



## **AGREEMENT FOR SERVICES**

**by and between**

**THE CITY OF MOAB,  
A MUNICIPAL CORPORATION**

**and**

Civil Science

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THIS AGREEMENT FOR SERVICES (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between the City of Moab, a municipal corporation,

(the “**City**”) and Civil Science (the “**Contractor**”). The City and the Contractor are sometimes individually referred to as a “**Party**” and collectively referred to as the “**Parties.**”

### **RECITALS**

A. The City has sought, by issuance of a request for proposal or invitation to bid, the performance of the services defined and described in Section 1 of this Agreement.

B. The Contractor, following submission of a proposal or bid for the performance of the services defined and described in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City’s Municipal Code Section 2.28.130, the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of the Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as defined and described in this Agreement.

### **AGREEMENT**

In consideration of the mutual promises and covenants made by the Parties and contained in this Agreement and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

#### **1. SERVICES OF CONTRACTOR**

##### **1.1 Scope of Work**

In compliance with all the terms and conditions of this Agreement, the Contractor shall provide those services specified in the “Scope of Work” attached to this Agreement as **Exhibit A** and incorporated by this reference. The services described in the Scope of Work shall be referred to as the “**Work**” in this Agreement. The Contractor acknowledges that it accepts the risk that the Work may be more costly or time consuming than the Contractor anticipates and that the Contractor shall not be entitled to additional compensation should this occur. As a material inducement to the City entering into this Agreement, the Contractor represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Work in a thorough, competent, and professional manner and is experienced in performing the Work. The Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent perform all aspects of the Work. The Contractor covenants that it shall follow the highest professional standards in performing the Work required by this Agreement and that all materials will be of good quality and fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar services under similar circumstances.

## 1.2 Contractor's Proposal

The Work shall include the Contractor's scope of work, proposal or bid, bid specifications, official design prints and specifications, change orders, approved written instructions, and written contract amendments and notice of award, if any, which shall be incorporated into this Agreement by this reference as though fully set forth in this Agreement. If any inconsistency between any scope of work, proposal or bid and this Agreement, the terms of this Agreement shall govern.

## 1.3 Compliance with Law

The Contractor shall keep itself informed concerning and shall render the Work in accordance with all ordinances, resolutions, statutes, rules and regulations of the City and any federal, state or local governmental entity having jurisdiction in effect at the time service is rendered.

## 1.4 Licenses, Permits, Fees and Assessments

The Contractor shall obtain at its sole cost and expense and shall maintain such licenses, permits and approvals as may be required by law for the performance of the Work. The Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from, or are necessary for, the Contractor's performance of the Work. The Contractor shall indemnify, defend and hold harmless the City, its officers, employees or agents against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against the City.

## 1.5 Familiarity with Work

By executing this Agreement, the Contractor warrants that it:

- 1.5.1. Has thoroughly investigated and has considered the scope of the Work;
- 1.5.2. Has carefully considered how the Work should be performed;
- 1.5.3. Fully understands the facilities, difficulties and restrictions attending performance of the Work under this Agreement;
- 1.5.4. Has, or will, investigate the site and is, or will be, fully acquainted with the existing conditions prior to commencement of any aspect of the Work upon any site that may be needed to perform the Work;
- 1.5.5. Shall immediately inform the City should the Contractor discover any latent or unknown conditions which will materially affect the performance of any aspect of the Work and shall not proceed except at Contractor's sole risk and expense until written instructions are received from an authorized representative of the City.

## 1.6 Care of the Work

The Contractor shall adopt reasonable methods during the life of this Agreement to furnish continuous protection of the Work and any related equipment, materials, papers, documents, plans, studies and/or other components to prevent losses or damages. The Contractor shall be responsible for all damages to persons or property until acceptance of the Work by the City, except such losses or damages as may be caused by the City's own negligence.

