

**NOTICE OF JOINT WORK MEETING OF THE
CITY COUNCIL AND THE PLANNING COMMISSION
OF THE CITY OF ST. GEORGE,
WASHINGTON COUNTY, UTAH**

Public Notice

Public notice is hereby given that the City Council and the Planning Commission of the City of St. George, Washington County, Utah, will hold a work meeting in the Administrative Conference Room at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, August 25, 2022 commencing at 3:00 p.m.

The agenda for the meeting is as follows:

Call to Order
Invocation
Flag Salute

1. **Discussion regarding the State-mandated Moderate Income Housing Plan.**
2. **Update regarding the Tech Ridge project plans and development progress.**
3. **Adjourn and reconvene in a joint Work Meeting of the City Council and Neighborhood Redevelopment Agency.**

**** THE COUNCIL WILL REMAIN IN THE ADMINISTRATIVE
CONFERENCE ROOM FOR THE JOINT CITY COUNCIL AND
NEIGHBORHOOD REDEVELOPMENT AGENCY MEETING****

**NOTICE OF JOINT WORK MEETING OF THE
CITY COUNCIL AND THE NEIGHBORHOOD REDEVELOPMENT AGENCY
OF THE CITY OF ST. GEORGE, WASHINGTON COUNTY, UTAH**

Public Notice

Public notice is hereby given that the City Council and the Neighborhood Redevelopment Agency of the City of St. George, Washington County, Utah, will hold a work meeting in the Administrative Conference Room at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, August 25, 2022 commencing at approximately 4:00 p.m.

The agenda for the meeting is as follows:

1. **Discussion regarding the proposed Tech Ridge Community Development Area (CDA).**
2. **Adjourn and reconvene in a City Council Work Meeting.**

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

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

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a work meeting in the Administrative Conference Room at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, August 25, 2022, commencing at approximately 5:00 p.m.

The agenda for the meeting is as follows:

- 1. Discussion regarding the Fiscal Year 2022-2023 Budget.**
- 2. Adjourn and reconvene in a City Council Regular Meeting.**

**** THE COUNCIL WILL REMAIN IN THE
ADMINISTRATIVE CONFERENCE ROOM
FOR THE CITY COUNCIL REGULAR MEETING****

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

Public Notice

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a regular meeting in the Administrative Conference Room at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, August 25, 2022, commencing at approximately 6:00 p.m.

The agenda for the meeting is as follows:

1. **Consent Calendar.**

- a. **Consider approval of a Professional Services Agreement with Jones & Demille Engineering for the design and engineering services of the Country Club Water Storage Tank Replacement and Expansion project.**

BACKGROUND and RECOMMENDATION: The City's Culinary Water Master Plan has identified the need for the replacement and upsizing of the existing Country Club tank, located south of the Southgate area. This Professional Services Agreement with Jones & Demille Engineering is for the engineering design services of that project. Staff recommends approval of the agreement.

- b. **Consider approval of a Professional Services Agreement with Alpha Engineering for the design and engineering services of the Industrial Water Storage Tank Replacement project.**

BACKGROUND and RECOMMENDATION: The City's Culinary Water Master Plan has identified the need for a replacement and upsize of the existing Industrial Tank. This Professional Services Agreement with Alpha Engineering is for the engineering design and construction-related services for the Industrial Tank replacement. Staff recommends approval.

- c. **Consider approval of a Professional Services Agreement with Bowen, Collins, and Associates for the design and engineering services of the Divario and Stone Cliffs Water Storage Tanks.**

BACKGROUND and RECOMMENDATION: The City's Culinary Water and Secondary Irrigation Master Plans have identified the need for a culinary water storage tank in the Divario development area and a secondary irrigation storage tank in the area of Stone Cliff. The City has already secured the tank site in Stone Cliff and is working with the Divario developer to secure a site in the Divario development. This Professional Services Agreement with Bowen and Collins is for the engineering design services for those tanks. Staff recommends approval.

- d. **Consider approval of an agreement to purchase real property and a slope easement from Red Sands F-2, LLC for widening of the 3000 East roadway.**

BACKGROUND and RECOMMENDATION: The City desires to acquire 1.57 acres of property for the widening of the 3000 East roadway located at 3000 East between 2000 South and 2450 South. Staff recommends approval.

- e. **Consider approval of an agreement to purchase real property and slope easement from Red Sands F-1, LLC for widening of the 3000 East roadway.**

BACKGROUND and RECOMMENDATION: The City desires to acquire 1.51 acres of property for the widening of 3000 East roadway located at 3000 East between 2000 South and 2450 South. Staff recommends approval.

- f. **Consider entering into lease with Teri McHale for Studio Space #3 at the Electric Theater Center.**

BACKGROUND and RECOMMENDATION: Studios at the Electric Theater serve as office space or gallery space for artists and arts organizations. Studio #3 is a gallery studio and Teri McHale proposes to sell fiber art out of the space. Staff recommends approval.

g. Consider approval to award bid to Skyline Creations, Inc. for the abatement and demolition of a City-owned building located at 85 South 400 East.

BACKGROUND and RECOMMENDATION: The City recently purchased this property from the Church of Jesus Christ of Latter-day Saints. The purchase agreement includes language that the City will remove the chapel from the property within 180 days of the closing date. This will eventually become the site of the new St. George Fire Department headquarters (Station 1). Staff recommends awarding the bid to Skyline Creations, Inc in the amount of \$482,000.

2. Consider approval of a resolution to enter into a Red Mesa Tapaha Solar Project Power Purchase Agreement.

BACKGROUND and RECOMMENDATION: This is a solar project on the Navajo Nation for the purchase of 18.314 Megawatts (MW) of energy for 25 years starting no later than 9/15/2023. This project has been previously discussed with the City Council. Staff recommends approval.

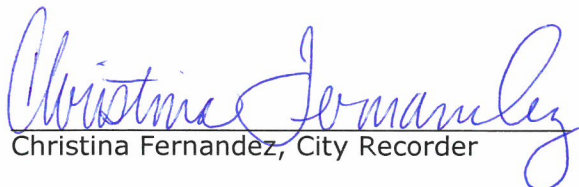
3. Consider approval of a resolution to adopt the Final Fiscal Year 2022-2023 Budget.

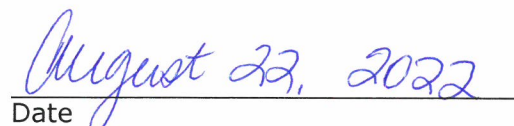
BACKGROUND and RECOMMENDATION: The Preliminary Fiscal Year 2022-2023 Budget was presented during the May 5th City Council Meeting and has been available on the city's website and in the City Recorder's Office since that time. This year the City Council held four work meetings to review the budget and discuss changes thereto. The city held two public hearings to receive input on the budget on June 2, 2022 and June 16, 2022. Following the second public hearing on June 16, 2022, the City Council formally adopted the FY 2022-2023 Tentative Budget along with an amendment that included year one of the Safe St. George plan and the proposed property tax increase. Tonight's item is to consider approval of a resolution to adopt the Final Fiscal Year 2022-2023 Budget. Staff recommends approval of the resolution to adopt the Final Fiscal Year 2022-2023 Budget.

4. Appointments to Boards and Commissions of the City.

5. Reports from Mayor, Councilmembers, and City Manager.

6. Request a closed session to discuss litigation, property acquisition or sale or the character and professional competence or physical or mental health of an individual.


Christina Fernandez, City Recorder


Date

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



Agenda Date: 08/25/2022

Agenda Item Number: 1a

Subject:

Consider approval of a Professional Services Agreement with Jones & Demille Engineering for the design and engineering services of the Country Club Water Storage Tank Replacement and Expansion project.

Item at-a-glance:

Staff Contact: Water Services Dept

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

Southgate Area

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

The City's Culinary Water Master Plan has identified the need for the replacement and upsizing of the existing Country Club tank, located south of the Southgate area. This Professional Services Agreement with Jones & Demille Engineering is for the engineering design services of that project. Staff recommends approval of the agreement.

Staff Narrative (need/purpose):

The existing 1 MG steel storage tank is in poor condition and needs replacement. The Master Plan has identified the need of expanding this tank to a 2 MG capacity tank. A new 2 MG partially buried concrete tank will be constructed adjacent to the existing tank and the existing steel tank will be dismantled and removed from the site.

Name of Legal Dept approver: Jami Brackin

Budget Impact:

Cost for the agenda item: \$169,700

Amount approved in current FY budget for item: \$2,241,000

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

N/A

Description of funding source:

Impact Fees and User Rates

Recommendation (Include any conditions):

Water Services Staff recommends approval of the Professional Services Agreement



**CITY OF ST. GEORGE PROFESSIONAL SERVICES AGREEMENT
FOR PROJECT NAME WITH JONES & DEMILLE ENGINEERING, INC.**

This Agreement is made and entered into this _____, by and between the City of St. George, a municipal corporation, with offices at 175 East 200 North, St. George, Utah 84770 (hereinafter called the “CITY”), and Jones & DeMille Engineering, Inc., with offices at 1535 South 100 West, Richfield, Utah 84701 (hereinafter called “CONSULTANT”).

WITNESSETH THAT:

WHEREAS, CITY desires professional services to be performed and has solicited CONSULTANT to provide (type of professional) services including (list of deliverable items) for the Project Name Project (hereinafter called the PROJECT); and

WHEREAS, CONSULTANT has submitted a proposal for the PROJECT; and

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

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

1. **EMPLOYMENT OF CONSULTANT.**

- a. CONSULTANT is a professional licensed by the State of Utah and the City of St. George. CONSULTANT has all licenses, permits, and approvals that are legally required for CONSULTANT to practice its profession and shall keep them in effect at all times during the term of this Agreement.
- b. CONSULTANT states that it has the necessary knowledge, experience, abilities, skills and resources to perform its obligations under this Agreement and agrees to perform its obligations under this Agreement in a professional manner, consistent with prevailing industry standards and practices as observed by competent practitioners of the profession in which CONSULTANT and its subcontractors or agents are engaged.
- c. CONSULTANT certifies that it does not and will not during the performance of this contract knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. CONSULTANT agrees to require all subcontractors at the time they are hired for this project to sign a Certification of Legal Work Status and submit the Certification to CITY prior to any work being performed by the subcontractors. CONSULTANT agrees to produce, at CITY’S request, documents to verify compliance with applicable State and Federal laws. If CONSULTANT knowingly employs workers or subcontractors in violation of 8 USC § 1324a, such violation shall be cause for unilateral cancellation of the contract between CONSULTANT and CITY. In addition, CONSULTANT may be suspended from participating in future projects with CITY for a period of one (1) year. In the event this

contract is terminated due to a violation of 8 USC § 1324a by CONSULTANT or a subcontractor of CONSULTANT, CONSULTANT shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by CITY as well as attorney fees. For purposes of compliance, CITY requires CONSULTANT and subcontractors to use E-Verify or other federally accepted forms of verification to verify the employment eligibility of all employees as allowed by law and the E-Verify procedures. CONSULTANT and subcontractors must maintain authorized documentation of the verification.

- d. CONSULTANT shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City or the operations or procedures of CITY without the prior written consent of CITY.
- e. CONSULTANT further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.
- f. CONSULTANT, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, sexual orientation, gender identity, disability or marital status in its employment practices.
- g. CONSULTANT expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve CONSULTANT from any obligation to comply with all applicable requirements of CITY during the term of this Agreement including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of CITY, except as modified or waived in this Agreement.
- h. CONSULTANT shall comply with all applicable federal, state, and local laws, regulations, and ordinances that affect those employees or those engaged by CONSULTANT on the PROJECT, and will procure all necessary licenses, permits and insurance required.
- i. CITY acknowledges that CONSULTANT may employ various specialized subcontractors for up to 15% of the services provide herein. CONSULTANT shall give written notice to CITY at least seven (7) days prior to CONSULTANT's employment of the subcontractors to perform portions of the work provided for in this Agreement. It shall be solely CONSULTANT's responsibility to ensure that any of CONSULTANT'S subcontractors perform in compliance with the terms of this Agreement. Subcontractors may not be changed without ten (10) days prior written notice to CITY.

2. **PROJECT SERVICES DESCRIPTION.**

- a. CONSULTANT will provide the services covered by this Agreement as described in the attached Scope of Work (Exhibit A) which is made a part of this Agreement by this reference. CITY may at any time, as the need arises, order changes within the scope of the services without invalidating the Agreement. If such changes increase or decrease the amount due under the Agreement, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.
- b. CONSULTANT shall furnish all of the materials, supplies, tools, transportation, equipment, labor, subcontractor services and other services necessary for the completion of the work described in Exhibit A.
- c. CONSULTANT shall provide services in compliance with all applicable requirements of federal, state, and local laws, codes, rules, regulations, ordinances, and standards.

3. **TERM OF AGREEMENT.**

- a. This Agreement shall be effective as of the date executed by all parties and shall continue until services provided for this Agreement have been performed unless otherwise terminated as set forth in this Agreement.
- b. CONSULTANT agrees to perform services as expeditiously as is consistent with professional skill and care and the orderly progress of the PROJECT. CONSULTANT shall perform the services in a timely manner according to the schedule approved by CITY.
- c. CONSULTANT shall perform its services upon Notice to Proceed from CITY and in accordance with the schedule approved by CITY. In the event that performance of its services is delayed by causes beyond the reasonable control of CONSULTANT, and without the fault or negligence of CONSULTANT, the time for the performance of the services shall be equitably adjusted by written amendment to reflect the extent of such delay. CONSULTANT shall provide CITY with written notice of delay, including a description of the delay and the steps contemplated or actually taken by CONSULTANT to mitigate the effect of such delay.

4. **COMPENSATION**

For the performance of the services and completion of PROJECT set forth herein, CITY shall reimburse CONSULTANT as set out in the Contract Documents, not to exceed the amounts listed in Exhibit.

5. **INVOICING, PAYMENT, NOTICES.**

- a. CONSULTANT shall submit invoices, no more frequently than monthly, for the services rendered during the preceding period; invoices shall describe the services performed, list all subcontractors used and the amount owed or paid to them, list all suppliers used and the amount owed or paid to them, list the contract amount, list the current invoice amount based on percentage of task complete, list the previous invoice amount, list total invoices to date, and list the contract balance.
- b. In executing the request for payment, CONSULTANT shall attest those subcontractors involved with prior requests for payment have been paid, unless CONSULTANT provides a detailed explanation why such payments have not occurred. CONSULTANT shall also sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status and submit them with each request for payment. CONSULTANT shall require each subcontractor to sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status at the time subcontractor is paid and shall provide a copy of both documents to CITY.
- c. A “Waiver and Release Upon Final Payment” signed by CONSULTANT attesting that all subcontractors, laborers, and material suppliers involved with prior requests for payment have been paid, and that all subcontractors, laborers and material suppliers upon which the final payment is based will be paid immediately unless CONSULTANT provides a detailed explanation why such payments have not occurred or will not occur. CONSULTANT shall also require each subcontractor to sign a “Waiver and Release Upon Final Payment” and a Certificate of Legal Work Status at the time subcontractor is paid its final payment and shall provide a copy of both documents to CITY.
- d. If such liens, claims, security interests or encumbrances remain unsatisfied after payments are made, CONSULTANT shall refund to CITY all money that CITY may be compelled to pay in discharging such liens, including all costs and reasonable attorneys' fees.

- e. All invoices for reimbursable costs shall be taken from the books of account kept by CONSULTANT, and CONSULTANT shall maintain copies of payroll distribution, receipted bills and other documents. CITY shall have the right to review all books and records kept by CONSULTANT and any subcontractors concerning the operation and services performed under this Agreement.
- f. CITY shall withhold payment for any expenditure not substantiated by CONSULTANT'S or subcontractor's books and records.
- g. In the event CITY has made payment for expenditures that are not allowed, as determined by CITY'S audit, CONSULTANT shall reimburse CITY for the amount of the un-allowed expenditures. If additional money is owed to CONSULTANT, the reimbursement may be deducted from the additional money owed.
- h. CITY shall make no payment for any services not specified in this Agreement unless such additional services and the price thereof are agreed to in writing, prior to the time that such additional services are rendered.
- i. Invoices shall be paid to CONSULTANT within thirty (30) days of presentation to CITY.
- j. CITY may withhold 5% of billed amount as retention. Retention held shall be included in the final invoice after the contract is complete.

6. **CHARGES AND EXTRA SERVICE.**

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

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

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

9. **ACCURACY AND COMPLETENESS.**

- a. CONSULTANT has total responsibility for the accuracy and completeness of its

investigations, calculations, reports, plans and related designs, specifications and estimates prepared for the PROJECT and shall check all such material accordingly.

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

10. **INDEPENDENT CONTRACTOR.**

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

11. **INSURANCE.**

- a. GENERAL: CONSULTANT shall secure and maintain insurance as required by laws and regulations and the terms of this agreement to protect against any liability, loss or expense which occurs or arises as a result of the performance of the services provided pursuant to this agreement or as changed as provided herein. CONSULTANT'S insurer must be authorized to do business in Utah and must have an A.M. Best rating of A VIII or better at the time this contract is executed.

- b. COMMENCEMENT OF WORK: Neither CONSULTANT, his Suppliers nor any subcontractors shall enter the site of the work or commence work under this contract before CITY has received and accepted Certificate(s) of Insurance and Insurance Endorsements and has issued the Notice to Proceed.
- c. INSURANCE CERTIFICATES AND COVERAGE: Insurance certificates shall be issued on all policies required under this contract and shall be signed by an authorized representative of the insurance company. The insurance certificate or the coverage required shall include the following:
 - i. The name and address of the insured.
 - ii. CITY shall be named as a Certificate Holder.
 - iii. CITY shall be named as an additional primary insured on the General Liability Certificate with CITY listed as non-contributory on the General Liability certificate.
 - iv. The location of the operations to which the insurance applies.
 - v. The number of the policy and the type or types of insurance in force thereunder on the date borne by the certificate.
 - vi. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by the certificate.
 - vii. A statement that all coverage is on an occurrence basis rather than a claims basis except for the Professional Errors and Omissions Malpractice Insurance coverage.
 - viii. A provision that the policy or policies will not be cancelled, denied renewal, or reduced in coverage until at least 30 days after written notice has been received by CITY.
 - ix. Name, address, and telephone number of the insurance company's agent of process in Utah.
 - x. Other information to demonstrate compliance with additional requirements stipulated for the various types of insurance coverage.
- d. COMPENSATION INSURANCE: CONSULTANT shall take out and maintain Worker's Compensation Insurance as required by the Labor Code for all its employees at the site of the work during the life of this contract. Coverage must be provided by a company authorized by the State of Utah to provide Worker's Compensation Insurance. The insurance shall include:
 - i. Insurance certificates shall provide a waiver of subrogation by the carrier to Certificate Holder.
 - ii. CONSULTANT shall require each subcontractor to provide Workers Compensation Insurance for its employees unless such employees are covered by CONSULTANT.
 - iii. In the event any class of employees engaged in hazardous work under this contract is not protected by the Worker's Compensation Statute, CONSULTANT shall provide, and shall cause its subcontractors to provide, special insurance for the protection of such employees not otherwise protected.
- e. COMMERCIAL GENERAL LIABILITY INSURANCE:
 - i. CONSULTANT shall procure and maintain commercial general liability insurance for the duration of the contract against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors. The insurance shall remain in effect during the term of this agreement and such that claims reported beyond the date of substantial completion of this agreement are covered and during the warranty period, to the extent that it relates to the activities covered by this Agreement, in such manner and amounts as set forth herein.
 - ii. The Insurance Endorsement shall evidence such provisions.

- iii. The minimum commercial general liability insurance shall be as follows:
 - 1. Comprehensive general liability insurance for injuries, including accidental death, to any one person in any one occurrence in an amount not less than \$1,000,000.00 Dollars.
 - 2. Comprehensive general liability insurance for injuries, including accidental death, to two or more persons in any one occurrence in an amount not less than \$3,000,000.00 Dollars.
 - 3. Broad form property damage insurance in an amount not less than \$300,000.00 Dollars.
- iv. Such policy shall include each of the following coverages:
 - 1. Comprehensive form.
 - 2. Premises - operations.
 - 3. Explosion and collapse hazard.
 - 4. Underground hazard.
 - 5. Product/completed operations hazard.
 - 6. Contractual insurance.
 - 7. Broad form property damage, including completed operations.
 - 8. Independent contractors for vicarious liability.
 - 9. Personal injury.
 - 10. Cross liability or severability of interest's clause shall be included unless a separate policy covering CITY is provided.
- f. **PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE:**
 - i. CONSULTANT shall carry and maintain Professional Liability Errors and Omissions Insurance in an amount not less than \$3,000,000.00 Dollars for all work performed under this Agreement.
 - ii. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors. With respect to General Liability, Professional liability coverage should be maintained for a minimum of five (5) years after contract completion.
 - iii. If Professional Liability coverages are written on a claims-made form:
 - 1. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
 - 2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONSULTANT must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
 - 4. A copy of the policy must be submitted to CITY for review.
- g. **BUSINESS AUTOMOBILE COVERAGE:**
 - i. CONSULTANT shall carry and maintain business automobile insurance coverage on each vehicle used in the performance of the work in an amount not less than \$1,000,000.00 Dollars for one person and \$3,000,000.00 Dollars for more than one person and for property damage resulting from any one occurrence which may arise from the operations

- of CONSULTANT in performing the work.
- ii. Such business automobile insurance shall include each of the following types:
 1. Comprehensive form, including loading and unloading.
 2. Owned.
 3. Hired.
 4. Non-owned.

12. **INDEMNITY AND LIMITATION.**

- a. CONSULTANT shall indemnify, defend, and hold harmless CITY, its elected officials, officers, employees, and representatives against any and all claims, suits, causes of action, demands, losses, costs, and damages and liability of every kind including but not limited to all fees and charges of attorneys and other professionals and all court or other dispute resolution costs for:
 - i. death or injuries to persons or for loss of or damage to property which directly or indirectly, in whole or in part are caused by, resulting from, or arising out of the intentional, reckless, negligent, or wrongful acts, errors or omissions, or other liability imposed by law of CONSULTANT, its officers, employees, agents, or representatives in the performance of services under this Agreement or any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work;
 - ii. CONSULTANT's failure or refusal, whatever the reason, to pay subcontractors or suppliers for Work performed under the Agreement;
 - iii. claims by any employee of the CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, CONSULTANT'S indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONSULTANT or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts.
- b. CITY shall give CONSULTANT prompt written notice of any such claims or suits filed against CITY arising out of the services provided under this Agreement. CONSULTANT agrees to defend against any claims brought or actions filed against CITY arising out of the services provided under this Agreement. If CITY'S tender of defense, based upon the indemnity provision, is rejected by CONSULTANT or CONSULTANT'S insurer, and CONSULTANT is later found by a court of competent jurisdiction to have been required to indemnify the CITY, then, in addition to any other remedies the CITY may have, CONSULTANT shall pay the CITY'S reasonable costs, expenses and attorney's fees incurred in obtaining such indemnification, defending themselves or enforcing the indemnification provision.
- c. The insurance requirements in this agreement shall not be construed as limiting CONSULTANT'S liability. Irrespective of the requirements for CONSULTANT to carry insurance as provided herein, insolvency, bankruptcy or failure of any insurance company to pay all claims accruing shall not be held to relieve CONSULTANT of any obligations under this agreement.
- d. This section does not apply to a design professional services contract, design professional services, and design professionals.

13. **DOCUMENTS.**

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

14. **RECORDS.**

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

15. **TERMINATION.**

- a. CITY may terminate this Agreement by providing fourteen (14) days written notice prior to the effective termination date to CONSULTANT.
- b. In the event of such termination, CITY shall pay CONSULTANT for all services actually rendered up to and including the date of termination.

c. CONSULTANT shall deliver to CITY copies of all drawings, reports, analyses, documents, and investigations, whether completed or not, that were prepared or were being prepared under the provisions of this Agreement.

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

17. **CONFLICT OF INTEREST.**

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

b. CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop after the date of execution of this Agreement.

c. CONSULTANT further agrees to complete any statements of economic interest required by either CITY ordinance or State law.

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

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

CITY: City of St. George
175 East 200 North
St. George, Utah 84770
Attention: Legal Department
Copy: legal@sgcity.org

CONSULTANT: Jones & DeMille Engineering, Inc.
1535 South 100 West
Richfield, Utah, 84701
Attention: Chad Sonderegger

20. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of Utah. The parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction. The parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other

rights and remedies. Each party agree that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government parties.

21. **LEGAL FEES.** Should any party default on any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney's fee including appeals and bankruptcy proceedings. If either party commences legal action to interpret any term of this agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, court costs, and any other costs incurred in connection with such action.
22. **MODIFICATION OF AGREEMENT.** CITY specifically reserves the right to modify or amend this Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work. All modifications shall be in writing and executed by both parties. Each Work Order adopted under this Agreement shall incorporate the terms and conditions of this Agreement and shall constitute a modification to this contract. A Work Order may amend the terms and conditions of this Agreement only as they apply to that particular Work Order and shall not have any general effect on this Agreement.
23. **RESERVED LEGISLATIVE POWERS.** Nothing in this Agreement shall limit the future exercise of the police power by CITY in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement, but which shall not be retroactively applied to or modify this Agreement.
24. **SUCCESSORS AND ASSIGNS.** CONSULTANT shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement without assigning the rights and the responsibilities under this Agreement and without the prior written approval of CITY. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.
25. **NO JOINT VENTURE, PARTNERSHIP OR THIRD-PARTY RIGHTS.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the parties. No term or provision of this Agreement is intended to or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
26. **INTEGRATION.** This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature between CITY and CONSULTANT and supersedes and replaces all terms and conditions

of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to this PROJECT.

27. **SEVERABILITY.** If any part or provision of this Agreement shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
28. **CONSTRUCTION.** Each of the parties hereto has had the opportunity to review this agreement with counsel of their choosing and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this agreement.
29. **SURVIVAL.** It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.
30. **HEADINGS.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
31. **COUNTERPARTS.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.
32. **AUTHORITY OF PARTIES.** The parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated and that this Agreement constitutes a valid and binding Agreement.

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

CITY: CITY OF ST. GEORGE

OWNER: JONES & DEMILLE ENGINEERING,
INC.

Michele Randall, Mayor

Kendrick Thomas, Vice President

Attest:

Approved as to form:

Christina Fernandez, City Recorder



Agenda Date: 08/25/2022

Agenda Item Number: 1b

Subject:

Consider approval of a Professional Services Agreement with Alpha Engineering for the design and engineering services of the Industrial Water Storage Tank Replacement project.

Item at-a-glance:

Staff Contact: Water Service Dept
Applicant Name: City of St. George
Reference Number: N/A
Address/Location:
Industrial Tank

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

The City's Culinary Water Master Plans has identified the need for a replacement and upsize of the existing Industrial Tank . This Professional Services Agreement with Alpha Engineering is for the engineering design and construction-related services for the Industrial Tank replacement.

Staff Narrative (need/purpose):

The existing Industrial Tank has been in poor condition for several years. We have been planning on replacing the tank for a number of years. Approximately 5 years ago, the City purchased additional properties adjacent to the existing tank site to enable the replacement and upsizing of the Industrial Tank. The existing 1M gallon Industrial Tank will be replacement with a partially burring concrete 2M gallon tank.

Name of Legal Dept approver: Jami Brackin

Budget Impact:

Cost for the agenda item: \$189,208
Amount approved in current FY budget for item: \$1.5M
If not approved in current FY budget or exceeds the budgeted amount, please explain funding source:
N/A
Description of funding source:
User rates and impact fees

Recommendation (Include any conditions):

Water Services Staff recommends approval of the Professional Services Agreement



**CITY OF ST. GEORGE PROFESSIONAL SERVICES AGREEMENT
FOR INDUSTRIAL PARK 2MG TANK REPLACEMENT PROJECT WITH ALPHA
ENGINEERING COMPANY**

This Agreement is made and entered into this _____, by and between the City of St. George, a municipal corporation, with offices at 175 East 200 North, St. George, Utah 84770 (hereinafter called the “CITY”), and Alpha Engineering Company, with offices at 43 South 100 East, Suite 100, St. George, Utah 84770 (hereinafter called “CONSULTANT”).

WITNESSETH THAT:

WHEREAS, CITY desires professional services to be performed and has solicited CONSULTANT to provide (type of professional) services including (list of deliverable items) for the Industrial Park 2 MG Tank Replacement Project (hereinafter called the PROJECT); and

WHEREAS, CONSULTANT has submitted a proposal for the PROJECT; and

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

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

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

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

- d. CONSULTANT shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City or the operations or procedures of CITY without the prior written consent of CITY.
- e. CONSULTANT further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.
- f. CONSULTANT, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, sexual orientation, gender identity, disability or marital status in its employment practices.
- g. CONSULTANT expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve CONSULTANT from any obligation to comply with all applicable requirements of CITY during the term of this Agreement including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of CITY, except as modified or waived in this Agreement.
- h. CONSULTANT shall comply with all applicable federal, state, and local laws, regulations, and ordinances that affect those employees or those engaged by CONSULTANT on the PROJECT, and will procure all necessary licenses, permits and insurance required.
- i. CITY acknowledges that CONSULTANT may employ various specialized subcontractors for up to 15% of the services provide herein. CONSULTANT shall give written notice to CITY at least seven (7) days prior to CONSULTANT's employment of the subcontractors to perform portions of the work provided for in this Agreement. It shall be solely CONSULTANT's responsibility to ensure that any of CONSULTANT'S subcontractors perform in compliance with the terms of this Agreement. Subcontractors may not be changed without ten (10) days prior written notice to CITY.

2. **PROJECT SERVICES DESCRIPTION.**

- a. CONSULTANT will provide the services covered by this Agreement as described in the attached Scope of Work (Exhibit A) which is made a part of this Agreement by this reference. CITY may at any time, as the need arises, order changes within the scope of the services without invalidating the Agreement. If such changes increase or decrease the amount due under the Agreement, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.
- b. CONSULTANT shall furnish all of the materials, supplies, tools, transportation, equipment, labor, subcontractor services and other services necessary for the completion of the work described in Exhibit A.
- c. CONSULTANT shall provide services in compliance with all applicable requirements of federal, state, and local laws, codes, rules, regulations, ordinances, and standards.

3. **TERM OF AGREEMENT.**

- a. This Agreement shall be effective as of the date executed by all parties and shall continue until services provided for this Agreement have been performed unless otherwise terminated as set forth in this Agreement.
- b. CONSULTANT agrees to perform services as expeditiously as is consistent with professional skill and care and the orderly progress of the PROJECT. CONSULTANT shall perform the services in a timely manner according to the schedule approved by CITY.
- c. CONSULTANT shall perform its services upon Notice to Proceed from CITY and in accordance with the schedule approved by CITY. In the event that performance of its services is delayed by causes beyond the reasonable control of CONSULTANT, and without the fault or negligence of CONSULTANT, the time for the performance of the services shall be equitably adjusted by written amendment to reflect the extent of such delay. CONSULTANT shall provide CITY with written notice of delay, including a description of the delay and the steps contemplated or actually taken by CONSULTANT to mitigate the effect of such delay.

4. **COMPENSATION**

For the performance of the services and completion of PROJECT set forth herein, CITY shall reimburse CONSULTANT as set out in the Contract Documents, not to exceed the amounts listed in Exhibit A.

