

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-70

A RESOLUTION APPROVING AN IMPROVEMENTS AGREEMENT WITH ROY HARRIS AND RAILA H. HARRIS

WHEREAS, Roy Harris and Raila H. Harris (collectively, the "Harris") own the parcel of improved real property (the "Harris Property") that is commonly known as 7520 South 2300 East, Cottonwood Heights, UT, and the city of Cottonwood Heights (the "City") owns the parcel of real property containing approximately 4.77 acres (the "City Property") that is located immediately to the South of the Harris Property; and

WHEREAS, City currently is causing a building and other improvements to be constructed on the City Property for use as City's future municipal center; and

WHEREAS, in connection with the construction of City's municipal center, the parties desire to cooperatively improve their respective properties with fencing and other improvements as provided in a proposed "Improvements Agreement" between them; and

WHEREAS, City's city council (the "Council") met in regular session on 10 November 2015 to consider, among other things, approving City's entry into the Agreement; and

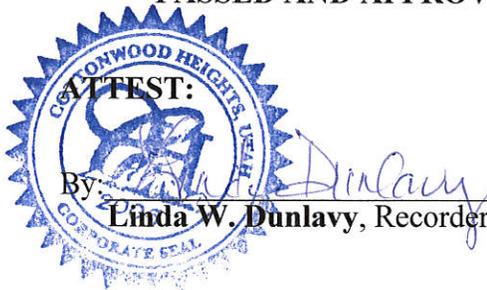
WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

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. 2015-70, shall take effect immediately upon passage.

PASSED AND APPROVED effective 10 November 2015.



COTTONWOOD HEIGHTS CITY COUNCIL

By [Signature]
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 10th day of November 2015.

RECORDED this 10 day of November 2015.

Improvements Agreement

THIS IMPROVEMENTS AGREEMENT (this "*Agreement*") is made effective 9 November 2015 by and between **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **ROY HARRIS** and **RAILA H. HARRIS**, individually and as trustees of a revocable trust for their benefit, whose address is 7520 South 2300 East, Cottonwood Heights, UT 84121 (collectively, "*Owner*").

RECITALS:

A. Owner owns legal title to the improved real property ("*Owner's Property*") that is commonly known as 7520 South 2300 East, Cottonwood Heights, UT.

B. City owns a parcel of real property containing approximately 4.77 acres ("*City's Property*") that is located immediately to the South of Owner's Property. City currently is causing a building and other improvements to be constructed on City's Property for use as City's future municipal center.

C. The parties desire to cooperatively improve their respective properties with fencing and other improvements as provided in this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. New Fencing.

(a) South Fence. Before 1 July 2016, and with at least one week's prior notice, City will cause the fencing (the "*Old South Fence*") running along the South side of Owner's Property to be removed and will replace such existing fencing with a new precast concrete fence/wall (the "*New South Fence*") that matches the appearance of the precast concrete fencing to be placed around some portions of City's Property. The New South Fence will include a decorative metal gate at the approximate location, and of the approximate height and width, as the existing gate in the Old South Fence. The portion of the New South Fence running from the Southwest corner of the Old South Fence and extending approximately 148 feet Easterly to the line of the front of Owner's residence will be approximately six feet in height. The remainder of the New South Fence will be approximately four feet in height. City shall pay the entire cost of the New South Fence and the other work and materials contemplated by this subsection 1(a). City shall assign any third-party warranty concerning the New South Fence to Owner, but shall have no responsibility or liability whatsoever concerning any future maintenance, repair or replacement of the New South Fence.

(b) West Fence. If Owner submits to City a written request and payment agreement before 5 January 2016, then City also shall cause a matching precast concrete fence/wall (the "*New West Fence*") to be installed from the West corner of the New South Fence (i.e., approximately the Southwest corner of Owner's Property) extending Northward approximately along the West line of Owner's Property for a distance to be determined by Owner. Promptly upon City's request, Owner shall pay the entire cost of the New West Fence and the other work and

materials contemplated by this subsection 1(b). City shall assign any third-party warranty concerning the New West Fence to Owner, but shall have no responsibility or liability whatsoever concerning any future maintenance, repair or replacement of the New West Fence.

2. **Tree Removal.** Before the New South Fence is installed, City will cause the two large pine trees (conifers) located on the South side of Owner's Property to be removed and the resulting stumps ground to below ground level. The parties agree to equally share the cost of the tree removal, which they currently anticipate will total \$3,525. If the any of Owner's existing fencing needs to be removed during this tree removal process, it will be replaced with temporary fencing (of chain-link or similar) at City's cost until such time as the New South Fence is installed.

