Memorandum

To: Councilmembers and Media
From: Mayor Emily S. Niehaus
Date: 6/24/2021
Re: Special City Council Meeting

The City of Moab will hold a Special Moab City Council Meeting on Wednesday, June 30, 2021, at 4:00 p.m. at City Hall Council Chambers, 217 E. Center St., Moab, Utah. The purpose of this meeting will be:

1. Walnut Lane Update

2. Proposed Ordinance 2021-13: An Ordinance Amending the Text of the Moab Municipal Code (MMC) to Add Regulation for Outdoor Dining by Amending Sections 17.21 C-2 Commercial Residential Zone, 17.24 C-3 Central Commercial Zone, 17.27 C-4 General Commercial Zone and 17.31 RC Resort Commercial Zone and by allowing consideration of parklets in the City Right-of-Way (ROW) by amending Section17.24 C-3 Central Commercial Zone. Associated definitions will be added to MMC Section 17.06 Definitions.

   Briefing and possible action.

Mayor Emily S. Niehaus

In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the Recorder’s Office at 217 East Center Street, Moab, Utah 84532; or phone (435) 259-5121 at least three (3) working days prior to the meeting.
Moab City Council Agenda Item  
Meeting Date: June 30, 2021

**Title:** Walnut Lane & Employee Housing Discussion  
**Disposition:** Discussion and possible action  
**Staff Presenter:** Kaitlin Myers, Senior Project Manager  
**Attachments:**  
- Walnut Lane Summary  
- IndieDwell Contract  
- *IndieDwell shuts down Caldwell factory for revamp, lays off 61 employees; Expands elsewhere (Boise Dev, May 19, 2021)*  
- Employee Housing Letter of Support from Chief Edge

**Background/Summary:**

Staff wishes to provide an update to Council on the status of the Walnut Lane project to facilitate a conversation about moving it forward. Additionally, staff would like to initiate a conversation with the Council to start exploring employee housing solutions.

**IndieDwell Updates**

On June 16, indieDwell notified Kaitlin Myers and Carly Castle they are unable to meet the performance bond requirements outlined in the contract. Staff has included a longer narrative outlining the timeline leading up to this conversation, other minor issues with indieDwell since signing the contract, and alternatives to move forward.

Staff presents three questions for the Council to consider for this conversation:

- Does the Council wish to terminate the contract with indieDwell?  
- Does the Council wish to keep moving forward as quickly as possible and find additional funding to cover the cost of price surges or delay by 6-12 months until construction prices go down?  
- Does the Council wish to proceed with 4 duplexes or evaluate other alternatives for phase 1?

**Employee Housing**

Staff has begun evaluating options to provide housing to City employees. The Police Department is facing a severe shortage of officers, and while they have received numerous applications from qualified applicants, they have lost several potential officers due to lack of housing in the community. Other new City employees have experienced similar challenges finding housing, which has caused them to turn down the job or find temporary living alternatives (like trailers) for several months before finding permanent housing.
Like many employers in the community, the City is facing an employment challenge due to housing. Staff will provide a presentation on options the Council can consider, including but not limited to the following:

- Dedicate units at Walnut Lane
- Develop housing on other city-owned properties
- Consider public-private partnerships with local developers and businesses to develop employee housing
- Purchase and deed restrict existing units
- Provide monthly housing stipend
- Provide assistance with down payment or security deposit
indieDwell Updates – June 30, 2021

Bonding Issues

indieDwell (ID) has tried numerous avenues to meet the performance bond/irrevocable letter of credit requirements outlined in the contract.

During contract negotiations in December 2020, ID requested submitting an irrevocable letter of credit rather than a performance bond because they were concerned about their bonding ability but believed they could get an ILOC to cover the project. The City signed a contract with ID on December 22, 2020, with the following performance bond clause:

5.4 Performance Bond
Concurrently with execution of this Agreement the Contractor shall deliver to the City an Irrevocable Standby Letter of Credit in the amount of One Million Dollars ($1,000,000) covering the full and faithful performance of the Contract, the payment of all obligations arising thereunder, and the timely completion of the Work free and clear of any and all liens ("Letter of Credit"). The City will be the named beneficiaries on the Letter of Credit. Such Letter of Credit will provide, "Any alterations which may be made in the terms of the Contract Documents or in the Work to be done thereunder, or the giving of any extension of time for the performance of the Contract Documents, or any other forbearance, will not in any way release the Letter of Credit." The letter of credit shall remain in force from the period of the Materials Payment through to the Final Acceptance by the City. The City shall bear any cost to provide the Letter of Credit which shall not exceed 1% of the total amount of the Contract Sum.

On January 6, 2021, ID submitted an invoice for $216,060 for Task A per Exhibit C of the contract. On January 14, Sommar told ID via email that the City could not pay the invoice until we received the performance bond and insurance information, as required by the contract. On January 15, ID submitted their insurance information. To date, ID has not met the performance bond requirement, so the City has not fulfilled their invoice.

Throughout the spring months, the City and ID had regular check-ins regarding plan updates and the bonding requirement, but bonding was not heavily discussed again until May, when ID was getting closer to building plan submission and ordering materials.

On May 6, May 18, and June 10, City and ID met to discuss bonding options, and ID expressed positive progress at these meetings to meet the contractual requirements.

On June 16, ID officially notified Kaitlin and Carly they could not meet the requirements. They had exhausted their three potential avenues to do so. Their original ILOC partner decided it did not want to bond for projects outside of the state of Colorado; the second option seemed to become a dead end during the due diligence process; and the third option would have required the City to reassign the contract to a different contractor, ID would be their subcontractor, and this company would require 50% of the net profits from ID for the project. ID said the third option was not feasible and they would need $300-400k more due to surges in construction material costs to make a return on this project.

Ron Francis, the General Manager, told us even if the City could somehow waive the bonding requirements, he would not be able to recommend moving forward with this project to his board
because the cost margin is so large, meaning they would need to renegotiate the price of the contract to approximately $1.4MM to feel comfortable moving forward.

Further, Ron said he felt it was a 90% chance, if we did renegotiate the contract, that they would be able to bond. They have told us similar odds for their other avenues they have explored, which have failed.

Other indieDwell Issues
The City has experienced a few minor issues with ID along the way, likely due to internal challenges at ID. Staff has included a recent news article from Boise Dev, which reported indieDwell is closing its Caldwell, ID factory and moved all the pending work from this factory to the Pueblo, CO factory, where Moab’s project is being developed. The article also mentions ID is opening a new factory in Virginia.

These internal challenges have caused Moab’s dedicated ID project team to have to focus on additional work from the Caldwell factory, which has caused delays on our project.

Conversation with Zions Bank regarding the STRB
After the indieDwell news, Ben Billingsley and Kaitlin Myers spoke to Alex Buxton with Zions Bank about the City’s options with the STRB for the redevelopment of Walnut Lane.

