

**NOTICE OF SPECIAL REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF ST. GEORGE,
WASHINGTON COUNTY, UTAH**

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a special regular meeting in the **Conference Room at the Dixie Power Administration Building at 145 West Brigham Road, St. George, Utah, on Tuesday, March 4, 2025, commencing at 8:30 a.m.**

The agenda for the meeting is as follows:

1. **Request a closed meeting to discuss litigation, security, property acquisition or sale or the character and professional competence or physical or mental health of an individual.**
2. **Consent Calendar.**
 - a. **Consider approval of a Professional Services Agreement (PSA) with MRW Design Associates Inc. for the design and construction documents for the re-development of the Dixie Sunbowl.**

BACKGROUND and RECOMMENDATION: This PSA is to provide design and construction documents for the re-development of the Dixie Sunbowl. This includes preliminary design, design development, construction documents, plan review/permitting, and construction support. The goal is to have the project ready to start construction immediately after the Dixie Roundup Rodeo in September. Staff recommends approval.

- b. **Consider approval of an Amendment to Master Deed Restrictions and Housing Agreement for The Point (Friends of Switchpoint, Inc) Affordable Housing Project.**

BACKGROUND and RECOMMENDATION: A Development Agreement and Master Deed Restrictions were recorded in 2022 to guarantee low income housing within the City. Staff recommends approval.

3. **Adjourn and reconvene in a Work Meeting of the City Council.**

**** THE COUNCIL WILL REMAIN IN THE
DIXIE POWER CONFERENCE ROOM FOR
THE CITY COUNCIL WORK MEETING****

**NOTICE OF SPECIAL WORK MEETING OF THE
CITY COUNCIL OF THE CITY OF ST. GEORGE,
WASHINGTON COUNTY, UTAH**

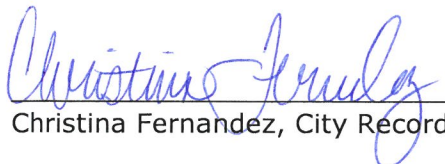
Public Notice

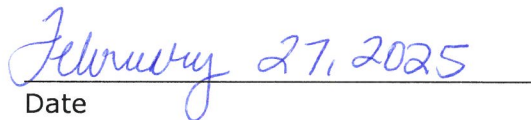
Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a special work meeting in the **Conference Room at the Dixie Power Administration Building at 145 West Brigham Road, St. George, Utah, on Tuesday, March 4, 2025, commencing at approximately 9:00 a.m.**

The agenda for the meeting is as follows:

Call to Order
Invocation
Flag Salute

1. **Discussion regarding the Fiscal Year 2025-2026 Budget.**
2. **Reports and updates from the Mayor, Councilmembers, and City Manager.**
3. **Request a closed meeting to discuss litigation, security, property acquisition or sale or the character and professional competence or physical or mental health of an individual.**


Christina Fernandez, City Recorder


Date

REASONABLE ACCOMMODATION: The City of St. George will make efforts to provide reasonable accommodations to disabled members of the public in accessing City programs. Please contact the City Human Resources Office, 627-4674, at least 24 hours in advance if you have special needs.



Agenda Date: 03/04/2025

Agenda Item Number: 2a

Subject:

Consider approval of a Professional Services Agreement (PSA) with MRW Design Associates Inc. for the design and construction documents for the re-development of the Dixie Sunbowl.

Item at-a-glance:

Staff Contact: Mark Goble

Applicant Name: City of St. George

Reference Number: n/a

Address/Location:

Dixie Sunbowl, 150 South 400 East

Item History (background/project status/public process):

This PSA is to provide design and construction documents for the re-development of the Dixie Sunbowl. This includes preliminary design, design development, construction documents, plan review/permitting, and construction support. The goal is to have the project ready to start construction immediately after the Dixie Roundup Rodeo in September.

Staff Narrative (need/purpose):

Much of the Dixie Sunbowl facility is in desperate need of repair and upgrades. It is also desired to utilize this facility to host more events in addition to the Dixie Roundup Rodeo. The purpose of this professional services agreement is to design a facility that provides a better user experience for those attending events at the facility. This includes better seating, additional seating, improved viewing opportunities, additional restroom facilities, improved access, plaza space, and landscaping.

Name of Legal Dept approver: Daniel Baldwin

Budget Impact:

Cost for the agenda item: \$229,000

Amount approved in current FY budget for item: \$300,000

If not approved in current FY budget or exceeds the budgeted amount, please explain funding source:

Approved in budget.

Description of funding source:

Recreation General Obligation Project Fund

Recommendation (Include any conditions):

Approval.



CITY OF ST. GEORGE PROFESSIONAL SERVICES AGREEMENT FOR SERVICES WITH MRW DESIGN ASSOCIATES INC.

This Professional Services Agreement (hereinafter “Agreement”) is made and entered into on _____ by and between the City of St. George, a municipal corporation, with offices at 175 East 200 North, St. George, Utah 84770 (hereinafter called the “CITY”), and MRW Design Associates Inc., with offices at 73 E 100 S, St. George, Utah 84770 (hereinafter “CONSULTANT”).

WITNESSETH THAT:

WHEREAS CITY desires professional services to be performed and has solicited CONSULTANT to provide design and construction documents for the re-development of the Dixie Sunbowl on one or more projects from time to time on an as needed basis (hereinafter called the PROJECT); and

WHEREAS, CONSULTANT has submitted a proposal, which outlines the general scope of services to be provided and the fees for the PROJECT; and

WHEREAS CITY selected CONSULTANT to perform the services for the PROJECT;

NOW, THEREFORE, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

1. ENGAGEMENT OF CONSULTANT.

- 1.1 CONSULTANT is a professional licensed by the State of Utah and the City of St. George. CONSULTANT has all licenses, permits, and approvals that are legally required for CONSULTANT to practice its profession and shall keep them in effect at all times during the term of this Agreement.
- 1.2 CONSULTANT states that it has the necessary knowledge, experience, abilities, skills, and resources to perform its obligations under this Agreement and agrees to perform its obligations under this Agreement in a professional manner, consistent with prevailing industry standards and practices as observed by competent practitioners of the profession in which CONSULTANT and its subcontractors or agents are engaged.
- 1.3 CONSULTANT certifies that it does not and will not during the performance of this contract knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC §1324(a). CONSULTANT agrees to require all subcontractors at the time they are hired for this project to sign a Certification of Legal Work Status and submit the Certification to CITY prior to any work being performed by the subcontractors. CONSULTANT agrees to produce, at CITY’S request, documents to verify compliance with applicable State and Federal laws. If CONSULTANT knowingly employs workers

or subcontractors in violation of 8 USC § 1324(a), such violation shall be cause for unilateral cancellation of the contract between CONSULTANT and CITY. In addition, CONSULTANT may be suspended from participating in future projects with CITY for a period of one (1) year. In the event this contract is terminated due to a violation of 8 USC § 1324(a) by CONSULTANT or a subcontractor of CONSULTANT, CONSULTANT shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by CITY excluding attorney fees. For purposes of compliance, CITY requires CONSULTANT and subcontractors to use E-Verify or other federally accepted forms of verification to verify the employment eligibility of all employees as allowed by law and the E-Verify procedures. CONSULTANT and subcontractors must maintain authorized documentation of the verification.