5. **INVOICING, PAYMENT, NOTICES.**

- a. CONSULTANT shall submit invoices, no more frequently than monthly, for the services rendered during the preceding period; invoices shall describe the services performed, list all subcontractors used and the amount owed or paid to them, list all suppliers used and the amount owed or paid to them, list the contract amount, list the current invoice amount based on percentage of task complete, list the previous invoice amount, list total invoices to date, and list the contract balance.
- b. In executing the request for payment, CONSULTANT shall attest those subcontractors involved with prior requests for payment have been paid, unless CONSULTANT provides a detailed explanation why such payments have not occurred. CONSULTANT shall also sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status and submit them with each request for payment. CONSULTANT shall require each subcontractor to sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status at the time subcontractor is paid and shall provide a copy of both documents to CITY.
- c. A “Waiver and Release Upon Final Payment” signed by CONSULTANT attesting that all subcontractors, laborers, and material suppliers involved with prior requests for payment have been paid, and that all subcontractors, laborers and material suppliers upon which the final payment is based will be paid immediately unless CONSULTANT provides a detailed explanation why such payments have not occurred or will not occur. CONSULTANT shall also require each subcontractor to sign a “Waiver and Release Upon Final Payment” and a Certificate of Legal Work Status at the time subcontractor is paid its final payment and shall provide a copy of both documents to CITY.

- d. If such liens, claims, security interests or encumbrances remain unsatisfied after payments are made, CONSULTANT shall refund to CITY all money that CITY may be compelled to pay in discharging such liens, including all costs and reasonable attorneys' fees.
- e. All invoices for reimbursable costs shall be taken from the books of account kept by CONSULTANT, and CONSULTANT shall maintain copies of payroll distribution, receipted bills and other documents. CITY shall have the right to review all books and records kept by CONSULTANT and any subcontractors concerning the operation and services performed under this Agreement.
- f. CITY shall withhold payment for any expenditure not substantiated by CONSULTANT'S or subcontractor's books and records.
- g. In the event CITY has made payment for expenditures that are not allowed, as determined by CITY'S audit, CONSULTANT shall reimburse CITY for the amount of the un-allowed expenditures. If additional money is owed to CONSULTANT, the reimbursement may be deducted from the additional money owed.
- h. CITY shall make no payment for any services not specified in this Agreement unless such additional services and the price thereof are agreed to in writing, prior to the time that such additional services are rendered.
- i. Invoices shall be paid to CONSULTANT within thirty (30) days of presentation to CITY.
- j. CITY may withhold 5% of billed amount as retention. Retention held shall be included in the final invoice after the contract is complete.

6. **CHARGES AND EXTRA SERVICE.**

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

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

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

9. **ACCURACY AND COMPLETENESS.**

- a. CONSULTANT has total responsibility for the accuracy and completeness of its investigations, calculations, reports, plans and related designs, specifications and estimates prepared for the PROJECT and shall check all such material accordingly.
- b. The plans will be reviewed by CITY for conformity with PROJECT objectives and compliance with CITY Standards.
- c. Reviews by CITY do NOT include the detailed review or checking of major design components and related details or the accuracy with which such designs are depicted on the plans.
- d. The responsibility for accuracy and completeness remains solely with CONSULTANT and shall be performed consistent with the standard of care.

10. **INDEPENDENT CONTRACTOR.**

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

11. **INSURANCE.**

- a. **GENERAL:** CONSULTANT shall secure and maintain insurance as required by laws and regulations and the terms of this agreement to protect against any liability, loss or expense which occurs or arises as a result of the performance of the services provided pursuant to this

agreement or as changed as provided herein. CONSULTANT'S insurer must be authorized to do business in Utah and must have an A.M. Best rating of A VIII or better at the time this contract is executed.

- b. COMMENCEMENT OF WORK: Neither CONSULTANT, his Suppliers nor any subcontractors shall enter the site of the work or commence work under this contract before CITY has received and accepted Certificate(s) of Insurance and Insurance Endorsements and has issued the Notice to Proceed.
- c. INSURANCE CERTIFICATES AND COVERAGE: Insurance certificates shall be issued on all policies required under this contract and shall be signed by an authorized representative of the insurance company. The insurance certificate or the coverage required shall include the following:
 - i. The name and address of the insured.
 - ii. CITY shall be named as a Certificate Holder.
 - iii. CITY shall be named as an additional primary insured on the General Liability Certificate with CITY listed as non-contributory on the General Liability certificate.
 - iv. The location of the operations to which the insurance applies.
 - v. The number of the policy and the type or types of insurance in force thereunder on the date borne by the certificate.
 - vi. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by the certificate.
 - vii. A statement that all coverage is on an occurrence basis rather than a claims basis except for the Professional Errors and Omissions Malpractice Insurance coverage.
 - viii. A provision that the policy or policies will not be cancelled, denied renewal, or reduced in coverage until at least 30 days after written notice has been received by CITY.
 - ix. Name, address, and telephone number of the insurance company's agent of process in Utah.
 - x. Other information to demonstrate compliance with additional requirements stipulated for the various types of insurance coverage.
- d. COMPENSATION INSURANCE: CONSULTANT shall take out and maintain Worker's Compensation Insurance as required by the Labor Code for all its employees at the site of the work during the life of this contract. Coverage must be provided by a company authorized by the State of Utah to provide Worker's Compensation Insurance. The insurance shall include:
 - i. Insurance certificates shall provide a waiver of subrogation by the carrier to Certificate Holder.
 - ii. CONSULTANT shall require each subcontractor to provide Workers Compensation Insurance for its employees unless such employees are covered by CONSULTANT.
 - iii. In the event any class of employees engaged in hazardous work under this contract is not protected by the Worker's Compensation Statute, CONSULTANT shall provide, and shall cause its subcontractors to provide, special insurance for the protection of such employees not otherwise protected.
- e. COMMERCIAL GENERAL LIABILITY INSURANCE:
 - i. CONSULTANT shall procure and maintain commercial general liability insurance for the duration of the contract against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors. The insurance shall remain in effect during the term of this agreement and such that claims reported beyond the date of substantial completion of this agreement are

- covered and during the warranty period, to the extent that it relates to the activities covered by this Agreement, in such manner and amounts as set forth herein.
- ii. The Insurance Endorsement shall evidence such provisions.
 - iii. The minimum commercial general liability insurance shall be as follows:
 - 1. Comprehensive general liability insurance for injuries, including accidental death, to any one person in any one occurrence in an amount not less than \$1,000,000.00 Dollars.
 - 2. Comprehensive general liability insurance for injuries, including accidental death, to two or more persons in any one occurrence in an amount not less than \$3,000,000.00 Dollars.
 - 3. Broad form property damage insurance in an amount not less than \$300,000.00 Dollars.
 - iv. Such policy shall include each of the following coverages:
 - 1. Comprehensive form.
 - 2. Premises - operations.
 - 3. Explosion and collapse hazard.
 - 4. Underground hazard.
 - 5. Product/completed operations hazard.
 - 6. Contractual insurance.
 - 7. Broad form property damage, including completed operations.
 - 8. Independent contractors for vicarious liability.
 - 9. Personal injury.
 - 10. Cross liability or severability of interest's clause shall be included unless a separate policy covering CITY is provided.
 - f. PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE:
 - i. CONSULTANT shall carry and maintain Professional Liability Errors and Omissions Insurance in an amount not less than \$3,000,000.00 Dollars for all work performed under this Agreement.
 - ii. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors. With respect to General Liability, Professional liability coverage should be maintained for a minimum of five (5) years after contract completion.
 - iii. If Professional Liability coverages are written on a claims-made form:
 - 1. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
 - 2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONSULTANT must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
 - 4. A copy of the policy must be submitted to CITY for review.
 - g. BUSINESS AUTOMOBILE COVERAGE:
 - i. CONSULTANT shall carry and maintain business automobile insurance coverage on each

vehicle used in the performance of the work in an amount not less than \$1,000,000.00 Dollars for one person and \$3,000,000.00 Dollars for more than one person and for property damage resulting from any one occurrence which may arise from the operations of CONSULTANT in performing the work.

- ii. Such business automobile insurance shall include each of the following types:
 1. Comprehensive form, including loading and unloading.
 2. Owned.
 3. Hired.
 4. Non-owned.

12. **INDEMNITY AND LIMITATION.**

- a. CONSULTANT shall indemnify, defend, and hold harmless CITY, its elected officials, officers, employees, and representatives against any and all claims, suits, causes of action, demands, losses, costs, and damages and liability of every kind including but not limited to all fees and charges of attorneys and other professionals and all court or other dispute resolution costs for:
 - i. death or injuries to persons or for loss of or damage to property which directly or indirectly, in whole or in part are caused by, resulting from, or arising out of the intentional, reckless, negligent, or wrongful acts, errors or omissions, or other liability imposed by law of CONSULTANT, its officers, employees, agents, or representatives in the performance of services under this Agreement or any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work;
 - ii. CONSULTANT's failure or refusal, whatever the reason, to pay subcontractors or suppliers for Work performed under the Agreement;
 - iii. claims by any employee of the CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, CONSULTANT'S indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONSULTANT or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts.
- b. CITY shall give CONSULTANT prompt written notice of any such claims or suits filed against CITY arising out of the services provided under this Agreement. CONSULTANT agrees to defend against any claims brought or actions filed against CITY arising out of the services provided under this Agreement. If CITY'S tender of defense, based upon the indemnity provision, is rejected by CONSULTANT or CONSULTANT'S insurer, and CONSULTANT is later found by a court of competent jurisdiction to have been required to indemnify the CITY, then, in addition to any other remedies the CITY may have, CONSULTANT shall pay the CITY'S reasonable costs, expenses and attorney's fees incurred in obtaining such indemnification, defending themselves or enforcing the indemnification provision.
- c. The insurance requirements in this agreement shall not be construed as limiting CONSULTANT'S liability. Irrespective of the requirements for CONSULTANT to carry insurance as provided herein, insolvency, bankruptcy or failure of any insurance company to pay all claims accruing shall not be held to relieve CONSULTANT of any obligations under this agreement.
- d. This section does not apply to a design professional services contract, design professional

services, and design professionals.

13. **DOCUMENTS.**

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

14. **RECORDS.**

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

15. **TERMINATION.**

- a. CITY may terminate this Agreement by providing fourteen (14) days written notice prior to the effective termination date to CONSULTANT.

- b. In the event of such termination, CITY shall pay CONSULTANT for all services actually rendered up to and including the date of termination.
- c. CONSULTANT shall deliver to CITY copies of all drawings, reports, analyses, documents, and investigations, whether completed or not, that were prepared or were being prepared under the provisions of this Agreement.

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

17. **CONFLICT OF INTEREST.**

- a. CONSULTANT certifies that it has disclosed to CITY any actual, apparent or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement.
- b. CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop after the date of execution of this Agreement.
- c. CONSULTANT further agrees to complete any statements of economic interest required by either CITY ordinance or State law.

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

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

| | |
|--|---|
| <p>CITY: City of St. George 175 East 200 North St. George, Utah 84770 Attention: Legal Department Copy: legal@sgcity.org</p> | <p>CONSULTANT: Alpha Engineering Company 43 South 100 East, Suite 100 St. George, Utah, 84770 Attention: Glen E. Carnahan, P.E.</p> |
|--|---|

20. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of Utah. The parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction. The parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened

breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party agree that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government parties.

21. **LEGAL FEES.** Should any party default on any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney's fee including appeals and bankruptcy proceedings. If either party commences legal action to interpret any term of this agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, court costs, and any other costs incurred in connection with such action.
22. **MODIFICATION OF AGREEMENT.** CITY specifically reserves the right to modify or amend this Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work. All modifications shall be in writing and executed by both parties. Each Work Order adopted under this Agreement shall incorporate the terms and conditions of this Agreement and shall constitute a modification to this contract. A Work Order may amend the terms and conditions of this Agreement only as they apply to that particular Work Order and shall not have any general effect on this Agreement.
23. **RESERVED LEGISLATIVE POWERS.** Nothing in this Agreement shall limit the future exercise of the police power by CITY in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement, but which shall not be retroactively applied to or modify this Agreement.
24. **SUCCESSORS AND ASSIGNS.** CONSULTANT shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement without assigning the rights and the responsibilities under this Agreement and without the prior written approval of CITY. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.
25. **NO JOINT VENTURE, PARTNERSHIP OR THIRD-PARTY RIGHTS.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the parties. No term or provision of this Agreement is intended to or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.


26. **INTEGRATION.** This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature between CITY and CONSULTANT and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to this PROJECT.
27. **SEVERABILITY.** If any part or provision of this Agreement shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
28. **CONSTRUCTION.** Each of the parties hereto has had the opportunity to review this agreement with counsel of their choosing and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this agreement.
29. **SURVIVAL.** It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.
30. **HEADINGS.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
31. **COUNTERPARTS.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.
32. **AUTHORITY OF PARTIES.** The parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated and that this Agreement constitutes a valid and binding Agreement.

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

CITY: CITY OF ST. GEORGE

OWNER: ALPHA ENGINEERING COMPANY

Michele Randall, Mayor



Glen E. Carnahan, P.E., President

Attest:

Approved as to form:

Christina Fernandez, City Recorder



43 South 100 East, Suite 100 T 435.628.6500
St George, Utah 84770 F 435.628.6553

alphaengineering.com

June 1, 2022

City of St. George
Attn: Mr. Kade Bringhurst, P.E.
811 East Red Hills Parkway
St. George, Utah 84770

Re: Industrial Park 2 MG Water Tank Replacement

Dear Kade,

It is my understanding the City of St. George is proposing to replace the existing 2 MG water tank in the St. George Industrial Park. An additional water source is being provided to this tank through the East Ridge Pump Station which our office designed in 2017.

We have recently received bids in Toquerville for a 2MG reinforced concrete tank and the average bid price for the reinforced concrete tank only was \$3.6 Million, which is a significant increase over other tanks we have completed in recent years. With some piping modifications and removal of the existing tank we would estimate your tank would be in this range although it is difficult to estimate with the current bidding climate. Since we have recently completed the design of a 2 MG reinforced concrete tank, we feel we can complete the engineering work necessary for the replacement tank at a discount over our normal rates. A normal design fee for the tank design based on ASCE guidelines is around 4.45% of the project cost or \$196,000. Outlined on the following pages is a proposed scope of work to provide professional civil engineering services and the associated cost (Exhibit A) for the design of the tank and pipeline interconnection.

Please let us know if you have any questions regarding this proposal, we appreciate the opportunity to work with you on this project.

Sincerely,

Glen E. Carnahan, P.E.
Alpha Engineering Company

EXHIBIT A - SCOPE OF WORK

CITY OF ST. GEORGE – INDUSTRIAL PARK

2 MG WATER TANK REPLACEMENT PROJECT

ARTICLE 1

DESIGN ENGINEERING SCOPE OF WORK

The general extent of design engineering work to be performed is outlined as follows:

- 1.1 Topographic and Right of Way Survey.** The ENGINEER will complete a topographic and boundary survey of the tank site using a combination of areal drone and gps survey equipment. This will include locating the floor and lid of the existing water tank and pipeline connection points. The ENGINEER will also plot the property ownership for the project.
- 1.2 Preliminary Design.** The ENGINEER will utilize the topographic survey completed in task 1.1 to develop preliminary drawings and cross sections of the tank and site. The ENGINEER will coordinate with the water department to pothole and locate the existing connection points within the site to assist in the vertical design of the connection points. We understand the City will assist with the potholing.
- 1.3 Geotechnical Report.** The ENGINEER will coordinate with Landmark Testing and Engineering to prepare a geotechnical report for the project. We propose to drill 1 boring within the footprint of the tank. The boring will be drilled with a bottom-bit, down-the-hole type, track-mounted drill rig. The boring will be to determine depth of bedrock and soil below the elevation of the tank. The borings will be drilled to a depth of 10 to 15 feet below the estimated bottom of tank elevation, estimated to be 30-35 feet below the existing ground surface. Samples of cuttings will be obtained to observe bedrock/soil type. If soils are encountered in the boring below the bottom of tank elevation, relatively undisturbed samples may be obtained. A continuous log of the boring will be maintained in the field. The boring will be backfilled immediately upon completion of sampling and logging. Depending on subsurface conditions encountered, laboratory testing will be performed to evaluate soil properties and to provide data for earthwork and foundation design. Testing will include mechanical gradations and Atterberg Limits to assist in soil classification and for correlations with design parameters, collapse/swell tests to assess potential volume change of soils upon wetting, unit weight and moisture content for correlation with design parameters, and corrosivity suite for corrosion potential of soils and bedrock to concrete and steel.

The geotechnical report will make recommendations for subgrade preparation and treatment, excavation requirements, the suitability of on-site materials, recommended compaction requirements and cement type.

- 1.4 Construction Plans and Specifications.** Final construction plans and specifications will be prepared for the tank including cross sections, site plan, grading plan, structural details, piping connection plan with appropriate details. The plans will include tank backfill and site drainage plans and cross sections including final grading and restoration of the site. The plans and specifications will be submitted to the OWNER and the Utah State Department of Environmental Quality, Division of Drinking Water for review.
- 1.5 Make Revisions/Additions.** After receiving comments from the DEQ and City of St. George, the construction drawings, Engineer's estimate, and contract documents will be revised accordingly.
- 1.6 Assemble Bid Package.** The revised construction drawings, Engineer's estimate, and contract documents will be assembled and submitted to the City of St. George and DEQ for final review and approval. Upon receiving final approval of the plans and specifications, the Bid package will be put together for bidding the project.

ARTICLE II

CONSTRUCTION ENGINEERING SCOPE OF WORK

The general extent of construction engineering work to be performed is outlined as follows:

- 2.1 Bid Advertisement.** The ENGINEER will prepare for the OWNER an advertisement for bids for the water tank and associated piping connections. The ENGINEER will also provide copies of the drawings, specifications, and contract documents required by prospective bidders, material suppliers, and other interested parties, but may charge for the actual cost of such copies.
- 2.2 Pre-Bid Meeting.** The ENGINEER will invite all potential bidders and conduct a pre-bid meeting. Elements of the contract will be discussed and presented to potential bidders to aid them in preparation of their bids.
- 2.3 Bid Opening.** The ENGINEER will attend the bid opening and tabulate the bid proposals and shall make an analysis of the bids and make recommendations for awarding contracts for construction.
- 2.4 Contract Award.** Upon award of the Contract, the ENGINEER will furnish to the OWNER, five (5) sets of contract plans and specifications for execution of the contract.
- 2.5 Preconstruction Conference.** The ENGINEER shall provide notification for and conduct a Preconstruction Conference for the project prior to beginning work. Invitations to the Preconstruction Conference shall be issued to the OWNER, Contractor, and others having specific interest in the project.

- 2.6 Construction Staking.** The ENGINEER will provide construction staking for the project including construction limits, water tank and critical connection points for piping.
- 2.7 Contractor Partial Payments.** The ENGINEER will review the Contractor’s applications for progress and final payment and, when approved, submit the same to the OWNER for payment.
- 2.8 Construction Observation & Testing.** The ENGINEER will provide part time observation of the work to ascertain satisfactory completion of work performed. In addition, periodic testing including proctors to determine optimum density, density tests, gradations, and concrete testing will be performed. The ENGINEER does not guarantee the performance of the Contractor(s) by the ENGINEER's performance of said periodic construction observations. The ENGINEER's undertaking hereunder shall not relieve the Contractor of the obligation to perform the work in conformity with the drawings and specifications and in a workmanlike manner; shall not make the ENGINEER an insurer of the Contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner. We understand the OWNER will provide inspectors to insure performance of the contractors.
- 2.9 Substantial Completion.** The ENGINEER will make a final review prior to the issuance of the statement of substantial completion of all construction and submit a written report to the OWNER. Prior to submitting the final pay estimate, the ENGINEER shall submit a statement of satisfactory completion to and obtain the written acceptance of the facility from the OWNER.
- 2.10 Record Drawings.** The ENGINEER will provide the OWNER with one set of reproducible record drawings and two sets of prints to the OWNER. Such drawings will be based upon construction records provided by the Contractor during construction and reviewed by the ENGINEER and from the ENGINEER's construction data.

ARTICLE III

BASIS OF COMPENSATION

The OWNER agrees to pay compensation to the ENGINEER for work performed on the project as specified below:

- 3.1 Design Fee.** For all design engineering services as outlined in Article 1, "Design Engineering Scope of Work", the ENGINEER shall be compensated the fixed fee of: Ninety Six Thousand Eight Hundred and Eight dollars, \$96,808.00. The design fee has been broken down for the different aspects of the project as follows:
- | | | |
|-------|--|-------------|
| 3.1.1 | Topographic and Right-of-Way Survey..... | \$6,606.00 |
| 3.1.2 | Preliminary Design | \$12,356.00 |
| 3.1.3 | Geotechnical Investigation..... | \$8,186.00 |

| | | |
|-------|---|--------------------|
| 3.1.4 | Construction Plans & Specifications | \$53,552.00 |
| 3.1.5 | Make Revisions/Additions..... | \$5,216.00 |
| 3.1.6 | Assemble Bid Package..... | <u>\$10,862.00</u> |
| | Total Design | \$96,808.00 |

3.2 Construction Engineering Fee. For all construction engineering services as outlined in Article 2, "Construction Engineering Scope of Work", the ENGINEER shall be paid on an hourly rate basis in accordance with our *Standard Rate Schedule* (Attachment "A"). The following amounts are estimated assuming a 16-week (5 days/week for 4 months) construction period with part time construction observation.

Construction Management

| Item | Rate | Quantity | Cost |
|--|----------|----------|--------------------|
| Principal Engineer, P.E. (1 hr/wk) | \$197 | 16 | \$3,152.00 |
| Senior Engineer I, P.E. (6 hrs/wk) | \$145 | 96 | \$13,920.00 |
| Project Engineer II, P.E. (8 hrs/wk) | \$132 | 128 | \$16,896.00 |
| Project Engineer E.I.T. (4 hrs/wk) | \$97 | 64 | \$6,208.00 |
| Land Surveyor, L.S. | \$135 | 12 | \$1,620.00 |
| Survey Crew Chief w/ GPS | \$134 | 36 | \$4,824.00 |
| Design Technician (Record Drawings) | \$86 | 40 | \$3,440.00 |
| Direct Costs (Soils & Concrete Testing etc.) | \$42,340 | 1 | \$42,340.00 |
| Total Estimated Construction Management | | | \$92,400.00 |

3.3 Additional Services. Additional work and reproduction expenses will be invoiced per our *Standard Rate Schedule* (Attachment "A"). No extra work will be performed without the consent of the OWNER.

ATTACHMENT “A”

**ALPHA ENGINEERING COMPANY
STANDARD RATE SCHEDULE**

January 2022

Principal Engineer (PE): \$197.00 / hour

Senior Engineer II (PE): \$163.00 / hour

Senior Engineer I (PE): \$145.00 / hour

Project Engineer II (PE): \$132.00 / hour

Project Engineer I (PE): \$124.00 / hour

Project Engineer (PE): \$109.00 / hour

Engineer (EIT): \$97.00 / hour

Head Design Technician: \$86.00 / hour

Design Technician: \$76.00 / hour

Senior Licensed Surveyor: \$135.00 / hour

Licensed Survey Crew Chief: \$98.00 / hour

Survey Crew Member: \$70.00 / hour

GPS Survey Equipment: \$36.00 / hour

Inspector: \$72.00 / hour

Accountant: \$83.00 / hour

Secretary: \$54.00 / hour

Type I Survey Monuments: \$505.00 each

Type II Survey Monuments: \$156.00 each

Mileage: \$0.65 / mile

Large Format Prints / Copies: 22x34 \$1.50 / sheet
 30x42 \$2.00 / sheet

Photocopies: 8.5x11 (b&w) \$0.11 / page
 8.5x11 (color) \$0.25 / page

*Other expenses will be billed at cost plus 10%.

*Rates will be adjusted periodically to reflect inflation and cost changes.



Agenda Date: 08/25/2022

Agenda Item Number: 1C

Subject:

Consider approval of a Professional Services Agreement with Bowen, Collins, and Associates for the design and engineering services of the Divario and Stone Cliffs Water Storage Tanks.

Item at-a-glance:

Staff Contact: Water Services Dept

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

Divario and Stone Cliffs areas

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

The City's Culinary Water and Secondary Irrigation Master Plans have identified the need for a culinary water storage tank in the Divario development area and a secondary irrigation storage tank in the area of Stone Cliff. The City has already secured the tank site in Stone Cliff and is working with the Divario developer to secure a site in the Divario development. This Professional Services Agreement with Bowen and Collins is for the engineering design services for those tanks. Staff recommends approval.

Staff Narrative (need/purpose):

The water storage tanks are needed to support development in both the Stone Cliffs and Divario areas. While these tanks will be located with the Stone Cliffs and Divario developments, they will service other areas surrounding these specific developments. The tanks are identified in the City's Water Capital Facilities Plan and are included in the City's Impact Fee Analysis.

Name of Legal Dept approver: Jami Brakin

Budget Impact:

Cost for the agenda item: \$584,624

Amount approved in current FY budget for item: \$5.6M

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

N/A

Description of funding source:

Impact Fees and User Rates

Recommendation (Include any conditions):

Water Services Staff recommends approval of the Professional Services Agreement



**CITY OF ST. GEORGE PROFESSIONAL SERVICES AGREEMENT
FOR CULINARY WATER AND IRRIGATION TANKS WITH BOWEN COLLINS &
ASSOCIATES, INC.**

This Agreement is made and entered into this _____, by and between the City of St. George, a municipal corporation, with offices at 175 East 200 North, St. George, Utah 84770 (hereinafter called the “CITY”), and Bowen Collins & Associates, Inc., with offices at 20 North Main Suite No. 107, St. George, Utah 84790 (hereinafter called “CONSULTANT”).

WITNESSETH THAT:

WHEREAS, CITY desires professional services to be performed and has solicited CONSULTANT to provide (engineering) services including (design, bidding and limited construction management) for the Culinary Water and Irrigation Tanks Project (hereinafter called the PROJECT); and

WHEREAS, CONSULTANT has submitted a proposal for the PROJECT; and

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

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

1. **EMPLOYMENT OF CONSULTANT.**

- a. CONSULTANT is a professional licensed by the State of Utah and the City of St. George. CONSULTANT has all licenses, permits, and approvals that are legally required for CONSULTANT to practice its profession and shall keep them in effect at all times during the term of this Agreement.
- b. CONSULTANT states that it has the necessary knowledge, experience, abilities, skills and resources to perform its obligations under this Agreement and agrees to perform its obligations under this Agreement in a professional manner, consistent with prevailing industry standards and practices as observed by competent practitioners of the profession in which CONSULTANT and its subcontractors or agents are engaged.
- c. CONSULTANT certifies that it does not and will not during the performance of this contract knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. CONSULTANT agrees to require all subcontractors at the time they are hired for this project to sign a Certification of Legal Work Status and submit the Certification to CITY prior to any work being performed by the subcontractors. CONSULTANT agrees to produce, at CITY’S request, documents to verify compliance with applicable State and Federal laws. If CONSULTANT knowingly employs workers or subcontractors in violation of 8 USC § 1324a, such violation shall be cause for unilateral cancellation of the contract between CONSULTANT and CITY. In addition, CONSULTANT may be suspended from participating in future projects with CITY for a period of one (1) year. In the event this contract is terminated due to a violation of 8 USC § 1324a by CONSULTANT or a

subcontractor of CONSULTANT, CONSULTANT shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by CITY as well as attorney fees. For purposes of compliance, CITY requires CONSULTANT and subcontractors to use E-Verify or other federally accepted forms of verification to verify the employment eligibility of all employees as allowed by law and the E-Verify procedures. CONSULTANT and subcontractors must maintain authorized documentation of the verification.

- d. CONSULTANT shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City or the operations or procedures of CITY without the prior written consent of CITY.
- e. CONSULTANT further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.
- f. CONSULTANT, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, sexual orientation, gender identity, disability or marital status in its employment practices.
- g. CONSULTANT expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve CONSULTANT from any obligation to comply with all applicable requirements of CITY during the term of this Agreement including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of CITY, except as modified or waived in this Agreement.
- h. CONSULTANT shall comply with all applicable federal, state, and local laws, regulations, and ordinances that affect those employees or those engaged by CONSULTANT on the PROJECT, and will procure all necessary licenses, permits and insurance required.
- i. CITY acknowledges that CONSULTANT may employ various specialized subcontractors for up to 15% of the services provide herein. CONSULTANT shall give written notice to CITY at least seven (7) days prior to CONSULTANT's employment of the subcontractors to perform portions of the work provided for in this Agreement. It shall be solely CONSULTANT's responsibility to ensure that any of CONSULTANT'S subcontractors perform in compliance with the terms of this Agreement. Subcontractors may not be changed without ten (10) days prior written notice to CITY.

2. **PROJECT SERVICES DESCRIPTION.**

- a. CONSULTANT will provide the services covered by this Agreement as described in the attached Scope of Work (Exhibit A) which is made a part of this Agreement by this reference. CITY may at any time, as the need arises, order changes within the scope of the services without invalidating the Agreement. If such changes increase or decrease the amount due under the Agreement, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.
- b. CONSULTANT shall furnish all of the materials, supplies, tools, transportation, equipment, labor, subcontractor services and other services necessary for the completion of the work described in Exhibit A.
- c. CONSULTANT shall provide services in compliance with all applicable requirements of federal, state, and local laws, codes, rules, regulations, ordinances, and standards.

3. **TERM OF AGREEMENT.**

- a. This Agreement shall be effective as of the date executed by all parties and shall continue until services provided for this Agreement have been performed unless otherwise terminated as set forth in this Agreement.
- b. CONSULTANT agrees to perform services as expeditiously as is consistent with professional skill and care and the orderly progress of the PROJECT. CONSULTANT shall perform the services in a timely manner according to the schedule approved by CITY.
- c. CONSULTANT shall perform its services upon Notice to Proceed from CITY and in accordance with the schedule approved by CITY. In the event that performance of its services is delayed by causes beyond the reasonable control of CONSULTANT, and without the fault or negligence of CONSULTANT, the time for the performance of the services shall be equitably adjusted by written amendment to reflect the extent of such delay. CONSULTANT shall provide CITY with written notice of delay, including a description of the delay and the steps contemplated or actually taken by CONSULTANT to mitigate the effect of such delay.

4. **COMPENSATION**

For the performance of the services and completion of PROJECT set forth herein, CITY shall reimburse CONSULTANT as set out in the Contract Documents, not to exceed the amounts listed in Exhibit .

5. **INVOICING, PAYMENT, NOTICES.**

- a. CONSULTANT shall submit invoices, no more frequently than monthly, for the services rendered during the preceding period; invoices shall describe the services performed, list all subcontractors used and the amount owed or paid to them, list all suppliers used and the amount owed or paid to them, list the contract amount, list the current invoice amount based on percentage of task complete, list the previous invoice amount, list total invoices to date, and list the contract balance.
- b. In executing the request for payment, CONSULTANT shall attest those subcontractors involved with prior requests for payment have been paid, unless CONSULTANT provides a detailed explanation why such payments have not occurred. CONSULTANT shall also sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status and submit them with each request for payment. CONSULTANT shall require each subcontractor to sign a “Conditional Waiver and Release Upon Progress Payment” and a Certificate of Legal Work Status at the time subcontractor is paid and shall provide a copy of both documents to CITY.
- c. A “Waiver and Release Upon Final Payment” signed by CONSULTANT attesting that all subcontractors, laborers, and material suppliers involved with prior requests for payment have been paid, and that all subcontractors, laborers and material suppliers upon which the final payment is based will be paid immediately unless CONSULTANT provides a detailed explanation why such payments have not occurred or will not occur. CONSULTANT shall also require each subcontractor to sign a “Waiver and Release Upon Final Payment” and a Certificate of Legal Work Status at the time subcontractor is paid its final payment and shall provide a copy of both documents to CITY.
- d. If such liens, claims, security interests or encumbrances remain unsatisfied after payments are made, CONSULTANT shall refund to CITY all money that CITY may be compelled to pay in discharging such liens, including all costs and reasonable attorneys' fees.

