

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this ___ day of _____, 2022, by and between the **Town of Springdale** with offices at 118 Lion Boulevard, Springdale, Utah 84767, (hereinafter called “CLIENT”), and **Rosenberg Associates**, with offices at 352 East Riverside Drive, Suite A2; St. George, Utah 84790 (hereinafter called “CONSULTANT”).

WITNESSETH THAT:

WHEREAS, CLIENT desires professional services to be performed by providing civil engineering services (hereinafter call the “SERVICES”); and

WHEREAS, CLIENT has solicited the services of CONSULTANT to develop **BLACKS CANYON WASH REHABILITATION PROJECT**, (hereinafter call the PROJECT); and

WHEREAS, CONSULTANT has submitted a fee proposal dated December 7, 2020, which outlines the scope of work for the PROJECT; and

WHEREAS, CLIENT on January 12, 2022 selected CONSULTANT to perform the services for the PROJECT;

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

1. **EMPLOYMENT OF CONSULTANT**

- a. CONSULTANT is a professional Engineer licensed by the State of Utah. CONSULTANT has all licenses, permits, and approvals that are legally required for CONSULTANT to practice its profession and shall keep them in effect at all times during the term of this Agreement.
- b. CONSULTANT states that it has the necessary knowledge, experience, abilities, skills and resources to perform its obligations under this Agreement, and agrees to perform its obligations under this Agreement in a professional manner, consistent with prevailing industry standards and practices as observed by competent practitioners of the profession in which CONSULTANT and its subcontractors or agents are engaged.
- c. CONSULTANT shall not, either during or after the term of this Agreement, make public any reports or articles, or dispose to any third party any confidential information relative to the work of CLIENT or the operations or procedures of CLIENT without the prior written consent of CLIENT.
- d. CONSULTANT further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.
- e. CONSULTANT, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

- f. CONSULTANT expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve CONSULTANT from any obligation to comply with all applicable requirements of CLIENT during the term of this Agreement including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of CLIENT, except as modified or waived in this Agreement.
- g. CONSULTANT shall comply with all applicable federal, state, and local laws, regulations, and ordinances that affect those employees or those engaged by CONSULTANT on the PROJECT, and will procure all necessary licenses, permits and insurance required.
- h. CLIENT acknowledges that CONSULTANT may employ various specialized subcontractors for up to 35% of the services provide herein. CONSULTANT shall give written notice to CLIENT at least seven (7) days prior to CONSULTANT's employment of the subcontractors to perform portions of the work provided for in this Agreement. It shall be solely CONSULTANT's responsibility to ensure that any of CONSULTANT's subcontractors perform in compliance with the terms of this Agreement. Subcontractors may not be changed without ten (10) days prior written notice to CLIENT.

2. **PROJECT SERVICES DESCRIPTION**

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

3. **TERM OF AGREEMENT**

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

CLIENT with written notice of delay, including a description of the delay and the steps contemplated or taken by CONSULTANT to mitigate the effect of such delay.

4. **COMPENSATION**

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

5. **INVOICING, PAYMENT, NOTICES**

- a. CONSULTANT shall submit invoices, no more frequently than monthly, for the services rendered during the preceding period; invoices shall describe the services performed, list all subcontractor's used and the amount owed or paid to them, list the contract amount, list the current invoice amount based on percentage of task complete, list the previous invoice amount, list total invoices to date, and list the contract balance.
- b. All invoices for reimbursable costs shall be taken from the books of account kept by CONSULTANT, and CONSULTANT shall maintain copies of payroll distribution, receipted bills and other documents. CLIENT shall have the right to review all books and records kept by CONSULTANT and any subcontractors concerning the operation and services performed under this Agreement.
- c. CLIENT shall make no payment for any services not specified in this Agreement unless such additional services and the price thereof are agreed to in writing, prior to the time that such additional services are rendered.
- d. Invoices shall be paid to CONSULTANT within thirty (30) days of presentation to CLIENT.

6. **CHARGES AND EXTRA SERVICE**

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

7. **TO BE FURNISHED BY CLIENT**

Resources to be furnished by CLIENT to CONSULTANT, at no cost to CONSULTANT, consist of CLIENT staff assistance for oversight, meetings, and any other mapping or information described in the Request for Proposals that will help to perform the services. CONSULTANT shall verify accuracy of provided information as defined in the CONSULTANTS Scope of Work.

8. **INSPECTIONS**

All work shall be subject to inspection and approval of CLIENT or its authorized representative.

9. **ACCURACY AND COMPLETENESS**

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


10. **INDEPENDENT CONTRACTOR**

- a. The CLIENT retains and employs CONSULTANT, as an independent contractor, to act for and represent it in all matters involved in the performance of services on the PROJECT, subject to the terms, conditions and stipulations as hereinafter stated.
- b. It is understood and agreed that CONSULTANT will provide the services without supervision from CLIENT. CONSULTANT is an independent contractor and is not an employee, officer, or agent of CLIENT for any purposes related to the performance of this Agreement and is not an employee of CLIENT and is not entitled to any benefits from CLIENT.
- c. Nothing in this agreement shall create nor be construed to constitute a partnership or joint venture between CONSULTANT and CLIENT.
- d. CONSULTANT is advised to obtain and maintain in effect during the term of this Agreement medical insurance and disability insurance for all related work performed under this Agreement.
- e. CONSULTANT acknowledges that CLIENT will not withhold any federal, state, or local taxes, including FICA, nor will CLIENT provide any unemployment compensation or worker's compensation coverage. As an independent contractor, CONSULTANT shall be responsible for all taxes, worker's compensation coverage and insurance coverage, and shall hold CLIENT harmless and indemnify CLIENT from and against any and all claims related to taxes, unemployment compensation, and worker's compensation.
- f. CONSULTANT shall secure, at its own expense all personnel required in performing the

services under this Agreement. The employees of CONSULTANT shall not be considered to be the employees of CLIENT nor have any contractual relationship with CLIENT. CONSULTANT and its employees shall not hold themselves out as, nor claim to be officers or employees of CLIENT by reason of this Agreement. The employees of CLIENT shall not be considered to be employees of CONSULTANT.

