

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-43

A RESOLUTION APPROVING A REAL PROPERTY PURCHASE AGREEMENT WITH UTAH DEPARTMENT OF TRANSPORTATION (3000 EAST PUBLIC WORKS YARD)

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met in regular session on 23 June 2015 to consider, among other things, approving a purchase contract (with addendum) (the "Agreement") with Utah Department of Transportation ("UDOT") whereunder the City would purchase from UDOT, and UDOT would sell and convey to the City, approximately 2.411 acres of realty located at approximately 6600 South 3000 East on the terms and conditions specified 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;

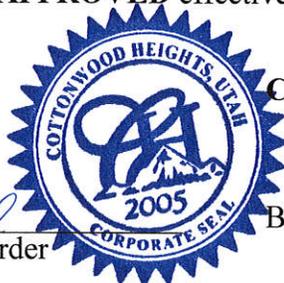
NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City; and be it

FURTHER RESOLVED by the city council of the city of Cottonwood Heights that the City's mayor and recorder are authorized and directed to execute and deliver such additional instruments, agreements and documents as may be deemed (in consultation with the City's manager and attorney) reasonably necessary or advisable to effect and consummate the transactions contemplated by the Agreement.

This Resolution, assigned no. 2015-43, shall take effect immediately upon passage.

PASSED AND APPROVED effective 23 June 2015.

ATTEST:



COTTONWOOD HEIGHTS CITY COUNCIL

By: Kory Solorio, Recorder

By: Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr. Yea [checked] Nay ___
Michael L. Shelton Yea [checked] Nay ___
J. Scott Bracken Yea [checked] Nay ___
Michael J. Peterson Yea [checked] Nay ___
Tee W. Tyler Yea [checked] Nay ___

DEPOSITED in the office of the City Recorder this 23rd day of June 2015.

RECORDED this 23 day of June 2015.

**Purchase Contract
for the
Utah Department of Transportation**

This is a legally binding contract. If you desire legal or tax advice, consult your attorney or tax advisor.

The Buyer, **COTTONWOOD HEIGHTS**, a Utah municipality, offers to purchase the Property described below from the Utah Department of Transportation. Buyer commits to deliver Earnest Money in the amount of \$25,000, which upon acceptance of this offer by all parties shall be deposited within 3 business days. The Earnest Money will be held by the Title Company located in Salt Lake County, Utah that is reasonably designated by UDOT.

PROPERTY ADDRESS: Approximately 2.411 acres located at approximately 6600 South 3000 East, Cottonwood Heights, Salt Lake County, Utah.

1. Also described as UDOT Parcel (s) # _____
2. **WATER RIGHTS.** No Water Rights / Shares are included in this sale.
3. **PURCHASE PRICE.** The purchase price for the Property is approximately \$1,102,743. The actual purchase price shall be determined before closing based on \$10.50/square foot of actual, surveyed acreage, which shall be subject to verification by both parties.
4. **APPRAISAL.** This offer ____ is ____ is not contingent upon the Buyer obtaining an appraisal on the Property.
5. **FINANCING.** This offer ____ is ____ is not contingent upon the Buyer securing a loan on the property.
6. **ADDITIONAL TERMS.** There ____ are _____ are not addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference: Addendum No. ____ 1 ____.
7. **CLOSING.** This transaction shall be closed on or after ____ 1 July 2015 ____.
UDOT will designate the Title Company (**no split closings**). Possession shall be at time of recording and Buyer's portion of the property taxes shall be prorated as of closing.
8. **SURVEY.** UDOT will not accept a revised legal description. If the buyer chooses to contract with an outside company for a survey it will be the responsibility of the surveyor to work with the county to change the legal description after closing.
9. **SELLER DISCLOSURES, WARRANTIES AND REPRESENTATIONS.** Buyer understands that Seller acquired the Property for public works yard purposes and makes no representation concerning the condition of the Property. Buyer agrees to accept the Property in "as is" condition, including any hidden defects or environmental conditions affecting the Property, whether known or unknown, whether such defects were discoverable through an inspection or not; provided that Buyer shall have the right to inspect and test the Property before being required by this Contract to purchase it, as explained in the addendum to this Contract.

