CITY OF MOAB RESOLUTION NO. 49-2019
A RESOLUTION APPROVING AN AGREEMENT BETWEEN CITY OF MOAB AND
WANG ORGANIZATION FOR WANG UTILITY CONSTRUCTION

The following findings describe the reasons for this resolution and explain its purpose.

a. The City desires to address additional utility replacement and installation needs within the
   UDOT right of way in the area affected by the US-191 Widening project.

b. Coordinating installation of these utilities prior to the roadway widening will limit future
   impacts to the new roadway.

c. The City has arranged with property owners to install minor utility improvements to the east
   side of the highway simultaneous to the planned UDOT project to widen and reconstruct US-
   191.

Now therefore, the City of Moab resolves as follows:

1. **Funding Agreement.** The City will enter into a funding agreement receiving funds from the
   Wang Organization and establishing provisional cost of the proposed betterments at
   $132,090.00, and in any case stipulating payment of actual costs incurred by construction.

2. **Effective Date and Duration.** This resolution shall take effect immediately upon passage by
   the City Council, regardless of the date of publication.

PASSED AND APPROVED by a majority of the City Council, this 12th day of November, 2019.

By: [Signature]
Emily S. Niehaus, Mayor

[Date]

Attest:

By: [Signature]
Sommar Johnson, Recorder

[Date]
UTILITY CONSTRUCTION FUNDING AGREEMENT

This UTILITY CONSTRUCTION FUNDING AGREEMENT (the Agreement) is entered into by and between the City of Moab, a Utah municipality (the City), the Wang Organization, LLC, a Utah limited liability company (Wang), and Giammatteo Investments, LLC, a Utah limited liability, company (Giammatteo), as follows:

RECITALS

The Following describes the intent and purpose of this Agreement:

a. On August 13, 2019, the City approved the Final Plat for the Tram Subdivision, a two-lot subdivision of lands within the City (the Subdivision), pursuant to Resolution No. 42-2019. Wang is the current owner of Lots 1 and 2, Tram Subdivision.

b. The City is undertaking the construction of the North Corridor Trunk Sewer Project (the NCTS) in the fall of 2019. When completed, the NCTS will provide sanitary sewer service to a number of properties in the northern area of the City, including the Subdivision and the lands of Giammatteo.

c. Concurrently, the Utah Department of Transportation (UDOT) is planning for and designing highway improvements to expand U.S. Highway 191 in the north area of the City (the UDOT Expansion Project). The UDOT Expansion Project will commence in early 2020.

d. Wang (or the developer of the Subdivision) is required to install certain sanitary sewer improvements to serve the Subdivision (the Improvements), and part of those improvements include the connection to the NCTS on the west side of Highway 191.

e. Wang has separately contracted with Civil Science Engineering to design the Improvements and permit construction and installation of the same by UDOT during the Highway 191 project, as shown in the schematic attached as Exhibit A.

f. Wang is prepared to pay for and have UDOT and/or its contractor(s) install the Improvements under and through the Highway 191 right-of-way in conjunction with the UDOT Expansion Project.

g. The City and Wang acknowledge that UDOT requires its contractor to install the Improvements within its right-of-way and they each agree to allow the same.

h. The City and Wang also acknowledge that UDOT requires the City to collect and manage construction funds for the Improvements, and the City agrees to do the same.
i. Accordingly, Wang will pay monies to the City, which will in turn be paid to UDOT to cover the costs of construction of the Subdivision sewer improvements across Highway 191.

j. Additionally, Giammatteo will grant certain utility easements to the City to connect the Improvements to the NCTS project.

k. The easements to be provided by Giammatteo are necessary for the completion of the NCTS, and the infrastructure to be provided by the City will provide material benefits to both Giammatteo and Wang.

AGREEMENT

1. Incorporation of Recitals. The Recitals above are incorporated into this Agreement.

2. Pass-Through Payment. No later than ten (10) days from the execution of a Project-specific betterments agreement by UDOT and the City, Wang shall pay the sum of one hundred thirty-two thousand ninety dollars ($132,090) to the City (the Project Funds). Payment shall be made in certified funds, wire transfer, or other method in which the funds available for immediate withdrawal. No later than ten (10) days from receipt of the Project Funds, the City shall transmit the Project Funds to UDOT for construction of the Improvements to serve the Subdivision pursuant to Exhibit A.

