

COTTONWOOD HEIGHTS

RESOLUTION No. 2014-41

A RESOLUTION APPROVING AN INDEPENDENT CONTRACTOR  
AGREEMENT WITH TRANSCRIPT-BULLETIN PUBLISHING  
COMPANY FOR NEWSLETTER PRINTING AND MAILING

**WHEREAS**, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 24 June 2014 to consider, among other things, approving an "Independent Contractor Agreement" (the "*Agreement*") with Transcript-Bulletin Publishing Company ("*Provider*") whereunder Provider would provide printing and mailing services for the City's monthly newsletter to its residents; and

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

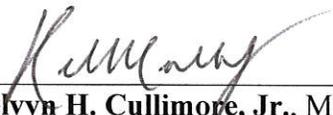
**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the city council of the city of Cottonwood Heights 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. 2014-41, shall take effect immediately upon passage.

**PASSED AND APPROVED** effective 24 June 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By   
Kelvyn H. Cullimore, Jr., Mayor

ATTEST:



  
Kory Solorio, Recorder

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

**DEPOSITED** in the office of the City Recorder this 24<sup>th</sup> day of June 2014.

**RECORDED** this 25 day of June 2014.

# Independent Contractor Agreement

**THIS INDEPENDENT CONTRACTOR AGREEMENT** (this "*Agreement*") is entered into effective \_\_ June 2014 by and between **COTTONWOOD HEIGHTS**, a Utah municipality ("*City*") and **TRANSCRIPT-BULLETIN PUBLISHING COMPANY**, a Utah corporation ("*Contractor*").

## **RECITALS:**

A. City provides community information to its citizens in various ways, including a monthly newsletter (the "*newsletter*") delivered to each household. Since its inception, the newsletter has been included as a separate section in a local newspaper distributed (through hand-delivery or by U.S. mail) in the City.

B. City now desires to produce and deliver the newsletter by other means, and, pursuant to a "Request for Proposals" issued on or about 26 March 2014 (the "*RFP*"), requested proposals from qualified parties to directly provide all of the printing, mailing and related services necessary to cause the newsletter to be received by each household in City.

C. Contractor has significant experience in providing newsletter printing and delivery services, and submitted a proposal dated 9 April 2014 (the "*Proposal*") in response to the RFP.

D. City is in need of such services and, based on City's analysis of Contractor's Proposal, desires to retain Contractor to provide such services as specified in this Agreement.

E. 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 the Services (defined below) as specified in this Agreement.

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 (such work, together with all ancillary and additional services and materials as may be reasonably required to accomplish the desired result in a competent, comprehensive and finished manner, is referred to herein as the "*Services*");

(a) **Printing**. Providing all materials and labor to print, at Contractor's cost, 14,000 multi-page, color copies of the newsletter each month (provided that City may reasonably increase the number of newsletter copies for a month upon at least 30 days' prior written notice to Contractor and payment of increased charges therefor, prorated in accordance with the base cost for 14,000 copies specified on the attached exhibits). City will produce all text and graphic/layout design in-house, uploading such to Contractor monthly on a mutually-agreed, standardized timetable

(the “*Schedule*”). City shall have complete control over and ownership of all content of the newsletter, and third-party advertising or other content not specifically pre-approved by City’s manager in writing shall be prohibited. City may from time to time, or at any time, designate in writing which of the two different types of newsletter format/design is used during a particular month:

(i) 8½” x 11” finished size glossy booklet, beginning at four pages and expandable to up to 16 pages depending on City’s needs each month.

(ii) 11” x 12” finished size short tab (half broadsheet) newsprint, beginning at eight pages and expandable to up to 20 pages depending on City’s needs each month.

Failing another written designation by City in any particular month, format 2(a)(i) shall be used.

(b) *Mailing and Delivery.*

(i) Mailing, at Contractor’s cost, the newsletter via U.S. mail to all households in City, together with all related actions such as mail prep, postage and delivery to the post office. Mailing must be accomplished in bulk according to carrier routes in City, rather than to individual addresses or zip codes. The mailing cost will be reimbursed to Contractor by City as described on the attached exhibits.

(ii) Delivering the balance of each monthly run of the newsletter in stacks to City’s offices, to the Whitmore Library, and to the Cottonwood Heights Recreation Center.

(c) *Additional Related Services.* Performing such additional related services in connection with the monthly printing and mailing of the newsletter as City reasonably may direct.

3. **Fees for Services.** City shall pay Contractor for Services actually performed as described on the attached exhibits, which are applicable depending on the format/design alternative used for the month in question.

