COTTONWOOD HEIGHTS

RESOLUTION NO. 2016-46

A RESOLUTION APPROVING ENTRY INTO AN AGREEMENT WITH BROOKSEE, LLC FOR REIMBURSEMENT AND INDEMNIFICATION CONCERNING THE 2016 BIG COTTONWOOD MARATHON AND HALF

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights ("*City*") met in regular session on 14 June 2016 to consider, among other things, approving the City's entry into a "Reimbursement Agreement" (the "*Agreement*") with Brooksee, LLC ("*Brooksee*"); and

WHEREAS, Brooksee is in the business of promoting and staging marathon and half-marathon running races, including the "Revel Big Cottonwood Marathon & Half" (the "*Event*") scheduled to occur on Saturday, 10 September 2016, which consists of two road races commencing at 6:45 a.m. at Guardsman Pass and the Spruces Campground, respectively, in Big Cottonwood Canyon (the "*Canyon*") and ending at a location in City's boundaries; and

WHEREAS, Brooksee will obtain a special event permit (the "*Permit*") from City as required by Chapter 14.56 of City's code of ordinances ("*Chapter 14.56*"), and all other necessary permissions and approvals of all other pertinent governmental authorities, before staging the Event; and

WHEREAS, in order to, *inter alia*, promote public health and the benefits of physical exercise, City is co-sponsoring the Event; and

WHEREAS, to avoid public safety concerns arising from hundreds of small, private vehicles transporting the Event's runners up the Canyon during pre-dawn hours on September 10th, Brooksee and City desire for such transportation to occur via chartered busses so that smaller, private vehicles can be prohibited from accessing the Canyon before and during the Event; and

WHEREAS, consequently, City contemplates entering into an interlocal agreement (the "*Interlocal*") with Canyons School District ("*District*") whereunder District will provide 30 of its "school busses," and qualified drivers, to transport runners up the Canyon on September 10th prior to the Event; and

WHEREAS, District is willing to so contract with City only if (1) the fee of $10,000 (the "*Fee*") for District's provision of the busses, etc. is prepaid before the Event; (2) adequate insurance, prepaid before the Event, is provided through the Utah Local Governments Trust ("*ULGT*") to provide adequate insurance protection (the "*Insurance*") to District for its participation in the Event; and (3) City agrees to indemnify, defend and hold District harmless from all liabilities, claims, damages, actions, proceedings, etc. arising from District's participation in the Event (the "*City Indemnity*"); and

WHEREAS, because City is prohibited from using public monies to advance private enterprise, and to induce City to enter into the Interlocal and to issue the Permit, Brooksee has agreed to pay and fully perform all of its obligations under Chapter 19.46, and to also prepay and indemnify the City for the entirety of (1) the Fee, (2) the cost of the Insurance, (3) the cost of City's legal fees incurred in negotiating and drafting the Interlocal, the Agreement and any other necessary or advisable documents or agreement or in the provision of any associated legal counsel to City, and (4) any other out-of-pocket costs, fees or expenses incurred by City in connection with the Event or its facilitation; and

WHEREAS, Brooksee also has agreed to indemnify City on the same basis as City indemnifies District under the City Indemnity; 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 the Agreement accomplishes the reimbursement and indemnity desired by City, and that it is in the best interests of the health, safety and welfare of the citizens of the City to therefore approve the 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 be, and hereby is, approved, 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. 2016-46, shall take effect immediately upon passage.

PASSED AND APPROVED this 14th day of June 2016.

COTTONWOOD HEIGHTS CITY COUNCIL

By _____
Kelvyn H. Cullimore, Jr., Mayor

ATTEST:

_____
Linda W. Dunlavy, Recorder

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 14th day of June 2016.

RECORDED this 14 day of June 2016.

Reimbursement Agreement

THIS REIMBURSEMENT AGREEMENT (this "*Agreement*") is entered into effective 14 June 2016 by the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and by **BROOKSEE, LLC**, a Utah limited liability company whose address is 11968 Ithica Drive, Highland, UT 84003 ("*Brooksee*").

