

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 22 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 22nd 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 22nd 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 22 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 22nd 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 22nd 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 22 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 22nd 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 22nd 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 22 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 22nd 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 22nd day of July 2014.

POSTED this __ day of July 2014.

COTTONWOOD HEIGHTS

RESOLUTION No. 2014-49

A RESOLUTION APPROVING AN INDEPENDENT CONTRACTOR
AGREEMENT WITH PRECISION CONCRETE CUTTING, INC.
(2014-15 FISCAL YEAR)

WHEREAS, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) met in regular session on 22 July 2014 to consider, among other things, approving an independent contractor agreement (the “*Agreement*”) with Precision Concrete Cutting, Inc. (“*Precision*”) whereunder Precision would provide concrete cutting, concrete grinding and other forms of sidewalk trip hazard mitigation and related services to the City during the City’s 2014-15 fiscal year; 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. 2014-49, shall take effect immediately upon passage.

PASSED AND APPROVED effective 22 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 22nd day of July 2014.

RECORDED this ___ day of July 2014.

Independent Contractor Agreement

THIS INDEPENDENT CONTRACTOR AGREEMENT (this “*Agreement*”) is entered into effective 1 July 2014 by and between **COTTONWOOD HEIGHTS**, a Utah municipality (“*City*”) and **PRECISION CONCRETE CUTTING, INC.**, a Utah corporation (“*Contractor*”).

RECITALS:

- A. Contractor has significant experience in removing trip hazards from sidewalks.
- B. City is in need of such services.
- C. City desires to retain Contractor to remove trip hazards from sidewalks in City’s public right-of-way, as specified in this Agreement.
- D. The parties have determined that it is mutually advantageous to enter into this Agreement.

AGREEMENT:

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:

1. **Employment of Contractor.** City hereby engages Contractor, and Contractor hereby agrees, to perform all services necessary or desirable to remove trip hazards from sidewalks within City (as designated by City in writing from time to time), up to the maximum contract amount as set forth in paragraph 3 below.

2. **Detailed Description of the Services.** In furtherance of this Agreement, Contractor shall do, perform, and carry out in a good, professional manner, the following services (the “*Services*”):

(a) **Elimination of Trip Hazards.** Contractor shall eliminate all trip hazards (up to a maximum height of 2”) by saw cutting all such trip hazards in accordance with the Americans with Disabilities Act requirements. Each offset will be tapered at a 1:8 slope and shall have a smooth uniform appearance and texture.

(b) **Saw Cut.** All saw cutting shall be taken to the zero point of differential settlement and to the edges of the sidewalk to eliminate trip hazards the full width of the sidewalk.

(c) **Cleaning.** All debris and concrete dust shall be cleaned from the sidewalk surface as well as surrounding areas, sidewalks, driveway, landscaping or other objects in vicinity of the work. Any damage to adjacent landscaping, sprinklers, grass, etc. shall be repaired and otherwise returned to as good of condition as existed prior to such work.

3. **Fees for Services.** City shall pay Contractor for Services actually performed as described on the attached exhibit; provided, however, that the maximum amount to be paid to Contractor for all Services performed under this Agreement shall not exceed \$75,000.

4. **Method of Payment.** Contractor shall submit monthly to City a detailed invoice setting forth the Services performed since the last monthly billing, and specifying the charges therefor computed as specified on the attached exhibit. Provided that the aggregate amount of all previous invoices and the current invoice does not exceed the total maximum compensation specified in section 3 hereof, City shall pay (or provide a reasoned objection to) the amount set forth in the current invoice within 30 days after receipt.

5. **Services Performed in a Professional, Reasonable Manner.** Contractor shall perform the Services in a professional, reasonable, responsive manner in compliance with all laws and applicable standards of performance. Subject to the foregoing, the exact nature of how the Services are to be performed and other matters incidental to providing the Services shall remain with Contractor.

6. **Personnel, Equipment and Facilities.** Except as otherwise specified in this Agreement, Contractor shall at its sole cost furnish all supervision, personnel, labor, equipment, materials, supplies, communication facilities, vehicles for transportation and identification cards, and shall obtain all licenses and permits, necessary or incidental to performing any and all of the Services. Contractor shall not use City staff as a means to perform the Services in lieu of using Contractor's own staff.

