

**When recorded, mail to:**

City of St. George  
175 East 200 North  
St. George, UT 84770

Tax ID: SG-

**CITY OF ST. GEORGE STORMWATER MANAGEMENT  
BMP MAINTENANCE AGREEMENT WITH  
OWNER'S NAME FOR PROJECT NAME**

This Stormwater Management BMP Maintenance Agreement (“Agreement”) is made and Entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of St. George, a municipal corporation, with offices at 175 East 200 North, St. George, Utah 84770 (“City”), and (Owner's Name), located at (Address), (City), (State) (Zip) (“Owner”).

**RECITALS**

**WHEREAS**, City is authorized and required to regulate and control the disposition of storm and surface waters within its boundaries, as set forth in the City of St. George Code, Stormwater Management, Title 9 Chapter 14, as amended (“Ordinance”), adopted pursuant to the Utah Water Quality Act, and pursuant to City’s MS4 Permit which requires stormwater runoff to be managed by the use of Stormwater Facilities and best management practices (“BMP’s”); and

**WHEREAS**, Owner hereby acknowledges that owner owns certain real property more particularly described in Exhibit “A,” attached hereto and incorporated herein by this reference (“Property”); and

**WHEREAS**, Owner desires to build or develop the Property and/or to conduct certain regulated construction activities on the Property which will alter existing storm and surface water conditions on the Property and adjacent lands.

**WHEREAS**, in order to facilitate these changes, Owner or Owner’s representative was required to submit a Stormwater Mitigation Plan (“SWMP”) that proposed how stormwater from the Property is to be managed by the use of Stormwater Management Facilities which are identified in the SWMP as BMP’s. The precise location(s) and extent of the post construction BMP’s are indicated on the approved SWMP dated SWMP date approved. The SWMP specifies the manner and standards by which the BMP’s must be repaired and maintained in order to retain their effectiveness, as set forth in the Operation Maintenance Plan (hereinafter referred to as “O&M PLAN”). The approved SWMP and O&M PLAN containing any revisions thereto are on file with the CITY.

**WHEREAS**, Owner as provided in the SWMP is required to build and maintain, at Owner's expense, certain storm and surface water management facilities, including structures, improvements, and/or vegetation to control the quantity and quality of the storm water (the “SWFS”).

**WHEREAS**, the SWFS are shown in the final site plan or subdivision approved for the Property, in any related engineering drawings, and in any amendments thereto, which plans and drawings are on file in

the office of the City of St. George and are hereby incorporated herein by this reference (the "Development Plan").

**WHEREAS**, a detailed description of the SWFS, which includes the operation and routine maintenance procedures required to enable the SWFS to perform their designed functions (the "Stormwater Pollution Prevention Plan"), is attached hereto as Exhibit "B" and is incorporated herein by this reference.

**WHEREAS**, as a condition of the Development Plan approval, and as required by City MS4 UPDES General Permit from the State of Utah, Owner is required to enter into this Storm Water Maintenance Agreement establishing a means of documenting the execution of the Storm Water Pollution Prevention Plan.

**WHEREAS**, the information contained in the SWMP and OWNER's representations that the BMP's will be maintained pursuant to the SWMP have been relied upon by CITY in approving OWNER's development applications. It is the purpose of this Agreement to assure that the BMP's are maintained, by creating obligations which are enforceable against the OWNER and the OWNER's successors in interest in the PROPERTY. It is intended that these obligations be enforceable notwithstanding other provisions related to BMP maintenance which are provided by law.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the benefits received and to be received by Owner, its successors and assigns, as a result of City approval of (THE DEVELOPMENT PLANS AND) the Agreement, and the mutual covenants contained herein, the parties agree THAT THE PROPERTY IS SUBJECT TO A PRIVATELY MAINTAINED SWFS AND ALSO COVENANTS AND AGREES as follows:

1. **Construction of Stormwater Facilities.** Owner shall, at its sole cost and expense, construct the SWFS in strict accordance with all New Development Plans, specifications, and any amendments thereto which have been approved by City.

