COTTONWOOD HEIGHTS

RESOLUTION NO. 2009-41

A RESOLUTION APPROVING AN AGREEMENT FOR BUILDING SERVICES WITH SUNRISE ENGINEERING, INC. (2009-10 FISCAL YEAR)

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 23 June 2009 to consider, among other things, approving an "Agreement for Building Services" (the "*Agreement*") with Sunrise Engineering, Inc. ("*Sunrise*") whereunder Sunrise would provide, among other things, plan review and building inspection services to the City as specified in the Agreement during the City's 2009-10 fiscal year; 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 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. 2009-41, shall take effect immediately upon passage.

PASSED AND APPROVED effective 23 June 2009.

COTTONWOOD HEIGHTS CITY COUNCIL

By _____
Kelvyn H. Cullimore, Jr., Mayor

COTTONWOOD HEIGHTS, UTAH
ATTEST
2005
CORPORATE SEAL

_____
Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea ✓	Nay ___
Gordon M. Thomas	Yea ✓	Nay ___
J. Scott Bracken	Yea ✓	Nay ___
Don J. Antczak	Yea ✓	Nay ___
Bruce T. Jones	Yea ✓	Nay ___

DEPOSITED in the office of the City Recorder this 23rd day of June 2009.

RECORDED this __ day of June 2009.

WST\CH\524745.1

Agreement for Building Services

THIS AGREEMENT FOR BUILDING SERVICES (this "*Agreement*") is made effective 1 July 2009 by **SUNRISE ENGINEERING, INC.**, a Utah corporation ("*Provider*"), and **COTTONWOOD HEIGHTS**, a Utah municipality ("*City*").

RECITALS:

A. Provider is licensed to perform, and is in the business of providing, plan examination, building inspection, technical and other building services (collectively, "*Building Services*").

B. City is in need of Building Services in connection with building and other real property development now or hereafter proposed or occurring within City's corporate limits (the "*City Limits*").

C. Provider represents to City that Provider has significant expertise in the area of Building Services, and that Provider desires to provide such services to City as described in this Agreement.

D. Consequently, 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 described herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Scope of Services to be Provided.** Throughout the term of this Agreement, Provider shall furnish to City all Building Services reasonably needed and/or requested by City. Provider shall use its diligent efforts to cause the Building Services to be performed by its personnel consistent with the ability levels reasonably required to assure that such services are accomplished in a professionally competent and timely manner.

2. **Description of Building Services**. Provider shall provide all personnel, equipment and supplies necessary to supply (in a modern, well-equipped fashion) the following Building Services within City Limits in compliance with all applicable laws and standards:

(a) *Plan Examination*. Review all residential, industrial and commercial building plans for compliance with the (1) current adopted version of the International Building Code, International Plumbing Code, International Mechanical Code, National Electrical Code, Model Energy Code, Americans With Disabilities Act ("*ADA*") and other applicable building codes (collectively, the "*Building Code*"); (2) applicable engineering standards; (3) applicable City ordinances; and (4) all other applicable land use requirements. Provider shall provide a qualified technician to accept building plans, permit applications and the like at City's offices throughout

City's regular business hours on each day that City's offices are open to the public, for a total of at least forty (40) hours during a standard work week. Provider shall use its diligent best efforts to complete each residential plan review within five (5) working days and each commercial plan review within ten (10) working days after receipt of such plans.

(b) *Building Inspection*. Inspect (through a qualified inspector designated by Provider to conduct all, or substantially all, inspections within City Limits) all permitted buildings and structures under construction for compliance with the (1) approved construction plans for such project; (2) the Building Code; and (3) all other applicable laws and ordinances. Provider shall use its diligent best efforts to complete scheduled building inspections within 24 hours of a request. Building inspectors shall complete reports of their inspections using forms approved by City, which concisely communicate to the builder any required corrections. At the conclusion of each inspection, the building inspector shall provide to the builder a complete history of all inspections performed on the project; provided, however, that Provider shall not be required to provide such history until such time as it is available through City's building services software. Provider timely shall provide City with copies of all plan reviews, inspection checklists and final building inspection reports relating to each project for which Provider provides Building Services.

