

Independent Contractor Agreement

(Governmental Affairs Consulting/Lobbying)

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "*Agreement*") is made effective 1 July 2017 by **COTTONWOOD HEIGHTS**, a municipality of the state of Utah whose address is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 ("*City*"), and the individual or entity whose identity, address and contact information are specified on the below signature page ("*Contractor*").

RECITALS:

- A. Contractor has significant expertise and experience in lobbying and governmental affairs consulting services and is legally registered with the state of Utah as a governmental lobbyist.
- B. Contractor heretofore has performed lobbying services for City during, *inter alia*, prior general sessions of the Utah Legislature (the "*Legislature*"), and has proposed to continue to perform lobbying services for City as hereafter directed by City's manager and/or city council.
- C. City desires to retain Contractor on an independent contractor basis to act as City's lobbyist and to perform other related functions for City on the terms and conditions specified in this Agreement.
- D. Contractor desires to be so retained by City.
- 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 hereinafter set forth, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Engagement.** City hereby engages Contractor, and Contractor hereby accepts such engagement, to perform the Services (as hereinafter defined).
2. **Services, Independent Activities.**

(a) *Services.* Contractor is engaged to serve as City's lobbyist for state and local matters in the state of Utah, performing the following functions, as the same may be augmented, eliminated or otherwise modified on the attached exhibit: (1) provide full-time presence on Capitol Hill during the then general session of the Legislature and any special sessions when legislation under consideration could affect City; (2) working with City to formulate a lobbying strategy; (3) monitor and advocate City's position on proposed and pending legislation or amendments to legislation as requested by City or as reasonably deemed appropriate by Contractor; (4) attend all relevant interim meetings and special sessions of the Legislature, or committees thereof, during the year; (5) provide weekly updates to the City of lobbying activities during the general session, and monthly updates during the balance of the year; (6) when requested, attend and report at city

council meetings; (7) attend other meetings as requested by City; (8) when requested, attend Salt Lake County Council or other related meetings when issues relevant to City are being discussed; (9) when requested, attend Utah Transit Authority, Cottonwood Heights Recreation Center, and other government agency meetings when issues relevant to City are being discussed; (10) attend meetings of the Utah League of Cities and Towns, or committees thereof, as directed by City; (11) work with individual members of government agencies or other service providers, as directed by City; (12) actively seek out sources of community development or other infrastructure improvement funding or grants from local, state, federal or private resources; (13) work to familiarize City's elected and appointed officers with other elected and appointed officials and employees of pertinent state and local government offices, bureaus and advisory bodies who do or may have influence over bills, proposals, and other similar matters which do or may impact City's performance of its governmental functions on behalf of City's residents; and (14) perform such additional similar services as City may from time to time reasonably designate (collectively, the "Services").

Contractor shall be actively involved in personally performing the Services on the basis specified above, devoting Contractor's time, attention and best efforts to City's affairs. City acknowledges that Contractor may perform the Services through a business entity owned or controlled, legally or practically, by Contractor; provided, however, that Contractor's assignment/delegation of actual performance of any of the Services hereunder to any other individual or entity must be pre-approved in writing by City, which City may withhold, condition or delay in City's sole discretion.

(b) Independent Activities. As an independent contractor, Contractor shall be freely entitled to expend time (while not on duty for City) for personal or outside business, charitable or professional activities. Such outside activities shall not be deemed a breach of this Agreement, provided that they do not materially interfere with the Services to be rendered to City hereunder. Contractor shall not, without City's express prior written consent (which consent shall not be unreasonably withheld), engage in any activity competitive with or adverse to City's interests, whether alone, as a partner, or as an officer, director, employee, shareholder, member or owner of any other entity, or as a trustee, fiduciary, or other representative of any other activity.

(c) Not Exclusive; Conflicts of Interest. The parties acknowledge that this Agreement does not provide exclusive rights to either party in that City may engage other persons to provide similar Services to City and that Contractor may provide similar services to other clients whose interests are not in conflict with or adverse to City's interests. To assure the absence of any conflicting interests, in January of each year Contractor shall provide City with a complete listing of all of Contractor's clients for lobbying services during the upcoming legislative session. City shall hold such list as a private, controlled or protected record under the Government Records Access and Management Act. Further, Contractor shall immediately notify City if Contractor becomes aware of any situation involving Contractor's services to another client which does or may constitute a conflict of interest with respect to Contractor's Services to City hereunder.

3. Focus Areas. Contractor's Services on behalf of City shall be directed by City's mayor, city council and/or manager. Contractor's Services shall focus on such issues as may be designated by City from time to time, including any specified on the attached exhibit. Contractor shall promptly notify City upon the occurrence of any material event affecting City's interests in the state of Utah.

4. Term. Subject to the provisions regarding termination set forth in section 8 below, Contractor's term of engagement hereunder shall commence on the effective date hereof and shall

terminate on 30 June 2020. The term of this Agreement may be extended upon the written consent of both City and Contractor.