Note: Staff anticipated an increase in construction prices when running financial pro formas for the STRB amount. We settled on the $6.5MM bond because we still have funding in the WAHO, and we did not want to take on additional funding because the rent charges could not cover a higher debt amount.

State of the Market - Other Entities
We asked if other entities are experiencing similar challenges. The only examples he offered were school districts who don't have the option to put the project on hold, some are expanding the bond to complete the project as originally planned, others are shrinking the project so it fits within current bond capacity.

Spend Down Time Frame
As long as we remain in negative arbitrage (the interest we’re earning is less than the interest we're paying), we have a 3 year spend down time frame. Even if we go beyond 3 years, Gilmore Bell would just write a letter to the IRS indicating the project extended beyond 3 years due to construction costs. In Alex's time, he's never seen an entity fined for exceeding arbitrage timelines, especially in negative arbitrage.

We also talked about various options for the next step:

1. **Insignificant Change of Scope** - Changing the scope of the project as long as it remains on the Walnut Lane property requires very little effort.
2. **Material Change in Scope** - If we wanted to spend the money to buy Days Inn, or build Tiny Homes at Old City Park, this would require approval from Bond Counsel and Zion's Credit, as the revenue source would change significantly. It may even require the next option.
3. **Returning Bond Proceeds** - If we wanted to put the project on hold and not make the bond payments while waiting, or if we wanted to materially change the scope of the project, we would return the funds. While not desirable, this would have no negative impact on future lending ability. The downside to this is the legwork already done on the bond, and the $ paid
for Bond Counsel and ZPF. However, these sunk costs are less $ than the interest on our first bond payment.

4. **Defer Payment** - This is possible if we simply did not have the $ on hand to make the payment, pursuing this option is highly discouraged due to impacting future borrowing ability.

**The Path Forward...**

The following are several alternatives Council could consider to move the Walnut Lane project forward.

1) **We find more money to keep going with the project.**
   a) We find more money to continue with indieDwell.
      i) Pros: The City currently has a contract with ID, so it would take less time to continue forward with them than going out to bid for a different builder, have plans redrawn, etc. We know approximately how much money ID would need to move forward.
      ii) Cons: ID has expressed some uncertainty to be able to find a partner to bond, even if the City finds additional funding to reevaluate the contract; staff is generally uncertain of ID’s ability to fulfill the contract as promised.
   b) We terminate the contract with indieDwell and find another builder for phase 1. This could mean finding an architect/designer to redraw the duplex plans so they can be stick built rather than modular, or the City could consider abandoning the duplexes for a different builder altogether that meets similar density to the proposed phase 1. We bid out the vertical and horizontal construction of phase 1 together.
      i) Pros: Staff feels uncertain about ID’s ability to complete the terms of the contract.
      ii) Cons: Finding a new builder and redesigning building plans will take time and additional costs. The City does not have a firm estimate for how much phase 1 would cost with another builder, but it would still be over the proposed budget.
   c) General
      i) Pros: We save time, even if we take the time to find a new builder.
      ii) Cons: We need to find approximately $500k in additional funding. There is some level of uncertainty with ID or a new builder.
   d) Potential funding sources
      i) The City could use STRB funding to cover costs now and find this funding later in phase 2, but the funding will need to be found at some point.
      ii) Property tax, ARPA, reintroduce overnight accommodations to generate WAHO funding

2) **We press pause until construction prices go down.**
   a) We continue with indieDwell.
   b) We terminate the contract with indieDwell and find another builder.
   c) General
      i) Pros: We spend less money by waiting for construction costs to go down.
      ii) Cons: We delay the project timeline, which increases pressure to spend the STRB within 3 years. We will still need to make STRB payments. We continue to face the same maintenance concerns with existing trailers at Walnut Lane, which is a health and safety concern. We disappoint residents who were expecting units by the end of the year. We must consider the same uncertainty as in #1 regarding ID or soliciting another builder.
3) **We abandon the current master plan and find an alternative redevelopment plan (i.e. we redevelop the trailer park).**

   a) As has been proposed this time last year, the City could go to the bidder list from the last RFP and purchase manufactured units from the next highest bidder. It is uncertain how much the price of these units has changed since we received the bids, but it is safe to assume they have increased due to general surges in the market right now.

   i) **Pros:** Cheaper and faster overall redevelopment of Walnut Lane. Easier to meet the STRB spending deadline. Still provides safe, affordable housing to current tenants.

   ii) **Cons:** Does not meet Council’s goal to provide additional housing beyond replacement. Long-term property value of a manufactured home park is less than that of a multifamily development, and manufactured units do not hold up as well over time as permanent units.
AGREEMENT FOR SERVICES

by and between

THE CITY OF MOAB,
A MUNICIPAL CORPORATION

and

indieDwell
THIS AGREEMENT FOR SERVICES ("Agreement") is entered into this 22 day of December 2020 by and between the City of Moab, a municipal corporation, ("the City") and indieDwell ("the Contractor"). The City and the Contractor are sometimes individually referred to as a "Party" and collectively referred to as "the Parties."

WHEREAS

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.

THEREFORE

NOW, THEREFORE, 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 Services

In compliance with all the terms and conditions of this Agreement, the Contractor shall provide those services specified in the “Scope of Services” attached to this Agreement as Exhibit A and incorporated by this reference. These services may be referred to as “services” or “work” in this Agreement. The Contractor acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services 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 services required under this Agreement in a thorough, competent, and professional manner and is experienced in performing the work and services contemplated in this Agreement. The Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent perform all services described in this Agreement. The Contractor covenants that it shall follow the highest professional standards in performing the services 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 services 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. In the event of 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 all services provided 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 such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. 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 services required by this Agreement. 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 as a result of the Contractor.

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 services to be performed;
1.5.2. Has carefully considered how the services should be performed;
1.5.3. Fully understands the facilities, difficulties and restrictions attending performance of the services 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 services if the services involve work upon any site;
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 services and shall not proceed except at Contractor’s risk until written instructions are received from an authorized representative of the City.

1.6 **Care of Services**

The Contractor shall adopt reasonable methods during the life of this Agreement to furnish continuous protection of the services, work, and the 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 services 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 one (1) year (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) working 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 Services, 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. 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. In the event that 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 services do 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 services or work of the other.