#### 1.7 Warranty

The Contractor warrants that all work under this Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material or workmanship. The Contractor agrees that for a period of three (3) years (or the period of time specified elsewhere in this Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work, faulty material or workmanship or non-conformance of the work with the Scope of Work, scope of work, proposal or bid, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at the Contractor's sole cost and expense. The Contractor shall act sooner as requested by the City in response to an emergency. In addition, the Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by its defective or faulty material or workmanship or non-conforming work and any work which becomes damaged in the course of repairing or replacing the defective or faulty material or workmanship or non-conforming work. For any work corrected, the Contractor's obligation to correct defective or faulty material or workmanship or non-conforming work shall be reinstated for an additional one-year period, commencing with the date of acceptance of the corrected work. The Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of this Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by the Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and the Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. If the Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or faulty material or workmanship or non-conforming work and any work damaged by any defective or faulty material or workmanship or non-conforming work at the Contractor's sole expense. The Contractor shall be obligated to fully reimburse the City for any expenses incurred upon demand. This provision may be waived in Exhibit B if the Work does not include construction of any improvements or the supplying of equipment or materials.

### 1.8 Further Responsibilities of Parties

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless specified in this Agreement, neither Party shall be responsible for the Work of the other.

### 1.9 Services in Addition to the Work

The City shall have the right at any time during the performance of the Work, without invalidating this Agreement, to order extra services beyond that specified in the Scope of Work (Exhibit A) or make changes by altering, adding to or deducting from Scope of Work (Exhibit A). No such extra services may be undertaken unless a written order is first given by the City Manager to the Contractor. These extra services may include an adjustment in (i) the Schedule of Compensation (Exhibit C), and/or (ii) Schedule of Performance (Exhibit D), (if applicable) and these adjustments are subject to the written approval of the Contractor. Any increases in the Schedule of Compensation (Exhibit C), taken either separately or cumulatively, must be approved by the City Manager if the total cost of the services does not exceed \$50,000. If the total cost of the services will exceed \$50,000, the extra services need to be approved by the Mayor. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Work or reasonably contemplated by it.

### 1.10 Special Requirements

Additional terms and conditions of this Agreement, if any, which are made a part of this Agreement, are set forth in the "Special Requirements" which are attached as Exhibit B (if applicable) and are incorporated in this Agreement by this reference. If a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of this Agreement shall govern.

## **2. COMPENSATION AND METHOD OF PAYMENT**

### 12.1. Agreement Sum

Subject to any limitations set forth in this Agreement, the City agrees to pay the Contractor the amounts specified in the "Schedule of Compensation" attached as Exhibit C and incorporated in this Agreement by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \$50,000 ("**Agreement Sum**"), unless additional compensation is approved pursuant to Section 1.9. The Schedule of Compensation shall include the attendance of the Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the Work with the City is a critical component of the Work. If the Contractor is required to attend additional meetings to facilitate such coordination, the Contractor shall not be entitled to any additional compensation for attending these meetings.

The Contractor acknowledges that the City is greatly concerned about the cost of work and the Work. For this reason, the Contractor agrees that if the Contractor becomes aware of any facts, circumstances, techniques or events that may or will materially increase or decrease the cost of the Work contemplated in this Agreement and specified in the Schedule of Compensation, the Contractor shall promptly notify the City Manager of this fact, circumstance, technique or event and the estimated increased or decreased cost and, if the Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed. The Contractor understands that even if it notifies the City Manager of an increase, the City shall not pay any additional funds to the Contractor for any increase unless the Parties fully execute a written amendment to this Agreement pursuant to Section 9.4.

## 2.2 Method of Compensation

The method of compensation may include:

- 2.2.1. a lump sum payment upon completion;
- 2.2.2. payment in accordance with specified tasks or the percentage of completion of the Work;
- 2.2.3. payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Agreement Sum;
- 2.2.4. such other methods as may be specified in the Schedule of Compensation.

## 2.3 Reimbursable Expenses

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses and travel expenses approved by the City Manager in advance and only if specified in the Schedule of Compensation.

## 2.4 Invoices

Each month, the Contractor shall furnish to the City an invoice for all services performed and expenses incurred during the preceding month to carry out the Work. Contractor shall furnish an invoice in a form approved by City's Finance Director and which includes copies of all receipts. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment and supplies.