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 exhibits. 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 2016. Thereafter, this Agreement shall be automatically renewed for successive terms of one year each.

8. **Assignment and Delegation.** Contractor shall not assign or delegate the performance of its duties under this Agreement without City's prior written consent. If Contractor chooses to subcontract to one or more third parties any part(s) of the Services, such subcontract shall be at Contractor's own risk, and Contractor shall be fully responsible for the full, timely and proper performance of all of the Services. All Services are to be consistently performed in accordance with the Schedule, and Contractor will be subject to financial penalties for nonperformance or late performance.

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, without cause, upon at least 90 days' prior written notice to the other party. Either party also may terminate this Agreement for cause upon at least ten days' prior written notice and opportunity to cure to the defaulting 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 before the effective date of the termination, 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. John Park, City Manager 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, 9 <sup>th</sup> Floor Salt Lake City, UT 84133
Contractor:	TRANSCRIPT-BULLETIN PUBLISHING COMPANY 58 North Main Tooele, UT 84074

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:**

**TRANSCRIPT-BULLETIN PUBLISHING  
COMPANY, a Utah corporation**

By:  \_\_\_\_\_  
Scott C. Dunn, President

619764.1

Exhibit to  
Independent Contractor Agreement

(Attach Pages 4-5 of Proposal)



Miles Lawrence

Transcript Bulletin  
Publishing

OFFICE  
171 N. Main • P.O. Box 379  
Tulsa, OK 74101

PHONE  
800.637.2279 mobile

EMAIL  
miles@transcriptbulletin.com

WEB  
transcriptbulletin.com

DATE  
April 9, 2014

TO  
Linda W. Dunlavy  
Deputy City Manager

PROJECT TITLE: City Newsletter Print/Mail Services

PROJECT DESCRIPTION: 11 x 12 Short Tab

DESCRIPTION	QUANTITY	PER THOUSAND	COST
<b>11 x 12 Short Tab</b>			
Size: 11 x 12			
Stock: Newsprint, 26.6#, 60 bright			
Ink: CMYK on all pages			
Prepare for for bulk mail by bundling in carrier routes.			
<b>8 page</b>	14,000	\$ 56.93	\$ 797
<b>12 page</b>	14,000	\$ 80.50	\$ 1,127
<b>16 page</b>	14,000	\$ 94.07	\$ 1,317
<b>20 page</b>	14,000	\$ 114.79	\$ 1,607
One proof of customer provided files, print, quarter fold and deliver to post office on Wasatch Front. Postage is additional, approx. \$0.16 per piece.			

Prices quoted are good for 30 days from above date. Electronic files with no manipulation required. Should the files require manipulation of any kind, this work will be performed at \$65 Hour. Price does not include Utah State sales tax of 6.35% if applicable. Tax will be added at the time of invoicing. If exempt from tax, customer shall furnish seller with a valid tax exemption certificate.



Miles Lawrence  
 Transcript Bulletin  
 Publishing

DATE  
 April 9, 2014  
 TO  
 Linda W. Dunlavy  
 Deputy City Manager

OFFICE  
 100 N. 1500 W. BOULEVARD  
 SUITE 1000  
 PHOENIX  
 (602) 998-9900  
 FAX  
 (602) 998-9900  
 EMAIL  
 sales@transcriptbulletin.com  
 WEB  
 transcriptbulletin.com

PROJECT TITLE: City Newsletter Print/Mail Services  
 PROJECT DESCRIPTION: 8.5 x 11 Glossy Booklet

DESCRIPTION	QUANTITY	PER THOUSAND	COST
<b>8.5 x 11 Glossy Booklet</b>			
Size: 8.5 x 11			
Stock: 70# Gloss Text			
Ink: CMYK on all pages, full bleeds			
Prepare for for bulk mail by bundling in carrier routes.			
<b>4 page</b>	14,000	\$ 94.57	\$ 1,324
<b>8 page</b>	14,000	\$ 142.57	\$ 1,996
<b>12 page</b>	14,000	\$ 223.79	\$ 3,133
<b>16 page</b>	14,000	\$ 255.64	\$ 3,579
One proof of customer provided files, print, fold to final size and deliver to post office on Wasatch Front. Postage is additional, approx. \$0.16 per piece.			

Prices quoted are good for 30 days from above date. Electronic files with no manipulation required. Should the files require manipulation of any kind, this work will be performed at \$65 Hour. Price does not include Utah State sales tax of 6.35% if applicable. Tax will be added at the time of invoicing. If exempt from tax, customer shall furnish seller with a valid tax exemption certificate.