

PUBLIC WORKS INSPECTION AND ENGINEERING SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is made and entered into this ____ day _____ of 2025 (hereinafter, the "Effective Date") by and between HYRUM CITY, a municipal corporation (hereinafter, "CITY") and _____, (hereinafter, "CONTRACTOR"). For the purposes of this Agreement, CITY and CONTRACTOR may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to CITY or CONTRACTOR interchangeably, as appropriate.

RECITALS

WHEREAS, CITY requires professional consulting services for Public Works inspection and engineering services; and

WHEREAS, CITY staff has determined that CONTRACTOR possesses the experience, skills and training necessary to competently provide such services to CITY; and

WHEREAS, the execution of this Agreement was approved by Hyrum City Council at its Regular Meeting on _____, _____, 2025.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, CITY and CONTRACTOR agree as follows:

SECTION I—ENGAGEMENT TERMS

1.1 **SCOPE OF WORK:** Subject to the terms and conditions of this Agreement, CONTRACTOR agrees to provide the services and tasks described in that certain Request for Proposals of CITY entitled "Request for Proposal for Public Works Inspection and Engineering Services", (hereinafter, "CITY RFP") and the written proposal of CONTRACTOR (hereinafter, the "CONTRACTOR Proposal"). The CITY RFP and the CONTRACTOR Proposal are attached and incorporated hereto as **Exhibit "A"** and **"B"** respectively. The term "Scope of Work" shall be a collective reference to the CITY RFP and the CONTRACTOR PROPOSAL. The capitalized term "Work" shall be a collective reference to all the various services and tasks referenced in the Scope of Work. In the event of any conflict or inconsistency between the provisions of the document entitled CITY RFP and the provisions of the document entitled CONTRACTOR PROPOSAL, the requirements of the document entitled CITY RFP shall govern and control but only to the extent of the conflict or inconsistency and no further. In the event of any conflict or inconsistency between the provisions of the Scope of Work and the provisions of this Agreement to which the Scope of Work is attached, the provisions of this Agreement shall govern and control.

1.2 PROSECUTION OF WORK:

A. Time is of the essence of this Agreement and each and every provision contained herein. The Work shall be commenced within three (3) calendar days of CITY's

issuance of a Notice to Proceed. CONTRACTOR shall complete the various tasks identified in the Scope of Work within the timeframes set forth in the Scope of Work;

B. CONTRACTOR shall cooperate with CITY and in no manner interfere with the work of CITY, its employees or other CONTRACTORs, contractors or agents;

C. CONTRACTOR shall not claim or be entitled to receive any compensation or damage because of the failure of CONTRACTOR, or its subcontractors, to have related services or tasks completed in a timely manner;

D. CONTRACTOR shall at all times enforce strict discipline and good order among CONTRACTOR's employees; and

E. CONTRACTOR, at its sole expense, shall pay all sales, consumer, use or other similar taxes required by law.

1.3 COMPENSATION: CONTRACTOR's compensation for the work performed under this Agreement shall be detailed in **Exhibit "C"**, attached hereto.

1.4 PAYMENT OF COMPENSATION: CONTRACTOR shall be paid in accordance with the payment terms outlined in **Exhibit "C"**.

1.5 ACCOUNTING RECORDS: CONTRACTOR shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY may access and examine such records, without charge, during normal business hours. CITY may audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

1.6 ABANDONMENT BY CONTRACTOR: In the event CONTRACTOR ceases to perform the Work agreed to under this Agreement or otherwise abandons the undertaking contemplated herein prior to the expiration of this Agreement or prior to completion of any or all tasks set forth in the Scope of Work, CONTRACTOR shall deliver to CITY immediately and without delay, all materials, records and other work product prepared or obtained by CONTRACTOR in the performance of this Agreement. Furthermore, CONTRACTOR will only be compensated for the reasonable value of the services, tasks and other Work performed up to the time of cessation or abandonment, less a deduction for any damages, costs or additional expenses which CITY may incur as a result of CONTRACTOR's cessation or abandonment.