The City shall independently review each invoice submitted by the Contractor to determine whether the services performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for services performed or expenses incurred by the Contractor which are disputed by the City, or as provided in Section 7.3., the City shall use its best efforts to cause the Contractor to be paid for an invoice within forty-five (45) days of receipt of the Contractor's correct and undisputed invoice. If any charges or expenses are

disputed by the City, the City shall notify the Contractor within thirty (30) days of receipt of the invoice and request that the Contractor correct and resubmit the invoice.

## 2.5 Waiver

Payment to the Contractor for services performed pursuant to this Agreement shall not be deemed to waive any defect in the work, faulty material or workmanship or non-conformance of the services performed by the Contractor.

## 3. PERFORMANCE SCHEDULE

### 3.1 Time of Essence

Time is of the essence in the performance of this Agreement.

### 3.2 Schedule of Performance

The Contractor shall commence the services pursuant to this Agreement upon full execution of this Agreement and shall perform all services within the time period(s) established in the Schedule of Performance attached as Exhibit D and incorporated in this Agreement by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the City Manager.

### 3.3 Force Majeure

The time period(s) specified in the Schedule of Performance for performance of the services pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, pandemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of any delay notify the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of any delay and extend the time for performing the services for the period of the delay when, and if, in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

### 3.4 Inspection and Final Acceptance

The City may inspect and accept or reject any of the Contractor's work under this Agreement, either during performance or when the terms of this contract are fully completed. The City shall reject or finally accept the Contractor's work within forth five (45) days after the services being provided to the City are fully completed. The City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. The City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by the City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section 5, pertaining to insurance, indemnification and bonds.

3.5 Term

Unless terminated earlier in accordance with Section 7.8 of this Agreement, the term of this Agreement shall be for twelve (12) months, beginning on the date of full execution of this Agreement and extending through and concluding at 11:59 p.m. on the day before the anniversary date of this Agreement ("**Term**"). This Agreement shall automatically be extended for an additional year at the end of any Term unless either Party provides written notice of its desire not to renew this Agreement to the other Party prior to sixty (60) days of the expiration of any Term or extension. This Agreement shall continue to automatically renew indefinitely until terminated by either Party, except as otherwise provided in the Schedule of Performance (Exhibit D).

**4. COORDINATION**

4.1 Representatives and Personnel of Contractor

The following principals of the Contractor ("**Principals**") are designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the Work:

(Name) (Title)

(Name) (Title)

(Name) (Title)

The Contractor expressly understands that the experience, knowledge, capability and reputation of the foregoing Principals were a substantial inducement for the City to enter into this Agreement. Therefore, the foregoing Principals shall be responsible during the term of this

Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the Work. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of the City. Additionally, the Contractor shall make every reasonable effort to maintain the stability and continuity of the Contractor's staff, if any, assigned to perform the Work. The Contractor shall notify the City of any changes in the Contractor's staff assigned to perform the Work, prior to and during any such performance.

#### 4.2 Status of Contractor

In providing the Work under this Agreement, the Parties expressly agree that the Contractor is acting as an independent contractor and not as an employee of the City. The Contractor shall have no authority to bind the City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against the City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by the City. The Contractor shall not at any time nor in any manner represent that the Contractor or any of the Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of the City. Neither the Contractor, nor any of the Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to the City's employees. The Contractor expressly waives any claim the Contractor may have to any such rights.

#### 4.3 Contract Officer

The Contract Officer shall be such person as may be designated by the City Manager of the City. Should the City Manager appoint a Contract Officer, it shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the Work and the Contractor shall refer any decisions which must be made by the City to the Contract Officer. Unless otherwise specified in this Agreement, any required approval of the City shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required to carry out the terms of this Agreement. In the absence of a designated Contract Officer, the City Manager shall serve the duties of the Contract Officer as specified above on behalf of the City.

#### 4.4 Independent Contractor

Neither the City nor any of its employees shall have any control over the manner, mode or means by which the Contractor, its agents or employees, perform the Work required in this Agreement, except as otherwise set forth in this Agreement. The City shall have no voice in the selection, discharge, supervision or control of the Contractor's employees, representatives or agents, or in fixing their number, compensation or hours of service. The Contractor shall perform the Work as an independent contractor of the City and shall remain at all times as to the

City a wholly independent contractor with only such obligations as are consistent with that role. The Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the City. The City shall not in any way or for any purpose become or be deemed to be a partner of the Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with the Contractor.

