

COTTONWOOD HEIGHTS

RESOLUTION No. 2016-24

A RESOLUTION APPROVING AN AGREEMENT WITH Y2 ANALYTICS, LLC FOR PUBLIC OPINION RESEARCH SERVICES

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met on 26 April 2016 to consider, among other things, approving and ratifying a contract (the "Agreement") with Y2 Analytics, LLC ("Provider") whereunder the City would retain Provider to perform public opinion research services 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. 2016-24, shall take effect immediately upon passage.

PASSED AND APPROVED this 26th day of April 2016.



By: Linda W. Dunlavy
Linda W. Dunlavy, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By: Kelvyn H. Cullimore, Jr.
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 26th day of April 2016.

RECORDED this 26 day of April 2016.

Project Name: Cottonwood Heights Public Opinion Research

AN AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
COTTONWOOD HEIGHTS

And

Y2 Analytics

THIS AGREEMENT made and entered into this **26th day of April, 2016**, by and between **COTTONWOOD HEIGHTS**, a municipal corporation (hereinafter referred to as "**City**"), and **Y2 ANALYTICS LLC**, a Utah limited liability company (hereinafter referred to as "**Consultant**").

City and **Consultant** agree as follows:

1. **RETENTION AS CONSULTANT**

City hereby retains **Consultant**, and **Consultant** hereby accepts such engagement, to perform the public opinion research, and related, services described in Paragraph 2 (the "**Services**"). **Consultant** warrants it has the qualifications, experience and facilities to properly perform the Services.

2. **DESCRIPTION OF SERVICES**

See attached Y2 Analytics Cottonwood Heights Proposal 2016 Schedules B ("Pricing") & C ("Survey Process"), hereinafter referred to as the "Proposal."

3. **COMPENSATION**

Except for authorized extra services (pursuant to Paragraph 4, below), the compensation payable to **Consultant** by **City** for the Services shall be earned on the basis as indicated in the Proposal.

All payments shall be made within thirty (30) calendar days after **Consultant** has provided **City** with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to **City**. Invoices shall be made no more frequently than on a monthly basis, and describing work performed (including a list of man-hours by personnel classification, if billing is on a per hour basis).

Any work to be charged on an hourly basis shall be billed to **City** at the rates set forth in the Proposal, which rates shall be binding upon **Consultant** until completion of the final design as outlined in the Proposal.

4. **EXTRA SERVICES**

City shall pay **Consultant** for any extra Services authorized in writing in such amounts as mutually agreed to in advance. Unless **City** and **Consultant** have agreed in writing before the performance of extra Services, no liability and no right to claim compensation for such extra Services or expenses shall exist. The applicable hourly rate for extra Services shall be at the hourly rate set forth in **Consultant's** proposal.

5. **PROGRESS AND COMPLETION**

City and **Consultant** are aware that many factors outside **Consultant's** control may affect **Consultant's** ability to complete the Services to be provided under this *Agreement*.

Consultant will perform these Services with reasonable diligence and expediency consistent with sound professional practices.

6. **OWNERSHIP OF DOCUMENTS**

All drawings, designs, data, photographs, reports, and other documentation, including duplication of same prepared by **Consultant** in the performance of the Services, shall become the property of **City** upon termination of the consulting services pursuant to this *Agreement* and upon payment in full of all compensation then due **Consultant**. **City** agrees to hold **Consultant** harmless from all damages, claims, expenses and losses arising out of any reuse by **City** of the plans and specifications for purposes other than those described in this *Agreement*, unless written authorization of **Consultant** is first obtained.

7. **PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR**

This Agreement is for professional services, which are personal services to **City**. The following persons are deemed to be a key member(s) of or employee(s) of **Consultant's** firm, and shall be directly involved in performing or assisting in the performance of the Services:

- Quin Monson
- Scott Riding

Should these individual(s) be removed from performing or assisting in the Services for any reason, **City** may terminate this *Agreement*.

This *Agreement* is not assignable by **Consultant** without **City's** prior written consent.

8. **HOLD HARMLESS AND INSURANCE**

Consultant shall defend, indemnify and hold **City**, its elected and appointed officials, officers, agents and employees, harmless from all claims, lawsuits, demands, judgments or liability including, but not limited to general liability, automobile and professional errors and omissions liability, arising out of, directly or indirectly, the negligent performance, or any negligent omission of **Consultant** in performing the Services.

