligation to comply with Section 20, as follows:

(a) By City. City may terminate this Agreement without cause or for City’s convenience (“*without cause*”) at any time after 30 June 2014 upon at least 90 days’ prior written notice to Contractor; provided, however, that if Contractor disagrees with the effective date of such termination, such effective date shall instead be up to 180 days after such termination notice, as reasonably, mutually agreed by the Parties. City also may effectively terminate this Agreement without cause by notifying Contractor at least six months before expiration of the Initial Term or the first Renewal Term, as applicable, of City’s refusal to extend the Term for a Renewal Term, as provided in Subsection 9.2, above. Notwithstanding anything in this Agreement to the contrary, City may also terminate this Agreement with no advance notice if (i) a Bankruptcy Act (defined below) occurs with respect to Contractor; or (ii) any transfer of a controlling interest in Contractor (meaning over a 50% members interest, either singly or cumulatively in a series of related transactions) to any individual or entity that is not a member of Contractor (a “*Current Member*”) as of the Effective Date, any transfer of a controlling interest in any Current Member, or any other reorganization or change of controlling ownership of Contractor such that the Current Members no longer control Contractor. Contractor promptly shall notify the City Manager in writing if such a change in ownership or control occurs at any time during the Term.

Notwithstanding the foregoing, however, City acknowledges that a controlling interest in Contractor currently is owned by an equity investment firm (the “*Current Owner*”) which may elect to sell and convey most or all of such controlling interest to another equity investment firm during the term of this Agreement. City hereby consents to such transfer so long as it does not result in any material changes to the day-to-day management and operations of Contractor.

(b) By Contractor. Contractor may terminate this Agreement without cause at any time after 30 June 2014 upon at least 90 days’ prior written notice to City; provided, however, that if City disagrees with the effective date of such termination, such effective date shall instead be up to 180 days after such termination notice, as reasonably, mutually agreed by the Parties. Contractor also may effectively terminate this Agreement without cause by notifying City at least six months before expiration of the Initial Term or the first Renewal Term, as applicable, of Contractor’s refusal to extend the Term for a Renewal Term, as provided in Subsection 9.2, above.

Section 6. No Other Modification. Except as specifically amended by this Amendment, the Agreement is unmodified and remains in full force and effect between the parties.

**DATED** effective the day, month and year first above written.

**CONTRACTOR:**

**TERRACARE ASSOCIATES, LLC**, a Colorado corporation qualified to do business in Utah

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY:**

**COTTONWOOD HEIGHTS**, a Utah municipality

**ATTEST:**

By: \_\_\_\_\_  
**Kory Solorio**, Recorder

By: \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr.**, Mayor