#### 4.5 Prohibition Against Subcontracting or Assignment

The experience, knowledge, capability and reputation of the Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, the Contractor shall not contract with any other entity to perform in whole or in part the Work without the express written approval of the City. In addition, neither this Agreement nor any interest in this Agreement may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the City. Transfers restricted by this Agreement shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of the Contractor, taking all transfers into account on a cumulative basis. If any such unapproved transfer, including any bankruptcy proceeding, the City, at its sole discretion, may void this Agreement in whole or in part. No approved transfer shall release the Contractor or any surety of the Contractor of any liability without the express consent of the City.

### **5. INSURANCE, INDEMNIFICATION AND BONDS**

#### 5.1 Insurance Coverages

General: The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the City, during the entire term of this Agreement including any extension as specified in Section 3.2, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of the City:

Comprehensive General Liability Insurance: A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

Worker's Compensation Insurance: A policy of worker's compensation insurance in an amount sufficient to fully comply with the laws of the State of Utah and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the Work.

Automotive Insurance: A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. The policy shall include coverage for owned, non-owned, leased and hired cars.

Professional Liability: Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to the Work. The insurance must be maintained for at least five consecutive years following the completion of the Work or the termination of this Agreement. During this additional five-year period, the Contractor shall annually, and upon request of the City, submit written evidence of this continuous coverage.

Additional Insurance: Policies of such other insurance, as may be required in the Special Requirements.

## 5.2 General Insurance Requirements

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by the City or its officers, employees or agents shall apply in excess of, and not contribute with the Contractor's insurance. The insurer is deemed to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of these policies of insurance shall provide that the insurance may not be amended or cancelled by the insurer or any Party without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. If any of these policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the City Manager. The Contractor shall not commence the Work or any other services until the Contractor has provided the City with Certificates of Insurance or appropriate evidence of the above insurance coverages and these Certificates of Insurance or appropriate evidence of the above insurance are accepted by the City. The City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to the City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

**CANCELLATION: SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED IN THIS AGREEMENT.**

[to be initialed] \_\_\_\_\_

## Agent Initials

The City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds with respect to: liability arising out of activities the Contractor performs; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, and its respective elected and appointed officers, officials, employees or volunteers. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.

### 5.3 Indemnification

To the full extent permitted by law, the Contractor shall indemnify, defend at its own expense and hold harmless the City, its officers, employees, agents and volunteers ("**Indemnified Parties**") against, and shall hold and save them and each of them harmless from any and all liability and actions whether judicial, administrative, regulatory or arbitrated ("**Actions**") and any and all losses, claims, expenses or damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened that may be asserted or claimed by any person, firm or entity arising out of or in connection with the performance of the Work or any other operations or activities provided in this Agreement of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which the Contractor is legally liable ("**Indemnors**"), or arising from the Contractor's negligent, reckless or willful misconduct, or arising from the Contractor's Indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement ("**Claims**").

The Contractor shall defend any Action filed in connection with any such Claims and shall pay all costs and expenses, including legal costs and attorneys' fees incurred in connection with any Claims.

The Contractor shall promptly pay any judgment rendered against the City, its officers, agents or employees for any such Claims arising out of or in connection with the performance of or failure

to perform services, operations or activities of the Contractor and the Contractor agrees to save and hold the City, its officers, agents, and employees harmless.

If the City, its officers, agents or employees is made a party to any Action filed or prosecuted against the Contractor for such Claims arising out of or in connection with the performance of or failure to perform the services, operation or activities of the Contractor, the Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Failure of the City to monitor compliance with these provisions shall not be a waiver of this requirement. The provisions of this Section do not apply to claims or liabilities occurring as a result of the City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from the City's negligence, except that design professionals' indemnity shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of the Contractor and shall survive termination of this Agreement.

#### 5.4 Performance Bond

Concurrently with execution of this Agreement, and if required in Exhibit B, the Contractor shall deliver to the City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

#### 5.5 Sufficiency of Insurer or Surety

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in Utah, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City Manager due to unique circumstances. If this Agreement continues for more than three years duration, or the City Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the City Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the City Manager to the City Council of City within ten (10) days of receipt of notice from the City Manager.