- 1.4 CONSULTANT shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City or the operations or procedures of CITY without the prior written consent of CITY.
- 1.5 CONSULTANT further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.
- 1.6 CONSULTANT, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, sexual orientation, gender identity, disability, or marital status in its employment practices.
- 1.7 CONSULTANT expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve CONSULTANT from any obligation to comply with all applicable requirements of CITY during the term of this Agreement including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies, and procedures of CITY, except as modified or waived in this Agreement.
- 1.8 CONSULTANT shall comply with all applicable federal, state, and local laws, regulations, and ordinances that affect those employees or those engaged by CONSULTANT on the PROJECT, and will procure all necessary licenses, permits and insurance required.
- 1.9 CONSULTANT certifies it is in compliance with the public contract boycotting restrictions set forth in Utah Code § 63G-27-201 and agrees not to engage in any such restricted boycotting for the duration of this Agreement, and to notify the City in writing if it begins engaging in an economic boycott.
- 1.10 CITY acknowledges that CONSULTANT may employ various specialized subcontractors for up to 15% of the services provided herein. CONSULTANT shall give written notice to CITY at least seven (7) days prior to CONSULTANT'S employment of the subcontractors to perform portions of the work provided for in this Agreement. It shall be solely CONSULTANT's responsibility to ensure that any of CONSULTANT'S subcontractors perform in compliance with the terms of this Agreement. Subcontractors

may not be changed without ten (10) days prior written notice to CITY.

2. **PROJECT SERVICES DESCRIPTION.**

- 2.1 CITY makes no guarantee as to the total volume of work, if any, that will be needed under this Agreement. CONSULTANT will provide the services on an as needed basis as described in the attached Scope of Work ("**Exhibit A Scope of Services**") which is made a part of this Agreement by this reference. As services are needed, CITY shall provide CONSULTANT with a description of the work needed which shall be known as a "Work Order" and CONSULTANT will provide CITY with a specific scope of work and cost for the Work Order, which if accepted by the CITY shall become part of this Agreement binding both parties. CITY may at any time, as the need arises, order changes within the scope of the services without invalidating the Agreement. If such changes increase or decrease the amount due under the Agreement, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.
- 2.2 CONSULTANT shall furnish all the material, supplies, tools, transportation, equipment, labor, subcontractor services and other services necessary for the completion of the work described in "**Exhibit A Scope of Services**" or in subsequent Work Orders.
- 2.3 CONSULTANT shall provide services in compliance with all applicable requirements of federal, state, and local laws, codes, rules, regulations, ordinances, and standards.

3. **TERM OF AGREEMENT.**

- 3.1 This Agreement shall be effective as of the date executed by all parties and shall continue for one year unless otherwise terminated as set forth in this Agreement. If a Work Order was started during this term but not completed, the terms of this Agreement shall continue through completion of the Work Order.
- 3.2 CONSULTANT agrees to perform services as expeditiously as is consistent with professional skill and care and the orderly progress of the PROJECT. CONSULTANT shall perform the services in a timely manner according to the schedule approved by CITY.
- 3.3 CONSULTANT shall perform its services upon notice from the CITY to proceed and in accordance with the schedule approved by CITY. In the event performance of its services is delayed by causes beyond the reasonable control of CONSULTANT, and without the fault or negligence of CONSULTANT, the time for the performance of the services shall be equitably adjusted by written amendment to reflect the extent of such delay. CONSULTANT shall provide CITY with written notice of delay, including a description of the delay and the steps contemplated or taken by CONSULTANT to mitigate the effect of such delay.

COMPENSATION. For the performance of the services and completion of PROJECT set forth herein, CITY shall pay CONSULTANT as agreed in "**Exhibit A**" and each Work Order as applicable. The

aggregate total of all Work Orders shall not exceed Two Hundred Twenty-Nine Thousand, \$229,000.00. Each individual Work Order shall not exceed n/a, \$n/a.

4. **INVOICING, PAYMENT, NOTICES.**

- 5.1 CONSULTANT shall submit invoices, no more frequently than monthly, for the services rendered during the preceding period; invoices shall describe the services performed, list all subcontractors used and the amount owed or paid to them, list all suppliers used and the amount owed or paid to them, list the contract amount, list the current invoice amount based on percentage of task complete, list the previous invoice amount, list total invoices to date, and list the contract balance.
- 5.2 In executing the request for payment, CONSULTANT shall attest that payment has been made to all subcontractors involved with prior requests, unless CONSULTANT provides a detailed explanation why such payments have not occurred. CONSULTANT shall also sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status and submit them with each request for payment. CONSULTANT shall require each subcontractor to sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status at the time subcontractor is paid and shall provide a copy of both documents to CITY. CONSULTANT shall also sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status and submit them with each request for payment.
- 5.3 A “Waiver and Release Upon Final Payment” signed by CONSULTANT attesting that all subcontractors, laborers, and material suppliers involved with prior requests for payment have been paid, and that all subcontractors, laborers, and material suppliers upon which the final payment is based will be paid immediately unless CONSULTANT provides a detailed explanation why such payments have not occurred or will not occur. CONSULTANT shall also require each subcontractor to sign a “Waiver and Release Upon Final Payment” and a Certificate of Legal Work Status at the time subcontractor is paid its final payment and shall provide a copy of both documents to CITY.
- 5.4 If such liens, claims, security interests or encumbrances remain unsatisfied after payments are made, CONSULTANT shall refund to CITY all money that CITY may be compelled to pay in discharging such liens, including all costs except for attorneys' fees.
- 5.5 All invoices for reimbursable costs shall be taken from the books of account kept by CONSULTANT, and CONSULTANT shall maintain copies of payroll distribution, receipted bills, and other documents. CITY shall have the right to review all books and records kept by CONSULTANT and any subcontractors concerning the operation and services performed under this Agreement. CITY shall withhold payment for any expenditure not substantiated by CONSULTANT’S or subcontractor’s books and records.
- 5.6 In the event CITY has made payment for expenditures that are not allowed, as determined by CITY’S audit, CONSULTANT shall reimburse CITY the amount of the un-allowed

expenditures. If additional money is owed to CONSULTANT, the reimbursement may be deducted from the additional money owed.

- 5.7 CITY shall make no payment for any services not specified in this Agreement unless such additional services and the price thereof are agreed to in writing, prior to the time that such additional services are rendered.
- 5.8 Invoices shall be paid to CONSULTANT within thirty (30) days of presentation to CITY.
- 5.9 CITY may withhold 5% of billed amount as retention. Retention held shall be included in the final invoice after the contract is complete.

5. **CHARGES AND EXTRA SERVICE.**

- 6.1 CITY may make changes within the general scope of this Agreement. If CONSULTANT is of the opinion a proposed change causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONSULTANT shall notify CITY of that fact. An agreed-upon change will be reduced to writing signed by the parties hereto and will modify this Agreement accordingly. CONSULTANT may initiate such notification upon identifying conditions which may change the services agreed to on the effective date of this Agreement, as set forth in **Exhibit A**. However, CONSULTANT represents that to the best of its knowledge that it is not aware of any such conditions on the date hereof. Any such notification must be provided within thirty (30) days from the date of receipt by that party of the other party's written notification of a proposed change.
- 6.2 CITY may request CONSULTANT to perform extra services not covered by **Exhibit A**, and CONSULTANT shall perform such extra services and will be compensated for such extra services when they are reduced to a writing mutually agreed to and signed by the parties hereto amending this Agreement accordingly.
- 6.3 CITY shall not be liable for payment of any extra services, nor shall CONSULTANT be obligated to perform any extra services except upon such written amendment.

