

## MASTER PROFESSIONAL SERVICES AGREEMENT

THIS MASTER PROFESSIONAL SERVICES AGREEMENT (this "AGREEMENT") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the Greater Salt Lake Municipal Services District ("MSD", "CLIENT") and Avenue Consultants, Inc., an S-Corporation, ("CONSULTANT"), (each of CLIENT and CONSULTANT is a "Party" and together they are the "Parties"), who agree as follows:

1. PROJECT. CLIENT desires to engage CONSULTANT, in an independent contractor relationship, to provide engineering, technical, real estate, and/or other professional services on an as needed, non-exclusive basis in connection with any project identified by CLIENT (collectively and individually the "PROJECT"). CLIENT and CONSULTANT agree to cooperate with each other in order to fulfill their responsibilities and obligations under this AGREEMENT.

2. SCOPE OF SERVICES. CONSULTANT shall provide certain specified services (the "SERVICES") on the PROJECT in accordance with this AGREEMENT, the Standard Terms and Conditions ("STANDARD TERMS") attached hereto as Exhibit A, and the Task Order/Scope of Services ("SCOPE OF SERVICES") which will be determined as each Project is identified by CLIENT, and will be signed at that time and attached hereto as Exhibit B. Since there may be more than one PROJECT, more than one SCOPE OF SERVICES may subsequently be attached as Exhibit B. CONSULTANT shall not be responsible to provide any services not expressly contained in or reasonably inferred from the STANDARD TERMS or the applicable SCOPE OF SERVICES. Any change to this AGREEMENT (including the SCOPE OF SERVICES and negotiated fees) shall be in a writing signed by CLIENT and CONSULTANT. The execution of this AGREEMENT does not guarantee that CONSULTANT will be allowed to perform any services under this AGREEMENT. CONSULTANT's right to perform services, and receive payment for the same, shall be strictly conditioned upon CLIENT and CONSULTANT coming to terms and agreeing respecting the Scope of Work, a not to exceed fee, a fee schedule (if applicable), and any other pertinent matter, with the same to be reflected in an executed Task Order, Change Order or other appropriate document that will become part of this AGREEMENT respecting the subject Project.

3. FEES. CLIENT shall reimburse CONSULTANT for services provided under this AGREEMENT either (a) on an hourly billing rate plus reimbursable expenses basis, with a not-to-exceed fee that will be negotiated by the Parties when the Scope of Services is available, as reflected in a Task Order, Change Order or other appropriate contract document(s) in accordance with the CONSULTANT's Fee Schedule ("FEE SCHEDULE") attached hereto as Exhibit C, which fee schedule shall remain in effect for at least twelve (12) months after the effective date of this AGREEMENT, but renegotiated not more frequently than once per year thereafter, PROVIDED that the fee schedule in effect at the inception of a PROJECT shall remain in effect for the duration of that PROJECT, or (b) as follows: As otherwise agreed by the Parties as reflected in a signed Task Order, Change Order or other appropriate document, including the SCOPE OF SERVICES. CLIENT hereby agrees that all fees, charges and conditions set forth in the FEE SCHEDULE, if attached, are acceptable to CLIENT, and CLIENT further agrees to pay authorized fees and charges to CONSULTANT in accordance with the requirements of this AGREEMENT,

including subsequent Task Orders, Change Orders and other appropriate documents signed by the Parties, and, if applicable, the FEE SCHEDULE provided, however, that CLIENT shall not be required to pay, in the aggregate, any amount in excess of any specified not-to-exceed fee absent an executed Task Order, Change Order or other prior written approval signed by CLIENT that so provides.

4. SCHEDULE. It is anticipated that a schedule for the performance of the SERVICES will be determined as each Project is considered and will be signed and attached as Exhibit D to this AGREEMENT at that time. Since there may be more than one PROJECT, more than one schedule may be attached hereto as Exhibit D.

5. ATTACHMENTS AND EXHIBITS. The Parties have read and understand the terms and conditions set forth in this AGREEMENT, the STANDARD TERMS, and all ATTACHMENTS and EXHIBITS referenced in or attached to this AGREEMENT, except those that are to be approved in the future by the Parties, and agree that such items are hereby incorporated into and made a part of this AGREEMENT. Any Exhibit agreed to by the Parties and attached to this AGREEMENT at a future date shall be incorporated as part of this AGREEMENT as of such date.

6. TERM.

A. This AGREEMENT shall be effective and applicable to each SCOPE OF SERVICES issued hereunder for three (3) years from the Effective Date of this AGREEMENT, and shall automatically be renewed thereafter at the end of the term and the first renewal term, for up to two additional one-year terms, until either Party terminates the AGREEMENT as set forth in Article 16 of the Standard Terms and Conditions or the fifth anniversary of the Effective Date of this AGREEMENT, whichever is sooner. Provided, however, the term may be extended beyond the fifth anniversary of the Effective Date as provided in subparagraph B. immediately below.