____ Seller's Initials

____ Buyer's Initials

Buyer acknowledges that Seller, its agents and representatives negates and disclaims any representation, warranties, promises, covenants, agreements or guarantees, implied or express, in respect to the following:

9.1 The conformity of the property to any zoning, land use or building code requirements or compliance with any laws, rules or ordinances of state and local government; and

9.2 The closing of this sale shall constitute acknowledgement by the Buyer that Buyer had the opportunity to retain an independent, qualified professional to inspect the Property and that condition of the Property is acceptable to the Buyer.

9.3 Buyer agrees that the Seller shall have no liability for any claims or losses the Buyer or assigns may incur as a result of defects that may now or hereafter exist on the property.

10. CONDITION OF PROPERTY. Buyer hereby accepts the Property in the condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state, and federal laws, ordinances and regulations governing and regulating the use of the Property. Buyer acknowledges that neither the Department nor any agent of the Department has made any representation or warranty with respect to the condition of the Property or the suitability thereof for the conduct of Buyer, nor has UDOT agreed to undertake any modification, alteration or improvement to the Property. Buyer agrees to accept the Property in its presently existing conditions "as is," and that the Department shall not be obligated to make any improvements or modifications thereto. Buyer represents and acknowledges that it has made a sufficient investigation of the conditions of the Property existing immediately prior to the execution of the purchase agreement and is satisfied that the Property are fully fit physically and lawfully for Buyer's desired use.

11. ANTIQUITIES. It is understood and agreed that all treasure trove and all articles of antiquity in or upon the subject lands are and shall remain the property of the State of Utah. The Buyer shall report any discovery of a "site" or "specimen" to the Division of State History in compliance with the provisions of Sections 9-8-304, 305, 306 and 307, Utah Code Annotated (1953), as amended and take such action as may be required for the protection of said "site" or "specimen."

12. VENUE. In any action brought to enforce the terms of this Agreement, the Parties agree that the appropriate venue shall be the Third Judicial District Court in and for Salt Lake County.

13. AUTHORITY OF SIGNERS. If Buyer is a corporation, partnership, trust, limited liability Company, or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

14. COMPLETE CONTRACT. This contract together with its addenda, and any attached exhibits, constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.

15. DISPUTE RESOLUTION. The parties agree that any dispute, arising prior to or after Closing, related to this Contract **MAY** (upon mutual agreement of the parties) first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation

_____ Seller's Initials

_____ Buyer's Initials

through a mediation provider mutually agreed upon by the parties. Each party agrees to bear its own costs of mediation.

16. ATTORNEY FEES AND COSTS. In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation.

17. DEFAULT. Both parties agree that the liquidated damages will be limited to 100% of the Earnest Money Deposit. Liquidated damages shall not include costs of suit for specific performance.

18. FAX TRANSMISSION. Facsimile transmission of a signed copy of this Contract, any addenda, or counteroffers shall be the same as an original.

19. RISK OF LOSS. All risk of loss or damage to the property shall be borne by the Seller until Closing.

20. BUYER ACKNOWLEDGEMENTS:

20.1 Real property is transferred by a Quit Claim Deed not a Warranty Deed. Buyer has reviewed the map and the Quit Claim Deed for deed restrictions.

20.2 Buyer understands that State property is likely to have multiple offers. All property is sold contingent upon the previous owner's first right of refusal and final disposal approval from UDOT. **UDOT reserves the right to reject all offers.**

20.3 Property is not sold by tax id or sidwell number. State owned property is sold by project and parcel number referenced by the state road. Any reference to the county parcel number will be crossed out and State Road number will be inserted.