- 6. **TO BE FURNISHED BY CITY.** Resources to be furnished by CITY to CONSULTANT, at no cost to CONSULTANT, consist of CITY staff assistance for oversight and meetings to help perform the services. CONSULTANT shall verify accuracy of the information provided, unless otherwise stated in the contract documents.

- 7. **INSPECTIONS.** All work shall be subject to inspection and approval of CITY or its authorized representative.

8. **ACCURACY AND COMPLETENESS.**

- 9.1 CONSULTANT has total responsibility for the accuracy and completeness of its investigations, calculations, reports, plans and related designs, specifications and estimates prepared for the PROJECT and shall check all such material accordingly.

- 9.2 The plans will be reviewed by CITY for conformity with PROJECT objectives and compliance with CITY Standards.
- 9.3 Reviews by CITY do NOT include the detailed review or checking of major design components and related details or the accuracy with which such designs are depicted on the plans.
- 9.4 The responsibility for accuracy and completeness remains solely with CONSULTANT and shall be performed consistent with the standard of care.

9. **INDEPENDENT CONTRACTOR.**

- 10.1 CITY retains and engages CONSULTANT, as an independent contractor, to act for and represent it in all matters involved in the performance of services on the PROJECT, subject to the terms, conditions and stipulations as hereinafter stated.
- 10.2 It is understood and agreed that CONSULTANT will provide the services without supervision from CITY. CONSULTANT is an independent contractor and is not an employee, officer, or agent of CITY for any purposes related to the performance of this Agreement and is not an employee of CITY and is not entitled to any benefits from CITY.
- 10.3 Nothing in this agreement shall create nor be construed to constitute a partnership or joint venture between CONSULTANT and CITY.
- 10.4 CONSULTANT is advised to obtain and maintain in effect during the term of this Agreement medical insurance and disability insurance for all related work performed under this Agreement.
- 10.5 CONSULTANT acknowledges that CITY will not withhold any federal, state, or local taxes, including FICA, nor will CITY provide any unemployment compensation or worker's compensation coverage. As an independent contractor, CONSULTANT shall be responsible for all taxes, worker's compensation coverage and insurance coverage, and shall hold CITY harmless and indemnify CITY from and against any and all claims related to taxes, unemployment compensation, and worker's compensation.
- 10.6 CONSULTANT shall secure, at its own expense all personnel required in performing the services under this Agreement. The employees of CONSULTANT shall not be considered employees of CITY nor have any contractual relationship with CITY. CONSULTANT and its employees shall not hold themselves out as, nor claim to be officers or employees of CITY by reason of this Agreement. The employees of CITY shall not be considered employees of CONSULTANT.
- 10.7 Neither party has the right to bind or obligate the other in any way. CONSULTANT shall not use the name, trademarks, copyrighted materials, or any information related to this

Agreement in any advertising or publicity without CITY'S prior written authorization.

10. **INSURANCE.**

- 11.1 GENERAL: CONSULTANT shall secure and maintain insurance as required by laws and regulations and the terms of this agreement to protect against any liability, loss or expense which occurs or arises as a result of the performance of the services provided pursuant to this agreement or as changed as provided herein. CONSULTANT'S insurer must be authorized to do business in Utah and must have an A.M. Best rating of A VIII or better at the time this contract is executed.
- 11.2 COMMENCEMENT OF WORK: Neither CONSULTANT, its Suppliers nor any subcontractors shall enter the site of the work or commence work under this contract before CITY has received and accepted Certificate(s) of Insurance and Insurance Endorsements and has issued the Notice to Proceed, as applicable.
- 11.3 INSURANCE CERTIFICATES AND COVERAGE: Insurance certificates shall be issued on all policies required under this contract and shall be signed by an authorized representative of the insurance company. The insurance certificate or the coverage required shall include the following:
- A. The name and address of the insured.
 - B. CITY shall be named as a Certificate Holder.
 - C. CITY shall be named as an additional primary insured on the General Liability Certificate with CITY listed as non-contributory on the General Liability certificate.
 - D. The location of the operations to which the insurance applies.
 - E. The number of the policy and the type or types of insurance in force thereunder on the date borne by the certificate.
 - F. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by the certificate.
 - G. A statement that all coverage is on an occurrence basis rather than a claims basis except for the Professional Errors and Omissions Malpractice Insurance coverage.
 - H. A provision that the policy or policies will not be canceled, denied renewal, or reduced in coverage until at least 30 days after written notice has been received by CITY.
 - I. Name, address, and telephone number of the insurance company's agent of process in Utah.

- J. Other information to demonstrate compliance with additional requirements stipulated for the various types of insurance coverage.
- 11.4 COMPENSATION INSURANCE: CONSULTANT shall, as applicable, take out and maintain Workers' Compensation Insurance as required by the Labor Code for all its employees at the site of the work during the life of this contract. Coverage must be provided by a company authorized by the State of Utah to provide Workers' Compensation Insurance. The insurance shall include:
- A. Insurance certificates shall provide a waiver of subrogation by the carrier to Certificate Holder.
 - B. CONSULTANT shall require each subcontractor to provide Workers' Compensation Insurance for its employees unless such employees are covered by CONSULTANT.
 - C. In the event any class of employees engaged in hazardous work under this contract is not protected by the Workers' Compensation Statute, CONSULTANT shall provide, and shall cause its subcontractors to provide, special insurance for the protection of such employees not otherwise protected.
- 11.5 COMMERCIAL GENERAL LIABILITY INSURANCE: CONSULTANT shall procure and maintain commercial general liability insurance for the duration of the contract against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, its agents, representatives, employees, or subcontractors. The insurance shall remain in effect during the term of this agreement and such that claims reported beyond the date of substantial completion of this agreement are covered and during the warranty period, to the extent that it relates to the activities covered by this Agreement, in such manner and amounts as set forth herein. The Insurance Endorsement shall evidence such provisions.
- A. The minimum commercial general liability insurance shall be as follows:
 - i. Comprehensive general liability insurance for injuries, including accidental death, to any one person in any one occurrence in an amount not less than \$1,000,000.00 Dollars.
 - ii. Comprehensive general liability insurance for injuries, including accidental death, to two or more persons in any one occurrence in an amount not less than \$4,000,000.00 Dollars (umbrella coverage may be considered).
 - iii. Broad form property damage insurance in an amount not less than \$300,000.00 Dollars.

- B. Such policy shall include each of the following coverages (as applicable):
- i. Comprehensive form.
 - ii. Premises - operations.
 - iii. Explosion and collapse hazard.
 - iv. Underground hazard.
 - v. Product/completed operations hazard.
 - vi. Contractual insurance.
 - vii. Broad form property damage, including completed operations.
 - viii. Independent contractors for vicarious liability.
 - ix. Personal injury.
 - x. Cross liability or severability of interest's clause shall be included unless a separate policy covering CITY is provided.

11.6 PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE:

- A. CONSULTANT shall carry and maintain Professional Liability Errors and Omissions Insurance in an amount not less than \$3,000,000.00 Dollars for all work performed under this Agreement.
- B. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, its agents, representatives, employees, or subcontractors. With respect to General Liability, Professional liability coverage should be maintained for a minimum of five (5) years after contract completion.
- C. If Professional Liability coverages are written on a claims-made form:
- i. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the contract of work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONSULTANT must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
 - iv. A copy of the policy must be submitted to CITY for review.