- g. Neither party has the right to bind or obligate the other in any way. CONSULTANT shall not use the name, trademarks, copyrighted materials, or any information related to this Agreement in any advertising or publicity without CLIENT'S prior written authorization.

11. **INSURANCE**

- a. **GENERAL:** CONSULTANT shall secure and maintain insurance as required by law and regulations and the terms of this agreement to protect against any liability, loss or expense which occurs or arises as a result of the performance of the services provided pursuant to this agreement. CONSULTANT'S insurer must be authorized to do business in Utah. 
- b. **COMMENCEMENT OF WORK:** Neither CONSULTANT, nor any subcontractors shall enter the site of the work or commence work under this contract before CLIENT has received and accepted Certificate(s) of Insurance and has issued the Notice to Proceed.
- c. **INSURANCE CERTIFICATES AND COVERAGE:** Insurance certificates shall be issued on all policies required under this contract and shall be signed by an authorized representative of the insurance company.

12. **DOCUMENTS**

- a. All data used in compiling CONSULTANT's work, and the results of any tests or surveys, as well as all photographs, drawings, electronically stored records of work performed, renderings, specifications, schedules, CONSULTANT's work, data processing output, computations, studies, audits, research, reports, models and other items of like kind prepared by CONSULTANT, and its employees, shall be the sole and exclusive property of CLIENT, and CLIENT shall own all intellectual property rights thereto whether the specific work project for which they are made is undertaken or not. CONSULTANT may retain reproducible copies of all of the foregoing documents for information and reference and customary marketing and public relations. The originals of all the foregoing documents shall be delivered to CLIENT promptly upon completion thereof. This provision may be enforced by an order of specific performance and is independent of any other provision of this Agreement. Compliance by CONSULTANT with this paragraph shall be a condition precedent to CLIENT's obligation to make final payment to CONSULTANT. If CLIENT has specific requirements on the information and manner the documentation is collected, CLIENT shall provide those specifics to CONSULTANT in writing.
- b. Plans, specifications, maps and record drawings prepared or obtained under this Agreement shall be provided to CLIENT in a format approved by CLIENT which shall generally be a hard copy and an electronic copy, and shall become the property of CLIENT whether the work for which they are prepared is executed or not.
- c. The basic survey notes and sketches, charts, computations, and other data prepared under this Agreement shall be made available upon request to CLIENT without restriction or limitation on their use.

- d. CLIENT shall have the right to use reports, designs, details or products developed as part of this Agreement for purposes of maintenance, remodeling or reconstruction of existing facilities or construction of new facilities without additional compensation to CONSULTANT or without restriction or limitation on its use even if documents are considered copyrighted material.
- e. CLIENT will hold harmless CONSULTANT for any use or reuse of these reports, designs, or details by a third party, for purposes other than the project associated with this Agreement, unless CLIENT obtains from CONSULTANT a written verification adopting or adapting the third party's use of these reports, designs, or details.

13. **RECORDS**

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

14. **TERMINATION**

- a. CLIENT 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, CLIENT shall pay CONSULTANT for all services rendered up to and including the date of termination.
- c. CONSULTANT shall deliver to CLIENT copies of all drawings, reports, analyses, documents and investigations, whether completed or not, that was prepared or was being prepared under the provisions of this Agreement.

15. **SUCCESSORS AND ASSIGNS**

CONSULTANT shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement without the prior approval of CLIENT.

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.

16. **CONFLICT OF INTEREST**

- a. CONSULTANT certifies that it has disclosed to CLIENT 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 CLIENT 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 CLIENT ordinance or State law.

17. **NOTIFICATION**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

Town of Springdale
118 Lion Boulevard
Springdale, Utah 84767
Attention: Rick Wixom

Rosenberg Associates
352 East Riverside Drive, Suite A-2
St. George, Utah 84790
Attention: Rick Rosenberg

18. **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.

19. **MODIFICATION OF AGREEMENT**

CLIENT 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.

20. **RESERVED LEGISLATIVE POWERS**

Nothing in this Agreement shall limit the future exercise of the police power by CLIENT 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.

21. **ASSIGNMENT**

Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned, sold, transferred or otherwise disposed of to any other party, individual or entity without assigning the rights and the responsibilities under this Agreement and without prior written consent of CLIENT, which consent shall not be unreasonably withheld.

22. **BINDING EFFECT**

This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

23. 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.

24. 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 CLIENT 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.

25. 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.

26. 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.

27. 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.

28. COUNTERPARTS

This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.

29. AUTHORIZATION

The parties hereto have subscribed their names through their proper officers duly authorized as of the day and year first above written.

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

Town of Springdale

Rosenberg Associates

Barbara Bruno, Mayor

Rick Rosenberg, Principal

APPROVED AS TO FORM

Attest: Town Clerk Darci Carlson