1.9 Additional Services

The City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra services beyond that specified in the Scope of Services (Exhibit A) or make changes by altering, adding to or deducting from Scope of Services (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 Services 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. In the event of 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

2.1 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 $1,080,300.00 (“Agreement Sum”), unless additional compensation is approved pursuant to Section 1.9. The Schedule of Compensation shall include the attendance (whether in person or virtually) of the Contractor at all project meetings reasonably deemed
necessary by the City. Coordination of the performance of the services with the City is a critical component of the services. 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 services to be performed pursuant to this Agreement. 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 or services 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 will 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 services;
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 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 will use its best efforts to cause the Contractor to be paid for an invoice within forty-five (30) days of receipt of the Contractor’s correct and undisputed invoice. In the event any charges or expenses are disputed by the City, the City will notify the Contractor within thirty (10) 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 shall 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, pandemic, 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 such delay notify the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of the delay and extend the time for performing the services for the period of the enforced delay when, and if, in the judgment of the City Manager acting in good faith 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 acting in good faith 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 thirty (30) 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 OF SERVICES

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 services specified in this Agreement:

Brad Henderson, Director of Business Development
205 N. Elizabeth St., Pueblo, CO 81003
Email: bhenderson@indiedwell.com
Phone: 720-988-7352

Steve Mazza, Project Superintendent
205 N. Elizabeth St., Pueblo, CO 81003
Email: smazza@indiedwell.com
Phone: 719-716-9119
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 services pursuant to this Agreement. 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 services required under this Agreement. The Contractor shall notify the City of any changes in the Contractor’s staff assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor

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 or 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 services 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 will 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 services 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 all services required by this Agreement 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 services required by this Agreement without the express written approval of the City. The City hereby acknowledges all trucking, craning, stitching and final connections will be made by sub-contractors to the Contractor in performance of this agreement. 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. In the event of 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

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 such amount as will 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 or services contemplated in this Agreement.

**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.

**Additional Insurance:** Products and completion insurance.

### 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. In the event 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. No services or services under this Agreement shall commence 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

5.3.1 To the full extent permitted by law, the Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from any and all actions whether judicial, administrative, regulatory or arbitrated (“Actions”) and any and all claims 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 services, 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 will defend any Action filed in connection with any such Claims and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection with any Claims.

The Contractor will 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.
In the event 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.

5.3.2 To the full extent permitted by law, the City agrees to indemnify, defend and hold harmless the Contractor, its officers, employees and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from any and all actions whether judicial, administrative, regulatory or arbitrated (“Actions”) and any and all claims 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 services, operations or activities provided in this Agreement of City, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which the City is legally liable (“indemnors”), or arising from the City’s negligent, reckless or willful misconduct, or arising from the City’s indemnors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement (“Claims”). The City will defend any Action filed in connection with any such Claims and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection with any Claims.

The City will promptly pay any judgment rendered against the Contractor, 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 City and the City agrees to save and hold the Contractor, its officers, agents, and employees harmless.

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

Failure of the Contractor 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 Contractor’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 Contractor’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 City and shall survive termination of this Agreement.

5.4 Performance Bond

Concurrently with execution of this Agreement the Contractor shall deliver to the City an Irrevocable Standby Letter of Credit in the amount of One Million Dollars ($1,000,000) covering the full and faithful performance of the Contract, the payment of all obligations arising thereunder, and the timely completion of the Work free and clear of any and all liens ("Letter of Credit"). The City will be the named beneficiaries on the Letter of Credit. Such Letter of Credit will provide, "Any alterations which may be made in the terms of the Contract Documents or in the Work to be done thereunder, or the giving of any extension of time for the performance of the Contract Documents, or any other forbearance, will not in any way release the Letter of Credit.” The letter of credit shall remain in force from the period of the Materials Payment through to the Final Acceptance by the City. The City shall bear any cost to provide the Letter of Credit which shall not exceed 1% of the total amount of the Contract Sum.

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 in the event 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 services performed pursuant to this Agreement (“Records”), as shall be necessary to perform the services required by this Agreement and enable the City to evaluate the performance of such services. 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 services pursuant to this Agreement, and the City shall have access to such Records in the event any audit is required. In the event 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. City acknowledges and agrees that digital forms of these records are equivalent to paper and sufficient for record keeping purposes.

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 services 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 Services.

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 Contractor. However, the City shall retain the perpetual right to use the drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials as required for any purpose within the City of Moab.

6.4 Confidentiality and Release of Information

All information gained, or work product produced, by the Contractor in performance of this Agreement shall be considered confidential, 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 services performed under this Agreement. 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 services performed pursuant to this Agreement. 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

In the event that 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. Provided that the City has disclosed these losses, costs liabilities, damages or amounts owed to third parties in writing to the Contractor prior to the issuance of the invoice and the Contractor has had both the ability to respond and time to cure. In the event that 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 in good faith 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 **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 and materials purchased 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. In the event 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. Despite the foregoing, the initial payment of 20% of the contract will be considered non-refundable as the payment is used to secure the production slots required for the project. 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.

7.8 **Termination for Default of Contractor**

If termination is due to the default of the Contractor 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.

7.9 **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 Non-Liability of Contractor and Employees

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

8.3 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 will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.4 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 either served personally 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 and in the case of the Contractor, to the person at the address 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.

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. It is understood that 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

In the event that 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

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.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the Parties have executed this Agreement as follows:

CITY:
Dated: 12/22/2020

CITY OF MOAB, a municipal corporation

Emily Niehaus
Mayor, City of Moab

ATTESTED:

By: Sommar Johnson
City Recorder

CONTRACTOR:

Dated: 12/22/2020

By: Ron Francis
General Manager

Address:
205 N Elizabeth St
Pueblo, CO 81003
EXHIBIT A
SCOPE OF SERVICES

I. Contractor will perform the following services and/or work (“services”):

Manufacturing and Installation Scope of Work

ALTERNATIVE PRODUCTS

indieDwell is committed to using high quality products in every aspect of construction. indieDwell reserves the right to utilize an equivalent or better product for all items listed below without prior approval of the Purchaser.

INDIEDWELL MANAGEMENT, SUPERVISION, AND OVERHEAD FOR ALL WORK WHICH INDIEDWELL IS RESPONSIBLE UNDER THIS SCHEDULE A.

Project manager
Site manager

Project is insured for 100% replacement

Clients are ‘Additionally Insured’ under indieDwell’s insurance policy

indieDwell overhead

Any additional indieDwell fees

PERMITS

Included in contract price: Insignia permit from Governing State Modular Regulator

Not included: Local building permits. Includes, but not limited to, foundation and utility permits

DEMOLITION

Not included: Purchaser to have the lot cleared of all debris and material

EXCAVATION

Not included: Purchaser to deliver Recorded Buildable Lots

Drainage to be a minimum 5% slope away from the dwelling with drainage system per plan

Excavate and backfill for new dwelling foundation, per plan

New sewer line, water line, and 3” electrical conduit and any other required and/or desired utilities
FOOTINGS AND FOUNDATION

Not included: Purchaser to install footings and foundation and any other foundation related requirements per plan or local jurisdiction requests

GENERAL

All ground floor units to be ADA visitable.