- 11.7 BUSINESS AUTOMOBILE COVERAGE: CONSULTANT shall carry and maintain business automobile insurance coverage on each vehicle used in the performance of the work in an amount not less than \$1,000,000.00 Dollars for one person and \$3,000,000.00 Dollars for more than one person and for property damage resulting from any one

occurrence which may arise from the operations of CONSULTANT in performing the work.

Such business automobile insurance shall include each of the following types:

- A. Comprehensive form, including loading and unloading.
- B. Owned.
- C. Hired.
- D. Non-owned.

11. **INDEMNITY AND LIMITATION.**

12.1 Except as otherwise provided herein, CONSULTANT shall indemnify, defend, and hold harmless CITY, its elected officials, officers, employees, and representatives against any and all claims, suits, causes of action, demands, losses, costs, and damages and liability of every kind including but not limited to all fees and charges of professionals, except for attorney's fees, and all court or other dispute resolution costs for:

- A. death or injuries to persons or for loss of or damage to property which directly or indirectly, in whole or in part are caused by, resulting from, or arising out of the intentional, reckless, negligent, or wrongful acts, errors or omissions, or other liability imposed by law of CONSULTANT, its officers, employees, agents, or representatives in the performance of services under this Agreement or any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work;
- B. CONSULTANT's failure or refusal, whatever the reason, to pay subcontractors or suppliers for Work performed under the Agreement;
- C. claims by any employee of the CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, CONSULTANT'S indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONSULTANT or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts.

12.2 CITY shall give CONSULTANT prompt written notice of any such claims or suits filed against CITY arising out of the services provided under this Agreement. CONSULTANT agrees to defend against any claims brought or actions filed against CITY arising out of the services provided under this Agreement. If CITY'S tender of defense, based upon the indemnity provision, is rejected by CONSULTANT or CONSULTANT'S insurer, and CONSULTANT is later found by a court of competent jurisdiction to have been required to indemnify the CITY, then, in addition to any other remedies the CITY may have, CONSULTANT shall pay the CITY'S reasonable costs and expenses, except for attorney's fees, incurred in obtaining such indemnification, defending themselves or

enforcing the indemnification provision.

- 12.3 The insurance requirements in this agreement shall not be construed as limiting CONSULTANT'S liability. Irrespective of the requirements for CONSULTANT to carry insurance as provided herein, insolvency, bankruptcy, or failure of any insurance company to pay all claims accruing shall not be held to relieve CONSULTANT of any obligations under this agreement.
- 12.4 This section does not apply to a design professional services contract, design professional services, and design professionals.

12. **DOCUMENTS.**

- 13.1 All data used in compiling CONSULTANT's work, and the results of any tests or surveys, as well as all photographs, drawings, electronically stored records of work performed, renderings, specifications, schedules, CONSULTANT's work, data processing output, computations, studies, audits, research, reports, models and other items of like kind prepared by CONSULTANT, and its employees, shall be the sole and exclusive property of CITY, and CITY shall own all intellectual property rights thereto whether the specific work project for which they are made is undertaken or not. CONSULTANT may retain reproducible copies of all the foregoing documents for information and reference and customary marketing and public relations. The originals of all the foregoing documents shall be delivered to CITY promptly upon completion thereof. This provision may be enforced by an order of specific performance and is independent of any other provision of this Agreement. Compliance by CONSULTANT with this paragraph shall be a condition precedent to CITY's obligation to make final payment to CONSULTANT. If CITY has specific requirements on the information and manner the documentation is collected, CITY shall provide those specifics to CONSULTANT in writing.
- 13.2 Plans, specifications, maps, and record drawings prepared or obtained under this Agreement shall be provided to CITY in a format approved by CITY which shall generally be a hard copy and an electronic copy and shall become the property of CITY whether the work for which they are prepared is executed or not.
- 13.3 The basic survey notes and sketches, charts, computations, and other data prepared under this Agreement shall be made available upon request to CITY without restriction or limitation on their use.
- 13.4 CITY shall have the right to use reports, designs, details, or products developed as part of this Agreement for purposes of maintenance, remodeling or reconstruction of existing facilities or construction of new facilities without additional compensation to CONSULTANT or without restriction or limitation on its use even if documents are considered copyrighted material.
- 13.5 CITY will hold harmless CONSULTANT for any use or reuse of these reports, designs,

or details for purposes other than the project associated with this Agreement unless CITY obtains validation of that use or reuse from CONSULTANT.

13. **RECORDS.**

- 14.1 CONSULTANT shall maintain records, books, documents, and other evidence directly pertinent to the performance of services under this Agreement in accordance with generally accepted accounting principles and practices.
- 14.2 CONSULTANT agrees to keep proper books of records and accounts in which complete and correct entries will be made of payroll costs, travel, subsistence, and field expenses.
- 14.3 Said books shall, at all times, be available for at least three (3) years after final payment for reasonable examination by CITY.

14. **TERMINATION.**

- 15.1 CITY may terminate this Agreement by providing fourteen (14) days written notice prior to the effective termination date to CONSULTANT.
- 15.2 In the event of such termination, CITY shall pay CONSULTANT for all services actually rendered up to and including the date of termination.
- 15.3 CONSULTANT shall deliver to CITY copies of all drawings, reports, analyses, documents, and investigations, whether completed or not, that were prepared or were being prepared under the provisions of this Agreement.

15. **CONFLICT BETWEEN DOCUMENTS.** In the event of a conflict between this Agreement and any other documents with CONSULTANT, this Agreement shall govern.

16. **CONFLICT OF INTEREST.** CONSULTANT certifies that it has disclosed to CITY any actual, apparent or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement.

- 17.1 CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop after the date of execution of this Agreement.
- 17.2 CONSULTANT further agrees to complete any statements of economic interest required by either CITY ordinance or State law.

17. **NON-WAIVER.** No failure or waiver or successive failures or waivers on the part of either party hereto, their successors or permittee assigns, in the enforcement of any condition, covenant, or Article of this Agreement shall operate as a discharge of any such condition, covenant, or Article nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

18. **NOTIFICATION.** All notices required or permitted to be made by either party in connection with this Agreement shall be in writing, and shall be deemed to have been duly given: (a) five (5) business days after the date of mailing if sent by U.S. mail, postage prepaid, (b) when transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine and a copy of such facsimile is promptly sent by another means specified in this Section; or (c) when delivered if delivered personally or sent by express courier service. All notices shall be sent to the other party at its address as set forth below unless written notice is given by either party of a change of address:

CITY:	City of St. George	CONSULTANT:	MRW Design Associates Inc.
	175 East 200 North		73 E 100 S
	St. George, Utah 84770		St. George, Utah 84770
Attention:	City Attorney	Attention:	Jeff Mathis
Copy:	legal@sgcity.org		

19. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of Utah. The parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction. The parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party agrees that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government parties.
20. **LEGAL FEES.** Each party shall bear its own costs, expenses, and attorneys' fees in connection with this Agreement. This obligation includes, without limitation, all costs and expenses which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise.
21. **MODIFICATION OF AGREEMENT.** CITY specifically reserves the right to modify or amend this Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work. All modifications shall be in writing and executed by both parties. Each Work Order adopted under this Agreement shall incorporate the terms and conditions of this Agreement and shall constitute a modification to this contract. A Work Order may amend the terms and conditions of this Agreement only as they apply to that particular Work Order and shall not have any general effect on this Agreement.
22. **RESERVED LEGISLATIVE POWERS.** Nothing in this Agreement shall limit the future exercise of the police power by CITY in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and

regulations after the date of this Agreement, but which shall not be retroactively applied to or modify this Agreement.