- e. All invoices for reimbursable costs shall be taken from the books of account kept by CONSULTANT, and CONSULTANT shall maintain copies of payroll distribution, receipted bills and other documents. CITY shall have the right to review all books and records kept by CONSULTANT and any subcontractors concerning the operation and services performed under this Agreement.
- f. CITY shall withhold payment for any expenditure not substantiated by CONSULTANT'S or subcontractor's books and records.
- g. In the event CITY has made payment for expenditures that are not allowed, as determined by CITY'S audit, CONSULTANT shall reimburse CITY for the amount of the un-allowed expenditures. If additional money is owed to CONSULTANT, the reimbursement may be deducted from the additional money owed.
- h. CITY shall make no payment for any services not specified in this Agreement unless such additional services and the price thereof are agreed to in writing, prior to the time that such additional services are rendered.
- i. Invoices shall be paid to CONSULTANT within thirty (30) days of presentation to CITY.
- j. CITY may withhold 5% of billed amount as retention. Retention held shall be included in the final invoice after the contract is complete.

6. **CHARGES AND EXTRA SERVICE.**

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

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

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

9. **ACCURACY AND COMPLETENESS.**

- a. CONSULTANT has total responsibility for the accuracy and completeness of its

investigations, calculations, reports, plans and related designs, specifications and estimates prepared for the PROJECT and shall check all such material accordingly.

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

10. **INDEPENDENT CONTRACTOR.**

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

11. **INSURANCE.**

- a. **GENERAL:** CONSULTANT shall secure and maintain insurance as required by laws and regulations and the terms of this agreement to protect against any liability, loss or expense which occurs or arises as a result of the performance of the services provided pursuant to this agreement or as changed as provided herein. CONSULTANT'S insurer must be authorized to do business in Utah and must have an A.M. Best rating of A VIII or better at the time this contract is executed.

- b. **COMMENCEMENT OF WORK:** Neither CONSULTANT, his Suppliers nor any subcontractors shall enter the site of the work or commence work under this contract before CITY has received and accepted Certificate(s) of Insurance and Insurance Endorsements and has issued the Notice to Proceed.
- c. **INSURANCE CERTIFICATES AND COVERAGE:** Insurance certificates shall be issued on all policies required under this contract and shall be signed by an authorized representative of the insurance company. The insurance certificate or the coverage required shall include the following:
 - i. The name and address of the insured.
 - ii. CITY shall be named as a Certificate Holder.
 - iii. CITY shall be named as an additional primary insured on the General Liability Certificate with CITY listed as non-contributory on the General Liability certificate.
 - iv. The location of the operations to which the insurance applies.
 - v. The number of the policy and the type or types of insurance in force thereunder on the date borne by the certificate.
 - vi. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by the certificate.
 - vii. A statement that all coverage is on an occurrence basis rather than a claims basis except for the Professional Errors and Omissions Malpractice Insurance coverage.
 - viii. A provision that the policy or policies will not be cancelled, denied renewal, or reduced in coverage until at least 30 days after written notice has been received by CITY.
 - ix. Name, address, and telephone number of the insurance company's agent of process in Utah.
 - x. Other information to demonstrate compliance with additional requirements stipulated for the various types of insurance coverage.
- d. **COMPENSATION INSURANCE:** CONSULTANT shall take out and maintain Worker's Compensation Insurance as required by the Labor Code for all its employees at the site of the work during the life of this contract. Coverage must be provided by a company authorized by the State of Utah to provide Worker's Compensation Insurance. The insurance shall include:
 - i. Insurance certificates shall provide a waiver of subrogation by the carrier to Certificate Holder.
 - ii. CONSULTANT shall require each subcontractor to provide Workers Compensation Insurance for its employees unless such employees are covered by CONSULTANT.
 - iii. In the event any class of employees engaged in hazardous work under this contract is not protected by the Worker's Compensation Statute, CONSULTANT shall provide, and shall cause its subcontractors to provide, special insurance for the protection of such employees not otherwise protected.
- e. **COMMERCIAL GENERAL LIABILITY INSURANCE:**
 - i. CONSULTANT shall procure and maintain commercial general liability insurance for the duration of the contract against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors. The insurance shall remain in effect during the term of this agreement and such that claims reported beyond the date of substantial completion of this agreement are covered and during the warranty period, to the extent that it relates to the activities covered by this Agreement, in such manner and amounts as set forth herein.
 - ii. The Insurance Endorsement shall evidence such provisions.

- iii. The minimum commercial general liability insurance shall be as follows:
 - 1. Comprehensive general liability insurance for injuries, including accidental death, to any one person in any one occurrence in an amount not less than \$1,000,000.00 Dollars.
 - 2. Comprehensive general liability insurance for injuries, including accidental death, to two or more persons in any one occurrence in an amount not less than \$3,000,000.00 Dollars.
 - 3. Broad form property damage insurance in an amount not less than \$300,000.00 Dollars.
- iv. Such policy shall include each of the following coverages:
 - 1. Comprehensive form.
 - 2. Premises - operations.
 - 3. Explosion and collapse hazard.
 - 4. Underground hazard.
 - 5. Product/completed operations hazard.
 - 6. Contractual insurance.
 - 7. Broad form property damage, including completed operations.
 - 8. Independent contractors for vicarious liability.
 - 9. Personal injury.
 - 10. Cross liability or severability of interest's clause shall be included unless a separate policy covering CITY is provided.
- f. **PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE:**
 - i. CONSULTANT shall carry and maintain Professional Liability Errors and Omissions Insurance in an amount not less than \$3,000,000.00 Dollars for all work performed under this Agreement.
 - ii. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors. With respect to General Liability, Professional liability coverage should be maintained for a minimum of five (5) years after contract completion.
 - iii. If Professional Liability coverages are written on a claims-made form:
 - 1. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
 - 2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - 3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONSULTANT must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
 - 4. A copy of the policy must be submitted to CITY for review.
- g. **BUSINESS AUTOMOBILE COVERAGE:**
 - i. CONSULTANT shall carry and maintain business automobile insurance coverage on each vehicle used in the performance of the work in an amount not less than \$1,000,000.00 Dollars for one person and \$3,000,000.00 Dollars for more than one person and for property damage resulting from any one occurrence which may arise from the operations

- of CONSULTANT in performing the work.
- ii. Such business automobile insurance shall include each of the following types:
 1. Comprehensive form, including loading and unloading.
 2. Owned.
 3. Hired.
 4. Non-owned.

12. **INDEMNITY AND LIMITATION.**

- a. CONSULTANT shall indemnify, defend, and hold harmless CITY, its elected officials, officers, employees, and representatives against any and all claims, suits, causes of action, demands, losses, costs, and damages and liability of every kind including but not limited to all fees and charges of attorneys and other professionals and all court or other dispute resolution costs for:
 - i. death or injuries to persons or for loss of or damage to property which directly or indirectly, in whole or in part are caused by, resulting from, or arising out of the intentional, reckless, negligent, or wrongful acts, errors or omissions, or other liability imposed by law of CONSULTANT, its officers, employees, agents, or representatives in the performance of services under this Agreement or any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work;
 - ii. CONSULTANT's failure or refusal, whatever the reason, to pay subcontractors or suppliers for Work performed under the Agreement;
 - iii. claims by any employee of the CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, CONSULTANT'S indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONSULTANT or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts.
- b. CITY shall give CONSULTANT prompt written notice of any such claims or suits filed against CITY arising out of the services provided under this Agreement. CONSULTANT agrees to defend against any claims brought or actions filed against CITY arising out of the services provided under this Agreement. If CITY'S tender of defense, based upon the indemnity provision, is rejected by CONSULTANT or CONSULTANT'S insurer, and CONSULTANT is later found by a court of competent jurisdiction to have been required to indemnify the CITY, then, in addition to any other remedies the CITY may have, CONSULTANT shall pay the CITY'S reasonable costs, expenses and attorney's fees incurred in obtaining such indemnification, defending themselves or enforcing the indemnification provision.
- c. The insurance requirements in this agreement shall not be construed as limiting CONSULTANT'S liability. Irrespective of the requirements for CONSULTANT to carry insurance as provided herein, insolvency, bankruptcy or failure of any insurance company to pay all claims accruing shall not be held to relieve CONSULTANT of any obligations under this agreement.
- d. This section does not apply to a design professional services contract, design professional services, and design professionals.

13. **DOCUMENTS.**

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

14. **RECORDS.**

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

15. **TERMINATION.**

- a. CITY may terminate this Agreement by providing fourteen (14) days written notice prior to the effective termination date to CONSULTANT.
- b. In the event of such termination, CITY shall pay CONSULTANT for all services actually rendered up to and including the date of termination.

c. CONSULTANT shall deliver to CITY copies of all drawings, reports, analyses, documents, and investigations, whether completed or not, that were prepared or were being prepared under the provisions of this Agreement.

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

17. **CONFLICT OF INTEREST.**

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

b. CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop after the date of execution of this Agreement.

c. CONSULTANT further agrees to complete any statements of economic interest required by either CITY ordinance or State law.

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

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

| | | | |
|------------|--|-------------|---|
| CITY: | City of St. George 175 East 200 North St. George, Utah 84770 | CONSULTANT: | Bowen Collins & Associates 20 North Main Suite 197 St. George, Utah 84770 |
| Attention: | Legal Department | Attention: | Todd Olsen |
| Copy: | legal@sgcity.org | | |

20. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of Utah. The parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction. The parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other

rights and remedies. Each party agree that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government parties.

21. **LEGAL FEES.** Should any party default on any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney's fee including appeals and bankruptcy proceedings. If either party commences legal action to interpret any term of this agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, court costs, and any other costs incurred in connection with such action.
22. **MODIFICATION OF AGREEMENT.** CITY specifically reserves the right to modify or amend this Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work. All modifications shall be in writing and executed by both parties. Each Work Order adopted under this Agreement shall incorporate the terms and conditions of this Agreement and shall constitute a modification to this contract. A Work Order may amend the terms and conditions of this Agreement only as they apply to that particular Work Order and shall not have any general effect on this Agreement.
23. **RESERVED LEGISLATIVE POWERS.** Nothing in this Agreement shall limit the future exercise of the police power by CITY in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement, but which shall not be retroactively applied to or modify this Agreement.
24. **SUCCESSORS AND ASSIGNS.** CONSULTANT shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement without assigning the rights and the responsibilities under this Agreement and without the prior written approval of CITY. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.
25. **NO JOINT VENTURE, PARTNERSHIP OR THIRD-PARTY RIGHTS.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the parties. No term or provision of this Agreement is intended to or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
26. **INTEGRATION.** This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature between CITY and CONSULTANT and supersedes and replaces all terms and conditions

of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to this PROJECT.

27. **SEVERABILITY.** If any part or provision of this Agreement shall be determined to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
28. **CONSTRUCTION.** Each of the parties hereto has had the opportunity to review this agreement with counsel of their choosing and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this agreement.
29. **SURVIVAL.** It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.
30. **HEADINGS.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
31. **COUNTERPARTS.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.
32. **AUTHORITY OF PARTIES.** The parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated and that this Agreement constitutes a valid and binding Agreement.

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

CITY: CITY OF ST. GEORGE

OWNER: COMPANY NAME

Michele Randall, Mayor



Todd Olsen, Principal

Attest:

Approved as to form:

Christina Fernandez, City Recorder



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/12/2022

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

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

| | |
|--|--|
| PRODUCER American Insurance & Investment Corp. 448 South 400 East Salt Lake City, UT 84111 | CONTACT NAME: Ashley Gallaher PHONE (A/C, No, Ext): (801) 364-3434 625 FAX (A/C, No): (801) 355-5234 E-MAIL ADDRESS: Ashley.Gallaher@american-ins.com |
| | INSURER(S) AFFORDING COVERAGE |
| INSURED Bowen Collins & Associates Michelle Skousen 154 East 14000 South Draper, UT 84020 | INSURER A : Charter Oak Fire Ins Co 25615 |
| | INSURER B : Phoenix Insurance Company 25623 |
| | INSURER C : Travelers Indemnity Company 25658 |
| | INSURER D : XL Specialty Insurance Company 37885 |
| | INSURER E : |
| | INSURER F : |

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|---------------|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER: | X | | 6803J161762 | 8/4/2021 | 8/4/2022 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$ |
| B | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY | | | BA9R374578 | 8/4/2021 | 8/4/2022 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| C | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 | | | CUP6766Y453 | 8/4/2021 | 8/4/2022 | EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ |
| C | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | X | UB4S013224 | 8/4/2021 | 8/4/2022 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| D | Prof Liab Claim Made | | | DPR9981606 | 8/4/2021 | 8/4/2022 | Per Claim 5,000,000 |
| D | Retro Date 7/01/1997 | | | DPR9981606 | 8/4/2021 | 8/4/2022 | Aggregate 5,000,000 |

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

Project: Culinary Water and Irrigation Tank Projects

The City of St. George is listed as an additional insured with respects to the General Liability as per the contract. A Waiver of subrogation applies to the Workers Compensation Policy. The General Liability is primary and Non-Contributory. A 30 day notice of cancellation applies with the exception of nonpayment of Premium which is 10 days.

CERTIFICATE HOLDER

CANCELLATION

| | |
|---|---|
| City of St. George 811 East Red Hills Parkway Saint George, UT 84770 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
| | AUTHORIZED REPRESENTATIVE |

EXHIBIT A



20 NORTH MAIN, SUITE 107 • ST. GEORGE, UTAH 84770
TEL: 435.656.3299

March 28, 2022

Kade Bringhurst, P.E.
Special Projects Manager
City of St. George Water Services
811 East Red Hills Parkway
St. George, Utah 84770
Sent via email: kade.bringhurst@sgcity.org

Subject: Proposed Scope of Work, Schedule, and Fee for the City of St. George Culinary Water and Irrigation Tank Projects

Dear Kade:

Per your request, Bowen Collins & Associates (BC&A) has developed a scope of work, schedule, and fee to provide engineering services associated with design, bidding, and limited construction management services for a new estimated 3.5 million gallon (MG) culinary water tank near the Divario Development on the west side of the City of St. George and a new estimated 1.5 MG irrigation water tank in the Stonecliff Development in central St. George.

The purpose of these two tanks is to provide critical storage for both the culinary water and irrigation systems for fast-growing areas of the City.

We propose to complete the following tasks to accomplish the City's objectives for these two projects.

SCOPE OF SERVICES

PHASE I: PRELIMINARY DESIGN. BC&A will provide preliminary design services including the following tasks:

1.1: Progress Meetings. We will prepare for and attend a project kickoff meeting with City staff, a preliminary design progress meeting, and a review meeting at the completion of the Preliminary Design phase.

1.2: Collect and Review Existing Information. BC&A will collect and review existing information relevant to the two new tanks. This information includes previously completed hydraulic analysis, information regarding existing pressure zones, site information including aerial photographs, and any previous studies. It is assumed that if there are any other water/irrigation system master plans by others, these will be provided to BC&A by the City. We will also work with the City to obtain information regarding pipeline designs for connections and other information relevant to the project.

1.3: Geotechnical Evaluation. Our geotechnical investigation plan has been developed considering guidance from ACI 372R-03 Appendix A and ASCE 7-16. At the Divario Tank we propose to drill one boring to depth sufficient to determine the seismic site classification and two other borings to a depth of 30 ft. At the Stonecliff tank we propose a single boring to depth sufficient to determine the seismic site classification and a second boring to a depth of 20 ft. Subsurface investigation sampling will be collected at approximately three to five-foot intervals, which will be logged and samples classified. Laboratory testing will be performed on these samples including

classification tests, unconfined compression, consolidation tests, pH, resistivity, sulfate, and chloride. The results of this investigation will be documented in a report which will contain the following information: 1) geological and existing site conditions, 2) subsurface soils and water conditions, 3) foundation considerations and recommendations, 4) site preparation and compacted fill requirements, and 5) results of field and laboratory tests.

1.4: Site Survey. We will provide a topographic survey of the site sufficient to develop 1-foot contours for design. The survey will include topography as well as all existing surface features and utility location markings. We will also use detailed aerial photography for the site available from the County or the State of Utah AGRC. For the Divario Tank site it has been assumed that the field topographic survey will be completed after the site has been graded by the developer. It has also been assumed that the City has already negotiated the property acquisition for both sites and no additional right-of-way surveys or property negotiation will be required for this project.

1.5: Preliminary Design Report. We will summarize the results of Tasks 1.1 through 1.4 and all other general design criteria for the new tank in a Preliminary Design Report. This will include an evaluation of the hydraulics of these two tanks and confirmation of floor elevation and high-water levels, an evaluation of recommended tank structural types, site plan evaluation for the new tanks, yard piping layout, site access, and potential staging and storage areas. The report will include conceptual design drawings for site layout, tank structural layout, yard piping, and site access and grading. The report will also include conceptual cost estimates. Draft copies of the report will be provided to the City for review in digital (PDF) format. We will meet with City staff, incorporate review comments in a final Preliminary Design Report, and provide digital copies to the City.

PHASE II: FINAL DESIGN AND PERMITTING. BC&A will provide final detailed design services for the project. Tasks will include:

2.1: Progress and Review Meetings. We will prepare for and attend up to four regular progress meetings to coordinate the design of the project with City staff. We will also prepare for and attend up to six Joint Utility Committee (JUC) meetings to review the utility design with the utility companies. We will also provide digital copies of draft drawings and specifications for review by the City at the 60- and 90-percent stages of design.

2.2: Utilities Investigation. We will conduct a thorough investigation of existing utilities at the sites based on available records from the City and local utilities, and will include this information on design drawings. For the purpose of this proposal, it is assumed the City will complete any needed potholing for existing utilities.

2.3: Tank Structural Design. BC&A will design the new tanks using the preferred structural type identified in preliminary design. The structural design will account for seismic and geotechnical considerations.

2.4: Civil Design. BC&A will provide the civil design including: design of yard piping improvements for the two sites to connect inlet, outlet, overflow and drain piping with the planned development utilities; one drain collection vault for the tank drain and structural underdrain system; hydraulic analyses will be performed to size inlet, outlet, drain and overflow piping; and design of construction and final grading improvements along with accounting for construction and maintenance access to both sites.

2.5: Electrical Design. We will provide the electrical design for the tanks and appurtenances. This electrical design will include providing the plumbing for the level transducer, hatch alarms, and

mixers. The City will provide power to the sites and will complete the remaining electrical and controls design.

2.6: Technical Specifications. We will develop all technical specifications for the project in accordance with City standards, State Division of Drinking Water (DDW) rules, and other applicable regulations. We will also work with the City to estimate the construction schedule for the project and to identify shutdown periods and operating procedures for making connections to the existing pipelines. These construction and schedule constraints will be incorporated in a technical specification included in the contract documents.

2.7: Cost Estimate. BC&A will provide a construction cost estimate for the project at the final design phase.

2.8: Utah State Division of Drinking Water Construction Permit. We will submit final plans and specifications for the Divario Tank to the State DDW for review and will address any comments from the State needed to obtain a Construction Permit.

2.9: Contractor Construction Permits. In the technical specifications, BC&A will identify permits required for construction, and will identify the permits that will be paid for by the City and by the Contractor. BC&A will also assist the City by providing the information and calculations to obtain a Building Permit. These permits will be obtained by the contractor as part of the construction phase of the project.

2.10: Final Bid Documents. We will provide the City with electronic copies of final plans and specifications for bidding. Drawings will be 11x17 (half-size) format. We have assumed that the final design will include up to 44 drawings for the Divario Tank and 41 drawings for the Stonecliff Tank as shown in Attachments A and B. We will coordinate closely with City to finalize dates for distribution of documents and the bid period schedule. We will prepare bid and contract (i.e. front end) documents for the project using the City's standard forms for bid, bonds, agreement, and general conditions. We will supplement the contract documents and City's specifications with the technical specifications developed for the project.

PHASE III: BID AND CONSTRUCTION PERIOD SERVICES. BC&A will provide the bid and limited construction period services for both projects. It has been assumed for budgetary purposes that the construction of the tanks will be completed simultaneously. Tasks associated with these phases of both projects will include:

3.1: Prequalification of Contractors. We will prepare prequalification documents and assist the City in advertising for prequalification of general contractors for construction of the tank projects. We will also assist the City in evaluating proposals received and will recommend a list of prequalified contractors for bidding.

3.2: Bid Period Services. We will respond to questions during the bid period, conduct a pre-bid meeting and site visit, prepare any needed addenda, attend the bid opening, prepare a bid tabulation, and provide a written recommendation to the City for award of the construction contract.

3.3: Construction Management and Submittal Review. Our project manager will review contractor payments, review submittals, respond to contractor RFIs, prepare needed change orders, or field orders, and collect required close-out documentation from the contractor at the end of the project.

3.4: Construction Progress Meetings. Our project manager will attend weekly on-site progress meetings with the contractor. He will also provide supervision of the construction observation provided by a third-party special inspector. For the purposes of this proposal, it is assumed that the construction period will be as follows:

| | |
|-----------------|----------------------|
| Divario Tank | 14 months (60 weeks) |
| StoneCliff Tank | 11 Months (48 weeks) |

3.5: Project Observation. Project observation will primarily be completed by the City. BC&A will subcontract the services of a special inspector to perform special inspections for the rebar installation and concrete placement. BC&A will also subcontract the services of an independent material testing firm for construction Quality Assurance/Quality Control (QA/QC). This firm will be responsible for soil compaction and concrete testing. It is assumed that all project observation and QA/QC testing will be paid in accordance with the rates in the following table.

| SPECIAL INSPECTION & QAQC | |
|-------------------------------|---------------|
| Item | Rates |
| Special Inspection | \$94/hr |
| Concrete/Compaction Testing | \$66/hr |
| Concrete Cylinders | \$77/set of 5 |
| Proctor & Soil Classification | \$275/ea |
| Weekly Summary Report | \$110/ea |

3.6: Project Documentation. We will prepare record drawings for the project based on redlines provided by the contractor. As-built record drawings will be provided to the City in digital format (PDF and AutoCAD) as well as hard copy (two copies) format. We will also review operations and maintenance manuals assembled by the contractor and amend as needed and provide copies of final manuals to the City. We will also assist the City in acquiring the DDW operating permit for the project.

PROJECT TEAM

To complete these objectives, we propose using the following team members:

Project Manager: Todd Olsen, P.E. (primary contact)

Senior Review, QA/QC, and Principal-in-Charge: Greg Loscher, P.E.

Staff Engineer: Cody Nielson, EIT

Structural Engineer: Kyle Smoot, PE

Senior Structural Engineer: Preston Baxter, S.E.

Electrical Engineer: Shane Cavanaugh, P.E.

Geotechnical Engineer/QAQC/Special Inspection: AGEC

PROJECT SCHEDULE

The following provides a preliminary schedule for the design and construction of the two tank projects based on time from Notice to Proceed. This schedule is preliminary and can be revised during the design process.

Divario 3.5 MG Tank

| <u>Task/Milestone</u> | <u>Anticipated Completion Date</u> |
|----------------------------|-------------------------------------|
| Kickoff Meeting/Site Visit | 1 week from NTP |
| Preliminary Design | 6 weeks from NTP |
| Final Design | 24 weeks from NTP (6 months) |
| Bidding | 24 to 28 weeks from NTP (1 month) |
| Construction | 29 to 99 weeks from NTP (14 months) |

Stonecliff 1.5 MG Tank

| <u>Task/Milestone</u> | <u>Anticipated Completion Date</u> |
|----------------------------|-------------------------------------|
| Kickoff Meeting/Site Visit | 1 week from NTP |
| Preliminary Design | 6 weeks from NTP |
| Final Design | 24 weeks from NTP (6 months) |
| Bidding | 24 to 28 weeks from NTP (1 month) |
| Construction | 29 to 77 weeks from NTP (11 months) |

FEE ESTIMATE

We have tabulated estimated man-hours and costs to complete each task outlined in the previously defined scope of services for both tanks. As presented in Attachment C, we propose to complete the above outlined scope of services on a cost reimbursable basis, with a total fee not to exceed \$584,624.

We are willing to negotiate the scope of services and associated fee if there is something in this proposal that does not meet your needs. We enjoy working with the City and look forward to working with you on this critical project. We are available to start work immediately. Please call if you have any questions or if you need additional information.

Sincerely,
Bowen Collins & Associates, Inc.



Todd Olsen, P.E.
Project Manager

Attachments

ATTACHMENT A
St. George Culinary Water Tank Project
City of St. George

Estimated Drawing Sheet Count

Last Updated: 03-07-22

| TANK | | |
|-------------|-------|---|
| NO. | SHEET | DESCRIPTION |
| 1 | G-01 | PROJECT LOCATION MAP & VICINITY MAP |
| 2 | G-02 | INDEX OF DRAWINGS |
| 3 | G-03 | ABBREVIATIONS |
| 4 | G-04 | SYMBOLS AND LEGENDS |
| 5 | G-05 | GENERAL NOTES |
| 6 | G-06 | JUC NOTES |
| 7 | G-07 | FLOW SCHEMATIC |
| 8 | C-01 | SITE AND GRADING PLAN |
| 9 | C-02 | SUBGRADE EXCAVATION PLAN |
| 10 | C-03 | RESERVOIR SECTIONS |
| 11 | C-04 | ACCESS ROAD PROFILE - 1 |
| 12 | C-05 | YARD PIPING PLAN |
| 13 | C-06 | YARD PIPING PROFILE - 1 |
| 14 | C-07 | YARD PIPING PROFILE - 2 |
| 15 | C-08 | WASHDOWN SYSTEM |
| 16 | C-09 | UNDERDRAIN SYSTEM |
| 17 | C-10 | SITE COORDINATES |
| 18 | S-01 | FLOOR PLAN |
| 19 | S-02 | ROOF PLAN |
| 20 | S-03 | TANK SECTION |
| 21 | S-04 | FLOOR TENDON PLAN |
| 22 | S-05 | ROOF TENDON PLAN |
| 23 | S-06 | WALL SECTIONS AND DETAILS |
| 24 | S-07 | WALL POST-TENSIONING SECTIONS AND DETAILS |
| 25 | S-08 | TANK OVERFLOW SECTIONS AND DETAILS |
| 26 | S-09 | TANK ACCESS SECTION AND DETAILS |
| 27 | S-10 | MISCELLANEOUS SECTIONS AND DETAILS |
| 28 | E-01 | ELECTRICAL NOTES, SYMBOLS, AND SCHEDULE |
| 29 | E-02 | RESERVOIR ELECTRICAL SITE PLAN |
| 30 | E-03 | CONTROL BLOCK DIAGRAM |
| 31 | GC-01 | CIVIL DETAILS - 1 |
| 32 | GC-02 | CIVIL DETAILS - 2 |
| 33 | GC-03 | CIVIL DETAILS - 3 |
| 34 | GC-04 | CIVIL DETAILS - 4 |
| 35 | GS-01 | GENERAL STRUCTURAL NOTES |
| 36 | GS-02 | GENERAL STRUCTURAL DETAILS - 1 |
| 37 | GS-03 | GENERAL STRUCTURAL DETAILS - 2 |
| 38 | GS-04 | GENERAL STRUCTURAL DETAILS - 3 |
| 39 | GS-05 | GENERAL STRUCTURAL DETAILS - 4 |
| 40 | GS-06 | GENERAL STRUCTURAL DETAILS - 5 |
| 41 | GS-07 | GENERAL STRUCTURAL DETAILS - 6 |
| 42 | GM-01 | PIPE MATERIAL SCHEDULE |
| 43 | GM-02 | GENERAL MECHANICAL DETAILS - 1 |
| 44 | GE-01 | GENERAL ELECTRICAL DETAILS - 1 |

ATTACHMENT B
St. George Irrigation Tank Project
City of St. George

Estimated Drawing Sheet Count

Last Updated: 03-07-22

| TANK | | |
|-------------|-------|---|
| NO. | SHEET | DESCRIPTION |
| 1 | G-01 | PROJECT LOCATION MAP & VICINITY MAP |
| 2 | G-02 | INDEX OF DRAWINGS |
| 3 | G-03 | ABBREVIATIONS |
| 4 | G-04 | SYMBOLS AND LEGENDS |
| 5 | G-05 | GENERAL NOTES |
| 6 | G-06 | FLOW SCHEMATIC |
| 7 | C-01 | SITE AND GRADING PLAN |
| 8 | C-02 | SUBGRADE EXCAVATION PLAN |
| 9 | C-03 | RESERVOIR SECTIONS |
| 10 | C-04 | YARD PIPING PLAN |
| 11 | C-05 | YARD PIPING PROFILE - 1 |
| 12 | C-06 | WASHDOWN SYSTEM |
| 13 | C-07 | UNDERDRAIN SYSTEM |
| 14 | C-08 | SITE COORDINATES |
| 15 | S-01 | FLOOR PLAN |
| 16 | S-02 | ROOF PLAN |
| 17 | S-03 | TANK SECTION |
| 18 | S-04 | FLOOR TENDON PLAN |
| 19 | S-05 | ROOF TENDON PLAN |
| 20 | S-06 | WALL SECTIONS AND DETAILS |
| 21 | S-07 | WALL POST-TENSIONING SECTIONS AND DETAILS |
| 22 | S-08 | TANK OVERFLOW SECTIONS AND DETAILS |
| 23 | S-09 | TANK ACCESS SECTION AND DETAILS |
| 24 | S-10 | MISCELLANEOUS SECTIONS AND DETAILS |
| 25 | E-01 | ELECTRICAL NOTES, SYMBOLS, AND SCHEDULE |
| 26 | E-02 | RESERVOIR ELECTRICAL SITE PLAN |
| 27 | E-03 | CONTROL BLOCK DIAGRAM |
| 28 | GC-01 | CIVIL DETAILS - 1 |
| 29 | GC-02 | CIVIL DETAILS - 2 |
| 30 | GC-03 | CIVIL DETAILS - 3 |
| 31 | GC-04 | CIVIL DETAILS - 4 |
| 32 | GS-01 | GENERAL STRUCTURAL NOTES |
| 33 | GS-02 | GENERAL STRUCTURAL DETAILS - 1 |
| 34 | GS-03 | GENERAL STRUCTURAL DETAILS - 2 |
| 35 | GS-04 | GENERAL STRUCTURAL DETAILS - 3 |
| 36 | GS-05 | GENERAL STRUCTURAL DETAILS - 4 |
| 37 | GS-06 | GENERAL STRUCTURAL DETAILS - 5 |
| 38 | GS-07 | GENERAL STRUCTURAL DETAILS - 6 |
| 39 | GM-01 | PIPE MATERIAL SCHEDULE |
| 40 | GM-02 | GENERAL MECHANICAL DETAILS - 1 |
| 41 | GE-01 | GENERAL ELECTRICAL DETAILS - 1 |

ATTACHMENT C

City of St. George

St. George Culinary Water and Irrigation Tank Projects

Engineering Man-Hour and Fee Estimate

Last Updated 03-25-22

| Task No. | Labor Category | Office/Support | | Technicians | | Engineers | | | | | | Subtotal Hours | Subtotal Labor | Subtotal Expenses | Total Cost |
|------------|---|----------------|-----------|-------------|-----------|------------|------------|-----------|-----------|------------|------------|----------------|----------------------|-------------------|----------------------|
| | | Account | Editor | Tech 5 | Tech 6 | PE | SE | SE | EE | PM | QAQC | | | | |
| | Staff | KB | MH | SR | TA | CN | KS | PB | SC | TO | GL | | | | |
| I | Preliminary Design | | | | | | | | | | | | | | |
| 1.1 | Progress Meetings | | | | | 4 | | | | 7 | 2 | 13 | \$ 2,216.50 | \$30 | \$ 2,246.50 |
| 1.2 | Collect and Review Existing Information | | | | | 16 | | | | 8 | 1 | 25 | \$ 3,840.50 | \$15 | \$ 3,855.50 |
| 1.3 | Geotechnical Investigation | | | | | 1 | 2 | | | 4 | 1 | 8 | \$ 1,332.00 | \$18,015 | \$ 19,347.00 |
| 1.4 | Site Survey | | | | | 2 | | | | 4 | 1 | 7 | \$ 1,199.50 | \$5,030 | \$ 6,229.50 |
| 1.5 | Preliminary Design Report | 2 | 2 | | | 28 | 16 | 1 | | 24 | 6 | 79 | \$ 12,083.50 | \$30 | \$ 12,113.50 |
| | Preliminary Design Task Subtotal | 2 | 2 | 0 | 0 | 51 | 18 | 1 | 0 | 47 | 11 | 132 | \$ 20,672.00 | \$23,120 | \$ 43,792.00 |
| II | Final Design and Permitting | | | | | | | | | | | | | | |
| 2.1 | Progress and Review Meetings | 1 | | | | 20 | 4 | | | 23 | 4 | 52 | \$ 8,340.00 | \$100 | \$ 8,440.00 |
| 2.2 | Utilities Investigation | | | | | 16 | | | | 4 | 1 | 21 | \$ 3,110.50 | \$30 | \$ 3,140.50 |
| 2.3 | Tank Structural Design | 1 | | | 75 | | 496 | 33 | | 12 | 8 | 625 | \$ 86,492.50 | \$0 | \$ 86,492.50 |
| 2.4 | Civil Design | | | 60 | | 320 | | | | 60 | 12 | 452 | \$ 64,518.00 | \$0 | \$ 64,518.00 |
| 2.5 | Electrical Design | 1 | | 10 | | | | | 55 | 2 | 2 | 70 | \$ 12,194.00 | \$0 | \$ 12,194.00 |
| 2.6 | Technical Specifications | | 20 | | | 16 | 30 | 7 | 6 | 40 | 20 | 139 | \$ 21,767.50 | \$30 | \$ 21,797.50 |
| 2.7 | Cost Estimate | 1 | | | | 8 | | | | 6 | 8 | 23 | \$ 3,847.50 | \$30 | \$ 3,877.50 |
| 2.8 | Utah State DDW Construction Permit | | | | | 4 | | | | 16 | 6 | 26 | \$ 4,645.00 | \$0 | \$ 4,645.00 |
| 2.9 | Contractor Construction Permits | 1 | | | | | 6 | | | 6 | 2 | 15 | \$ 2,383.50 | \$10 | \$ 2,393.50 |
| 2.10 | Final Bid Documents | | 8 | | | 10 | 10 | 7 | 6 | 15 | 9 | 65 | \$ 10,328.50 | \$30 | \$ 10,358.50 |
| | Final Design and Permitting Task Subtotal | 5 | 28 | 70 | 75 | 394 | 546 | 47 | 67 | 184 | 72 | 1488 | \$ 217,627.00 | \$230 | \$ 217,857.00 |
| III | Bid and Construction Period Services | | | | | | | | | | | | | | |
| 3.1 | Prequalification of Contractors | 1 | | | | 12 | | | | 18 | 2 | 33 | \$ 5,404.50 | \$10 | \$ 5,414.50 |
| 3.2 | Bid Period Services | 1 | | | | 25 | 10 | 1 | | 30 | 4 | 71 | \$ 11,279.50 | \$60 | \$ 11,339.50 |
| 3.3 | Construction Management and Submittal Review | 1 | | | | 90 | 180 | 5 | 4 | 40 | 30 | 350 | \$ 51,375.00 | \$0 | \$ 51,375.00 |
| 3.4 | Construction Progress Meetings | 1 | | | | 10 | | | | 432 | 20 | 463 | \$ 84,223.50 | \$1,215 | \$ 85,438.50 |
| 3.5 | Project Observation | 1 | | | | | 16 | | | 40 | 4 | 61 | \$ 10,326.50 | \$144,000 | \$ 154,326.50 |
| 3.6 | Project Documentation | 2 | | | | 60 | 28 | | | 14 | 2 | 106 | \$ 15,081.00 | \$0 | \$ 15,081.00 |
| | Bid and Construction Period Services Task Subtotal | 7 | 0 | 0 | 0 | 197 | 234 | 6 | 4 | 574 | 62 | 1084 | \$ 177,690.00 | \$145,285 | \$ 322,975.00 |
| | Total Hours | 14 | 30 | 70 | 75 | 642 | 798 | 54 | 71 | 805 | 145 | 2704 | | | |
| | Total Cost | | | | | | | | | | | | \$ 415,989.00 | \$168,635 | \$ 584,624.00 |

Expenses include:

Mileage reimbursement at \$0.75/mile

Computer/Communications Charge at \$7.5/labor hour

*Surveyor: Rosenberg Associates

*Geotechnical Investigation: AGECE



Agenda Date: 08/25/2022

Agenda Item Number: 1d

Subject:

Consider approval of an agreement to purchase real property and a slope easement from Red Sands F-2, LLC for widening of the 3000 East roadway.