FRAMING

16 each 12’ x 28’ Cold Formed Steel Framed Modules
Steel studs throughout

SIDING

James Hardie or similar cement fiber siding, smooth finish with Fry Riglet trim
James Hardie or similar window and door trim
Color confirmed via Finishes and Options Selection Sheet attached as Schedule H upon execution

ROOFING

Shed roof with asphalt shingles
Prefinished metal drip edge on eaves

FIRE / LIFE SAFETY

Fire Rated Walls as required
Fire Rated Ceilings as required
No Fire Rated Doors or Windows required
Sprinklers required

INTERIOR DRYWALL

Walls and ceiling 1/2” gypsum board
Finish: tape, float, sand and texture
Square corners

City of Moab – Contract for Services
PAINTING, TRIM & STAINING (all interior paints are NO-VOC)

Exterior:

(1) color for body

(1) color for trim

Interior:

(1) color - walls, ceiling, trim, baseboards and doors

Colors confirmed via Finishes and Options Selection Sheet attached as Schedule H upon execution

INTERIOR TRIM & DOORS

All windows and openings are wrapped MDF

Interior doors: solid core, prefinished, 6’-8” tall

Modern levers

Colors confirmed via Finishes and Options Selection Sheet attached as Schedule H upon execution

HEATING, AIR CONDITIONING AND ERV

(1) HVAC system to comply with Manual J which will be sized for 1 person per bedroom + 1 additional person. For the avoidance of doubt, the heating and air conditioning system for a three bedroom home will be designed to provide a comfortable environment for up to 4 people. Any use beyond this capacity will not be covered by this Warranty.

(1) ERV

Transfer fans as required

INSULATION

Roof Meet or exceed energy code requirements

Walls Meet or exceed energy code requirements

Floor None

Foundation Wall R-16 rigid insulation (NOT INCLUDED)

PLUMBING SPECIFICATIONS

Plumbed per code

(1) Properly sized Energy Star electric water heater

City of Moab – Contract for Services
(1) Washer/dryer hookups

**AUDIO/VIDEO**

1 cable drop per bedroom

1 cable drop in living space

**ELECTRICAL**

Wired per code

Decorative switches and receptacles

Permits, labor, and materials to connect power from the underground conduit to the main electrical panel.

**MIRRORS**

Bath mirrors (1 Per Bath)

**SHOWER DOORS**

None

**WINDOWS**

Vinyl Pella windows, white, with screens, Energy Star Rated or better, per attached plan

**CABINETS**

Textured melamine per plan

(1) Color and finish confirmed via Finishes and Options Selection Sheet attached as Schedule H upon execution.

**APPLIANCES**

(1) Over-The-Range Microwave - 1.5 Cu. Ft. or equivalent

(1) 18 Cu. Ft. Top Freezer Refrigerator - or equivalent

(1) Built-in Dishwasher

(1) Electric Range

(1) Color to be confirmed via Finishes and Options Selection Sheet attached as Schedule H upon execution
LIGHTING
LED disc lights throughout

FLOORING
Shaw ‘Concrete & Composed’ engineered flooring

(1) Color to be confirmed via Finishes and Options Selection Sheet attached as Schedule H upon execution

COUNTERTOPS
Solid surface countertops with matching backsplash

(1) Color to be confirmed via Finishes and Options Selection Sheet attached as Schedule H upon execution

LANDSCAPING
None

PLUMBING FIXTURES
(1) Disposal in kitchen
(1) Undermount stainless steel kitchen sink

Moen plumbing fixtures in kitchen, baths, and showers

Elongated toilets

Bath sink vanities

Drop in bathroom sink

Finishes to be confirmed via Finishes and Options Selection Sheet attached as Schedule H upon execution

BATHROOM HARDWARE

Paper holder, towel ring, and towel bar in baths (1 each per Bath)

GUTTERS

Per plan

DELIVERY

Transportation of the units to the Designated Point of Delivery

City of Moab – Contract for Services
INSTALLATION

Crane Units onto foundation

Installation costs include basic craning with a 50 Ton Crane.

Lift of 20’ from road surface to top of foundation wall

Max reach of 35’ from center of crane to middle of container furthest from the crane

No overhead obstructions (power lines / trees etc)

Additional Craning Costs will be based upon site visit by crane company and will be charged as additional fees to the Purchaser.

Connect Units to foundation

Marry Units

Install Roof

Attach Gutters

ITEMS NOT INCLUDED IN CONTRACT PRICE

Excavation

Foundation

Any other Sitework

Additional Fire/Life Safety Requirements

Additional unforeseen conditions and requirements from the City or any other inspectors or authorities.

Additional engineering requirements

Any work required to be done outside of the property boundary

Furniture or automobiles detailed in the plans

Site specific utility bills

Lot survey

Security system install

Site Security Fencing or any other security features

City of Moab – Contract for Services
Clearing of lot from all debris and material not the result of IndieDwell's performance

II. As part of the services, Contractor will prepare and deliver the following tangibles to the City:
   
   A. Permit Design Documents
   
   B. Modular Units as described in Exhibit A Scope of Services
   
   C.

III. In addition to the requirements of Section 6.2, during performance of the services, Contractor will keep the City appraised of the status of the services by delivering the following status reports:
   
   A. Weekly email updates noting construction progress
   
   B.
   
   C.

IV. All work product is subject to review and acceptance by the City and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by the City.

V. Contractor will utilize the following personnel to accomplish the services:
   
   A. Trucking contractor TBD
   
   B. Crane contractor TBD
   
   C. Possible local licensed electrician and plumber to make utility connections TBD
EXHIBIT B
SPECIAL REQUIREMENTS
EXHIBIT C
SCHEDULE OF COMPENSATION

I. The Contractor shall perform the following services:

<table>
<thead>
<tr>
<th></th>
<th>RATE</th>
<th>TIME</th>
<th>SUB-BUDGET</th>
</tr>
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<tbody>
<tr>
<td>A</td>
<td>Task A</td>
<td>20% of Contract</td>
<td>$216,060.00</td>
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<tr>
<td></td>
<td></td>
<td>Due at Contract Signing</td>
<td></td>
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<tr>
<td>B</td>
<td>Task B</td>
<td>30% of Contract</td>
<td>$324,090.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Due 60 days prior to factory construction start</td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>Task C</td>
<td>40% of Contract</td>
<td>$432,120.00</td>
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<tr>
<td></td>
<td></td>
<td>Due at factory completion</td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Task D</td>
<td>10% of Contract</td>
<td>$108,030.00</td>
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<tr>
<td></td>
<td></td>
<td>Due upon Final Inspection</td>
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<tr>
<td>E</td>
<td>Task E</td>
<td>__________</td>
<td>_________</td>
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</tr>
</tbody>
</table>

II. The City will compensate the Contractor for services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items describing completed Tasks per the services identified in Section I A.-D.

B. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

III. The total compensation for the services shall not exceed $1,080,300, as provided in Section 2.1 of this Agreement.
EXHIBIT D
SCHEDULE OF PERFORMANCE

I. Contractor shall perform all services in accordance with the following schedule:

Schematic Design (SD): 3 weeks from contract execution
Design Development (DD): 3 weeks after SD completion
MILESTONE: Owner Approval of designs
City of Moab Building Department Permit Approval: 3 weeks after Owner Approval
Shop Drawing Completion: 2 weeks after Building Dept Approval
Factory Procurement: 4 Weeks after Shop Drawing Completion (barring supply chain issues)
Build Time: 2 Months after Procurement complete
First duplex can be onsite one month after Build begins.
IndieDwell will ship four units at a time until production is complete. Anticipate 2 days shipping from Pueblo to Moab. Set and stitch to take 30 days from delivery of first units. Total anticipated contract time not to exceed 145 days (<5 months)

II. The City Manager may approve extensions for performance of services in accordance with Section 3.2.
A prominent affordable housing manufacturer in Caldwell closed its doors earlier this year. IndieDwell, a company focused on building affordable housing units made out of recycled shipping containers, stopped manufacturing, and laid off or furloughed 61 employees. The company said it hoped to hire some of the back “starting this week.”

The company got glowing coverage in the local and national press in recent years for its innovative approach to construction, affordable prices, and partnerships with governments and local nonprofits to create low-cost homeownership opportunities. They provided the homes for several small subdivisions developed alongside Boise-based nonprofit LEAP Housing Solutions as recently as last summer.

[Company built ‘landmark’ Meridian building for 100s of employees. Now it’s laying them off and a new co. will take over]
Closed ‘for the moment’

In an email to BoiseDev, Gombert said the factory is currently closed “for the moment” and is in the middle of transitioning to a new product type. He did not respond to a follow up email or a phone call from BoiseDev about layoffs or provide more details.

“There are a lot of moving parts related to this conversation and the current supply chain issues surrounding the building industry are making it go a little slower than we expected,” Gombert said.

The temporary closure and transition to a new product was news to IndieDwell’s former Marketing and Communications Manager Chris Blanchard, who was let go at the end of April. He said the company was transitioning to a more complex form of manufacturing and it came with unexpected expenses.

“It’s both complicated and it’s not,” Blanchard said. “At the end of the day when a business fails it’s when they ran out of money before they ran out of month. That’s the simple cause of it.”

After the publication of this story, Gombert challenged Blanchard’s comment.

“‘The comment about running out of money before running out of month is just wrong,” Gombert said.

[2020: LEAP and indieDwell to bring new affordable duplexes to Nampa]

An expensive pivot

IndieDwell’s spring newsletter from April 20th celebrated coming through the pandemic and shared that the company would press ahead with a new product, instead of shipping containers. These changes were due to new regulations requiring “single trip” containers instead of the multi-use ones IndieDwell upcycling into homes.

The email said the company’s new focus would be on cold-formed steel to build the entire module for its homes. But, Blanchard said this brought problems because it requires significantly more equipment.

“In the original model, you’ve got shipping containers,” he said. “You need welding machines and hand tools. You’re not investing $100 million. It’s just a simple set of tools and you can get a factory set up pretty quickly, but when you moved to this other model you’ve got gantry cranes and specialized lifts and now we need wall system racks and ultimately you need a machine that rolls cold steel that are a quarter of a million dollars. It got to the point where this is not a low capital model anymore.”

Gombert said Blanchard’s information wasn’t correct and went into a technical explanation of the new process IndieDwell plans to use. He said the company had to cut staff because there was no work to do during the transition.
“We can’t pay 50 or 70 people on the production line to be sitting there doing absolutely nothing,” Gombert said. “We don’t have the cash to pay that many people and have them do nothing.”

Manufacturing continuing elsewhere

Blanchard said the company moved the remaining contracts IndieDwell is fulfilling for developers in California to its manufacturing operation in Pueblo, Colorado to complete the orders. This factory is under different management and has different funding, Blanchard said.

Gombert said that all projects slated for Caldwell were completed at that facility before it shut down for the conversion.

Virginia Governor Ralph Northam announced Wednesday IndieDwell will open a new manufacturing plant in Newport News, in southeastern Virginia. It will create 220 jobs, according to a release from the governor.

“Our Newport News facility is strategically located in the Mid-Atlantic region with access to the interstate highway system, and, most importantly, a strong workforce,” Gombert said in a press release. “Workforce development is one of indieDwell’s guiding principles, and our sincere desire to work with the Southeast Community neighborhood to create new jobs and construction trade training was a driving force behind our decision to select Newport News.”

Due to the labor shortage, Blanchard said the majority of the employees were able to land jobs at other nearby factories. He himself has received several offers for a new job in the area within days of being let go, so he isn’t worried.

“I’m not mad,” Blanchard said. “Most of the other people that left are all at other places already. It’s pretty easy when you’re an executive to do something else.”

Update: Adds additional information from Pete Gombert, including precise number of employees affected.
14 June 2021

To Whom It May Concern,

The Moab City Police Department has struggled to attract and retain talented employees for several years, with most citing the area’s unaffordable cost of living as a significant contributing factor. This is not an issue unique to Moab. Many resort communities have faced this issue. Some have addressed it with various creative strategies while others, including Moab, haven’t yet found the right solution(s).

Some strategies being used elsewhere, in places like Jackson, Wyoming and Park City, Utah, have included the implementation of housing stipends and, importantly, employee housing. Starting a new job is stressful. Starting a new job in a new town in perhaps a new career field compounds that stress. If one considers that a new police officer making just under $22 per hour also has to secure housing in a town where rent often exceeds $1,500/month – if housing is even available at all – this issue becomes all too apparent.

I firmly believe Moab needs to address this issue soon. Failure to do so will risk the loss of quality employees citywide – not just at the police department. Housing stipends are a quick fix. While these stipends won’t resolve the issue of housing inventory, they will provide employees with a financial buffer to offset Moab’s high cost of living. Mid to long-term, I believe the city should consider purchasing or developing employee transitional housing. These units would give new city employees a set time period during which they are able to move to Moab, establish residency and begin working while searching for permanent housing.

Best,

B. Edge

Bret Edge
Chief of Police
Memo

To: City Council  
From: Nora Shepard, Planning Director  
Date: June 30, 2021  
Re: Outdoor dining and parklet code amendments

Attached is a new mark-up and clean copy of Ordinance 2021-13 dated 6.28.2021. Please take a look at the revisions and if there are any edits you want me to add, please let me know and I can make those changes before the meeting next week.
An Ordinance Amending the Text of the Moab Municipal Code (MMC) to Add Regulation for Outdoor Dining by Amending Sections 17.21 C-2 Commercial Residential Zone, 17.24 C-3 Central Commercial Zone, 17.27 C-4 General Commercial Zone, 17.30 Neighborhood Commercial Zone, and 17.31 RC Resort Commercial Zone and 17.36 Industrial Zone and by allowing consideration of parklets in the City Right-of-Way (ROW) by amending Section 17.24 C-3 Central Commercial Zone. Associated definitions will be added to MMC Section 17.06 Definitions.