B. Respecting a PROJECT for which a SCOPE OF WORK is issued and work commences prior to the end of the term of this AGREEMENT, including allowed renewal term(s), but has not been completed prior to the end of the term, CONSULTANT may be allowed to complete the Project after the end of the term, provided that CLIENT'S Procurement Official determines, in writing, that: (i) a longer period is necessary in order to obtain the procurement item (CONSULTANT'S services on the specific PROJECT); (ii) a longer period is customary for industry standards; or (iii) a longer period is in the best interest of CLIENT; as allowed pursuant to Utah Code Ann. § 63G-6a-1204(7). The Procurement Official's written determination shall be included in the MSD file relating to the subject PROJECT.

C. Notwithstanding anything in this AGREEMENT, or otherwise, to the contrary, the term of this AGREEMENT shall not continue, or be renewed, for any year after the first year of the multiyear term if adequate funds are not appropriated by, or otherwise available to, CLIENT to continue or renew the contract, all as mandated by Utah Code Ann. § 63G-6a-1204(3)(b).

IN WITNESS WHEREOF, CLIENT and CONSULTANT have executed this AGREEMENT as of the date first above written.

CLIENT: Greater Salt Lake Municipal Services District

CONSULTANT: Avenue Consultants, Inc.

By: \_\_\_\_\_

By: Blake Unguren

Its: \_\_\_\_\_

Its: Executive Vice President

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

### **STANDARD TERMS AND CONDITIONS**

The standard terms and conditions set forth herein are attached to and made a part of the Master Professional Services AGREEMENT (the "AGREEMENT") between CONSULTANT and CLIENT (as defined in the AGREEMENT). All capitalized terms which are not specifically defined herein shall have the meanings assigned to such terms in the AGREEMENT.

**SERVICES.** The SERVICES to be provided by CONSULTANT shall be as set forth in the SCOPE OF SERVICES, which will be determined as each Project is identified by CLIENT, and will be signed and attached to the AGREEMENT at that time as Exhibit B. If CONSULTANT is involved in more than one Project, there may be more than one Exhibit B to the AGREEMENT, but each Exhibit B shall apply only to the Project which is the subject of the Exhibit.

**ARTICLE 1. BILLING.** Unless otherwise expressly provided in the AGREEMENT, an executed Task Order, Change Order, or any other appropriate document executed by the Parties, billings will be based on actual accrued time, costs and expenses. CONSULTANT is permitted to submit invoices up to once each month in arrears, and CLIENT agrees to pay unchallenged invoices within thirty (30) days after receipt. If an unchallenged payment is not received by CONSULTANT within thirty (30) days after receipt, the amount due shall bear interest at a rate of one percent (1.0%) per month (12% per annum), before and after judgment. In the event of litigation to interpret or enforce this AGREEMENT, including but not limited to CONSULTANT's efforts to collect amounts claimed to be due hereunder, the substantially prevailing party shall be entitled to an award of costs of suit including, without limitation, reasonable attorneys' fees, in addition to other available relief. The "Substantially Prevailing Party" is the party who recovers greater than 67% of its total claims in the action or who is required to pay no more than 33% of the other party's total claims in the action when considered in the totality of claims and counterclaims, if any. In claims for monetary damages, the total amount of recoverable attorney's fees and costs shall not exceed the net monetary award of the Prevailing Party.

If CLIENT has an objection to any invoice or part thereof submitted by CONSULTANT, CLIENT shall so advise CONSULTANT in writing, giving CLIENT's reasons, within 21 days after receipt of such invoice. If the PROJECT or the AGREEMENT is terminated in whole or part prior to the completion of the SERVICES not due to any negligence of CONSULTANT, then CONSULTANT shall be paid for work performed prior to CONSULTANT's receiving or issuing written notice of such termination and, in addition, CONSULTANT shall be reimbursed for reasonable out-of-pocket expenses associated with the termination of the PROJECT or the AGREEMENT, including, without limitation, reasonably necessary "shut-down" costs if CLIENT terminates the AGREEMENT without cause, but not lost profits or consequential damages. In the event CLIENT prevails in litigation, CLIENT shall not be responsible to pay interest on any past due amounts that were not paid due to the litigation.

**ARTICLE 2. RIGHT OF ENTRY.** CLIENT grants a right of entry to the PROJECT site to

CONSULTANT, its employees, agents, CONSULTANTs, contractors, and subcontractors, for the purpose of performing services, and all acts, studies, and research required in connection therewith including, without limitation, the obtaining of samples and the performance of tests and evaluations within the scope of the SERVICES.

