

COTTONWOOD HEIGHTS

RESOLUTION No. 2024-45

A RESOLUTION APPROVING A CONSULTING AGREEMENT WITH TIM TINGEY

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met in regular session on 18 June 2024 to consider, among other things, approving an agreement (the "Agreement") with B. Tim Tingey ("Provider"), the City's retiring city manager, whereunder Provider would provide city manager-type consulting services to the City's elected officials, staff and contractors as described in the Agreement to better assure a seamless transition of the city manager functions in the City's administration; 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 the City and its residents to approve the City's entry into the Agreement as proposed;

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

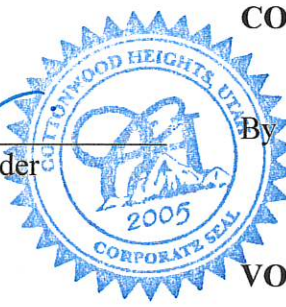
This Resolution, assigned no. 2024-45, shall take effect immediately upon passage.


PASSED AND APPROVED effective 18 June 2024.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By:   
Paula Melgar, Recorder



By:   
Michael T. Weichers, Mayor

VOTING:

Michael T. Weichers	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Matt Holton	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Suzanne Hyland	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Shawn E. Newell	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Ellen Birrell	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 18<sup>th</sup> day of June 2024.

RECORDED this 19 day of June 2024.

# Consulting Agreement

**THIS CONSULTING AGREEMENT** (this "*Agreement*") is entered into effective 22 June 2024 by and among **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 ("*City*"), and **B. TIM TINGEY**, an individual whose address is 5788 South Waldenridge, Murray, UT 84123 ("*Consultant*").

## RECITALS:

A. Consultant was employed as City's city manager from 2018 until the effective date of this Agreement, when Consultant commenced new employment with the University of Utah and NeighborWorks.

B. To better assure a seamless transition of city manager knowledge and services City desires to engage Consultant—on a part-time, independent contractor basis—to provide information, counsel and the like to City during the service of any interim city manager (pending City's hiring of a long-term city manager) and thereafter as needed to fully train and acclimate City's new long-term city manager.

C. Consultant has significant experience in providing services of the type needed by City and desires to be so engaged by City as specified in this Agreement.

D. 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 Consultant.** City hereby engages Consultant, and Consultant hereby agrees, to perform the Services (defined below) as specified in this Agreement.

2. **Detailed Description of the Services.** In furtherance of this Agreement, Consultant shall do, perform, and carry out in good, professional and timely manner, such consultation services in connection with management of the City's administration as may reasonably be requested from time to time by the then (interim or long-term) city manager, by city department heads, or by the City's elected officials acting through the City's mayor. Such work, together with all ancillary and additional services and materials as may be reasonable required to accomplish the desired result in a competent, comprehensive and finished manner, is referred to herein as the "*Services.*"

3. **Fees for Services.** City shall pay Consultant for Services actually performed at the rate of \$130 per hour.

4. **Method of Payment.** Each calendar month, Consultant shall submit to City a detailed invoice setting forth the Services performed during the immediately preceding calendar month describing the Services rendered by type and date and specifying the resulting charges. Consultant's work time shall be recorded and billed in one-tenth hour increments. Any

reimbursable costs shall be separately itemized and accompanied by such back-up documentation as City reasonably may require. City shall pay (or provide a reasoned objection to) the amount set forth in the current invoice within 30 days after receipt.

5. **Services Performed in a Professional, Reasonable Manner.** Consultant shall perform the Services in a professional, reasonable, responsive manner in compliance with all laws and applicable standards of performance. Subject to the foregoing, the exact nature of how the Services are to be performed and other matters incidental to providing the Services shall remain with Consultant.

6. **Personnel, Equipment and Facilities.** Consultant shall at its sole cost furnish all supervision, personnel, labor, equipment, materials, supplies, office space, communication facilities, vehicles for transportation and identification cards, and shall obtain all licenses and permits, necessary or incidental to performing the Services. Without the then manager's prior consent, Consultant shall not perform any of the Services on City's premises or utilize any City material equipment or supplies.

7. **Term.** This Agreement shall be effective on the date hereof and shall terminate on 22 September 2024. This Agreement may be extended on such terms as the parties may agree to in a subsequent signed writing.

8. **Independent Contractor Status.** Consultant shall perform the Services as an independent contractor, and all persons employed by Consultant in connection herewith shall be employees or independent contractors of Consultant and not employees of City in any respect.

(a) **Control.** Consultant shall have complete control and discretion over all of Consultant's personnel providing Services hereunder.

(b) **Salary and Wages.** Subject to Section 3, above, City shall not have any obligation or liability for the payment of any salaries, wages or other compensation to Consultant's personnel providing Services hereunder.

(c) **No Employment Benefits.** Except for City staff assigned by Manager to assist Consultant in performing the Services, all personnel providing Services are and shall be and remain Consultant's employees, and shall have no right to any City pension, civil service, or any other City benefits pursuant to this Agreement or otherwise.

9. **Termination.** Either party may terminate this Agreement, without cause, upon at least 30 days' prior written notice to the other party. Either party also may terminate this Agreement for cause upon at least ten days' prior written notice and opportunity to cure to the defaulting party. Neither party shall have any liability to the other for damages nor other losses because of termination of this Agreement, provided; however, City shall pay Consultant all amounts due for actual work performed within the scope of Services before the effective date of the termination, as specified herein.

10. **Indemnification.** Consultant 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. Consultant 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 Consultant (or any officers, employees, agents, subcontractors, etc. of Consultant), 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 Consultant 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 Consultant hereunder.

11. **Laws and Regulations.** Consultant 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. Consultant shall comply with equal opportunity laws and regulations to the extent that they are applicable.

12. **Non-Exclusive Rights.** Nothing in the Agreement is to be construed as granting to Consultant any exclusive right to perform any or all Services (or similar services) now or hereafter required by City.

13. **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 Consultant. Such decision by City shall be final unless Consultant, 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. Consultant 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 14 below.

14. **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, Consultant shall continue to perform the Services during any such litigation proceedings and City shall continue to make undisputed payments to Consultant in accordance with the terms of this Agreement.

15. **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 at their respective addresses set forth above or such other or additional address(es) as a party previously may have supplied to the other by written notice.

16. **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 Consultant in connection with the Services or which relate in any manner to the Services or which result from any Services produced or undertaken by Consultant 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, Consultant hereby assigns to City all right, title and interest that Consultant may have or may hereafter acquire in all Work Product, including all intellectual property rights therein. Notwithstanding the foregoing, however, Consultant shall be entitled to use and display in her professional portfolio any publicly-disseminated written work performed as part of the Services.

17. **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.

(n) Execution and Delivery. This Agreement may be executed and/or delivered by email, facsimile or other electronic means with the same legal effect as manual execution and physical delivery.

(o) Joint and Several Liability. The liability of Consultant hereunder shall be the joint and several liability of each of the individuals and/or entities which comprise Consultant from time to time.

**DATED** effective the date first-above written.

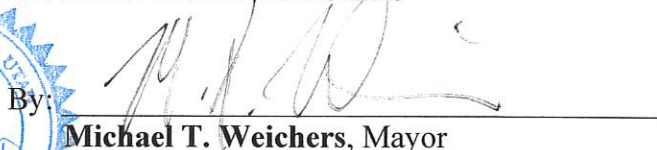
**CITY:**

**COTTONWOOD HEIGHTS**

**ATTEST:**

By:   
Paula Melgar, Recorder



By:   
Michael T. Weichers, Mayor

**CONSULTANT:**

  
B. TIM TINGEY