7. **Term.** This Agreement shall be effective on the date hereof and shall terminate at 11:59:59 p.m. on 30 June 2015.

8. **Assignment and Delegation.** Contractor shall not assign or delegate the performance of its duties under this Agreement without City's prior written consent.

9. **Independent Contractor Status.** Contractor shall perform the Services as an independent contractor, and all persons employed by Contractor in connection herewith shall be employees or independent contractors of Contractor and not employees of City in any respect.

(a) **Control.** Contractor shall have complete control and discretion over all personnel providing Services hereunder.

(b) **Salary and Wages.** City shall not have any obligation or liability for the payment of any salaries, wages or other compensation to personnel providing Services hereunder.

(c) **No Employment Benefits.** All personnel providing Services are and shall be and remain Contractor's employees, and shall have no right to any City pension, civil service, or any other City benefits pursuant to this Agreement or otherwise.

10. **Termination.** Either party may terminate this Agreement upon 30 days' prior written notice to the other party. Neither party shall have any liability to the other for damages nor other losses because of termination of this Agreement, provided; however, City shall pay Contractor all amounts due for actual work performed within the scope of Services, as specified herein.

11. **Indemnification.** Contractor shall defend, indemnify, save and hold harmless City (including, without limitation, its elected and appointed officers, employees, successors and assigns) from and against any and all demands, liabilities, claims, damages, actions and/or proceedings, in law or equity (including reasonable attorneys' fees and cost of suit), relating to or arising in any way from the Services provided, or to be provided, hereunder. Contractor shall so defend, indemnify, save and hold harmless City whether such demands, liabilities, claims, damages, actions and/or proceedings are attributable to the simple negligence, gross negligence, recklessness or intentional misconduct of Contractor (or any officers, employees, agents, subcontractors, etc. of Contractor), or under any other applicable legal theory, and shall be effective whether or not such negligence, recklessness or other misconduct reasonably was foreseeable. Nothing herein shall, however, require Contractor to indemnify as provided in this section with respect to (a) City's own negligence or intentional misconduct, or (b) any demand, liability, claim, damage, action and/or proceeding not alleged to relate to the Services provided, or to be provided, by Contractor hereunder.

12. **Insurance.** Without limiting any indemnity or other obligations of Contractor hereunder, Contractor shall, prior to commencing work hereunder, secure and continuously thereafter (throughout the term of this Agreement) carry with insurers the following insurance coverage in policies which include provisions or endorsements naming City and its designees as an additional insured, and shall furnish proof thereof satisfactory to City prior to commencement of performance of the Services hereunder, and thereafter promptly when requested:

(a) **Commercial general liability insurance** coverage with a minimum single limit of \$1,000,000.00, with a deductible not to exceed \$5,000. The coverage shall include bodily injury and property damage liability coverage, contractual liability coverage, products and completed operations coverage, as well as coverage to protect against and from all loss by reason of injury to persons or damage to property, including Contractor's own workers and all third persons, property of City and all third parties based upon and arising out of the negligent performance of Contractor's operations hereunder, including the operations of its subcontractors of any tier.

(b) **Business automobile liability insurance** coverage with a minimum single limit of \$1,000,000.00 for bodily injury and property damage with respect to Contractor's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Services. Contractor may elect to not provide this coverage if no Contractor-owned or hired automobiles are used in performance of the Services, provided, however, that Contractor shall defend, indemnify and hold City harmless from any and all claims, damages, actions, proceedings, fees (including attorneys fees) and costs incurred by City arising from or in any way related to use of any automobile by Contractor or any of its employees, subcontractors or other related parties in performance of the Services.

(c) **Workers' compensation insurance** coverage as required by applicable workers' compensation and employer's liability statutes.

The foregoing insurance policies shall be through reputable, licensed insurers reasonably acceptable to City, and specifically shall provide that such insurance may not be terminated or reduced without at least 30 days' prior written notice to City.