SECTION II—PERFORMANCE OF AGREEMENT

2.1. CITY'S REPRESENTATIVE: The CITY hereby designates the City Engineer, Matthew Holmes (hereinafter, the "City Representative") to act as its representative for the performance of this Agreement. The City Representative or their designee will act on behalf of the CITY for all purposes under this Agreement. CONTRACTOR will not accept directions or orders from any person other than the City Representative or their designee.

2.2. CONTRACTOR REPRESENTATIVE: CONTRACTOR hereby designates _____, to act as its representative for the performance of this Agreement (hereinafter, "CONTRACTOR Representative"). CONTRACTOR Representative will have full authority to represent and act on behalf of CONTRACTOR for all purposes under this Agreement. CONTRACTOR Representative or their designee will supervise and direct the performance of the Work, performing to the applicable industry standard, and will be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONTRACTOR Representative will constitute notice to CONTRACTOR.

2.3. COORDINATION OF SERVICE; CONFORMANCE WITH REQUIREMENTS: CONTRACTOR agrees to work closely with CITY staff in the performance of the Work and this Agreement and will be available to CITY staff and the CITY Representative at all reasonable times. All work prepared by CONTRACTOR will be subject to inspection and approval by CITY Representative or their designees.

2.4. STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONTRACTOR represents, acknowledges and agrees to the following:

A. CONTRACTOR shall perform all Work skillfully, competently and to the highest standards of CONTRACTOR's profession;

B. CONTRACTOR shall at all times employ such force, plant, materials, and tools as will be sufficient in the sole opinion of the CITY to perform the Services within the time limits established, and as provided herein. It is understood and agreed that said tools, equipment, apparatus, facilities, labor, and material shall be furnished and said Services performed and completed as required by the Agreement, and subject to the approval of the CITY's authorized representative;

C. CONTRACTOR shall perform all Work in a manner reasonably satisfactory to the CITY;

D. CONTRACTOR shall comply with all applicable federal, state and local laws and regulations. CONTRACTOR shall be liable for all violations of such laws and regulations in connection with Services. If CONTRACTOR performs any work knowing it to be contrary to such laws, rules and regulations, CONTRACTOR shall be solely responsible for all costs arising therefrom;

E. CONTRACTOR understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;

F. All of CONTRACTOR's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONTRACTOR; and

G. All of CONTRACTOR's employees and agents (including, but not limited to, subcontractors and subcontractors) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals will be maintained throughout the term of this Agreement and made available to CITY for copying and inspection.

The Parties acknowledge and agree that CONTRACTOR shall perform, at CONTRACTOR's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONTRACTOR's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONTRACTOR's employees, agents, contractors, subcontractors and subcontractors. Such effort by CONTRACTOR to correct any errors or omissions will be commenced immediately upon their discovery by either Party and will be completed within seven (7) calendar days from the date of discovery or such other extended period of time authorized by the CITY Representative in writing and in her sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONTRACTOR or on CONTRACTOR's behalf does not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONTRACTOR, including but not limited to the representation that CONTRACTOR possesses the skills, training, knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONTRACTOR's profession.

2.5. ASSIGNMENT: CONTRACTOR may not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONTRACTOR's duties or obligations under this Agreement without the prior written consent of the CITY or as authorized by this Agreement. In the absence of CITY's prior written consent, any attempted assignment or transfer will be ineffective, null and void and will constitute a material breach of this Agreement.

2.6. SUBSTITUTION OF KEY PERSONNEL: CONTRACTOR has represented to CITY that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, CONTRACTOR may substitute other personnel of at least equal competence upon written approval of CITY. In the event that CITY and CONTRACTOR cannot agree as to the substitution of key personnel, CITY shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the CITY, or who are determined by the CITY to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the CONTRACTOR at the request of the CITY.

2.7. CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR: The Work shall be performed by CONTRACTOR or under CONTRACTOR's strict supervision. CONTRACTOR will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONTRACTOR on an independent contractor basis and not as an employee. CONTRACTOR reserves the right to

perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONTRACTOR's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONTRACTOR are not employees of CITY and will at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR will pay all wages, salaries and other amounts due to such personnel and will assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONTRACTOR will be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.