2. **Maintenance of Stormwater Facilities.** Owner shall, at its sole cost and expense, operate and maintain the SWFS in strict accordance with the Storm Water Maintenance Agreement.

OWNER agrees, for itself and its successors in interest, to all or any portion of the PROPERTY, to comply in all respects with the requirements of the Stormwater Ordinance and the SWMP with regards to the maintenance of BMP's designated in the SWMP, and in particular agrees to perform, at its sole cost, expense and liability, the following "MAINTENANCE ACTIVITIES": all inspections, cleaning, repairs, servicing, maintenance and other actions specified in the O&M PLAN, with respect to all of the BMP's listed at Recital "B" above, at the times and in the manner specified in the O&M PLAN. OWNER shall initiate, perform and complete all MAINTENANCE ACTIVITIES at the required time, without request or demand from CITY or any other agency. OWNER further agrees that "MAINTENANCE ACTIVITIES" shall include replacement or modification of the BMP's in the event that said BMP's do not function as intended. Replacement shall be with an identical type, size and model of BMP, except that:

(a) The CITY Engineer may authorize substitution of an alternative BMP if he or she determines that it will function as well or better than the original BMP; and

(b) Pursuant to Section 40.2.3(c) of the Stormwater Ordinance, if the failure of the BMP, in the judgment of the CITY Engineer indicates that the BMP in use is inappropriate or inadequate to the circumstances, the BMP must be modified or replaced with an upgraded BMP to prevent future failure.

**DUTIES OF GRANTOR(S):**

**grantor(s)(owners) shall regularly inspect and maintain/repair the private Stormwater Facilities on the said-described property in accordance with the standards specified in the City's Construction Standards, specifically including Appendix D ("Maintenance Requirements for Privately Maintained Drainage Facilities"), as now collectively enacted or hereafter amended, which are incorporated by this reference as if fully set forth herein (the, "City Construction Standards").**

**2. Grantor(s) shall inspect the Stormwater Facilities as often as conditions require, but in any event at least once each year. Grantor(s) shall, within four weeks after each inspection, maintain / repair the Stormwater Facilities as required by the City Construction Standards.**

**3. Grantor(s) shall inspect each element of the Stormwater Facilities whenever the City's Public Works Director ("Director"), in his/her sole discretion, determines that unacceptable conditions exist within or adjoining to the Stormwater Facilities. Similarly, the Director, in his/her sole discretion, may require the Grantor(s) to complete the maintenance / repair of the Stormwater Facilities within a shorter time period than allowed in Section 2, above.**

**Grantor(s), in effecting this maintenance/repair, shall restore the Stormwater Facilities to like new condition, or if that is not practical, to an acceptable condition to the extent listed and/or described in the City Construction Standards.**

**Grantor(s) is hereby required to obtain written approval from the Director prior to grading, filling, piping, cutting or removing vegetation (except for routine and minor landscape maintenance) in open vegetated drainage facilities (such as biofiltration swales, channels, ditches, ponds, etc.) or performing any alterations or modifications to the Stormwater Facilities.**

**Grantor(s) shall obtain all necessary permits and provide all required land surveys as required by the City Construction Standards.**

**6. Grantor(s) shall assume all responsibility for the implementation and cost of any maintenance and/or repairs to the Stormwater Facilities.**

**RIGHTS OF THE CITY:**

**1. The City shall have ingress and egress rights to the said-described property for inspection and monitoring of the Stormwater Facilities in order to determine performance, operational flows or defects in the Stormwater Facilities, all in accord with the City Construction Standards.**