3. Conveyance of Easements. No later than three (3) days from the effective date of this Agreement, Giammatteo will execute and deliver to the City in recordable form the four utility easements attached as Exhibits B, C, D, and E. The City will promptly record same.

4. Dedication of Improvements; Future Cost Recovery. At the conclusion of the construction of the Improvements, Wang shall dedicate same to the City; provided, however, that the City shall not permit any connections to the Improvements, including service to Lions Park, prior to execution of a Reimbursement Agreement in favor of Wang, who shall be reimbursed for a proportionate share of the Project Funds, without interest, equal to the proportionate share of the pipeline capacity consumed by the by the connecting user, as measured by equivalent residential units (ERUs). Wang shall transfer the Improvements to the City free and clear of any other liens or encumbrances.

5. Construction and Acceptance of Improvements. The Improvements shall be constructed in conformity with all approved design drawings. The City shall have the right, but not the obligation, to inspect the Improvements to verify compliance with approved designs, construction codes, and City utility standards; provided, however, that the City accepts the Improvements in as-is condition if it waives its right to inspection.
6. **Construction Costs.** The City shall have no obligation to incur any costs for the Improvements or for construction of the lateral sewer line that connects the Subdivision with NCTS through Giammatteo property, except in the event of its later connection to the Improvements pursuant to Section 4. In the event that UDOT notifies the City that construction costs for the Improvements exceed the Project Funds, it will notify Wang and the parties will confer as to the likely change in costs or scope of work. Similarly, in the event that UDOT notifies the City that the construction costs for the Improvements are less than the Project Funds, the City will work with UDOT in good faith to return the excess Project Funds to Wang.

7. **Integration.** This Agreement, together with its Exhibits, is the sole and complete agreement of the parties. It supersedes all prior agreements, representations, or oral statements pertaining to the subjects encompassed by the Agreement.

8. **Governing Law, Venue, Jury Waiver.** Utah law governs this Agreement. The exclusive venue for any dispute arising from or concerning the terms of this Agreement shall be the Seventh Judicial District Court in and for Grand County. In any such proceeding the matter shall be decided by the court sitting without a jury, regardless of the denomination of any legal claims that may be brought.

9. **Interpretation: No Third-Party Beneficiaries.** The parties acknowledge that this Agreement is the product of mutual bargaining; it shall be construed in conformity with its plain meaning regardless of the extent to which any party has contributed to the drafting. There are no third-party beneficiaries to this Agreement.

10. **Amendments.** To be binding, any amendment or modification to this Agreement must be in writing and duly executed by all parties. Routine email communications shall not constitute modifications to this Agreement.

11. **Time is of the Essence.** Time is of the essence as to all temporal obligations contained in this Agreement.

12. **Notice to the Parties.** Notice under this Agreement shall be delivered to the parties at the addresses specified below, or such other addresses as the parties, or any one of them, may designate in writing upon notice to the others:

Giammatteo Investments, LLC  
Attn: J. J. Wang  
168 East Center Street  
Moab, UT 84532

Wang Organization, LLC  
Attn: J. J. Wang
168 East Center Street
Moab, UT 84532

City of Moab
Attn: City Manager
217 East Center Street
Moab, UT 84532

Notice shall be deemed valid upon delivery if given by personal service, hand delivery, or delivery by courier. Otherwise, notice shall be deemed valid no later than three (3) calendar days from the date of transmittal by United States Mail.

13. Remedies. This Agreement may be enforced in an action seeking specific performance, damages, or both, as may fit the circumstances. In no event shall any party be liable to the other(s) for consequential damages, lost profits, delay-related damages, loss of use damages, or any damages in tort.

14. Notice of Breach; Right to Cure. As a condition precedent to invoking any remedies under this Agreement, the party seeking relief shall first provide written notice identifying the act or omission constituting breach and allowing the other party a reasonable period of time but, in any event, not less than fifteen (15) days in which to cure or abate the breaching event or condition. Cure within that time period shall result in reinstatement of all rights and obligations under this Agreement.

15. Effective Date. This Agreement is effective and binding as of the date of last signature.

16. Authority. The parties each warrant and represent that this Agreement is a valid, binding, and enforceable obligation executed after obtaining all necessary authority.