23. **SUCCESSORS AND ASSIGNS.** CONSULTANT shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement without assigning the rights and the responsibilities under this Agreement and without the prior written approval of CITY. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.
24. **NO JOINT VENTURE, PARTNERSHIP OR THIRD-PARTY RIGHTS.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the parties. No term or provision of this Agreement is intended to or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
25. **INTEGRATION.** This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature between CITY and CONSULTANT and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to this PROJECT.
26. **SEVERABILITY.** If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement 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.
27. **CONSTRUCTION.** Each of the parties hereto has had the opportunity to review this agreement with counsel of their choosing and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this agreement.
28. **SURVIVAL.** It is expressly agreed that the terms, covenants, and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.
29. **HEADINGS.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
30. **COUNTERPARTS.** This Agreement may be signed in counterparts and each such counterpart shall constitute an original document. All such counterparts, taken together, shall constitute one and the same instrument. Any signature on this Agreement transmitted by facsimile, electronically in PDF format, or by other generally accepted means of conveying digital signatures (e.g. DocuSign) shall be deemed an original signature for all purposes and the exchange of copies of this Agreement and of signature pages by any such transmission, or by a

combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original for all purposes.

31. **AUTHORITY OF PARTIES.** The parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated and that this Agreement constitutes a valid and binding Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the CITY and CONSULTANT effective from the day and year first written above.

CITY OF ST. GEORGE

MRW DESIGN ASSOCIATES INC.

Michele Randall, Mayor

Jeff Mathis, Architect

ATTEST:

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Christina Fernandez, City Recorder

Daniel Baldwin, Assistant City Attorney

EXHIBIT A
SCOPE OF SERVICES

This Exhibit A Scope of Services is attached to, and fully incorporated into, the Professional Services Agreement by and between the City of St. George (the “City”) and the following individual or entity (“Contractor”) to the extent that it does not conflict with any provisions in this Agreement. If there are any conflicts between the Agreement and the Scope of Services, the terms of the Agreement apply.:

Name: MRW Design Associates Inc.

Address: 73 E 100 S, St. George, Utah 84770

Email: jm@mrwdesign.com Phone Number: 435-628-2377

Scope of Services and/or Deliverables by Contractor:

- Retainer/Preliminary Design
- Design Development
- Construction Documents
- Plan Review/Permitting
- Construction Support

Compensation: City shall pay Contractor the following sum:

- \$229,000.00



Date: February 10, 2025

To: City of St. George Utah

Subject: Agreement for Design, Construction Documents for the Re-development of the Dixie Sunbowl

Contact: Shane Moore
1-435-703-1489
shane.moore@sgcity.org

INTRODUCTION

This Agreement is based upon MRW Design providing and completing architectural design and consulting engineering (mechanical, electrical, plumbing) and documents for the construction of a new Sunbowl Arena in St. George City Utah. The purpose of our services will be to prepare the arena plans including all the documents which will be required to submit to the city for the review of plans to obtain a building permit and provide construction support during the building process.

SCOPE OF WORK

The scope of work involves designing and preparing design and construction documents, including drawings, consulting engineering, pertinent specifications, for the construction of this project as described in "Introduction" above. Preliminary designs have been previously prepared under a separate agreement and those Preliminary designs are the basis for moving forward with the this full design.

Based upon owner approval of the preliminary plans, complete arena plans will be prepared, including floor plans, elevations, building sections, roof plan, and building details. The building design will be reviewed and completed in conjunction with the owner. A full specification will not be provided. Pertinent specifications shall be indicated as needed on the plans.

Consulting Engineering will be prepared, including mechanical, electrical, and plumbing plans. The plans will be completed to the requirements of the owner and in coordination with owner's fixtures/equipment, including all preliminary designs, plan reviews, and building permit approvals. Sheet specifications shall be provided on the drawings for use in construction of the new facility.

Structural Engineering and coordination with the metal bleacher supplier is included.

Site Civil Engineering is included and shall be coordinated to comply with the City's requirements. Special inspections and during construction testing services are not included as a part of this proposal. These items shall be included in the bidding documents, under the control of the general contractor or owner.

Interior design including color and material selection shall not be provided as a part of this proposal. Our plans shall include a finish schedule with typical, generic, performance-

based specifications on finishes. Information on any specific specialty materials, colors, or finishes which may be required shall be provided to MRW by the owner for inclusion in the plans.

Construction questions and clarifications are included to assist the contractor during construction. Any change to the plans or design requested by the contractor/owner after preliminary approval and after city permitting is not included and shall be negotiated prior to completion. Changes are considered "Additional Services" and are negotiated base on the "hourly rate fee schedule."

Electronic copy (PDF) of construction documents are included within this Agreement. Printed hard copies are not included. Printed copies can be provided at owner request and expense (industry standard printing rates).

SCHEDULE:

Once authorized to proceed and initial payment is made, we will proceed with the Scope of Work promptly and complete the work within a reasonable time frame. Any written or verbal time estimates are estimates only.

FEE PROPOSAL AND STATEMENT OF TERMS:

Our services will be invoiced monthly with one final bill to be invoiced upon completion of the work provided within the Scope of Work. Fees are based upon the Scope of Work and allocation within the following categories as shown below.

Phase	Percent Breakdown	Fee
Retainer/Preliminary Design	10%	\$ 26,500.00
Design Development	25%	\$ 56,250.00
Construction Documents	50%	\$ 112,500.00
Plan Review/Permitting	10%	\$ 22,500.00
Construction Support	5%	\$ 11,250.00
Total Fees for the scope of work as listed above:		\$ 229,000.00

MRW Design reserves the right to renegotiate, modify and/or reissue the values, scope of work and all information included in this document if this proposal has not been accepted within thirty (30) days.

If the project is suspended for more than three months or abandoned in whole or in part, MRW Design shall be compensated for services performed prior to receipt of written notice from the Client of suspension and/or abandonment.

Payments may be made by credit card for an additional fee of 4% of the amount charged. This additional fee will be charged at the time of credit card payment.

HOURLY RATE FEE SCHEDULE:

HOURLY FEE JOB DESCRIPTION:	<u>RATE</u>
Principal Architect	\$150.00/hour
Principal Engineer	\$150.00/hour
Project Architect or Engineer	\$125.00/hour
Structural Engineer	\$150.00/hour
Project Manager	\$95.00/hour
Designer Drafter	\$85.00/hour
Administrative Assistant	\$65.00/hour

EXCLUSIONS

Subdividing/platting of property;
 Coordinating with Flood Plain;
 Any required Title Insurance or Title research work;
 Geotechnical Report;
 Testing/Special Inspections during Construction;
 Traffic Study if Required;
 Interior Design and selection of finishes, fixtures, equipment;
 Special Acoustical design/consulting;
 Specialty Audio Visual design/consulting;
 Fire Protection and Alarm Systems;
 Security/A/V/Access controls;
 Local, State, or Federal licensing/accreditation;
 Health Department submittal for Food Service;
 Permitting/application, submittal and impact fees to the City;

AGREEMENT AND AUTHORIZATION

MRW Design Associates, Inc. hereby agrees to complete the engineering and architectural design services outlined in the SCOPE OF WORK section of this document:

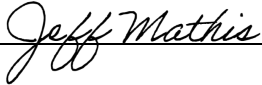
Work will be completed as outlined within the FEE PROPOSAL section of this document. The termination fees and approved additional work which may be requested will be completed and/or billed on a time and materials basis in accordance with the HOURLY RATE FEE SCHEDULE listed above.