2.8. REMOVAL OF EMPLOYEES OR AGENTS: If any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subcontractors is determined by the CITY Representative to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONTRACTOR, a threat to persons or property, or if any of CONTRACTOR's officers, employees, agents, contractors, subcontractors or subcontractors fail or refuse to perform the Work in a manner acceptable to the CITY, such officer, employee, agent, contractor, subcontractor or subcontractors will be promptly removed by CONTRACTOR and will not be reassigned to perform any of the Work.

2.9. COMPLIANCE WITH LAWS: CONTRACTOR will keep itself informed of and in compliance with all applicable federal, state or local laws to the extent such laws control or otherwise govern the performance of the Work. CONTRACTOR's compliance with applicable laws will include, without limitation, compliance with all applicable Cal/OSHA requirements and applicable regulations of the Federal Department of Housing and Urbanization.

2.10. NON-DISCRIMINATION: CONTRACTOR represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

2.11. INDEPENDENT CONTRACTOR STATUS: The Parties acknowledge, understand and agree that CONTRACTOR and all persons retained or employed by CONTRACTOR are, and will at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONTRACTOR will be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and subcontractors. CONTRACTOR and all persons retained or employed by CONTRACTOR will have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to CONTRACTOR under this Agreement or is otherwise expressly conferred by CITY in writing.

SECTION III—INSURANCE

3.1. DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONTRACTOR shall procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONTRACTOR shall procure and maintain the following insurance coverage, at its own expense:

A. Commercial General Liability Insurance: CONTRACTOR shall procure and maintain Commercial General Liability Insurance (“CGL Coverage”) as broad as Insurance Services Office Commercial General Liability coverage or its equivalent. Such CGL Coverage will have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability. The CGL Coverage shall list the CITY as an additional insured.

B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than Two Million Dollars (\$2,000,000.00) per accident for bodily injury and property damage.

C. Workers’ Compensation Insurance/ Employer’s Liability Insurance: A policy of workers’ compensation insurance in such amount as will fully comply with the laws of the State of Utah and which will indemnify, insure and provide legal defense for both CONTRACTOR and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONTRACTOR in the course of carrying out the Work contemplated in this Agreement.

D. Errors & Omissions Insurance: For the full term of this Agreement and for a period of three (3) years thereafter, CONTRACTOR shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONTRACTOR’s profession. Such coverage will have minimum limits of no less than Two Million Dollars (\$2,000,000.00) per claim.

3.2. ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance will contain an endorsement naming the CITY and CITY’s elected and appointed officials, officers, employees, agents and volunteers as additional insureds.

3.3. PRIMACY OF CONTRACTOR’S INSURANCE: All policies of insurance provided by CONTRACTOR will be primary to any coverage available to CITY or CITY’s elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY’s elected or appointed officials, officers, employees, agents or volunteers will be in excess of CONTRACTOR’s insurance and will not contribute with it.

3.4. FAILURE TO MAINTAIN COVERAGE: In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced immediately so as to avoid a lapse in the required coverage, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONTRACTOR or CITY will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, CITY may cancel this Agreement effective upon notice.

3.5. SPECIAL RISKS OR CIRCUMSTANCES. CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

SECITON IV—INDEMNIFICATION

4.1. INDEMNITY. To the fullest extent permitted by law, CONTRACTOR shall indemnify, hold harmless and defend the CITY (with counsel acceptable to CITY) from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs, and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.

4.2. OFFSET. CITY shall have the right to offset against the amount of any compensation due to CONTRACTOR under this Agreement, any amount due to CITY from CONTRACTOR as a result of CONTRACTOR's failure to either pay CITY promptly for any costs associated with CONTRACTOR's obligations to indemnify the CITY Indemnitees under this Article, or related to CONTRACTOR's failure to either (i) pay taxes on amounts received pursuant to this Agreement, or (ii) comply with applicable workers' compensation laws.

4.3. WORKERS COMPENSATION LIMITATION. The obligations of CONTRACTOR under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents, and volunteers.