20.4 Buyer acknowledges and agrees that the Property is sold "as is". No other provisions, statements or disclosures regarding the condition shall be treated as a warranty of any kind.

21. CONTINGENCIES & DUE DILIGENCE

21.1 FINANCING & APPRAISAL. Buyer shall have until _____ N/A _____ (date) to complete and remove these conditions.

21.2 DUE DILIGENCE PERIOD. Buyer shall have until 90 days after full execution and delivery of this Contract to complete any due diligence and/or any desired approvals.

21.3 EARNEST MONEY. Buyer shall have until the 95th day after full execution and delivery of this Contract to cancel this Contract for any reason including the contingencies listed above and be eligible to receive a refund of the Earnest Money Deposit.

22. REPRESENTATION. (Please print legibly) Buyer is represented by _____ N/A _____ (agent) _____ (phone) in behalf of _____ (Broker) for _____ (Brokerage). This

_____ Seller's Initials

_____ Buyer's Initials

Addendum No. 1 to
Purchase Contract
for the
Utah Department of Transportation

THIS ADDENDUM (this "*Addendum*") is attached to and made a part of the "Purchase Contract for the Utah Department of Transportation" with the city of Cottonwood Heights dated ____ 2015 (the "*Agreement*") covering the real property described therein. Unless otherwise defined in this Addendum, all capitalized terms in this Addendum shall have the same meanings as in the Agreement. In this Addendum, each of UDOT and Buyer is singly referred to as a "*Party*," and are collectively referred to as the "*Parties*."

Section 1. **Background.**

(a) Buyer is a Utah municipality that is responsible for, *inter alia*, providing public works services (such as paving and snow plowing roads and construction and repair of curb, gutter and sidewalk in Buyer's public ways) (collectively, "*Public Works*") within Buyer's boundaries, and currently obtains most of those services by contract from Terracare Associates, a private provider ("*Terracare*").

(b) Buyer requires an appropriate facility to store and maintain vehicles, equipment, fuel, road salt (or other snow melt substance) (collectively, "*snow melt*"), and similar property and supplies (collectively, "*Equipment and Supplies*"), used to provide Public Works services within Buyer's jurisdiction.

(c) UDOT owns fee simple title to about 7.8 acres of improved realty located at approximately 6600 South 3000 East in Cottonwood Heights, Utah, which UDOT uses as an operations yard (the "*Yard*"). The Yard is described and/or shown on attached Exhibit "A."

(d) The Yard contains excess ground not necessary for UDOT's operations. Consequently, Buyer desires to purchase and UDOT desires to sell approximately 2.411 acres (the "*Property*") of the Yard for use in connection with Buyer's Public Works operations, whether conducted by Buyer itself or through a Buyer contractor such as Terracare. The Property is described and/or shown on attached Exhibit "B."

(e) In connection with its anticipated purchase of the Property and future cooperative use of the Yard described below, Buyer heretofore purchased fee title to the parcel of ground (the "*City Lot*") containing approximately .6 acres that is contiguous to, and located Northerly of, the Yard.

Section 2. **Use of the Yard.** Following the Closing, each of the Parties intends to occupy and use its portion of the Yard for the purposes of storing and maintaining their respective items of Equipment and Supplies, housing facilities for repair and maintenance of such items, providing related employee facilities and administrative offices, and similar uses in connection with Public Works activities for Buyer and UDOT's legally-authorized highway construction and maintenance endeavors. To better assure efficient, cooperative use of the Yard, the Parties further agree as follows:

_____ Seller's Initials

_____ Buyer's Initials

(a) Cooperative Use Agreement. Before or after Closing, the Parties **may** mutually execute and deliver an interlocal cooperative agreement (the “*Cooperative Use Agreement*”) for ownership and use of the Yard upon mutually-satisfactory provisions.