(c) *Building Services Coordination*. Staff, coordinate and accomplish all Building Services, including, but not limited to, regular "counter" technical support at City's offices as specified herein, fielding incoming telephone calls for inspections, dispatching building inspectors, keeping records of plan reviews and inspections performed and providing copies or originals of reports as requested by City relating to the Building Services.

(d) *Mobile Home/Office*. Inspect permitted modular home and mobile office installations for proper installation of structure, landings, stairs, handrails, utility connections and location on property.

(e) *Orders*. Issue compliance and stop work orders if deemed necessary in accordance with the current system in use in Salt Lake County. City will instigate any required legal action.

(f) *Fire and Health Departments; Utilities*. Coordinate with the Unified Fire Authority (the "*Fire Department*"), the Salt Lake Valley Health Department, and utility providers (including, without limitation, water and sanitary sewer) regarding their approval of building plans and building inspections.

(g) *Reporting*. Establish and deliver periodically to City copies of acceptable computer files or other file copies in a form acceptable to City with sufficient information for City to monitor Provider's performance of the Building Services hereunder.

(h) *Advice and Consultation*. Act as a resource to City and its boards and committees (such as City's Planning Commission and Board of Adjustment) with respect to the Building Services to be provided under this Agreement.

(i) *Public Meetings*. Attend City's city council meetings, cabinet meetings and development and planning meetings as requested by City. All fees and charges otherwise applicable to the first two hours' attendance at each such meeting shall be waived, and time thereafter shall be billed at standard rates.

(j) *Miscellaneous Building Services*. At City's request pursuant to Work Order (defined below) from time to time, Provider will perform the following additional services:

(1) Business Licensure. Review new business license applications for verification that the use is appropriate to the type and construction of the building in which the business is to be located.

(2) Unsafe Structures. Inspect/investigate reports of unsafe structures believed to be dangerous or a nuisance. All resulting reports shall be furnished to City for its use in its abatement process.

(3) Emergencies. Cooperate with City's efforts to issue on an expedited basis emergency permits occasioned by disasters such as earthquakes and fires.

(4) Other Services. Perform such other services as may be mutually agreed to from time to time by the parties.

(k) *Emergency Safety Inspections of Key Public Facilities*. Within 12 hours after any disaster or other emergency that may have compromised the structural integrity, safety or functionality of any public or other facility needed to provide public shelter, services, utilities or the like, Provider's qualified personnel shall inspect such facility to determine the nature and extent of any damage and to assure that it may be safely used as proposed by the City.

3. **Personnel, Equipment and Facilities**. Except as otherwise specified in this Agreement, Provider shall at its sole cost furnish all supervision, personnel, labor, equipment, materials, supplies, communication facilities, vehicles for transportation and identification cards, and shall obtain all licenses and permits, necessary or incident to performing any and all of the Building Services.

4. **Term.** This Agreement is binding and enforceable on the date first above written. Provider's obligation to perform any Building Services hereunder shall commence on the effective date of this Agreement and, unless renewed or sooner terminated as provided for herein, shall terminate at 11:59:59 p.m. on 30 June 2010.

5. **Termination.** Notwithstanding anything in this Agreement to the contrary, either party may terminate this Agreement at any time by giving 90 days' prior written notice to the other party. Upon any termination of this Agreement, Provider shall be obligated to either, at City's option, (a) fully complete all Building Services remaining under any particular permit or project for which Provider has been paid, or (b) promptly reimburse City an appropriate portion of any payment(s) on and uncompleted project(s) for which Provider has been paid, such that the reimbursement (reasonably determined by City) reflects the uncompleted portion of the total Building Services that will be necessary or advisable for each open project for which Provider has been paid..

6. **Payment for Services.** City shall compensate Provider hereunder as follows:

(a) *Building Services*. For satisfactory performance of the Building Services, City shall pay Provider the total amount of 60% of the plan check and building inspection fees collected by City for each project. Such payment shall be made by City to Provider at least once per calendar month, in arrears.

