

# COTTONWOOD HEIGHTS

## RESOLUTION NO. 2016-03

### A RESOLUTION DECLARING POLICE K-9 “CHIP” SURPLUS AND AUTHORIZING SALE TO SGT. TOM DAUGHERTY

**WHEREAS**, §2.150.060 of the COTTONWOOD HEIGHTS CODE OF ORDINANCES (the “Code”) establishes the procedures for disposal by the city of Cottonwood Heights (the “City”) of its surplus property; and

**WHEREAS**, the City's police department (the “CHPD”) recently determined to retire police K-9 “CHip” (“Chip”) from active service with the CHPD, and has informed the City's finance director of the surplus nature of Chip; and

**WHEREAS**, consequently, the finance director has informed the City's city council (the “Council”) that Chip is surplus property of the City as required by Code § 2.150.060(C); and

**WHEREAS**, the chief of the CHPD has informed the Council that Sgt. Tom Daugherty, a CHPD officer who is a former handler of Chip and/or has worked with Chip in CHPD-related activities, desires to purchase Chip for nominal value and, in connection therewith, to covenant to provide good care for Chip for the balance of his natural life and to indemnify the City and its related parties from any claims, actions, proceedings, etc. arising from or related to Chip or his actions after the date of the conveyance, as provided in Code § 2.150.060(H) (1); and

**WHEREAS**, the Council met on 12 January 2016 to consider, among other things, (a) declaring Chip surplus; and (b) approving the City's entry into an agreement (the “Agreement”) whereby the City would sell Chip to Mr. Daugherty for nominal value, conditioned on, *inter alia*, Mr. Daugherty's covenant to provide good care to Chip for the balance of his natural life and to indemnify the City and its related parties from any claims, actions, proceedings, etc. related to or arising from Chip or his actions after the effective date of the Agreement; 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 (a) declare Chip surplus; and (b) approve the City's entry into the Agreement, a copy of which is annexed hereto;

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

1. Police K-9 Chip is hereby declared to be surplus and no longer needed by the City; and
2. Chip is hereby declared to be of nominal value; and
3. The City's entry into the Agreement is hereby approved, and the City's mayor and recorder are hereby authorized to execute and deliver the Agreement, following such modifications to the Agreement as the mayor, in consultation with the City's manager and attorney, may deem to be reasonable and in the City's best interest.

This Resolution, assigned no. 2016-03, shall take effect immediately upon passage.

**PASSED AND APPROVED** effective 12 January 2016.

**COTTONWOOD HEIGHTS CITY COUNCIL**



**ATTEST:**

*Linda W. Dunlavy*  
Linda W. Dunlavy, Recorder

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

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea	<input type="checkbox"/>	Nay	<input type="checkbox"/>
Michael L. Shelton	Yea	<input checked="" type="checkbox"/>	Nay	<input type="checkbox"/>
J. Scott Bracken	Yea	<input 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 12th day of January 2016.

**RECORDED** this 3 day of January 2016.

# Purchase and Sale Agreement

## (CHPD Retired K-9)

**THIS PURCHASE AND SALE AGREEMENT** (this "*Agreement*") is made and entered into effective 12 January 2015 (the "*Effective Date*") between **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*Seller*"), and **TOM DAUGHERTY**, an individual whose address is a protected public record available to Seller ("*Buyer*").

### **RECITALS:**

A. Seller owns a police-trained canine named Chip ("*Chip*") who has served in Seller's police department's "K-9 Unit" (the "*K-9 Unit*"). Buyer is a member of Seller's police department and either was Chip's handler or has worked with Chip in police-related activities.

B. Effective 12 January 2016, Seller has retired Chip from service in Seller's K-9 Unit because Chip has surpassed his usefulness in that function.

C. Seller has made a substantial investment in Chip, and Chip has served Seller very well. Seller therefore desires to assure that Chip will be provided with a loving home, shelter and care for the rest of his natural life.

D. Seller desires to sell, and Buyer desire to acquire, ownership of Chip for the consideration and subject to the terms and conditions hereinafter set forth.

### **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:

1. **Sale and Delivery of Chip.** Seller hereby **sells, assigns, transfers** and **conveys** ownership of Chip to Buyer, subject to the terms of this Agreement.