WHEREAS, the City has enacted Title 17 Zoning, of the Moab Municipal Code (“MMC”) that governs land use and development within the City Limits.

WHEREAS, from time to time the City undertakes revisions of Title 17.00 to improve the quality of land development and align the Code with state law and contemporary planning concepts.

WHEREAS, the City finds that this Ordinance will serve the public health, safety, and welfare, and that adoption is in the best interests of the Moab community.

WHEREAS, Title 17.00 of the MMC does not address outdoor dining.

WHEREAS, outdoor dining adds activity and pedestrian scale to the City’s commercial areas.

WHEREAS, the City permitted “parklets” to be constructed in City Right of Way (ROW) to allow restaurants to be able to operate on-site during COVID-19 restrictions and the City would like to allow parklets, under specific conditions, as part of Title 17 Zoning.

WHEREAS, the Planning Commission has discussed and reviewed the proposed ordinance revisions on numerous occasions and has provided valuable input.

WHEREAS, the Planning Commission held a public hearing on May 27, 2021 after meeting the public hearing notice requirement of the MMC.

WHEREAS, after the public hearing, the Planning Commission considered the ordinance and public input and forwarded a positive recommendation to the City Council on May 27, 2021.

NOW, THEREFORE BE IT ORDAINED that the Moab City Council hereby approves Text Amendments to the MMC as follows:
Section 1: Add definitions to 17.06 to include:

Parklets - Parklets are on-street parking spaces that are temporarily converted to outdoor seating for to allow temporary, seasonal outdoor dining.

Restaurant with Outdoor Dining, Permanent - Outdoor dining, permanent - Any restaurant with an outdoor eating and drinking area that is associated with and incidental and subordinate to a primary use of that parcel or lot. The outdoor dining is constructed as a part of the primary building, as an addition to the building or a separate structure that is a permanent structure. The outdoor dining areas may include design features to allow year-round use

Restaurant with Outdoor Dining, Seasonal - Any restaurant with an outdoor eating and drinking area that is associated with and incidental and subordinate to a primary use of that parcel or lot. This use may include removable tables, chairs, planters, or similar features and equipment.

Section 2: Modify the C-2 Commercial – Residential Zone to allow Outdoor Dining by adding Outdoor Dining and associated development standards to 17.21.020 Permitted Uses and Regulations and renumbering the balance of the section as necessary, as follows:

Restaurant with Outdoor Dining, Permanent
a. All Outdoor Dining must comply with the applicable Building, Health and Fire Codes
b. Outdoor Dining must not encroach into the zone required setbacks.
c. Additional parking will be required to include the additional floor area
   Parking
d. Noise All operations shall comply with the Noise Provisions of the MMC.
   e.d. All additional lighting will have to comply with the Dark Sky Outdoor lighting (Dark Sky) provisions of the code.
   f.e. Landscaping, screening, and fencing shall be installed and maintained to mitigate impacts on surrounding residential uses.

f. Outdoor dining shall not interfere with required Vehicular circulation and parking.

g. Temporary structures such as umbrellas, planters, tents, or temporary barriers are allowed. Such items as space heaters are permitted as long as they are at least 2 feet away from any flammable materials. Tents may be allowed if approved by the Moab Building Official and by Fire Officials. Outdoor cooking is not permitted. Coolers or other displays may be allowed but have to be easily moved and follow health guidelines for distribution.
h. No amplified music will be allowed. All operations shall comply with the Noise Provisions of the MMC.

i. Hours of operation will not exceed seven a.m. to ten p.m.

j. Individual businesses are responsible for adding any additional space to their premises for purposes of DABC licensing if they wish.

j.k. Currently, only restaurants with approved proper DABC permits may serve alcohol outdoors. All restaurants shall be responsible for following DABC rules and regulations.

Restaurants with Outdoor Dining, Seasonal

a. All Outdoor Dining must comply with the applicable Building, Health and Fire Codes

b. Outdoor Dining must not encroach into the zone required setbacks.

c. Noise, odor and glare shall be contained on the property.

d. All additional lighting will have to comply with the Dark Sky lighting provisions of the code.

e. Landscaping, screening, and fencing shall be installed and maintained to mitigate impacts on surrounding residential uses.

f. Outside storage of equipment, materials, and supplies shall be contained and located within a building or a sight obscuring fence;

g. No amplified music will be allowed. All operations shall comply with the Noise Provisions of the MMC.

h. Hours of operation will not exceed seven a.m. to 10 p.m.

i. Temporary structures such as umbrellas, planters, tents, or temporary barriers are allowed. Such items as space heaters are permitted as long as they are at least 2 feet away from any flammable materials. Tents may be allowed if approved by the Moab Building Official and by Fire Officials. Outdoor cooking is not permitted. Coolers or other displays may be allowed but have to be easily moved and follow health guidelines for distribution.

j. Individual businesses are responsible for adding any temporary space to their premises for purposes of DABC licensing if they wish. Currently, only restaurants with approved proper DABC permits may serve alcohol outdoors. All restaurants shall be responsible for following DABC rules and regulations.

Section 3: Modify the C-3 Central Commercial Zone to allow Outdoor Dining:
Add Outdoor Dining and associated development standards to 17.24.020 Permitted Uses and Regulations with associated standards as shown for Section 2 above.

Section 4: Modify the C-4 General Commercial Zone to allow Outdoor Dining:
Add Outdoor Dining and associated development standards to 17.27.020 Permitted Uses and Regulations with associated standards as shown for Section 2 above.

Section 5: Modify the C-5 Neighborhood Commercial Zone to allow Outdoor Dining:
Add Outdoor Dining and associated development standards to 17.30.020 Permitted Uses and Regulations with associated standards as shown for Section 2 above.

Section 6: Modify the I Industrial Zone to Outdoor Dining:
Add Outdoor Dining and associated development standards to 17.36.020 Permitted Uses and Regulations with associated standards as shown for Section 2 above.

Section 5: Modify the RC Resort Commercial Zone to allow Outdoor Dining: Add Outdoor Dining and associated development standards to 17.31.020 Permitted Uses and Regulations as shown for Section 2 above.