13. **Laws and Regulations.** Contractor shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances, including without limitation, those governing wages, hours, desegregation, employment discrimination, workers' compensation, employer's liability and safety. Contractor shall comply with equal opportunity laws and regulations to the extent that they are applicable.

14. **Alcohol and Drug-Free Work Place.** All personnel during such time that they provide Services shall not be under the influence of alcohol, any drug, or combined influence of alcohol or any drug to a degree that renders the person incapable of safely providing the Services. Further, all personnel during such time that they provide Services shall not have sufficient alcohol in his body, blood, or on his breath that would constitute a violation of UTAH CODE ANN. § 41-6-44 or any measurable controlled substance in his body that would constitute a violation of UTAH CODE ANN. § 41-6-44.6.

15. **Non-Exclusive Rights.** Nothing in the Agreement is to be construed as granting to Contractor any exclusive right to perform any or all Services (or similar services) now or hereafter required by City.

16. **Conflict Resolution.** Except as otherwise provided for herein, any dispute between the parties regarding the Services which is not disposed of by agreement shall be decided by City, which shall provide written notice of the decision to Contractor. Such decision by City shall be final unless Contractor, within 30 calendar days after such notice of City's decision, provides to City a written notice of protest, stating clearly and in detail the basis thereof. Contractor shall continue its performance of this Agreement during such resolution. If the parties do not thereafter agree to a mutually-acceptable resolution, then they shall resolve the dispute pursuant to section 17 below.

17. **Claims and Disputes.** Unresolved claims, disputes and other issues between the parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, Contractor shall continue to perform the Services during any such litigation proceedings and City shall continue to make undisputed payments to Contractor in accordance with the terms of this Agreement.

18. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties as set forth below:

City: COTTONWOOD HEIGHTS
Attn. Mike Allen, Public Works Director
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

with a copy to: Wm. Shane Topham
CALLISTER NEBEKER & McCULLOUGH
10 East South Temple, 9th Floor
Salt Lake City, UT 84133

Contractor: PRECISION CONCRETE CUTTING, INC.
3191 North Canyon Road
Provo, UT 84604

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

(a) *Titles and Captions.* All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

(b) *Pronouns and Plurals.* Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

(c) *Applicable Law.* The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

(d) *Integration.* This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

(e) *Time.* Time is the essence hereof.

(f) *Survival.* All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

(g) *Waiver.* No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

(h) *Rights and Remedies.* The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

(i) Severability. In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(j) Litigation. If any action, suit or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

(k) Exhibits. All exhibits annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such exhibits and writings.

(l) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(m) Authorizations. Each person signing this Agreement represents and warrants that he is authorized to sign this Agreement for the party indicated.

DATED effective the date first-above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS

Kory Solorio, Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor

CONTRACTOR:

ATTEST:

PRECISION CONCRETE CUTTING, INC.,
a Utah corporation

By: _____
Its: _____

By: _____
Jared Taylor, _____

Exhibit to Independent Contractor Agreement

Contractor shall be paid for Services performed on the basis of \$28.25 per inch-foot of trip-hazard removal performed.

Inch-feet shall be calculated by multiplying the average depth of the cut by the width of the cut. For example, if a joint is cut 1" on one side and tapered to 0" on the other side of a full 4-foot wide sidewalk, the number of inch-feet would be calculated as follows:

$$\frac{1" + 0"}{2} \times 4' = 2 \text{ inch-feet}$$

$$2 \text{ inch-feet} \times \$28.25/\text{inch-foot} = \$56.50$$

All invoices must show the address of the work; the depth, length and width of the cut; the inch-feet calculation; and the resulting charge.

Contractor's process for removal of trip hazards to the specifications in this Agreement are protected by the following patents. Contractor is a sole-source provider for the Services.