**2. If the City determines that, pursuant to the City Construction Standards, the Stormwater Facilities require maintenance and/or repair work, the Director shall deliver written notice to the Grantor specifically describing the required maintenance and/or repair. The notice shall also set a reasonable time in which Grantor must complete the described work. The notice shall also state that the City or its authorized agent may perform the authorized maintenance and/or repair if the Grantor(s) fails to complete the maintenance and/or repair within the time allowed.**

**3. If the Grantor(s) does not complete the required maintenance and/or repair within the time allowed as set forth in the Director's notice, the City or its authorized agent will not commence the maintenance and/or repair work described in the Director's notice until at least seven (7) calendar days after the expiration of the time allotted to Grantor to make the maintenance and/or repair.**

However, if the Director determines, at his or her sole discretion, that an imminent danger exists, the City's obligation to provide written notice shall be deemed waived, and the City or its authorized agent may immediately begin the required maintenance and/or repair work.

4. If the City or its authorized agent performs the required maintenance and/or repairs to the Stormwater Facilities, Grantor(s) shall reimburse the City all its costs incurred in completing the maintenance and/or repairs within thirty (30) calendar days of Grantor's receipt of the City's invoice for that work. Overdue payments shall accrue interest at the rate of twelve percent (12%) per annum.
5. If the Director determines, in his/her sole discretion, that the Stormwater Facilities, if originally constructed in accordance with the City's approved design, need further modifications, Grantor(s) authorizes the City to enter the Stormwater Facilities property in order to make these modifications.

Any notice or consent required to be given or otherwise provided for by the provisions of this agreement shall be effective either upon personal delivery or three (3) calendar days after mailing by Certified Mail, return receipt requested.

This Covenant is intended to protect the value and desirability of the property described above, including the larger parcel(s), if any, benefited by the Stormwater Facilities. Further, this Covenant shall inure to the benefit of all the citizens of the City and shall bind Grantor(s), and its heirs, successors and assigns.

3. **Annual Maintenance Report.** The Owner shall, at its sole cost and expense, inspect the SWFS and submit an inspection report and certification to the City annually. The purpose of the inspection and certification is to assure safe and proper functioning of the SWFS. The annual inspection shall cover all aspects of the SWFS, including, but not limited to, the parking lots, structural improvements, berms, channels, outlet structure, pond areas, access roads, vegetation, landscaping, etc. Deficiencies shall be noted in the inspection report. The report shall also contain a certification as to whether adequate maintenance has been performed and whether the structural controls are operating as designed to protect water quality. The annual inspection report and certification shall be due by July 31, of each year and shall be in a form acceptable to the City of St. George.
4. **Oversight Inspection Authority.** The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the SWFS upon reasonable notice to the Owner. Such inspections shall be conducted in a reasonable manner and at reasonable times, as determined appropriate by the City of St. George. The purpose of the inspection shall be to determine and ensure that the SWFS are adequately maintained, are continuing to perform in an adequate manner, and are in compliance with the Act, the Ordinance, and the Storm Water Maintenance Agreement.

#### **Surgery**

5. **Notices.**
  - a. If the City finds the SWFS contain any defects or are not being maintained adequately, the City shall send the Owner written notice of the defects or deficiencies and provide the Owner with reasonable time to cure such defects or deficiencies. Such notice shall be confirmed delivery to the Owner or sent certified mail to the Owner at the Property address.
  - b. OWNER further agrees that it shall, prior to transferring ownership of any land on which any of the above BMP's are located, and also prior to transferring ownership of any such BMP, provide clear written notice of the above maintenance obligations associated with that BMP to the transferee. OWNER further agrees to provide evidence to CITY that

OWNER has requested the California Department of Real Estate to include in the public report issued for the development of the PROPERTY, a notification regarding the BMP maintenance requirements described herein.

6. **Owner to Make Repairs.** The Owner shall, at its sole cost and expense, make such repairs, changes or modifications to the SWFS as may be determined as reasonably necessary by the City within the required cure period to ensure the SWFS are adequately maintained and continue to operate as designed and approved.