RECITALS:

A. Brooksee is in the business of promoting and staging marathon and half-marathon running races, including the "Revel Big Cottonwood Marathon & Half" (the "*Event*") scheduled to occur on Saturday, 10 September 2016, which consists of two road races commencing at 6:45 a.m. at Guardsman Pass and the Spruces Campground, respectively, in Big Cottonwood Canyon (the "*Canyon*") and ending at a location in City's boundaries.

B. Brooksee has or will obtain a special event permit (the "*Permit*") from City as required by Chapter 14.56 of City's code of ordinances ("*Chapter 14.56*"), and all other necessary permissions and approvals of all other pertinent governmental authorities, before staging the Event.

C. In order to, *inter alia*, promote public health and the benefits of physical exercise, City is co-sponsoring the Event.

D. To avoid public safety concerns arising from hundreds of small, private vehicles transporting the Event's runners up the Canyon during pre-dawn hours on September 10th, Brooksee and City desire for such transportation to occur via chartered busses so that smaller, private vehicles can be prohibited from accessing the Canyon before and during the Event.

E. Consequently, City contemplates entering into an interlocal agreement (the "*Interlocal*") with Canyons School District ("*District*") whereunder District will provide 30 of its "school busses," and qualified drivers, to transport runners up the Canyon on September 10th prior to the Event. A copy of the Interlocal has been provided to Brooksee, and Brooksee is familiar with the terms of the Interlocal and the indemnities provided by City to District thereunder.

F. District is willing to so contract with City only if (1) the fee of $10,000 (the "*Fee*") for District's provision of the busses, etc. is prepaid before the Event; (2) adequate insurance, prepaid before the Event, is provided through the Utah Local Governments Trust ("*ULGT*") to provide adequate insurance protection (the "*Insurance*") to District for its participation in the Event; and (3) City agrees to indemnify, defend and hold District harmless from all liabilities, claims, damages, actions, proceedings, etc. arising from District's participation in the Event (the "*City Indemnity*").

G. Because City is prohibited from using public monies to advance private enterprise, and to induce City to enter into the Interlocal and to issue the Permit, Brooksee has agreed to pay and fully perform all of its obligations under Chapter 19.46, and to also prepay and indemnify the City for the entirety of (1) the Fee, (2) the cost of the Insurance, (3) the cost of City's legal fees incurred in negotiating and drafting the Interlocal, this Agreement and any other necessary or advisable documents or agreement or in the provision of any associated legal counsel to City (the "*Legal Fees*"), and (4) any other out-of-pocket costs, fees or expenses incurred by City in connection with the Event or its facilitation. Brooksee also has agreed to indemnify City on the same basis as City indemnifies District under the City Indemnity. Brooksee's obligations regarding

such payments/reimbursements and indemnity are on the terms and conditions specified in this Agreement.

H. The parties desire to memorialize their agreement concerning such matters, and have determined that their entry into this Agreement is mutually beneficial.

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:

Section 1. **Payments**. Brooksee shall pay the following costs, and perform as follows, in connection with the Event:

(a) *Fee*. On or before 2 September 2016, Brooksee shall pay the entire Fee to District via a cashiers check or other official bank check representing good, immediately available funds. Contemporaneously, Brooksee shall provide evidence of such payment to City.

(b) *Insurance Policy*. The Insurance shall comply with the requirements of the Interlocal, shall name City, District and Brooksee as insureds or additional insureds, and shall have a deductible of not more than $1,000. On or before 2 September 2016, Brooksee shall pay the entire cost of the Insurance (currently estimated at approximately $3,000) to ULGT via a cashiers check or other official bank check representing good, immediately available funds. Contemporaneously, Brooksee shall provide evidence of such payment to City.

(c) *Legal Fees*. Brooksee shall pay all Legal Fees incurred by City to facilitate the Event. On or before 2 September 2016, Brooksee shall deposit a $1,000 prepayment of the Legal Fees with City's legal counsel (Callister, Nebeker & McCullough, Attn. Wm. Shane Topham, 10 East South Temple, 9th Floor, Salt Lake City, UT 84133) via a cashiers check or other official bank check representing good, immediately available funds. If the final Legal Fees are more or less than the amount prepaid by Brooksee, reconciliation and payment by or to Brooksee, as appropriate, shall occur within 30 days after the Event.