Item at-a-glance:

Staff Contact: Jay Sandberg

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

3000 East between 2000 South and 2450 South

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

The City desires to acquire 1.57 acres of property for the widening of the 3000 East roadway located at 3000 East between 2000 South and 2450 South.

Staff Narrative (need/purpose):

This proposed property acquisition is necessary to continue the improvement along 3000 East.

Name of Legal Dept approver: Ryan Dooley

Budget Impact:

Cost for the agenda item: \$228,463

Amount approved in current FY budget for item: \$9,000,000

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

N/A

Description of funding source:

Funds for this acquisition have been set aside for this purchase by the Washington County Council of Governments (COG).

Recommendation (Include any conditions):

Approval



AGREEMENT TO PURCHASE REAL PROPERTY AND SLOPE EASEMENT

The City of St. George, a Utah municipal corporation, (the “City”), and Red Sands F-2 LLC, a Utah limited liability company (“Seller”), hereby enter this instrument effective as of August 1, 2022 (the “Effective Date”).

RECITALS

- A. The City desires to acquire real property consisting of a portion of parcel SG-5-3-3-3100 as described on the legal description attached to the form warranty deed attached hereto as Exhibit A and slope easement hereto as Exhibit B (the “Property”).
- B. Seller has represented to the City that it is willing and able to transfer the Property to the City free and clear of all liens and encumbrances.
- C. The parties have discussed various issues with regard to the purchase of the Property by the City (the “Purchase”), have identified terms believed to be acceptable to the parties, and now desire to memorialize the terms in this instrument as a final written expression of their agreement.

TERMS

Based on the foregoing recitals and the following covenants, obligations, terms and conditions, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

- 1 Purchase Price. On the terms and conditions stated below, the City shall pay Seller the amount of two hundred twenty-eight thousand four hundred sixty-three (\$228,463.00) (the “Purchase Price”) as shown in Exhibit C.
- 2 Conveyance. On the terms and conditions stated below, Seller shall convey the Property to the City, free and clear of all liens and encumbrances, by delivering a duly executed and notarized original of the document attached hereto as Exhibit A, titled “Warranty Deed,” by which Seller shall convey all of Seller’s interest in the Property to the City. Upon execution of this contract by the parties, Grantor grants the City, its contractors, permittees, and assigns, including but not limited to, utilities and their contractors, the right to immediately occupy and commence construction or other necessary activity on the property acquired for the project.
- 3 Property Improvements. On the terms and conditions stated below, the City shall remove the existing fencing and install new stock fencing on the new property line established on 3000 East and 2450 South; City shall complete the roadway improvements for curb and gutter, walking trail and landscaping, and underground

AGREEMENT TO PURCHASE REAL PROPERTY

utilities as shown on the plans on Exhibit D; provide utility service laterals for future improvements to the property, including sewer and water, to the southwest corner of 2000 South and 3000 East and to the future 2220 South Street intersection on 3000 East; install a deceleration lane at the future 2220 South access location; install storm drain flowing west to east across 3000 East at 2000 South.

4 Escrow. The Purchase shall be consummated through an escrow through Southern Utah Title Company, attention: Elwin Prince, 157 E. Riverside Drive, Suite 1B, St. George, UT 84790, Phone No.: (435) 652-4804, Email: elwin@sutc.com (“Escrow Agent”).

(a) Opening of Escrow. Immediately upon execution hereof, the parties shall open escrow by delivering a fully executed copy of this instrument to Escrow Agent, along with the duly executed Warranty Deed executed by Seller and the sum of \$1,000.00 (the “Deposit”) from the City. All interest earned by the Deposit while on deposit with Escrow Agent shall accrue to the benefit of the City. This instrument shall constitute the Escrow Agent’s instructions and Escrow Agent is hereby authorized and instructed to act in accordance with the provisions of this instrument; provided, however, that the parties agree to execute and return to Escrow Agent within 10 days after the receipt thereof such additional standard escrow instructions, not inconsistent with this instrument, that Escrow Agent may reasonably require. No failure by either party to execute such additional standard escrow instructions will affect the validity or enforceability of this instrument in any manner. In the event of any inconsistency between such additional standards escrow instructions and this instrument, the terms of this instrument will prevail.

(b) Closing Conditions. The City shall have no obligation to complete the Purchase unless and until each of the following conditions (the “Closing Conditions”) is met to the satisfaction of the City, as determined by the City in the City’s sole and absolute discretion:

(1) Physical Condition. The City shall approve of the physical condition and circumstances of the Property. To facilitate the City’s approval, within 5 days of the Effective Date Seller shall disclose to the City all documents in Seller’s possession, or issues of which Seller is aware, affecting the physical condition of the property, including but not limited to patent or latent defects, soils, and the presence of any hazardous materials. Further, Seller hereby grants to the City and the City’s agents and consultants a license to enter upon the Property for the purpose of conducting, at the City’s sole expense, the City’s review of the Property. Seller shall reasonably cooperate with the City in the inspection of the Property; provided however that Seller shall not be required to incur any expenses with regard to the City’s inspection. The City shall indemnify, defend, and hold Seller harmless for any expenses or claims resulting from the City’s entry onto the Property. The City shall not engage in any testing which will damage the Property in any way without further written consent from Seller.

(2) Title. The City shall approve of the condition of title and all encumbrances affecting title to the Property. To facilitate the City’s approval, within 5 days of the Effective Date Seller shall disclose to the City all documents in Seller’s possession, or issues of which Seller is aware, affecting title to the property, including any security interests, leases, notices of claim, etc. Further, Escrow Agent shall issue to

AGREEMENT TO PURCHASE REAL PROPERTY

the City a commitment of title insurance showing all encumbrances shown on public records. If the City disapproves of the any encumbrances affecting title to the Property which may be removed through the payment of funds, including but not limited to taxes not yet due but appearing as a lien on title to the Property, the City may elect to proceed to complete the Purchase and may, at the City's sole discretion, direct Escrow Agent to pay from the Purchase Price any amounts necessary to secure the release of any such encumbrances.

(3) Legislative Approval. The St. George City Council shall legislatively approve this instrument, in the City Council's sole and absolute discretion.

(c) Failure of Conditions. If any condition is not fulfilled, the City may terminate this instrument at any time by notifying Seller and Escrow Agent in writing, upon which notice this instrument shall be null and void and neither party shall have any further obligation or liability pursuant to this instrument. Upon termination pursuant to this section, Escrow Agent shall return all documents and funds received from either party to the submitting party.

(d) Close of Escrow. If the City approves the Closing Conditions, the City shall notify Seller and Escrow Agent in writing and shall deposit the amount of the Purchase Price, less the Deposit and all accrued interest, with Escrow Agent. Upon receipt of the City's notice and the balance of the Purchase Price, Escrow Agent shall promptly proceed to record the Warranty Deed and post the Purchase Price, less any obligations attributable to Seller, for delivery to Seller.

(1) The City's Obligations. The City shall be responsible for the closing costs, it being understood that there will not be any recording fee. The City shall also be responsible for any expenses incurred by the City related to this transaction, including any agricultural rollback taxes assessed by Washington County Recorder as a result of this transaction, attorney's fees for the City's attorney, if any, and any commission to the City's broker, if any.

(2) Seller's Obligations. Seller shall be responsible for any expenses incurred by Seller related to this transaction, including any attorney's fees for Seller's attorney, if any, any commission to Seller's broker, if any, and the payment of any taxes, including fees related to the Property accruing on or before the date Warranty Deed is recorded. Further, Seller hereby consents to the payment from the Purchase Price any and all amounts necessary to obtain releases of any encumbrances or liens affecting title to the Property including taxes not yet due but appearing as a lien on title to the Property.

5 Representations and Warranties. Seller hereby represents and warrants to the City as follows:

(a) Authority. Seller has all requisite power and authority to execute and deliver this instrument, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this instrument, and the performance by Seller of its obligations hereunder, have been duly and validly authorized by all necessary action on behalf of Seller. This instrument has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms,

AGREEMENT TO PURCHASE REAL PROPERTY

except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance or other similar law relating to or affecting the rights of creditors generally, or by general equitable principles.

(b) No Conflicts. The execution and delivery of this instrument and the consummation or the compliance herewith of the transaction contemplated hereby will not: (i) result in any breach of any of the terms or conditions of, or constitute a default under, the organizational documents of Seller, or any material contract by which Seller is bound; (ii) result in any violation of any governmental, law, rule, regulation, judgment, writ, degree, injunction or order applicable to the Property; (iii) require notice to or the consent, authorization, approval, or order of any governmental authority, or (iv) result in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument, except to the extent otherwise disclosed in this Agreement.

(c) Foreign Status. Seller is not a “foreign person” as defined under Section 1445(f) of the Internal Revenue Code.

(d) Legal Proceedings. There are no claims, actions, suits, or proceedings pending or threatened against the Property or Seller that would reasonably be expected to result in the issuance of a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal, the consummation of any of the transactions contemplated by this instrument.

(e) Condemnation. Seller has not received written notice of any existing or pending, condemnation or similar proceedings against or involving the Property or any plan, study or effort to rezone the Property or to widen, modify, regrade or realign any street or highway that borders the Property.

(f) Patriot Act Compliance. Neither Seller nor its affiliates is in violation of any laws relating to terrorism, money laundering or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Action of 2001, Public Law 107-56 and Executive Order No. 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) (the “Executive Order”) (collectively, the “Anti-Money Laundering and Anti-Terrorism Laws”). Neither Seller nor its affiliates is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time. Neither Seller nor its affiliates or any of its brokers or other agents in any capacity in connection with the sale of the Property (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists referenced above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws. Neither Seller, nor any person or entity controlling or controlled by Seller, is a country, territory, individual or entity named on

AGREEMENT TO PURCHASE REAL PROPERTY

any of the lists maintained by the United States Department of Commerce (Denied Persons and Entities), the list maintained by the United States Department of Treasury (Specially Designated Nationals and Blocked Persons), and the lists maintained by the United States Department of State (Terrorist Organizations and Debarred Parties) (collectively, "Government Lists"), and the monies used by Seller in connection with this instrument and amounts committed with respect hereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a Government List or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

(g) Environmental Condition. Seller has not treated, recycled, stored, disposed of, arranged for or permitted the disposal of, transported, handled, or released any substance, including Hazardous Materials (as defined below), or operated the Property in violation of Environmental Laws (as defined below) in a manner that would trigger an enforcement action thereunder. "Hazardous Materials" means any gasoline, petroleum, or petroleum products or by-products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls, and any other chemicals, materials, wastes, or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law. "Environmental Laws" means any and all federal, state, local, or municipal laws (including common law), rules, orders, regulations, statutes, ordinances, codes, decrees, or other requirements as now or may at any time hereafter be in effect, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, regulating, relating to or imposing liability or standards of conduct concerning pollution or protection of the environment or human health or safety.

(h) Solvency. Seller has not (i) made a general assignment for the benefit of its creditors, (ii) admitted in writing its inability to pay its debts as they mature, (iii) had an attachment, execution or other judicial seizure of any property interest which remains in effect, or (iv) taken, failed to take or submitted to any action indicating a general inability to meet its financial obligations as they accrue. There is not pending any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or recomposition of Seller or any of its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking appointment of a receiver, trustee, custodian or other similar official for any of them or for all or any substantial part of its or their property.

(i) Brokers. Seller has not employed any broker, finder, investment banker, or financial advisor as to whom Seller may have any obligation to pay any brokerage or finder's fees, commissions or similar compensation in connection with the transactions contemplated hereby.

(j) Untrue Statements. To the knowledge of Seller, none of the representations and warranties in this Section contains any untrue statement of material fact or omits to state a material fact necessary, in light of the circumstances under which it was made, to make any such representation not misleading in any material respect.

6 Default, Remedies and Termination. It shall constitute an event of default of this instrument if any party fails to timely deliver any of its performances at the times

AGREEMENT TO PURCHASE REAL PROPERTY

indicated herein. The defaulting party shall also be liable to pay any escrow cancellation charges. In no event shall either party be entitled to recover lost profits or appreciation or other consequential damages. Additionally:

(a) Default by Seller. If Seller defaults on this instrument, the City's exclusive remedies shall be to either: (i) terminate this instrument; or (ii) pursue an action for specific performance against Seller.

(b) Default by the City. If the City defaults on this instrument, Seller's exclusive remedy shall be to terminate this instrument and receive \$1,000.00 as liquidated damages.

7 Miscellaneous Provisions

(a) Interpretation. Captions and headings are used for reference only and must not be used in construing or interpreting this instrument. All recitals set forth at the beginning of this instrument are, by this reference, fully incorporated into this instrument and the facts recited therein shall be deemed conclusive for any purpose. All exhibits referred to in this instrument are deemed fully incorporated herein, whether or not actually attached. As used herein (i) the singular include the plural (and vice versa) and the masculine or neuter gender include the feminine gender (and vice versa) as the context may require; (ii) locative adverbs such as "herein", "hereto", and "hereunder" refer to this instrument in its entirety and not to any specific section or paragraph; (iii) the terms "include", "including", and similar terms must be construed as though followed immediately by the phrase "but not limited to;" and (iv) the terms "party" and "parties" refer only to a named party or parties to this instrument unless the context requires otherwise. All parties have jointly participated in the negotiation and drafting of this instrument upon advice of their own, independent counsel or had the opportunity to do so, and this instrument must be construed fairly and equally as to all parties as if drafted jointly by them. If there is any conflict between the terms of this instrument and any other related documents, including any exhibits identified herein, the terms of this instrument shall prevail.

(b) Acknowledgement of Public Disclosure Laws. Sponsor hereby acknowledges that the City is subject to the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated or its successor, that pursuant thereto all materials submitted by Sponsor pursuant to this Agreement may be subject to disclosure as government records, and that the City has no duty or obligation to withhold any such materials from disclosure in any manner.

(c) Beneficiaries. This instrument shall be binding upon and inure to the benefit of the parties and to their respective heirs, representatives, successors and permitted assignees. This instrument is intended for the exclusive benefit of the parties and permitted assignees and is not intended and shall not be interpreted as conferring any benefit on any third party.

(d) Entire Agreement. The parties intend that this instrument is the final expression of their agreement and constitutes their entire understanding regarding this subject matter. This instrument supersedes any previous or contemporaneous negotiations or communications of any kind between the parties and contains all of the

AGREEMENT TO PURCHASE REAL PROPERTY

terms agreed upon between the parties. No party relied on any other term, warranty, and/or covenant as an inducement to enter this instrument.

(e) Amendment. The parties shall not amend or modify this instrument in any way unless in writing signed by the parties.

(f) Further Action. Each party shall promptly do any act or execute and deliver any document reasonably necessary to comply with their respective obligations under this instrument in order to carry out the intent of the parties in consummating this transaction.

(g) Time of the Essence. Time is of the essence in each and every term and provision of this instrument. All references to days herein shall be deemed to refer to calendar days unless otherwise specified. In the event that the final date for performance of any act required by this instrument falls on a Saturday, Sunday, or legal holiday, such act may be performed on the next day which is not a Saturday, Sunday, or legal holiday.

(h) Waiver. Neither the failure of either party to insist upon the timely or full performance of any of the terms and conditions of this instrument, nor the waiver of any breach of any of the terms and conditions of this instrument, shall be construed as thereafter waiving any such terms and conditions, but these shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

(i) Severability. If any court of competent jurisdiction declares any portion of this instrument unenforceable, the parties shall deem such portion as severed from this instrument, and shall deem the remaining parts of this instrument, including without limitation the remaining parts of the paragraph of which the unenforceable portion was a part, in full force and effect as though such unenforceable portion had never been part of this instrument. The parties shall replace any such unenforceable portion with an enforceable provision which will achieve, to the extent possible, the purposes of the unenforceable portion.

(j) Forum and Law. Utah law shall govern this instrument without respect to any principles of choice of law or conflicts of law. Jurisdiction and venue of any action commenced relating to this instrument shall be exclusively in courts located in, or with jurisdiction over, Washington County, Utah.

(k) Attorney's Fees. In any civil action to enforce this instrument commenced in a court of proper jurisdiction, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney's fees and costs incurred by the prevailing party, including pre-litigation efforts related to the dispute that is the subject of the action.

(l) Notices, Requests, and Communications. Unless otherwise set forth above, all notices, requests, and communications required by this instrument shall be in writing. Any party delivering any written document shall deliver the written document by any of the following means: (a) certified or registered mail, postage prepaid, return receipt requested, in which case the written document shall be deemed delivered upon the earlier of actual receipt or three business days after the postmark date, (b) recognized commercial overnight courier, in which case the written document shall be deemed delivered one business day after acceptance for next business-day delivery by the courier, or (c) personal delivery, in which case the written document shall be deemed

AGREEMENT TO PURCHASE REAL PROPERTY

delivered when received. The addresses to which the written documents shall be delivered are as follows:

If delivered to the City: City of St. George
 Attn: City Engineer
 175 E. 200 N.
 St. George, UT 84770

 with a copy to: City of St. George
 Attn: City Attorney
 175 E. 200 N.
 St. George, UT 84770

If delivered to Seller: Red Sands F-2 LLC
 Attn: William C. Cox
 951 South 900 East.
 St. George, Utah 84790

Any party shall deliver notice of change of address in the manner described in this section. Rejection or other refusal to accept a notice or the inability to deliver a notice because of a changed address of which no notice was given will be deemed to constitute receipt of the notice sent.

8 Execution. By executing this instrument below, the executing individuals acknowledge that (1) they have read this instrument, (2) they understand its terms, (3) they have had the opportunity to have this instrument reviewed by independent counsel, (4) they have the full and complete authority to execute this instrument on their own behalf or on the behalf of any entity which they represent, and (5) they intend to bind themselves or the entity which they represent, if any, to the terms of this instrument in full. The failure of any executing individual to date their signature will not affect the validity of this instrument.

9 Counterparts. The parties may execute this instrument in multiple counterparts with the same force and effect as if all signatures were set forth in a single document. Facsimile and other copies shall have the same force and effect as the original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES FOLLOW]

AGREEMENT TO PURCHASE REAL PROPERTY

In witness of their intention to be bound by the above terms, the parties hereby execute this instrument as follows:

CITY OF ST. GEORGE

_____ By: _____
Date Michele Randall, Mayor

Attested: By: _____
Christina Fernandez, City Recorder

Approved: By: _____
Jami Brackin, Deputy City Attorney

RED SANDS F-2 LLC

August 1, 2022 By: William C Cox
Date William C. Cox, Manager

AGREEMENT TO PURCHASE REAL PROPERTY

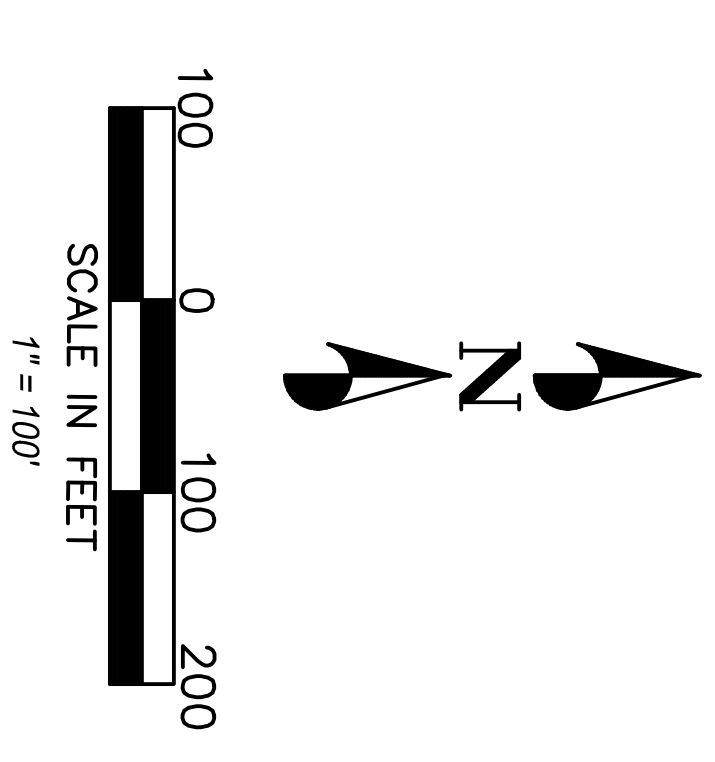
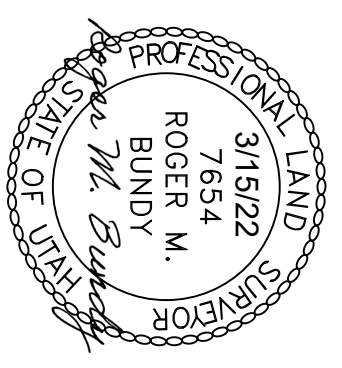
EXHIBIT A
Warranty Deed

BEGINNING AT A POINT N88°58'00"W, 51.25 FEET ALONG THE CENTER SECTION LINE AND S1°02'00"W, 24.75 FEET FROM THE CENTER 1/4 CORNER OF SECTION 3, T43S, R15W, SLB&M, SAID POINT BEING ON THE NORTH LINE OF LOT 6, BLOCK 4 OF RC LUND'S ENTRY SURVEY, RUNNING THENCE S88°58'00"E, 26.66 FEET ALONG SAID NORTH LINE TO THE NORTHEAST CORNER OF SAID LOT 6; THENCE S0°41'28"W, 1304.77 FEET ALONG THE EAST LINE OF LOT 6 AND THE EAST LINE OF LOTS 7, 8 AND 1 OF SAID BLOCK 4 TO THE SOUTHEAST CORNER OF LOT 1 (NORTHEAST CORNER OF LOT 6, BLOCK 6 OF THE HORATIO PICKETT ENTRY SURVEY); THENCE N89°00'32"W, 47.22 FEET ALONG THE SOUTH LINE OF LOT 1 (NORTH LINE OF LOT 6, BLOCK 6 OF THE HORATIO PICKETT ENTRY SURVEY); THENCE N1°05'36"E, 1033.55 FEET; THENCE N2°43'38"E, 93.25 FEET TO THE BOUNDARY OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016223 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE S89°09'24"E, 10.00 FEET, MORE OR LESS, ALONG SAID BOUNDARY TO AN EXISTING FENCE LINE, SAID POINT BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016223 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE N0°41'28"E, 178.00 FEET ALONG SAID FENCE LINE AND THE EASTERLY LINE OF SAID PARCEL TO THE POINT OF BEGINNING.

CONTAINING 1.225 ACRES.

SURVEYORS CERTIFICATE

I, ROGER M. BUNDY, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD CERTIFICATE No. 7664 IN ACCORDANCE WITH TITLE 58, CHAPTER 22 OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT OF THE STATE OF UTAH. I FURTHER CERTIFY THAT I HAVE MADE A SURVEY OF THE HEREON DESCRIBED LAND IN ACCORDANCE WITH SECTION 17-223-17, HAVE CERTIFIED MEASUREMENTS AND CORRECTED REPRESENTATIONS SHOWN HEREON AND THAT THIS IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.



BOUNDARY DESCRIPTIONS

PORTION OF RED SANDS F-2, LLC TO BE DEEDED TO ST. GEORGE CITY
 (TAX PARCEL, SG-5-3-3-3100)
 BEGINNING AT A POINT N88°58'00"W, 24.75 FEET FROM THE CENTER SECTION LINE AND S1°02'00"W, 51.25 FEET ALONG THE CENTER OF SECTION 3, T43S, R15W, SLB8M, SAID POINT BEING ON THE NORTH LINE OF LOT 6, BLOCK 4 OF R.C. LUND'S ENTRY SURVEY, RUNNING THENCE S89°01'00"E, 28.66 FEET TO THE EAST LINE OF LOT 6, BLOCK 4 TO CORNER OF LOT 6 AND THE EAST LINE OF LOTS 7, 8 AND 1 OF SAID BLOCK 4 TO THE SOUTHEAST CORNER OF LOT 1 (NORTHEAST CORNER OF LOT 6, BLOCK 6 OF THE HORATIO PICKETT ENTRY SURVEY); THENCE N89°00'32"W, 47.22 FEET ALONG THE SOUTH LINE OF LOT 1 (NORTH LINE OF LOT 6, BLOCK 6 OF THE HORATIO PICKETT ENTRY SURVEY); THENCE N1°05'36"E, 103.55 FEET; THENCE N2°43'38"E, 93.25 FEET TO THE BOUNDARY OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016223 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE S89°09'24"E, 10.00 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL; SAID POINT BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016223 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE N0°41'28"E, 176.00 FEET ALONG SAID FENCE LINE AND THE EASTERLY LINE OF SAID PARCEL TO THE POINT OF BEGINNING.

CONTAINING 1.225 ACRES.

PORTION OF RED SANDS F-2, LLC TO BE CONVEYED TO ST. GEORGE CITY AS (TAX PARCEL, SG-5-3-3-3100).
 BEGINNING AT A POINT N88°58'00"W, 51.25 FEET ALONG THE CENTER SECTION LINE, S1°02'00"W, 24.75 FEET, S88°58'00"E, 28.66 FEET, S0°41'28"W, 176.00 FEET AND N89°09'24"W, 10.00 FEET FROM THE CENTER 1/4 CORNER OF SECTION 3, T43S, R15W, SLB8M, RUNNING THENCE S2°43'38"W, 93.25 FEET; THENCE S1°05'36"W, 103.55 FEET TO A POINT ON THE SOUTH LINE OF LOT 1, BLOCK 4 OF R.C. LUND'S ENTRY SURVEY (NORTH LINE OF LOT 6, BLOCK 6 OF THE HORATIO PICKETT ENTRY SURVEY); THENCE N1°05'36"E, 103.55 FEET; THENCE N2°43'38"E, 93.25 FEET TO THE BOUNDARY OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016223 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE S89°09'24"E, 10.00 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL; SAID POINT BEING THE SOUTHWESTERLY CORNER OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016223 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE N0°41'28"E, 176.00 FEET ALONG SAID FENCE LINE AND THE EASTERLY LINE OF SAID PARCEL TO THE POINT OF BEGINNING.

CONTAINING 0.347 ACRE.

NARRATIVE

THE PURPOSE OF THE HEREON EXHIBIT IS TO SHOW THE AREA OF LAND TO BE ACQUIRED BY ST. GEORGE CITY FROM RED SANDS F-2, LLC FOR ADDITIONAL ROADWAY RIGHT OF WAY AND SLOPE EASEMENT. THE BASIS OF BEARINGS FOR THIS SURVEY IS NORTH 88°58'00" WEST ALONG THE CENTER SECTION LINE BEYOND THE EAST QUARTER CORNER AND THE WEST QUARTER CORNER OF SECTION 3, T43S, R15W, SLB8M, TO THE WEST QUARTER CORNER OF SECTION 15 WEST SALT LAKE BASE AND MERIDIAN. RECORD DEED DOCUMENTS FOR RED SANDS F-2, LLC, CITY PROPERTY, AND THE RC LUNDS SURVEY WERE USED AS A BASIS FOR PREPARATION OF THE HEREON BOUNDARY DESCRIPTION. MINOR ADJUSTMENTS WERE MADE TO COINCIDE WITH PREVIOUSLY DEEDED PROPERTY TO THE CITY. EXISTING FENCE LINE, ETC., NO BOUNDARY CORNERS WERE PLACED IN CONJUNCTION WITH PREPARATION OF THE HEREON BOUNDARY DESCRIPTION.