Section 6: Modify the C-3 Central Commercial Zone to allow consideration of Parklets: Add Parklets and associated standards to 17.24.020 as follows:

Parklets
a. Parklets on City Property will only be considered if there is not adequate area on the property to accommodate outdoor dining. If outdoor dining already exists, the property is not eligible for a Parklet.
b. Sidewalks and Public Rights of Way must maintain an adequate pedestrian flow.
   The recommended width of the sidewalk is 72 inches. The placement of the outdoor dining shall maintain access to fire hydrants, crosswalks, public utility access and building entrances. A 15’ Fire lane must be maintained at all times.
c. Maximum encroachment into street: 12 feet from edge of gutter
   No more than width of storefront, if parklet will be in front of the business in the City ROW
b.d. Entrance to the Parklet must be from the sidewalk and not from the street.
e. Width shall not exceed the frontage of the business property without written permission from the adjacent property owner. Adjacent properties are strongly encouraged to coordinate. A 72” pedestrian path (preferred width) should be maintained at all times. Each business is responsible for ensuring compliance with fire/emergency access and ADA requirements.
f. Temporary structure such as umbrellas, planters or temporary barriers are allowed, but shall not be permanently affixed to public property. Such items shall be properly weighted and cannot be more than 80 inches above the sidewalk. Space heaters are permitted if they are at least 2 feet away from any flammable materials. Tents may be allowed if approved by the Moab Building Official and by Fire Officials. Outdoor cooking is not permitted. Coolers or other displays may be allowed but must be easily moved and follow health guidelines for distribution.
g. The City has the right to ask that the parklet be removed within 24 hours if necessary, for public health, safety, or welfare purposes.
h. The applicant will work with the City Engineer, the Public Works Director and Building Official if they desire to build a more substantial parklet. Any parklet improvements will be allowed seasonally, requiring removal during the off season.
c. All street furniture shall be secured to withstand high winds, during and after business hours.

d. All businesses are responsible for their own trash, waste, and recycling. The site must be kept clean. In the event of a strong storm causing minor flooding, the business owner is responsible for cleaning up any debris, as necessary.

e. Individual businesses are responsible for adding any temporary space to their premises for purposes of DABC licensing if they wish. Currently, only restaurants with approved proper DABC permits may serve alcohol outdoors. All restaurants shall be responsible for following DABC rules and regulations.

f. Main Street (Hwy 191) is a state highway, and the City does not have the authority to grant any activities in the State Right of Way.

g. All business activities shall be governed by the City’s noise and nuisance provisions. No amplified music will be allowed.

h. Parklets may be used during normal dining hours. Use of the outdoor dining area must end at 10:00pm.

i. Parklets are allowed seasonally, from April 15th through October 31st through November 30th.

j. If a property is located on a corner, only one parklet is allowed per restaurant. The parklet will be located on the street with lower volumes of traffic and where the parklet will least disrupt the entrances to other businesses.

k. Parklets must follow Southeast Utah Health Department (SEUHD) requirements.

l. Safety lighting is required, signage and reflective materials are allowed and encouraged. All lighting shall meet the City of Moab outdoor lighting standards.

m. Other Design Criteria:

1. Maximum encroachment into street: 12 feet from edge of gutter

2. No more than width of storefront, if parklet will be in front of the business in the City ROW

3. Minimum remaining lane width: 15 ft (Can be reduced on a case-by-case basis)
   Minimum remaining sidewalk width: 72 inches preferred (Can be reduced on a case-by-case basis)

4. Enter/Exit outdoor dining from sidewalk only, not from street

5. Safety lighting is required, signage and reflective materials are allowed and encouraged

6. All street furniture must be secure to withstand high winds

7. All street furniture should be secured after closing

8. Must follow Southeast Utah Health Department (SEUHD) requirements

9. Enclosures should be able to be removed within 24 hours, if needed and required by City

j-s. A License Agreement shall be required as specified in Parklet information application and packet.

k. Submittal requirements are stated in the Parklet Information and packet and shall include:

1. Completed Application Form

2. Site Plan (8.5” by 11” minimum size) showing
i. Parcel boundary lines
iii. Location of proposed outdoor dining area (with dimensions)

3. Plans that indicate the following:
   i. Location of tables, general table dimensions, spacing between tables (feet), spacing between tables and public walkways (feet), and number of seats per table.
   ii. ADA accessible routes between the outdoor dining space and indoor space, noting location of restrooms.
   iii. Occupancy of outdoor dining space meeting applicable public health guidelines.
   iv. Location of any additional outdoor structures such, kiosks, tents or shade structures.
   v. All parklets are required to install barriers on all sides. The only access to the parklet will be from the sidewalk.
   vi. Description of what type of barriers you will use to define the parklet space. Materials can include Jersey Barriers or similar barriers, planters, and fences (that can be removed within 24 hours, if necessary) Steel tubing or similar materials.
   vii. Notification of adjacent property owners: This process requires that the applicant communicate with all adjoining property owners. The application shall include evidence of how this outreach was done and resulting concerns raised by the neighbors.

   viii. Signage and Lighting: Lighting Plan Consistent with Moab’s Dark Sky Outdoor Lighting requirements and sign requirements. For safety purposes, it is important that the parklet be lighted and visible, but the lighting must meet the lighting requirement on our Code (Dark Sky Compliant Lighting). Notification of adjacent property owners: This process requires that the applicant communicate with all adjoining property owners. The application shall include evidence of how this outreach was done and resulting concerns raised by the neighbors.

PASSED by the City Council in a public meeting on _____________ by the following vote:

MOAB CITY COUNCIL:

Those voting aye:_____________________________________

Those voting nay:_____________________________________

Those abstaining:_____________________________________
Those absent: ____________________________________________

Emily Niehaus, Mayor

ATTEST:

Sommar Johnson, Clerk/Recorder
An Ordinance Amending the Text of the Moab Municipal Code (MMC) to Add Regulation for Outdoor Dining by Amending Sections 17.21 C-2 Commercial Residential Zone, 17.24 C-3 Central Commercial Zone, 17.27 C-4 General Commercial Zone, 17.30 Neighborhood Commercial Zone, 17.31 RC Resort Commercial Zone and 17.36 Industrial Zone to allow consideration of parklets in the City Right-of-Way (ROW) by amending Section 17.24 C-3 Central Commercial Zone. Associated definitions will be added to MMC Section 17.06 Definitions.

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WHEREAS, the Planning Commission has discussed and reviewed the proposed ordinance revisions on numerous occasions and has provided valuable input.

WHEREAS, the Planning Commission held a public hearing on May 27, 2021 after meeting the public hearing notice requirement of the MMC.

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Restaurant, with Outdoor Dining, Seasonal - Any restaurant with an outdoor eating and drinking area that is associated with and incidental and subordinate to a primary use of that parcel or lot. This use may include removable tables, chairs, planters, or similar features and equipment.