(b) Site Plan. Attached hereto as Exhibit “C” is a site plan (the “*Site Plan*”) showing how access to and/or use of the Yard is to be configured to facilitate combined activities and cooperative use as provided in this Agreement.

(c) General Use Issues. In their use of the Yard, the Parties:

(i) Will act in a reasonable, cooperative fashion in order to more fully utilize a public asset, thereby enhancing operational efficiencies and better conserving public resources, and

(ii) **May** combine, through future interlocal agreement(s), as many activities and functions as practical, but only on such terms and conditions as they mutually may find acceptable. Sharing of ownership or use of existing fuel pumps/facilities, stores of snow melt, vehicle wash facilities, brine ponds, etc. are **possible** combined uses, provided that appropriate policies, procedures and safeguards are utilized to prevent overuse by either party and to assure that costs are appropriately allocated based on proportion and type of use. The cost of maintaining, repairing and replacing any shared facility shall be allocated and borne by the Parties in an equitable manner based on the duration and intensity of each party’s respective use of such facility.

(iii) Agree that although interior fencing, jersey barriers or the like may be used by an owner to delineate the boundaries of such party’s portion of the Yard, the Parties desire to use the Yard in a manner that, to the greatest extent reasonably possible, preserves accessibility and facilitates movement of large equipment throughout the Yard and to the adjoining public way.

(iv) Agree that each Party shall have exclusive use and control of its own employee facilities and administrative offices located in buildings that either Party now or hereafter chooses to erect on its portion of the Yard. To allow full utilization of the Yard and possible sharing of facilities, to the extent reasonably possible there will be a zero lot line setback for any future buildings between the Parties’ respective portions of the Yard.

(d) Access.

(i) Existing Access Road. The existing roadway (the “*Existing Access Road*”) from the Yard to 3000 East (located near the existing fuel pumps) shall continue to be the primary access roadway to the Yard until a new access road (the “*New Access Road*”) is constructed. The location, dimensions, etc. of the New Access Road shall be substantially as shown on the Site Plan that is attached hereto as Exhibit “C.” As of Closing, Buyer shall be deemed to have granted to UDOT and RMP (defined below) a license to continue to use the Existing Access Road across the Property until such time as the New Access Road is completed and put into service as provided below.

(ii) New Access Road. The New Access Road shall be constructed on the City Lot and the Property within 14 months after the Closing. The New Access Road shall be

____ Seller’s Initials

____ Buyer’s Initials

engineered to bear the weight of loaded trucks and other equipment anticipated to utilize the Yard and shall include related improvements such as curb, gutter & sidewalk; lane striping; landscaping; etc., all as required by applicable law or as shown on the Site Plan. Although the cost of constructing the New Access Road on the City Lot and the Property shall be paid by Buyer, Buyer shall not be obligated to construct the New Access Road elsewhere on the Yard.

When the New Access Road is completed and ready to be put into service, the Parties and RMP promptly shall mutually (A) terminate all of their rights in and to the Existing Access Road, and (B) grant to each other replacement access rights and easements across the New Access Road, all in such recordable form(s) as they shall mutually, reasonably agree (including, without limitation, Buyer's right to reasonably relocate the New Access Road and its related easement in the future at Buyer's sole cost).

RMP's formal agreement (the "*RMP Release*") to relinquish and terminate any and all rights in and to the Existing Access Road (and any other part of the Property, other than typical easements for electric power poles and lines) in exchange for a right of way over the City Lot and the Property via the New Access Road shall be a condition precedent to Buyer's obligation to close and consummate the transactions contemplated by the Agreement.

(iii) Intersection Improvements. Buyer may, at its sole option and cost, construct any desired improvements to the intersection of the New Access Road and 3000 East street such as, for example, a semaphore and additional turn lanes.

