COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-80

A RESOLUTION APPROVING AN AMENDED AND RESTATED AGREEMENT FOR GRAPHIC DESIGN AND LAYOUT SERVICES WITH EMILY ADAMS D/B/A EMD GRAPHICS

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 15 December 2015 to consider, among other things, approving an "Amended and Restated Independent Contractor Agreement" (the "*Amended Agreement*") with Emily Adams d/b/a EMD Graphics ("*Provider*") whereunder Provider would provide graphic design and layout services for the City; and

WHEREAS, the City provides community information to its citizens in various ways, including a monthly newsletter (the "*newsletter*") delivered to each household; and

WHEREAS, the City also utilizes other types of print and web-based media to provide public notice of events and to otherwise communicate with the public (such the newsletter and all other types of communications from the City utilizing print and/or graphics are collectively referred to herein as the "*Media*"); and

WHEREAS, in November 2014, the City engaged Provider's professional services to format and enhance the appearance of the Media, as described in their original agreement dated on or about 11 November 2014; and

WHEREAS, the parties now desire to modify certain terms of their original agreement as described in the Amended Agreement; and

WHEREAS, the Council has reviewed the form of the Amended 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 Amended Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Amended Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Amended Agreement on behalf of the City.

This Resolution, assigned no. 2015-80, shall take effect immediately upon passage.

PASSED AND APPROVED effective 15 December 2015.

ATTEST:

By _____
Linda W. Dunlavy, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By _____
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea ✓	Nay ___
Michael L. Shelton	Yea ✓	Nay ___
J. Scott Bracken	Yea ✓	Nay ___
Michael J. Peterson	Yea ✓	Nay ___
Tee W. Tyler	Yea ✓	Nay ___

DEPOSITED in the office of the City Recorder this 15th day of December 2015.

RECORDED this 15 day of December 2015.

Amended and Restated Independent Contractor Agreement

THIS AMENDED AND RESTATED INDEPENDENT CONTRACTOR AGREEMENT (this "*Agreement*") is entered into effective 15 December 2015 by and between **COTTONWOOD HEIGHTS**, a Utah municipality ("*City*") and **EMILY ADAMS** d/b/a **EMD GRAPHICS** ("*Contractor*"). This Agreement amends and restates, and entirely supersedes, a similar agreement between the parties dated 14 October 2014.

RECITALS:

A. City provides community information to its citizens in various ways, including a monthly newsletter (the "*newsletter*") delivered to each household. City also utilizes other types of print and web-based media to provide public notice of events and to otherwise communicate with the public. The newsletter and all other types of communications from City utilizing print and/or graphics are collectively referred to herein as the "*Media*."

B. City desires to engage the professional services of a graphic/layout designer to format and enhance the appearance of the Media.

C. Contractor has significant experience in providing graphic/layout design services of the type needed by City.

D. Based on City's analysis of Contractor's resume and references, City desires to retain Contractor to provide such graphic/layout design 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. **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**. In furtherance of this Agreement, Contractor shall do, perform, and carry out in a good, professional and timely 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) *Graphic Design Services*. Provide all graphic/layout design services requested by City in connection with the monthly newsletter and other Media produced by City, such as banners, placards, flyers, etc.

(b) *Additional Related Services*. Perform such additional related services in connection with production of the Media as City reasonably may direct.

Deadlines for monthly Services to be provided for the newsletter shall be as per the schedule for publication of the newsletter utilized from time to time by City and the printer of the newsletter. Deadlines for other Media projects shall be as reasonably requested by City. Contractor shall promptly (within 24 hours or less) respond to all e-mails, voicemails and other communications from any of City's employees. Contractor shall provide at least 30 days' prior written notice to City of any vacations or other times when Contractor will be unable to perform the Services.

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. **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, 9th Floor
Salt Lake City, UT 84133

Contractor: Emily Adams
EMD Grapics
P.O. Box 1104
Eden, UT 84310

17. **Intellectual Property Rights**. City shall own and retain all right, title and interest in and to all Services and all other 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 or which relate in any manner to the Services or which result from any Services produced or undertaken by Contractor for City, 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 hereby assigns 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) *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

_____
Linda W. Dunlavy, Recorder

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

CONTRACTOR:

_____
EMILY ADAMS d/b/a EMD GRAPHICS