17. Attorney Fees. In the event of dispute arising under this Agreement, the prevailing party, as determined by a court of competent jurisdiction, shall be awarded its reasonable attorneys’ fees and costs.

-Remainder of Page Intentionally Left Blank-
The parties have executed this Agreement on the date(s) set forth below.

Giammatteo Investments, LLC

By: [Signature]
J. C. Wang, Manager/Member

Wang Organization, LLC

By: [Signature]
J. J. Wang, Manager/Member

City of Moab

By: [Signature]
Mayor Emily S. Niehaus

Attest:

By: [Signature]
Sommar Johnson, Recorder

Exhibits: A, B, C, D, E

-End of Document-
UTILITY EASEMENT AND AGREEMENT

This UTILITY EASEMENT AND AGREEMENT (the “Agreement”) is made and entered into as of the date(s) set forth below by and between Giammatteo Investments LLC, a Utah limited liability company, the owner of record, (“Grantor”), and the City of Moab, a municipal corporation (“Grantee”). In consideration of the mutual promises and obligations contained herein, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a permanent easement in the NE ¼ & NW ¼ of the SW ¼ of Section 26, T 25 S, R 21 E SLB&M, Moab City, Grand County, Utah:

   Beginning at a point on grantor’s boundary said point being North 40°28’15” West 2000.89 feet from the North Quarter corner of Section 35, Township 25 South, Range 21 East, Salt Lake Base and Meridian, and running thence along grantor’s west boundary North 31°20’00” West 321.70 feet; thence with said boundary North 31°42’42” West 98.30 feet to grantor’s north boundary; thence with said boundary North 53°35’00” East 20.07 feet; thence South 31°42’42” East 100.01 feet; thence South 31°20’00” East 319.99 feet to grantor’s south boundary; thence with said boundary South 53°35’00” West 20.08 feet to the point of beginning, having an area of 8,400 sq. ft., 0.19 acres

   (the “Easement Area”). A map outlining the Easement Area is attached as Exhibit C.

2. Purpose. This Agreement is granted for the purpose of establishing, installing, constructing, maintaining, enlarging, and repairing sanitary sewer lines, along with associated surface structures, including manholes, as may be deemed necessary for the intended use; provided, however, that Grantee shall: a) not install a lift station in the Easement Area; and b) make a good faith effort to i) install improvements underground and ii) consolidate necessary surface structures together to minimize surface disturbance in the Easement Area. Grantee shall have reasonable access to the Easement Area as necessary to carry out the purposes of this Agreement. Grantee shall be solely responsible for the maintenance of any improvements, structures, or equipment it constructs within the Easement Area.

3. Non-exclusive Use; Removal of Encroachments. Grantor expressly reserves and shall have the right to use the Easement Area in a manner that does not impair or harm the grant or use by Grantee. Grantor shall not construct any buildings, structures, or other permanent improvements within the Easement Area, and any such improvements or encroachments may be subject to removal without compensation.
4. **Restoration.** Upon completion of any installation, construction, repair or maintenance work contemplated by this Agreement, Grantee agrees to promptly restore the surface to a condition equal or superior to that existing prior to any disturbance.

5. **Connection Fees.** In consideration of the easement granted herein, the City shall waive all City of Moab sewer connection fees (but not water connection fees) for future development of any type on real property owned by Grantor and known as 1691 N. Riverview Drive (Parcel No. 01-0126-0010), which real property is comprised of 4.22 acres. This Section shall not be construed as waiving water and sewer impact fees due to the City of Moab under Chapter 13.25 of the City of Moab Municipal Code.

6. **Abandonment.** This Agreement shall only be deemed abandoned upon lawful execution and recording of a written grant by Grantee conveying and abandoning this Agreement.

7. **Warranty of Title and Authority.** Grantor warrants that it has full right and lawful authority to make the grant contained herein and promises and agrees to defend the Grantee in the exercise of its rights hereunder against any defect in Grantor’s title to the lands subject to this Agreement.

8. **Binding in Perpetuity.** This Agreement is irrevocable and shall bind the subject property in perpetuity, and all of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties.

9. **Sole Agreement; Modifications.** This Agreement constitutes the sole and complete agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the subject matter of this instrument. No modification to this Agreement shall be binding unless it is in writing and duly executed by both parties.

