

**MILLCREEK UTAH**  
**RESOLUTION NO. 17-**

**A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER  
INTO A CONTRACT WITH JOHN JANSEN FOR PLANNING SERVICES**

**WHEREAS**, the Millcreek Council (“Council”) met in regular meeting on August \_\_, 2017, to consider, among other things, authorizing and directing the Mayor to enter into a contract with John Jansen as a consultant for planning services; and

**WHEREAS**, the Council has determined that the City needs various planning services; and

**WHEREAS**, a copy of a contract/agreement for planning services (“Agreement”) is attached hereto; and

**WHEREAS**, after careful consideration the Council has determined that it is in the best interest of health, safety, and welfare of the citizens of the City to approve the Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Council that the Agreement is approved and the Council hereby authorizes and directs the Mayor and Recorder to execute and deliver the Agreement.

**PASSED AND APPROVED** by the Council this \_\_\_ day of August, 2017.

**MILLCREEK COUNCIL**

\_\_\_\_\_  
Jeff Silvestrini, Mayor

**ATTEST:**

\_\_\_\_\_  
Leslie Van Frank, Acting City Recorder

## INDEPENDENT CONTRACTOR AGREEMENT

**THIS AGREEMENT** is effective July \_\_ 2017, by and between **MILLCREEK**, a Utah municipality (“**Millcreek**” or “**City**”), and **JOHN JANSON**, an individual (“**Independent Contractor**”).

### RECITALS:

- A. Millcreek is in need of consultant planning services.
- B. Independent Contractor has experience in providing planning services as a consultant.
- C. Millcreek desires to enter into a service contract with Independent Contractor for such services.
- D. The parties have determined that it is mutually advantageous to enter into this services contract (“**Agreement**”).

### AGREEMENT:

**NOW, THEREFORE**, in consideration of the premises, mutual covenants, and undertakings, the parties hereby agree as follows:

1. **Employment of Independent Contractor.** Millcreek agrees to engage Independent Contractor, and Independent Contractor agrees to furnish all services and materials necessary or desirable to provide Millcreek with planning services, including but not limited to:
  - a. assist the City with the creation of the Millcreek General Plan Steering Committee (“General Plan Committee”) and provide assistance and guidance to the General Plan Committee throughout the General Plan update process, as well as supervise the General Plan update process , as requested;
  - b. provide drafts of the following materials, sufficient to act as amendments to the Millcreek Land Use Ordinances, to the City, Millcreek Council members, and Millcreek Planning Commission (“Planning Commission”) members for review: (i) Mixed Development Ordinance (ii) facilitate thru a consultant a Meadowbrook Form Based Code and 23rd/33rd Form Based Code;
  - c. as requested provide training to Millcreek Officials and Community Councils on planning related topics;

- d. provide to the City, for consideration by the Planning Commission, the existing drafts of the C-1, C-2, C-3, RM Conditional Use, new definitions, and a new concept for a design related ordinance and the M zone;
- e. attend Millcreek Planning Commission meetings, as requested;
- f. as requested by the Mayor or the City Manager from time to time, respond to resident and developer phone calls and other inquiries for planning information and assistance and;
- g. as requested by the Mayor or City Manager from time-to-time, provide other planning related services.

(All such services are collectively referred to herein as the “**Services**”). In the event of conflicts and/or inconsistencies within or among, this Agreement, and applicable statute, rules, regulations, or standards, Independent Contractor shall (1) provide the better quantity or greater quality or (2) comply with more stringent requirements or standards, either or both, in accordance with Millcreek’s reasonable interpretation.

2. **Fees for Services.** Millcreek shall pay Independent Contractor \$100 per hour for Services not to exceed \$1,750 per month (“**Fee**”). Each month Independent Contractor shall provide Millcreek with a detailed hourly invoice. Provided the invoice is in a form acceptable to Millcreek and the Services have been performed to the satisfaction of Millcreek then Millcreek shall pay such amount. Millcreek and Independent Contractor acknowledge that funds are not presently available for the performance of this Agreement. Millcreek’s obligation for performance of this Agreement is contingent upon funds being appropriated for payment of Services. If no funds or insufficient funds are appropriated then this Agreement shall create no obligation on Millcreek but instead shall terminate and become null and void on the first day of the for which funds were not appropriated.