7. **Corrective Action.**

a. In the event the Owner fails to adequately maintain the SWFS in good working condition acceptable to the City, after due notice of deficiencies as provided, the City may issue a Citation punishable as a Class C Misdemeanor. The City may also give written notice that the SWFS will be disconnected from the City's municipal separate storm sewer system. Any damage resulting from the disconnected system will be the Owner's responsibility. It is expressly understood and agreed that the City is under no obligation to maintain or repair the SWFS, and in no event shall this Agreement be construed to impose any such obligation on the City. The actions described in this Section are in addition to and not in lieu of the legal remedies available to the City as provided by law for Owner's failure to remedy deficiencies or any other failure to perform under the terms and conditions of this Agreement.

b. **CITY's Right to Perform Maintenance.** It is agreed that CITY shall have the right, but not the obligation, to elect to perform any or all of the MAINTENANCE ACTIVITIES if, in the CITY's sole judgment, OWNER has failed to perform the same. It is recognized and understood that the CITY makes no representation that it intends to or will perform any of the MAINTENANCE ACTIVITIES and any election by CITY to perform any of the MAINTENANCE ACTIVITIES, shall in no way relieve OWNER of its continuing maintenance obligations under this agreement. If CITY elects to perform any of the MAINTENANCE ACTIVITIES, it is understood that CITY shall be deemed to be acting as the agent of the OWNER and said work shall be without warranty or representation by CITY as to safety or effectiveness, shall be deemed to be accepted by OWNER "as is", and shall be covered by OWNER's indemnity provisions below. If CITY performs any of the MAINTENANCE ACTIVITIES, after CITY has demanded that OWNER perform the same and OWNER has failed to do so within a reasonable time stated in the CITY's demand, then OWNER shall pay all of CITY's costs incurred in performing the MAINTENANCE ACTIVITIES. OWNER's obligation to pay CITY's costs of performing MAINTENANCE ACTIVITIES is a continuing obligation and shall apply whether or not CITY has utilized all or any portion of the security provided pursuant to Paragraph 5.

8. **Reimbursement of Costs.** In the event the City, pursuant to this Agreement, incurs any costs, or expends any funds resulting from enforcement or cost for labor, use of equipment, supplies, materials, and the like related to storm drain disconnection from the City's municipal separate storm sewer system, the Owner shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City. After said thirty (30) days, such amount shall be

deemed delinquent and shall be subject to interest at the rate of ten percent (10%) per annum. Owner shall also be liable for any collection costs, including attorney's fees and court costs, incurred by the City in collection of delinquent payments.

9. **CITY'S Access Rights.** OWNER hereby authorizes the CITY to access perpetually over, under and across (insert either "all of the PROPERTY" or "that portion of the PROPERTY described in Exhibit "B" hereto"), for purposes of accessing the BMP's and performing any of the MAINTENANCE ACTIVITIES specified in Paragraph 1 above. CITY shall have the right, at any time and without prior notice to OWNER, to enter upon any part of said area as may be necessary or convenient for such purposes. OWNER shall at all times maintain the PROPERTY so as to make CITY's access clear and unobstructed.

10. **Security.** OWNER has provided CITY with security to assure the faithful performance of the obligations of this agreement. The security is in the form of (specify "a Cash Deposit" or "a letter of Credit") in the amount of \$\_\_\_\_\_. CITY may utilize the security to provide funding for the cost of CITY performing any of the MAINTENANCE ACTIVITIES under Paragraph 3 above. CITY may utilize all or any part of the security at any time pursuant to this Agreement. Should any portion of the security be used by CITY,

11. OWNER shall deposit additional funds or provide an additional Letter of Credit to CITY in the amount utilized by CITY. If the security is a cash deposit, and a Substitute Cash Deposit or Letter of Credit is provided acceptable to the CITY, any amount of the Cash Deposit not utilized by CITY shall be returned to OWNER by a check made payable to OWNER and mailed first class to OWNER at the following address:

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

The Letter of Credit shall be submitted on bank letterhead using the CITY approved form.