10. **Governing Law and Venue.** This Agreement is governed by Utah law; the sole venue for any dispute arising from this Agreement shall be the courts of Grand County, Utah.

11. **Remedies and Attorney Fees.** In the event of any breach of the provisions of this Agreement, the non-breaching party may enforce same in an action for damages, specific performance, or both. In any such proceeding arising under this Agreement the prevailing party shall be entitled to recover its reasonable attorney fees and court costs, in addition to any other remedies or relief.

12. **Notices.** Any notice shall be sent by first class mail, postage prepaid, or delivered by courier, to the addresses for the parties as specified below:
Grantee:
City of Moab
Attn: City Manager
217 East Center St.
Moab, UT 84532

Grantor:
Giammatteo Investments LLC
Attn: J. J. Wang
168 East Center St.
Moab, UT 84532

This Agreement is binding and effective as of the date(s) of execution by the parties, below.

Grantor:
Giammatteo Investments LLC
By: J. J. Wang, Manager/Member

STATE OF UTAH
) ss.
COUNTY OF GRAND

The foregoing Agreement was acknowledged and executed before me by Giammatteo Investments LLC, acting by and through J. J. Wang, Manager/Member this 16th day of November, 2019.

Witness my hand and official seal. My commission expires: November 6, 2022

RACHELLE PIERCE
Notary Public
State of Utah
COMMISSION # 703203
My Commission Expires November 06, 2022

Notary Public, State of Utah
Address: 250 E 100 N
MOAB, UT 84532

-Continued Below-
Giannatto/City of Moab Utility Easement and Agreement
Signature Page, Contd.

Grantee:

By: [signature]
Emily Niehaus, Mayor of the City of Moab

Attest:

[Stamp]
Sommar Johnson, Recorder

NOV. 9, 2017
Date

-End of Document-
TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT (the "Agreement") is made and entered into as of the date(s) set forth below by and between Giannatteo Investments LLC, a Utah limited liability company, the owner of record, ("Grantor"), and the City of Moab, a municipal corporation ("Grantee"). In consideration of the mutual promises and obligations contained herein, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee, its successors and assigns, a temporary construction easement in the NE ¼ & NW ¼ of the SW ¼ of Section 26, T 25 S, R 21 E SLB&M, Moab City, Grand County, Utah:

   Beginning at a point on grantor's boundary said point being North 40°28'15" West 2000.89 feet and North 53°35'00" East 20.08 feet from the North Quarter corner of Section 35, Township 25 South, Range 21 East, Salt Lake Base and Meridian, and running thence North 31°20'00" West 319.99 feet; thence North 31°42'42" West 100.01 feet to grantor's north boundary; thence with said boundary North 53°35'00" East 30.10 feet; thence South 31°42'42" East 102.58 feet; thence South 31°20'00" East 317.43 feet to grantor's south boundary; thence with said boundary South 53°35'00" West 30.12 feet to the point of beginning, having an area of 12,600 sq. ft., 0.29 acres.

   (the "Easement Area"). A map outlining the Easement Area is attached as Exhibit A.

2. **Purpose.** This Agreement is granted for the purpose of establishing, installing, and constructing sanitary sewer lines, along with associated surface structures including manholes, and such other surface and sub-surface appurtenances as may be provided in the permanent easement executed contemporaneously with this Agreement. This includes but is not limited to, the transport and storage of construction material, soil, equipment, and vehicles. Grantee shall have reasonable access to the Easement Area as necessary to carry out the purposes of this Agreement. Grantee shall be solely responsible for the maintenance of any improvements, structures, or equipment it constructs within the Easement Area.

3. **Temporary Easement.** This Agreement shall be temporary in duration, commencing upon the date of execution of this Agreement and continuing for the duration of the construction project, but not to exceed January 1, 2021. After construction and restoration is complete, Grantee covenants and agrees that it shall have no further right or interest as to the real property comprising the same.
4. **Non-exclusive Use; Removal of Encroachments.** Grantor expressly reserves and shall have the right to use the Easement Area in a manner that does not impair or harm the grant or use by Grantee.

5. **Restoration.** Upon completion of any installation, construction, repair or maintenance work contemplated by this Agreement, Grantee agrees to promptly restore the surface to a condition equal or superior to that existing prior to any disturbance. All restoration work within or upon the Easement Area shall be undertaken at the sole cost of Grantee. Upon completion of the restoration, the Grantee shall remove all equipment and materials from the Easement Area.

