COTTONWOOD HEIGHTS

RESOLUTION NO. 2024-26

A RESOLUTION APPROVING AN AGREEMENT FOR LAND USE APPEALS HEARING OFFICER SERVICES

WHEREAS, Chapter 19.92 of the Cottonwood Heights Code of Ordinances ("*Chapter 19.92*") provides one or more appeals hearing officers ("*Hearing Officers*") will serve as the appeal authority of the city of Cottonwood Heights (the "*City*") as authorized by the Municipal Land Use, Development, and Management Act codified as UTAH CODE ANN. 10-9a-101 *et seq.*; and

WHEREAS, pursuant to Chapter 19.92, each Hearing Officer shall be a qualified individual appointed by the city manager (the "*Manager*") with advice and consent of the city council (the "*Council*"); and

WHEREAS, the Manager has appointed attorney Scott Finlinson ("*Provider*") to serve as a Hearing Officer for the City; and

WHEREAS, the Council met in regular session on 16 April 2024 to consider, among other things, approving an independent contractor agreement (the "*Agreement*") with Provider whereunder Provider would serve as one of the City's Hearing Officers on a part-time, as needed, basis as provided 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 citizens of the City 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 ratified and 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. 2024-26, shall take effect immediately upon passage.

PASSED AND APPROVED this 16th day of April 2024.

ATTEST: **COTTONWOOD HEIGHTS CITY COUNCIL**

By: _____ By: _____

Paula Melgar, Recorder **Michael T. Weichers**, Mayor

COTTONWOOD HEIGHTS, UTAH 2005 CORPORATE SEAL

VOTING:

Michael T. Weichers	Yea Y Nay ___
Matt Holton	Yea Y Nay ___
Suzanne Hyland	Yea Y Nay ___
Shawn E. Newell	Yea Absent Nay ___
Ellen Birrell	Yea Y Nay ___

DEPOSITED in the office of the City Recorder this 16th day of April 2024.

RECORDED this 17 day of April 2024.

Appeals Hearing Officer Services Agreement

THIS APPEALS HEARING OFFICER SERVICES AGREEMENT (this "*Agreement*") is made effective 16 April 2024 by and between the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 ("*City*"), and **SCOTT FINLINSON**, an individual whose address is 5701 South 675 East, Murray, UT 84107 and whose email address is scottbfinlinson@gmail.com ("*Contractor*").

W I T N E S S E T H :

A. City desires to engage a qualified individual to act as City's land use appeal authority and appeals hearing officer ("*Hearing Officer*") as authorized by, *inter alia*, the Municipal Land Use, Development, and Management Act codified as UTAH CODE ANN. 10-9a-101 *et seq.* ("*LUDMA*") and Chapter 19.92 of the COTTONWOOD HEIGHTS CODE OF ORDINANCES.

B. Contractor is a licensed attorney with the necessary professional experience and training to perform Hearing Officer services for City.

C. City desires to retain Contractor to serve as one of City's Hearing Officers, and Contractor desires to be so retained by City, as provided in this Agreement.

D. The parties have determined that it is mutually advantageous to enter into this Agreement.

A G R E E M E N T :

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

2. **Detailed Description of the Services**. In furtherance of this Agreement, Contractor shall do, perform, and carry out in good, professional and timely manner, the following Hearing Officer services to City with respect to land use appeals, variance requests and any other administrative hearings authorized in the COTTONWOOD HEIGHTS CODE OF ORDINANCES (the "*City Code*") as may be assigned from time to time by City's manager (the "*Manager*"):

(a) Conduct administrative hearings and render decisions on all matters assigned by the Manager.

(b) Render all decisions in writing within the times required by the City Code, LUDMA or applicable Utah state law. Such written decisions shall include findings of fact and conclusions of law, and otherwise provide a thorough, reasoned analysis of the matter and a decision that is clear and supportable under applicable law.

(c) Such other Hearing Officer-type services as may be reasonably required or designated by the Manager.