12. **Successors and Assigns.** This Agreement shall be recorded in the office of the County Recorder and the covenants and agreements contained herein shall run with the land and whenever the Property shall be held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements and provisions of this Agreement which shall apply to, bind and be obligatory upon the Owner hereto, its successors and assigns, and shall bind all present and subsequent owners of the Property described herein.

13. **Severability Clause.** The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Owner, its successors and assigns, is held invalid, the remainder of this Covenant shall not be affected thereby.

14. **Utah Law and Venue.** This Agreement shall be interpreted under the laws of the State of Utah. Suits for any claims or for any breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of St. George, Utah.

**15. Indemnification.** This Agreement imposes no liability of any kind whatsoever on the City. The Owner hereby agrees to indemnify and hold the City and its officers, employees, agents and representatives harmless from and against all liability, loss, damage, costs, or expenses, including attorneys' fees and court costs arising from, or as a result of, any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person by the construction, existence, maintenance, or failure of the Storm Water Facilities.

**Defense and Indemnity.** CITY shall not be liable for, and OWNER and its successors in interest shall defend and indemnify CITY and the employees and agents of CITY (collectively "CITY PARTIES"), against any and all claims, demands, liability, judgments, awards, fines, mechanic's liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "CLAIMS"), related to this Agreement and arising either directly or indirectly from any act, error, omission or negligence of OWNER, OWNER's successors, or their contractors, licensees, agents, servants or employees, including, without limitation, claims caused by the concurrent negligent act, error or omission, whether active or passive of CITY PARTIES. OWNER shall have no obligation, however, to defend or indemnify CITY PARTIES from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of CITY PARTIES. Nothing in this Agreement, CITY's approval of the subdivision or other applications or plans and specifications, or inspection of the work, is intended to acknowledge responsibility for any such matter, and CITY PARTIES shall have absolutely no responsibility or liability therefore unless otherwise provided by applicable law.

**16. 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 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, whether such claims or actions are rightfully or wrongfully brought or filed. In the case when a claim is brought or an action filed with respect to the subject of indemnity herein, CONSULTANT agrees that CITY may employ a separate attorney to appear and

- defend the claim or action on its own behalf at the expense of CONSULTANT. CONSULTANT shall be responsible for all costs associated with any claim, demand, action, suit or judgment including attorney fees for which they indemnify or defend CITY.
- 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.



17. **Common Interest Developments.** If the PROPERTY is developed as a "Common Interest Development" as defined in Civil Code section 1351(c) which will include membership in or ownership of an "ASSOCIATION" as defined in Civil Code section 1351(a), then the following provisions of this Paragraph 8 shall apply during such time as the PROPERTY is encumbered by a "DECLARATION" as defined in Civil Code section 1351(h), and the Common Area, as "Common Area" is defined in Civil Code section 1351(b), of the PROPERTY is managed and controlled by the ASSOCIATION:

(a) The ASSOCIATION, through its Board of Directors, shall assume full responsibility to perform the MAINTENANCE ACTIVITIES pursuant to this Agreement, and shall undertake all actions and efforts necessary to accomplish the MAINTENANCE ACTIVITIES, including but not limited to, levying regular or special assessments against each member of the ASSOCIATION sufficient to provide funding for the MAINTENANCE ACTIVITIES, conducting a vote of the membership related to such assessments if required by law. In the event insufficient votes have been obtained to authorize an assessment, the ASSOCIATION shall seek authority from a court of competent jurisdiction for a reduced percentage of affirmative votes necessary to authorize the assessment, re-conducting the vote of the membership in order to obtain the votes necessary to authorize an assessment, and the ASSOCIATION shall take all action authorized by the DECLARATION or California law to collect delinquent assessments, including but not limited to, the recording and foreclosure of assessment liens.