(d) *Other City Expenses*. Brooksee shall pay or reimburse City for all other out-of-pocket costs, fees or expenses incurred by City in connection with the Event or its facilitation within five business days after receipt of City's invoice detailing such expenditures.

Section 2. **Legal Compliance**. Before staging the Event, Brooksee shall obtain the Permit and all other necessary permissions and approvals of all other pertinent governmental authorities. Brooksee shall assure that all aspects of the Event fully comply with Chapter 14.56 and all other applicable laws, rules, regulations and industry best practices.

Section 3. **Indemnification**. Brooksee forever shall indemnify, hold harmless and defend (through counsel selected by City) City and its council, elected and appointed officers (including City's manager and city attorney), employees, agents, representatives, assigns, affiliates, insurers, and successors in interest (collectively, "*City's Related Parties*") from and against any and all claims, lawsuits, actions, proceedings, damages, losses, costs, fees and expenses, including, without limitation, all attorneys' fees and costs of litigation, or other liabilities or losses of any kind

or nature whatsoever, arising out of or in any way related to the Event. Such indemnity specifically shall include, without limitation, any and all claims, lawsuits, actions, proceedings, damages, losses, costs, fees and expenses incurred by City under the Interlocal with District or otherwise incurred by City due to its facilitation or co-sponsorship of the Event.

Brooksee agrees, for itself and its officers, employees, agents, insurers and all other related parties (collectively, "*Brooksee's Related Parties*"), that it and they shall have absolutely no recourse against City or City's Related Parties for matters covered by this indemnity, and Brooksee waives, on behalf of itself and Brooksee's Related Parties, any and all rights of recovery, including but not limited to subrogation rights, against City and City's Related Parties.

To the extent any part or portion of this indemnity is held to be unenforceable, the parties intend that that part or portion be reformed to be consistent with the law and public policy and that it be enforced to the fullest extent permitted by law and that all other parts be enforced.

Section 4. **Best Efforts**. In furtherance of Section 3, above, City shall have no liability whatsoever to Brooksee, Brooksee's Related Parties, any Event participants, or anyone else concerning any failure by District to timely supply busses and drivers as contemplated by the Interlocal, or for any other breach by District of its obligations under the Interlocal. City is acting only as a facilitator of District's provision of such busses and drivers, utilizing only City's reasonable best efforts to cause District to perform its obligations under the Interlocal.

Section 5. **Additional Provisions**.

(a) *Survival*. The parties' respective rights and obligations hereunder, and all representations and warranties made in this Agreement, all exhibits hereto, and all certificates and documents delivered pursuant hereto, shall survive any closings contemplated by this Agreement.

(b) *Binding Agreement*. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(c) *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.

(d) *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.

(e) *Severability*. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(f) *Waiver of Breach*. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(g) *Cumulative Remedies*. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law.

(h) *Amendment*. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(i) *Interpretation*. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) *Notice*. All notices provided for herein shall be in writing and shall be given by first-class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing. Notice shall be deemed received and effective three calendar days after mailing.

(k) *Time of Essence*. Time is the essence of this Agreement.

(l) *Integration Clause*. There are no representations, warranties, covenants or agreements between the parties as to the subject matter of this Agreement except as are specified in this Agreement. This Agreement contains the entire agreement between the parties hereto pertaining to the matters that are set forth herein and supersedes all prior agreements, correspondence, memorandum, representations and understandings of the parties related thereto. No representations have been made to induce the parties hereto to enter into this Agreement except as set forth herein.

(m) *Authority*. Each individual executing this Agreement does thereby represent and warrant to any other individual so signing (and to each other entity for which another individual is signing) that the individual has been duly authorized to deliver this Agreement in the capacity and for the entity that is set forth where he signs.

DATED effective the date first written above.

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By _____
Kelvyn H. Cullimore, Jr., Mayor

_____
Linda W. Dunlavy, Recorder

BROOKSEE:

BROOKSEE, LLC,
a Utah limited liability company

By:_____
Jared Rohatinsky, Vice President