**ARTICLE 3. PERMITS AND LICENSES.** CONSULTANT represents and warrants that it possesses all necessary professional licenses and credentials required for the performance of the SERVICES. CLIENT represents and warrants that it possesses or will obtain all necessary permits and governmental approvals required for the performance of the SERVICES and the continuation of CLIENT's and CONSULTANT's activities at the PROJECT SITE, if applicable.

**ARTICLE 4. DOCUMENTS.** CLIENT shall furnish, or cause to be furnished, such reports, data, studies, plans, specifications, documents and other information reasonably deemed necessary by CONSULTANT for the proper performance of the SERVICES, but only to the extent CLIENT has actual possession or control of same. CLIENT shall not be required to generate or create any documents or information to satisfy the immediately preceding sentence. In performing the SERVICES, CONSULTANT shall be entitled to reasonably rely upon documents provided by CLIENT. All documents provided by CLIENT shall remain the property of CLIENT, provided that CONSULTANT shall be permitted, at CONSULTANT's discretion, to retain copies of such documents for CONSULTANT's files.

CLIENT acknowledges CONSULTANT's documents as instruments of professional service. Nevertheless, all materials developed, prepared, completed or acquired by the CONSULTANT for CLIENT during the performance of the services specified by the AGREEMENT or any amendment thereto, including all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, CADD files, and reports (collectively, "Work Product"), shall become the property of the CLIENT and shall be delivered to the CLIENT, as appropriate, as services for the subject PROJECT are performed or immediately after completion or termination of the PROJECT. All such Work Product shall not be released by the CONSULTANT to anyone other than CLIENT at any time without the prior written approval of the CLIENT's Representative. It is understood and agreed that such Work Product is to be prepared exclusively for work required under this AGREEMENT, and that its use on other projects may not be appropriate. CLIENT agrees to indemnify and hold CONSULTANT harmless from any claim or liability arising out of any unauthorized reuse or modification of the Work Product by CLIENT.

However, notwithstanding the foregoing, or any provision to the contrary in this AGREEMENT, intellectual property owned or created by any third party other than CONSULTANT, its subconsultants, or CLIENT ("Third-Party Content"), and inventions, improvements, discoveries, methodologies, models, formats, software, algorithms, processes, procedures, designs, specifications, findings, and other intellectual properties developed, gathered, compiled or produced by CONSULTANT or its subconsultants prior to or independently of their performance of this AGREEMENT ("Background IP"), including such Third-Party Content or Background IP that CONSULTANT or its subconsultants may employ in their performance of this AGREEMENT, or may incorporate into any part of the Work Product, shall not be the property

of CLIENT. CONSULTANT, or its subconsultants as applicable, shall retain all rights, titles, and interests, including but not limited to all ownership and intellectual property rights, in all such Background IP. CONSULTANT, and its subconsultants as applicable, grant CLIENT an irrevocable, non-exclusive, non-transferable, royalty-free license in perpetuity to use, reproduce, prepare derivative works based upon, distribute, disclose, derive from, perform, and display such Background IP, but only as an inseparable part of, and only for the purpose intended by creation of, the Work Product. In the event the Work Product contains, or incorporates, any Third-Party Content, or derivative work based on such Third-Party Content, or any compilation that includes such Third-Party Content, CONSULTANT shall secure all licenses to any such Third-Party Content, but only as an inseparable part of the Work Product, where such licenses are necessary for CLIENT to utilize and enjoy CONSULTANT's services and the Work Product for their intended purposes.

CLIENT agrees not to use or permit any contractor, subcontractor, or other person to use plans, specifications, drawings, cost estimates, reports, or other documents prepared by CONSULTANT if they are not final and unless they are signed and stamped or sealed by CONSULTANT. CLIENT shall not rely on any document unless it is in printed form and, if required, signed or sealed by CONSULTANT or one of its subconsultants. A party may rely that data or information set forth on paper (also known as hard copies) received from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of test data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not for reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between electronic files and hard copies, the hard copies shall govern. CLIENT and CONSULTANT agree that any electronic files furnished by either party shall conform to applicable CADD specifications, if any. Any changes to the CADD specifications by either CLIENT or CONSULTANT will be subject to review and reasonable acceptance by the other party. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days of receipt of the same, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. When transferring documents in electronic media format, the transferring party makes no representation as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

**ARTICLE 5. QUANTITIES AND CONSTRUCTION COSTS.** If the SCOPE OF SERVICES requires CONSULTANT to estimate quantities, such estimates will be made on the basis of CONSULTANT's experience and qualifications and will represent CONSULTANT's judgment as a professional generally familiar with the industry. However, such estimates are only estimates and shall not constitute representations, warranties or guaranties of the quantities of the subject of the estimates. If the SCOPE OF SERVICES requires CONSULTANT to provide its opinion of probable construction costs, CLIENT understands that CONSULTANT has no control over costs or the price of labor, equipment or materials, or over the construction contractor's

method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of CONSULTANT's qualifications and experience and represents CONSULTANT's professional judgment as to the probable construction costs. CONSULTANT makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to the bid or actual costs.

