

**EAGLE MOUNTAIN CITY
CITY COUNCIL MEETING
OCTOBER 15, 2013**

TITLE:	AGREEMENT – Consideration and Approval of an Agreement between Eagle Mountain City and Matrix Design Group for the Camp Williams Training Site Joint Land Use Study (JLUS) Implementation.		
FISCAL IMPACT:	N/A		
APPLICANT:	Eagle Mountain City		
GENERAL PLAN DESIGNATION	CURRENT ZONE	ACREAGE	COMMUNITY
N/A	N/A	N/A	N/A

NOTICES:

- Posted in 2 public places
- Posted on City webpage
- Notice to newspapers

REQUIRED FINDINGS:

Vote: N/A

Prepared By:
Fionnuala Kofoed City Recorder

NOTES/COMMENTS:

RECOMMENDATION:

City staff recommend that the Council approve an agreement with the Matrix Design Group as a consultant for the Camp Williams Training Site JLUS implementation.

BACKGROUND

This agreement details the terms of a consultant agreement with Matrix Design Group for the JLUS implementation project. Eagle Mountain, along with representatives from other regional communities, Camp Williams, and the Utah Army National Guard, participated in the development of a JLUS. In partnership with Matrix, as a consultant team, and with financial assistance from OEA, the JLUS was completed in January, 2013. The goal of this implementation effort is to carry out recommendations from the JLUS that will ensure the public's health, safety, and welfare, and continue to recognize private land owners' current property rights, and ensure the continued viability of the mission activities on Camp Williams.

**AGREEMENT FOR A JOINT LAND USE STUDY
IMPLEMENTATION PROGRAM**

THIS AGREEMENT ("Agreement") is entered into by and between **EAGLE MOUNTAIN CITY**, a Utah municipality ("**Eagle Mountain**"), and **MATRIX DESIGN GROUP, INC.**, a Colorado corporation ("**Matrix**") to prepare the Camp W. G. Williams Joint Land Use Study Implementation ("**Project**")

RECITALS:

A. Pursuant to that certain Interlocal Agreement among Eagle Mountain, Herriman City, Bluffdale City, Lehi City, City of Saratoga Springs, Utah County, Salt Lake County, Camp Williams, and the Utah National Guard, ("the JLUS board") Eagle Mountain is the local lead agency with respect to a joint land use study implementation regarding Camp W.G. Williams.

B. As the local lead agency, Eagle Mountain issued a request for proposals ("**RFP**") for the joint land use study implementation, a copy of which is attached as Exhibit "A."

C. On or about September 13, 2013, Matrix submitted a response ("**Response**") to the RFP, a copy of which is attached as Exhibit "B."

D. Matrix has experience in joint land use study implementation regarding military installations.

E. As the local lead agency, Eagle Mountain desires to enter into an agreement with Matrix for a joint land use study implementation.

F. The parties have determined that it is mutually advantageous to enter into this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, mutual covenants and undertakings, the parties hereby agree as follows:

1. **Employment of Matrix.** Eagle Mountain agrees to engage Matrix, and Matrix agrees to furnish land planning and public involvement consulting services to develop a joint land use study implementation for Camp W.G. Williams ("**Services**"). Matrix will perform the services as an independent contractor, and shall not be deemed, by virtue of this Agreement, to have entered into any partnership, joint venture or other relationship with Eagle Mountain.

2. **Detailed Description of Services.** Matrix shall perform the Services, as identified in the RFP and Response and as directed from time to time by Eagle Mountain. In

the event of conflict and/or inconsistencies within or among the RFP, Response, and this Agreement, Matrix and Eagle Mountain shall jointly determine if (i) providing the better quantity or greater quality or (ii) complying with more stringent requirements or standards, either or both, in accordance with their mutual reasonable interpretations.

3. **Fees for Services.** Eagle Mountain shall pay Matrix the amount not to exceed One Hundred Ninety-Seven Thousand, Nine Hundred and Twenty-Five Dollars (\$197,925) for the Services. Such amount includes all costs, expenses, materials, etc. Matrix shall submit to Eagle Mountain a detailed monthly invoice for the Services that is consistent with the fee schedule set forth in the Response. Provided the invoice is complete and consistent with the fee schedule and the Services are acceptable, then Eagle Mountain shall pay the amount set forth in the invoice within 30 days of its receipt. Eagle Mountain shall have a maximum of thirty (30) days after receipt of the invoice to make payment. If Eagle Mountain disputes a charge on an invoice for any reason, notice of the disputed item will be provided to Matrix within 30 days of the receipt of the invoice stating the disputed item or charge. All undisputed invoiced amounts outstanding after thirty days will bear interest at the rate of 1.5% per month (18% per annum), or the maximum permissible by applicable law, whichever is less, from the thirtieth day following the date of the invoice, until paid. At Matrix's option, Matrix may temporarily cease to perform the services or elect to terminate this Agreement if undisputed invoiced amounts are unpaid sixty days after the date of any invoice. In the event of a dispute between the parties, the party not in default shall be entitled to recover all attorneys' fees, dispute resolution fees, court costs and other expenses incurred in the collection or attempted collection of any amounts due under this Agreement. Eagle Mountain's obligation to pay for the services shall not be reduced or in any way impaired by Eagle Mountain's inability to obtain financing, governmental approval of the project, or for any other cause. No deduction shall be made from any invoice because of penalty set-off or liquidated damages.