U.S. Pat. No. 6,827,074

U.S. Pat. No. 6,896,604

U.S. Pat. No. 7,000,606

U.S. Pat. No. 7,143,760

U.S. Pat. No. 7,201,644

U.S. Pat. No. 7,402,095

COTTONWOOD HEIGHTS

RESOLUTION No. 2014-50

A RESOLUTION APPROVING AN “ATM PLACEMENT AGREEMENT”
WITH CAMBRIA FINANCIAL GROUP LLC FOR 2014 BUTLERVILLE DAYS

WHEREAS, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) met on 22 July 2014 to consider, among other things, approving and ratifying an “ATM Placement Agreement” (the “*Agreement*”) with Cambria Financial Group LLC (“*Provider*”) whereunder the City would authorize Provider to place and operate one or more automated teller machines at the City’s 2014 “Butlerville Days” community celebration on the terms and conditions specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto as an exhibit; 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 city council of Cottonwood Heights that the attached Agreement with Provider is hereby approved and ratified, 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. 2014-50, shall take effect immediately upon passage.

PASSED AND APPROVED this 22nd 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 22nd day of July 2014.

RECORDED this ___ day of July 2014.

ATM PLACEMENT AGREEMENT

This Agreement is made and entered into effective 10 July 2014 between **Cambria Financial Group LLC, d/b/a ATM Event Co.**, a Utah limited liability company, having its principal offices at 6183 South Prairie View Drive, Suite 101, Salt Lake City, UT 84118 ("Owner"), and the city of **Cottonwood Heights** ("City"), a Utah municipality whose address is 6925 Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047, as the sponsor of a community event known as "Butlerville Days" (the "Event").

The undersigned parties agree as follows:

1. **Event Date(s). July 23-24 2014.**
2. **Event Address. Approx. 2700 East 7500 South, Cottonwood Heights, UT.**
3. **Equipment.** Owner owns automated teller machines and owns or has the right to utilize all software needed for the operation of the ATM. City agrees that Owner may install, operate, and maintain its ATM (the "Site ATM(s)") at the Event Address specified above (the "Premises"). City shall provide such space for the Site ATM(s) as is necessary to enable customers to have unobstructed access to the Site ATM(s) and for maintenance and servicing of the Site ATM(s).
4. **Availability.** City agrees that the Site ATM(s) shall at all times remain available for use by the Event's participants and vendors during the Event's hours of operation. Owner reserves the right to schedule reasonable downtime to accomplish necessary maintenance or system improvements. Owner may charge a fee not to exceed Three Dollars (\$3.00) per transaction involving a withdrawal of less than \$200 at the Site ATM(s) during the Event.
5. **American with Disabilities Act (ADA).** Owner warrants that Site ATM(s) comply with the requirements of the Americans with Disabilities Act (ADA).
6. **Placement Fees.** Owner shall pay City a total of Twenty-five Dollars (\$25.00) for the right to place the Site ATM(s) at the Event.
7. **Installation.** Owner agrees to ship and install the Site ATM(s). The Site ATM(s) shall be and remain the sole property of Owner. Owner shall have the right to install appropriate signage at the Premises to advertise the availability of the Site ATM(s), provided that any such signage must be pre-approved by City.
8. **Maintenance/Repair.** Owner will arrange for necessary servicing and repair of the Site ATM(s). In the event of any Site ATM(s) failure, damage, or other problem requiring service, repair, replacement, adjustment or maintenance, City shall promptly notify Owner or a person designated by Owner when first becoming aware of such failure or problem. City will not affirmatively permit anyone, other than an authorized representative or designee of Owner, to perform any service or repair work on the Site ATM(s) without Owner's prior written approval. Owner or its representatives shall at any reasonable time and at all times during event hours have the right to enter into and upon the Premises for the purpose of inspecting, repairing, maintaining, or upgrading the Site ATM(s) and observing its use. City shall cooperate with Owner in allowing Owner to perform maintenance, service, parts replacement or repair. City shall maintain the space surrounding the Site ATM(s) in a safe, neat and orderly condition.
9. **Inventory.** Owner shall keep sufficient amounts of cash in the Site ATM(s) at all times during the Event's hours of operation. Owner is providing the cash, and all cash kept in the Site ATM(s) shall be the property of Owner.
10. **Electrical Requirements.** City shall, at its expense, provide and maintain operating

electrical power outlet(s) (110v) for each of the Site ATM(s). The electrical power outlet shall be within fifty (50) feet of the Site ATM(s) site. City shall pay for charges reasonably incurred in connection with such electric power usage necessary to operate the Site ATM(s) and related signage. Approximately 5 amps of power is required for each Site ATM.