**ARTICLE 6. INDEMNITY.** CONSULTANT hereby agrees to indemnify and hold harmless CLIENT and CLIENT's Trustees, officers, employees, and agents from and against any and all third party claims ("Claims") and the losses, damages and liabilities arising from such claims to the extent caused by any negligent act, error, or omission of CONSULTANT or CONSULTANT's CONSULTANTS or subCONSULTANTS of any tier, or their officers, employees or agents, with respect to the AGREEMENT and/or the performance of CONSULTANT's SERVICES. CLIENT hereby agrees to indemnify and hold harmless CONSULTANT and CONSULTANT's CONSULTANTS and subconsultants and their officers, directors, employees, and agents from and against any and all losses, damages and liabilities to the extent caused by the negligent act, error or omission of CLIENT with respect to the AGREEMENT and/or the performance of CLIENT'S obligations under the AGREEMENT. As permitted by Utah Code Ann. Section 13-8-7(1)(d)(iii), CONSULTANT's obligations under this Article 6 includes an obligation to reimburse each of the indemnified parties for their attorney fees and costs incurred due to the CONSULTANT's breach of contract, negligence, recklessness, or intentional misconduct or the CONSULTANT's subconsultant's negligence.

**ARTICLE 7. CONSULTANT'S INSURANCE.** CONSULTANT agrees to maintain worker's compensation and employer's liability insurance for CONSULTANT's personnel as may be required by state law. CONSULTANT also agrees to maintain general liability insurance issued by an insurance company that is satisfactory to CLIENT naming CLIENT as an additional insured as its interest may appear, providing coverage of not less than One Million Dollars (\$1,000,000), and a two million (\$2,000,000) annual aggregate limit, combined bodily injury and property damage liability, which can only be canceled on thirty (30) days prior written notice to CLIENT. CONSULTANT further agrees to maintain auto liability insurance in the minimum amount of One Million Dollars (\$1,000,000); and professional errors and omissions insurance with coverage of not less than One Million Dollars (\$1,000,000). One or more Certificates of Insurance evidencing the coverage currently held by CONSULTANT and/or which is obtained by CONSULTANT as required by the AGREEMENT will be supplied to CLIENT upon CLIENT's execution of the AGREEMENT.

**ARTICLE 8. FORCE MAJEURE.** CONSULTANT is not responsible for damages or delays in performance caused by factors beyond CONSULTANT's reasonable control, including but not limited to strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the CLIENT to furnish timely information or approve or disapprove CONSULTANT's services or work product promptly, or delays caused by faulty performance by CLIENT or by CLIENT'S contractor(s) or subconsultant(s) at any level. When such delays beyond CONSULTANT's reasonable control occur, CLIENT agrees that

CONSULTANT is not responsible for damages resulting therefrom, nor shall CONSULTANT be deemed to be in default of this AGREEMENT as a result thereof. Conversely, CLIENT is not responsible for damages or delays in performance caused by factors beyond CLIENT'S reasonable control, including but not limited to strikes, lockouts, work slowdowns or stoppages, accidents, acts of god, failure of any governmental or other regulatory authority to act in a timely manner, failure of CONSULTANT to perform as required by this AGREEMENT, or delays caused by faulty performance by CONSULTANT or by CONSULTANT'S subcontractor(s) or subconsultant(s) at any level. When such delays beyond CLIENT'S reasonable control occur, CONSULTANT agrees that CLIENT is not responsible for damages resulting therefrom, nor shall CLIENT be deemed to be in default of this AGREEMENT as a result thereof.

**ARTICLE 9. CORPORATE/GOVERNMENTAL PROTECTION.** It is intended by the parties to this AGREEMENT that CONSULTANT's professional services in connection with the PROJECT shall not subject CONSULTANT's individual employees, officers or directors who are not directly involved in providing the SERVICES to any personal legal exposure for the risks associated with the PROJECT. Conversely, CONSULTANT recognizes and acknowledges that CLIENT is a political subdivision of the state of Utah and, as such, as provided in the Governmental Immunity Act of Utah, Title 63G, Chapter 7 of the Utah Code, CLIENT and CLIENT's individual employees, officers and Trustees is/are entitled to any and all immunity from suit, limitations on judgements, and protections and defenses afforded by the Governmental Immunity Act of Utah, and that such individuals shall have no duty or obligation respecting this AGREEMENT. Nothing stated in this AGREEMENT or elsewhere is intended, nor shall it be interpreted or construed, to release, alter, waive, or minimize any immunity, limitation, protection or benefit afforded to CLIENT, its employees, its officers and/or its officials by the Governmental Immunity Act of Utah.