6. **Warranty of Title and Authority.** The Grantor warrants that it has full right and lawful authority to make the grant contained herein and promises and agrees to defend the Grantee in the exercise of its rights hereunder against any defect in Grantor's title to the lands subject to this Agreement.

7. **Sole Agreement; Modifications.** This Agreement constitutes the sole and complete agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the subject matter of this instrument. No modification to this Agreement shall be binding unless it is in writing and duly executed by both parties.

8. **Governing Law and Venue.** This Agreement is governed by Utah law; the sole venue for any dispute arising from this Agreement shall be the courts of Grand County, Utah.

9. **Remedies and Attorney Fees.** In the event of any breach of the provisions of this Agreement, the non-breaching party may enforce same in an action for damages, specific performance, or both. In any such proceeding arising under this Agreement the prevailing party shall be entitled to recover its reasonable attorney fees and court costs, in addition to any other remedies or relief.

10. **Notices.** Any notice shall be sent by first class mail, postage prepaid, or delivered by courier, to the addresses for the parties as specified below:

    Grantee:  
    City of Moab  
    Attn: City Manager  
    217 East Center St.  
    Moab, UT 84532  

    Grantor:  
    Giammatteo Investments LLC  
    Attn: J. J. Wang  
    168 East Center St.  
    Moab, UT 84532

This Agreement is binding and effective as of the date(s) of execution by the parties, below.
Grantor:
Giammatteo Investments LLC

By: ___________________________
Giammatteo Investments LLC
By: J. J. Wang, Member/Manager

STATE OF UTAH

COUNTY OF GRAND

The foregoing Agreement was acknowledged and executed before me by Giammatteo Investments LLC, acting by and through J. J. Wang, Member/Manager this 6th day of November, 2019.


[Notary Public Seal]
RACHELLE PIERCE
Notary Public
State of Utah
COMMISSION # 703203
My Commission Expires November 06, 2022

Grantee:

By: ___________________________
Emily Niehaus, Mayor of the City of Moab

Attest:

[Notary Public Seal]
Sommar Johnson, Recorder

Nov. 6, 2017
Date

-End of Document-
LEGEND

○ Property Corner

GIANNATTIO INVESTMENTS LLC
01-126-0010

UNITED MEDICAL GROUP

30' TEMPORARY CONSTRUCTION EASEMENT

S 53°35'00" W 30.12'

20' SEWER LINE EASEMENT

S 53°35'00" W 20.08'

POB SEWER EASEMENT

POB
TEMPORARY EASEMENT
COTTON TREE PARTNERS
01-128-0009

N2 CORNER, SECTION 35,
T25S, R21E, SLB&M
(FOUND REBAR)

RED DESERT
Land Surveying
30 South 100 East
Mesa, UT 84532
435-259-8171

EXHIBIT C
20' SEWER EASEMENT,
30' TEMPORARY CONSTRUCTION EASEMENT

Project 067-18
Date 2/16/19
Sheet 1 of 1

Ent 536106 Bk 0890 Pg 0701
UTILITY EASEMENT AND AGREEMENT

This UTILITY EASEMENT AND AGREEMENT (the “Agreement”) is made and entered into as of the date(s) set forth below by and between Giammateo Investments LLC, a Utah limited liability company, the owner of record, (“Grantor”), and the City of Moab, a municipal corporation (“Grantee”). In consideration of the mutual promises and obligations contained herein, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee, its successors and assigns, a permanent easement in the NE ¼ & NW ¼ of the SW ¼ of Section 26, T 25 S, R 21 E SLB&M, Moab City, Grand County, Utah:

   Beginning at a point on grantor’s boundary said point being North 40°28’15” West 2000.89 feet and North 31°20’00” West 321.70 feet and North 31°42’42” West 98.30 feet from the North Quarter corner of Section 35, Township 25 South, Range 21 East, Salt Lake Base and Meridian, and running thence along grantor’s north boundary North 53°35’00” East 460.20 feet to the west right-of-way of highway US-191; thence with said right-of-way South 36°25’00” East 20.00 feet; thence South 53°35’00” West 461.85 feet; thence North 31°42’42” West 20.07 feet to the point of beginning, having an area of 9,220 sq. ft., 0.21 acres

   (the “Easement Area”). A map outlining the Easement Area is attached as Exhibit A.

2. **Purpose.** This Agreement is granted for the purpose of establishing, installing, constructing, maintaining, enlarging, and repairing sanitary sewer lines, along with associated surface structures, including manholes, as may be deemed necessary for the intended use; provided, however, that Grantee shall: a) not install a lift station in the Easement Area; and b) make a good faith effort to i) install improvements underground and ii) consolidate necessary surface structures together to minimize surface disturbance in the Easement Area. Grantee shall have reasonable access to the Easement Area as necessary to carry out the purposes of this Agreement. Grantee shall be solely responsible for the maintenance of any improvements, structures, or equipment it constructs within the Easement Area.

3. **Non-exclusive Use: Removal of Encroachments.** Grantor expressly reserves and shall have the right to use the Easement Area in a manner that does not impair or harm the grant or use by Grantee. Grantor shall not construct any buildings, structures, or other permanent improvements within the Easement Area, and any such improvements or encroachments may be subject to removal without compensation.
4. **Restoration.** Upon completion of any installation, construction, repair or maintenance work contemplated by this Agreement, Grantee agrees to promptly restore the surface to a condition equal or superior to that existing prior to any disturbance.

5. **Connection Fees.** In consideration of the easement granted herein, the City shall waive all City of Moab sewer connection fees (but not water connection fees) for future development of any type on real property particularly described as Lots 1 and 2, Tram Subdivision, according to the official plat thereof recorded in the real property records of Grand County, Utah. This Section shall not be construed as waiving water or sewer impact fees due to the City of Moab under Chapter 13.25 of the City of Moab Municipal Code.

6. **Abandonment.** This Agreement shall only be deemed abandoned upon lawful execution and recording of a written grant by Grantee conveying and abandoning this Agreement.

7. **Warranty of Title and Authority.** Grantor warrants that it has full right and lawful authority to make the grant contained herein and promises and agrees to defend the Grantee in the exercise of its rights hereunder against any defect in Grantor’s title to the lands subject to this Agreement.

8. **Binding in Perpetuity.** This Agreement is irrevocable and shall bind the subject property in perpetuity, and all of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties.

9. **Sole Agreement; Modifications.** This Agreement constitutes the sole and complete agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the subject matter of this instrument. No modification to this Agreement shall be binding unless it is in writing and duly executed by both parties.

10. **Governing Law and Venue.** This Agreement is governed by Utah law; the sole venue for any dispute arising from this Agreement shall be the courts of Grand County, Utah.

11. **Remedies and Attorney Fees.** In the event of any breach of the provisions of this Agreement, the non-breaching party may enforce same in an action for damages, specific performance, or both. In any such proceeding arising under this Agreement the prevailing party shall be entitled to recover its reasonable attorney fees and court costs, in addition to any other remedies or relief.

12. **Notices.** Any notice shall be sent by first class mail, postage prepaid, or delivered by courier, to the addresses for the parties as specified below:
Giannmatto Investments LLC/City of Moab Temporary Utility Easement
Signature Page, Contd.

Grantor:
Giannmatto Investments LLC

By:

Giannmatto Investments LLC
By: J. J. Wang, Member/Manager

STATE OF UTAH
COUNTY OF GRAND

) ) ss.

The foregoing Agreement was acknowledged and executed before me by Giannmatto
Investments LLC, acting by and through J. J. Wang, Member/Manager this 6th day of
November, 2019.


RACHELLE PIERCE
Notary Public
State of Utah
COMMISSION # 703203
My Commission Expires November 06, 2022

Grantee:

By:

Emily Niehaus, Mayor of the City of Moab

Attest:

Sammar Johnson, Recorder

Nov 6, 2019
Date

-End of Document-
TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT (the "Agreement") is made and entered into as of the date(s) set forth below by and between Giammatteo Investments LLC, a Utah limited liability company, the owner of record, ("Grantor"), and the City of Moab, a municipal corporation ("Grantee"). In consideration of the mutual promises and obligations contained herein, the receipt of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a temporary construction easement in the NE ¼ & NW ¼ of the SW ¼ of Section 26, T 25 S, R 21 E SLB&M, Moab City, Grand County, Utah:

   Beginning at a point at a point on grantor's boundary said point being North 40°28'15" West 2000.89 feet and North 31°20'00" West 321.70 feet and North 31°42'42" West 78.23 feet from the North Quarter corner of Section 35, Township 25 South, Range 21 East, Salt Lake Base and Meridian, and running thence North 53°35'00" East 461.85 feet to the west right-of-way of highway US-191; thence with said right-of-way South 36° 25' 00" East 30.00 feet; thence South 53°35'00" West 464.32 feet; thence North 31°42'42" 30.10 feet to the point of beginning, having an area of 13,892 sq. ft., 0.32 acres.