4. **Timing and Deadline.** Matrix shall perform the Services pursuant to the Project Schedule set forth in the Response.

5. **Services Performed in a Professional, Reasonable Manner.** The Services shall be provided by Matrix in a professional manner in compliance with all applicable laws, ordinances, rules, regulations, and applicable standards of performance, including, *but not limited to*, the state's verification system requirements for contracts of UTAH CODE ANN. § 63G-11-103. Subject to the foregoing, the exact nature of how the Services are to be performed and other matters incidental to providing the Services shall remain with Matrix.

6. **Eagle Mountain Responsibilities.** Eagle Mountain shall designate a person to act as Eagle Mountain's representative with respect to the Services. Eagle Mountain's designee shall have authority to communicate decisions of the JLUS board and transmit instructions within the scope of authority of the agent, receive information, interpret and define Eagle Mountain's policies and decisions with respect to the services. Eagle Mountain will use its reasonable best efforts to collect information specifically requested by Matrix

which is relevant to the services Matrix is required to perform as described in Task 1C of the Matrix proposal dated September 13, 2013. Eagle Mountain agrees to provide Matrix with access to the site, if necessary, to complete Matrix's services. Eagle Mountain will examine all studies, reports, sketches, drafts or other documents prepared by Matrix for Eagle Mountain's review in a timely manner, and generally render decisions and provide information in such a manner as to prevent delay of the services.

7. **Ownership of Work Products.** Documents, diagrams, sketches, surveys, computer files, working drawings, and any other materials created or prepared by Matrix as part of its performance of this Agreement (the "Work Products") are instruments of Matrix's service for use solely with respect to this project however, Eagle Mountain and its JLUS participants may retain copies and may use such Work Products in connection with the project or subsequent land use or planning decisions. Any unauthorized re-use by Eagle Mountain will be at their sole risk and without liability to Matrix. Project records and Work Products will be retained by Matrix for a period of five years following completion of the services. Project financial records will be retained for a period of three years. Eagle Mountain understands that any Work Products prepared or provided on electronic media have a limited duration and require use of compatible software and hardware which may become unavailable over a period of time.

8. **Public Information.** Matrix understands and agrees that this Agreement and related invoice, reports, work product, etc., will be public documents as provided in UTAH CODE ANN. § 63G-2-101, *et seq.*

9. **Confidentiality.** Both parties agree (1) to hold confidential information in strict confidence; (2) not to disclose confidential information to any third-party except upon both parties prior written consent; and (3) to use reasonable precautions and processes to prevent unauthorized access, use, or disclosure of both parties confidential information; provided, however, that both parties may disclose confidential information if and only to the extent required to do so by applicable law (in which case, each party shall advise the other party as soon as practicable and prior to disclosure, if practical, and cooperate and assist the requesting party at the requesting party's cost and expense, if the requesting party seeks a protective order or other relief from such disclosure requirements). As used in this Agreement, confidential information means all information and material that constitutes a "private," "controlled," or "protected" record or document, or is exempt from disclosure as referenced in Utah Code Ann. §63G-2-101, *et seq.* Both parties also agree to obligate their employees to the same obligations imposed on each other as provided in this Section.

10. **Alcohol and Drug-free Work Place.** All personnel during such time that they provide Services shall not be under the influence of alcohol, any drug or combined influence of alcohol or any drug to a degree that renders the person incapable of safely providing the Services. Further all personnel during such time that they provide Services shall not have sufficient alcohol in his body, blood or on his breath that would constitute a violation of UTAH CODE ANN. § 41-6a-502 (without giving any consideration to or establishing the requirement of operating or being in physical control of a vehicle) or any measurable controlled substance in his body that would constitute a violation of UTAH CODE ANN. § 41-6a-517

(without giving any consideration to or establishing the requirement of operating or being in physical control of a vehicle).

11. **Equipment and Facilities.** For purposes of performing the Services, Matrix shall furnish and supply at their sole cost all necessary labor, supervision, equipment, tools and supplies necessary and incident to performing the Services.

12. **Warranty.** No warranty of any kind, express or implied, at common law or created by statute, is extended, made or intended by the provision of professional services and advice or by the furnishing of the professional Work Products pursuant to this agreement.

13. **Indemnity.** Matrix shall defend, protect, indemnify, save and hold harmless Eagle Mountain, including its elected and appointed officials, employees, agents, and contractor from and against any and all demands, liabilities, claims, damages, actions, or proceedings, in law or in equity, including reasonable attorneys' fees and costs of suits, relating to or arising from Matrix providing the Services to Eagle Mountain. Nothing herein shall be construed to require Matrix to indemnify Eagle Mountain against Eagle Mountain's own negligence.

14. **Term.** This Agreement shall be effective as of the date hereof and shall terminate upon performance of the Services by Matrix and delivery of payment of the Fees for Services by Eagle Mountain.