AUTHORIZATION TO PROCEED: Execution of this Agreement by the CLIENT will authorize MRW DESIGN ASSOCIATES, INC. to proceed with the work described within the SCOPE OF WORK, unless otherwise provided for in this agreement.

PAYMENT AND BILLING SCHEDULE: Invoices will be presented MONTHLY based on the percent of completion of each phase of the work. Payment must be made with **15** days of the date of the invoice. If payment is not made, work will not continue on the project until past due amounts are paid in full to the current level of the billings and work performed.

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this agreement upon the terms, conditions, and provisions above stated and/or attached to, the day and year first above written. (Please acknowledge the **General Conditions** ("**Attachment I**") with this document by initialing the bottom of the page.)

MRW Design Associates:

 Jeff Mathis, Architect  Date: 2-10-2025

 The City of St. George (Owner/Client): Date: _____

General Conditions

Section 1 - Right of Entry

CLIENT shall provide for MRW DESIGN ASSOCIATES' right to enter from time to time property owned by CLIENT and/or other(s) in order for MRW DESIGN ASSOCIATES to fulfill the scope of services described herein. MRW DESIGN ASSOCIATES will take reasonable precautions to minimize any damage to the Site; however, CLIENT acknowledges that during the normal course of the performance of MRW DESIGN ASSOCIATES' services, some damage to the Site may occur. Accordingly, CLIENT waives any claim against MRW DESIGN ASSOCIATES, and agrees to defend, indemnify, and hold MRW DESIGN ASSOCIATES harmless from any claim or liability for injury or loss allegedly arising from procedures associated with subsurface exploration activities or discovery of hazardous materials or suspected hazardous materials.

Section 2 - Information Provided by Others

MRW DESIGN ASSOCIATES shall indicate to CLIENT the information needed for rendering of services hereunder, and CLIENT shall provide to MRW DESIGN ASSOCIATES such information as is available to CLIENT. CLIENT recognizes that it is impossible for MRW DESIGN ASSOCIATES to assure the sufficiency or accuracy of such information, either because it is impossible to do so, or because of errors or omissions which may have occurred in assembling the information.

CLIENT shall immediately notify MRW DESIGN ASSOCIATES in writing of any data, information, or knowledge in the possession of or known to CLIENT relating to the subsurface conditions existing at the Site and shall provide MRW DESIGN ASSOCIATES with the location, size and depth of any and all underground tanks, piping, or structures existing upon the Site.

Accordingly, CLIENT waives any claim against MRW DESIGN ASSOCIATES, and agrees to defend, indemnify, and hold MRW DESIGN ASSOCIATES harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in documents or other information provided to MRW DESIGN ASSOCIATES by CLIENT. Further, CLIENT agrees to compensate MRW DESIGN ASSOCIATES for any time spent or expenses incurred by MRW DESIGN ASSOCIATES in defense of any such claim, with such compensation to be based upon MRW DESIGN ASSOCIATES' prevailing fee schedule and expense reimbursement policy.

Section 3 - Ownership of Instruments of Service

All reports, building plans, field data, field notes, final and preliminary plans, calculations, estimates and other documents prepared by MRW DESIGN ASSOCIATES shall remain the property of MRW DESIGN ASSOCIATES.

CLIENT shall have the right to the use of all data, recommendations, proposals, reports, design criteria and similar information provided to it by MRW DESIGN ASSOCIATES; provided, however, that the information shall not be used or relied upon by any party other than CLIENT, save and except as may be required by the design and licensing requirements of the project for which the information is provided; further, such use shall be limited to the particular site and project for which the information is provided.

CLIENT's right to the use of the information is expressly conditioned upon CLIENT's prompt payment to MRW DESIGN ASSOCIATES of all sums due under the CLIENT/MRW DESIGN ASSOCIATES agreement. In the event of CLIENT's nonpayment or partial payment of said amounts, CLIENT agrees that it shall not use any of the information for any purpose whatsoever and shall return the same to MRW DESIGN ASSOCIATES upon demand.

MRW DESIGN ASSOCIATES shall retain permanent records relating to the MRW DESIGN ASSOCIATES services for a period of five (5) years following completion of MRW DESIGN ASSOCIATES' contract, during which period the records will be made available to CLIENT upon reasonable notice given by

CLIENT and upon payment to MRW DESIGN ASSOCIATES of an amount sufficient to reimburse MRW DESIGN ASSOCIATES for its necessary and reasonable expenses in making said records available.

Section 4 - Standard of Care

Services performed by MRW DESIGN ASSOCIATES under the agreement to which these General Conditions are a part will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, building plan, document, or otherwise.

Where MRW DESIGN ASSOCIATES' services involve field observation it is agreed:

a. That in the event MRW DESIGN ASSOCIATES is to provide periodic observation, CLIENT acknowledges that MRW DESIGN ASSOCIATES cannot be responsible for any work performed at a time or times when MRW DESIGN ASSOCIATES was not performing its observation services. MRW DESIGN ASSOCIATES will not provide an opinion concerning the performance of any third party, save and except to the extent that said work was in fact observed and tested by MRW DESIGN ASSOCIATES during the course of construction.

b. That where MRW DESIGN ASSOCIATES' services include continuous observation, CLIENT agrees not to allow grading, filling, or compaction to be performed at any time or times when MRW DESIGN ASSOCIATES is not physically present upon the Site and shall restrict the amount and extent of such grading, filling, and compaction to that which can be properly observed by MRW DESIGN ASSOCIATES personnel present on the Site.

c. That in the event MRW DESIGN ASSOCIATES is to conduct exploratory borings or trenches for CLIENT, CLIENT acknowledges that the accuracy of said explorations relates only to the specific location in which the exploration itself was performed and that the nature of many sites is such that differing subsurface soil characteristics can be experienced within a small distance.

Section 5 - Limitation of Liability

CLIENT shall defend and save harmless MRW DESIGN ASSOCIATES, its officers, directors, agents, and employees from all liability, claims and demands, arising from personal injuries including disease and death, property loss or damage, injury to others (including personnel of CLIENT, MRW DESIGN ASSOCIATES, or third parties performing work hereunder), and air or ground pollution or environmental impairment arising out of or in any manner connected with or related to the performance of MRW DESIGN ASSOCIATES' services, except where such injury, loss or damage shall have been caused by the sole negligence or willful misconduct of MRW DESIGN ASSOCIATES.

Section 6 - Discovery of Unanticipated Hazardous Materials

Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. MRW DESIGN ASSOCIATES and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. MRW DESIGN ASSOCIATES and CLIENT also agree that the discovery of unanticipated hazardous materials will make it necessary for MRW DESIGN ASSOCIATES to take immediate measures to protect human health and safety, and/or the environment. MRW DESIGN ASSOCIATES agrees to notify CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be

encountered. CLIENT encourages MRW DESIGN ASSOCIATES to take any and all measures that in MRW DESIGN ASSOCIATES' professional opinion are justified to preserve and protect the health and safety of MRW DESIGN ASSOCIATES' personnel and the public, and/or the environment, and CLIENT agrees to compensate MRW DESIGN ASSOCIATES for the additional cost of such work. In addition, CLIENT waives any claim against MRW DESIGN ASSOCIATES, and agrees to indemnify, defend, and hold MRW DESIGN ASSOCIATES harmless from any claim or liability for injury or loss arising from MRW DESIGN ASSOCIATES' encountering of unanticipated hazardous materials or suspected hazardous materials. CLIENT also agrees to compensate MRW DESIGN ASSOCIATES for any time spent and expenses incurred by MRW DESIGN ASSOCIATES in defense of any such claim, with such compensation to be based upon MRW DESIGN ASSOCIATES' prevailing fee schedule and expense reimbursement policy.