4.4. INDEMNITY WITH SUBCONTRACTORS: CONTRACTOR shall obtain executed indemnity agreements with provisions identical to those set forth herein this Article from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. In the event CONTRACTOR fails to obtain such indemnity obligations from others as required herein, CONTRACTOR agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents, and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR's subcontractors or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Such costs and

expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.

4.5. NO WAIVER: CITY does not, and shall not waive any rights that it may possess against CONTRACTOR because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense.

4.6. SURVIVE TERMINATION: This Article and all provisions contained herein (including but not limited to the duty to indemnify, defend, and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the CITY may have at law or in equity.

SECTION V—TERMINATION

5.1 TERMINATION WITHOUT CAUSE: CITY may immediately terminate this Agreement at any time for convenience and without cause by giving prior written notice of CITY's intent to terminate this Agreement which notice shall specify the effective date of such termination. Upon such termination for convenience, CONTRACTOR will be compensated only for those services and tasks which have been performed by CONTRACTOR up to the effective date of the termination. CONTRACTOR may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONTRACTOR to provide all finished or unfinished Documents and Data, as defined in Section 6.1, below, and other information of any kind prepared by CONTRACTOR in connection with the performance of the Work. CONTRACTOR will be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, will operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") will occur. For all Events of Default, the Party alleging an Event of Default will give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default will be cured, which will not be less than the applicable cure period set forth under Sections 5.2B and 5.2C, below, or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default will constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.

B. CONTRACTOR shall cure the Event of Default within the following time periods:

(i) Within ten (10) business days of CITY's issuance of a Default Notice for any failure of CONTRACTOR to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONTRACTOR is obligated to provide to CITY or CITY's employees or agents under this Agreement. Prior to the expiration of the 10-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 10-day cure period. The foregoing notwithstanding, CITY will be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.i. that exceeds seven (7) calendar days from the end of the initial 10-day cure period; or

(ii) Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONTRACTOR may submit a written request for additional time to cure the Event of Default upon a showing that CONTRACTOR has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, CITY will be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period.

C. In addition to any other failure on the part of CONTRACTOR to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONTRACTOR will include, but will not be limited to the following: (i) CONTRACTOR's refusal or failure to perform any of the services or tasks called for under the Scope of Work; (ii) CONTRACTOR's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONTRACTOR's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONTRACTOR, whether voluntary or involuntary; (v) CONTRACTOR's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vi) CITY's discovery that a statement representation or warranty by CONTRACTOR relating to this Agreement is false, misleading or erroneous in any material respect.

D. CITY will cure any Event of Default asserted by CONTRACTOR within forty- five (45) calendar days of CONTRACTOR's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the

45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONTRACTOR as provided under Section 1.4, above, will be cured by CITY within five (5) calendar days from the date of CONTRACTOR's Default Notice to CITY.

E. CITY, in its sole and absolute discretion, may also immediately suspend CONTRACTOR's performance under this Agreement pending CONTRACTOR's cure of any Event of Default by giving CONTRACTOR written notice of CITY's intent to suspend CONTRACTOR's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONTRACTOR will be compensated only for those services and tasks which have been rendered by CONTRACTOR to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY will operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.

F. No waiver of any Event of Default or breach under this Agreement will constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party will give the other Party any contractual rights by custom, estoppel, or otherwise.

G. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder will be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:

- (i) Upon written notice to CONTRACTOR, the CITY may immediately terminate this Agreement in whole or in part;
- (ii) Upon written notice to CONTRACTOR, the CITY may extend the time of performance;
- (iii) The CITY may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONTRACTOR's breach of the Agreement or to terminate the Agreement; or
- (iv) The CITY may exercise any other available and lawful right or remedy. CONTRACTOR will be liable for all legal fees plus other costs and expenses that CITY incurs upon a breach of this Agreement or in the CITY's exercise of its remedies under this Agreement.

H. In the event CITY is in breach of this Agreement, CONTRACTOR's sole remedy will be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONTRACTOR under this Agreement for completed

services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement will constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party will give the other Party any contractual rights by custom, estoppel, or otherwise.