2. **Purchase Price.** In exchange and as payment in full for Chip and against delivery thereof, contemporaneously herewith Buyer shall pay to Seller the total sum of One Dollar (U.S. \$1.00) (the "*Purchase Price*") in cash.

3. **Buyer's Representations, Warranties and Additional Covenants.** To induce Seller to enter into and perform under this Agreement, Buyer hereby irrevocably represents, warrants, certifies and covenants to Seller as follows:

(a) *Care.* From and after the Effective Date, and thereafter for the duration of Chip's natural life, Buyer shall vigilantly provide companionship and care for Chip in a family situation as heretofore, including, without limitation, indoor shelter, appropriate and ample food, water, affection, and reasonably adequate veterinary care.

(b) *No Conveyance; No Law Enforcement Use.* Buyer shall not sell, convey, assign or transfer ownership or possession of Chip to any other individual or entity, or allow Chip to be

employed or used for law enforcement purposes, without prior written permission from Seller's city manager following a consultation with Seller's chief of police and city council.

Buyer acknowledges that the covenants, etc., detailed in this Section 3 are irrevocable and are a material basis for Seller's agreement to sell and convey Chip to Buyer for the Purchase Price specified in Section 2, above.

4. **Release of Seller.** For and in consideration of Seller's agreement to sell, assign, transfer and deliver ownership of Chip to Buyer, Buyer hereby knowingly and voluntarily waives, releases and forever discharges Seller and its elected and appointed officers, agents, employees, representatives, assigns, contractors, insurers, attorneys and other related parties and successors-in-interest (collectively, "*Related Parties*") of and from any and all liabilities, claims, demands, damages, actions and causes of action, or suits at law or in equity, of whatsoever kind or nature, which Buyer may have had or assert to have had, or now has or asserts to have, or hereafter may have or assert to have, arising from, based upon, or in any way relating to Chip, whether before or after the Effective Date.

5. **Indemnification.** Buyer shall indemnify, defend and hold Seller and its Related Parties harmless from and against any and all demands, damages, claims, suits, obligations, costs, expenses, debts and liabilities, known or unknown, suspected or unsuspected (including, but not limited to, costs of suit and reasonable attorneys' fees), arising from, based upon or related to Chip or his actions occurring after the Effective Date.

6. **Default; Remedies.** If any party fails to perform any of its obligations hereunder and such conditions are not cured within ten days after written notice thereof by the non-defaulting party, the defaulting party shall be in default, thereby entitling the non-defaulting party to proceed at law and in equity to enforce its rights under this Agreement. The remedies of the non-defaulting party hereunder shall include, without limitation, the remedy of specific performance and the right to obtain injunctive relief.

7. **General Provisions.** The following provisions also are integral to this Agreement:

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

(b) **Captions; Recitals.** 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. The recitals form an integral part of this Agreement and are hereby incorporated.

(c) **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.

(d) **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.

(e) 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.

(f) 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.

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

(h) Interpretation; Jurisdiction and Venue. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah. The parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Utah and the courts of the United States of America located in the State of Utah for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby

(i) Attorneys' Fees. In the event of any lawsuit, arbitration or other proceeding or dispute concerning this Agreement, the prevailing party will be entitled to recover its costs, expenses and reasonable attorneys' fees from the non-prevailing party, whether such sums are expended with or without suit and regardless of the forum (including but not limited to recourse in connection with any arbitration, mediation, bankruptcy case or insolvency proceeding). For purposes of the foregoing sentence (a) "prevailing party" means (i) in the case of the party initiating the enforcement of rights or remedies, that it recovered substantially all of its claims, and (ii) in the case of the party defending against such enforcement, that it successfully defended substantially all of the claims made against it; and (b) if no party is a "prevailing party" within the meaning of the foregoing, then no party will be entitled to recover its costs and expenses (including attorneys' fees and costs) from the other party.

(j) 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.

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

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

(m) Assignment. No party may assign its rights or delegate its duties under this Agreement without the other's prior written consent.

[End of text. Signatures to appear on following page]

**DATED** as of the Effective Date.

**BUYER:**

\_\_\_\_\_  
**TOM DAUGHERTY**

**SELLER:**

**COTTONWOOD HEIGHTS**, a Utah municipality

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

**ATTEST:**

By: \_\_\_\_\_  
**Linda W. Dunlavy**, Recorder