11. **Exclusivity.** City shall not affirmatively permit the removal of the Site ATM(s) from the Premises, nor allow the placement of any other ATM(s) not owned by Owner on the Premises (including other Event vendors), nor subscribe to any other data processing service for processing Site ATM(s) transactions during the term of this Agreement, except as may be specifically approved by Owner in writing. City has, however, absolutely no duty of safekeeping of the Site ATM(s).

12. **Insurance.** Owner agrees to insure the Site ATM(s). Owner shall bear the risk of loss if any cash is stolen or if any Site ATM(s) or its contents otherwise is lost or destroyed. City has no liability for the Site ATM(s), any cash, or otherwise except as specified in this Agreement.

13. **Property Ownership or Lease Terms.** City represents and warrants that it has the permission of the owner of the Premises to occupy the Premises for the Event.

14. **Termination.** Owner may terminate this agreement at any time due to inadequate use, damage, destruction, vandalism, or misuse of the Site ATM(s). City may terminate this Agreement immediately upon written notice to Owner following Owner's default hereunder.

IN WITNESS WHEREOF, each of the parties hereto, intending to be legally bound thereby, has duly executed and accepted this Agreement as of the day and year first above written.

OWNER – CAMBRIA FINANCIAL GROUP

CITY – COTTONWOOD HEIGHTS

By: _____
Smith Ballstaedt, Managing Director

By: _____
Kelvyn H. Cullimore, Jr., Mayor

Phone: 801-599-8642

Phone: Fax: 801-944-7000

Fax:

Email: kvnelson@comcast.net

Email: aetchel@ch.utah.gov

Operations Manager: (placing ATM's on event days)

Smith Ballstaedt

Phone: 801-599-8642

Attest: _____
Kory Solorio, Recorder

COTTONWOOD HEIGHTS

RESOLUTION No. 2014-51

A RESOLUTION APPROVING AN AGREEMENT WITH
WATER WALKERS, LLC FOR 2014 BUTLERVILLE DAYS

WHEREAS, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) met on 22 July 2014 to consider, among other things, approving and ratifying an agreement (the “*Agreement*”) with Water Walkers, LLC (“*Provider*”) whereunder the City would authorize Provider to place and operate a “water walker” activity at the City’s 2014 “Butlerville Days” community celebration on the terms and conditions specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto as an exhibit; 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 city council of Cottonwood Heights that the attached Agreement with Provider is hereby approved and ratified, 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. 2014-51, shall take effect immediately upon passage.

PASSED AND APPROVED this 22nd 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 22nd day of July 2014.

RECORDED this ___ day of July 2014.

Event Proposal

THIS EVENT PROPOSAL (this “*Agreement*”) is entered into effective 22 July 2014 between **WATER WALKERS, LLC, INC.**, a Utah limited liability company whose address is 4968 South Cowdell Street, Taylorsville, UT 84129 (“*Contractor*”), and the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 (“*City*”).

Section 1. **Background.** City has scheduled its annual “Butlerville Days” community event (the “*Event*”) for 23-24 July 2014 on the public property surrounding the Cottonwood Heights Recreation Center near 2700 East 7500 South in the City (the “*Event Site*”). As part of the Event, City desires to provide recreational opportunities to Event participants in the form of rides, games and other activities. Contractor is in the business of providing one such service, and has proposed to provide (as specified in the Agreement) all necessary or advisable equipment, facilities, supervision, etc. for a “water walker” activity (the “*Activity*”) in connection with the Event. The Activity involves the use of air-tight, plastic “water walking balls” holding a person, which are placed on an inflatable plastic water pool (the “*Pool*”), allowing the occupants to effectively walk on water.

Section 2. **Activity.** Contractor shall perform for City the following described services (the “*Services*”) in connection with the Event:

(a) Contractor will set up the Pool and all associated supplies and equipment (collectively, the “*Equipment*”) before the Event begins using water provided by City;

(b) Contractor will operate the Activity for the duration of the Event, charging \$5 per participant (“*Participant*”);

(c) Contractor will have a qualified, adult attendant in place safeguarding the Equipment and preventing unauthorized use of the Pool throughout the Event (including the entire night of July 23-24) and during the entire time that any water is in the Pool; and

(d) Contractor will take down the Pool upon termination of the Event and will remove all Equipment upon conclusion of the Event.