(b) No provision of the DECLARATION, nor any other governing document of the ASSOCIATION or grant of authority to its members, shall grant or recognize a right of any member or other person to alter, improve, maintain or repair any of the PROPERTY in any manner which would impair the functioning of the BMP's to manage drainage or stormwater runoff as described in the SWMP. In the event of any conflict between the terms of this Agreement and the DECLARATION or other ASSOCIATION governing documents, the provisions of this Agreement shall prevail.

18. **Amendments.** This Agreement shall not be modified except by written instrument executed by City and Owner of the Property at the time of modification, and no modification shall be effective until recorded in the office of the County Recorder.

19. **Subordination Requirement.** If there is a lien, trust deed or other property interest Recorded against the Property, the trustee, lien holder, etc., shall be required to execute a subordination agreement or other acceptable recorded document agreeing to subordinate their interest to this Agreement.

IN WITNESS WHEREOF, the parties have signed and subscribed their names hereon and have caused this Agreement to be duly executed as of the day and year first set forth above.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first above written.

ADD APPROVED CITY SIGNATURE BLOCK

**Agreement Binds Successors and Runs with the PROPERTY.** It is understood and agreed that the terms, covenants and conditions herein contained shall constitute covenants running with the land and shall be binding upon the heirs, executors, administrators, successors and assigns of OWNER and CITY, shall be deemed to be for the benefit of all persons owning any interest in the PROPERTY (including the interest of CITY or its successors in the Access Rights authorized herein). It is the intent of the parties hereto that this Agreement may be recorded and shall be binding upon all persons purchasing or otherwise acquiring all or any lot, unit or other portion of the PROPERTY, who shall be deemed to have consented to and become bound by all the provisions hereof.

10. **OWNER's Continuing Responsibilities Where Work Commenced or Permit Obtained.** Notwithstanding any other provision of this Agreement, no transfer or conveyance of the PROPERTY or any portion thereof shall in any way relieve OWNER of

or otherwise affect OWNER's responsibilities for installation or maintenance of BMP's which may have arisen under the ordinances or regulations of CITY referred to in Recital B

above, or other federal, state or CITY laws, on account of OWNER having obtained a permit which creates such obligations or having commenced grading, construction or other land disturbance work.

11. **Amendment and Release.** The terms of this Agreement may be modified only by a written amendment approved and signed by the City Council or the CITY Engineer acting on behalf of CITY and by OWNER or OWNER's successor(s) in interest. This Agreement may be terminated and OWNER and the PROPERTY released from the covenants set forth herein, by a Release which CITY may execute if it determines that another mechanism will assure the ongoing maintenance of the BMP's or that it is no longer necessary to assure such maintenance.

12. **Governing Law and Severability.** This Agreement shall be governed by the laws of the State of California. Venue in any action related to this Agreement shall be in the Superior Court of the State of California, County of San Diego, North County Division. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity, and enforceability of the remaining provisions shall not be affected thereby.

1. **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.

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

3. **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.

4. **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.

5. **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:		CONSULTANT:
City of St. George	175	(Company Name)
East 200 North		(Address)
St. George, Utah 84770		(City, State, Zip)
Attention: (Contact Name)		Attention: (Contact Name)

6. **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.

7. **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.

8. **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.
  
9. **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.
  
10. **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.
  
11. **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.
  
12. **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.
  
13. **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.
  
14. **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.

15. **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.
  
16. **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.
  
17. **COUNTERPARTS.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.
  
18. **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

CONSULTANT: (Company Name)

\_\_\_\_\_  
Jonathan T. Pike, Mayor

\_\_\_\_\_  
(Consultant Name)  
(Consultant title)

ATTESTED:

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Christina Fernandez, City Recorder

APPROVED AS TO FORM

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Paula Houston, Deputy City Attorney

NOTARY

DRAFT