## **6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records**

The Contractor shall keep all ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to the City and Work (“**Records**”), as shall be necessary to perform the Work and enable the City to evaluate the performance of the Work. Any and all such Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The City shall have full and free access to these Records at all times during normal business hours of the City, including the right to inspect, copy, audit and make transcripts from such Records. The Contractor shall maintain such Records for a period of seven (7) years following completion of the Work, and the City shall have access to such Records if an audit is required. If of dissolution of Contractor’s business, custody of the Records shall be given to the City, and access shall be provided by Contractor’s successor in interest.

### **6.2 Reports**

The Contractor shall periodically prepare and submit to the City Manager (or his or her designee) such reports concerning the performance of the Work required by this Agreement as the City Manager (or his or her designee) shall require as well as any reporting required in the Scope of Work.

### **6.3 Ownership of Documents**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (“**Documents**”) prepared by the Contractor, its employees and agents in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request of the City Manager (or his or her designee) or upon the termination of this Agreement. The Contractor shall have no claim for further employment or additional compensation as a result of the exercise by the City of its full rights of ownership use, reuse, or assignment of the Documents. Any use, reuse or assignment of such Documents for other projects and/or use of uncompleted documents without specific written authorization by the City shall be at the Contractor’s sole risk and without liability to the City. The Contractor may retain copies of such Documents for its own use. The Contractor shall have an unrestricted right to use the concepts embodied.

### **6.4 Confidentiality and Release of Information**

All information gained or work product produced by the Contractor in performance of this Agreement shall be held confidential by the Contractor unless such information is in the public domain or already known to the Contractor. The Contractor shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the City Manager (or his or her designee).

The Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the Work. Response to a subpoena or court order shall not be considered “voluntary.”

If the Contractor, or any officer, employee or agent of the Contractor, provides any information or work product in violation of this Agreement, the City shall have the right to reimbursement and indemnity from the Contractor for any damages, costs and fees, including attorneys’ fees, caused by or incurred as a result of the Contractor’s conduct.

The Contractor shall immediately notify the City should the Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the Work. The City retains the right, but has no obligation, to represent the Contractor or be present at any deposition, hearing or similar proceeding. The Contractor agrees to cooperate fully with the City and to provide the City with the opportunity to review any response provided by the Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

## **7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 Utah Law**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of Utah. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Grand, State of Utah, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the District of Utah, Tenth Circuit.

### **7.2 Disputes; Default**

If the Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating the Contractor for any services performed after the date of default. Instead, the City may give notice to the Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding

invoices during the period of default. If the Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Section. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### 7.3 Retention of Funds

The Contractor hereby authorizes the City to deduct from any amount payable to the Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute or which are necessary to compensate the City for any losses, costs, liabilities or damages suffered by the City, and (ii) all amounts for which the City may be liable to third parties, by reason of the Contractor's acts or omissions in performing or failing to perform the Contractor's obligation under this Agreement. If any claim is made by a third party, the amount or validity of which is disputed by the Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of the City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect the City as elsewhere provided in this Agreement.

### 7.4 Waiver

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by the City of any work or services by the Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

### 7.5 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

### 7.6 Legal Action

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

#### 7.7 Liquidated Damages

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) as liquidated damages for each working day of delay in the performance of any service required by this Agreement, as specified in the Scope of Work (Exhibit A) and Schedule of Performance (Exhibit D). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

#### 7.8 Termination Prior to Expiration of Term

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice to the Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the City Manager. In addition, the Contractor reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice to the City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services except those as may be specifically approved by the City Manager. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the City Manager thereafter in accordance with the Schedule of Compensation or such as may be approved by the City Manager, except as provided in Section 7.3. If the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced and/or services delivered. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

#### 7.9 Termination for Default of Contractor

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, the City may, after compliance with the provisions of Section 7.2, take over the services and see them to completion by contract or otherwise. Should this occur, the Contractor shall be liable to the extent that the total cost for completion of the services required exceeds the Schedule of Compensation in this Agreement (provided that the City shall use reasonable efforts

to mitigate such costs), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of amount in excess of the Schedule of Compensation.