(b) *Work Order*. For services outside the scope of this Agreement, all such services shall be performed pursuant to an itemized work order or work release ("*Work Order*") in such form as City may specify from time to time, signed by an authorized officer or employee of City. Invoices for work order items shall be submitted to City for amounts claimed due by Provider. Provider will endeavor to submit such invoices within 30 days after the performance of the underlying services. All such invoices shall be in a form reasonably acceptable to City and shall (1) contain references to the date of this Agreement and the specific work order issued for such Building Services; (2) itemize and describe in detail the services performed and the hours expended in such performance; and (3) contain copies and supporting documents and proof of any expenditures on behalf of City. City shall remit the amount due under each such invoice within 30 days after receipt, subject to prior resolution of any *bona fide* disputes.

(c) *Remittance*. City shall remit the amounts due hereunder to:

SUNRISE ENGINEERING, INC.
Corporate Offices
25 East 500 North
Fillmore, UT 84631

or to such other address as Provider may designate to City in writing from time to time.

If payment is not remitted to Provider when due, Provider shall be entitled to recover interest thereon at the rate of ten percent (10%) per annum from and after the date the remittance is due and payable.

(d) *Non-Funding*. The parties acknowledge that funds are not presently available for performance of this Agreement by City beyond 30 June 2010. City's obligation for performance of this Agreement beyond that date (or beyond the end of any of City's future fiscal years within the term of this Agreement) is contingent upon funds being appropriated for payments due under this Agreement. In the event that no funds or insufficient funds are appropriated and budgeted in a current or any succeeding fiscal year, or in the event there is a reduction in appropriations of City, due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on City as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated, or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payments, or other charges to City of any kind whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Provider or its successors or assigns as to this Agreement, or any portion thereof, which may so terminate and become null and void.

7. **Performance Standards for Certain Building Services.** Provider shall perform all of the Building Services in a timely, responsive manner. In addition, the following performance standards shall be applicable to certain of the Building Services:

(a) *Residential Plan Review*. No less than ninety-five percent (95%) of all residential plan reviews shall be completed (to the extent reasonably possible in view of any deficiencies in the plans submitted) within five working days after receipt of such plan by City calculated on an average of any three month period;

(b) *Commercial Plan Review*. No less than ninety-five percent (95%) of all commercial plan reviews shall be completed (to the extent reasonably possible in view of any deficiencies in the plans submitted) within ten working days after receipt of such plan by City calculated on an average of any three month period;

(c) *Inspections*. No less than ninety-five percent (95%) of all building inspections shall be completed no later than the end of the next business day after receipt of a request for such inspection by City;

8. **Services Performed in a Professional Manner; Certification.** All Building Services shall be provided by Provider in a professional, ethical, reasonable manner in compliance with any and all applicable laws and standards of performance. All personnel providing Building Services hereunder shall be licensed by all applicable authorities and shall have substantially the same certifications, meet the same professional/technical requirements, and, on average, have the same level of experience, as other personnel regularly performing such functions for Salt Lake County's Building Services Division. Provider shall conduct regular quality control inspection

reviews of all of its personnel and their work to assure professional/technical proficiency and to determine training needs. Subject to the foregoing, the exact nature of how the Building Services are to be provided, the discipline of personnel, and other matters incidental to providing such services shall remain with Provider.

9. **Chief Building Official**. City may designate a representative of Provider's staff to be the chief building official for City and represent City as its "chief building official."

10. **Change in Level of Services**. City shall be entitled to reasonably modify (increase or decrease) the level of Building Services by providing at least 30 days' prior written notice to Provider of such change. Provider shall provide such modified Building Services pursuant a mutually agreeable fee schedule or other adjustment to Provider's compensation hereunder.

11. **Suspension of Services.** City may, by written notice, direct Provider to suspend performance of any or all of the Building Services for any specified period of time. If such suspension is not occasioned by the fault or negligence of Provider, the notice shall be modified to compensate Provider for extra costs incurred due to said suspension, provided that any claim for adjustment is supported by appropriate cost documentation and asserted within 20 calendar days after the date that City issues an order for resumption of the Building Services. Upon receipt of any such notice of suspension, Provider shall (a) discontinue the subject Building Services; (b) place no further orders or subcontracts for such services; (c) suspend all pending orders and subcontracts for such services; (d) protect and maintain the work in question; and (e) otherwise mitigate City's costs and liabilities for those Building Services suspended.