**ARTICLE 10. STANDARD OF CARE/COVENANT.** CONSULTANT covenants and represents that the SERVICES will be performed in accordance with the skill, care, and diligence ordinarily exercised by professionals performing similar services in the same or similar locale and under the same or similar circumstances to that of CONSULTANT (herein the "Standard of Care") under this AGREEMENT and that such covenant and representation shall remain in full force and effect after the expiration or other termination of this AGREEMENT. Notwithstanding any clause in this AGREEMENT to the contrary, nothing shall be construed as imposing on the CONSULTANT any greater obligation than to exercise the Standard of Care.

**ARTICLE 11. GOVERNING LAW.** CLIENT and CONSULTANT agree that all disputes arising out of or in any way connected to this AGREEMENT, its validity, interpretation and performance and remedies for breach of contract, or any other claims related to this AGREEMENT, shall be governed by the laws of the State of Utah, without reference to any conflict of laws provision, and Utah Courts located in Salt Lake County, Utah shall have sole and exclusive jurisdiction and venue over all such disputes and CONSULTANT waives the right to remove such litigation to any other county or judicial district.

**ARTICLE 12. MEDIATION.** In an effort to resolve any conflict that arises during the design or construction of a PROJECT or following the completion of the PROJECT, as applicable, CLIENT and CONSULTANT agree that all disputes between them arising out of or relating to this AGREEMENT shall be submitted to non-binding mediation, unless the parties mutually agree otherwise in writing.

**ARTICLE 13. LITIGATION ASSISTANCE.** Unless otherwise specified in Exhibit B for any PROJECT, when attached to the AGREEMENT, the SCOPE OF SERVICES does not include costs of CONSULTANT for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CLIENT. All such services requested of and agreed to by CONSULTANT, except for suits or claims between the Parties to the AGREEMENT, will be reimbursed as mutually agreed, and payment for such services shall be in accordance with the AGREEMENT, unless the Parties mutually agree otherwise in writing or unless and until otherwise required by a court or arbitrator, should the parties mutually agree to submit the underlying dispute to binding arbitration.

**ARTICLE 14. CHANGES.** CLIENT may make or approve changes by written change order within the SCOPE OF SERVICES. CLIENT shall pay any additional costs of such changes at the rates set forth in the attached FEE SCHEDULE or as agreed by the parties in writing in the Change Order or other document or AGREEMENT, as appropriate.

**ARTICLE 15. WORK ELIGIBILITY STATUS OF EMPLOYEES.** CONSULTANT represents and warrants to CLIENT that CONSULTANT and any and all subconsultants, contractors and subcontractors of any tier who work under CONSULTANT in performing the SERVICES are and at all times during the performance of the services will be in full compliance with the requirements of Utah Code Ann. § 63G-12-302(3) (including amendments and substitutions to the law) relative to the verification of the work eligibility status of employees and, in particular, that CONSULTANT is registered with and participates in a Status Verification System as required by law, and CONSULTANT agrees to require the same of any subcontractor or subconsultant, of any tier, who assists CONSULTANT in performing SERVICES under the AGREEMENT.

**ARTICLE 16. TERMINATION.** CONSULTANT or CLIENT may terminate the AGREEMENT on ten (10) calendar days prior written notice if the other Party fails to substantially perform under this AGREEMENT and the Party giving notice of the termination has not caused the failure. Either CLIENT or CONSULTANT may terminate this AGREEMENT at any time, with or without cause, upon giving the other Party thirty (30) calendar days prior written notice. In the event all or any portion of the SERVICES to be performed by CONSULTANT are suspended, abandoned, or otherwise terminated, CLIENT shall pay CONSULTANT fees and charges for SERVICES provided prior to termination, not to exceed the contract limits specified herein, if any, within thirty (30) calendar days of the suspension, abandonment or termination, in accordance with the compensation provisions of the AGREEMENT, particularly ARTICLE 1 of the Standard Terms. CLIENT and CONSULTANT acknowledge that, if the PROJECT SERVICES are suspended and restarted for the convenience of CLIENT and without cause, there may be

additional charges due to suspension of the SERVICES which may be paid by CLIENT as extra SERVICES pursuant to Article 14 of the Standard Conditions.

**ARTICLE 17. SURVIVAL.** All obligations arising prior to the termination of the AGREEMENT and all provisions of the AGREEMENT allocating the responsibility or liability between CLIENT and CONSULTANT shall survive the completion of the SERVICES and the termination of the AGREEMENT.