5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto will not operate to terminate any Article, Section or provision contained herein which provides that it will survive the termination or normal expiration of this Agreement.

SECTION VI—MISCELLANEOUS

6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data will be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term “Documents and Data” means and includes all reports, analyses, correspondence, plans, designs, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONTRACTOR in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically. This Agreement creates, at no cost to CITY, a perpetual license for CITY to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONTRACTOR will require all subcontractors and subcontractors working on behalf of CONTRACTOR in the performance of this Agreement to agree in writing that CITY will be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any subcontractor or subcontractor as applies to Documents and Data prepared by CONTRACTOR in the performance of this Agreement.

6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this Agreement are deemed confidential and will not be disclosed by CONTRACTOR without prior written consent by CITY. CITY will grant such consent of disclosure as legally required. Upon request, all CITY data will be returned to CITY upon the termination or expiration of this Agreement. CONTRACTOR will not use CITY’s name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.

6.3 FALSE CLAIMS ACT: CONTRACTOR warrants and represents that neither CONTRACTOR nor any person who is an officer of, in a managing position with, or has an ownership interest in CONTRACTOR has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.

6.4 NOTICES: All notices permitted or required under this Agreement will be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONTRACTOR:

CITY:

Hyrum City
60 West Main Street
Hyrum, UT 84319-1205
Attn:
Phone:
Email:

Such notices will be deemed effective when personally delivered or successfully transmitted by email or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepaid and addressed to the Party at its applicable address.

6.5 COOPERATION; FURTHER ACTS: The Parties will fully cooperate with one another, and will take any additional acts or sign any additional documents as are reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.

6.6 SUBCONTRACTING: CONTRACTOR will not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of CITY. Subcontracts (including without limitation subcontracts with subcontractors), if any, will contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.

6.7 CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS: CITY reserves the right to employ other contractors in connection with the various projects worked upon by CONTRACTOR.

6.8 PROHIBITED INTERESTS: CONTRACTOR warrants, represents and maintains that it has not employed nor retained any company or person, other than a *bona fide* employee working solely for CONTRACTOR, to solicit or secure this Agreement. Further, CONTRACTOR warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a *bona fide* employee working solely for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY will have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of CITY, during the term of his or her service with CITY, will have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.

6.10 GOVERNING LAW AND VENUE: This Agreement will be interpreted and

governed according to the laws of the State of Utah. In the event of litigation between the Parties, venue, without exception, will be in the First Judicial District Court in and for Cache County, State of Utah. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, will be in the District of Utah.

6.11 ATTORNEYS' FEES: If either Party commences an action against the other Party, legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation will be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.

6.12 SUCCESSORS AND ASSIGNS: This Agreement will be binding on the successors and assigns of the Parties.

6.13 NO THIRD-PARTY BENEFIT: There are no intended third-party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.

6.14 CONSTRUCTION OF AGREEMENT: This Agreement will not be construed in favor of, or against, either Party but will be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.

6.15 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect.

6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement will be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver will be void and invalid.

6.17 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

6.18 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement will control.

6.19 ENTIRE AGREEMENT: This Agreement, including all attached exhibits, constitutes the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, which may have been entered into between CITY and CONTRACTOR prior to the execution of this Agreement. Any statements, representations, or other agreements, whether oral or written, made by either Party that is not embodied herein will not be valid or binding on the Parties. No amendment, modification or supplement to this Agreement will be valid and binding unless in writing and duly executed by the Parties pursuant to Section 6.16, above.

6.20 COUNTERPARTS: This Agreement will be executed in three (3) original counterparts each of which will be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterpart will be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart will be delivered to CONTRACTOR and the remaining two original counterparts will be retained by CITY.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

HYRUM CITY

By: _____
Stephanie Miller, *Mayor*

ATTEST

City Recorder

APPROVED AS TO FORM:

Jonathan Jenkins, *City Attorney*

CONTRACTOR:

By:
Its:

EXHIBIT A
REQUEST FOR PROPOSAL

DRAFT

EXHIBIT B
CONTRACTOR'S PROPOSAL

DRAFT

**EXHIBIT C
COMPENSATION**

DRAFT