12. **Termination for Convenience.** City may terminate any Work Order (or part thereof) at any time prior to completion, with or without cause, by written notice to Provider. Upon any such termination, City shall pay Provider for all Building Services satisfactorily performed by Provider pursuant to such Work Order as of the date of termination, excluding damages, unearned fees or anticipated profits on work not yet performed.

13. **Ownership of Designs and Drawings.** All documents (whether printed or stored as electronic, magnetic, or digital information) including, but not limited to, documents prepared by Provider with respect to building inspection type services, original drawings, estimates, specifications, field notes, and data, generated or used in connection with Provider's performance of the Building Services hereunder are and shall remain City's property; provided, however, that Provider shall have no liability or responsibility for any such documents which are re-used by City without Provider's consent for any project(s) other than the project(s) for which such documents originally were prepared by Provider. Upon completion or earlier termination of the Building Services and City's payment of the amounts due Provider for such services, Provider shall deliver to City all documents (whether complete or partially complete) produced or collected by Provider in its performance of such Building Services. Although Provider may, at its expense, reproduce for its own files such drawings, estimates, specifications, field notes or data, Provider may not disclose, sell, publish or display any such item without City's prior written consent. City hereby consents

that Provider may, at its expense, reproduce and use standardized forms developed by it pursuant to this Agreement.

14. **Nondisclosure.** Unless otherwise required by law, Provider will not divulge to third parties without City's prior written consent any information obtained from or through City in connection with this Agreement. Provider shall safeguard the confidentiality of any information obtained from or through City in connection with this Agreement to the same extent that Provider safeguards the confidentiality of its own proprietary or confidential information. Unless waived by City, Provider shall require its employees and subcontractors of every tier to adhere to the foregoing covenants of nondisclosure and confidentiality. The nondisclosure restrictions in this section shall not apply, however, to any information that constitutes public records, or to any information that enters the public domain other than by reason of its disclosure by Provider or its employees or subcontractors.

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

16. **Intellectual Property.** Except as otherwise provided herein, if Provider's employees, officers, agents, subcontractors of any tier, or anyone of a like nature in the performance of the Building Services, or as a result of performing the Building Services, develop any trade secret, prepare any copyrighted material, make any improvement, originate any invention, or develop any process or the like, such trade secret, copyright, improvement, invention, or process shall be the property of Provider. Notwithstanding the foregoing, however, Provider shall grant or cause to be used for the benefit of City, without cost, any such trade secret, copyright, improvement, design, invention, or process in any manner for so long as City desires to use the same for City's own internal use.

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

(a) *Control.* Provider shall have complete control and discretion over all personnel providing Building Services hereunder.

(b) *Salary and Wages.* City shall not have any obligation or liability for the payment of any salaries, wages or other compensation to personnel providing Building Services hereunder.

(c) *No Employment Benefits*. All personnel providing Building Services are and shall be and remain Provider's employees, and shall have no right to any City pension, civil service, or any other City benefits pursuant to this Agreement or otherwise.

18. **Assignment; Subcontracts.** Provider shall not assign or subcontract this Agreement, or any part thereof, without City's prior written consent, and any attempted assignment or subcontract in violation of this section shall be void from its inception. Provider shall be fully responsible for the acts or omissions of any subcontractor of any tier and of all persons employed by them, and neither City's consent, nor anything contained herein, shall be deemed to create any contractual relations between City and any assignee or subcontractor of any tier.

19. **Accounting and Auditing.** Provider shall keep accurate and complete records in support of all remuneration paid hereunder. City, or its audit representative, shall have the right at any reasonable time to examine, audit, and reproduce all records pertaining to costs, including but not limited to payrolls, employees' time sheets, invoices, and all other evidence of expenditures for Building Services. Such records shall be available for at least two years after completion of the underlying Building Services.