LEGEND



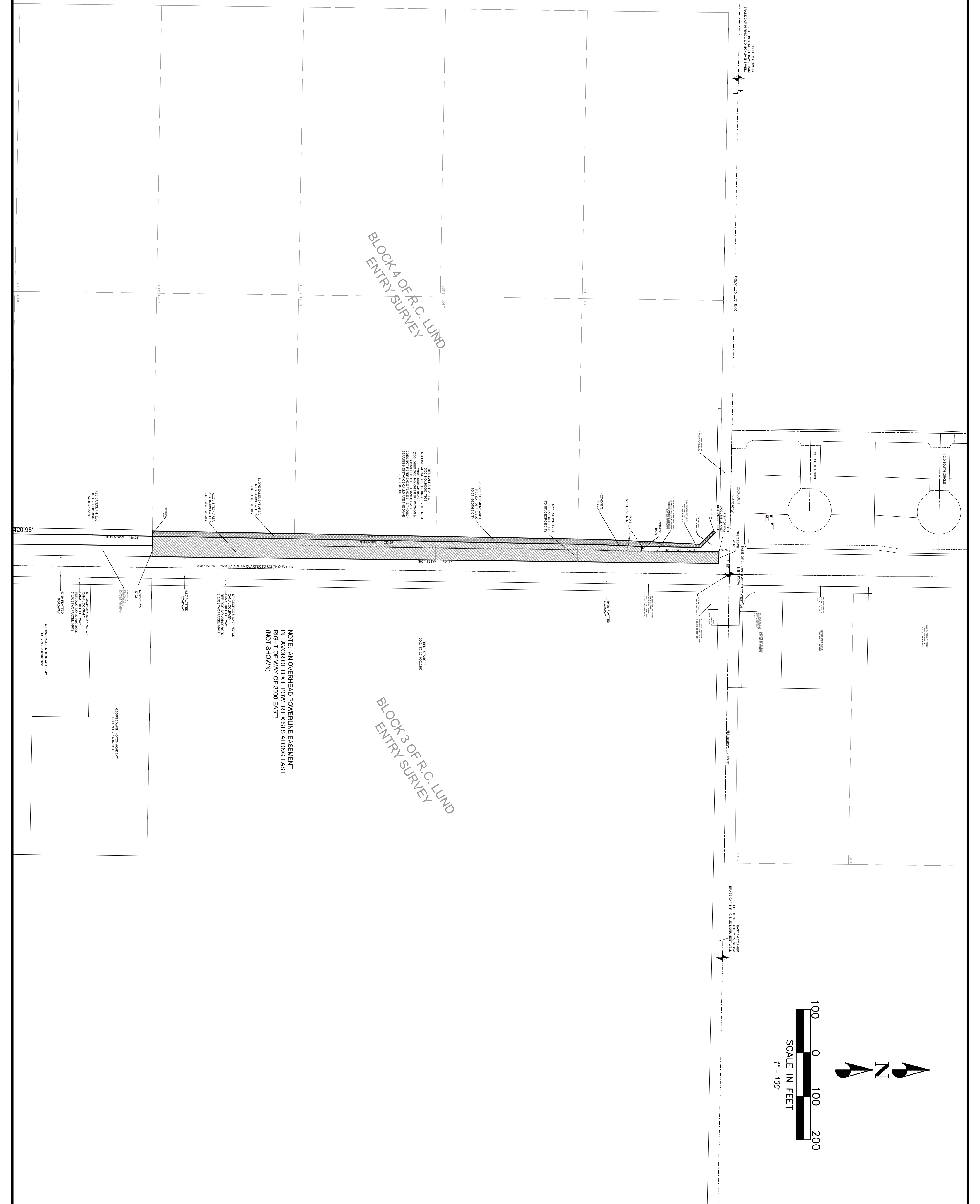
RECORD OF SURVEY

PREPARED BY: R&B SURVEYING
 257 PRICKLEY PEAR DRIVE WASHINGTON, UTAH 84780
 PHONE: 435-632-3540

LOCATION:
 SW 1/4 SEC. 3, T42S, R15W, SLB8M

COMPLETED:
 MARCH 15, 2022

REQUESTED BY:
 SUNRISE ENGINEERING/TAYLOR, TORGERSON



AGREEMENT TO PURCHASE REAL PROPERTY

EXHIBIT B
Slope Easement

When Recorded Return To:
City of St. George
City Attorney's Office
175 East 200 North
St. George, Utah 84770

Red Sands F-1 LLC
Attn: William C. Cox
951 South 900 East
St. George, Utah 84790

a portion of Tax ID: SG-5-3-3-3100

MUNICIPAL SLOPE EASEMENT

That in consideration of Ten Dollars and other good and valuable consideration paid to Red Sands F-2 LLC, a Utah limited liability company, Grantor, by the City of St. George, a Utah municipal corporation, Grantee, the receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell, transfer and convey unto Grantee, its successors and assigns, a slope easement, for slope maintenance and protection of roadway improvements, upon, over and across in and along real property owned by Grantor in Washington County, State of Utah, and the easement being more fully described as follows:

See Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD such property to Grantee, the City of St. George, forever for the uses and purposes normally associated with municipal utilities.

This easement will terminate upon the construction of an approved development on the Easement which provides the necessary subjacent support and protection of slope that is created by this easement. Improvements installed, built, or placed within the easement by Grantor or its successors or assigns, shall require the written permission of the Grantee.

The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the Grantors has executed this instrument this _____ day of _____, 2022.

GRANTOR: RED SANDS F-2 LLC

Date

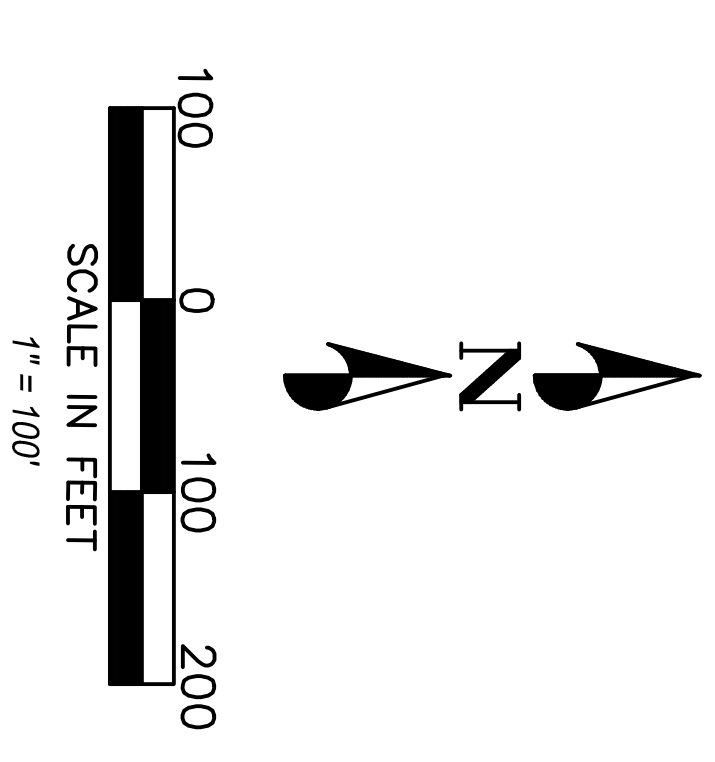
By: _____
Name: William C. Cox
Title: Manager

BEGINNING AT A POINT N88°58'00"W, 51.25 FEET ALONG THE CENTER SECTION LINE, S1°02'00"W, 24.75 FEET, S88°58'00"E, 26.66 FEET, S0°41'28"W, 178.00 FEET AND N89°09'24"W, 10.00 FEET FROM THE CENTER 1/4 CORNER OF SECTION 3, T43S, R15W, SLB&M, RUNNING THENCE S2°43'38"W, 93.25 FEET; THENCE S1°05'36"W, 1033.55 FEET TO A POINT ON THE SOUTH LINE OF LOT 1, BLOCK 4 OF RC LUND'S ENTRY SURVEY (NORTH LINE OF LOT 6, BLOCK 6 OF HORATIO PICKETT'S ENTRY SURVEY) THENCE N89°00'32"W, 12.00 FEET ALONG THE SOUTH LINE OF SAID LOT 1 (NORTH LINE OF SAID LOT 6); THENCE N1°05'36"E, 1033.75 FEET; THENCE N2°48'26"E, 226.40 FEET; THENCE N45°25'50"W, 42.84 FEET; THENCE N23°37'36"E, 7.57 FEET TO THE BOUNDARY OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016223 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE ALONG SAID BOUNDARY THE FOLLOWING TWO (2) COURSES: S45°20'24"E, 48.96 FEET; THENCE S0°50'36"W, 136.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.347 ACRE.

SURVEYORS CERTIFICATE

I, ROGER M. BUNDY, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD CERTIFICATE No. 7664 IN ACCORDANCE WITH TITLE 58 CHAPTER 22 OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT OF THE STATE OF UTAH. I FURTHER CERTIFY THAT I HAVE MADE A SURVEY OF THE HEREON DESCRIBED LAND IN ACCORDANCE WITH SECTION 17-223-17, HAVE CERTIFIED MEASUREMENTS AND CORNER MONUMENTS AS SHOWN HEREON AND THAT THIS IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.



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CONTAINING 1.225 ACRES

PORTION OF RED SANDS F-2, LLC TO BE CONVEYED TO ST. GEORGE CITY AS (TAX PARCEL, SG-5-3-3-3100)

BEGINNING AT A POINT N88°58'00"W, 51.25 FEET ALONG THE CENTER SECTION LINE, S1°02'00"W, 24.75 FEET, S88°58'00"E, 28.66 FEET, S0°41'28"W, 176.00 FEET AND N89°09'24"W, 10.00 FEET FROM THE CENTER 1/4 CORNER OF SECTION 3, T43S, R15W, SLB8M, RUNNING THENCE S2°43'38"W, 93.25 FEET; THENCE S1°05'36"W, 103.55 FEET TO A POINT ON THE SOUTH LINE OF LOT 1, BLOCK 4 OF R.C. LUND'S ENTRY SURVEY (NORTH LINE OF LOT 6, BLOCK 6 OF THE HORATIO PICKETT ENTRY SURVEY); THENCE N1°05'36"E, 103.55 FEET; THENCE N2°43'38"E, 93.25 FEET TO THE BOUNDARY OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016223 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE S89°09'24"E, 10.00 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL; SAID POINT BEING THE SOUTHEASTERLY CORNER OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016223 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE N0°41'28"E, 176.00 FEET ALONG SAID FENCE LINE AND THE EASTERLY LINE OF SAID PARCEL TO THE POINT OF BEGINNING.

CONTAINING 0.347 ACRE

NARRATIVE

THE PURPOSE OF THE HEREON EXHIBIT IS TO SHOW THE AREA OF LAND TO BE ACQUIRED BY ST. GEORGE CITY FROM RED SANDS F-2, LLC FOR ADDITIONAL ROADWAY RIGHT OF WAY AND SLOPE EASEMENT. THE BASIS OF BEARINGS FOR THIS SURVEY IS NORTH 88°58'00" WEST ALONG THE CENTER SECTION LINE BEYOND THE EAST QUARTER CORNER AND THE WEST QUARTER CORNER OF SECTION 3, T43S, R15W, SLB8M, TO THE BEST AVAILABLE MERIDIAN. RECORD DEED DOCUMENTS FOR RED SANDS F-2, LLC, CITY PROPERTY, AND THE RC LUNDS SURVEY WERE USED AS A BASIS FOR PREPARATION OF THE HEREON BOUNDARY DESCRIPTION. MINOR ADJUSTMENTS WERE MADE TO COINCIDE WITH PREVIOUSLY DEEDED PROPERTY TO THE CITY. EXISTING FENCE LINE, ETC., NO BOUNDARY CORNERS WERE PLACED IN CONJUNCTION WITH PREPARATION OF THE HEREON BOUNDARY DESCRIPTION.

LEGEND

SECTION MONUMENT AS NOTED

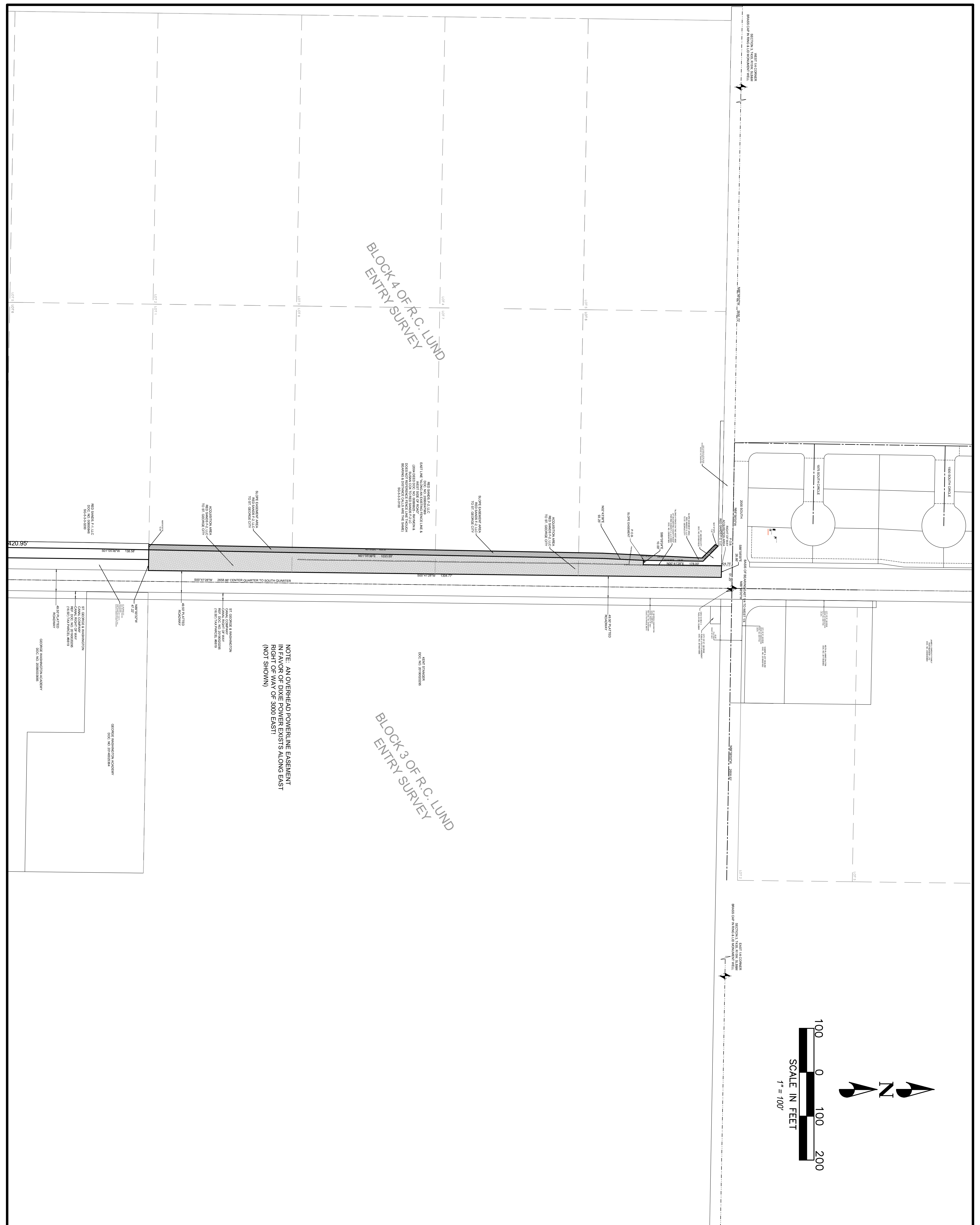
RECORD OF SURVEY

PREPARED BY: R&B SURVEYING
 257 PRICKLEY PEAR DRIVE WASHINGTON, UTAH 84780
 PHONE: 435-632-3540

LOCATION:
 SW 1/4 SEC. 3, T42S, R15W, SLB8M

COMPLETED:
 MARCH 15, 2022

REQUESTED BY:
 SUNRISE ENGINEERING/TAYLOR, TORGERSON



AGREEMENT TO PURCHASE REAL PROPERTY

EXHIBIT C

Purchase Price

Exhibit C

3000 East Property Acquisition Costs for Cox/Red Sands F2 - Appraisal Report January 27, 2022

| <u>Type</u> | <u>Parcel #</u> | <u>Acres</u> | <u>Cost/Acre</u> | <u>Total</u> |
|-------------|-----------------|--------------|------------------|------------------|
| Residential | SG-5-3-3-3100 | 1.225 | 186,500 | <u>\$228,463</u> |
| | | | | \$228,463 |

AGREEMENT TO PURCHASE REAL PROPERTY

EXHIBIT D
Construction Plans



Agenda Date: 08/25/2022

Agenda Item Number: 1e

Subject:

Consider approval of an agreement to purchase real property and slope easement from Red Sands F-1, LLC for widening of the 3000 East roadway.

Item at-a-glance:

Staff Contact: Jay Sanberg

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

3000 East between 2000 South and 2450 South

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

The City desires to acquire 1.51 acres of property for the widening of 3000 East roadway located at 3000 East between 2000 South and 2450 South.

Staff Narrative (need/purpose):

This proposed property acquisition is necessary to continue the improvement along 3000 East.

Name of Legal Dept approver: Ryan Dooley

Budget Impact:

Cost for the agenda item: \$428,685

Amount approved in current FY budget for item: \$9,000,000

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

N/A

Description of funding source:

Funds for this acquisition have been set aside for this purchase by the Washington County Council of Governments (COG).

Recommendation (Include any conditions):

Approval



AGREEMENT TO PURCHASE REAL PROPERTY AND SLOPE EASEMENT

The City of St. George, a Utah municipal corporation, (the “City”), and Red Sands F-1 LLC, a Utah limited liability company (“Seller”), hereby enter this instrument effective as of August 1, 2022 (the “Effective Date”).

RECITALS

A. The City desires to acquire real property consisting of a portion of parcel SG-5-3-3-3200 as described on the legal description attached to the form warranty deed attached hereto as Exhibit A and slope easement hereto as Exhibit B (the “Property”).

B. Seller has represented to the City that it is willing and able to transfer the Property to the City free and clear of all liens and encumbrances.

C. The parties have discussed various issues with regard to the purchase of the Property by the City (the “Purchase”), have identified terms believed to be acceptable to the parties, and now desire to memorialize the terms in this instrument as a final written expression of their agreement.

TERMS

Based on the foregoing recitals and the following covenants, obligations, terms and conditions, the receipt and sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1 Purchase Price. On the terms and conditions stated below, the City shall pay Seller the amount of four hundred twenty-eight thousand six hundred eighty-five dollars (\$428,685.00) (the “Purchase Price”) as shown in Exhibit C.

2 Conveyance. On the terms and conditions stated below, Seller shall convey the Property to the City, free and clear of all liens and encumbrances, by delivering a duly executed and notarized original of the document attached hereto as Exhibit A, titled “Warranty Deed,” by which Seller shall convey all of Seller’s interest in the Property to the City. Upon execution of this contract by the parties, Grantor grants the City, its contractors, permittees, and assigns, including but not limited to, utilities and their contractors, the right to immediately occupy and commence construction or other necessary activity on the property acquired for the project.

3 Property Improvements. On the terms and conditions stated below, the City shall remove the existing fencing and install new stock fencing on the new property line established on 3000 East and 2450 South; City shall complete the roadway improvements for curb and gutter, walking trail and landscaping, and underground utilities as shown on the plans (Exhibit D); provide utility service

AGREEMENT TO PURCHASE REAL PROPERTY

laterals for future improvements to the property, including sewer and water, to the southwest corner of 2000 South and 3000 East and to the future 2220 South Street intersection on 3000 East; install a deceleration lane at the future 2220 South access location; install storm drain flowing west to east across 3000 East at 2000 South.

4 Escrow. The Purchase shall be consummated through an escrow through Southern Utah Title Company, attention: Elwin Prince, 157 E. Riverside Drive, Suite 1B, St. George, UT 84790, Phone No.: (435) 652-4804, Email: elwin@sutc.com (“Escrow Agent”).

(a) Opening of Escrow. Immediately upon execution hereof, the parties shall open escrow by delivering a fully executed copy of this instrument to Escrow Agent, along with the duly executed Warranty Deed executed by Seller and the sum of \$1,000.00 (the “Deposit”) from the City. All interest earned by the Deposit while on deposit with Escrow Agent shall accrue to the benefit of the City. This instrument shall constitute the Escrow Agent’s instructions and Escrow Agent is hereby authorized and instructed to act in accordance with the provisions of this instrument; provided, however, that the parties agree to execute and return to Escrow Agent within 10 days after the receipt thereof such additional standard escrow instructions, not inconsistent with this instrument, that Escrow Agent may reasonably require. No failure by either party to execute such additional standard escrow instructions will affect the validity or enforceability of this instrument in any manner. In the event of any inconsistency between such additional standards escrow instructions and this instrument, the terms of this instrument will prevail.

(b) Closing Conditions. The City shall have no obligation to complete the Purchase unless and until each of the following conditions (the “Closing Conditions”) is met to the satisfaction of the City, as determined by the City in the City’s sole and absolute discretion:

(1) Physical Condition. The City shall approve of the physical condition and circumstances of the Property. To facilitate the City’s approval, within 5 days of the Effective Date Seller shall disclose to the City all documents in Seller’s possession, or issues of which Seller is aware, affecting the physical condition of the property, including but not limited to patent or latent defects, soils, and the presence of any hazardous materials. Further, Seller hereby grants to the City and the City’s agents and consultants a license to enter upon the Property for the purpose of conducting, at the City’s sole expense, the City’s review of the Property. Seller shall reasonably cooperate with the City in the inspection of the Property; provided however that Seller shall not be required to incur any expenses with regard to the City’s inspection. The City shall indemnify, defend, and hold Seller harmless for any expenses or claims resulting from the City’s entry onto the Property. The City shall not engage in any testing which will damage the Property in any way without further written consent from Seller.

(2) Title. The City shall approve of the condition of title and all encumbrances affecting title to the Property. To facilitate the City’s approval, within 5 days of the Effective Date Seller shall disclose to the City all documents in Seller’s possession, or issues of which Seller is aware, affecting title to the property, including any security interests, leases, notices of claim, etc. Further, Escrow Agent shall issue to the City a commitment of title insurance showing all encumbrances shown on public

AGREEMENT TO PURCHASE REAL PROPERTY

records. If the City disapproves of the any encumbrances affecting title to the Property which may be removed through the payment of funds, including but not limited to taxes not yet due but appearing as a lien on title to the Property, the City may elect to proceed to complete the Purchase and may, at the City's sole discretion, direct Escrow Agent to pay from the Purchase Price any amounts necessary to secure the release of any such encumbrances.

(3) Legislative Approval. The St. George City Council shall legislatively approve this instrument, in the City Council's sole and absolute discretion.

(c) Failure of Conditions. If any condition is not fulfilled, the City may terminate this instrument at any time by notifying Seller and Escrow Agent in writing, upon which notice this instrument shall be null and void and neither party shall have any further obligation or liability pursuant to this instrument. Upon termination pursuant to this section, Escrow Agent shall return all documents and funds received from either party to the submitting party.

(d) Close of Escrow. If the City approves the Closing Conditions, the City shall notify Seller and Escrow Agent in writing and shall deposit the amount of the Purchase Price, less the Deposit and all accrued interest, with Escrow Agent. Upon receipt of the City's notice and the balance of the Purchase Price, Escrow Agent shall promptly proceed to record the Warranty Deed and post the Purchase Price, less any obligations attributable to Seller, for delivery to Seller.

(1) The City's Obligations. The City shall be responsible for the closing costs, it being understood that there will not be any recording fee. The City shall also be responsible for any expenses incurred by the City related to this transaction, including any agricultural rollback taxes assessed by Washington County Recorder as a result of this transaction, attorney's fees for the City's attorney, if any, and any commission to the City's broker, if any.

(2) Seller's Obligations. Seller shall be responsible for any expenses incurred by Seller related to this transaction, including any attorney's fees for Seller's attorney, if any, any commission to Seller's broker, if any, and the payment of any taxes or fees related to the Property accruing on or before the date Warranty Deed is recorded. Further, Seller hereby consents to the payment from the Purchase Price any and all amounts necessary to obtain releases of any encumbrances or liens affecting title to the Property including taxes not yet due but appearing as a lien on title to the Property.

5 Representations and Warranties. Seller hereby represents and warrants to the City as follows:

(a) Authority. Seller has all requisite power and authority to execute and deliver this instrument, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this instrument, and the performance by Seller of its obligations hereunder, have been duly and validly authorized by all necessary action on behalf of Seller. This instrument has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization,

AGREEMENT TO PURCHASE REAL PROPERTY

arrangement, moratorium, fraudulent conveyance or other similar law relating to or affecting the rights of creditors generally, or by general equitable principles.

(b) No Conflicts. The execution and delivery of this instrument and the consummation or the compliance herewith of the transaction contemplated hereby will not: (i) result in any breach of any of the terms or conditions of, or constitute a default under, the organizational documents of Seller, or any material contract by which Seller is bound; (ii) result in any violation of any governmental, law, rule, regulation, judgment, writ, degree, injunction or order applicable to the Property; (iii) require notice to or the consent, authorization, approval, or order of any governmental authority, or (iv) result in the creation or imposition of any lien, charge or encumbrance upon its property pursuant to any such agreement or instrument, except to the extent otherwise disclosed in this Agreement.

(c) Foreign Status. Seller is not a “foreign person” as defined under Section 1445(f) of the Internal Revenue Code.

(d) Legal Proceedings. There are no claims, actions, suits, or proceedings pending or threatened against the Property or Seller that would reasonably be expected to result in the issuance of a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal, the consummation of any of the transactions contemplated by this instrument.

(e) Condemnation. Seller has not received written notice of any existing or pending, condemnation or similar proceedings against or involving the Property or any plan, study or effort to rezone the Property or to widen, modify, regrade or realign any street or highway that borders the Property.

(f) Patriot Act Compliance. Neither Seller nor its affiliates is in violation of any laws relating to terrorism, money laundering or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Action of 2001, Public Law 107-56 and Executive Order No. 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) (the “Executive Order”) (collectively, the “Anti-Money Laundering and Anti-Terrorism Laws”). Neither Seller nor its affiliates is acting, directly or indirectly, on behalf of terrorists, terrorist organizations or narcotics traffickers, including those persons that appear on the Annex to the Executive Order, or are included on any relevant lists maintained by the Office of Foreign Assets Control of U.S. Department of Treasury, U.S. Department of State, or other U.S. government agencies, all as may be amended from time to time. Neither Seller nor its affiliates or any of its brokers or other agents in any capacity in connection with the sale of the Property (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person included in the lists referenced above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Money Laundering and Anti-Terrorism Laws. Neither Seller, nor any person or entity controlling or controlled by Seller, is a country, territory, individual or entity named on any of the lists maintained by the United States Department of Commerce (Denied

AGREEMENT TO PURCHASE REAL PROPERTY

Persons and Entities), the list maintained by the United States Department of Treasury (Specially Designated Nationals and Blocked Persons), and the lists maintained by the United States Department of State (Terrorist Organizations and Debarred Parties) (collectively, "Government Lists"), and the monies used by Seller in connection with this instrument and amounts committed with respect hereto, were not and are not derived from any activities that contravene any applicable anti-money laundering or anti-bribery laws and regulations (including funds being derived from any person, entity, country or territory on a Government List or engaged in any unlawful activity defined under Title 18 of the United States Code, Section 1956(c)(7)).

(g) Environmental Condition. Seller has not treated, recycled, stored, disposed of, arranged for or permitted the disposal of, transported, handled, or released any substance, including Hazardous Materials (as defined below), or operated the Property in violation of Environmental Laws (as defined below) in a manner that would trigger an enforcement action thereunder. "Hazardous Materials" means any gasoline, petroleum, or petroleum products or by-products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls, and any other chemicals, materials, wastes, or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law. "Environmental Laws" means any and all federal, state, local, or municipal laws (including common law), rules, orders, regulations, statutes, ordinances, codes, decrees, or other requirements as now or may at any time hereafter be in effect, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, regulating, relating to or imposing liability or standards of conduct concerning pollution or protection of the environment or human health or safety.

(h) Solvency. Seller has not (i) made a general assignment for the benefit of its creditors, (ii) admitted in writing its inability to pay its debts as they mature, (iii) had an attachment, execution or other judicial seizure of any property interest which remains in effect, or (iv) taken, failed to take or submitted to any action indicating a general inability to meet its financial obligations as they accrue. There is not pending any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or recomposition of Seller or any of its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking appointment of a receiver, trustee, custodian or other similar official for any of them or for all or any substantial part of its or their property.

(i) Brokers. Seller has not employed any broker, finder, investment banker, or financial advisor as to whom Seller may have any obligation to pay any brokerage or finder's fees, commissions or similar compensation in connection with the transactions contemplated hereby.

(j) Untrue Statements. To the knowledge of Seller, none of the representations and warranties in this Section contains any untrue statement of material fact or omits to state a material fact necessary, in light of the circumstances under which it was made, to make any such representation not misleading in any material respect.

6 Default, Remedies and Termination. It shall constitute an event of default of this instrument if any party fails to timely deliver any of its performances at the times indicated herein. The defaulting party shall also be liable to pay any escrow cancellation

AGREEMENT TO PURCHASE REAL PROPERTY

charges. In no event shall either party be entitled to recover lost profits or appreciation or other consequential damages. Additionally:

(a) Default by Seller. If Seller defaults on this instrument, the City's exclusive remedies shall be to either: (i) terminate this instrument; or (ii) pursue an action for specific performance against Seller.

(b) Default by the City. If the City defaults on this instrument, Seller's exclusive remedy shall be to terminate this instrument and receive \$1,000.00 as liquidated damages.

7 Miscellaneous Provisions

(a) Interpretation. Captions and headings are used for reference only and must not be used in construing or interpreting this instrument. All recitals set forth at the beginning of this instrument are, by this reference, fully incorporated into this instrument and the facts recited therein shall be deemed conclusive for any purpose. All exhibits referred to in this instrument are deemed fully incorporated herein, whether or not actually attached. As used herein (i) the singular include the plural (and vice versa) and the masculine or neuter gender include the feminine gender (and vice versa) as the context may require; (ii) locative adverbs such as "herein", "hereto", and "hereunder" refer to this instrument in its entirety and not to any specific section or paragraph; (iii) the terms "include", "including", and similar terms must be construed as though followed immediately by the phrase "but not limited to;" and (iv) the terms "party" and "parties" refer only to a named party or parties to this instrument unless the context requires otherwise. All parties have jointly participated in the negotiation and drafting of this instrument upon advice of their own, independent counsel or had the opportunity to do so, and this instrument must be construed fairly and equally as to all parties as if drafted jointly by them. If there is any conflict between the terms of this instrument and any other related documents, including any exhibits identified herein, the terms of this instrument shall prevail.

(b) Acknowledgement of Public Disclosure Laws. Sponsor hereby acknowledges that the City is subject to the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated or its successor, that pursuant thereto all materials submitted by Sponsor pursuant to this Agreement may be subject to disclosure as government records, and that the City has no duty or obligation to withhold any such materials from disclosure in any manner.

(c) Beneficiaries. This instrument shall be binding upon and inure to the benefit of the parties and to their respective heirs, representatives, successors and permitted assignees. This instrument is intended for the exclusive benefit of the parties and permitted assignees and is not intended and shall not be interpreted as conferring any benefit on any third party.

(d) Entire Agreement. The parties intend that this instrument is the final expression of their agreement and constitutes their entire understanding regarding this subject matter. This instrument supersedes any previous or contemporaneous negotiations or communications of any kind between the parties and contains all of the terms agreed upon between the parties. No party relied on any other term, warranty, and/or covenant as an inducement to enter this instrument.

AGREEMENT TO PURCHASE REAL PROPERTY

(e) Amendment. The parties shall not amend or modify this instrument in any way unless in writing signed by the parties.

(f) Further Action. Each party shall promptly do any act or execute and deliver any document reasonably necessary to comply with their respective obligations under this instrument in order to carry out the intent of the parties in consummating this transaction.