15. **Assignment and Delegation.** Matrix will not assign or delegate the performance of their duties outside of the firm under this Agreement without the prior written approval of Eagle Mountain.

16. **Employment Status.**

a. **Official Status.** Matrix shall have complete control and discretion over all personnel providing Services hereunder. All such personnel shall be and remain employees of Matrix and shall be considered to be Matrix. Matrix has no authority, expressed or implied, to bind Eagle Mountain to any agreement, settlements, or liability whatsoever.

b. **Salary and Wages.** Eagle Mountain shall not have any obligation or liability for the payment of any salary or other compensation to personnel providing Services hereunder.

c. **Employment Benefits.** All personnel providing Services hereunder are and shall remain employees of Matrix. All personnel providing Services shall have no right to any Eagle Mountain pension, civil service, or any other Eagle Mountain benefits pursuant to this Agreement or otherwise.

17. **Termination.** Either party may terminate this Agreement upon thirty (30) days written notice to the other party.

18. **Insurance.** Matrix shall obtain Workers Compensation insurance in the statutory amount and professional negligence/errors and omissions insurance covering all errors,

omissions, and other professional negligence on the part of Matrix and their officers, employees, agents, etc., in a minimum amount of \$1,000,000 per occurrence. Matrix shall furnish Eagle Mountain certificates of insurance evidencing the insurance requirements herein.

19. **Notice.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties as set forth below:

Eagle Mountain:	Mayor Heather Jackson Eagle Mountain City 1650 E. Stagecoach Run Eagle Mountain, UT 84005
with a copy to:	Fionnuala B. Kofoed, City Recorder Eagle Mountain City 1650 E. Stagecoach Run Eagle Mountain, UT 84005
with a copy to:	Jeremy R. Cook, Esq. PARSONS KINGHORN HARRIS 111 East Broadway, 11th Floor Salt Lake City, UT 84111
Matrix:	Celeste Werner, Vice President Matrix Design Group, Inc. 2224 W. Northern Ave., D-240 Phoenix, AZ 85021

20. **Claims and Disputes.** The parties agree that all claims, disputes and other issues between them will be submitted to a mutually agreeable neutral mediator if a mediator can be appointed within 90 days of notice of a claim or dispute to either party, as a condition precedent to litigation or other remedies provided by law. The fee and costs of the mediator shall be apportioned equally between the parties. If mediation is unsuccessful, claims, disputes, and other issues between the parties arising out of or related to this Agreement, shall be decided by litigation in the Third Judicial District Court in and for Salt Lake County, Utah. Unless terminated pursuant to provisions hereof or otherwise agreed in writing, Matrix shall continue to perform the Services during any such litigation and Eagle Mountain shall continue to make payments to Matrix in accordance with the terms of this Agreement. Eagle Mountain agrees to notify Matrix of any claimed negligent act, error or omission within a reasonable time under the circumstances, and to provide Matrix with the opportunity to investigate and to recommend ways of mitigating damages as a condition precedent to litigation or other remedies provided by law.

21. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the

same instrument.

22. **Patents, Copyrights, Etc.** Matrix shall indemnify and hold Eagle Mountain, its officers, agents, and employees harmless from liability of any kind or nature, including Matrix's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in the performance of this Agreement, unless identified as confidential by Matrix.

23. **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend, or describe the scope, content, or intent of any part or parts hereof.

24. **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plurals and vice versa.

25. **Applicable Law.** The provisions hereof shall be governed by and construed in accordance with the laws of the state of Utah.

26. **Entire Agreement and Modification of Agreement.** This Agreement and exhibits attached hereto constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by the parties.

27. **Force Majeure.** Neither party to this Agreement will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control.

28. **Time.** Time is the essence hereof.

29. **Survival.** All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

30. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term, or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation, or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other than existing or subsequently occurring breach.

31. **Rights and Remedies.** The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

32. **Severability.** In the event that any condition, covenant, or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

33. **Exhibits and Recitals.** The recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

34. **Injunctive Relief.** Notwithstanding anything to the contrary in this Agreement, both parties acknowledge that the unauthorized use or disclosure of confidential information would cause irreparable harm to the other party. Accordingly, both parties agree that each party will have the right to obtain an immediate injunction against any breach or threatened breach of Section 7 of this Agreement, as well as the right to pursue any and all other rights or remedies available at law or in equity for such breach from the other party.

35. **Conflicts of Interest.** Matrix represents and certifies that Matrix, its employees or representatives have not offered or given any gift or compensation prohibited by law to any officer or employee of Eagle Mountain to secure favorable treatment with respect to being awarded this Agreement.

IN WITNESS WHEREOF, Eagle Mountain caused this Agreement to be signed by its Mayor and attested by its City Recorder and delivered, and Matrix has caused the same to be signed and delivered.

MATRIX DESIGN GROUP, INC.

By: _____
Printed Name: Celeste C. Werner, AICP
Date Signed: _____

EAGLE MOUNTAIN CITY

By: _____
Mayor Heather Anne Jackson
Date Signed: _____

ATTEST

Fionnuala B. Kofoed, City Recorder
Date Signed: _____

APPROVED AS TO FORM