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

21. **Indemnification**. Provider 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 Building Services provided, or to be provided, hereunder. Provider 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 Provider (or any officers, employees, agents, subcontractors, etc. of Provider), or under any other applicable legal theory, and shall be effective whether or not such negligence, recklessness or other misconduct reasonably was foreseeable. In the event of a lawsuit brought against Provider and/or City as a result of Building Services (or lack thereof), and if requested by City, Provider shall provide at its sole cost separate qualified legal representation to City (including its elected and appointed offices, employees, successors and assigns) that is reasonably acceptable to and specified by City. Nothing herein shall, however, require Provider 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 Building Services provided, or to be provided, by Provider hereunder; or (c) Provider's reliance on, or enforcement of, any City ordinance that is unconstitutional or otherwise invalid.

22. **Insurance**. Without limiting any indemnity or other obligations of Provider hereunder, Provider shall, prior to commencing work hereunder, secure and continuously thereafter (throughout the term of this Agreement) carry with insurers the following insurance coverage in policies which include provisions or endorsements naming City as an additional insured, and shall furnish proof thereof satisfactory to City promptly when requested:

(a) *Commercial general liability insurance* coverage with a minimum single limit of $2,000,000.00. The coverage shall include bodily injury and property damage liability coverage, contractual liability coverage, products and completed operations coverage, as well as coverage to protect against and from all loss by reason of injury to persons or damage to property, including Provider's own workers and all third persons, property of City and all third parties based upon and arising out of the negligent performance of Provider's operations hereunder, including the operations of its subcontractors of any tier.

(b) *Business automobile liability insurance* coverage with a minimum single limit of $2,000,000.00 for bodily injury and property damage with respect to Provider's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Building Services.

(c) *Workers' compensation insurance* coverage as required by applicable workers' compensation and employer's liability statutes.

(d) *Professional negligence/errors and omissions insurance* covering all errors, omissions and other professional negligence on the part of Provider and its officers, employees, agents, etc. in connection with the Building Services to be performed hereunder in a minimum coverage amount of $2,000,000.00 per occurrence.

The foregoing insurance policies shall be through reputable, licensed insurers reasonably acceptable to City, and specifically shall provide that such insurance may not be terminated or reduced without at least 30 days' prior written notice to City.

23. **Examination of Work.** All Building Services shall be subject to examination by City at any reasonable time(s), and City shall have the right to reasonably reject unsatisfactory work. City may give Provider a reasonable opportunity to correct unsatisfactory work before pursuing other remedies. Neither City's examination of Building Services, failure to examine Building Services, City's acceptance of Building Services, nor payment therefor shall relieve Provider from any of its obligations under this Agreement.

24. **Progress.** Provider shall submit periodic progress reports under Work Orders as reasonably requested by City. City's representatives may visit Provider's office at any reasonable time to determine the status of ongoing Building Services under this Agreement.

25. **Conflict Resolution.** Except as otherwise provided for herein, any dispute between the parties regarding Building Services which is not disposed of by agreement shall be decided by City, which shall provide written notice of the decision to Provider. Such decision by City shall be final unless Provider, 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. Provider 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 26 below.

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

27. **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, certified, return receipt requested and addressed to the parties as set forth below:

Provider:	SUNRISE ENGINEERING, INC. Corporate Office 25 East 500 North Fillmore, UT 84631
City:	COTTONWOOD HEIGHTS Attn. Liane Stillman, City Manager 1265 East Fort Union Blvd., Suite 250 Cottonwood Heights, UT 84047
with a copy to:	Wm. Shane Topham CALLISTER NEBEKER & MCCULLOUGH 10 East South Temple, 9th Floor Salt Lake City, UT 84133

28. **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 nonprevailing 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*. Provider hereby represents that it has been duly authorized to enter into this Agreement by a resolution of its Board of Directors. City hereby represents that it has been duly authorized to enter into this Agreement by a resolution duly adopted by its City Council.

DATED effective the date first-above written.

ATTEST:

_____
LINDA W. DUNLAVY, Recorder
Date signed _____

COTTONWOOD HEIGHTS

By:_____
KELVYN H. CULLIMORE, JR., Mayor
Date signed _____

ATTEST:

By:_____
Its:_____
Date signed _____

SUNRISE ENGINEERING, INC.,
a Utah corporation

By:_____
Its:_____
Date signed _____

WST\CH\524188.1