3. **Undergrounding Electrical Service.** Before 31 March 2016, and with at least one week's prior notice, City will cause the overhead electrical service to the residence (the "*Residence*") on Owner's Property to be re-located underground in accordance with applicable standards. The parties acknowledge that the undergrounding will include installing a new 200 amp meter/disconnect and connecting the feeder to the existing electrical service or meter box that is located in a patio area of the Residence or to the sub-panel located in the garage, as determined by the qualified electrician performing such work and in compliance with the electrical code. City shall pay the cost of all such work and materials, but shall not be obligated to pay for any work or materials inside the Residence. City shall assign any third-party warranty concerning such work to Owner, but shall have no responsibility or liability whatsoever concerning any future maintenance, repair or replacement of the relocated electrical service.

4. **Easements.** City and its contractors shall have easements over and across Owner's Property providing reasonable, unimpeded access for workmen, vehicles and equipment for all purposes related to the work to be performed by them under this Agreement and the carrying out of City's other rights or duties under this Agreement. Owner covenants and agrees not to do anything or to erect any barrier that will unreasonably hinder, delay or limit use of such easements by City or its contractors or their respective officers, employees and agents in connection with the performance of City's rights or duties under this Agreement.

5. **Owner's Duties.** Owner shall, at its cost, be responsible for readying Owner's Property for construction in order to protect Owner's Property from damage to the greatest extent feasible, including, without limitation:

(a) **Trimming.** Trimming or relocating trees, bushes, plants and other landscaping on Owner's Property which may be affected or damaged by such construction; and

(b) **Relocation.** Relocating or modifying sprinkler systems, exterior lighting or other improvements to Owner's Property that may be, or is, affected by such construction.

Such work shall be completed within five business days after written notice by City of its intent to commence any work contemplated by this Agreement that may affect Owner's Property; and

(c) **Repairing Damage.** Repairing all damage and adverse impacts to Owner's Property resulting from construction activities contemplated by this Agreement.

6. **Covenants Run with Land.** This Agreement shall (a) create an equitable servitude on Owner's Property in favor of City; (b) constitute a covenant running with the land; (c) bind every

person having any fee, leasehold or other interest in any portion of Owner's Property affected by this Agreement at any time or from time to time; and (d) inure to the benefit of and be binding upon Owner and City, their respective successors and assigns.

7. **Immunity Act; No City Liability.** City is a governmental entity under the "Utah Governmental Immunity Act" (UTAH CODE ANN. § 63-30d-101, *et seq.*) (the "*Immunity Act*"). Consistent with the terms of the Immunity Act, City shall be responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees, but does not waive any (a) defenses otherwise available to City under the Immunity Act, nor (b) any limits of liability currently provided by the Indemnity Act. Except as may be otherwise specifically provided in this Agreement, City shall have absolutely no liability whatsoever for any damage to any aspect, attribute or component of Owner's Property (or any improvement thereon) within the area reasonably subject to City's work under this Agreement. City (and its officers, agents and employees) shall not be liable in any way for the negligent or wrongful acts of any contractor(s), subcontractor(s), material supplier(s), agent(s) or employee(s) of City's third-party contractors or subcontractors in connection with City's work under this Agreement.

8. **Default.** If either party fails to perform any of its obligations hereunder and such condition is not cured within ten days after written notice thereof by the other, such party shall be in default hereunder and, subject to section 10 below, the non-defaulting party shall be entitled to proceed at law and in equity to enforce its rights under this Agreement.

9. **Conflict Resolution.** Except as otherwise provided for herein, any dispute between the parties regarding this Agreement which is not disposed of by agreement shall be decided by City, which shall provide written notice of the decision to Owner. Such decision by City shall be final unless Owner, 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. If the parties do not thereafter agree to a mutually-acceptable resolution, then they shall resolve the dispute pursuant to section 11 below.

10. **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.

11. **General Provisions.** The following provisions are also integral parts of 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.** 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.

(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.

OWNER:

ROY HARRIS, individually and as trustee

RAILA H. HARRIS, individually and as trustee

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On __ November 2015, personally appeared before me **ROY HARRIS** and **RAILA H. HARRIS**, who duly acknowledged to me that they executed the foregoing document individually and as trustees of a revocable trust for their benefit.

Notary Public

CITY:

COTTONWOOD HEIGHTS, a Utah municipality

ATTEST:

Linda W. Dunlavy, Recorder

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

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On __ November 2015, personally appeared before me **Kelvyn H. Cullimore, Jr.** and **Linda W. Dunlavy**, who duly acknowledged to me that they executed the foregoing document as the mayor and the recorder, respectively, of **COTTONWOOD HEIGHTS**, a Utah municipality.

Notary Public