The Activity will be fully set up and operational by ____ p.m. on 23 July 2014; will operate until ____ p.m. on 23 July 2014 and between ____ a.m. and ____ p.m. on 24 July 2014; and the Equipment will be fully disassembled and removed from the Event Site by ____ .m. on 2_ July 2014.

Section 3. **Compensation.** Contractor shall pay to City an amount equal to fifteen percent (15%) of Contractor’s gross sales (“*Sales*”) at the Event. The next business day after the Event, Contractor shall (a) meet with City’s representative to disclose the results of Sales, cash received for each category of items offered by Contractor, etc., and (b) remit to City its 15% portion of Sales. Contractor shall maintain accurate books and records concerning all Sales at the Event, and shall safeguard such records and make them available for City’s inspection promptly upon City’s request at any time during the six month period after the Event.

Section 4. **Liability Release.** Throughout the Event, Contractor shall require every prospective Participant in the Activity, and the parents or legal guardians of any and all minor Participants, to sign a written liability release (“*Release*”) in the form approved by City. The Release shall include City and its officers, employees, agents, servants and representatives as additional parties who, together with Contractor, are affirmatively released from all liability and other claims accruing to, or asserted by, any Participant.

Section 5. **Age Standard.** Contractor shall not allow anyone under the age of ___ years to be a Participant in the Activity.

Section 6. **Insurance.** Contractor shall maintain in full force and effect a broad form comprehensive workmen’s compensation, bodily injury and property damage liability insurance policy or policies against claims for damage or injury to persons or property arising out of any of the Activity or the Services (i.e.–whether Equipment-based, supervision-based, or otherwise) in connection with the Event. Such policy shall be maintained on the minimum basis of One Million Dollars (\$1,000,000.00) combined single limit. Contractor shall cause City and its officers, employees and other designees to be named as additional insureds under such policy, and shall provide to City a certificate evidencing such insurance coverage at least three days before the Event. All insurance required to be carried hereunder shall be with companies, on forms and with loss payable clauses reasonably satisfactory to City. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which City may carry.

Section 7. **Hold Harmless Undertaking.** Contractor agrees, covenants, and undertakes to indemnify, hold free and harmless, assume liability for, and defend City and its officers, employees, agents, servants and representatives (collectively, the “*Indemnitees*”) from any and all losses, costs, and expenses, including but not limited to monetary damages, attorney’s fees, investigative and discovery costs, court costs, fines, penalties, increased taxes, and all other sums, that any of the Indemnitees may incur, face, pay or become obligated to pay on account of any, all, and every demand for claim or assertion of liability, or any claim or action thereon, arising or alleged to have arisen out of any of the Services, the Activity, or this Agreement. The foregoing indemnities, etc. shall not, however, be deemed to waive or modify any rights, defenses, protections or limits of liability of City against third parties under the “Governmental Immunity Act of Utah” (UTAH CODE ANN. § 63G-7-101, *et seq.*).

Section 8. **General.** This Agreement shall be interpreted in accordance with Utah law. Section headings are for convenience only. Time is the essence of this Agreement. This Agreement may only be modified in a writing signed by both parties. This Agreement may be executed and delivered electronically, with the same legal effect as manual execution and physical delivery. In the event of any dispute concerning this Agreement, the prevailing party shall be entitled to an award of its attorneys fees and costs, whether incurred with or without suit, at trial, on appeal, or in any bankruptcy or insolvency proceeding. If any portion of this Agreement is deemed unenforceable or invalid by a court of competent jurisdiction, such portion shall be deemed severed from this Agreement to the extent of such unenforceability or invalidity.

DATED effective the date first-above written.

CONTRACTOR:

WATER WALKERS, LLC,
a Utah limited liability company

By: _____
Carter Wilkey, Manager

CITY:

COTTONWOOD HEIGHTS, a Utah municipality

ATTEST:

By: _____
Kory Solorio, Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor