

**AMENDED AND RESTATED
SPECIAL USE LEASE AGREEMENT NO. 1342
(Government)**

Fund: Schools

This Amended and Restated Special Use Lease Agreement No. 1342 (this “**Amended and Restated Lease**”), dated January 1, 2022 (the “**Effective Date**”), is between the State of Utah, acting by and through the School and Institutional Trust Lands Administration, with an address at 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 (“**SITLA**”), and City of Moab, a Utah municipality organized under Utah law, through the Moab Police Department, with an address at 217 E. Center Street, Suite 130, Moab, Utah 84532 (“**Lessee**”).

RECITALS

- A. SITLA manages lands held in trust by the State of Utah for certain named beneficiaries (“**Trust Lands**”), pursuant to Sections 6, 8, 10, and 12 of the Utah Enabling Act, Article XX, Section 2 of the Utah State Constitution, and Title 53C of the Utah Code.
- B. SITLA and Lessee are parties to Special Use Lease Agreement No. 539, dated December 9, 1981, as amended and restated in Special Use Lease Agreement No. 1342, dated January 1, 2002 as amended by Special Use Lease Agreement No. 1342 Amendment No. 1, dated January 1, 2008 (the “**Original Lease**”) covering 2.16 acres of Trust Lands located in Grand County, Utah (the “**Property**”), as the Property is more specifically described on *Exhibit A* and depicted on *Exhibit B*, for a shooting range and pistol qualification course.
- C. The Original Lease terminates on December 31, 2021 and Lessee has requested a 20-year extension to the Original Lease.
- D. SITLA has agreed to the extension, subject to Lessee signing this Amended and Restated Lease.

AGREEMENT

SITLA and Lessee agree as follows:

1. **DEFINITIONS**

- 1.1. “**Annual Rent**” is defined in Section 4.1 (*Annual Rent*).
- 1.2. “**Antiquities**” is defined in Utah Code § 76-6-901(1).
- 1.3. “**Applicable Environmental Law**” means: (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j-26, as such Acts have been or are hereafter amended; (b) any so called Superfund or Superlien law; and (c) any other federal, state and local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or any time hereafter in effect.

- 1.4. “**Applicable Law**” means Applicable Environmental Law and any other federal, state, or local statute, regulation, ordinance, rule, order, or judicial decree applicable to this Amended and Restated Lease, Property, the Project, Lessee, or Lessee’s activities under this Amended and Restated Lease.
- 1.5. “**Best Lead Management Practices Guide**” means Best Management Practices for Lead at Outdoor Shooting Ranges, published by the United States Environmental Protection Agency, EPA-902-B-01-001, Revised June 2005, Region 5, found at https://www.epa.gov/sites/default/files/documents/epa_bmp.pdf, and any updates or replacements.
- 1.6. “**CPI Index**” means the Consumer Price Index, published by the U.S. Bureau of Labor Statistics, All Urban Consumers, Western Region Average, All Items (1982-84 = 100), or if the CPI Index is no longer published, a substitute index published by a governmental agency and comparable to the CPI Index.
- 1.7. “**Condemning Authority**” is defined in Section 15.1 (*Eminent Domain; Cancellation*).
- 1.8. “**Critical Paleontological Resources**” is defined in Utah Code § 79-3-102(4).
- 1.9. “**Cultural Resources**” is defined in Utah Administrative Code R850-1-200(8).
- 1.10. “**Cultural Resource Survey**” is defined in Utah Administrative Code R850-1-200(9).
- 1.11. “**Default Rate**” means 8% per annum.
- 1.12. “**Effective Date**” is defined in the introductory paragraph.
- 1.13. “**Execution Date**” means the date on which the last party signs this Amended and Restated Lease.
- 1.14. “**Event of Default**” is defined in Section 13.1 (*Events of Default of Lessee*).
- 1.15. “**Financial Guaranty**” means a surety bond, letter of credit, certificate of deposit, cash deposit, or other financial security, as required in Section 7.6(a) (*Financial Guaranty Required*).
- 1.16. “**Force Majeure**” is defined in Section 14.7 (*Force Majeure*).
- 1.17. “**Governmental Approvals**” means certificates, permits, zoning changes or variances, easements, rights of way, and other federal, state, or local authorizations that are required by any Governmental Authorities or under any Applicable Law.
- 1.18. “**Governmental Authorities**” means federal, state, or local government, agencies or other authority having jurisdiction over this Amended and Restated Lease, the Property, the Project, Lessee, or Lessee’s activities under this Amended and Restated Lease.
- 1.19. “**Hazardous Substance**” means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of Utah, or the United States Government, including, without limitation: (i) any substance, chemical or waste that is or may be listed or defined as hazardous, toxic or dangerous under Applicable Environmental Law; (ii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by

any federal, state, or local Governmental Authority pursuant to Applicable Law and which could pose a hazard to the health and safety of occupants or users of the Property or any part of the Property, any adjoining property or cause damage to the environment; (iii) any petroleum products; (iv) PCB's; (v) leaded paint; and (vi) asbestos.

- 1.20. **“Historic Properties”** is defined in Utah Code § 9-8-302(10).
- 1.21. **“Indemnified Parties”** means the State of Utah, its affiliates, agencies, directors, officers, employees, agents, consultants, advisors, and other representatives, and their heirs, executors, successors and assignees. For clarity, Indemnified Parties includes SITLA, its Board of Trustees, beneficiaries, directors, officers, employees, agents, consultants, advisors, and other representatives, and their heirs, executors, successors and assignees.
- 1.22. **“Litigation Expense”** means any reasonable out-of-pocket expense incurred in defending a Third-Party Claim or in any related investigation or negotiation, including court-filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements.
- 1.23. **“Lead Management Plan”** is defined in Section 7.1(b) (*Lead Management Plan*).
- 1.24. **“Losses”** means any amount suffered as a result of, awarded in, or paid in settlement of, any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding, including any threatened claim or demand, whether brought by a non-party or by one party against the other, or any amount suffered by an Indemnified Party.
- 1.25. **“Mineral Estate”** means oil, natural gas, coal, geothermal resources, metalliferous minerals, sand, gravel, and other common varieties, and any other minerals that are on, in, or under the Property.
- 1.26. **“Notice”** is defined in Section 16.1 (*Notices*).
- 1.27. **“Original Lease”** is defined in the Recitals.
- 1.28. **“Original Lease Date”** means December 9, 1981.
- 1.29. **“Project”** is defined in Section 2.1 (*Grant of Lease*).
- 1.30. **“Reclamation Plan”** is defined in Section 7.4(a) (*Delivery of Reclamation Plan to SITLA*).
- 1.31. **“Remains”** is defined in Utah Code § 9-9-402(12).
- 1.32. **“Remedial Work”** means any investigation or monitoring of site conditions or any clean up, remediation, response, removal, encapsulation, containment or restoration work required because of the presence of any Hazardous Substance on, in, or under the Property or any release or suspected release or threat of release of any Hazardous Substance in the air, soil, surface water, or ground water.
- 1.33. **“Site”** is defined, with respect to Archaeology in Utah Code § 9-8-302(17) and Utah Administrative Code R850-1-200(31), and with respect to Paleontological in Utah Code § 79-3-102(14) and Utah Administrative Code R850-1-200(20).

- 1.34. “**Specimen**” is defined, with respect to Archaeology in Utah Code § 9-8-302(18) and Utah Administrative Code R850-1-200(33), and with respect to Paleontological in Utah Code § 79-3-102(15).
- 1.35. “**Term**” is defined in Section 3.1 (*Lease Term*).
- 1.36. “**Third-Party Claim**” means any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding, including any threatened claim or demand, brought by or on behalf of a non-party.

2. **LEASE OF PROPERTY**

- 2.1. **Grant of Lease.** SITLA hereby grants Lessee a lease on the Property for construction, operation, and maintenance of a shooting range and pistol qualification course for local, state, and federal law enforcement personnel (the “**Project**”). Lessee takes this Amended and Restated Lease subject to: (a) current taxes and assessments, reservations in patents and clear lists, all rights-of-way, easements, covenants, conditions, restrictions, obligations, liens, encumbrances, and liabilities of record as of the Execution Date; (b) all matters that an accurate survey or physical inspection of the Property would disclose; and (c) all zoning and building requirements and other governmental laws, rules, and regulations now or hereafter in effect, including without limitation all rules and regulations enacted by SITLA now or in the future with respect to use and management of Trust Lands. SITLA shall reasonably cooperate with and grant additional easements, rights-of-way, and similar rights to Lessee that: (y) are reasonably necessary to effectuate the construction, operation and maintenance of the Project; and (z) comply with SITLA’s applicable rules, regulations, and fee schedules for such easements and rights-of-way.
- 2.2. **Permitted Uses.** Lessee may use the Property for all purposes reasonably necessary and useful for the regulation, management, and oversight of the Project, including without limitation, constructing and maintaining shooting lanes, berms, and shot fall zones and installing and maintaining signage, fences, and gates, if needed. Lessee may permit other law enforcement agencies to use the Property for shooting range purposes consistent with all other term of this Amended and Restated Lease. Lessee may not use the Property for any other purposes and may not create a public or private nuisance, on or from the Property. Lessee may not commit any waste of the Property.
- 2.3. **No Warranty of Title.** SITLA hereby disclaims all warranties of title and any representations made by SITLA or its agents, employees, directors, officers or other representatives as to zoning, legal or physical access, suitability of the Property for the Project, improvements, utilities, soil conditions, floodplains and watercourses, the presence or absence of any Hazardous Substances or hazardous conditions, or other physical or legal attributes of the Property. Lessee is not entitled to any refund of any monies paid to SITLA under this Amended and Restated Lease in the event of title failure.
- 2.4. **Lessee’s Inspection of the Property.** Lessee has inspected and investigated the Property to Lessee’s complete satisfaction, observed its physical characteristics and existing conditions, the operations thereon and on adjacent areas, and Lessee hereby waives all objections to, complaints about, or claims regarding the valuation or utility of the Property or its suitability for any purpose whatsoever. Lessee hereby assumes the risk that past, present, and future environmental conditions on the Property and changes in applicable laws and regulations relating to such conditions, may increase the difficulty or cost of, or entirely prevent, Lessee’s development of the Project. Lessee expressly acknowledges that it has not relied on any warranties, promises,

understandings or representations, express or implied, oral or written, of SITLA or of any agent of SITLA, relating to the Property, except as specifically set forth in this Amended and Restated Lease.

- 2.5. Reservations to SITLA. Subject to the rights and privileges granted to Lessee under this Amended and Restated Lease, SITLA hereby excepts and reserves from the operation of this Amended and Restated Lease the following rights and privileges:
- (a) Rights-of-Way and Easements. SITLA reserves the right, following consultation with Lessee, to establish rights-of-way and easements upon, through, or over the Property, if such grants will not unreasonably interfere with Lessee's use and operations under this Amended and Restated Lease, for roads, pipelines, electric transmission lines, transportation and utility corridors, mineral access, and any other purpose deemed reasonably necessary by SITLA.
 - (b) Minerals. SITLA reserves the Mineral Estate and the right to lease the same to third parties, including the right to access and use the surface estate for exploration, development, and extraction of the Mineral Estate on terms and conditions that will not unreasonably interfere with Lessee's use and operations under this Amended and Restated Lease.
 - (c) Use and Disposal of Surface. SITLA reserves the right, following consultation with Lessee, to use, lease, sell, or otherwise dispose of all or part of the surface estate, if such use or disposal will not unreasonably interfere with Lessee's use and operations under this Amended and Restated Lease.
 - (d) Other Rights and Privileges. SITLA reserves all other rights and privileges of any kind or nature, except as granted in this Amended and Restated Lease.

3. LEASE TERM

- 3.1. Lease Term. This Amended and Restated Lease is effective as of Effective Date and continues for 20 years from the Effective Date ("**Term**"), except as otherwise provided in this Amended and Restated Lease.
- 3.2. Holding Over. If Lessee remains in possession of the Property after termination of this Amended and Restated Lease without an extension or a new lease, then this Amended and Restated Lease will convert to a month-to-month tenancy, subject to all of the covenants, terms, provisions, and obligations of this Amended and Restated Lease, except for the provisions relating to Annual Rent. During any holdover period, Annual Rent will be two times the amount of Annual Rent due immediately prior to the holdover period. The parties do not intend this Amended and Restated Lease to grant Lessee the right to holdover or to limit SITLA's remedies against a holdover Lessee. If Lessee does not surrender the Property at the end of the Term, Lessee shall reimburse SITLA for any loss or liability resulting from delay by Lessee in so surrendering the Property, including without limitation, any claims made by any succeeding lessee based on such delay.

4. **CONSIDERATION FOR LEASE**

4.1. **Annual Rent.**

- (a) **Annual Rent.** Lessee shall pay SITLA \$3,250.00 per annum (the “**Annual Rent**”), without deduction or offset, on or before the Effective Date and on or before each subsequent anniversary of the Effective Date during the Term of this Amended and Restated Lease.
- (b) **Annual Rent Adjustment.** SITLA may adjust the Annual Rent on the third anniversary of the Effective Date and on each three-year interval thereafter to reflect fair market value of the Property. SITLA, in its reasonable discretion, may use either of the following methods to calculate the adjusted Annual Rent:
 - (i) Multiply the Annual Rent by a fraction, the numerator of which is the CPI Index for the most recent month available as of the date of adjustment, and the denominator of which is the CPI Index for the month in which this Amended and Restated Lease was signed, or for the month that was the most recent available when the most recent adjustment was made, as applicable.
 - (ii) Fair market value determination based on appraised value of the Property (if appraisal is requested by either party), comparable lease rates of federal, state, and private leases, or other suitable uses of the Property. If either party requests an appraisal, the appraiser must be acceptable to both parties, MAI qualified, and licensed in Utah. If the parties are unable to agree on an appraiser, then each party shall designate one qualified appraiser by providing Notice of such designation to the other party. The two appraisers shall jointly designate a third appraiser, who shall complete an appraisal of the Property. If one of the parties fails to designate an appraiser, the appraiser designated by the other party will be the sole appraiser. If both parties designate appraisers and the two appraisers fail to designate a third appraiser within 20 days following the date on which the last of the two appraisers was designated, then either party may request the presiding judge of the Third Judicial District Court of Utah to make the designation. The designated appraiser must complete its appraisal and provide a written appraisal report to the parties not later than 30 days following appointment.

4.2. **Net Lease.** This is a net lease and the parties intend, except as specifically provided in this Amended and Restated Lease, that Lessee be responsible for all costs and expenses of the ownership, maintenance, repair and operation of the Property incurred or accrued during the Term, including without limitation real estate taxes payable on account of Lessee’s use of the Property. Any present or future law to the contrary notwithstanding, this Amended and Restated Lease will not terminate, and Lessee is not entitled to any abatement, reduction, set-off, counterclaim, defense, or deduction with respect to any rent or other sum payable under this Amended and Restated Lease by reason of any damage to or destruction of the Property.

4.3. **Interest and Penalty on Past Due Obligations.** Any amounts due under this Amended and Restated Lease that are not paid when due bear interest at the Default Rate from the due date until paid in full and are subject to penalties as provided by Utah Administrative Code R850-5-200 or by any replacement rule then in effect.

5. **INSPECTION OF THE PROPERTY**

- 5.1. **SITLA's Access to Property.** SITLA and its agents, at all reasonable times, may access all or any portion of the Property to: (a) examine or inspect the condition of the Property; (b) determine if Lessee is in compliance with this Amended and Restated Lease; and (c) post any notices that SITLA may desire to protect its rights. In exercising its rights under this Section 5.1, SITLA may not materially or adversely interfere with Lessee's use and enjoyment of the Property and shall comply with Lessee's security and safety rules, regulations and protocols.

6. **CONSTRUCTION AND OPERATIONS COVENANTS**

- 6.1. **Construction.** Lessee shall construct or maintain any improvements on the Property in a good workmanlike manner and in accordance with Applicable Law.
- 6.2. **Noxious Weeds.** Lessee shall use commercially reasonable efforts to ensure that all equipment, vehicles, and materials are free of noxious weeds and noxious weed seeds prior to entering the Property or other Trust Lands. Lessee shall monitor the Property for the growth of noxious weeds and take reasonable measures to eradicate noxious weeds from the Property. If Lessee fails to take reasonable measures to eradicate noxious weeds from the Property, as reasonably determined by SITLA, SITLA may take action to eradicate the noxious weeds after 30 days' Notice to Lessee and Lessee shall promptly pay SITLA's reasonably incurred and documented costs to eradicate the noxious weeds from the Property.
- 6.3. **Development at Lessee's Expense.** Lessee bears all expenses in connection with the development, improvement, construction, alteration and repair of the Project and the Property.
- 6.4. **Mechanics' Liens.**
- (a) **Lessee is Not SITLA's Agent.** Lessee acknowledges that it is not the agent of SITLA for the construction, alteration or repair of the Project, the same being done at the sole direction and expense of Lessee. All contractors, materialmen, mechanics, and laborers are hereby charged with notice that they must look only to Lessee for the payment of any charge for work done or material furnished on the Property. Lessee has no right, authority or power to bind SITLA or any interest of SITLA for the payment of any claim for labor or material, or for any charge or expense, incurred by Lessee as to improvements, alterations, or repairs on or to the Property.
- (b) **Covenant against Mechanic's Liens.** Lessee may not suffer or permit to be enforced against any or all of the Property, and shall indemnify and hold SITLA and the Property harmless for, from, and against any mechanic's, material men's, contractor's or subcontractor's liens arising from and any claim for damage growing out of, the work of, any construction, repair, restoration, replacement, or improvement done by or on behalf of Lessee. Lessee shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Property. If Lessee in good faith contests the validity of any lien, claim, or demand, then Lessee shall, at its expense, defend itself and SITLA against the same and shall pay and satisfy any adverse judgment that may be rendered. Lessee shall, at the request of SITLA, provide such security and take such steps as may be required by law to release the Property from the effect of such lien.

- 6.5. Survey Monuments. Lessee shall take reasonable precautions to protect, in place, all public land survey monuments and private property corners.
- 6.6. Fencing. Lessee may fence any portion of the Property at its own expense. If Lessee erects any fencing, Lessee shall provide gated access at reasonable locations to SITLA and to any lessees or permittees granted rights or access to or across the Property by SITLA pursuant to Section 2.5 (*Reservations to SITLA*), except for fencing necessary to prevent unauthorized access to the Project. Lessee shall take reasonably appropriate steps, including fencing, to secure the improvements from unauthorized access and prevent loss of wildlife. This Amended and Restated Lease does not grant Lessee rights to block access on or through county or other public or private roads that are not owned or controlled by SITLA.

7. LEAD MANAGEMENT PLAN; RECLAMATION

7.1. Lead Management Plan.

- (a) Environmental and Lead Contamination Study. Within 18 months of the Effective Date, Lessee shall use reasonable efforts to conduct an environmental study to delineate the location and concentration of lead bullets and fragments on the Property. Lessee shall provide SITLA with a copy of the study.
- (b) Lead Management Plan. Within a reasonable time after completion of the environmental study referenced in Section 7.1(a) (*Environmental and Lead Contamination Study*), but no later than two years after the Effective Date, Lessee shall prepare a lead management plan (the “**Lead Management Plan**”) based on the Best Lead Management Practices Guide that addresses: (i) the characteristics of the shooting range, (ii) the particular risks and concerns with respect to lead on the Property, (iii) the best management practices to address the particular risks of lead on the Property, and (iv) a plan to implement the best management practices. Additionally, Lessee shall include a proposed timeline to conduct regular removal of lead from the Property in accordance with the Best Lead Management Practices Guide. SITLA shall review the Lead Management Plan and provides comments to Lessee. The parties shall work cooperatively to ensure the Lead Management Plan addresses concerns particularly related to the Property and the concerns of SITLA.
- (c) Lessee Records. Lessee shall keep and maintain all records related to environmental studies and the Lead Management Plan and provide copies of such records to SITLA at SITLA’s request and at termination of this Amended and Restated Lease.

7.2. Reclamation Obligations.

- (a) Reclamation and Abatement. Prior to the end of the Term, Lessee shall reclaim the Property in accordance with Applicable Law, the Reclamation Plan, and as directed by SITLA, including without limitation removing improvements, structures, equipment and debris (including lead bullets and lead fragments, as required by Applicable Law in light of the uses to which SITLA intends to put the Property, as determined in its sole discretion), recontouring the Property to its approximate original contour, and reseeded the Property, as necessary in the reasonable judgment of SITLA to prevent soil erosion, promote the establishment of suitable vegetation, and control noxious weeds and pests. Lessee shall further abate any hazardous condition on or associated with the Property. Lessee shall commence reclamation at least three months prior to the end of the Term.

- (b) No Reclamation Required if Lease Renewed. If Lessee has requested and SITLA has agreed to a renewed lease, then Lessee is not required to begin reclamation of the Property unless and until discussions for renewal have ended. If the discussions end without the parties entering into a new lease, Lessee will have 90 days from the date the discussions end to reclaim the Property in compliance with Section 7.2(a) (*Reclamation and Abatement*). If the parties have not entered into a renewed lease by the end of the Term, SITLA may charge holder over rent pursuant to Section 3.2 (*Holding Over*) for the time required by Lessee to reclaim the Property or negotiate a renewed lease after the end of the Term, unless the delay is caused solely by SITLA.
- 7.3. SITLA's Right to Reclaim. If reclamation of the Property is not completed within the time provided for in Section 7.2 (*Reclamation Obligations*), SITLA may pursue all legal remedies available to it, including seeking specific performance, seizing the improvements, and/or using the Financial Guaranty to complete reclamation.
- 7.4. Reclamation Plan.
- (a) Delivery of Reclamation Plan to SITLA. At the same time that Lessee provides SITLA the Lead Management Plan but no later than two years after the Effective Date, Lessee shall deliver for SITLA's approval a plan for reclamation of the Property (the "**Reclamation Plan**"). The Reclamation Plan must include: (1) a general plan to remove all improvements and reclaim the Property as required by Section 7.2(a) (*Reclamation and Abatement*); (2) an estimate of time required to complete all reclamation activities; and (3) a reclamation cost estimate. The purpose of the Reclamation Plan is to help Lessee and SITLA plan for reclamation of the property. It is not intended to be an exhaustive list of reclamation activities or to limit Lessee's obligations under Section 7.2(a) (*Reclamation and Abatement*).
- (b) SITLA's Review of Reclamation Plan. SITLA shall review the Reclamation Plan and approve or request reasonable modifications within 30 days of receipt. If Lessee disagrees with the requested modifications, the parties shall attempt to resolve the dispute in good faith for 30 days. If the parties cannot resolve the dispute within 30 days, SITLA may hire an independent third party to conduct a study and prepare a Reclamation Plan for the Project. Lessee shall pay the costs of any such study and Reclamation Plan.
- (c) Update of Reclamation Plan. At the reasonable request of SITLA and five years prior to the end of the Term, Lessee shall update the Reclamation Plan. Lessee shall submit the updated Reclamation Plan for SITLA's approval as outlined in Section 7.4(b) (*SITLA's Review of Reclamation Plan*). If the parties cannot agree on a modified Reclamation Plan, SITLA may hire an independent third party to conduct a study and prepare a Reclamation Plan for the Project. Lessee shall pay the costs of any such study and Reclamation Plan. Lessee may not modify the Reclamation Plan without SITLA's consent, which consent SITLA may not unreasonably withhold. Lessee may update the Reclamation Plan at any time in addition to the times required by this Section.
- 7.5. Intermediate Reclamation. Lessee shall use reasonable efforts to reclaim disturbed areas not required for continuing operations of the Property by leveling, reseeding and other reasonably necessary steps to prevent soil erosion, promote the establishment of suitable vegetation, and control noxious weeds and pests.

7.6. Financial Guaranty.

- (a) Financial Guaranty Required. At SITLA's request, Lessee shall execute and file with SITLA a good and sufficient Financial Guaranty acceptable to SITLA in an amount sufficient to ensure reclamation of the Property, as set forth in the Reclamation Plan. SITLA may require a Financial Guaranty prior to Lessee submitting a Reclamation Plan based on a reasonable estimate of the reclamation costs. Lessee shall update the Financial Guaranty when it submits or updates the Reclamation Plan and as otherwise required by SITLA in its reasonable discretion. At any time during the Term, SITLA may, in its reasonable discretion, require Lessee to increase the amount of the Financial Guaranty by sending Lessee Notice that the Financial Guaranty is insufficient. Lessee shall execute and file with SITLA a Financial Guaranty in the amount sufficient to ensure reclamation of the Property, as required by SITLA, within 60 days of SITLA's Notice of insufficiency.
- (b) Financial Guaranty Requirements. All Financial Guaranties obtained pursuant to Section 7.6(a) (*Financial Guaranty Required*) must meet the following requirements:
- (i) be issued by a company rated "A3" or better by Moody's or A- or better by S&P (or an equivalent rating from another nationally recognized statistical rating organization acceptable to SITLA), responsible and authorized to do business in the State of Utah, and approved by SITLA;
 - (ii) be issued for the benefit of SITLA;
 - (iii) be for the amount sufficient to cover Lessee's obligations under this Amended and Restated Lease to fully reclaim the Property;
 - (iv) stipulate that SITLA be notified 90 days prior to termination or modification of the Financial Guaranty; and
 - (v) ensure the name of the principal on the Financial Guaranty is the same as the name of Lessee.
- (c) Proof of Coverage; Replacement.
- (i) Proof of Coverage. On reasonable request from SITLA, Lessee shall provide SITLA with evidence that the Financial Guaranty is in good standing.
 - (ii) Replacement. If the issuer terminates the Financial Guaranty, Lessee shall replace the Financial Guaranty with an equivalent Financial Guaranty within 60 days after receipt of notice of termination. If Lessee fails to provide SITLA with an equivalent Financial Guaranty within the 60-day period, such failure is deemed a material breach of this Amended and Restated Lease and SITLA may demand payment of the Financial Guaranty by the issuer. SITLA shall manage the monies received pursuant to this Section 7.6(c) as a cash bond and shall return any amounts not used by SITLA on full satisfaction of Lessee's obligations under this Amended and Restated Lease.

8. **REGULATORY COMPLIANCE**

8.1. **Compliance with Applicable Law.** In Lessee's use and occupancy of the Property and the performance by Lessee of its rights and obligations under this Amended and Restated Lease, Lessee shall comply with all Applicable Law and obtain all necessary Governmental Approvals. Lessee shall pay all costs, expenses, liabilities, losses, fines, penalties, claims and demands including, without limitation, reasonable attorney's fees that may in any way arise out of or be imposed because of the failure of Lessee to comply with any Applicable Law or Governmental Approvals. Lessee shall provide SITLA with copies of all Governmental Permits it obtains with respect to the Project and the Property.

8.2. **Right of Contest.** Lessee may contest the validity or applicability of any laws, orders, rules, regulations, directives, ordinances and requirements. During such contest, Lessee may refrain from complying with the contested law if: (a) SITLA is not or could not be subjected to criminal prosecution as a result of Lessee's non-compliance; (b) SITLA's title to the Property is not subject to lien or forfeiture as a result of Lessee's non-compliance; and (c) neither the Property nor any rights or interest of SITLA are otherwise prejudiced or jeopardized by Lessee's non-compliance.

8.3. **SITLA Statute and Regulations.** This Amended and Restated Lease is issued pursuant to, and is subject to, the provisions of Title 53C, Utah Code Annotated, 1953, as amended, and all current and future rules and regulations adopted by SITLA and its successor agencies. Lessee shall comply with all such statutes and rules as they exist on the Execution Date and as they may be amended or replaced in the future, provided that such statutes and rules do not materially alter the burdens and obligations of this Lease.

8.4. **Restrictions on Hazardous Substances; Remedial Work.** Lessee may not cause or permit any Hazardous Substance to be brought, kept, or used in or about the Property by Lessee except in commercial quantities not in violation of Applicable Law and similar to those quantities usually kept on similar Property by others in the same business or profession. Lessee shall store, use, and dispose of such materials in compliance with all Applicable Law. If the presence of any Hazardous Substance on, in or under the Property caused or permitted by Lessee results in any contamination of the Property, Lessee shall promptly complete all Remedial Work that is necessary to return the affected area to the condition existing prior to the introduction of any such Hazardous Substance. Lessee shall obtain all necessary licenses, manifests, permits and approvals to perform the Remedial Work. Lessee shall promptly perform all Remedial Work and the disposal of all waste generated by the Remedial Work in accordance with Applicable Law.

8.5. **Endangered Species; Migratory Birds.** In its use of the Property, Lessee shall take all actions reasonably necessary for the protection of endangered, threatened, and sensitive species, as the same may be defined by federal or state law; migratory birds as defined by the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq; and eagles as defined in the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668a et seq.

8.6. **Cultural, Archeological, Paleontological, and Antiquities Resources.**

(a) **Survey Required.** Prior to commencing any surface disturbing activity, Lessee shall, at its own cost and expense, complete a Cultural Resources Survey prepared in accordance with applicable laws and regulations, and obtain SITLA's prior consent.

- (b) SITLA's Consent to Activities. Lessee shall provide all Cultural Resource compliance materials to SITLA prior to commencing the surface-disturbing activity. SITLA will review all such materials and may withhold or condition its consent to surface-disturbing activities if such activities would result in impacts to Cultural Resources.
 - (c) Discovery of Site. On discovery of a Site, Historic Property, Remains, Antiquities, or Critical Paleontological Resource, Lessee shall immediately cease all activities until such time as the discovery has been evaluated and treated to SITLA's satisfaction.
 - (d) Property of State. All Specimens are and will remain the property of the State of Utah.
- 8.7. Wildfire. Lessee shall at all times take reasonable precautions to prevent wildfires from starting or spreading on the Property, and shall comply with Applicable Laws with respect to fire prevention and control. If Lessee or its employees, contractors, or licensees cause a wildfire that necessitates suppression action, Lessee shall reimburse the State of Utah and local fire authorities for the costs of any necessary fire suppression activities incurred as a result of the wildfire.
- 8.8. Fill Materials and Waste. Lessee may not allow any deposit of ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or on the Property, except as approved in writing by SITLA. If Lessee fails to remove all non-approved fill material, wastes or materials described above from the Property, SITLA may at its option remove such materials and charge Lessee for the cost of removal and disposal.

9. ASSIGNMENT AND SUBLETTING

- 9.1. Prohibition against Assignment and Subleases. Lessee may not assign or sublease all or part of this Amended and Restated Lease without SITLA's prior consent, which consent SITLA may not unreasonably withhold. Any attempted assignment or sublease without SITLA's consent will be voidable and constitute a default under this Amended and Restated Lease. SITLA may condition approval of an assignment on a non-governmental assignee executing a new lease. This prohibition on assignments and subleases does apply to Lessee permitting other law enforcement agencies to use the Property as a shooting range.
- 9.2. Assignments and Subleases Subject to this Amended and Restated Lease. Lessee shall require any approved assignee or sublessee of this Amended and Restated Lease, whether in whole or part, to execute a written agreement assuming all of Lessee's obligations under this Amended and Restated Lease. The assumption agreement must name SITLA as a third-party beneficiary with all rights to enforce the assumption agreement against Lessee and assignee or sublessee. Failure to include these requirements in an assumption agreement renders the assignment or sublease void. Lessee shall provide SITLA copies of all documents related to the assignment, assumption, and/or sublease of this Amended and Restated Lease subject to reasonable confidentiality requirements.
- 9.3. No Release. An assignment or sublease does not release Lessee from any of Lessee's obligations under this Amended and Restated Lease or the Original lease arising prior to the date of assignment or sublease.
- 9.4. Conditions of Assignment. SITLA may condition consent to an assignment or sublease on assignee or sublessee executing an updated lease and agreeing to reasonable amendments to the lease terms, including without limitation, changes to the legal and financial terms of the Amended

and Restated Lease to ensure that SITLA receives fair market value for the Property and that the terms comply with SITLA's then-current lease template and agency best practices.

- 9.5. No Waiver of Future Right to Approve. Consent of SITLA to an assignment or sublease does not constitute a waiver of SITLA's right to approve subsequent assignments or subleases. The acceptance by SITLA of payment or performance following an assignment or sublease does not constitute consent to any assignment or sublease. SITLA's consent is only effective if it is in a writing and signed by SITLA.

10. **WATER RIGHTS**

- 10.1. Water Rights in Name of SITLA. If Lessee applies for a new appropriation of water from a point of diversion located on the Property for use on the Property, Lessee shall apply for such rights in SITLA's name and the right will be considered an appurtenance to the Property. Lessee may use the water right at no cost during the Term. Upon termination of this Amended and Restated Lease, Lessee shall make all necessary filings to confirm SITLA's ownership of the water rights.

- 10.2. Option to Purchase. Lessee hereby grants SITLA an option, exercisable on termination of this Amended and Restated Lease, to acquire any water rights that Lessee purchases or acquires for use on the Property (other than for short term uses related to construction). At termination of this Amended and Restated Lease, Lessee shall send Notice to SITLA of all water rights purchased or acquired by Lessee for operations on the Property and its estimate of the fair market value of those water rights. SITLA may exercise its option to acquire the water rights by giving Lessee Notice of its election within 30 days after it receives the Notice describing the water rights. If SITLA disagrees with Lessee's fair market value estimate, SITLA shall notify Lessee of its disagreement within the same 30-day notice period. The parties shall then select a mutually agreeable appraiser for the water rights; the appraisal will be final and not subject to review or appeal. If the parties cannot agree on the choice of an appraiser, either party may seek a fair market value determination from the Third District Judicial Court of Utah. The parties shall consummate the transfer of the water rights to SITLA within 30 days of SITLA's Notice of exercise or within 30 days after the appraisal or a court's determination of fair market value. Lessee shall transfer the water rights by a water rights deed.

- 10.3. Proration in the Event of Unitization. If Lessee files to appropriate or acquires water rights as part of a unit, cooperative, or other plan of development, Lessee's obligation to initiate water filings in SITLA's name and its grant of the option to acquire to SITLA will be limited to a pro rata portion of such rights proportionate to SITLA's ownership of lands within the approved unit area or the area of such other cooperative development arrangement.

11. **INSURANCE**

- 11.1. Liability Insurance. Lessee, at its sole cost and expense, shall at all times during the Term, maintain in force an insurance policy or policies that name SITLA and Lessee as insureds against all liability resulting from property damage, injury or death occurring to persons in or about the Property, with limits for each occurrence of not less than \$3,100,000, combined single limit, with respect to personal injury, death, and property damage. Lessee shall provide SITLA, without necessity of demand, a duplicate policy or policies of any such insurance, subject to reasonable confidentiality requirements. Lessee shall maintain a current, authenticated certificate of insurance on file with SITLA.

- 11.2. Other Insurance. Lessee shall, at all times during the Term and at the sole cost and expense of Lessee, maintain and keep in force:
- (a) workmen's compensation insurance on its employees, if any, required under the applicable workmen's compensation laws of the State of Utah;
 - (b) such other and additional insurance policies as a prudent lessee in the position of Lessee would maintain consistent with industry standards for Lessee's business, or as required by law. Lessee shall name SITLA as an additional insured on all insurance policies.
- 11.3. Policy Requirements. All insurance policies held by Lessee must:
- (a) be issued by a company rated "A" or better by the then most current edition of Best's Insurance Guide (or if such guide is no longer published, then having a comparable rating as specified by SITLA), responsible and authorized to do business in the State of Utah, and approved by SITLA;
 - (b) waive the insurance company's rights of subrogation against the State of Utah;
 - (c) name the State of Utah as an additional insured;
 - (d) provide for specific coverage of Lessee's assumed obligation to indemnify the State of Utah; and
 - (e) ensure the name of the insured on the insurance policy is the same as the name of Lessee.
- 11.4. Lessee shall give SITLA 30-days' advanced Notice of the termination or modification of the policy.

12. INDEMNIFICATION AND DEFENSE

- 12.1. Indemnification. The Indemnified Parties have no responsibility for and Lessee shall indemnify the Indemnified Parties from and against all Losses arising out of:
- (a) Lessee's acts or omissions resulting in death, bodily injury, or damage to real property in connection with this Amended and Restated Lease;
 - (b) Lessee's breach of the representations and warranties or other covenants set forth in this Amended and Restated Lease;
 - (c) the condition of the Property, excluding any condition existing prior to the Original Lease Date;
 - (d) Lessee's use of the Property; and
 - (e) any use, generation, storage, disposal, release or threatened release of Hazardous Substances by Lessee on the Property during the Term of this Amended and Restated Lease or of the Original Lease, including without limitation: (i) all foreseeable and unforeseeable consequential damages; and (ii) the cost of any investigation, repair, cleanup, remediation or detoxification of the Property and other affected property and the preparations of any corrective action, closure or other required plans or reports.

- (f) Lessee is not responsible to indemnify an Indemnified Party to the extent that the Indemnified Party caused the Losses.

12.2. Defense.

- (a) Lessee to Defend. Lessee shall defend an Indemnified Party against any Third-Party Claim arising out of or related to the indemnification obligations set forth in Section 12.1 (*Indemnification*). To be entitled to defense from Lessee, an Indemnified Party must notify Lessee within a reasonable time of a Third-Party Claim and deliver to Lessee a copy of all documents and information related to the Third-Party Claim. The Indemnified Parties' failure to notify Lessee of a Third-Party Claim within a reasonable time does not relieve Lessee of its defense obligations unless Lessee is materially prejudiced by the Indemnified Party's failure to give reasonable notice.
- (b) Independent Counsel. On notice of a Third-Party Claim from an Indemnified Party, Lessee shall promptly retain independent legal counsel that is reasonably acceptable to the Indemnified Party requesting defense.
- (c) Indemnified Party's Participation in Defense. An Indemnified Party is entitled to participate in the defense of a Third-Party Claim with counsel of its own choosing and without Lessee's participation if: (i) Lessee notifies the Indemnified Party that it does not wish to defend the Third-Party Claim or does not promptly retain independent counsel on notice of a Third-Party Claim; or (ii) an Indemnified Party determines, in the opinion of the Indemnified Party's counsel, that it is in the best interest of the Indemnified Party to have independent counsel.
- (d) Litigation Expenses. Lessee shall pay any Litigation Expenses that an Indemnified Party incurs in connection with defense of a Third-Party Claim: (i) before Lessee assumes the defense of that Third-Party Claim, except with respect to any period during which the Indemnified Party fails to timely notify Lessee of that Third-Party Claim; or (ii) if Lessee does not defend the Third-Party Claim. Lessee is not liable for any Litigation Expenses that an Indemnified Party incurs in connection with defense of a Third-Party Claim after Lessee assumes the defense of that Third-Party Claim. Lessee shall promptly pay all Litigation Expenses as they are incurred.
- (e) Settlement. After Lessee assumes the defense of a Third-Party Claim, Lessee may contest, pay, or settle the Third-Party Claim without the consent of the Indemnified Party only if that settlement: (i) does not entail any admission on the part of the Indemnified Party that it violated any law or infringed the rights of any person; (ii) has no effect on any other claim against the Indemnified Party; (iii) provides as the claimant's sole relief monetary damages that are paid in full by Lessee; and (iv) requires that the claimant release the Indemnified Party from all liability alleged in the Third-Party Claim.

13. DEFAULT

13.1. Events of Default of Lessee. Any of the following occurrences or acts constitute an "**Event of Default**" under this Amended and Restated Lease:

- (a) Lessee fails to pay Annual Rent or any other monies due to SITLA within 30 days of Notice from SITLA of failure to pay;

- (b) Lessee fails to maintain insurance as required under Section 11 (*Insurance*) or to provide evidence of insurance coverage within 30 days of SITLA's request;
- (c) Lessee fails to maintain an adequate Financial Guaranty as required under Section 7.6 (*Financial Guaranty*) or provide evidence of such Financial Guaranty within 30 days of SITLA's request;
- (d) Lessee fails to commence reclamation of the Property at least three months prior to the end of the Term unless the parties are negotiating a renewal of this Amended and Restated Lease, or Lessee fails to complete reclamation of the Property by the end of the Term without executing a renewed lease;
- (e) Lessee fails to observe or perform any other material provision of this Amended and Restated Lease if such failure continues for 30 days after SITLA provides Lessee with notice of default, or if the cure requires a period longer than 30 days to complete, if Lessee fails to commence to effect the cure within such 30-day period and diligently pursue such cure thereafter;
- (f) (i) Lessee files a petition for bankruptcy, reorganization, or an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law, (ii) a creditor files any such petition against Lessee, (iii) Lessee makes an assignment for the benefit of creditors, (iv) Lessee admits in writing to its inability to pay its debts generally as they become due, (v) a petition or answer proposing the adjudication of Lessee as bankrupt or its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law is filed in any court and Lessee consents to or acquiesces in the filing thereof or such petition or answer is not discharged or denied within 60 days after the occurrence of any of the foregoing; or
- (g) a receiver, trustee or liquidator of Lessee or of all or substantially all of the assets of Lessee or of Lessee's leasehold interest in the Property is appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator is appointed in any proceeding brought against Lessee and is not discharged within 60 days after the occurrence thereof, or if Lessee consents to or acquiesces in such appointment.

13.2. Remedies. On occurrence of an Event of Default, SITLA has the following rights and remedies:

- (a) Right to Terminate. SITLA may terminate this Amended and Restated Lease on Notice to Lessee. If SITLA terminates pursuant to this Section, it may require Lessee to conduct all reclamation required under Section 7.2(a) (*Reclamation and Abatement*) or SITLA may undertake the reclamation obligations, use the Financial Guaranty to cover the reclamation expenses, and charge Lessee for costs and expenses incurred by SITLA and not otherwise covered by the Financial Guaranty.
- (b) Performance by SITLA. SITLA may, in its discretion, perform any necessary actions required to cure an Event of Default and charge Lessee all of its reasonable incurred costs and expenses.
- (c) Right to Re-enter. If SITLA terminates this Amended and Restated Lease pursuant to paragraph 13.2(a) (*Right to Terminate*), SITLA may immediately re-enter and repossess the Property by summary proceedings, ejectment, or any other legal action or in any

lawful manner SITLA determines necessary or desirable and remove all persons, improvements, and other personal property from the Property.

- (d) Remedies Not Exclusive. The rights and remedies provided in this Section 13.2 or otherwise in this Amended and Restated Lease are not exclusive of any other rights or remedies, and each and every right and remedy is cumulative and in addition to any other right or remedy given under this Amended and Restated Lease, or now or hereafter existing by law, in equity or by statute.

13.3. Damages. If SITLA exercises the remedies available to it pursuant to Section 13.2 (*Remedies*), Lessee shall pay SITLA:

- (a) All Annual Rent and other monies due under this Amended and Restated Lease up to the date of termination;
- (b) All SITLA's costs incurred to exercise the remedies available to it under Section 13.2 (*Remedies*); and
- (c) two times the Annual Rent.
- (d) Lessee shall pay the damages due under this Section 13.3 within five days of receipt of the statement. The costs and expenses incurred by SITLA pursuant to this Section 13.3 will bear interest at the Default Rate from the date they are incurred until paid in full.

13.4. SITLA Breach. If SITLA breaches any of its material obligations in this Amended and Restated Lease, Lessee shall send SITLA Notice of the default. If SITLA fails to cure the default within 30 days of Lessee's Notice, or if the cure requires a period longer than 30 days to complete and SITLA fails to commence to effect the cure within such 30-day period or diligently pursue such cure thereafter, Lessee may, as its sole and exclusive remedy, seek damages from SITLA by filing a judicial action in the appropriate venue, as set forth below. In seeking damages from SITLA, Lessee may recover its actual damages accruing from breach but may not offset or abate any sums due SITLA under this Amended and Restated Lease, and may not terminate this Amended and Restated Lease (except as otherwise provided in Section 14.2 (*Lessee's Right to Terminate*)).

14. TERMINATION

14.1. SITLA's Right to Terminate. SITLA may terminate this Amended and Restated Lease (subject to Lessee's right to cure), pursuant to Section 13.2(a) (*Right to Terminate*) by giving Notice of termination to Lessee. After the fifth anniversary of the Effective Date, SITLA may terminate this Amended and Restated Lease for any reason or no reason at all by giving Lessee one year's prior Notice of termination.

14.2. Lessee's Right to Terminate. Lessee may terminate this Amended and Restated Lease at any time by giving SITLA one year's prior Notice of termination.

14.3. Effect of Termination Notice. If either party gives the other party a termination Notice, then such Notice triggers Lessee's obligations to reclaim the Property pursuant to Section 7.2(a) (*Reclamation and Abatement*).

- 14.4. Lessee's Obligations on Termination. On termination of this Amended and Restated Lease, Lessee has the following obligations:
- (a) if termination occurs on an Event of Default, comply with paragraph 13.3 (*Damages*);
 - (b) within 30 days of termination for reasons other than an Event of Default, pay SITLA all Annual Rent and other monies due under this Amended and Restated Lease up to the date of expiration or termination;
 - (c) on termination of this Amended and Restated Lease for any reason, Lessee shall immediately surrender peaceable possession of the Property in a good, clean, and usable condition; and
 - (d) within 30 days of termination for any reason or within five days after demand, Lessee shall execute, acknowledge and deliver to SITLA a quitclaim deed from Lessee to SITLA, or other document deemed necessary or desirable by SITLA to remove the cloud of this Amended and Restated Lease from title to the Property.
- 14.5. Effect of Termination. On termination of this Amended and Restated Lease, Lessee will have no more rights under this Amended and Restated Lease, other than to enter the Property to perform its obligations under Section 14.4 (*Lessee's Obligations on Termination*). Lessee will remain liable for all outstanding obligations and liabilities until such obligations and liabilities are complete.
- 14.6. Waste Certification. Lessee shall provide upon any transfer of operation, assignment of rights, permanent cessation of operations, or lease termination, certification to SITLA that, based upon a complete search of all the Lessee's records for this Amended and Restated Lease, and upon its knowledge of past operations, there have been no reportable quantities of hazardous substances as defined in 40 Code of Federal Regulations § 302.4, or used oil as defined in Utah Administrative Code R315-15, discharged (as defined at 33 U.S.C. §1321(a)(2)), deposited or released within the Property, either on the surface or underground, and that all remedial actions necessary have been taken to protect human health and the environment with respect to such substances. Lessee shall additionally provide to SITLA a complete list of all hazardous substances, hazardous materials, and their respective Chemical Abstracts Service Registry Numbers, used or stored on, or delivered to, the Property. Such disclosure will be in addition to any other disclosure required by law or agreement.
- 14.7. Force Majeure. The term "**Force Majeure**" means causes or events such as an act of God, act of civil or military authority, fire, epidemic, flood, earthquake, riot, war, terrorism, sabotage, or other similar cause or event not within such party's reasonable control, but not including generalized economic conditions, recession, or depression. If either party, without fault or negligence by such party, is unable due to an event of Force Majeure, to perform any obligation under this Amended and Restated Lease, other than Lessee's obligation to pay Annual Rent or other monies due under this Amended and Restated Lease, including late fees, then such party shall promptly give Notice to the other party of the Force Majeure event. The Notice of Force Majeure must set forth the particular nature and circumstances of the Force Majeure, the expected effect of the Force Majeure on the party's performance under this Amended and Restated Lease, and the expected date the party will resume performance. As of the date of the event of Force Majeure, the party asserting Force Majeure is excused from performing any obligation that the party is unable to perform due to the Force Majeure event for as long as the event of Force Majeure continues, and such party is relieved of liability for its failure to perform the excused

obligations during the Force Majeure period. The party asserting an inability to perform shall use best efforts to correct such inability and to resume promptly its performance as required under this Amended and Restated Lease. The party asserting Force Majeure shall send the other party Notice when the event of Force Majeure has ended.

15. **CONDEMNATION**

15.1. **Eminent Domain; Cancellation.** If the Property is taken in whole by any entity with the power of eminent domain, excluding SITLA, (a “**Condemning Authority**”) or if the Property is conveyed to a Condemning Authority by a negotiated sale in lieu of condemnation, Lessee may terminate this Amended and Restated Lease by giving SITLA Notice of termination. If Lessee terminates this Amended and Restated Lease pursuant to this Section 15.1, SITLA shall refund to Lessee, on a pro rata basis, any Annual Rent prepaid beyond the date of termination.

15.2. **Partial Taking.**

(a) If part of the Property is taken by or conveyed to a Condemning Authority and the partial taking or conveyance does not substantially interfere with Lessee’s use of the Property, this Amended and Restated Lease does not terminate and SITLA shall adjust rents and other monies owed, as appropriate, to reflect the remaining leased portion of the Property.

(b) If part of the Property is taken by or conveyed to a Condemning Authority and the partial taking or conveyance substantially interferes with Lessee’s use of the Property, Lessee may terminate this Amended and Restated Lease as of the date of condemnation or sale by giving SITLA Notice of termination. If Lessee terminates this Amended and Restated Lease pursuant to this Section 15.2(b), SITLA shall refund to Lessee, on a pro rata basis, any rent prepaid beyond the date of termination.

15.3. **Basis of Awards.** Lessee hereby disclaims and waives all interest it may have in any award by the Condemning Authority for condemnation or conveyance of all or part of the Property. Lessee may seek recovery from the Condemning Authority for condemnation by or conveyance to the Condemning Authority of its leasehold interest and all improvements located on the Property.

16. **GENERAL PROVISIONS**

16.1. **Amends and Restates Original Lease.** This Amended and Restated Lease amends and restates the Original Lease in its entirety and all provisions that conflict with or are in addition to the terms of the Original Lease are effective as of the Effective Date and will continue for the remainder of the Term.

16.2. **Notices.** The parties shall send all notices, communications, and payments (“**Notices**”) in writing and addressed as follows:

If to SITLA:

School and Institutional Trust Lands Administration
Attn: Assistant Director
Surface 675 East 500 South, Suite 500
Salt Lake City UT 84102

If to Lessee:

City of Moab
Attn: City Manager
217 E. Center Street
Moab, Utah 84532

The parties shall give all Notices by (a) personal delivery, (b) deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or (c) overnight express delivery service, addressed or transmitted to SITLA and Lessee at the above addresses, or to such other addresses as either party may designate to the other in a writing delivered in accordance with the provisions of this Section. All notices will be deemed delivered and effective on the date the notice is actually received, if notice is given by personal delivery or overnight express delivery service, or on the third day after mailing if notice is sent through the United States mail.

- 16.3. Lessee Liable for Actions of Representatives. Whenever this Amended and Restated Lease imposes obligations or liabilities on Lessee, those obligations and liabilities apply to actions or inactions of Lessee's officers, agents, employees, sublessees, assignees, contractors, subcontractors, invitees, and concessionaires. Lessee hereby assumes all liability arising from the actions or inactions of Lessee's officers, directors, owners, agents, employees, sublessees, assignees, contractors, subcontractors, invitees, and concessionaires on the Property or pursuant to this Amended and Restated Lease.
- 16.4. Survival. The following Sections survive termination of this Amended and Restated Lease: Sections 3.2 (*Holding Over*), 7.2 (*Reclamation Obligations*), 10 (*Water Rights*), 11 (*Insurance*), 12 (*Indemnification and Defense*), 13.2 (*Remedies*), 13.3 (*Damages*), 16.1 (*Notices*), 16.10 (*Governing Law*).
- 16.5. Waiver of Breach. A party's waiver of a breach of any provisions of this Amended and Restated Lease does not constitute a waiver of any preceding or succeeding breach of the same or any other provision of this Amended and Restated Lease. SITLA's acceptance of any money from Lessee during any period of time in which Lessee is in default in any respect other than payment of such money, does not constitute a waiver of such default.
- 16.6. No Third-Party Beneficiary. There are no third-party beneficiaries to this Amended and Restated Lease.
- 16.7. Severability. If a court of competent jurisdiction finds any provision of this Amended and Restated Lease invalid, such determination will not affect the validity of any other provision of this Amended and Restated Lease.
- 16.8. Construction. The titles following the number of each Section are used for convenience only and do not affect the interpretation or construction of such provisions. The parties acknowledge that each party and its counsel have reviewed and revised this Amended and Restated Lease. This Amended and Restated Lease must not be construed for or against SITLA or Lessee.
- 16.9. Successors. Subject to the restrictions in Section 9 (*Assignment and Subletting*), this Amended and Restated Lease constitutes a covenant running with the land and is binding on and inures to the benefit of the successors and assigns of SITLA and Lessee.

- 16.10. Governing Law; Venue; Governmental Immunity. This Amended and Restated Lease is governed by the laws of the State of Utah without regard to its choice or conflicts of laws principles that may refer the interpretation of this Amended and Restated Lease to the laws of another jurisdiction. SITLA and Lessee agree that all disputes arising out of this Amended and Restated Lease may only be litigated in the Third Judicial District Court for Salt Lake County, Utah, and Lessee hereby consents to the jurisdiction of such court. Lessee may not bring any action against SITLA without exhaustion of available administrative remedies and compliance with applicable requirements of the Utah Governmental Immunity Act. By executing this Lease, neither SITLA nor Lessee waive, limit, or modify any sovereign immunity from suit except as specifically provided herein.
- 16.11. Broker's Commission. Lessee and SITLA represent and warrant to each other that there are no claims for brokerage commissions or finder's fees in connection with this Amended and Restated Lease.
- 16.12. Time is of the Essence. Time is of the essence of this Amended and Restated Lease and in the performance of all of the covenants and conditions.
- 16.13. Relationship of the Parties. The relationship of the parties is that of lessor and lessee, and SITLA is not in any way, or for any purpose, a partner or joint venturer of Lessee and neither party owes fiduciary duties to the other.
- 16.14. Time Periods. If the time for the performance of any obligation or the taking of any action under this Agreements expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day that is not a Saturday, Sunday or legal holiday.
- 16.15. Tax and Zoning Immunity. SITLA does not intend by any provision of this Amended and Restated Lease to waive any applicable laws providing tax and zoning immunity to state property or any interest therein or income therefrom.
- 16.16. Entire Agreement. This Amended and Restated Lease sets forth all the promises, inducements, agreements, conditions, and understandings between SITLA and Lessee relative to the Property, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them other than are set forth therein. No subsequent alteration, amendment, change, or addition to this Amended and Restated Lease are binding upon SITLA or Lessee unless in writing and signed by each of them.
- 16.17. Counterparts and Electronic Signatures. The parties may execute this Amended and Restated Lease in counterparts, each of which when taken together will be deemed one and the same document. The parties may execute this Amended and Restated Lease by exchange of electronic signatures and such electronic signatures are enforceable against the signing party. The parties agree that an electronic version of this Amended and Restated Lease, as amended, has the same legal effect and/or enforceability as a paper version as per Utah Code Ann. § 46-4-201.

[Signature page follows]

The parties have executed this Amended and Restated Lease on the dates indicated below.

CITY OF MOAB

**STATE OF UTAH, SCHOOL AND
INSTITUTIONAL TRUST LANDS
ADMINISTRATION**

By: Joette Langianese

Its: Mayor

By: _____

Its: _____

Date: _____, 20__

Date: _____, 20__

Attest:

Approved as to form:
Sean D. Reyes, Attorney General

By: _____
Sommar Johnson, City Recorder

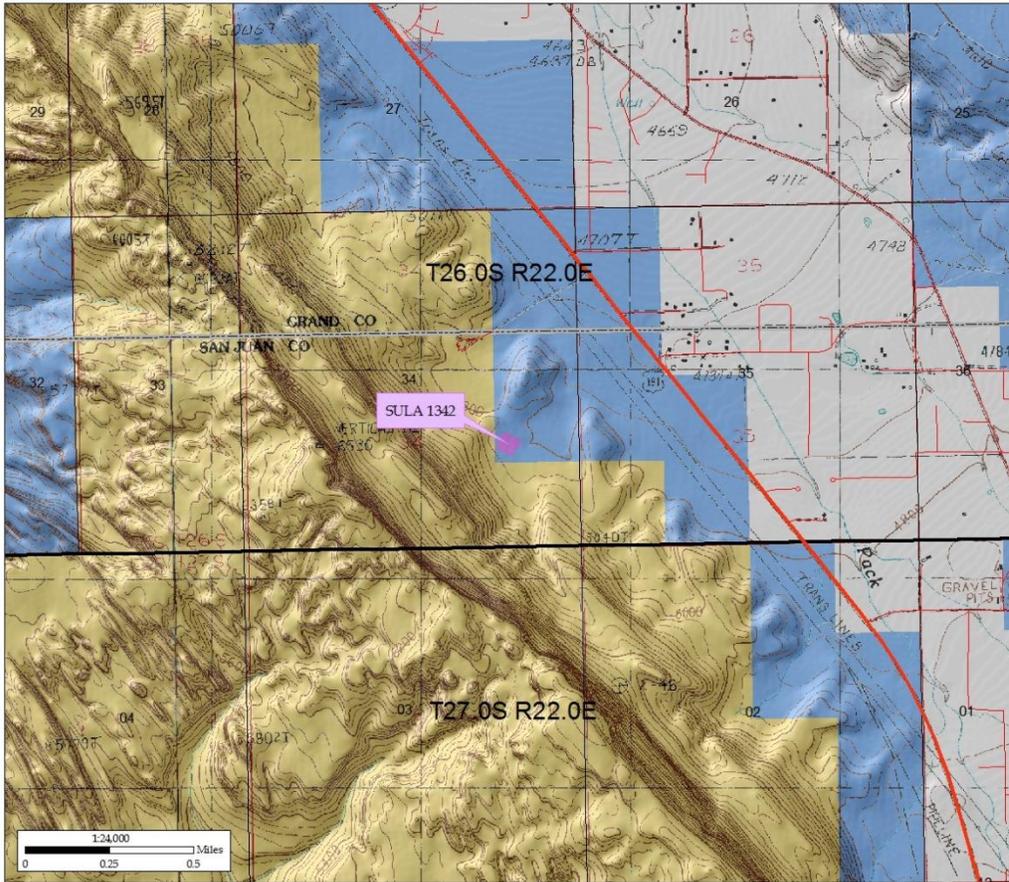
By: _____
Special Assistant Attorney General

EXHIBIT A
TO
SPECIAL USE LEASE AGREEMENT NO. 1342
LEGAL DESCRIPTION OF THE PROPERTY

The Property is located in Grand County, Utah and is within Township 26 South, Range 22 East, Section 34, SLB&M and described as follows:

Commencing at the East $\frac{1}{4}$ corner of Section 34, T26S, R22E, SLB&M, from which the Northeast corner of said Section 34 bears $N0^{\circ}01'15''W$ 2643.93 ft., and proceeding thence $S40^{\circ}31'14''W$ 1311.99 ft. to a corner and the true Point of Beginning, thence $S37^{\circ}08'09''W$ 305.83 ft. to a corner, thence $N64^{\circ}59'58''W$ 294.83 ft. to a corner, thence $N29^{\circ}20'37''E$ 298.78 ft. to a corner, thence $S65^{\circ}10'58''E$ 336.50 ft. to the true Point of Beginning and containing 2.16 acres, more or less.

**EXHIBIT B
TO
SPECIAL USE LEASE AGREEMENT NO. 1342
MAP OF THE PROPERTY**



Special Use Lease Agreement No. 1342
Government Site
 Township 26 South, Range 22 East, SLB&M,
 SW4NE4E4 (Within),
 San Juan County

State of New Mexico
 Bureau of Land Management
 September 13, 2010

- Special Use Lease Agreement
- Land Ownership and Administration
- Bureau of Land Management
- Bureau of Reclamation
- Bunkhead/Forest Land Use Lands
- National Recreation Area
- National Parks, Monuments & Historic Sites
- National Forest
- National Wilderness Area
- National Wildlife Refuge
- Other Federal
- Military Reservations and Corps of Engineers
- Private
- State Trust Lands
- State Sovereign Land
- State Parks and Recreation
- State Wildlife Reserve / Management Area
- Other State
- Tribal Lands

N

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