(iv) RMP Parcel. The Parties acknowledge that UDOT heretofore has sold and conveyed approximately 5.82 acres of the Southerly portion of the Yard (the "*RMP Parcel*") to Rocky Mountain Power (or an affiliate) ("*RMP*") for use as an electric substation. As explained above, the Parties shall cooperate to continue to provide ingress/egress to the RMP Parcel across the Yard, via the Existing Access Road or a reasonable replacement, pending construction of the New Access Road, at which time RMP's right to use the Existing Access Road shall be irrevocably terminated.

(e) Fencing; Gate. Within 12 months after the Closing, Buyer shall construct the fencing on and around the Property as shown on the Site Plan. Any such fencing shall include an access gate between the Property and UDOT's portion of the Yard (the "*UDOT Portion*") substantially as shown on the Site Plan.

(f) Storm Water. Within 12 months after the Closing, Buyer will at its cost design a proposed storm water treatment system for the Property and the UDOT Portion, including a storm water grading plan for both properties. Following the Closing, each Party shall be responsible for detaining storm water on its own property. Buyer shall pay the cost of handling the storm water on the City Lot and the Property, but shall have no obligation concerning the handling of storm water on the UDOT Portion. At or following the Closing, Buyer will grant to UDOT an easement across a mutually-agreeable portion of the Property for the purpose of construction, re-construction, repair and maintenance of underground culinary, storm water and sanitary sewer lines from 3000 East to the UDOT Portion, subject to Buyer's right to reasonably relocate such easement in the future at Buyer's sole cost. The Parties shall obtain and maintain in effect all applicable state and federal licenses relating to such Party's use of and facilities on its portion of the Yard, including, without limitation, a UPDES Multi-Sector

____ Seller's Initials

____ Buyer's Initials

General Permit for Storm Water Discharges from Industrial Activities and a storm water pollution prevention plan.

(g) Relocation of Fueling Station. Within 12 months after the Closing, Buyer and UDOT will reasonably cooperate to cause the Utah state fueling station currently located on the Property to be relocated to such place on the UDOT Portion as UDOT may reasonably specify. Buyer is responsible for all costs associated with the relocation of the fueling station, excluding any environmental liability remediation costs related to or arising from such fueling station, which will be the responsibility of the owners of said fueling station.

(h) Grading. In connection with construction of the New Access Road, the Parties shall work together to coordinate the re-grade of their respective properties to match elevations to the extent reasonably possible; provided that Buyer shall only be responsible for the cost of any required regarding work on the City Lot and the Property.

(i) Compliance with Applicable Laws. Each of the Parties shall comply with all applicable laws governing use of its portion of the Yard.

(j) First Right of Refusal. To assure their continued right to use and occupy the Yard, at Closing each party shall grant (under any Cooperative Use Agreement or under another appropriate written instrument) to the other a right of first refusal as to its respective portion of the Yard, whereunder a party that desires to sell, convey or transfer any of its portion of the Yard must provide the other party at least 60 days' prior written notice and the first right to purchase that portion on identical terms as those being offered to or by a third party.

Section 3. Inspection, Etc. Buyer and its agents shall have the right to enter the Property from time to time prior to the Closing in order to inspect and test the Property and the improvements thereon. Buyer shall repair any damage to the Property resulting from such inspections and testing, and shall indemnify, defend and hold UDOT harmless from and against any and all damages (including attorneys' fees), claims, demands, actions, or other proceedings, actual or threatened, arising from or in any manner related to Buyer's activities with respect to the Property prior to the Closing.

