COTTONWOOD HEIGHTS

RESOLUTION No. 2024-46

A RESOLUTION APPROVING AN AGREEMENT WITH SCHMIDT GRAPHICS AND SIGNS FOR PUBLIC ART PROJECT

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met in regular session on 2 July 2024 to consider, among other things, approving an independent contractor agreement (the "Agreement") with Schmidt Graphics and Signs ("Provider") for installation of artist-designed wrap material on eight Rocky Mountain Power electrical distribution boxes in the City as part of a public art project, as described in the Agreement; 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. 2024-46, shall take effect immediately upon passage.

PASSED AND APPROVED effective 2 July 2024.

By: Paula Melgar, Recorder	By Michael T. Weichers, Mayor					
	VOTING:					
	Michael T. Weichers Matt Holton Suzanne Hyland Shawn E. Newell Ellen Birrell	Yea X Nay Yea X Nay Yea X Nay Yea X Nay Yea X Nay				

DEPOSITED in the office of the City Recorder this 2nd day of July 2024.

RECORDED this <u>3</u> day of July 2024.

Independent Contractor Agreement

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement") is entered into effective 4 June 2024 between COTTONWOOD HEIGHTS, a Utah municipality whose address is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 ("City") and LISA SCHMIDT d/b/a SCHMIDT GRAPHICS AND SIGNS whose address is 249 West Paxton Avenue, Salt Lake City, UT 84101 ("Contractor").

RECITALS:

- A. Rocky Mountain Power ("RMP") owns, operates, and maintains transmission and distribution assets, including pad-mounted electrical distribution boxes, in City's public places pursuant to an electric distribution system franchise granted by Licensee to Licensor through 2027; and
- B. City has implemented a community art pilot program to allow local artists ("Artists") to decorate certain of those electrical distribution boxes; and
- C. Pursuant to a "Revocable Right of Access Agreement" dated on or about 7 May 2024 (the "License Agreement"), RMP has granted to City a temporary, non-exclusive and revocable license (the "License") authorizing City to cause designated electrical distribution boxes in the City to be wrapped with Artist-designed artwork (the "Project"); and
- D. City desires to engage Contractor to install the subject wrap material on eight of the electrical distribution boxes in the City (the "Boxes") as part of the Project, in accordance with Contractor's 21 May 2024 proposals that are attached as exhibits hereto (collectively, the "Proposal").
 - E. Contractor desires to be so engaged.
- F. 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. <u>Engagement of Contractor</u>. City hereby engages Contractor, and Contractor hereby agrees, to perform the Services (defined below) as specified in this Agreement.
- 2. <u>Detailed Description of the Services</u>. In furtherance of this Agreement, Contractor shall do, perform, and carry out in good, professional and timely manner the services that are detailed in the Proposal 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 (collectively, the "Services").
- 3. <u>Fees for Services</u>. City shall pay Contractor for Services actually and satisfactorily performed up to the cumulative not to exceed amount of \$5,191.79 as detailed in the Proposal.

Throughout the duration of this Agreement, as Services are performed, Contractor shall provide a written invoice to City within 30 days after completion of each phase of the Services.

- 4. <u>Method of Payment</u>. Any questions or objections by City concerning Contractor's charges under an invoice shall be submitted within 20 days after City's receipt of the subject invoice. Subject to the foregoing, all invoiced amounts due for Services performed shall be paid by City within 30 days after City's receipt of the subject invoice. If payment is not remitted to Contractor when due, Contractor shall be entitled to recover interest thereon at the rate of 6% per annum from and after the date the remittance is due and payable.
- 5. Services Performed in a Professional, Responsive Manner. Contractor shall perform the Services in a professional, reasonable, responsive manner in compliance with all laws and applicable standards of performance. Contractor shall complete the Services concerning each specific Box within one month after City submits to Contractor the subject artwork to be fabricated and wrapped on that Box. Further, Contractor shall promptly (within no more than one business day) respond to all e-mails, voicemails and other communications from any of City's employees concerning the Services. 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 Contractor.
- 6. <u>Personnel, Equipment and Facilities</u>. Contractor shall at its sole cost furnish all supervision, personnel, labor, equipment, materials, supplies, workspace, communication facilities, vehicles for transportation and identification cards, and shall obtain all licenses and permits, necessary or incidental to performing any and all of the Services. Contractor shall not use City staff as a means to perform the Services in lieu of using Contractor's own staff, nor shall Contractor perform any of the Services on City's premises or utilizing any City equipment or supplies.
- 7. <u>Term.</u> This Agreement shall be effective on the date hereof. As noted above in Section 5, the Services for each specific Box shall be completed within one month after the subject artwork has been submitted by City to Contractor. Subject to that condition, the Services shall be completed by 31 October 2024 or as otherwise mutually agreed.
- 8. <u>Independent Contractor Status</u>. Contractor shall perform the Services as an independent contractor, and all persons employed by Contractor in connection herewith shall be employees or independent contractors of Contractor and not employees of City in any respect.
- (a) <u>Control</u>. Contractor shall have complete control and discretion over all personnel providing Services hereunder.
- (b) <u>Salary and Wages</u>. Subject to Section 3, above, City shall not have any obligation or liability for the payment of any salaries, wages or other compensation to Contractor's personnel providing Services hereunder.
- (c) <u>No Employment Benefits</u>. All personnel providing Services are and shall be and remain Contractor'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. <u>Termination</u>. 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 Contractor all amounts due for actual work performed within the scope of Services before the effective date of the termination, as specified herein.