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 Contractor for Services actually performed at the rate of $125 per hour. City shall not provide Contractor with worker's compensation insurance, unemployment compensation insurance, or health insurance. Nothing in this Agreement shall be construed as entitling Contractor to any benefits, compensation, retirement, or protections provided by City to its employees. The hourly compensation provided in this section 3 shall be the total compensation paid by City for the services provided by Contractor. Contractor acknowledges that City will not withhold any federal, state or local taxes and that Contractor is solely responsible for any and all compensation-based taxes that Contractor may owe.

4. **Method of Payment**. Each calendar month, Contractor 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. Contractor'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**. Contractor 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 Contractor.

6. **Personnel, Equipment and Facilities**. Contractor 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 any and all of the Services. Without Manager's prior consent, Contractor shall not use City staff as a means to perform the Services in lieu of using Contractor's own staff. Although hearings on matters being adjudicated by Contractor may, for convenience of the applicant or parties to an appeal, be conducted in City's offices, Contractor shall not otherwise perform any of the Services on City's premises or utilize any City equipment or supplies.

7. **Term**. This Agreement shall be effective on the date hereof and shall terminate at 11:59:59 p.m. on 30 June 2024. This Agreement thereafter shall be automatically extended for successive terms of one year each (extending from each July 1st through the following June 30th) for up to five successive one-year terms, subject to the parties' termination rights under section 9, below.

8. **Independent Contractor Status.** 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) *Control*. Contractor shall have complete control and discretion over all of Contractor's personnel providing Services hereunder. Contractor shall be responsible for his own actions and the actions of his employees, agents or officials (if any), specifically including liability resulting therefrom, and also including, but not limited to, benefits, insurance, worker's compensation, and/or other applicable items.

(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 Contractor's personnel providing Services hereunder.

(c) *No Employment Benefits*. Except for any City staff assigned by Manager to assist Contractor in performing the Services, 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.

(d) *No Authority to Bind City*. Contractor shall be an independent contractor and, as such, except as may be otherwise expressly set forth in this Agreement, shall have no authorization, expressed or implied, to bind City to any agreements, settlements, liability, or understanding whatsoever. Contractor agrees not to perform any acts as an agent for City, except as expressly set forth in this Agreement. Contractor shall not represent himself to anyone as an employee of City, but shall only represent himself as an independent contractor.

(e) *Taxes and Assessments*. Contractor shall pay all lawful taxes, assessments, or charges which at any time may be levied by the state, county, City, district, or any other tax or assessment levying body upon Contractor's interest in this Agreement.

9. **Termination**. Contractor is expressly expected to be an independent adjudicator and shall not be subject to termination under this Agreement solely based on the outcome of any hearing matter assigned to Contractor for adjudication. Subject to the foregoing:

(a) City may terminate this Agreement for cause at any time without prior notice by providing Contractor with written notice of termination describing Contractor's breach of this Agreement. "*Cause*" is defined as a bad faith performance, unreasonable performance, lack of performance, or violation or breach of the terms and conditions of this Agreement or federal, state, and municipal laws, rules, and regulations.

(b) If an appeal is not scheduled or being conducted before Contractor, either party may terminate this Agreement for any or no reason by providing the other party written notice of termination at least 30 days prior to termination date.

(c) Within 48 hours of the termination or expiration of this Agreement, Contractor shall return to City any City equipment or documents that he may have in his possession.

(d) 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.

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 address set forth above or to such other address as such party previously may have supplied to the other party by written notice.

16. **Intellectual Property Rights**. City shall own and retain all right, title and interest in and to the 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 Contractor in connection with the Services or 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. Notwithstanding the foregoing, however, Contractor 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 Contractor hereunder shall be the joint and several liability of each of the individuals and/or entities which comprise Contractor from time to time.

(p) *Assignment*. This Agreement may not be transferred or assigned by Contractor without City's prior written permission, which may be withheld in City's sole discretion.

DATED effective the date first-above written.

CITY:

ATTEST:

COTTONWOOD HEIGHTS

By: _____
Paula Melgar, Recorder

By: _____
Michael T. Weichers, Mayor

CONTRACTOR:

_____
SCOTT FINLINSON