Consultant shall, at **Consultant's** sole cost and expense and throughout the term of this *Agreement* and any extensions thereof, carry:

- (1) Workers compensation insurance as required by law to protect from claims under workers compensation acts.
- (2) Professional errors and omissions insurance in the amount of \$2,000,000, and
- (3) General personal injury and property damage liability insurance and automobile liability insurance with liability limits of not less than \$2,000,000 each claimant and \$2,000,000 each occurrence for the injury or death of person or persons and property damage.

All insurance policies shall be issued by one or more financially responsible insurers authorized to do business in the State of Utah. **Consultant** shall provide **City** with copies of certificates for all policies with an endorsement that they are not subject to cancellation without thirty (30) days prior written notice to **City**. **City** and its officers, agents and

employees shall be named as additional insureds on the general and automobile liability policies only.

9. **RELATIONSHIP OF THE PARTIES**

Consultant shall perform the Services as an independent contractor and in no event shall be considered an officer, agent, servant, or employee of **City**. **Consultant** shall be solely responsible for all salaries, compensations, health insurance, perquisites, workers compensation, withholding taxes, unemployment insurance and any and all other compensation and employer obligations whatsoever associated with the Services and shall defend, indemnify and hold **City** and its officers, agents and employees harmless from and against the same.

10. **CORRECTIONS**

In addition to the above indemnification obligations, **Consultant** shall correct, at its expense, all errors in the work that may be disclosed during **City's** review of **Consultant's** report or plans. Should **Consultant** fail to make such correction in a reasonably timely manner, such correction shall be made by **City**, and the cost thereof shall be charged to **Consultant**.

11. **TERMINATION BY CITY**

City, by notifying **Consultant** in writing, may upon ten (10) calendar days notice, freely terminate any portion or all of the Services agreed to be performed under this *Agreement*, with or without cause. In the event of such termination, **Consultant** shall have the right and obligation to immediately assemble work in progress for the purpose of winding up the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by **City** to **Consultant** within thirty (30) calendar days following submission of final statement by **Consultant**.

12. **ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by **Consultant** of the final payment made under this *Agreement* shall operate as and be a release to **City** from all claims and liabilities for compensation to **Consultant** for anything done, finished or relating to the Services. Acceptance of payment shall be any negotiation of **City's** check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check.

However, approval or payment by **City** shall not constitute nor be deemed a release of the responsibility and liability of **Consultant**, its employees, subcontractors or agents if any for the accuracy and competency of the Services or a release of liability for any defect or error in any Services performed by **Consultant**, its employees, subcontractors and agents if any.

13. **WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this *Agreement* by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with

respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this *Agreement* or at law or in equity shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

14. **CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this *Agreement* shall be construed as a whole according to its common meaning and purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders and vice versa.

15. **MITIGATION OF DAMAGES**

In all situations arising out of this *Agreement*, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

16. **GOVERNING LAW**

This *Agreement*, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of Utah.

17. **CAPTIONS**

The captions or headings in the *Agreement* are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the *Agreement*.

18. **AUTHORIZATION**

Each party has expressly authorized the execution of this *Agreement* on its behalf and acknowledge it shall bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint ventures, insurance carriers and any others who may claim through it to this *Agreement*.

19. **ENTIRE AGREEMENT BETWEEN PARTIES**

Except for **Consultant's** proposals and submitted representations for obtaining this *Agreement*, this *Agreement* supersedes any other *Agreements*, either oral or writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and *Agreements* between the parties with respect to said services. Any modifications of this *Agreement* will be effective only if it is in writing and signed by the party to be charged.

20. **PARTIAL INVALIDITY**

If any provision in this *Agreement* is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

21. **NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in this United State mail, postage prepaid, and addressed as follows:

TO CITY: Cottonwood Heights
1265 E. Fort Union Blvd. Ste. 250
Cottonwood Heights, Utah 84047
Attention: City Recorder

TO CONSULTANT: Scott Riding
Y2 Analytics
60 South 600 East Suite #250
Salt Lake City, UT 84102

IN CONCURRENCE AND WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES EFFECTIVE ON THE DATE AND YEAR FIRST WRITTEN ABOVE.

COTTONWOOD HEIGHTS:

Attest

Kelvyn H. Cullimore, Jr., Mayor

Linda W. Dunlavy, Recorder

April 26, 2016
Date

CONSULTANT:

Y2 ANALYTICS LLC

Signature

Print Name

Title

Date