**ARTICLE 18. THIRD PARTIES.** Except for the jurisdiction(s) that will be benefitted by a specific PROJECT, which may be the Town of Brighton, the Town Copperton, Emigration Canyon, the City of Kearns, Magna City, White City, Salt Lake County (for unincorporated areas) and/or any other municipality served by CLIENT, each of which is an intended third party beneficiary of this AGREEMENT, no rights or benefits are provided by the AGREEMENT to any person other than the CLIENT and CONSULTANT and the AGREEMENT has no other intended third-party beneficiaries. CLIENT acknowledges that CONSULTANT is not responsible for the performance of work by third parties that are not retained by CONSULTANT including, but not limited to, the construction contractor and its subcontractors, except where defects in performance by such third parties result from negligent action or inaction by CONSULTANT (such as where the third party is acting under the direction of CONSULTANT, the defective performance results from following plans and/or specifications prepared by CONSULTANT, etc.).

**ARTICLE 19. INTEGRATION.** The AGREEMENT and all the exhibits and attachments thereto (present and future) constitute the entire AGREEMENT between the parties and cannot be changed except by a written instrument, such as a Change Order or a Task Order, signed by both parties.

**ARTICLE 20. CONTRACTOR AND JOB-SITE SAFETY.** If construction contractor(s) are involved in the PROJECT, CONSULTANT shall not be responsible for the supervision or direction of any construction contractor or its employees or agents unless CONSULTANT agrees otherwise in writing (including responsibilities specified in the SCOPE OF SERVICES), and CLIENT shall so advise the contractor(s). Neither the professional activities of CONSULTANT, nor the presence of CONSULTANT or its employees and subconsultants at a construction site, shall relieve the contractor(s) and any other entity of their respective obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with applicable contract documents and any health or safety precautions required by any regulatory agency. Unless specifically included in the SCOPE OF SERVICES or otherwise agreed in writing, CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and CONSULTANT shall not be responsible for job or site safety on the PROJECT or at the PROJECT SITE and shall not have the right or obligation to stop the work of any contractor or other person at the PROJECT SITE. Except as specifically provided in writing to the contrary (including the SCOPE OF SERVICES), CLIENT agrees that CONSULTANT is not responsible for job site safety.

**ARTICLE 21. NO SUPERVISION OR REPORTING DUTIES.** Unless otherwise agreed in writing (including the SCOPE OF SERVICES), CONSULTANT shall not assume control of or responsibility for the PROJECT site or the persons operating on the PROJECT site nor shall CONSULTANT be responsible for reporting to any federal, state or local agencies any conditions at the PROJECT site that may present potential dangers to public health, safety or the environment. Notwithstanding the foregoing, to the extent CLIENT has actual knowledge, CLIENT shall notify appropriate federal, state or local agencies, or otherwise disclose information that may relate to any danger to health, safety or the environment, in accordance with any applicable law, rule or regulation and in a timely manner.

**ARTICLE 22. SHOP DRAWING REVIEW.** If specified as a part of CONSULTANT's SCOPE OF SERVICES in an applicable Task Order, CONSULTANT shall review the construction contractor submittals, such as shop drawings, product data, samples and other data which the contractor is required to submit, but only for the limited purpose of checking for general conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the construction contractor. CONSULTANT's review shall be conducted with reasonable promptness while allowing sufficient time to permit adequate review. Review of a specific item shall not indicate that CONSULTANT has reviewed the entire assembly of which the item is a component. CONSULTANT shall not be responsible for any deviations from the Construction Documents not brought to the attention of CONSULTANT in writing by the construction contractor or revealed from some other source. CONSULTANT shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

**ARTICLE 23. HAZARDOUS MATERIALS-DEFINITION.** As used in the AGREEMENT, the term *hazardous materials* shall mean any substance, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes or rules), or any other substance under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the PROJECT SITE.

**ARTICLE 24. HAZARDOUS MATERIALS - SUSPENSION OF SERVICES.** Unless otherwise agreed in writing, both Parties acknowledge that CONSULTANT's SCOPE OF SERVICES does not include any services related to the presence of any hazardous or toxic materials. In the event CONSULTANT or any other party encounters any hazardous or toxic materials, or should it become known to CONSULTANT that such materials are likely to be present on or about the job site or any adjacent areas that are likely to affect the performance of CONSULTANT's SERVICES, CONSULTANT may, at its option and without liability for consequential damages, suspend or terminate performance of its services under this AGREEMENT until CLIENT retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials or to determine that abatement or removal is not necessary.