Section 2: Modify the C-2 Commercial – Residential Zone to allow Outdoor Dining by adding Outdoor Dining and associated development standards to 17.21.020 Permitted Uses and Regulations and renumbering the balance of the section as necessary, as follows:

Restaurant with Outdoor Dining, Permanent
a. All Outdoor Dining must comply with the applicable Building, Health and Fire Codes
b. Outdoor Dining must not encroach into the zone required setbacks.
c. Additional parking will be required to include the additional floor area
d. All additional lighting will have to comply with the Outdoor lighting (Dark Sky) provisions of the code.
e. Landscaping, screening, and fencing shall be installed and maintained to mitigate impacts on surrounding residential uses.
f. Outdoor dining shall not interfere with required Vehicular circulation and parking.
g. Temporary structures such as umbrellas, planters, tents, or temporary barriers are allowed. Such items as space heaters are permitted as long as they are at least 2 feet away from any flammable materials. Tents may be allowed if approved by the Moab Building Official and by Fire Officials. Outdoor cooking is not permitted. Coolers or other displays may be allowed but have to be easily moved and follow health guidelines for distribution.
h. No amplified music will be allowed All operations shall comply with the Noise Provisions of the MMC.
i. Hours of operation will not exceed seven a.m. to ten p.m.
j. All restaurants shall be responsible for following DABC rules and regulations.

Restaurants with Outdoor Dining, Seasonal
a. All Outdoor Dining must comply with the applicable Building, Health and Fire Codes
b. Outdoor Dining must not encroach into the zone required setbacks.
c. All additional lighting will have to comply with the Moab City outdoor lighting (Dark Sky) provisions of the code.
d. Landscaping, screening, and fencing shall be installed and maintained to mitigate impacts on surrounding residential uses.
e. Outdoor dining shall not interfere with required Vehicular circulation and parking
f. No amplified music will be allowed. All operations shall comply with the Noise Provisions of the MMC.
g. Hours of operation will not exceed seven a.m. to 10 p.m.
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i. All restaurants shall be responsible for following DABC rules and regulations.

Section 3: Modify the C-3 Central Commercial Zone to allow Outdoor Dining:
Add Outdoor Dining and associated development standards to 17.24.020 Permitted Uses and Regulations with associated standards as shown for Section 2 above.

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Section 5: Modify the C-5 Neighborhood Commercial Zone to allow Outdoor Dining:
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Section 6: Modify the I Industrial Zone to Outdoor Dining:
Add Outdoor Dining and associated development standards to 17.36.020 Permitted Uses and Regulations with associated standards as shown for Section 2 above.

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Parklets

a. Parklets on City Property will only be considered if there is not adequate area on the property to accommodate outdoor dining. If outdoor dining already exists, the property is not eligible for a Parklet.
b. Sidewalks and Public Rights of Way must maintain an adequate pedestrian flow. The recommended width of the sidewalk is 72 inches. The placement of the outdoor dining shall maintain access to fire hydrants, crosswalks, public utility access and building entrances. A 15’ Fire lane must be maintained at all times.
c. Maximum encroachment into street: 12 feet from edge of gutter
d. Entrance to the Parklet must be from the sidewalk and not from the street.
e. Width shall not exceed the frontage of the business property without written permission from the adjacent property owner. Adjacent properties are strongly encouraged to coordinate. Each business is responsible for ensuring compliance with fire/emergency access and ADA requirements.
f. Temporary structure such as umbrellas, planters or temporary barriers are allowed, but shall not be permanently affixed to public property. Such items shall be properly weighted and cannot be more than 80 inches above the sidewalk. Space heaters are permitted if they are at least 2 feet away from any flammable materials. Tents may be allowed if approved by the Moab Building Official and by Fire Officials. Outdoor cooking is not permitted. Coolers or other displays may be allowed but must be easily moved and follow health guidelines for distribution.
g. The City has the right to ask that the parklet be removed if necessary, for public health, safety, or welfare purposes.
h. The applicant will work with the City Engineer, the Public Works Director and Building Official if they desire to build a more substantial parklet. Any parklet improvements will be allowed seasonally, requiring removal during the off season.
i. All street furniture shall be secured to withstand high winds, during and after business hours.
j. All businesses are responsible for their own trash, waste, and recycling. The site must be kept clean. In the event of a strong storm causing minor flooding, the business owner is responsible for cleaning up any debris, as necessary.
k. Individual businesses are responsible for following DABC rules and regulations.
l. Main Street (Hwy 191) is a state highway, and the City does not have the authority to allow parklets in the State Right of Way.
m. All business activities shall be governed by the City’s noise and nuisance provisions. No amplified music will be allowed.
n. Parklets may be used during normal dining hours. Use of the outdoor dining area must end at 10:00pm.
o. Parklets are allowed seasonally, from March 1st through November 30th
p. If a property is located on a corner, only one parklet is allowed per restaurant. The parklet will be located on the street with lower volumes of traffic and where the parklet will least disrupt the entrances to other businesses.
q. Parklets must follow Southeast Utah Health Department (SEUHD) requirements
r. Safety lighting is required, signage and reflective materials are allowed and encouraged. All lighting shall meet the City of Moab outdoor lighting standards.
s. A License Agreement shall be required as specified in Parklet information application and packet.

t. Submittal requirements are stated in the Parklet Information and packet and shall include:
   1. Completed Application Form
   2. Notification of adjacent property owners: This process requires that the applicant communicate with all adjoining property owners. The application shall include evidence of how this outreach was done and resulting concerns raised by the neighbors.
   3. Site Plan (8.5" by 11" minimum size) showing
      i. Parcel boundary lines
      iii. Location of proposed outdoor dining area (with dimensions)
   4. Plans that indicate the following:
      i. Location of tables, general table dimensions, spacing between tables (feet), spacing between tables and public walkways (feet), and number of seats per table.
      ii. ADA accessible routes between the outdoor dining space and indoor space, noting location of restrooms.
      iii. Occupancy of outdoor dining space meeting applicable public health guidelines.
      iv. Location of any additional outdoor structures such, kiosks, tents or shade structures.
   v. All parklets are required to install barriers on all sides. The only access to the parklet will be from the sidewalk. Description of what type of barriers you will use to define the parklet space. Materials can include Jersey Barriers or similar barriers, planters, and fences (that can be removed within 24 hours, if necessary) Steel tubing or similar materials.
   vi. Signage and Lighting: Lighting Plan Consistent with Moab’s Outdoor Lighting requirements and sign requirements. For safety purposes, it is important that the parklet be lighted and visible.
   vii. Notification of adjacent property owners: This process requires that the applicant communicate with all adjoining property owners. The application shall include evidence of how this outreach was done and resulting concerns raised by the neighbors.

PASSED by the City Council in a public meeting on ______________ by the following vote:

MOAB CITY COUNCIL:

Those voting aye: ______________________________
Those voting nay:____________________________________

Those abstaining:____________________________________

Those absent:_______________________________________

_________________________
Emily Niehaus, Mayor

ATTEST:

______________________________
Sommar Johnson, Clerk/Recorder