Section 4. Environmental Matters. UDOT represents, warrants and certifies to Buyer that, to the best of UDOT's current actual knowledge, but without due diligence, there will be no (and has not been any) disposal, release or threatened release of any hazardous substances or hazardous wastes on, from or under the Property prior to, or during, UDOT's ownership of the Property. For purposes of this Agreement, the terms "disposal," "release," "threatened release" and "hazardous wastes" shall mean and include any hazardous, toxic or dangerous waste, substance or material, or any disposal, discharge or release or threatened release or any defined as such in (or for the purposes of) the Federal Comprehensive Environmental Response, Compensation and Liability Act, or any other state or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, relating to any hazardous, toxic or dangerous wastes, substances or materials, as now or at any time hereafter in effect. UDOT shall indemnify and hold Buyer harmless for any losses, damages, claims, costs (including attorneys fees), actions or proceedings arising from the inaccuracy of UDOT's representations in this section

Section 5. Conditions of Buyer's Obligation to Close. Buyer's obligation to consummate the transactions contemplated by this Agreement and to make any payment

_____ Seller's Initials

_____ Buyer's Initials

hereunder is subject to the fulfillment (or the waiver thereof by Buyer in writing) of the following conditions on or before the date of Closing (the “*Closing Date*”):

(a) Authority. Buyer shall be reasonably satisfied that UDOT has requisite authority to perform the actions necessary at the Closing.

(b) Satisfactory Title. Buyer shall be reasonably satisfied that UDOT will be able at the Closing to convey to Buyer fee simple absolute title to the Property, free and clear of all liens and encumbrances that are not acceptable to Buyer. Any required subdivision of the Property from the Yard shall occur at Buyer’s cost but with UDOT’s full and timely cooperation.

(c) Compliance with Obligations. UDOT shall have materially complied with all of UDOT’s obligations to be performed hereunder prior to or on the Closing Date.

(d) Accuracy of Warranties. All representations and warranties made by UDOT herein shall be essentially true, accurate and correct as of the Closing Date and there shall be no breach of any warranties or covenants made hereunder by UDOT.

(e) Execution and Delivery of Documents. As of or at the Closing, UDOT shall have executed and delivered to Buyer any and all documents required or necessary to consummate the transactions contemplated by this Agreement.

(f) Due Diligence. Buyer shall be satisfied with the results of its due diligence required or permitted by this Agreement, including, without limitation, its inspection and testing of the Property authorized under section 3 above.

(g) RMP Release. RMP shall have executed and delivered the RMP Release to the Parties, in such form as the Parties reasonably may require.

Section 6. Conditions of UDOT’s Obligation to Close. UDOT’s obligation to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or the waiver thereof by UDOT in writing) of the following conditions on or before the Closing Date:

(a) Authority. UDOT shall be satisfied that Buyer has requisite authority to perform the actions necessary at the Closing.

(b) Compliance With Obligations. Buyer shall have materially complied with all of Buyer’s obligations to be performed hereunder, including the payment of the Purchase Price, prior to or on the Closing Date.

(c) Accuracy of Warranties. All representations and warranties made by Buyer herein shall be essentially true, accurate and correct as of the Closing Date and there shall be no breach of any warranties or covenants made hereunder by Buyer.

(d) Execution and Delivery of Documents. As of or at the Closing, Buyer shall have executed and delivered to UDOT any and all documents required or necessary to consummate the transactions contemplated by this Agreement.

____ Seller’s Initials

____ Buyer’s Initials

(e) RMP Release. RMP shall have executed and delivered the RMP Release to the Parties, in such form as the Parties reasonably may require.

Section 7. **Permitted Termination**. If the Agreement is terminated by either party pursuant to a right expressly given it hereunder (a "*Permitted Termination*"), neither party shall have any further rights or obligations hereunder, and any deposit and other payments previously made hereunder by Buyer shall be returned to Buyer.

Section 8. **Default by UDOT**. UDOT shall be in default if Buyer has satisfied all of its obligations hereunder and UDOT fails to meet, comply with or perform any covenant, agreement or obligation on its part required, within the time limits and in the manner required in this Agreement, for any reason other than a Permitted Termination.

Upon an event of a default by UDOT of which Buyer is notified on or before the Closing Date, City may at City's option either:

(a) Terminate this Agreement by written notice delivered to UDOT at or prior to the Closing, in which case any deposit and other payments previously made hereunder by Buyer shall be returned to Buyer, whereupon both parties shall be relieved of any further right and obligation hereunder; or

(b) Enforce specific performance of this Agreement against UDOT.