Section 7 - Buried Utilities

MRW DESIGN ASSOCIATES will conduct the research that in its professional opinion is necessary to locate utility lines and other man-made objects that may exist beneath the Site's surface as required by the scope of work section of the contract. CLIENT recognizes that MRW DESIGN ASSOCIATES' research may not identify all subsurface utility lines and man-made objects, and that the information upon which MRW DESIGN ASSOCIATES relies may contain errors or may not be complete. CLIENT agrees to waive any claim against MRW DESIGN ASSOCIATES, and to defend, indemnify and hold MRW DESIGN ASSOCIATES harmless from any claim or liability for injury or loss allegedly arising from MRW DESIGN ASSOCIATES' damaging underground utilities or other man-made objects that were not called to MRW DESIGN ASSOCIATES' attention or which were not properly located on plans furnished to MRW DESIGN ASSOCIATES.

Section 8 - Jobsite Safety

MRW DESIGN ASSOCIATES shall be responsible for its activity and that of its employees on the Site. However, the CLIENT, its general contractor or any of its subcontractors shall maintain a safe jobsite. MRW DESIGN ASSOCIATES' services will not include a review or evaluation of the adequacy of the contractor's safety measures on or near the Site.

Section 9 - Confidentiality

MRW DESIGN ASSOCIATES shall hold all information provided to it by CLIENT and the results of the work performed by it confidential and shall not disclose the same to any third party except where required by Governmental regulatory agencies or as otherwise required by law.

Section 10 - Insurance

MRW DESIGN ASSOCIATES represents that it now carries, and will continue to carry during the term of the contract to which these General Conditions are a part, Workers Compensation insurance and that, if requested, MRW DESIGN ASSOCIATES shall provide to CLIENT certificates as evidence of the aforementioned insurance.

Section 11 - Payment and Collection Terms

Progress invoices will be issued for all work performed under this agreement. Invoices are due and payable on receipt. All invoices are considered past due on the 15th calendar day following the date of invoice. In the event payment is not made when due, a 1.5% (18% APR) finance charge, or the maximum rate allowed by state law, will be assessed monthly, together with reasonable collection fees, lien fees and attorney fees with or without suit, until paid.

A "Stop Work Order" may be issued if any invoice exceeds 15 days past due.

The Federal Truth in Lending Act requires prompt correction of billing errors. To preserve CLIENT'S rights under these Acts, CLIENT should follow steps outlined below if it is felt a bill is incorrect or more information is needed about an item on an invoice:

a. CLIENT should not write on the invoice. The following information should be written on a separate sheet of paper (*a telephone inquiry may be made, but a phone call will not preserve the CLIENT'S rights under this law*):

1) CLIENT'S name and the project number.

2) A description and of the error. If more information is needed, CLIENT should explain the item not sure about and ask for evidence of the charge. CLIENT should not send in his copy of the invoice unless a duplicate copy has been made for his records.

3) The dollar amount of the suspected error.

4) Any other information CLIENT feels will help.

b. CLIENT must send the billing error notice to MRW DESIGN ASSOCIATES, 251 Hilton Drive #202, St. George, UT 84770. The notice must be mailed early enough to reach the office of MRW DESIGN ASSOCIATES *within 35 days after the date of the invoice*.

c. MRW DESIGN ASSOCIATES will acknowledge all letters pointing out possible errors within *30 days of receipt*, and will either correct the error or explain why the billing is correct. Once MRW DESIGN ASSOCIATES has explained the bill and CLIENT still believes that there is an error, MRW DESIGN ASSOCIATES has no further obligation to CLIENT except as provided in Paragraph "f" below.

d. After MRW DESIGN ASSOCIATES has been notified, no collection (legal or otherwise) will be imposed with respect to the disputed amount. Periodic statements may be sent to CLIENT and the disputed amount can be applied against CLIENT'S credit limit. CLIENT will not be threatened with damage to his credit rating or sued for the amount in question, nor will the disputed amount be reported to a credit bureau as delinquent until all charges have been verified. **However, CLIENT remains obligated to pay the uncontested portions of his billing.**

e. If it is determined that MRW DESIGN ASSOCIATES has made a mistake on the bill in question, CLIENT will not pay finance charges on any disputed amount during the interim. Time will be given to CLIENT to pay under normal payment procedures before assessing finance charges. If MRW DESIGN ASSOCIATES has not made an error, CLIENT may be assessed finance charges on the disputed amount, and will make up any missed payments. Unless CLIENT has agreed that the bill was correct, MRW DESIGN ASSOCIATES will send CLIENT a written notification of what is owed.

f. NOT USED.

g. In the event MRW DESIGN ASSOCIATES fails to follow these terms/rules, MRW DESIGN ASSOCIATES will forfeit the first \$50 of the disputed amount and finance charges even if the billing is correct.

h. Should CLIENT have a problem with any service provided by MRW DESIGN ASSOCIATES and fail to clearly identify his concerns within 35 days of the date of invoice, CLIENT is fully responsible for all charges including finance charges and fees associated in collecting the amount owed.

Section 12 - Termination

CLIENT shall have the right to terminate this agreement in whole, or from time to time, in part, upon delivery to MRW DESIGN ASSOCIATES of a Notice of Termination specifying the extent to which performance of services under this contract is terminated, and the date upon which termination becomes effective. In the event the agreement is terminated by CLIENT prior to full performance by MRW DESIGN ASSOCIATES, MRW DESIGN ASSOCIATES shall be paid for services rendered to the date of termination based upon a percentage of completion of the full performance of this agreement.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/10/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Main Street Insurance 780 N 2860 E STE 101 St George UT 84790	CONTACT NAME: Kaleb DeMille PHONE (A/C, No, Ext): (435) 674-2221 E-MAIL ADDRESS: kaleb@msiagency.com FAX (A/C, No): INSURER(S) AFFORDING COVERAGE INSURER A : US SPECIALTY INS CO INSURER B : INSURER C : INSURER D : INSURER E : INSURER F : NAIC # 29599
INSURED MRW Design Associates 251 W. Hilton Drive, Suite 202 St George UT 84770	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N ☐ N / A						PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Errors and Omissions			USS2535348	01/09/2025	01/09/2026	GC General Aggregate DefenseLimitInside 3,000,000 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: Sunbowl.

CERTIFICATE HOLDER**CANCELLATION**

City of St George 175 E 200 N St George UT 84770	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Kaleb DeMille
--	--

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Agenda Date: 03/04/2025

Agenda Item Number: 2b

Subject:

Consider approval of an Amendment to Master Deed Restrictions and Housing Agreement for The Point (Friends of Switchpoint, Inc) Affordable Housing Project.

Item at-a-glance:

Staff Contact: Jami Brackin

Applicant Name: Friends of Switchpoint

Reference Number: N/A

Address/Location:

999 E Red Hills Parkway

Item History (background/project status/public process):

A Development Agreement and Master Deed Restrictions were recorded in 2022 to guarantee low income housing within the City.

