

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-41

A RESOLUTION APPROVING AN AGREEMENT WITH WATER WALKERS, LLC FOR 2015 BUTLERVILLE DAYS

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met on 23 June 2015 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 2015 "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. 2015-41, shall take effect immediately upon passage.

PASSED AND APPROVED this 23rd day of June 2015.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By:

Kory Solorio, Recorder



Kelvyn H. Cullimore, Jr., Mayor

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 23rd day of June 2015.

RECORDED this 23 day of June 2015.

Event Proposal

THIS EVENT PROPOSAL (this "*Agreement*") is entered into effective 23 June 2015 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 2015 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 4:00 p.m. on 23 July 2015; will operate until 9:00 p.m. on 23 July 2015 and between 12:00 p.m. and 9:00 p.m. on 24 July 2015; and the Equipment will be fully disassembled and removed from the Event Site by 12:00 a.m. on 25 July 2015.

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 three years or weighing over 200 lbs. 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