(g) Time of the Essence. Time is of the essence in each and every term and provision of this instrument. All references to days herein shall be deemed to refer to calendar days unless otherwise specified. In the event that the final date for performance of any act required by this instrument falls on a Saturday, Sunday, or legal holiday, such act may be performed on the next day which is not a Saturday, Sunday, or legal holiday.

(h) Waiver. Neither the failure of either party to insist upon the timely or full performance of any of the terms and conditions of this instrument, nor the waiver of any breach of any of the terms and conditions of this instrument, shall be construed as thereafter waiving any such terms and conditions, but these shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

(i) Severability. If any court of competent jurisdiction declares any portion of this instrument unenforceable, the parties shall deem such portion as severed from this instrument, and shall deem the remaining parts of this instrument, including without limitation the remaining parts of the paragraph of which the unenforceable portion was a part, in full force and effect as though such unenforceable portion had never been part of this instrument. The parties shall replace any such unenforceable portion with an enforceable provision which will achieve, to the extent possible, the purposes of the unenforceable portion.

(j) Forum and Law. Utah law shall govern this instrument without respect to any principles of choice of law or conflicts of law. Jurisdiction and venue of any action commenced relating to this instrument shall be exclusively in courts located in, or with jurisdiction over, Washington County, Utah.

(k) Attorney's Fees. In any civil action to enforce this instrument commenced in a court of proper jurisdiction, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney's fees and costs incurred by the prevailing party, including pre-litigation efforts related to the dispute that is the subject of the action.

(l) Notices, Requests, and Communications. Unless otherwise set forth above, all notices, requests, and communications required by this instrument shall be in writing. Any party delivering any written document shall deliver the written document by any of the following means: (a) certified or registered mail, postage prepaid, return receipt requested, in which case the written document shall be deemed delivered upon the earlier of actual receipt or three business days after the postmark date, (b) recognized commercial overnight courier, in which case the written document shall be deemed delivered one business day after acceptance for next business-day delivery by the courier, or (c) personal delivery, in which case the written document shall be deemed delivered when received. The addresses to which the written documents shall be delivered are as follows:

AGREEMENT TO PURCHASE REAL PROPERTY

If delivered to the City: City of St. George
Attn: City Engineer
175 E. 200 N.
St. George, UT 84770

with a copy to: City of St. George
Attn: City Attorney
175 E. 200 N.
St. George, UT 84770

If delivered to Seller: Red Sands F-1 LLC
Attn: William C. Cox
951 South 900 East
St. George, Utah 84790

Any party shall deliver notice of change of address in the manner described in this section. Rejection or other refusal to accept a notice or the inability to deliver a notice because of a changed address of which no notice was given will be deemed to constitute receipt of the notice sent.

8 Execution. By executing this instrument below, the executing individuals acknowledge that (1) they have read this instrument, (2) they understand its terms, (3) they have had the opportunity to have this instrument reviewed by independent counsel, (4) they have the full and complete authority to execute this instrument on their own behalf or on the behalf of any entity which they represent, and (5) they intend to bind themselves or the entity which they represent, if any, to the terms of this instrument in full. The failure of any executing individual to date their signature will not affect the validity of this instrument.

9 Counterparts. The parties may execute this instrument in multiple counterparts with the same force and effect as if all signatures were set forth in a single document. Facsimile and other copies shall have the same force and effect as the original.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES FOLLOW]

AGREEMENT TO PURCHASE REAL PROPERTY

In witness of their intention to be bound by the above terms, the parties hereby execute this instrument as follows:

CITY OF ST. GEORGE

Date

By: _____
Michele Randall, Mayor

Attested:

By: _____
Christina Fernandez, City Recorder

Approved:

By: _____
Jami Brackin, Deputy City Attorney

RED SANDS F-1 LLC

August 1, 2022
Date

By: William C Cox
William C. Cox, Manager

AGREEMENT TO PURCHASE REAL PROPERTY

EXHIBIT A
Warranty Deed

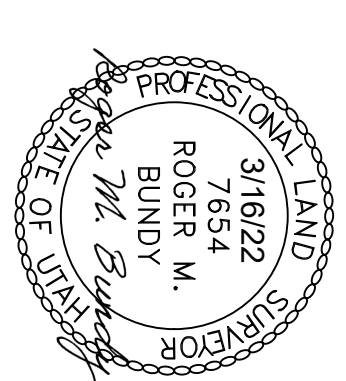
PORTION OF RED SANDS F-1, LLC TO BE DEEDED TO ST. GEORGE CITY
(TAX PARCEL SG-5-3-3-3200)

BEGINNING AT A POINT S0°41'28"W, 1329.51 FEET ALONG THE CENTER SECTION LINE AND N89°00'32"W, 49.75 FEET FROM THE CENTER 1/4 CORNER OF SECTION 3, T43S, R15W, SLB&M, SAID POINT BEING ON THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20170001492 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, SAID POINT ALSO BEING ON THE NORTH LINE OF LOT 6, BLOCK 6 OF HORATIO PICKETT'S ENTRY SURVEY (SOUTH LINE OF LOT 1, BLOCK 4 OF RC LUND'S ENTRY SURVEY), RUNNING THENCE S0°41'28"W, 1230.56 FEET ALONG THE EAST LINE OF SAID PARCEL TO THE CORNER OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016222 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE, MORE OR LESS, ALONG THE BOUNDARY OF SAID PARCEL THE FOLLOWING FOUR (4) COURSES; N89°17'40"W, 25.69 FEET; THENCE S0°39'58"W, 10.00 FEET TO THE POINT OF CURVE OF A 19.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, RADIUS POINT BEARS N89°12'11"W; THENCE SOUTHWESTERLY 29.90 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°09'44"; THENCE N0°56'07"E, 20.81 FEET; THENCE S88°48'50"E, 5.31 FEET; THENCE N1°11'10"E, 150.01 FEET; THENCE N8°18'40"E, 80.63 FEET; THENCE N1°11'10"E, 377.09 FEET; THENCE N0°58'39"E, 72.33 FEET; THENCE N0°46'09"E, 420.95 FEET; THENCE N1°05'36"E, 138.58 FEET TO THE NORTH LINE OF SAID LOT 6 (SOUTH LINE OF SAID LOT 1); THENCE S89°00'32"E, 22.22 FEET ALONG SAID NORTH LINE OF LOT 6 (SOUTH LINE OF LOT 1) TO THE POINT OF BEGINNING.

CONTAINING 0.758 ACRES.

SURVEYORS CERTIFICATE

I, ROGER M. BUNDY, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR AND THAT I HOLD CERTIFICATE NO. 7664 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT OF THE STATE OF UTAH. I FURTHER CERTIFY THAT I HAVE MADE A SURVEY OF THE HERON VILLAGE BOUNDARY PREPARED AND FOUND INSTRUMENTS AS SHOWN HEREON AND THAT THIS IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.



BOUNDARY DESCRIPTIONS

PORTION OF RED SANDS F-1, LLC TO BE DEEDED TO ST. GEORGE CITY (TAX PARCEL, SG-5-3-3200)
 BEGINNING AT A POINT 50°41'28"W, 1329.51 FEET ALONG THE CENTER OF SECTION LINE AND N89°00'32"W, 49.75 FEET FROM THE CENTER 1/4 CORNER OF SECTION 3, T43S, R19W, S18&M, SAID POINT BEING ON THAT CERTAIN PART OF THE BOUNDARY OF SAID PARCEL AS SHOWN ON THE SHINGO COUNTY RECORDER, SAID POINT ALSO BEING ON THE NORTH LINE OF LOT 6, BLOCK 6 OF HORATIO PICKETT'S ENTRY SURVEY (SOUTH LINE OF LOT 1, BLOCK 4 OF RC LUND'S ENTRY SURVEY), RUNNING THENCE S0°41'28"W, 1230.56 FEET ALONG THE EAST LINE OF SAID PARCEL TO THE CORNER OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20190016222 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE, MORE OR LESS, ALONG THE BOUNDARY OF SAID PARCEL THE FOLLOWING FOUR (4) COURSES: N89°17'40"W, 25.89 FEET; THENCE S0°39'38"W, 10.00 FEET TO THE POINT OF CURVE OF A 19.00 FOOT RADIUS CURVE BEING THE POINT OF BEGINNING; THENCE S0°39'38"W, 189°12'11"W; THENCE SOUTHWESTERLY X 29.90 FEET ALONG THE ARC OF SAID CURVE; THROUGH A CENTRAL ANGLE OF 90°09'44"; THENCE N0°56'07"E, 20.81 FEET; THENCE N8°19'40"E, 80.63 FEET; THENCE N1°11'10"E, 150.01 FEET; THENCE N8°58'39"E, 72.33 FEET; THENCE N0°46'09"E, 420.95 FEET; THENCE N1°06'38"E, 138.58 FEET TO THE NORTH LINE OF SAID LOT 6 (SOUTH LINE OF SAID LOT 1); THENCE S89°00'32"E, 22.22 FEET ALONG SAID NORTH LINE OF LOT 6 (SOUTH LINE OF LOT 1) TO THE POINT OF BEGINNING.
 CONTAINING 0.758 ACRE.

PORTION OF RED SANDS F-1, LLC TO BE CONVEYED TO ST. GEORGE CITY AS SLOPE EASEMENT (TAX PARCEL, SG-5-3-3200)
 BEGINNING AT A POINT 50°41'28"W, 1329.51 FEET ALONG THE CENTER OF SECTION LINE AND N89°00'32"W, 71.96 FEET FROM THE CENTER 1/4 CORNER OF SECTION 3, T43S, R19W, S18&M, SAID POINT BEING ON THE NORTH LINE OF LOT 6, BLOCK 6 OF HORATIO PICKETT'S ENTRY SURVEY (SOUTH LINE OF LOT 1, BLOCK 4 OF RC LUND'S ENTRY SURVEY), RUNNING THENCE S1°05'28"W, 138.58 FEET; THENCE S0°46'09"W, 420.95 FEET; THENCE S1°11'10"W, 377.09 FEET; THENCE S8°19'40"W, 80.63 FEET; THENCE S0°56'07"W, 18.50 FEET; THENCE N89°03'22"W, 8.77 FEET; THENCE N1°11'10"E, 169.43 FEET; THENCE N8°19'40"E, 80.63 FEET; THENCE N1°09'09"E, 448.47 FEET; THENCE N1°06'39"E, 138.60 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 6 (SOUTH LINE OF SAID LOT 1); THENCE S89°00'32"E, 12.00 FEET ALONG SAID NORTH LINE OF SAID LOT 6 (SOUTH LINE OF SAID LOT 1) TO THE POINT OF BEGINNING.
 CONTAINING 0.402 ACRE.

NARRATIVE

THE PURPOSE OF THE HERON EXHIBIT IS TO SHOW THE AREA OF LAND TO BE ACQUIRED BY ST. GEORGE CITY FROM RED SANDS F-1, LLC FOR ADDITIONAL ROADWAY RIGHT OF WAY AND SLOPE EASEMENT. THE BASIS OF BEARING FOR THIS SURVEY IS NORTH 88°59'00" WEST ALONG THE CENTER SECTION LINE BETWEEN THE EAST QUARTER CORNER AND THE WEST QUARTER CORNER OF SECTION 3, TOWNSHIP 42 SOUTH, RANGE 19 WEST, SALT LAKE BASE AND MERIDIAN. RECORD DEED DOCUMENTS FOR RED SANDS F-1, LLC SET FORTH THE PROPERTY AND THE PREPARATION OF THE HERON BOUNDARY DESCRIPTION. MINOR ADJUSTMENTS WERE MADE TO BOUNDARY CORNERS WERE PLACED IN PROPERTY TO THE CITY. NO BOUNDARY CORNERS WERE PLACED IN CONJUNCTION WITH PREPARATION OF THE HERON BOUNDARY DESCRIPTION.

LEGEND

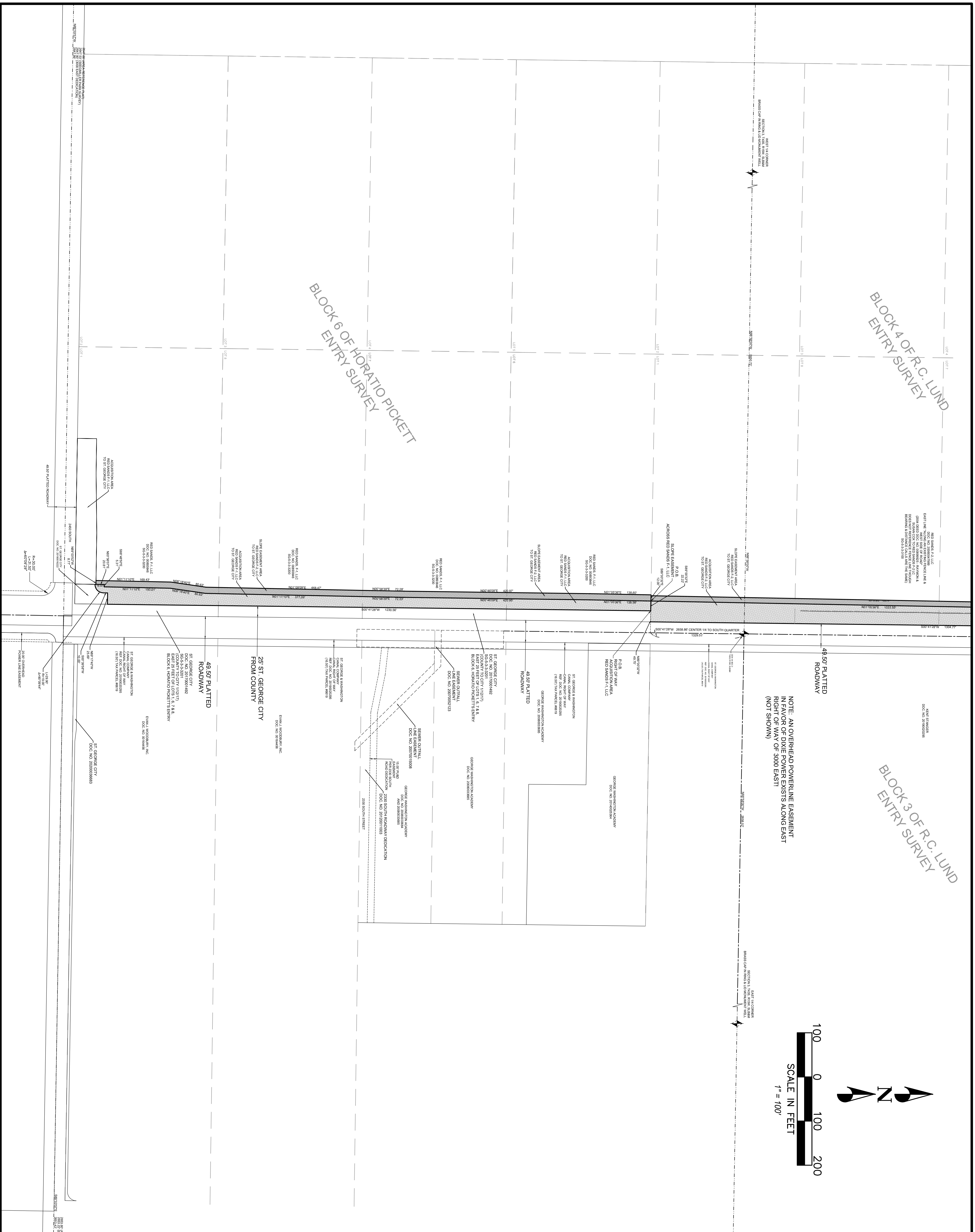
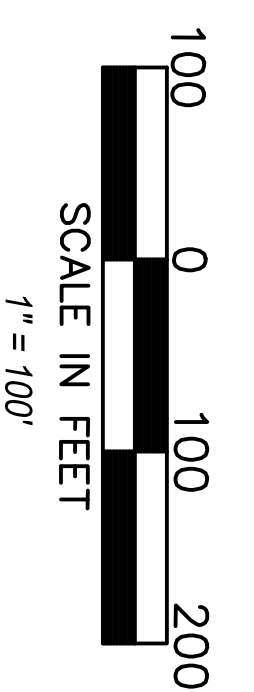
SECTION MONUMENT AS NOTED

RECORD OF SURVEY

PREPARED BY: R&B SURVEYING
 257 PRICKLEY PEAR DRIVE WASHINGTON, UTAH 84780
 PHONE: 435-632-3540

LOCATION:
 SW 1/4 SEC. 3, T42S, R19W, S18&M
 COMPLETED:
 MARCH 16, 2022
 REQUESTED BY:
 SUNRISE ENGINEERING/TAYLOR TORGERSON

NOTE: AN OVERHEAD POWERLINE EASEMENT IN THE AREA OF THE CENTER EXISTS ALONG EAST (NOT SHOWN)



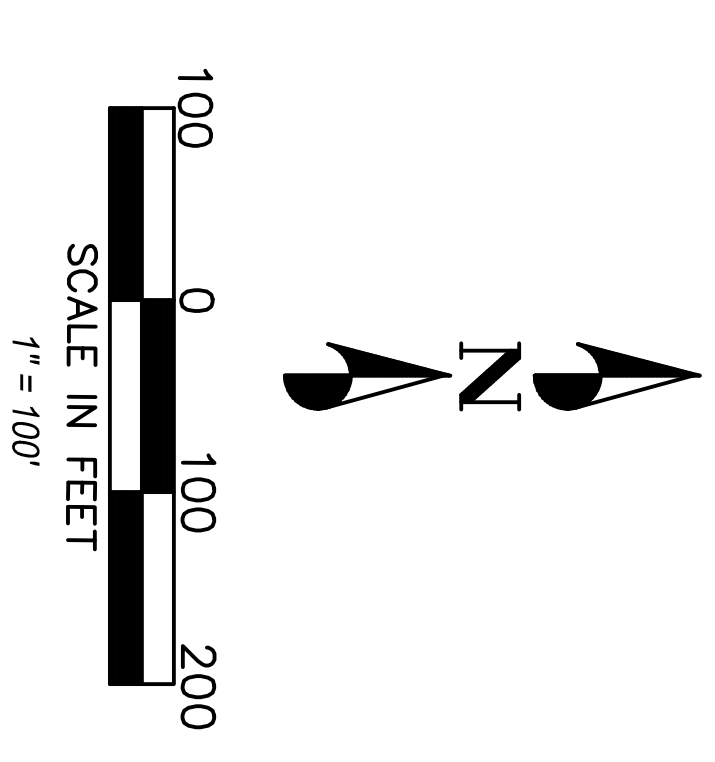
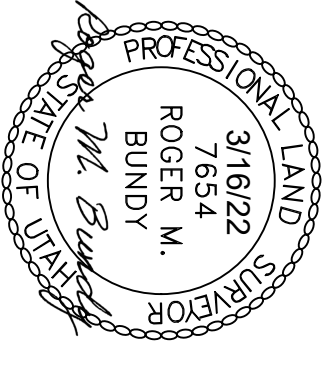
PORTION OF RED SANDS F-1, LLC TO BE DEEDED TO ST. GEORGE CITY
FOR WIDENING OF 2450 SOUTH
(TAX PARCEL SG-5-3-3-3200)

BEGINNING AT A POINT N89°03'57"W, 94.41 FEET ALONG THE SECTION LINE AND NORTH 24.75 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 3, T43S, R15W, SLB&M, SAID POINT BEING ON THE SOUTH LINE OF LOT 1, BLOCK 6 OF HORATIO PICKETT'S ENTRY SURVEY (NORTH LINE OF 2450 SOUTH STREET, A PLATTED 49.50' ROADWAY), RUNNING THENCE N89°03'57"W, 330.03 FEET ALONG SAID SOUTH LINE OF SAID LOT 1 AND ALONG THE NORTH LINE OF 2450 SOUTH STREET; THENCE N0°56'04"E, 43.52 FEET; THENCE S89°03'52"E, 80.04 FEET; THENCE N89°19'43"E, 133.73 FEET; THENCE S89°03'52"E, 116.31 FEET; THENCE S0°56'07"W, 47.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.345 ACRE.

SURVEYORS CERTIFICATE

I, ROGER M. BUNDY, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD CERTIFICATE No. 7664 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, OF THE PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT OF THE STATE OF UTAH. I FURTHER CERTIFY THAT I HAVE MADE A SURVEY OF THE HEREON DESCRIBED LAND IN ACCORDANCE WITH SECTION 7-223-17, HAVE OBTAINED MEASUREMENTS AND COORDINATE MEASUREMENTS AS SHOWN HEREON AND THAT THIS IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.



BOUNDARY DESCRIPTION

PORTION OF RED SANDS F-1, LLC TO BE DEEDED TO ST. GEORGE CITY (TAX PARCEL, SG-5-3-3-320)
 BEGINNING AT A POINT N89°03'57"W, 94.41 FEET ALONG THE SECTION LINE AND NORTH 24°7'5" FEET FROM THE SOUTH 1/4 CORNER OF SECTION 3, T14S, R15W, SLB8M, SAID POINT BEING ON THE SOUTH LINE OF LOT 1, BLOCK 6 OF BRIDLE GATE SUBDIVISION, SAID POINT BEING THE POINT OF BEGINNING OF THE 49.50' PLATTED ROADWAY (HEREINAFTER REFERRED TO AS "ROADWAY") RUNNING THENCE N89°03'57"W, 330.03 FEET, A POINT BEING THE POINT OF BEGINNING OF THE 49.50' PLATTED ROADWAY ALONG SAID SOUTH LINE OF SAID LOT 1 AND ALONG THE NORTH LINE OF 2450 SOUTH STREET, THENCE N0°56'04"E, 43.52 FEET, THENCE S89°03'52"E, 80.04 FEET, THENCE N89°19'43"E, 133.73 FEET, THENCE S89°03'52"E, 115.31 FEET, THENCE S0°58'07"W, 47.28 FEET TO THE POINT OF BEGINNING, CONTAINING 0.345 ACRE

NARRATIVE

THE PURPOSE OF THE HEREON EXHIBIT IS TO SHOW THE AREA OF LAND TO BE ACQUIRED BY ST. GEORGE CITY FROM RED SANDS F-1, LLC FOR ADDITIONAL ROADWAY RIGHT OF WAY FOR WIDENING 2450 SOUTH. THE BASIS OF BEARINGS FOR THIS SURVEY IS NORTH 89°03'57" WEST ALONG THE SECTION LINE BETWEEN THE SOUTHEAST CORNER AND THE SOUTHWEST CORNER OF SECTION 3, TOWNSHIP 142 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN. RECORD DEED DOCUMENTS FOR RED SANDS F-1, LLC, CITY PROPERTY, AND THE HORATIO PICKETT'S ENTRY SURVEY WERE USED AS A BASIS FOR PREPARATION OF THE HEREON EXHIBIT. THE HEREON EXHIBIT IS A TRUE AND CORRECT REPRESENTATION OF THE LAND TO BE ACQUIRED WITH PERVIOUSLY DEEDED PROPERTY TO THE CITY. NO BOUNDARY CORNERS WERE PLACED IN CONJUNCTION WITH PREPARATION OF THE HEREON BOUNDARY DESCRIPTION.

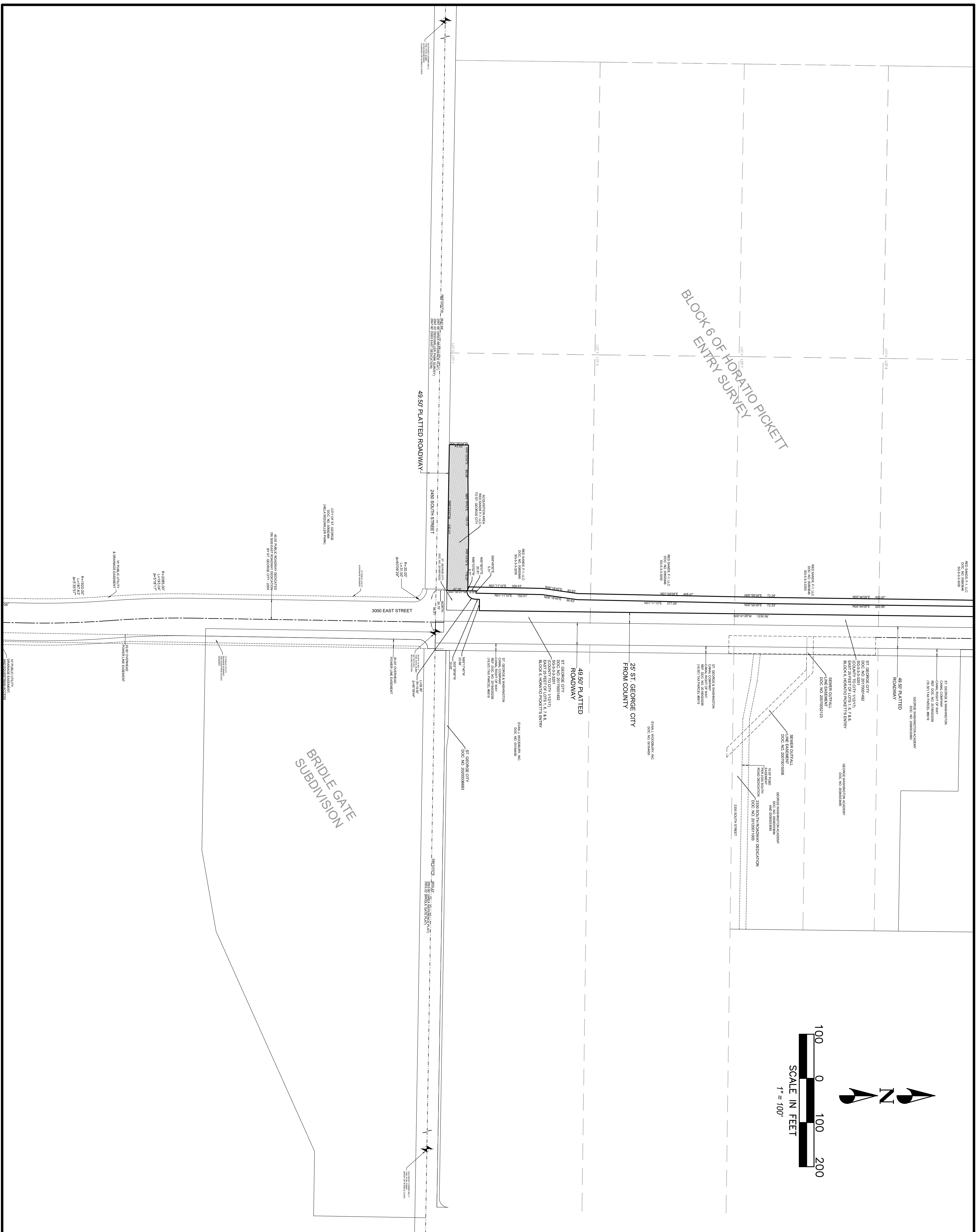
LEGEND

SECTION MONUMENT AS NOTED

RIGHT OF WAY ACQUISITION EXHIBIT FOR WIDENING OF 2450 SOUTH

PREPARED BY: R&B SURVEYING
 257 PRICKLEY PEAR DRIVE WASHINGTON, UTAH 84780
 PHONE: 435-632-3540

LOCATION:
 SW 1/4 SEC. 3, T42S, R15W, SLB8M
 COMPLETED:
 MARCH 16, 2022
 REQUESTED BY:
 SUNRISE ENGINEERING/TAYLOR, TORGERSON



AGREEMENT TO PURCHASE REAL PROPERTY

EXHIBIT B
Slope Easement

When Recorded Return To:
City of St. George
City Attorney's Office
175 East 200 North
St. George, Utah 84770

Red Sands F-1 LLC
Attn: William C. Cox
951 South 900 East
St. George, Utah 84790

a portion of Tax ID: SG-5-3-3-3200

MUNICIPAL SLOPE EASEMENT

That in consideration of Ten Dollars and other good and valuable consideration paid to Red Sands F-1 LLC, a Utah limited liability company, Grantor, by the City of St. George, a Utah municipal corporation, Grantee, the receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell, transfer and convey unto Grantee, its successors and assigns, a slope easement, for slope maintenance and protection of roadway improvements, upon, over and across in and along real property owned by Grantor in Washington County, State of Utah, and the easement being more fully described as follows:

See Exhibit "A" attached hereto and made a part hereof.

TO HAVE AND TO HOLD such property to Grantee, the City of St. George, forever for the uses and purposes normally associated with municipal utilities.

This easement will terminate upon the construction of an approved development on the Easement which provides the necessary subjacent support and protection of slope that is created by this easement. Improvements installed, built, or placed within the easement by Grantor or its successors or assigns, shall require the written permission of the Grantee.

The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the Grantors has executed this instrument this _____ day of _____, 2022.

GRANTOR: RED SANDS F-1 LLC

Date

By: _____
Name: William C. Cox
Title: Manager

PORTION OF RED SANDS F-1, LLC TO BE CONVEYED TO ST. GEORGE CITY AS SLOPE
EASEMENT

(TAX PARCEL SG-5-3-3-3200)

BEGINNING AT A POINT S0°41'28"W, 1329.51 FEET ALONG THE CENTER SECTION LINE AND N89°00'32"W, 71.96 FEET FROM THE CENTER 1/4 CORNER OF SECTION 3, T43S, R15W, SLB&M, SAID POINT BEING ON THE NORTH LINE OF LOT 6, BLOCK 6 OF HORATIO PICKETT'S ENTRY SURVEY (SOUTH LINE OF LOT 1, BLOCK 4 OF RC LUND'S ENTRY SURVEY), RUNNING THENCE S1°05'36"W, 138.58 FEET; THENCE S0°46'09"W, 420.95 FEET; THENCE S1°11'10"W, 377.09 FEET; THENCE S8°18'40"W, 80.63 FEET; THENCE S1°11'10"W, 150.01 FEET; THENCE N88°48'50"W, 5.31 FEET; THENCE S0°56'07"W, 18.50 FEET; THENCE N89°03'52"W, 8.77 FEET; THENCE N1°11'10"E, 169.43 FEET; THENCE N8°18'40"E, 80.63 FEET; THENCE N1°09'09"E, 448.47 FEET; THENCE N0°58'39"E, 72.28 FEET; THENCE N0°46'09"E, 420.97 FEET; THENCE N1°05'36"E, 138.60 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 6 (SOUTH LINE OF SAID LOT 1); THENCE S89°00'32"E, 12.00 FEET ALONG SAID NORTH LINE OF SAID LOT 6 (SOUTH LINE OF SAID LOT 1) TO THE POINT OF BEGINNING.

CONTAINING 0.402 ACRE.

AGREEMENT TO PURCHASE REAL PROPERTY

EXHIBIT C

Purchase Price

Exhibit C

3000 East Property Acquisition Costs for Cox Red Sands F1 - Appraisal Report January 27, 2022

| <u>Type</u> | <u>Parcel #</u> | <u>Acres</u> | <u>Cost/Acre</u> | <u>Total</u> |
|----------------------------|-----------------|--------------|------------------|----------------|
| Medium Density Residential | SG-5-3-3-3200 | 0.384 | 239,580 | 91,999 |
| Commercial | SG-5-3-3-3200 | 0.374 | 468,270 | 175,133 |
| Commercial 3000 E/2450 S | SG-5-3-3-3200 | 0.345 | 468,270 | <u>161,553</u> |
| | | | | 428,685 |

AGREEMENT TO PURCHASE REAL PROPERTY

EXHIBIT D
Construction Plans



Agenda Date: 08/25/2022

Agenda Item Number: 1f

Subject:

Consider entering into lease with Teri McHale for Studio Space #3 at the Electric Theater Center.

Item at-a-glance:

Staff Contact: Emily Reed

Applicant Name: Teri McHale

Reference Number: N/A

Address/Location:

68 East Tabernacle Street

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

Studios at the Electric Theater serve as office space or gallery space for artists and arts organizations. Studio #3 is a gallery studio and Teri McHale proposes to sell fiber art out of the space.