5. **Standards.** Contractor shall perform Contractor's duties under this Agreement in accordance with (a) all legal requirements; (b) all applicable professional standards and practices; and (c) such other standards as may, from time to time, be applicable during the term of this Agreement.

6. **Billings; Compensation.** Each month (except February and March, when City may direct that reports be personally given to the city council), Contractor shall provide to City a billing which details meetings attended on City's behalf during that month, including date(s), purpose(s), and those attending for City. Contractor's compensation shall total \$42,000 annually, paid in monthly or quarterly installments as mutually agreed by City and Contractor. Contractor also shall be entitled to reimbursement of any actual, out-of-pocket costs necessarily advanced by Contractor in his performance of the Services in accordance with City's reimbursement policies.

7. **Status.** In performing the Services, Contractor shall at all times be an independent contractor, and not an employee, of City. As an independent contractor, Contractor shall not be entitled to any benefits or perquisites offered by City to its employees, such as insurance coverage, paid vacation, retirement plan funding, or any other items. Instead, Contractor's sole compensation for performance of the Services shall be the compensation and costs reimbursement described in section 6 above.

8. **Termination.** This Agreement shall be terminated upon expiration of its term under Section 4, above, or upon the happening of any of the following events:

(a) **For Cause.** For cause upon ten days' prior written notice and opportunity to cure by the terminating party where the other party has materially breached any provision of this Agreement or violated any statutory or common law duty or obligation to the terminating party, including, without limitation, Contractor's failure to perform any of Contractor's obligations hereunder to City's reasonable satisfaction at any time;

(b) **Without Cause.** Without cause at any time upon at least 60 days' prior written notice by a party to the other;

(c) **Mutual Consent.** Whenever City and Contractor mutually agree in writing to terminate this Agreement;

(d) **Death.** Upon Contractor's death;

(e) **Conduct.** If Contractor engages in any fraudulent or dishonest conduct of any type whatsoever, or if City reasonably determines (in view of prevailing community standards in Cottonwood Heights, Utah) that Contractor has engaged in personal conduct which would injure the reputation of City or otherwise adversely affect City's interests if Contractor were retained as an independent contractor of City;

(f) **Conflict of Interest.** Immediately upon written notice to Contractor if City reasonably determines that Contractor is experiencing a conflict of interest between Contractor's duties to City hereunder and Contractor's representation of another client.

9. **Rules, Regulations and Policies.** Contractor shall observe and comply with the rules and regulations of City as adopted by City respecting performance of the Services, and shall carry out and to perform orders, directions and policies announced to Contractor by City from time to time, either orally or in writing.

10. **Nondisclosure of Confidential Information.** Contractor acknowledges that, as a result of his engagement by City, Contractor may be provided access to, and otherwise may have the opportunity to acquire and use, confidential information of a special and unique nature and value relating to City's affairs that is not known to the general public. Such information made known to or learned by Contractor as a result of Contractor's engagement hereunder shall be referred to herein as the "*Confidential Information.*"

As a material inducement to City to engage Contractor pursuant to this Agreement, Contractor covenants and agrees that Contractor shall not, at any time during or following the term of this Agreement, directly or indirectly divulge or disclose to any third party, for any purpose whatsoever, any of the Confidential Information which has been obtained by or disclosed to Contractor as a result of his engagement by City.

In the event of a breach or threatened breach by Contractor of any of the provisions of this section 10, City, in addition to and not in limitation of any other rights, remedies or damages available to City at law or in equity, shall be entitled to injunctive relief restraining and permanently prohibiting any such breach by Contractor or any other person or entity directly or indirectly acting for or with Contractor.

Upon termination of this Agreement, Contractor shall not be entitled to keep or preserve any records, files, documents and information of any type which are particular to City. Any and all records, files, documents and information of all types prepared in connection with Contractor's engagement hereunder are and shall remain City's property, notwithstanding that such items may have been prepared, transcribed or generated by Contractor.

11. **General Provisions.** The following provisions are also an integral part 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.

(d) **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.

(e) 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.

(f) 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.

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

(h) Time of Essence. Time is the essence of this Agreement.

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

(j) Attorneys' Fees. In the event any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above or to such other address(es) as a party may specify to the other in writing at any time during the term of this Agreement.

(l) Assignment. Contractor may not assign his rights or delegate his duties hereunder to any third party without City's prior written consent, which City may withhold in its sole, unfettered, discretion.

DATED effective the date first above written.

[Signature page follows]

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By: 

Paula Melgar, Recorder

By: 

Kelynn H. Cullimore, Jr., Mayor



CONTRACTOR:

EVVIVA ENTERPRISES, INC.
d/b/a **CAPITOL HILL ADVISORS,**
a Utah corporation

Brian R. Allen, Manager

Address: 2217 East Cottonwood Cove Lane
Cottonwood Heights, UT 84121

Email: brian.capitolhill@gmail.com

Telephone: (801) _____

Exhibit to
Independent Contractor Agreement

(Describe Additional or Modified Services)