Upon an event of a default by UDOT of which Buyer is notified after the Closing, Buyer may pursue all remedies available to it under law or in equity.

Section 9. **Default by Buyer**. Buyer shall be in default under this Agreement if UDOT has satisfied all of its obligations hereunder Buyer fails to meet, comply with or perform any covenant, agreement or obligation on its part required, within the time limits and in the manner required in this Agreement, for any reason other than a Permitted Termination.

Upon an event of a default by Buyer under this Agreement of which UDOT is notified on or before the Closing Date, UDOT's sole remedy shall be to terminate this Agreement upon written notice to Buyer and retain any deposit previously paid by Buyer as liquidated damages.

Upon an event of a default by Buyer of which UDOT is notified after the Closing, UDOT may pursue all remedies available to it under law or in equity.

Section 10. **Immunity Act; Indemnity**. The Parties are governmental entities under the Governmental Immunity Act of Utah (UTAH CODE ANN. § 63G-7-101, *et seq.*) (the "*Immunity Act*"). Consistent with the terms of the Immunity Act, and as provided herein, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which are committed by it or by its agents, officials, or employees. Neither party waives any defenses otherwise available under the Immunity Act nor does any party waive any limits of liability currently provided by the Immunity Act.

Subject to the foregoing, (a) Buyer shall defend, indemnify, save and hold harmless UDOT, including its elected and appointed officers, and employees, from and against any and all demands, liabilities, claims, damages, actions, or proceedings, in law or equity, including

_____ Seller's Initials

_____ Buyer's Initials

reasonable attorney's fees and costs of suit, relating to or arising from Buyer's performance, or failure to perform, its duties under this Agreement; and (b) UDOT shall defend, indemnify, save and hold harmless Buyer, including its elected and appointed officers, and employees, from and against any and all demands, liabilities, claims, damages, actions, or proceedings, in law or equity, including reasonable attorney's fees and costs of suit, relating to or arising from (i) UDOT's performance, or failure to perform, its duties under this Agreement, and (ii) the Property that arise from facts or circumstances existing before the Closing Date unless such claims arise, either directly or indirectly, from any actions or activities of Buyer or its agents, employees or assigns on the Property.

Section 11. **Conflict Resolution.** In the event of a dispute between the Parties regarding this Agreement, the Parties agree (without limiting any and all other legal and equitable remedies) that Buyer's manager and UDOT's Region II director shall meet as soon as possible to discuss and attempt to resolve the dispute. If the Parties do not agree, then the dispute shall be decided by litigation originating in the Third Judicial District Court of Salt Lake County, Utah.

Section 12. **Interpretation.** If there is any conflict or inconsistency between this Addendum and the Agreement, the terms and provisions of this Addendum shall control.

DATED effective the date first above written.

UDOT:

UTAH DEPARTMENT OF TRANSPORTATION, a department of the state of Utah

By: _____
Its: _____

BUYER:

COTTONWOOD HEIGHTS, a Utah municipality

ATTEST:

Kory Solorio, Recorder
Date signed: _____

By: _____
Kelvyn H. Cullimore, Jr., Mayor
Date signed: _____

Seller's Initials

Buyer's Initials

Exhibit "A" to
Addendum No. 1 to
Purchase Contract

The following-described real property located in Salt Lake County, Utah:

Legal description of the Yard:

Tax Parcel Number(s):

_____ Seller's Initials

_____ Buyer's Initials

Exhibit "B" to
Addendum No. 1 to
Purchase Contract

(Attach legal description and plat of the Property)

_____ Seller's Initials

_____ Buyer's Initials

Exhibit "C" to
Addendum No. 1 to
Purchase Contract

(Attach Site Plan of the Yard, showing parcels, New Access Road, etc.)

_____ Seller's Initials

_____ Buyer's Initials