Staff Narrative (need/purpose):

The City collects revenue stream but also fills the center with multiple types of art from local southern Utahns.

Name of Legal Dept approver: Alicia Carlton

Budget Impact: No Impact

Recommendation (Include any conditions):

Enter into the lease agreement with Teri McHale



ELECTRIC THEATER CENTER STUDIO LEASE AGREEMENT

BETWEEN

CITY OF ST. GEORGE

AND

Teri McHale

ELECTRIC THEATER CENTER LEASE AGREEMENT

THIS ELECTRIC THEATER CENTER LEASE AGREEMENT (which, as amended from time to time, is defined herein as the "Agreement") is entered into as of the 26th day of July, 2022, by and between the City of St. George, Utah, a Utah municipal corporation, (the "City") and Teri McHale, ("Tenant").

RECITALS

WHEREAS, City constructed the Electric Theater Center located at 68 E. Tabernacle, St. George, Utah 84770 (the "ETC"); and

WHEREAS, providing a rich, diverse art center experience to the wider community is an important part of the City's mission for the ETC; and

WHEREAS, Tenant desires to lease certain real property at the ETC for the purpose of establishing and operating an artist studio/office on the terms provided in this Agreement;

NOW THEREFORE, in consideration the foregoing recitals and the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Agreement to Lease and Operate a Business

A. Agreement to Lease ETC Specified Areas. City hereby leases to Tenant and Tenant hereby leases from City that certain real property within the ETC building that is described in Exhibit A, together with the improvements constructed thereon by City (the "Leasehold Area"). Tenant agrees to accept the ETC "as is," and City makes no warranty as to the condition of the ETC or their suitability for any particular purpose.

B. Construction of Tenant Improvements. Tenant shall not construct any improvements on the Tenant's Leasehold Area or the ETC except as authorized in advance in writing by City from time to time. Any improvements so authorized shall be constructed in accordance with the terms set forth in this Agreement and as approved by City in advance of any work being performed.

C. Purpose of Lease. Tenant agrees that it shall have the right, privilege, and obligation to use the Tenant's Leasehold Area in the ETC for the following purposes (and no other purposes): Display and sale of art.

D. Access. City agrees that if Tenant is not in breach of this Agreement, Tenant and Tenant's employees, officers, directors, contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Tenant's Associates") may ingress and egress across the ETC (in the areas designated by City and as permitted by applicable Laws and Regulations) on a non-exclusive basis and to the extent reasonably necessary for Tenant's use, occupancy, and operations in the Tenant's Leasehold Area at the ETC except as provided in this Agreement. Neither Tenant nor Tenant's Associates shall remain or enter into the ETC between the hours of 11:00 p.m. and 6:00 a.m. without consent of City. A violation of this provision will be treated as a criminal trespass and grounds for terminating the Lease.

E. This Agreement conveys only a leasehold interest in the Tenant's Leasehold Area and for the purposes provided herein, and it conveys no other rights, titles, or interests of any kind.

F. Enjoyment of Rights. Subject to Tenant's complete performance of the payment and other obligations contained in this Agreement, Tenant shall enjoy the rights, uses, and privileges stated in this Agreement.

2. Term

A. Term and Options to Extend. The term of this Agreement shall commence on July 26, 2022 (the "Commencement Date") and shall continue thereafter for an initial term of one (1) year until July 26, 2023 (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall remain in effect for three (3) additional periods of one (1) year terms (each being an "Annual Term") unless either party delivers a written notice of termination to the other party at least ninety (90) days before the expiration of the Initial Term or any Annual Term then in effect. The date on which this Agreement expires as provided in this Section 2.A is the "Expiration Date."

B. Possession. Tenant shall be entitled to possession on the Commencement day of the term of this Lease, and shall yield possession to City on the Expiration Date unless otherwise agreed by both parties in writing.

C. Assignment and Subleasing. Tenant shall not assign any of its rights under this Agreement (whether such assignment is voluntarily or involuntarily, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this Agreement (or any document or interested relating thereto), and shall not delegate any performance under this Agreement. Tenant shall not sublease any part of the Tenant's Leasehold Area without prior written approval from the City.

D. Damage or Destruction of ETC. If any portion of the ETC is damaged in any manner that renders it untenable, City, in its sole and absolute discretion, may determine to (i) repair the ETC at City's expense (and Tenant shall pay to repair any Tenant Improvements); (ii) relocate Tenant to other areas of the ETC that City determines to be reasonably suitable to conduct Tenant's business (on a temporary or permanent basis); or (iii) terminate this Agreement upon giving Tenant ten (10) day's notice.

E. Expiration or Termination

i. Surrender of ETC. Upon any expiration or termination of this Agreement, Tenant, at Tenant's sole cost, shall (i) promptly and peaceably surrender to City the Tenant's Leasehold Area "broom clean" and in good order and condition which shall be determined in the City's sole and absolute discretion; (ii) repair in a good and workmanlike manner any damage to the Tenant's Leasehold Area that arises from or relates to Tenant's use, occupancy, or operations under this Agreement (including, but not limited to, removing any property upon expiration or termination); (iii) deliver to City all keys and access credentials relating to the ETC; (iv) perform Tenant's environmental obligations as provided in Section 7; and (v) remove all movable personal property, Tenant Improvements, and trade fixtures (including signage) that are not owned by City, (except that Tenant must obtain City's prior written consent to remove any such property if Tenant is in default under this Agreement or if such removal may impair the structure of any building). Upon any expiration or termination of this Agreement or abandonment of the Tenant's Leasehold Area, all property that Tenant leaves on the Tenant's Leasehold Area shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by City without notice to, and without any obligation to account to, Tenant or any other person. Tenant shall pay to City all expenses incurred in connection with the disposition of such property in excess of any amount received by City from such disposition. Tenant shall not be released from Tenant's obligations under this Agreement in connection with surrender of the ETC until City has inspected the Tenant's Leasehold Area and delivered to Tenant a written acceptance of such surrender.

ii. Holding Over. If Tenant remains in possession of the Tenant's Leasehold Area after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with state

law. During such occupancy, Tenant shall comply with all provisions of this Agreement that are applicable to an at-will tenancy, including, but not limited to, the payment of rent.

F. Survival. The provisions of Section 2 shall survive any expiration or termination of this Agreement.

3. Rent and Payment.

A. Rent. For Tenant's lease of the Tenant's Leasehold Area, Tenant covenants to pay to City without set-off or deduction the rent as provided herein. Rent is due in advance on the 1st day of each month in the amount of \$150.00 per month and shall commence on the Commencement Date.

i. The first month rent, if it is a partial month, shall be in the amount of \$150.00.

ii. All payments shall be made to City's Finance Department at City's address as set forth in this Agreement on or before the due date and without demand.

B. Security Deposit. Upon the due execution of this Agreement, Tenant shall deposit with City the sum of \$300.00, as security for Tenant's faithful performance of the terms of this agreement. Tenant shall not have the right to apply the security deposit for payment of the last month's rent. City shall notify Tenant of its intent to use the security deposit for cleaning, maintenance, back rent or other purpose allowed herein within 30 days after Tenant has vacated, or within 15 days after receipt of the Tenant's new mailing address (extended to 30 days if there is damage to the Premises) whichever is later. City may use the security deposit for cleaning the premises, for any unusual wear and tear to the premises or common areas, and for any rent or other sums owed pursuant to this Agreement.

C. Late Fees And Bad Check Fees. In the event that any payment required to be paid by Tenant is not made within five (5) days of when due, Tenant shall pay to City, in addition to such payment or other charges due hereunder, a "late fee" in the amount of \$10.00 per day.

i. If City issues a Notice for Non-payment of rent, Tenant must thereafter tender all payments in cash or certified funds only.

ii. In the event of a dishonored check, Tenant must thereafter tender only cash or certified funds for all future payments. In addition, if any check paid on behalf of Tenant is dishonored or returned by a bank for any reason, Tenant shall pay all charges assessed to City by the bank plus a City service charge, per occurrence (as set out in the City fee schedule which may be amended from time to time) in addition to other sums due under this Agreement.

iii. All sums relating to this Agreement shall be due without prior notice or demand except when notice is necessary to make Tenant aware of the amount due if such amount is not otherwise set forth in this Agreement. Tenant shall make all payments without set-off or deduction. All sums paid by Tenant shall first be applied to any past due rent beginning with the most recent amount due. No statement on any check or elsewhere shall be deemed to create an accord and satisfaction. City may accept any payment without prejudice to City's rights to recover any sum or pursue other remedies provided by this Agreement or by law.

D. Payment Address. Tenant shall make payments to City at the following address (or at such other address that City may designate in writing):

City of St. George
c/o ETC Manager
68 E. Tabernacle
St. George, UT 84770

E. City Right to Apply. City shall have the right to apply any sums paid or provided by Tenant in connection with this Agreement to any obligation that Tenant owes to City, whether or not such obligation arises in connection with this Agreement.

4. Utilities. City shall be responsible for arranging and paying for electrical, sewer and water services at the ETC. City shall also provide a dumpster in the area behind the ETC. If Tenant desires additional services Tenant shall be responsible for arranging and paying for those services, including but not limited to: internet service, telephone service, janitorial service and any other Tenant desired services. Tenant must have approval from the City to add services and must coordinate them with the ETC Manager.

5. Tenant's Use of ETC

A. No Interference or Competition. Tenant and Tenant's Associates shall not use the Tenant's Leasehold Area or the ETC in any manner that City believes (in City's sole and absolute discretion) interferes with or competes with any operation at the ETC or decreases the ETC's effectiveness. Tenant shall immediately notify City of any use that creates such interference or decrease in effectiveness and remedy the same to City's sole satisfaction. When Tenant conducts operations in areas where City has authorized other users to be present, Tenant and Tenant's Associates shall cooperate with all such users and shall not interfere with the operations of others.

B. Comply with All Laws. Tenant and Tenant's Associates shall comply at all times, at Tenant's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Tenant's use, occupancy, or operations at the ETC (the "Laws and Regulations"), which include, but are not limited to, all laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law; any and all plans and programs developed in compliance with such requirements (including, but not limited to, the ETC Security Plan); and all lawful and nondiscriminatory ETC policies and rules as listed in Exhibit B. Upon request by City, Tenant will verify, within a reasonable time frame, compliance with any Laws and Regulations.

Tenant understands and agrees that it shall be solely responsible for payment of any and all royalties for musical and other works to be performed or used during its use of the ETC. Tenant further acknowledges and certifies that all requisite approvals and clearances have been obtained from the copyright owners for all musical and other works performed or used during Tenant's use of the ETC. Tenant agrees to defend, hold harmless, and indemnify City, its officers, agents, employees, and representatives from and against any infringement actions, or causes of action arising out of Tenant's failure to obtain such approvals and clearances.

C. No Unauthorized Use. Tenant and Tenant's Associates shall use the ETC only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access in any area that Tenant does not lease; placing waste materials in the ETC or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other ETC users; the use of automobile parking areas in a manner not authorized by City; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

D. Permits and Licenses. Tenant must have a City business license for the Tenant's Leasehold Area and a tax ID number. Tenant shall obtain and maintain in current status all permits and

licenses that are required under any Laws and Regulations in connection with Tenant's use, occupancy, or operations at the ETC. In the event that Tenant receives notice from any governmental authority that Tenant lacks, or is in violation of, any such permit or license, Tenant shall provide City with timely written notice of the same.

E. Taxes and Liens. Tenant shall timely pay all taxes, fees, assessments, and levies that relate to Tenant's use, occupancy, or operations at the ETC and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for any Tenant Improvements). Within ten (10) days, Tenant shall remove any such lien that may be created or commence a protest of such lien by depositing with City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the ETC, Tenant shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

F. No Alterations or Improvements. Tenant shall not make or cause to be made any alteration or improvement to the Tenant's Leasehold Area or to the ETC without City's prior written consent, which may be given or withheld in City's sole and absolute discretion. This includes painting the walls, installing window shades, putting holes in the wall, wiring in lighting fixtures and any other change to the structure of the Tenant's Leasehold Area.

G. Signage and Advertising. Tenant shall not install or operate any signage in the Tenant's Leasehold Area or in the ETC except with the prior written approval of City (which may be given or withheld in City's sole and absolute discretion). Any approved signage shall be at Tenant's expense and shall comply with Laws and Regulations (including, but not limited to, City's ETC signage policies and standards and City's ordinance and permit requirements). Except as expressly permitted by this Agreement, Tenant shall not advertise or permit others to advertise at the Tenant's Leasehold Area by any means, whether or not such advertising is for profit without prior written approval from City, which approval may be withheld for any reason.

H. Security. Tenant is responsible to comply (at Tenant's sole cost) with all security measures that City, including, but not limited to, any access credential requirements, any decision to remove Tenant's access credentials, and any other costs arising from a breach of security requirements caused or permitted by Tenant or Tenant's Associates. Tenant agrees that City has the right to impose any ETC security requirements. Tenant further agrees that ETC access credentials are the property of City and may be suspended or revoked by City in its sole and absolute discretion at any time. Tenant shall pay all fees associated with such credentials, and Tenant shall immediately report to the ETC Manager any lost credentials or credentials that Tenant removes from any employee or any of Tenant's Associates. Tenant shall protect and preserve security at the ETC. Tenant also acknowledges that the Tenant's Leasehold Area is not a secure area and City has no responsibility or liability for items left in the Tenant's Leasehold Area. City makes no warranty as to the safety of items left in the Tenant's Leasehold Area.

I. Maintenance, Repair and Storage. Tenant's use, occupancy, and operations at the ETC shall be without cost or expense to City. Tenant shall be solely responsible to install any Tenant Improvements if approved by City and to maintain, repair, refurbish, and operate Tenant's use and the Tenant Improvements at Tenant's sole cost and expense, except that City shall be responsible for the following to the extent that damage is not caused by Tenant or Tenant's Associates: (i) structural repair and periodic preventive maintenance in the License Area; (ii) structural repair for City-owned improvements in the Leasehold Area; and (iii) repair and maintenance for centralized systems that provide service to the Leasehold Area. Tenant, at Tenant's sole cost, shall at all times maintain the

Tenant's Leasehold Area in good repair and in a clean, safe, and sanitary condition and perform all work in accordance with Laws and Regulations, in a good and workmanlike manner, and in accordance with the standard of work performed by the City elsewhere at the ETC including repairing or replacing (to City's sole satisfaction) any damaged property that belongs to City or City's other tenants to the extent that such damage arises from or relates to an act or omission of Tenant or Tenant's Associates. Tenant shall promptly notify City of any such property damage. If Tenant discovers any other potential claims or losses that may affect City, Tenant shall promptly notify City of the same. City has sole and absolute discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. Among other things, Tenant shall not store on the ETC any inoperable equipment, discarded or unsightly materials, or materials likely to create a hazard; shall not use areas outside of the ETC for storage. Any substance or material that is regulated by any Environmental Law ("Hazardous Materials") shall be governed by Section 7.

J. Operations. Tenant's operations shall comply with the following:

i. Tenant use under this Agreement shall operate in a manner that promotes effective ETC operations. Among other things, Tenant shall (a) immediately notify the ETC Manager of any condition observed at the ETC that may create a hazard or disruption; (b) refrain from annoying, disturbing, or impairing ETC customers, tenants, or employees; (c) not engage in discriminatory business practices; (d) promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the ETC; and (e) operate Tenant's Leasehold Area in a clean and orderly manner.

ii. Tenant shall operate in accordance with Tenant's business plan accepted by City, and City may (but is not required to) request that Tenant update such plan. Tenant shall provide such update within thirty (30) days of City's written request.

iii. Tenant shall respond in a prompt manner to questions and complaints regarding Tenant's operations when raised by ETC users or by City and Tenant shall provide a timely resolution of such questions and complaints.

iv. If City determines for any reason that emergency conditions exist at the ETC, Tenant shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

v. The ETC may, but is not obligated to, stop tenant's operations if safety Laws and Regulations or other safe work practices are not being observed.

vii. Tenant shall control the Tenant's Associates so that they do not disturb or impair ETC customers, tenants, or employees, and among other things Tenant's Associates shall be professional to the public and others at the ETC.

viii. Without limiting or waiving any other remedies available to City, City's remedies shall include the following in connection with deficiencies in Tenant's operations:

a. Propose and Implement Cure. Tenant shall meet with the ETC Manager as he or she may request regarding the quality of Tenant's operations, whether or not in connection with a specific complaint. Tenant shall propose curative measures in response to City's determinations regarding deficiencies in Tenant's operations and shall implement as expeditiously as possible measures that are approved by City.

b. Remove Employees and Associates. City shall have the right to require that Tenant remove from the ETC any of Tenant's Associates that City reasonably determines to be in violation of this Agreement or otherwise detrimental to City's interests at the ETC.

c. City shall have the right to terminate this Agreement in connection with any deficiency in Tenant's operations and in connection with repeated deficiencies (where City notifies Tenant of three or more deficiencies in a twelve (12) month period, whether or not cured).

5. City's Rights and Obligations

A. ETC Maintenance. City shall keep the property of the ETC in good repair.

B. Access to ETC. City for itself and its employees, officers, directors, agents, contractors, subcontractors, suppliers, invitees, volunteers and other representatives ("City's Associates") reserves the right to enter the ETC, including Tenant's Leasehold Area, at any time without notice for any purpose relating to the ETC (including, but not limited to, in order to conduct inspections, determine compliance with the Agreement, investigate or remediate any potential threats or hazards, conduct ETC work, and for emergency purposes), provided that they shall not unreasonably interfere with Tenant's use of the ETC. Tenant agrees to allow City to interview any of Tenant's Associates to discuss any matters pertinent to Tenant's use, occupancy, or operations at the ETC. City shall retain keys to all areas within the ETC including Tenant's Leasehold Area. City and City's Associates shall not be deemed guilty of trespass upon the ETC or to have violated any of Tenant's rights hereunder by reason of any entrance into the ETC including Tenant's Leasehold Area.

C. City's Right to Work Within, Alter, or Recover ETC. City has the right at the ETC to perform or cause to be performed any work (including, but not limited to, constructing improvements, surveying, performing environmental testing, removing any hazard or obstruction, and implementing any plan, program, or action), that City (in its sole and absolute discretion) determines to be in City's best interests, including, but not limited to, within Tenant's Leasehold Area. City may elect to pursue any such work without recovering the Tenant's Leasehold Area from Tenant, in which case City shall exercise reasonable care to minimize disruptions to the premises. City also has the right to recover all or any portion of the Tenant's Leasehold Area from Tenant in connection with any such work (with or without relocating Tenant) as City may determine in its sole and absolute discretion, and the following shall apply:

i. If City determines to recover all or any portion of the Tenant's Leasehold Area, City shall provide Tenant with ninety (90) days prior written notice specifying what areas will be recovered.

ii. If City elects to relocate Tenant, City shall pay the reasonable costs that Tenant actually incurs to relocate to a new location in the ETC (chosen by City) any movable property associated with Tenant's permitted uses under this Agreement.

iii. Upon receiving notice of any recovery or relocation of Tenant's Leasehold Area, Tenant shall promptly notify City if Tenant believes the same will be inadequate to conduct Tenant's operations.

iv. Nothing under paragraph 5 shall be construed to waive City's right to pursue any remedy for a breach of this Agreement arising from or relating to Tenant's use, occupancy, or operations at any portion of the Tenant's Leasehold Area or at the ETC.

D. City's Right to Implement ETC Programs. City has the right to implement any lawful, reasonable, and nondiscriminatory program at the ETC as City may determine in its sole and absolute discretion, and to require Tenant to participate in or comply with any such program. Such programs may include, but are not limited to, providing common arrangements for trash disposal, utilities, or other ETC functions; providing revenue-generating activities at the ETC by City or its designee (including, but not limited to, vending machines, advertising, wireless communications, and utility services whether on or off of the ETC); designating approved vendors and service providers at the ETC; establishing

central locations and security procedures for delivering goods or materials to the ETC; and establishing green building and other programs to benefit the environment and conserve energy.

E. City Charges. City has the right to impose rates and charges in connection with any matter at the ETC in a manner consistent with Laws and Regulations.

F. City Directives. City is the owner and proprietor of the ETC, and City has the right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

G. Governmental Acts. City is a government entity, and City has all rights, powers, and privileges afforded to it under Laws and Regulations. Tenant agrees that Tenant is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

H. Photography. Tenant agrees that City may photograph or otherwise record images or likeness of the business and its activity and use the photograph or images in its advertising and for other purposes without compensation to Tenant.

6. Indemnity and Insurance.

A. Indemnity by Tenant. Tenant agrees to indemnify, hold harmless, and defend City, its agents, elected officials, officers, employees, nor representatives from and against losses of every kind and character (including, but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court or dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) this Agreement; (ii) any use, occupancy, or operations in the Tenant's Leasehold Area or the ETC by Tenant or Tenant's Associates; (iii) from any defects in the ETC, either apparent or hidden; or (iv) any wrongful, reckless, or negligent act or omission of Tenant or Tenant's Associates. In the event of any such claims made or suits filed against City, City shall give Tenant written notice. Tenant agrees to defend against any claims brought or actions filed against City, whether such claims or actions are rightfully or wrongfully brought or filed. In case a claim should be brought or an action filed with respect to the subject of the indemnity herein, Tenant agrees that City may employ attorneys of its own selection to appear and defend the claim or action on its own behalf at the expense of the Tenant, jointly or severally.

B. Waiver. Tenant hereby knowingly, voluntarily, and intentionally waives and releases all claims, liabilities and causes of action against City and its officers, employees, agents and volunteers arising from or relating to Tenant's use, occupancy, or operations at the Tenant's Leasehold Area or the ETC for any and all losses, injuries, damages to or destruction of, any person or any of the improvements, fixtures, equipment, supplies, merchandise, art work, and other property, whether that of Tenant or of others in, upon or about the Tenant's Leasehold Area or the ETC resulting from theft, fire, explosion, defects and latent defects to the premises, or other perils included in standard extended coverage insurance, whether caused by the negligence of any of said persons or otherwise. The waiver shall remain in force whether or not the Tenant's insurance shall consent hereto. Tenant knows that the Tenant's Leasehold Area is not a secured area and property of kept or stored in the Tenant's Leasehold Area or in the ETC shall be so kept or stored at the risk of Tenant only and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

C. Insurance.

i. Tenant, at Tenant's sole cost, shall be responsible for obtaining insurance coverage for Tenant's personal property, artwork, trade fixtures and inventory. Tenant agrees that neither City nor any of its officers, agents, and employees shall be responsible for any damage or loss of

personal property, trade fixtures and inventory including artwork. Tenant agrees that City makes no representations or warranties regarding the level of security in any City buildings or premises. Tenant agrees that City does not insure Tenant's personal property, trade fixtures and inventory including artwork.

The obligation stated in paragraph 6 shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or other termination. These duties shall apply whether or not the allegations made are found to be true.

ii. At Tenant's cost, Tenant shall procure the following insurance coverage prior to entering the Premises, and Tenant shall maintain its insurance coverage in force at all times when this Agreement is in effect in compliance with and subject to City's insurance requirements:

a. Commercial General Liability. Tenant shall secure and maintain during this Agreement commercial general liability insurance that shall protect City and City's representatives from all claims and legal costs for bodily injury or personal injury, including accidental death and property damage claims arising from operations under this Agreement. City shall be named as an additional insured and listed as primary non-contributory on the insurance certificate and shall be named as a Certificate Holder. The minimum commercial general liability insurance shall be one million dollars (\$1,000,000.00).

b. Workers Compensation. Workers compensation coverage in the amounts and form required by the State of Utah.

7. Hazardous Materials

A. No Violation of Environmental Laws. Tenant shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the Tenant's Leasehold Area or the ETC by Tenant or Tenant's Associates in violation of applicable Environmental Laws. Tenant is responsible for any such violation including any fines which may be imposed as a result of such a violation. Tenant shall be responsible for the cleanup of any spills or exposures that result from the materials brought into the ETC by Tenant. City shall have no responsibility or liability for the materials, the cleanup of the materials or the damage caused by the materials.

B. Response to Violations. Tenant agrees that in the event of a release or threat of release of any Hazardous Material by Tenant or Tenant's Associates at the ETC, Tenant shall provide City with prompt notice of the same. Tenant shall respond to any such release or threat of release in accordance with applicable Laws and Regulations. If City has reasonable cause to believe that any such release or threat of release has occurred, City may request, in writing, that Tenant conduct reasonable testing and analysis (using qualified independent experts acceptable to City) to show that Tenant is complying with applicable Environmental Laws. City may conduct the same at Tenant's expense if Tenant fails to respond in a reasonable manner. Tenant shall cease any or all of Tenant's activities as City determines necessary, in its sole and absolute discretion, in connection with any investigation, cure, or remediation. If Tenant or Tenant's Associates violate any Environmental Laws or other laws which regulate hazardous materials at the ETC (whether due to the release of a Hazardous Material or otherwise), Tenant, at Tenant's expense, shall have the following obligations, which shall survive any expiration or termination of this Agreement: (i) promptly commence and pursue to completion a remediation of such violation in compliance with applicable Environmental Laws; (ii) submit to City a written remediation plan in connection therewith, and City reserves the right to approve such plan (which approval shall not be unreasonably withheld) and to review and inspect all work; (iii) work with City and other governmental authorities having jurisdiction in connection with any violation; and (iv) promptly provide

to City copies of all documents pertaining to any environmental concern that are not subject to Tenant's attorney-client privilege.

C. Tenant's Hazardous Material. Tenant may bring some chemicals or hazardous materials onto the ETC provided Tenant gives City a Materials Safety Data Sheet for each chemical or hazardous material immediately upon bringing the substance onto the ETC. Tenant shall not bring more than two gallons of chemicals or hazardous material onto the ETC, no more than 4 aerosol cans which can be used to spray a surface no larger than 9 square feet. City reserves the right to withdraw the right to use these materials on the ETC if City receives complaints about the use of these materials.

8. Default

A. Tenant's Default. The occurrence of any of the following events shall constitute a default by Tenant under this Agreement: (i) Tenant fails to timely pay any installment of rent; (ii) Tenant ceases to provide any service that Tenant is required to provide under this Agreement for a period of seven (7) consecutive days; (iii) Tenant violates any requirement under this Agreement and fails to cure the same within twenty (20) days following written notice of such violation from City; (iv) Tenant assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the ETC (except as expressly permitted in this Agreement); (v) Tenant files a petition in bankruptcy, becomes insolvent, or has a petition filed against Tenant in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (vi) Tenant petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vii) Tenant is in breach of this Agreement (including, but not limited to, operational deficiencies pursuant to paragraph 5) three (3) or more times during a twelve (12) month period (whether or not cured).

B. Remedies. Upon any default by Tenant under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) terminate Tenant's rights under this Agreement upon delivering a written notice of termination; and (ii) re-enter and take possession of the ETC by any lawful means (with or without terminating this Agreement). Tenant shall pay all costs and damages arising out of Tenant's default, including, but not limited to, the cost of recovering possession of the Tenant's Leasehold Area at the ETC, the cost of improving and reletting the Tenant's Leasehold Area (including, but not limited to, any real estate broker fees or marketing costs), and attorneys' fees and costs. Notwithstanding any termination or re-entry, Tenant shall remain liable to pay the rent and fees required under this Agreement for the remaining term of this Agreement, and Tenant shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Tenant's Leasehold Area unless City provides Tenant with a written notice expressly stating that City has terminated this Agreement or accepted a surrender of the Tenant's Leasehold Area. Following a default by Tenant under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

C. Past Due Amounts. If Tenant fails to pay when due any amount required to be paid by Tenant under this Agreement, such unpaid amount shall bear interest at the rate of eighteen percent (18%) from the due date of such amount to the date of payment in full, with interest. In addition, City may also charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable estimate of and liquidated damages for City's additional costs for billing and collection arising from Tenant's failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent or fees, and shall be paid without abatement,

deduction, offset, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

D. Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within twenty (20) days after written notice by Tenant to City. If the nature of City's obligation is such that more than twenty (20) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such twenty (20) day period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

E. Survival. The provisions of this section and the remedies and rights provided shall survive any expiration or termination of this Agreement.

9. General Provisions

A. General Provisions. This Agreement is subject to the General Provisions set forth at Exhibit C.

B. Notices. Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or UPS), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows:

If to City:
ETC Manager
Electric Theater Center
68 E. Tabernacle
St. George, Utah 84770

If to Tenant:
Teri McHale
56 S. Cove Canyon Drive
Cedar City, UT 84720

with a required, simultaneous copy to:

City Attorney
City of St. George
175 E. 200 N.
St. George, Utah 84770

Either City or Tenant may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section and delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

C. Incorporation. All exhibits referred to in this Agreement, as they may be amended from time to time, are incorporated in and are a part of this Agreement. Any proposal materials submitted by

Tenant in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement. Tenant hereby acknowledges receiving Exhibits A – C to this Agreement.

D. Binding Obligation. Tenant warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of Tenant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF ST. GEORGE

TENANT

Michele Randall, Mayor

Attest::

Approved as to form:

Christina Fernandez, City Recorder

Collin R. Simonsen Assistant City Attorney

EXHIBIT A

ETC

A.1 Leasehold Area. Tenant's Leasehold Area is Studio #5 on the ETC Space Map (depicted below).

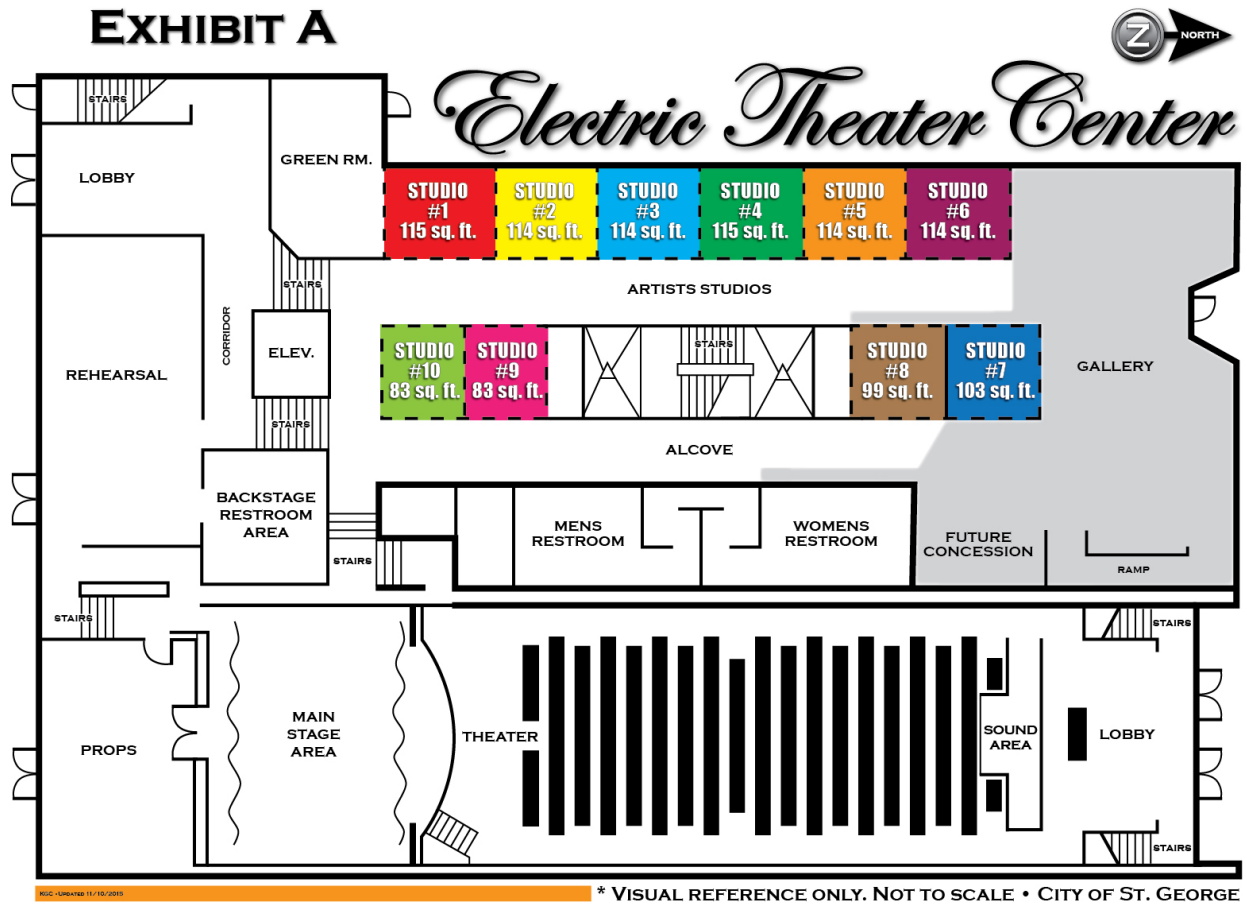


EXHIBIT B

Electric Theater Center Rules for Use of Center

Providing a rich, diverse art center experience to the wider community is an important part of our mission.

