

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-61

A RESOLUTION APPROVING AN INDEPENDENT CONTRACTOR AGREEMENT WITH ALLEN ROBERTS FOR HISTORIAN SERVICES

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights ("City") met in regular session on 22 September 2015 to consider, among other things, approving an "Independent Contractor Agreement" (the "Agreement") with Allen Roberts ("Provider") whereunder Provider would research and write a history of the City from 1847-1953 as desired by City's historic committee; and

WHEREAS, Provider has significant experience in providing services of the type needed by City; and

WHEREAS, City desires to retain Provider to provide such services as specified in the Agreement; and

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

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of City's residents to approve 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 City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of City.

This Resolution, assigned no. 2015-61, shall take effect immediately upon passage.

PASSED AND APPROVED effective 22 September 2015.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: 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 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 22<sup>nd</sup> day of September 2015.

RECORDED this 23 day of September 2015.

# Independent Contractor Agreement

**THIS INDEPENDENT CONTRACTOR AGREEMENT** (this "*Agreement*") is entered into effective 22 September 2015 between **COTTONWOOD HEIGHTS**, a Utah municipality ("*City*") and **ALLEN ROBERTS**, an individual ("*Contractor*").

## **RECITALS:**

A. Pursuant to Chapter 2.140 of City's code of ordinances ("*City Code*"), the Cottonwood Heights Historic Committee (the "*Committee*") is a City advisory committee that is charged with preserving City's history by organizing historically related performances or other events; by organizing historical displays and exhibits; by collecting and preserving oral and written histories, photographs, artifacts and the like concerning City; and by undertaking other actions within the scope of the Committee's authorized purposes.

B. City's present-day boundaries include areas that were once several different communities, including Cottonwood, Big Cottonwood, Butler, Union, Granite, Poverty Flats, Danish Town, Emmaville and Gold City. The Committee has spent the last seven years collecting histories and other information written about the various areas that now make up the present City. Much of that information is from people's memories or is anecdotal in nature, however, so that additional research will be required to sort fact from fiction, to provide accurate dates for significant events, to identify the early key residents of City, etc.

C. Consequently, City desires to enter into a contract with a qualified historian to research and write an official history of City from 1847, when the Mormon pioneers first entered the Salt Lake Valley, until 1953, and heretofore has issued a request for proposals (the "*RFP*") for such purpose.

D. Contractor has significant experience in providing services of the type outlined in the RFP, and submitted a proposal (the "*Proposal*") dated 14 August 2015 in response to the RFP.

E. Following review of the various proposals submitted in response to the RFP, and interviews with certain of the proposers, the Committee desires City to engage Contractor to perform the services outlined in Contractor's Proposal. Contractor desires to be so engaged by City as provided in this Agreement.

F. 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. **Engagement 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.** The services (the "Services") to be performed by Contractor hereunder include, at minimum, the work, materials and services necessary to write an official history of City from 1847 until 1953, together with all ancillary and additional work, materials and services as may be reasonably required to accomplish the desired result in a competent, comprehensive and finished manner, including, without limitation, the following:

(a) Review all material already gathered by the Committee and determine the relevance of the material;

(b) Conduct necessary research to verify accuracy of the information and conduct additional research as necessary to supplement what has been gathered;

(c) Obtain all necessary releases for the use of pictures, personal histories, copyrighted information, etc.;

(d) Prepare a detailed outline of the history and submit it to the Committee for input and approval;

(e) Submit a well-researched, written draft of the history to the Committee for input and approval;

(f) Provide an edited, written history, ready for publication, as the final product which will become City's property.

Contractor shall complete and bill City for the Services by 31 December 2016 unless such completion date is extended by mutual agreement of City, Committee and Contractor.

3. **Fees for Services.** City shall pay Contractor a total of \$19,500.00 for timely, proper performance of the Services. Such amount shall be the maximum, all-inclusive price for all Services rendered to produce the completed history of the City.

4. **Method of Payment.** Unless a progress-based billing arrangement is hereafter specified by Committee in writing, with a copy to City's director of finance, Contractor shall submit monthly to City a detailed invoice setting forth the Services performed since the last monthly billing, and specifying the charges therefor based on the overall stage of completion of the Services. 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 the Proposal, all laws, and all 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, office space, 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, nor shall Contractor perform any of the Services on City's premises or utilizing any City equipment or supplies.

7. **Term.** This Agreement shall be effective on the date hereof. This Agreement shall terminate no later than 30 June 2017.

8. **Assignment and Delegation.** 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 remain fully responsible for the full, timely and proper performance of all of the Services.

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.** City may terminate this Agreement, without cause, upon at least 30 days' prior written notice to Contractor. Either party may terminate this Agreement for cause upon at least ten days' prior written notice and opportunity to cure to the defaulting party. If City terminates this Agreement, City shall not be liable to Contractor for damages or other losses because of termination of this Agreement so long as City pays Contractor all amounts due for actual work performed within the scope of Services before the effective date of the termination.

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. **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.

13. **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.

14. **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 15 below.

15. **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.

16. **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:	Allen Roberts 1322 East 100 South Salt Lake City, UT 84102

17. **Intellectual Property Rights.** City shall own and retain all right, title and interest in and to all products of the Services, including the final written history as well as all drafts, notes, products of research, reports, documents, materials, ideas, concepts, know-how, specifications, plans, notes, drawings, designs, pictures, images, text, audiovisual works, data, information, graphics, designs, layouts and other items, expressions, works of authorship or work product of any kind that are authored, produced, created, conceived, collected, developed, discovered or made by Contractor in connection with the Services, including any and all intellectual property rights therein (collectively, the “*Work Product*”). To the extent applicable, City shall be deemed to be the “author” of all Work Product, and all Work Product will constitute “works made for hire” under the U.S. Copyright Act (17 U.S.C. §§ 101 et seq.), and any other applicable law. To the extent that any Work Product does not constitute a work made for hire, Contractor shall be deemed to have assigned to City all right, title and interest that Contractor may have or may hereafter acquire in all Work Product, including all intellectual property rights therein.

18. **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) 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.

(k) 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.

(l) 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:**

**COTTONWOOD HEIGHTS**

**ATTEST:**

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

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

**CONTRACTOR:**

\_\_\_\_\_  
**ALLEN ROBERTS**