#### 7.10 Attorneys' Fees

If either Party to this Agreement is required to initiate or defend is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation.

### **8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-Liability of City Officers and Employees

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

#### 8.2 Conflict of Interest

The Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder the Contractor's performance of services under this Agreement. The Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee or agent without the express written consent of the City Manager. The Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of the City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any state statute or regulation. The Contractor warrants that it has not paid or given and shall not pay or give any third party any money or other consideration for obtaining this Agreement.

#### 8.3 Covenant Against Discrimination

The City is committed to providing equal employment opportunity for all persons without regard to race, color, national origin, religion, sex (including conditions of pregnancy), sexual orientation, gender identity, age, disability, veteran status, genetic information or other group protected by federal law or applicable state or local law. The Contractor covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against any person or group of persons on account of race, color, national origin, religion, sex (including conditions of pregnancy), sexual orientation, gender identity, age, disability, veteran status, genetic information or other group protected by federal law or applicable state or local law in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, national origin, religion, sex (including conditions of pregnancy), sexual orientation, gender identity, age, disability, veteran status, genetic information or other group protected by federal law or applicable state or local law.

## **9. MISCELLANEOUS PROVISIONS**

### **9.1 Notices**

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and served personally, sent via email, or sent by prepaid, first-class mail, in the case of the City, to the City Manager, City of Moab, 217 East Center Street, Moab, UT 84532 or mblack@moabcity.gov and in the case of the Contractor, to the person at the physical and email addresses designated on the signature page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

### **9.2 Interpretation**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. For the purposes of this agreement, the term “shall” means an action that is required or mandatory.

### **9.3 Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

### **9.4 Integration; Amendment**

This Agreement including the attachments is the entire, complete and exclusive expression of the understanding of the Parties on the subject of this Agreement. There are no oral agreements between the Parties concerning this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and signed by the Contractor and by the City Manager. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### 9.5 Severability

If any one or more of the phrases, sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid or unenforceable by an order, judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs or sections of this Agreement which are hereby agreed to be severable and shall be interpreted to carry out the intent of the Parties unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

#### 9.6 Corporate Authority

The persons executing this Agreement on behalf of the Parties warrant that (i) the Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of the Party, (iii) by executing this Agreement, the Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

#### 9.7 No Waiver of Immunity

The City advises that it is a governmental entity in the State of Utah and is bound by the provisions of the Utah Governmental Immunity Act (Title 63G, Chapter 7, Utah Code Annotated, 1953, as amended) and does not waive any procedural or substantive defense or benefit provided or to be provided by the Governmental Immunity Act or comparable legislative enactment, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. Any indemnity and insurance obligations incurred by the City under this Agreement are expressly limited to the amounts identified in the Act. Further, nothing in this Agreement shall be deemed to abrogate or waive any immunity possessed by the City, including immunity under the Utah Governmental Immunity Act, U.C.A. § 63G-6-101, et seq., or other applicable law.

#### 9.8 Titles/Headings

The headings in the Agreement are for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

9.9 Necessary Acts of Cooperation

The Parties agree to do any act or thing necessary to execute any and all documents or instruments required by this Agreement and which are necessary and proper to make effective the provisions of and transaction contemplated by this Agreement. Provided, however, that neither Party shall act, or purport to act, on behalf of the other without the express written consent of the other Party.

9.10 Legal Review

The Parties represent and agree that they had full opportunity to review this Agreement and that they accept the terms hereof. The rule that such an agreement is to be construed against its drafter shall not apply to this Agreement.

9.11 Incorporation of Recitals

The recitals set forth in this Agreement are incorporated as part of this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as follows:

**CITY:**

Dated: \_\_\_\_\_

CITY OF MOAB, a municipal corporation

\_\_\_\_\_  
Michael Black  
City Manager

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

Address: \_\_\_\_\_

Email: \_\_\_\_\_

**ATTESTED:**

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

\_\_\_\_\_  
Sommar Johnson  
City Recorder

**EXHIBIT A**  
**SCOPE OF WORK, BUDGET & SCHEDULE OF PERFORMANCE**

**See the attachment.**