3. **Expenses and Costs.** The Fee includes all expenses, taxes, and costs related to the performance of the Services.

4. **Services Performed in a Professional, Reasonable Manner.** The Services shall be provided by Independent Contractor in a professional manner in compliance with all applicable laws, ordinances, rules, regulations, and applicable standards of performance, including, but not limited to, the status verify system requirements for contractors of Utah Code Ann. § 63G-12-101, *et seq.* 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 Independent Contractor.

5. **Public Information.** Independent Contractor understands and agrees that this Agreement and related invoices, etc., will be public documents, as provided in Utah Code Ann. § 63G-2-101, *et seq.*

6. **Confidentiality.** Independent Contractor agrees (1) to hold confidential information in strict confidence; (2) not to disclose confidential information to any third-party, except upon Millcreek's prior written consent; and (3) to use reasonable precautions and processes to prevent unauthorized access, use, or disclosure of Millcreek confidential information; provided, however, that Independent Contractor may disclose confidential information if and only to the extent required to do so by applicable law (in which case, Independent Contractor shall advise Millcreek as soon as practicable and prior to disclosure, if practical, and cooperate and assist Millcreek at Millcreek's cost and expense, if Millcreek seeks a protective order or other relief from such disclosure requirements). As used in this Agreement, confidential information means all information material that constitutes a private, controlled, or protected record or document, or is exempt from disclosure as referenced in Utah Code Ann. § 63G-2-101, *et seq.* Independent Contractor also agrees to obligate their employees to the same obligations imposed on Independent Contractor as provided in this section.

7. **Alcohol and Drug-free Work Place.** All personnel during such time that they provide Services shall not be under the influence of alcohol, any drug, or combined influence of alcohol or any drug to a degree that renders the person incapable of safely providing the Services. Further, all personnel during such time that they provide Services shall not have sufficient alcohol in his body, blood, or on his breath that would constitute a violation of Utah Code Ann. § 41-6a-502 (without giving any consideration to or establishing the requirement of operating or being in physical control of a vehicle) or any measurable controlled substance in his body that would constitute a violation of Utah Code Ann. § 41-6a-517 (without giving any consideration to or establishing the requirement of operating or being in physical control of a vehicle).

8. **Equipment and Facilities.** For purposes of performing the Services, Independent Contractor shall furnish and supply at his sole cost all necessary labor, supervision, equipment, tools, and supplies necessary and incident to performing the Services.

9. **Indemnity.** Independent Contractor shall defend, protect, indemnify, save, and hold harmless Millcreek, including its elected and appointed officials, employees, agents, and contractors from and against any and all demands, liabilities, claims, damages, actions, or proceedings, in law or in equity, including reasonable attorneys' fees and costs of suits, relating to or arising from Independent Contractor providing the Services to Millcreek. Nothing herein shall be construed to require Independent Contractor to indemnify Millcreek against Millcreek's own negligence.

10. **Term.** This Agreement shall be effective as of the date hereof and unless terminated earlier shall terminate on June 30, 2018, provided, however, upon the consent of the parties hereto and subject to the right to terminate as provided herein, this Agreement may be renewed for successive one (1) year terms.

11. **Assignment and Delegation.** Independent Contractor will not assign or delegate the performance of his duties under this Agreement without the prior written approval of Millcreek.

12. **Employment Status.**

a. **Official Status.** Independent Contractor shall have complete control and discretion over all personnel providing Services hereunder. All such personnel shall be and remain employees of Independent Contractor and shall be considered to be independent contractors. Independent Contractor has no authority, expressed or implied, to bind Millcreek to any agreement, settlements, or liability whatsoever.

b. **Salary and Wages.** Millcreek shall not have any obligation or liability for the payment of any salary or other compensation to personnel providing Services hereunder.

c. **Employment Benefits.** All personnel providing Services hereunder are and shall remain employees of Independent Contractor. All personnel providing Services shall have no right to any Millcreek pension, civil service, or any other Millcreek benefits pursuant to this Agreement or otherwise.