10. Insurance; Indemnification.

- (a) <u>Insurance</u>. Contractor continuously shall maintain in full force and effect the following insurance coverage: (i) Workers compensation insurance--As required by applicable law; (ii) automobile liability insurance--\$2.0 Million combined single limit; (iii) professional errors and omissions and general liability--\$2.0 Million combined single limit. City shall be named as an additional insured under such policies if and as commercially reasonable based on the type of policy.
- (b) <u>Indemnification</u>. 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 (i) City's own negligence or intentional misconduct, or (ii) any demand, liability, claim, damage, action and/or proceeding not alleged to relate to the Services provided, or to be provided, by Contractor hereunder.
- 11. <u>Laws and Regulations</u>. 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.
- 12. <u>Non-Exclusive Rights</u>. 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.
- 13. <u>Conflict Resolution</u>. 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 14 below.

- 14. <u>Claims and Disputes</u>. 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.
- 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 recipient party at its respective address set forth above or such successor address(es) as that party may hereafter have provided by notice to the other party.
- 16. <u>Intellectual Property Rights</u>. At City's option upon subsequent written notice to Contractor, City shall own and retain all right, title and interest in and to the results of the Services and all notes, drawings, designs, pictures, images, text, audiovisual works, data, information, graphics, designs, layouts and other items, expressions, or work product of any kind that are produced, created, conceived, collected, developed, discovered or made by Contractor in connection with the Services, 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.
- 17. <u>Conflicts</u>: Omissions. In the event of conflicts or inconsistencies within or between this Agreement and the Proposal, or applicable legal requirements, Contractor shall (a) provide the better quality or greater quantity of Services, or (b) comply with the more beneficial requirements to City, either or both in accordance with City's interpretation.
- 18. Assignment and Delegation. If Contractor chooses to subcontract to one or more third parties any part(s) of the Services, such subcontract shall be at Contractor's own risk, and Contractor shall remain fully responsible for the full, timely and proper performance of all of the Services.
- 19. <u>Additional Provisions</u>. The following provisions also are integral to this Agreement:
- (a) <u>Titles and Captions</u>. 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) <u>Pronouns and Plurals</u>. 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) <u>Applicable Law</u>. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.
- (d) <u>Integration</u>. 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) <u>Time</u>. Time is the essence hereof.
- (f) <u>Survival</u>. 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) <u>Waiver</u>. 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) <u>Rights and Remedies</u>. 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) <u>Severability</u>. 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) <u>Litigation</u>. 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) <u>Exhibits</u>. 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) <u>Counterparts</u>. 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

counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

- (m) <u>Authorizations</u>. Each person signing this Agreement represents and warrants that he is authorized to sign this Agreement for the party indicated.
- (n) <u>Execution and Delivery</u>. 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) <u>Joint and Several Liability</u>. The liability of Contractor hereunder shall be the joint and several liability of each of the individuals and/or entities which comprise Contractor from time to time.

DATED effective the date first-above written.

CITY:

ATTEST:

Paula Melgan Recorder

COTTONWOOD HEIGHTS

Michael T. Weichers, Mayor

CONTRACTOR:

SCHMIDT GRAPHICS AND SIGNS

LISA SCHMIDT, Owner/Principal

Exhibit to Independent Contractor Agreement

(Attach Proposal)

249 WEST PAXTON AVENUE (1170 SOUTH) SALT LAKE CITY, UTAH 84101-3036 801-486-0193 TO COHONWOOOD HEIGHTS
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SCHMIDT GRAPHICS AND SIGNS

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SCHMIDT GRAPHICS AND SIGNS 249 WEST PAXTON AVENUE (1170 SOUTH) SALT LAKE CITY, UTAH 84101-3036 801-486-0193 TO Cottonwood Heights
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I hereby acknowledge the satisfactory completion of the above described work.

Signature.

THANK YOU

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TOTAL