1. No activity is permitted in competition with the ETC Center.
2. Tenant may not use the Tenant's Leasehold Area as a storage space.
3. All studios must be open to the public at least 4 days a week. You should maintain a regular schedule of studio hours that coincide with the Electric Theater Center's open hours: Monday-Friday, 10am-5pm. The person listed as Tenant must be present whenever the Tenant's Leasehold Area is open for business.
4. The ETC will host Open Studios, Gallery Strolls, theater openings and other events several times a year. Tenant's shall participate in at least 3 events a year but are asked to participate whenever possible; these events will increase your visibility, and provide an opportunity to interact with the public.
5. Tenant may display work outside your Leasehold Area when and as approved by City. Such approval shall be given in writing and will usually be during an event, Open Studios, Gallery Stroll or theater opening.
6. No artist is allowed to "sleepover" in the Tenant's Leasehold Area.
7. For your safety, door codes, fobs or keys to any Electric Theater Center door are not permitted to be given to anybody.
8. Be considerate when using the space. You are in a public place and must conduct yourself accordingly. For example, keep music turned down; be aware of how strong your paint fumes or other supplies may be inside; and keep dangerous materials away from children and others.
9. Pick up after yourself when using the studio. Do not let trash accumulate in your space. Empty your trash before you leave. Smelly substances and food items can become a nuisance.
10. No smoking of any substance inside the building including in the studio/office space. Tenant agrees that smoking damages property and Tenant shall be strictly liable for all damage that results from smoking.
11. No open flame of any kind is permitted on the premises.
12. No cooking is allowed in the Leasehold Area. Tenant may not have a hot plate, refrigerator, or microwave in the Leasehold Area. No food or drink may be left on the premises as these items attract rodents and insects.
13. No animals are permitted except a service animal with a person with a disability.
14. All lights are to be turned OFF when you leave the building, if after hours.
15. Adult supervision is required if minors (anyone under 18) are present in the studio/office space.
16. Any exterior studio cosmetic changes must be approved before changes can be made.
17. No equipment, tables, chairs, or any other item is allowed to obstruct hallways or exits.
18. Tenant shall not park or store any vehicle or materials on the ETC premises which leak substances. Landlord has the right to tow, at Tenant's expense, any inoperable vehicle located on the ETC premises.
19. Tenant shall not keep on the ETC premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the ETC premises or that might be considered hazardous or extra hazardous by any responsible insurance company. All hazardous materials must be approved by City and must meet the requirements of the Agreement.

20. No welding, cutting or grinding is permitted. This includes small sanders and grinders.

EXHIBIT C

GENERAL PROVISIONS

C.1 Governmental Provisions.

a. Nondiscrimination Regarding Facilities, Improvements, and Federally-Funded Activities. Tenant for itself, successors in interest, and assigns (to the extent successors and assigns are permitted by this Agreement), as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities or any activity conducted, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

b. No Exclusive Rights. Nothing in this Agreement shall be construed to grant to Tenant any exclusive right or privilege for the conduct of any activity on the ETC (except to the Tenant's Leasehold Area for Tenant's exclusive use as provided herein).

C.2. Subordination to Financing and Matters of Record. This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the ETC and is subordinate to any matter of record affecting the real property of the ETC.

C.3. Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Tenant from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Tenant in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and that such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

C.4. Rights and Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

C.5. Attorneys Fees. If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for recovery of possession of the Tenant's Leasehold Area of the ETC, the party prevailing in such action shall be entitled to recover from the other party reasonable attorneys fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including

those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including, but not limited to, attorneys fees, incurred by City in any case or proceeding involving Tenant or any permitted assignee of Tenant under or related to any bankruptcy or insolvency law. The provisions of this Section C.5 shall survive any expiration or termination of this Agreement.

C.6. Governing Law, Venue, and Waiver of Jury Trial. This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance with the laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocably consents to the jurisdiction of the same and of the appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND TENANT EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE ETC. The provisions of this Section C.6 shall survive any expiration or termination of this Agreement.

C.7. Amendments and Waivers. No amendment to this Agreement shall be binding on City or Tenant unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

C.8. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any party. If any provision of this Agreement is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

C.9. Merger. This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, nor agreement of the other party except for those expressly contained in this Agreement.

C.10. Confidentiality. Tenant acknowledges that City is subject to legal requirements regarding the public disclosure of records. Tenant shall comply with such laws in connection with making any request that City maintain a record confidentially, and if Tenant complies with the same Tenant shall have the right to defend any such request for confidentiality at Tenant's expense.

C.11. Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon

any other person or entity any right, benefit, or remedy of any nature.

C.12. Further Assurances. Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

C.13. Miscellaneous. The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by Tenant shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

C.14. Time of Essence. Time is of the essence of this Agreement.



Agenda Date: 08/25/2022

Agenda Item Number: 1g

Subject:

Consider approval to award bid to Skyline Creations, Inc. for the abatement and demolition of a City-owned building located at 85 South 400 East.

Item at-a-glance:

Staff Contact: Marc M. Mortensen
Applicant Name: City of St. George
Reference Number: N/A
Address/Location:
85 South 400 East

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

The City recently purchased this property from the Church of Jesus Christ of Latter-day Saints. The purchase agreement includes language that the City will remove the chapel from the property within 180 days of the closing date. This will eventually become the site of the new St. George Fire Department headquarters (Station 1).

Staff Narrative (need/purpose):

Per the purchase agreement, the City is obligated to remove the chapel building within 180 days of the closing date.

Name of Legal Dept approver: Ryan Dooley

Budget Impact:

Cost for the agenda item: \$482,000
Amount approved in current FY budget for item: Unbudgeted
If not approved in current FY budget or exceeds the budgeted amount, please explain funding source:
Funds will come from Capital Project Fund in a September 2022 budget opening.
Description of funding source:
Capital Project Fund

Recommendation (Include any conditions):

Staff recommends approval

PROPOSAL FORM

Project: Abatement and Demolition of City Property 400 E.

Proposal of SKYLINE CREATIONS INC. ("CONTRACTOR"), organized and existing under the laws of the State of UTAH doing business as a corporation, partnership, or an individual (circle applicable status), to the City of St. George ("CITY"). Pursuant to and in compliance with the Public Notice, CONTRACTOR hereby proposes to perform all Work for the above named Project in strict accordance with the Contract Documents, CONTRACTOR'S Instructions, Drawings, Specifications, and other documents related thereto, the undersigned, having familiarized themselves with the existing conditions on the site and the conditions under which the work on the Drawings and in the Specifications is to be done, hereby proposes to furnish all labor, materials, equipment, incidental items, permits, fees, and services to perform all specified work on the above named project.

By submission of this PROPOSAL, each CONTRACTOR certifies, and in the case of a joint PROPOSAL each party thereto certifies as to his own organization, that this PROPOSAL has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this PROPOSAL with any other CONTRACTOR or with any competitor.

All Work shall be in strict accordance with the Contract Documents and documents issued thereto, and shall be installed at the price/prices set forth in the Contract Documents. CONTRACTOR acknowledges that all Work shall be done subject to CITY'S approval. Decisions and questions as to the quality, suitability, and acceptability of the materials, interpretation of drawings and specifications, and acceptable fulfillment of the Contract by the CONTRACTOR shall be made by CITY.

Of particular importance to be considered in the PROPOSAL are the following:

CONTRACT TIME AND LIQUIDATED DAMAGES

The WORK is to be performed within the specified construction period, which has been specified as Commencing 8/15/2022 and ending 120 Calendar Days from the Notice to Proceed.

If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the CITY, then the CONTRACTOR will pay the CITY LIQUIDATED DAMAGES assessed at the rates established as follows:

- a. \$250.00 (dollars) per day for each calendar day that the CONTRACTOR shall be in default after the CONTRACT TIME stipulated herein.
- b. \$250.00 (dollars) per day for failure to make repairs to deficiencies in the work within 10 days of notification to repair.

The rates specified in 'b.' above are cumulative and are in addition to LIQUIDATED DAMAGES assessed in association with the overall Contract Time as listed in 'a.' above. Additional information on LIQUIDATED DAMAGES is provided in the GENERAL CONDITIONS.

CONTRACTOR acknowledges receipt of the following ADDENDUM:

_____ Addendum No. _____ Dated _____
_____ Addendum No. _____ Dated _____
_____ Addendum No. _____ Dated _____

PROPOSAL SUMMARY

PROPOSAL Total: \$ 482,000

PROPOSAL SCHEDULE

Project: Abatement and Demolition of City Property 400 E.

Inquiry No.: #22-036

CONTRACTOR agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit or lump sum prices. If an alternate is asked for, the CONTRACTOR may elect to bid either or both PROPOSAL schedules, however only one schedule will be awarded.

CONTRACTOR will complete the work in accordance with the Contract Documents for the following unit prices. Quantities indicated are not guaranteed; they are solely for comparing PROPOSALS and establishing the initial Contract Price. Final payment will be based on actual quantities.

NOTE: The Engineer shall check all PROPOSALS for mathematical errors. If errors have been made in the extension of the figures, the unit prices will be the binding amount and the total amounts will be revised to reflect the corrections.

PROPOSAL SCHEDULE

| ITEM NO. | ITEM DESCRIPTION | QUANTITY | UNITS | UNIT COST | TOTAL |
|-----------------------------------|--------------------|----------|-------|-----------|----------------|
| 1 | MOBILIZATION/DEMOB | 1 | LS | 33,000 | 33,000 |
| 2 | PRELIM CLEARANCE | 1 | LS | 23,000 | 23,000 |
| 3 | ABATEMENT | 1 | LS | 220,000 | 220,000 |
| 4 | DEMOLITION | 1 | LS | 165,000 | 165,000 |
| 5 | EXCAVATION | 1 | LS | 28,000 | 28,000 |
| 6 | FINAL CLEANUP | 1 | LS | 13,000 | 13,000 |
| TOTAL OF PROPOSAL SCHEDULE | | | | | 482,000 |

CONTRACTOR certifies that CONTRACTOR has read the Request for PROPOSALS and fully understands its intent. CONTRACTOR certifies that CONTRACTOR has adequate personnel and resources to fulfill the proposal requirements. CONTRACTOR further understands that CONTRACTOR'S ability to meet the criteria and provide the required services shall be judged solely by the City. CONTRACTOR further certifies that, since the receipt of the Request for PROPOSALS, no contact, discussion, or negotiation has been made nor will be made regarding this proposal for construction services with any City employee other than the contact people listed in the Request for PROPOSALS. CONTRACTOR

understands that any such contact could disqualify this proposal. CONTRACTOR further certifies that CONTRACTOR is properly licensed to conduct business within the scope of this PROPOSAL as required by the State of Utah. CONTRACTOR certifies that all schedules and addenda contained herein shall be considered part of the entire Request for PROPOSALS response and that the complete document submitted shall be considered a legally binding document.

The undersigned swears and deposes that the information provided herein is true, accurate, and complete so as not to be misleading.

Dated this 28TH day of JULY 2022

Respectfully Submitted:

Business Name: SKYLINE CREATIONS INC. Seal (if PROPOSAL is by Corporation)

Business Address: P.O. Box 841, PAROWAN UT

Representative Name: MICHAEL BRADSHAW

Signature: MB

Title: PRESIDENT

Date: 7/28/22

Attest Signature: Heather Bradshaw

Attest Name: Heather Bradshaw

END OF SECTION

CONTRACTOR'S GENERAL INFORMATION

Project: Abatement and Demolition of City Property 400 E.

Inquiry No.: #22-036

Date: 7/28/22

To verify adequate qualifications and experience, CONTRACTOR must submit this sheet, filled out in its entirety, with their sealed PROPOSAL. Attach additional sheets as required to completely fill out the required information.

Failure to complete any item, or failure to completely and truthfully provide the requested information, shall constitute grounds for the PROPOSAL to be considered non-responsive and to cause its rejection.

(1) CONTRACTOR'S Name and Address:

SKYLINE CREATIONS INC.
P.O. Box 841
PAROWAN UT 84761

(2) CONTRACTOR'S Telephone Number / Facsimile Number:

435-590-9157

(3) CONTRACTOR'S Email Address

INFO@SKYCINC.COM

(4) CONTRACTOR'S Contractor License Primary Classification:

B100 E100 Other: _____

State and License Number (ATTACH A COPY): _____

Supplemental classifications held, if any (ATTACH A COPY IF NOT INCLUDED IN ABOVE): _____

CONTRACTOR must obtain the following licenses;

- Current City of S t. George Business license (attach a copy)
- And any other licenses required by the State of Utah (attach a copy)

(5) Work in Progress (WIP) limit*: \$ 1.5 Mill Current Status of WIP: \$ 130k

* attach a list of all projects currently in progress, including the owner, location, and phone number. State the percentage of work remaining for each project and the expected completion date.

(6) Provide a list of all construction contracts involving work of a similar scope and comparable value completed over the past three (3) years. Include the following information for each project:

- Name and location of project.
- Name, address, and telephone number of the project Owner.
- Brief description of the work involved.
- Contract amount.



CERTIFICATION OF LEGAL WORK STATUS (Contractor)

Project: Abatement and Demolition of City Property 400 E.

Inquiry No.: #22-036

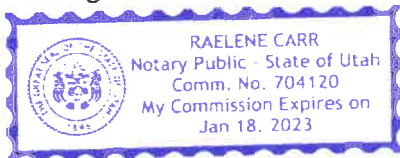
Contractor certifies that it does not and will not during the performance of this contract knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. Contractor agrees to require all subcontractors at the time they are hired for this project to sign a Certification of Legal Work Status and submit the Certification to City prior to any work being performed by the subcontractors. Contractor agrees to produce, at the City’s request, documents to verify compliance with applicable State and Federal laws. If Contractor knowingly employs workers or subcontractors in violation of 8 USC § 1324a, such violation shall be cause for unilateral cancellation of the contract between Contractor and City. In addition, Contractor may be suspended from participating in future projects with the City for a period of one (1) year. In the event this contract is terminated due to a violation of 8 USC § 1324a by Contractor or a subcontractor of Contractor, Contractor shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by the City as well as attorney fees. For purposes of compliance, the City requires Contractor and subcontractors to use E-Verify to verify the employment eligibility of all employees as allowed by law and the E-Verify procedures. Contractor and subcontractors must maintain authorized documentation of the E-Verify.

I certify that I have read, understand and agree to comply with the requirements herein.

Contractor Name: Skyline Creations Inc
Company Address: Po Box 841, Parowan, UT 84761
Company’s Unique E-Verification Number: 2015295140428CB
Heather Bradshaw 7/28/22
Signature Date
Vice President
Official Title

STATE OF UTAH)
County of Iron) ss.
County of Washington)

On the 28th day of July, 2022, personally appeared before me, Heather Bradshaw, known or identified to me to be the person whose name is signed on the foregoing document and acknowledged that s/he is authorized on behalf of said company to execute all documents pertaining hereto and acknowledged to me that he/she executed the same voluntarily for its stated purpose.



[Signature]
Notary Public

BID BOND

The American Institute of Architects,
AIA® Document A310™ (2010 Edition)

BondNo.B 1265403

ADDITIONS AND DELETIONS:

CONTRACTOR:

(Name, legal status and address)

**Skyline Creations, Inc.
366 E. Taylor Rd.
Parowan, UT 84761**

SURETY:

(Name, legal status and principal place of business)

**Selective Insurance Company of America
40 Wantage Avenue
Branchville, NJ 07890**

The author of this document has added information needed for its completion. The author may also have revised the original text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

**Saint George City
175 East 200 North
Saint George, UT 84770**

BOND AMOUNT: 5 % Percent of the Total Bid Amount

PROJECT:

(Name, location or address, and Project number, if any)

Abatement and Demolition of City Property 400 E

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.


When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 26th day of July, 2022


(Witness)

Skyline Creations, Inc.
(Contractor as Principal) *(Seal)*
PRESIDENT
(Title)


(Witness)

Selective Insurance Company of America
(Surety) *(Seal)*

(Title) **Kathy Avery, Attorney-in-Fact**

POWER OF ATTORNEY

SELECTIVE INSURANCE COMPANY OF AMERICA, a New Jersey corporation having its principal office at 40 Wantage Avenue, in Branchville, State of New Jersey ("SICA"), pursuant to Article VII, Section 1 of its By-Laws, which state in pertinent part:


The Chairman of the Board, President, Chief Executive Officer, any Executive Vice President, any Senior Vice President or any Corporate Secretary may, from time to time, appoint attorneys in fact, and agents to act for and on behalf of the Corporation and they may give such appointee such authority, as his/her certificate of authority may prescribe, to sign with the Corporation's name and seal with the Corporation's seal, bonds, recognizances, contracts of indemnity and other writings obligatory in the nature of a bond, recognizance or conditional undertaking, and any of said Officers may, at any time, remove any such appointee and revoke the power and authority given him/her.

does hereby appoint **Kathy Avery**

, its true and lawful attorney(s)-in-fact, full authority to execute on SICA's behalf fidelity and surety bonds or undertakings and other documents of a similar character issued by SICA in the course of its business, and to bind SICA thereby as fully as if such instruments had been duly executed by SICA's regularly elected officers at its principal office, in amounts or penalties not exceeding the sum of: **\$1,000,000.00**

Signed this 26th day of July, 2022

SELECTIVE INSURANCE COMPANY OF AMERICA

By: 
Brian C. Sarisky
Its SVP, Strategic Business Units, Commercial Lines




STATE OF NEW JERSEY :

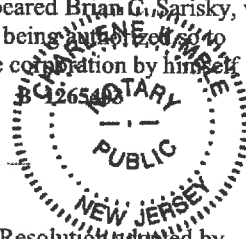
:ss. **Branchville**

COUNTY OF SUSSEX :

On this 26th day of July, 2022 before me, the undersigned officer, personally appeared **Brian C. Sarisky**, who acknowledged himself to be the Sr. Vice President of SICA, and that he, as such Sr. Vice President, being duly sworn, did do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Sr. Vice President and that the same was his free act and deed and the free act and deed of SICA. B0265403




Charlene Kimble
Notary Public



The power of attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of SICA at a meeting duly called and held on the 6th of February 1987, to wit:

"RESOLVED, the Board of Directors of Selective Insurance Company of America authorizes and approves the use of a facsimile corporate seal, facsimile signatures of corporate officers and notarial acknowledgements thereof on powers of attorney for the execution of bonds, recognizances, contracts of indemnity and other writing obligatory in the nature of a bond, recognizance or conditional undertaking."

CERTIFICATION

I do hereby certify as SICA's Corporate Secretary that the foregoing extract of SICA's By-Laws and Resolutions are true, correct, in full force and effect and this Power of Attorney issued pursuant to and in accordance with the By-Laws is valid.

Signed this 26th day of July, 2022.


Michael H. Lanza, SICA Corporate Secretary



Important Notice: If the bond number embedded within the Notary Seal does not match the number in the upper right-hand corner of this Power of Attorney, contact us at 973-948-3000.

City of St. George
 22-036 Abatement and Demolition of City Property 400 E
 July 28, 2022

| ITEM DESCRIPTION | VENDOR | VENDOR | VENDOR |
|-------------------------------|------------------------|------------------------|----------------------|
| | SKYLINE CREATIONS INC. | DOUG HUNT CONSTRUCTION | GRANT MACKAY COMPANY |
| MOBILIZATION | \$33,000.00 | \$15,000.00 | INCL |
| PRELIMINARY CLEARANCE | \$23,000.00 | | |
| ABATEMENT | \$220,000.00 | \$438,000.00 | \$548,628.00 |
| DEMOLITION | \$165,000.00 | \$100,000.00 | \$298,622.00 |
| EXCAVATION/EARTHWORK/BACKFILL | \$28,000.00 | \$25,000.00 | \$32,786.00 |
| FINAL CLEANUP | \$13,000.00 | | |
| OVERHEAD | | \$32,071.00 | |
| PROFIT | | \$65,000.00 | |
| TOTAL: | \$482,000.00 | \$675,071.00 | \$880,036.00 |



Agenda Date: 08/25/2022

Agenda Item Number: 02

Subject:

Consider approval of a resolution to enter into a Red Mesa Tapaha Solar Project Power Purchase Agreement.

Item at-a-glance:

Staff Contact: Laurie Mangum

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

175 East 200 North

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

This is a solar project on the Navajo Nation for the purchase of 18.314 Megawatts (MW) of energy for 25 years starting no later than 9/15/2023. This project has been previously discussed with the City Council.

Staff Narrative (need/purpose):

This power purchase agreement is to meet future energy needs due to the reduction of coal energy in the resource portfolio.

Name of Legal Dept approver: Standard PPA through UAMPS Organization

Budget Impact: No Impact

Recommendation (Include any conditions):

Staff recommends approval.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE RED MESA TAPAHA SOLAR PROJECT AMENDED AND RESTATED TRANSACTION SCHEDULE UNDER THE POWER SUPPLY AGREEMENT WITH UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS; AND RELATED MATTERS.

WHEREAS, the City of St. George, Utah (the “Member”) owns and operates a utility system for the provision of electric energy to its residents and others (the “System”) and is a member of Utah Associated Municipal Power Systems (“UAMPS”) pursuant to the provisions of the Utah Associated Municipal Power Systems Amended and Restated Agreement for Joint and Cooperative Action dated as of March 20, 2009, as amended (the “Joint Action Agreement”);

WHEREAS, the Member desires to purchase all or a portion of its requirements for electric power and energy from or through UAMPS and has entered into a Power Pooling Agreement with UAMPS to provide for the efficient and economic utilization of its power supply resources;

WHEREAS, the Member has previously entered into the Master Firm Power Supply Agreement with UAMPS in order to allow for UAMPS entering into various firm transactions for the purchase and sale of firm supplies of electric power and energy;

WHEREAS, UAMPS has investigated the Red Mesa Tapaha Solar Project, a sixty-six (66) megawatt (MW) solar photovoltaic generation facility to be located on the Navajo Nation, on behalf of its members and is now prepared to enter into a twenty-five (25) year power purchase agreement with Navajo Generation LLC to secure the delivery of all the energy from the Project and associated environmental attributes; and

WHEREAS, the Member now desires to authorize and approve the Red Mesa Tapaha Amended and Restated Transaction Schedule (“Amended and Restated Transaction Schedule”) attached hereto as Exhibit A for the Project subject to the parameters set forth in this Resolution;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. George as follows:

Section 1. Authorization of Red Mesa Tapaha Amended and Restated Transaction Schedule. The Amended and Restated Transaction Schedule, in substantially the form presented at the meeting at which this resolution is adopted, is hereby authorized and approved, and the Member Representative is hereby authorized, empowered and directed to execute and deliver the Amended and Restated Transaction Schedule on behalf of the Member. Promptly upon its execution, the Amended and Restated Transaction Schedule shall be filed in the official records of the Member.

Section 2. Other Actions with Respect to the Joint Action Agreement. The Mayor, City Recorder, the Member Representative and other officers and employees of the Member shall take all

actions necessary or reasonably required to carry out, give effect to, and consummate the transactions contemplated hereby and shall take all actions necessary to carry out the execution and delivery of the Transaction Schedule and the performance thereof.

Section 3. Miscellaneous; Effective Date. (a) All previous acts and resolutions in conflict with this resolution or any part hereof are hereby repealed to the extent of such conflict.

(b) In case any provision in this resolution shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) This resolution shall take effect immediately upon its adoption and approval.

ADOPTED AND APPROVED this _____ day of _____, 2022.

CITY OF ST. GEORGE

Mayor

ATTEST AND COUNTERSIGN:

City Recorder

[SEAL].

EXHIBIT A
RED MESA TAPAHA SOLAR AMENDED AND RESTATED TRANSACTION SCHEDULE

**RED MESA TAPAHA SOLAR
FIRM POWER SUPPLY AGREEMENT
AMENDED AND RESTATED TRANSACTION SCHEDULE**

This Amended and Restated Transaction Schedule to the Master Firm Power Supply Agreement to which all Parties to this Amended and Restated Transaction Schedule are signatories provide for the following transactions. The Parties to this Amended and Restated Transaction Schedule agree to the following provisions and agree to pay all costs of this transaction through the Firm Power Supply Project.

PURCHASER: City of St. George

ENTITLEMENT SHARE: 27.7484%

SUPPLIER: NTUA Generation – Utah, LLC (the “Red Mesa Tapaha Solar Project”)

EFFECTIVE DATE: The Amended and Restated Power Purchase Agreement by and between UAMPS and NGI Generation-Utah, LLC for the Red Mesa Tapaha Solar Resource (the “Amended and Restated PPA”) was executed on July 27, 2022. The Amended and Restated PPA becomes effective upon UAMPS obtaining member governing body approvals which UAMPS anticipates satisfying within 90 days. The Scheduled Commercial Operation Date (“COD”) is March 15, 2023. The COD may not occur earlier than April 1, 2022 but not later than September 15, 2023.

TERM: A 25-year delivery term commencing on COD. The Amended and Restated PPA will become effective upon UAMPS satisfying the condition precedent identified above.

AMOUNT: 18,314 kW and associated Environmental Attributes

PRICE: \$37.00/MWh

**OTHER
PROVISIONS:**

Energy: UAMPS will schedule all energy pursuant to the terms and conditions of the Amended and Restated PPA and will delivery to the Purchaser its Entitlement Share of the Red Mesa Tapaha Solar Resource. The Red Mesa Tapaha Solar Resource is to be constructed as a 66 MW from solar photovoltaic generation facility located on the Navajo Reservation.

Transmission: UAMPS will charge and the Purchaser will pay transmission charges as adopted by the UAMPS Board of Directors from time to time.

Administration: UAMPS will charge and Purchasers will pay the scheduling fee and reserve fee as adopted by the UAMPS Board of Directors from time to time.

Buyout Options: Under the Amended and Restated PPA, UAMPS has the ability to buy the Red Mesa Tapaha Solar Resource from NGI at specified buyout dates pursuant to a fair market value appraisal. If UAMPS is directed to pursue one of its buyout options, then UAMPS will in parallel develop new contracts or amend the Firm Power Supply Agreement with the Purchasers to provide UAMPS with the ability to finance the buyout of the Red Mesa Tapaha Solar Resource.

Other: Any costs incurred by UAMPS due solely to this Amended and Restated Transaction Schedule, including but not limited to Amended and Restated PPA costs, transmission costs, scheduling costs, administrative costs and legal costs will be the responsibility of Purchasers invoiced through the UAMPS Power Bills.

This Amended and Restated Transaction Schedule may be signed in counterpart.

Dated this _____ day of _____, 2022.

CITY OF ST. GEORGE

By: _____

Title: _____

UTAH ASSOCIATED MUNICIPAL POWER
SYSTEMS

By: _____

Title: _____



Agenda Date: 08/25/2022

Agenda Item Number: 03

Subject:

Consider approval of a resolution to adopt the Final Fiscal Year 2022-2023 Budget.

Item at-a-glance:

Staff Contact: Robert Myers

Applicant Name: City of St. George

Reference Number: NA

Address/Location:

175 East 200 North

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

The Preliminary Fiscal Year 2022-2023 Budget was presented during the May 5th City Council Meeting and has been available on the city's website and in the City Recorder's Office since that time. This year the City Council held four work meetings to review the budget and discuss changes thereto. The city held two public hearings to receive input on the budget on June 2, 2022 and June 16, 2022. Following the second public hearing on June 16, 2022, the City Council formally adopted the FY 2022-2023 Tentative Budget along with an amendment that included year one of the Safe St. George plan and the proposed property tax increase. Tonight's item is to consider approval of a resolution to adopt the Final Fiscal Year 2022-2023 Budget. Staff recommends approval of the resolution to adopt the Final Fiscal Year 2022-2023 Budget.

Staff Narrative (need/purpose):

The city's budget represents the financial plan for delivering the municipal services that are expected and depended on by the residents, businesses and visitors to the City of St. George. Development of the budget involves a significant investment of time for all levels of the organization as we work to develop a balanced budget that reflects the city's commitment to provide services that focus on people and advance an active, thriving, and fiscally health community. This year's budget development focused on addressing critical needs in public safety, city infrastructure, and continuing to provide the high quality services expected by our community.

Name of Legal Dept approver: NA

Budget Impact: No Impact

Recommendation (Include any conditions):

Staff recommends approval of a resolution to adopt the Final Fiscal Year 2022-2023 Budget.

RESOLUTION NO. _____

**ADOPTING THE 2022-2023 FISCAL BUDGET
FOR THE CITY OF ST. GEORGE, UTAH.**

WHEREAS, pursuant to the Uniform Fiscal Procedures Act for Utah Cities (the "Act"), the City of St. George is required to adopt an annual budget with regard to the funds of the City; and

WHEREAS, the City Manager of the City of St. George, as required by law, submitted to the City Council of the City of St. George a tentative budget on May 5, 2022 for the Fiscal Year beginning July 1, 2022 and ending June 30, 2023; and

WHEREAS, a copy of the Tentative Budget was made publicly available on the City of St. George website and in the City of St. George City Recorder's Office on May 5, 2022; and

WHEREAS, the City Council held two public hearings on the tentative budget on June 2, 2022 and June 16, 2022; and

WHEREAS, the Tentative Budget was approved by the City Council on June 16, 2022; and

WHEREAS, the Tentative Budget included a proposal to increase the property tax rate above the Tax Year 2022 Certified Tax Rate; and

WHEREAS, pursuant to Utah Code 59-2-919, the City is required to notice and hold a truth-in-taxation public hearing; and

WHEREAS, pursuant to Utah Code 59-2-919, the required notice for the Truth in Taxation hearing was given by publication as required by law in advance of the public hearing; and

WHEREAS, pursuant to Utah Code 59-2-919, the Truth-in-Taxation public hearing was held on August 18, 2022; and

WHEREAS, 10-6-118, the City Council, must adopt a final budget and set forth the property tax rate before the 1st day of September; and

WHEREAS, pursuant to Utah Code 10-6-112, the adopted Tentative Budget has been made publicly available for at least 10 days prior to the adoption of the final budget; and

NOW, THEREFORE, at a regular meeting of the City Council of the City of St. George, Utah, duly called, noticed and held on the 25th day of August, 2022, upon motion duly made and seconded, it is

RESOLVED that the 2022-2023 fiscal budget for the City of St. George, including the increase to property tax revenues, attached hereto as Exhibit "A" including all schedules thereto, is hereby adopted, subject to later amendment.

VOTED UPON AND PASSED BY THE CITY COUNCIL OF THE CITY OF ST. GEORGE AT
A REGULAR MEETING OF SAID COUNCIL HELD ON THE 25TH DAY OF AUGUST, 2022.

ST. GEORGE CITY:

ATTEST:

Michele Randall, Mayor

Christina Fernandez, City Recorder

APPROVED AS TO FORM:

VOTING OF CITY COUNCIL:

City Attorney's Office

Councilmember Hughes _____

Councilmember McArthur _____

Councilmember Larkin _____

Councilmember Larsen _____

Councilmember Tanner _____

Tani Pack Downing, City Attorney