   (the "Easement Area"). A map outlining the Easement Area is attached as Exhibit A.

2. Purpose. This Agreement is granted for the purpose of establishing, installing, and constructing sanitary sewer lines, along with associated surface structures including manholes and such other surface and sub-surface appurtenances as may be provided in the permanent easement executed contemporaneously with this Agreement. This includes but is not limited to, the transport and storage of construction material, soil, equipment, and vehicles. Grantee shall have reasonable access to the Easement Area as necessary to carry out the purposes of this Agreement. Grantee shall be solely responsible for the maintenance of any improvements, structures, or equipment it constructs within the Easement Area.

3. Temporary Easement. This Agreement shall be temporary in duration, commencing upon the date of execution of this Agreement and continuing for the duration of the construction project, but not to exceed January 1, 2021. After construction and restoration is complete, Grantee covenants and agrees that it shall have no further right or interest as to the real property comprising the same.
4. **Non-exclusive Use; Removal of Encroachments.** Grantor expressly reserves and shall have the right to use the Easement Area in a manner that does not impair or harm the grant or use by Grantee.

5. **Restoration.** Upon completion of any installation, construction, repair or maintenance work contemplated by this Agreement, Grantee agrees to promptly restore the surface to a condition equal or superior to that existing prior to any disturbance. All restoration work within or upon the Easement Area shall be undertaken at the sole cost of Grantee. Upon completion of the restoration, the Grantee shall remove all equipment and materials from the Easement Area.

6. **Warranty of Title and Authority.** The Grantor warrants that it has full right and lawful authority to make the grant contained herein and promises and agrees to defend the Grantee in the exercise of its rights hereunder against any defect in Grantor's title to the lands subject to this Agreement.

7. ** Sole Agreement; Modifications.** This Agreement constitutes the sole and complete agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the subject matter of this instrument. No modification to this Agreement shall be binding unless it is in writing and duly executed by both parties.

8. **Governing Law and Venue.** This Agreement is governed by Utah law; the sole venue for any dispute arising from this Agreement shall be the courts of Grand County, Utah.

9. **Remedies and Attorney Fees.** In the event of any breach of the provisions of this Agreement, the non-breaching party may enforce same in an action for damages, specific performance, or both. In any such proceeding arising under this Agreement the prevailing party shall be entitled to recover its reasonable attorney fees and court costs, in addition to any other remedies or relief.

10. **Notices.** Any notice shall be sent by first class mail, postage prepaid, or delivered by courier, to the addresses for the parties as specified below:

    Grantee:
    City of Moab
    Attn: City Manager
    217 East Center St.
    Moab, UT 84532

    Grantor:
    Giammatteo Investments LLC
    Attn: J. J. Wang
    168 East Center St.
    Moab, UT 84532

This Agreement is binding and effective as of the date(s) of execution by the parties, below.
Grantee:
City of Moab
Attn: City Manager
217 East Center St.
Moab, UT 84532

Grantor:
Giammatteo Investments LLC
Attn: J. J. Wang
168 East Center St.
Moab, UT 84532

This Agreement is binding and effective as of the date(s) of execution by the parties, below.

Grantor:
Giammatteo Investments LLC

By:
Giammatteo Investments LLC
By: J. J. Wang, Manager/Member

STATE OF UTAH
) ss.
COUNTY OF GRAND
)

The foregoing Agreement was acknowledged and executed before me by Giammatteo Investments LLC, acting by and through J. J. Wang, Manager/Member this 6th day of November, 2019.


RACHELLE PIERCE
Notary Public
State of Utah
COMMISSION # 703203
My Commission Expires November 06, 2022

Grantee:

By:
Emily Niehaus, Mayor of the City of Moab

Sommar Johnson, Recorder

Date
Nov. 9, 2019

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