13. **Termination.** Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party.

14. **Insurance.** Independent Contractor shall be responsible to obtain his own Worker's Compensation Insurance and Employer's liability insurance.

15. **Notice.** 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 as set forth below:

Millcreek: Mayor Jeff Silvestrini  
3932 South 500 East  
Millcreek, UT 84107

with a copy to: John N. Brems, Esq.  
BREMS LAW  
2798 West Matterhorn  
Taylorsville, UT 84129

Independent Contractor: John Janson  
2643 East 3120 South  
Millcreek UT 84109

16. **Claims and Disputes.** 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 in and for Salt Lake County, Utah. Unless terminated pursuant to provisions hereof or otherwise agreed in writing, Independent Contractor shall continue to perform the Services during any such litigation and Millcreek shall continue to make payments to Independent Contractor in accordance with the terms of this Agreement.

17. **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.

18. **Product of Services Patents, Copyrights, Etc.** The results of Services shall constitute “work made for hire” for Millcreek. Millcreek shall be considered the author of such work for all purposes and the exclusive owner of all rights comprised in the copyright of such work and shall have the right to exploit any or all of the foregoing in any and all media, now known or later devised. If the results of any Services are not determined to be “work made for hire,” or if Millcreek is not considered the owner of all such rights, Independent Contractor hereby assigns to Millcreek without reservation, all right, title, and interest (including, but not limited to, the copyright and any extension or renewal thereof) in and to all sculptures, models, photographs, and other expressions created by Independent Contractor pursuant to this Agreement. Millcreek, in return, hereby grants to the Independent Contractor a nonexclusive license to reproduce drawings and photographs of expressions created by Independent Contractor for marketing materials.

No other copyrights are included in this grant of nonexclusive license to Independent Contractor. Independent Contractor shall, upon request, execute, acknowledge, and deliver to Millcreek such additional documents as Independent Contractor may deem necessary or advisable to evidence and effectuate the assignment and Millcreek's rights under this Agreement. The Independent Contractor will indemnify and hold Millcreek, its officers, agents, and employees harmless from liability of any kind or nature, including the Independent Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in the performance of the Services.

19. **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.

20. **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.

21. **Applicable Law.** The provisions hereof shall be governed by and construed in accordance with the laws of the state of Utah.

22. **Entire Agreement and Modification of Agreement.** This Agreement and exhibits attached hereto constitute the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by the parties.

23. **Force Majeure.** Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control.

24. **Time.** Time is the essence hereof.

25. **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.

26. **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.

27. **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.

28. **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.

29. **Exhibits and Recitals.** The recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

30. **Injunctive Relief.** Notwithstanding anything to the contrary in this Agreement, Independent Contractor acknowledges that the unauthorized use or disclosure of confidential information would cause irreparable harm to Millcreek. Accordingly, Independent Contractor agrees that Millcreek will have the right to obtain an immediate injunction against any breach or threatened breach of section 6 of this Agreement, as well as the right to pursue any and all other rights or remedies available at law or in equity for such breach.

31. **Conflicts of Interest.** Independent Contractor represents and certifies that it has not offered or given any gift or compensation prohibited by law to any officer or employee of Millcreek to secure favorable treatment with respect to being awarded this Agreement.

**IN WITNESS WHEREOF**, Millcreek caused this Agreement to be signed by its mayor and attested by its city recorder and delivered, and Independent Contractor has caused the same to be signed and delivered.

**MILLCREEK**

By: \_\_\_\_\_  
**Mayor Jeff Silvestrini**

**ATTEST**

\_\_\_\_\_  
**Leslie Van Frank**, Acting City Recorder

**APPROVED AS TO FORM**

\_\_\_\_\_  
**John Brems**, City Attorney

\_\_\_\_\_  
**John Janson**