**ARTICLE 25. HAZARDOUS MATERIALS-LIMITATION OF LIABILITY.** Except as otherwise specifically provided in the AGREEMENT or as required by law, including attached Exhibits, neither CONSULTANT nor its officers, partners, employees or subconsultants shall have any contractual responsibility respecting the detection, presence, handling, removal, abatement, or disposal of any asbestos or other hazardous or toxic substance, product or material that exists on, about, or adjacent to the PROJECT SITE; provided that the hazardous or toxic substance, product or material was not so placed or disturbed by CONSULTANT or anyone for whom CONSULTANT is responsible.

**ARTICLE 26. ATTORNEY’S FEES.** In the event any action or proceeding is brought by any Party against the other Party under the AGREEMENT, recovery of actual attorney’s fees and costs in such amount as the court may adjudge reasonable, in addition to other available relief shall be in accordance with state law.

“Prevailing Party” is the party who recovers greater than 67% of its total claims in the action or who is required to pay no more than 33% of the other party’s total claims in the action when considered in the totality of claims and counterclaims, if any. In claims for monetary damages, the total amount of recoverable attorney’s fees and costs shall not exceed the net monetary award of the Prevailing Party.

**ARTICLE 27. SEVERABILITY.** The provisions of the AGREEMENT are severable and, should any provision thereof be void, overly broad or unenforceable, such void, overly broad or unenforceable provision shall not affect any other portion or provision of the AGREEMENT.

**ARTICLE 28. WAIVER.** Any waiver by a Party of a breach of any kind or character whatsoever by the other Party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of the AGREEMENT on the part of the other Party.

**ARTICLE 29. NOTICES.** All notices, demands, and requests required or permitted to be given under the AGREEMENT shall be in writing and shall be deemed duly given if delivered or if mailed by registered or certified mail, postage prepaid, addressed to the following:

CONSULTANT:	Avenue Consultants, Inc. Attn: David Bezzant, PE 6605 South Redwood Road, Suite 200 Taylorsville, UT 84123
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CLIENT:	<u>Greater Salt Lake Municipal Services District</u> Attn: Lizel Allen, P.E. <u>860 Levoy Dr., Suite 300</u> <u>Taylorsville, UT 84123</u>
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Either Party shall have the right to specify in writing another name and/or address to which subsequent notices to such Party shall be given. Any notice given hereunder shall be deemed to

have been given as of the date delivered or two business days after it is mailed, United States first class postage prepaid, to the other Party.

**ARTICLE 30. GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT.**

CONSULTANT recognizes that, as a governmental entity, CLIENT is subject to the Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code ("GRAMA"), and cannot guarantee that information or any document or record provided to the CLIENT will not be subject to disclosure unless it is properly classified as a "protected record" under GRAMA based upon a written claim of business confidentiality under Utah Code Ann. §§ 63G-2-305 and -309 and other provisions of GRAMA. For any record to be classified as a "protected record", CONSULTANT must provide a written claim of business confidentiality and a concise statement of reasons and justifications supporting the claim of business confidentiality, along with the record, when the record is first submitted by CONSULTANT to CLIENT and, if not so provided, any claim to protected record status may be deemed to have been waived and relinquished by CONSULTANT.

**ARTICLE 31. NO WORK GUARANTY.** CONSULTANT understands, acknowledges and agrees that CLIENT may use its own staff to provide Services identified in this AGREEMENT and that CLIENT may enter into other third party contracts for the provision of Services identified in this AGREEMENT. As a consequence, there is no guarantee or assurance that CONSULTANT will be called upon to perform services, or the number of times or frequency that CONSULTANT may be asked to perform Services, and work assignments may be distributed among CONSULTANT and other consultants, if there is more than one third party CONSULTANT contract, based on the SOQ ranking of CONSULTANT and other consultants, expertise, availability, geography, costs, or any other factor as determined by CLIENT.

**ARTICLE 32. ANTI-BOYCOTT.** CONSULTANT certifies that it is not currently engaged in a boycott of the State of Israel or an economic boycott, as defined in Utah Code Ann. § 63G-27-102 and prohibited by Utah Code Ann. § 63G-27-201(1); and agrees not to engage in a boycott of the State of Israel for the duration of this AGREEMENT. Furthermore, CONSULTANT agrees to notify the CLIENT in writing if CONSULTANT begins engaging in a prohibited economic boycott during the term of this AGREEMENT. Activities which are not to be boycotted, absent an ordinary business purpose or unless the boycott is intended to comply with applicable state or federal law, include a boycott of companies that are engaged in fossil fuel-based energy, timber, mining, agriculture, or firearms; companies that do not meet or commit to meet environmental standards beyond applicable state and federal law requirements; or companies that do not facilitate or commit to facilitate access to abortion or sex characteristic surgical procedures. Notwithstanding anything to the contrary stated in this contract, pursuant to Utah Code Ann. § 63G-27-201(3), this provision does not apply to a contract with a total value of less than \$100,000 or to a contract with an entity that has fewer than 10 full-time employees, nor prohibit CLIENT from entering into a contract with an entity that engages in an otherwise prohibited economic boycott if there is no economically practicable alternative available "to (A) acquire or dispose of a good or service; or meet...[CLIENT's] legal duties to issue, incur, or manage debt obligations, or deposit, keep custody of, manage, borrow, or invest funds" or if the purpose of the economic boycott is to "comply with federal law."