Staff Narrative (need/purpose):

In 2022, the City entered into a development agreement and master deed restriction for a project to be known as The Point which is a low income housing project. As contemplated, the owner, Friends of Switchpoint, are now ready to construct phase 2 of the project which is a new building with 60 1-bedroom low income units. The project has obtained Low Income Housing Tax Credit financing but needs to transfer the property to a new entity for the duration of the financing. Friends of Switchpoint will be a partial owner and the manager during this time period. The current deed restrictions have a right of first refusal in favor of the City if the property is transferred. The owners now seek to ensure that the transfer for purposes of financing will not trigger that first right of refusal.

Name of Legal Dept approver: Jami Brackin

Budget Impact: No Impact

Recommendation (Include any conditions):

Staff recommends approval.

WHEN RECORDED, RETURN TO:

City of St. George
175 E. 200 N.
St. George, Utah 84770
Tax Parcel No.: SG-1328-A-3-N.

**AMENDMENT TO MASTER DEED RESTRICTIONS
AND HOUSING AGREEMENT FOR THE POINT
(FRIENDS OF SWITCHPOINT, INC.)
AFFORDABLE HOUSING PROJECT**

THIS AMENDMENT TO MASTER DEED RESTRICTIONS AND HOUSING AGREEMENT FOR THE POINT (FRIENDS OF SWITCHPOINT, INC.) AFFORDABLE HOUSING PROJECT (this “Amendment”) is made and entered into as of the ____ day of February, 2025, by and between Friends of Switchpoint, Inc., a Utah nonprofit corporation (“Original Developer”), and the City of St. George, a Utah municipal corporation (“City”). The City and Developer may be referred to herein individually as a “Party” and collectively as the “Parties.” Capitalized terms that are defined in the Agreement, as defined below, shall have the same meanings assigned to them in the Agreement.

RECITALS

A. On February 4, 2022, the City and Original Developer entered into the Master Deed Restrictions and Housing Agreement for The Point (Friends of Switchpoint, Inc.) Affordable Housing Project (the “Agreement”) with regard to the development of an affordable housing project on the property described on Exhibit A attached hereto (the “Property”). The Agreement was recorded as Entry No. 20220008881 in the official records of the Washington County Recorder.

B. In order to obtain financing for the development of the Property as contemplated in the Agreement, Original Developer intends to convey the Property to The Point at Red Hills, LLC, a Utah limited liability company (the “Company”), whereupon the Company will assume the rights and obligations of Original Developer under the Agreement.

C. Original Developer has organized the Company in order to obtain necessary funds to develop the Property as contemplated by the Agreement, and has appointed The Point at Red Hills GP, LLC, a Utah limited liability company that is wholly-owned by Original Developer, as the managing member of the Company. The other members of the Company will be U.S.A. Institutional Red Hills LLC, a Delaware limited liability company (the “Investor Member”) and TRGHT, Inc., a Delaware corporation (the “STC Special Member”). The Investor Member and the STC Special Member are making an investment in the Company in order to receive Federal and Utah State Low-Income Housing Tax Credits (“LIHTC”) credits available to low income affordable housing projects under Title 42 of the United States Internal Revenue Code and Section 59-7-607, Utah Code Annotated.

D. The Parties desire to amend the Agreement in order to meet the requirements of the Investor Member and the STC Special Member in connection with their investment in the Company and to enable the Original Developer to acquire the Project pursuant to the options granted to the Original Developer in the Right of First Refusal/Purchase Option Agreement among the Company, the Original Developer, the

Investor Member and the STC Special Member without being subject to the City's Right of First Refusal set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agrees as follows:

1. Section 14 of the Agreement is hereby deleted and replaced with the following:

14. Transfer or Sale and Right of First Refusal. The City reserves for itself, during the Term, an assignable option to have the first right to purchase the Project within sixty (60) days after receiving notice of any written offer which Developer wishes to accept (the "Offer") to purchase the Project ("Offer Date") is received by Developer. Developer shall be obligated to immediately notify the City of any Offer as set forth below. After receipt of said notice, the City shall have 60 days to notify Developer of its intent to exercise its option. If the City or its assignee elects to exercise the option, the City or its assignee shall complete the acquisition of the Project by paying to Developer the purchase price first offered by a third party. In the event the City chooses not to exercise its option as set forth above, the option shall automatically terminate without further need of any notice. Failure of the City to exercise its option under this Section in no way terminates this Agreement or alters the restrictions herein. The Parties acknowledge and agree that (i) the transfer of the Property from the Original Developer to the Company as contemplated; and (ii) the exercise by the Original Developer of their rights to acquire the Property as provided in the Right of First Refusal/Purchase Option Agreement between the Company, the Original Developer, the Investor Member and the STC Special Member shall not be deemed to be an Offer subject to the City's rights under this Section 14. The Parties further agree that notwithstanding any other agreement, any other transfer by sale or otherwise shall be considered an "Offer" subject to this Right of First Refusal.

2. The following Section 32 is hereby added to the Agreement:

32. Notice to Investor Member and STC Special Member. Upon transfer of the Property to the Company, the City agrees to provide the Investor Member and the STC Special Member with a copy of any written notice it provides to Developer alleging any default by the Developer in performance of any of its obligations under the Agreement or other obligations in connection with the Project, and to provide Investor Member and the STC Special Member a period of at least thirty (30) days after the Investor Member and the STC Special Member have received any such written notice to cure each such default before the City will exercise any rights or remedies available to it under the Agreement, or such other documents in connection with the Project, or otherwise at law or in equity. Such notice shall be in writing and shall be delivered in accordance with Section 15 hereof, addressed as follows:

USA Institutional Red Hills LLC
c/o TRGHT, Inc.
777 West Putnam Avenue
Greenwich, Connecticut 06830
Attn: David A. Salzman

TRGHT, Inc.
777 West Putnam Avenue
Greenwich, CT 06830
Attention: General Counsel

3. Effect of Amendment. Other than as specifically amended herein by this Amendment, the Agreement shall remain in full force and effect.

4. Counterpart Signatures. This Amendment may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment by and through their respective, duly authorized representatives as of the day and year first herein above written.

CITY OF ST. GEORGE

Attest:

Michele Randall, Mayor

Christina Fernandez, City Recorder

STATE OF UTAH)
) ss.
WASHINGTON COUNTY)

On the day of February 2025, personally appeared before me, Michele Randall, the signer of the foregoing instrument, who being duly sworn, did say that she is the Mayor of the City of St. George, a Utah municipal corporation, and that the foregoing instrument was signed on behalf of said corporation by Michele Randall.

Notary Public

FRIENDS OF SWITCHPOINT, INC.

By: _____
Carol Hollowell, Executive Director

STATE OF UTAH)
) ss.
WASHINGTON COUNTY)

On the ____ day of February 2025, personally appeared before me, Carol Hollowell, the signer of the foregoing instrument, who being duly sworn, did say that she is the executive director of Friends of Switchpoint, Inc., a Utah non-profit corporation, and that the foregoing instrument was signed on behalf of said corporation.

Notary Public

EXHIBIT "A"
(Property Legal Description)

That certain real property located in the County of Washington, State of Utah, and more particularly described as follows:

The Land referred to herein below is situated in the County of Washington, State of Utah, and is described as follows:

Beginning at a point North 257.14 feet along the block line from the Southeast corner of Block 82, Plat "B", St. George City Survey & running thence North 286.26 Feet; thence West 225.00 feet; thence South 290.13 feet; thence S. 89°38'E. 167.85 feet to a point of a 310.00 foot radius curve to the left; thence Easterly 57.45 feet along the arc of said curve to the point of beginning.

Tax Parcel No.: SG-1328-A-3-N.