**ARTICLE 33. MISCELLANEOUS.** The AGREEMENT shall be binding upon the successors and permitted assigns of CLIENT and CONSULTANT. The AGREEMENT shall not be assigned by either CLIENT or CONSULTANT without the prior written consent of the other Party. The AGREEMENT contains the entire agreement between CLIENT and CONSULTANT relating to CONSULTANT's SERVICES. Any prior contracts, promises, negotiations or representations not expressly set forth in the AGREEMENT, or in a contemporaneous or subsequent written document approved by the Parties, are of no force or effect. Subsequent modifications to the AGREEMENT shall be in writing and be signed by both CLIENT and CONSULTANT. CONSULTANT's or CLIENT's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant, no matter how closely related. CONSULTANT's or CLIENT's waiver of any breach of the AGREEMENT shall not constitute the waiver of any other breach of the AGREEMENT. If any term, condition or covenant of the AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of the AGREEMENT shall be valid and binding on CLIENT and CONSULTANT. All references to the "AGREEMENT" contained in the AGREEMENT or in any Exhibit attached to the AGREEMENT shall include each and every mutually agreeable Exhibit attached from time-to-time to the AGREEMENT.

**EXHIBIT B**  
**STANDARD TASK ORDER FORM/SCOPE OF SERVICES**  
**TASK ORDER NO. \_\_\_\_**  
**TO**  
**MASTER PROFESSIONAL SERVICES AGREEMENT**

**CLIENT:** Greater Salt Lake Municipal Services District

Effective Date of Master AGREEMENT: \_\_\_\_\_

THIS TASK ORDER NO. \_\_\_\_ TO THE MASTER PROFESSIONAL SERVICES AGREEMENT (this "TASK ORDER" or "SCOPE OF SERVICES") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between CLIENT and \_\_\_\_\_, \_\_\_\_\_ (herein called "CONSULTANT") who agree as follows:

1. **PROJECT.** The PROJECT associated with this TASK ORDER is described as follows: \_\_\_\_\_  
\_\_\_\_\_. The PROJECT SITE is located as follows: \_\_\_\_\_.
2. **SCOPE OF SERVICES.** The SCOPE OF SERVICES and deliverables associated with this TASK ORDER is attached hereto as Attachment A.
3. **FEES.** CLIENT shall reimburse for services provided under this TASK ORDER on a time and expense basis which shall not exceed \$ \_\_\_\_\_ (the "Maximum Project Fee") or as follows: \_\_\_\_\_ . Unless otherwise indicated above, payment shall be in accordance with the FEE SCHEDULE attached as Exhibit C to the Master Professional Services AGREEMENT (the "Master AGREEMENT"), unless a different FEE SCHEDULE is attached hereto as Attachment B, and in accordance with the Master AGREEMENT.
4. **SCHEDULE.** The SERVICES associated with this TASK ORDER are anticipated to be completed within \_\_\_\_\_ (the "Project Time") following written authorization from the CLIENT to proceed.
5. **ATTACHMENTS AND EXHIBITS.** Both Parties have read and understood all attachments and Exhibits referenced in or attached to this TASK ORDER and agree that such items are hereby incorporated into and made a part of this Task Order and the Master AGREEMENT.

IN WITNESS WHEREOF, CLIENT and CONSULTANT have executed this TASK ORDER as of the date first above written.

**GREATER SALT LAKE MUNICIPAL  
SERVICES DISTRICT (CLIENT):**

**PROFESSIONAL SERVICE PROVIDER  
(CONSULTANT):**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT A TO TASK ORDER**  
**SCOPE OF SERVICES AND DELIVERABLES**  
**(to be attached before Task Order is signed)**

**ATTACHMENT B TO TASK ORDER**

**FEE SCHEDULE APPLICABLE TO PROJECT**

**(to be attached only if a Fee Schedule is negotiated for this Task Order)**

**EXHIBIT C**

**FEE SCHEDULE**

**(to be attached as mutually agreed in accordance with the requirements of the AGREEMENT)**

## **EXHIBIT D**

### **PROJECT SCHEDULE**

(to be attached as mutually agreed after the Scope of Services for each Project has been identified)