Consulting Services Agreement

This Consulting Services Agreement (this “Agreement”), dated as of October 10, 2020 (the “Effective Date”), is by and between Colliers International WA, LLC, with offices located at 1230 Peachtree Street NE, Suite 800, Atlanta, Georgia 30309 (“Service Provider”) and Seven Counties Infrastructure Coalition, with offices located at 294 East 100 South, Price, UT 84501 (“Customer” and together with Service Provider, the “Parties”, and each a “Party”).

WHEREAS, Service Provider has the capability and capacity to provide certain consulting services; and

WHEREAS, Customer desires to retain Service Provider to provide the said services, and Service Provider is willing to perform such services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer agree as follows:

1. Services. Service Provider shall provide to Customer the services (the “Services”) set out in one or more task orders to be issued by Customer and accepted by Service Provider (each, a “Task Order”). The initial accepted Task Order is attached hereto as Schedule A. Additional Task Orders shall be deemed issued and accepted only if signed by the Service Provider and the Customer.

2. Service Provider Obligations. Service Provider shall:

   2.1. Designate employees or contractors that it determines, in its sole discretion, to be capable of filling the following positions:

       (a) A primary contact with respect to all matters pertaining to this Agreement (the “Service Provider Contract Manager”).

       (b) A number of employees or contractors that it deems sufficient to perform the Services set out in each Task Order, (collectively, with the Service Provider Contract Manager, “Provider Representatives”).

   2.2. Make no changes in Provider Representatives except:

       (a) Following notice to Customer.

       (b) Upon the resignation, termination, death or disability of an existing Provider Representative.

   2.3. Maintain complete and accurate records relating to the provision of the Services under this Agreement.

3. Customer Obligations. Customer shall:

   3.1. Designate one or more of its employees or agents to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “Customer Contract Manager”), with such designation to remain in force unless and until a successor Customer Contract Manager is appointed.
3.2. Require that the Customer Contract Manager respond promptly to any reasonable requests from Service Provider for instructions, information or approvals required by Service Provider to provide the Services.

3.3. Cooperate with Service Provider in its performance of the Services and provide access to Customer’s premises, employees and equipment as required to enable Service Provider to provide the Services.

3.4. Take all steps necessary, including obtaining any required licenses or consents, to prevent Customer-caused delays in Service Provider’s provision of the Services.

4. Fees and Expenses.

4.1. In consideration of the provision of the Services by the Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees set out in the applicable Task Order. Payment to Service Provider of such fees and the reimbursement of expenses pursuant to this Section 4 shall constitute payment in full for the performance of the Services. Unless otherwise provided in the applicable Task Order, said fee will be payable within five (5) business days after the Coalition has received reimbursement from the Community Impact Board for the Board-approved submitted invoices.

4.2. Customer shall reimburse Service Provider for all reasonable expenses incurred in accordance with the Task Order, within five (5) business days after the Coalition has received reimbursement from the Community Impact Board for the Board-approved invoices.

4.3. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or with respect to, Service Provider’s income, revenues, gross receipts, personnel or real or personal property or other assets.

4.4. Except for invoiced payments that the Customer has successfully disputed, all late payments shall bear interest at the lesser of the rate of 7% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Service Provider for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under this Agreement or at law (which Service Provider does not waive by the exercise of any rights hereunder), Service Provider shall be entitled to suspend the provision of any Services if the Customer fails to pay any undisputed amounts/fees when due hereunder and such failure continues for 60 days following written notice thereof.

5. Limited Warranty and Limitation of Liability.

5.1. Service Provider warrants that it shall perform the Services:

   (a) In accordance with the terms and subject to the conditions set out in the respective Task Order and this Agreement.

   (b) Using personnel of required skill, experience and qualifications.

   (c) In a timely, workmanlike and professional manner in accordance with generally recognized industry standards for similar services.

5.2. Service Provider’s sole and exclusive liability and Customer’s sole and exclusive remedy for breach of this warranty shall be as follows:
(a) Service Provider shall use commercially reasonable efforts to promptly cure any such breach; provided, that if Service Provider cannot cure such breach within a reasonable time, but no more than 30 days, after Customer’s written notice of such breach, Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 8.2.

(b) In the event the Agreement is terminated pursuant to this Section 5.2, Service Provider shall within 30 days after the effective date of termination, refund to Customer any fees paid by the Customer as of the date of termination for the faulty Service or Deliverables (as defined in Section 6 below), less a deduction equal to the fees for receipt or use of such Deliverables or Service up to and including the date of termination on a pro-rated basis.

(c) The foregoing remedy shall not be available unless Customer provides written notice of such breach within 30 days after delivery of such Service or Deliverable to Customer.

5.3. EXCEPT AS SET FORTH IN SECTION 5.1, SERVICE PROVIDER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. Intellectual Property. All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, methodologies, models, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Service Provider in the course of performing the Services, including any items identified as such in the Task Order (collectively, the "Deliverables"), except for any Confidential Information of Customer or customer materials, shall be owned by the State of Utah.

7. Confidentiality. From time to time during the Term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), non-public proprietary and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as "confidential," or if disclosed orally, is identified as confidential when disclosed ("Confidential Information"); provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party’s breach of this Section 7; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was in Receiving Party’s possession prior to Disclosing Party’s disclosure hereunder; or (d) was or is independently developed by Receiving Party without using any Confidential Information. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party’s Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person or entity, except to the Receiving Party’s Representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.
Required Disclosure. If Recipient or any of its Representatives is/are requested or required by subpoena, investigation, court order, demand or other legal process to disclose any Confidential Information provided to Recipient by Disclosing Party hereunder, Recipient shall provide to Disclosing Party prompt written notice thereof, if not prohibited by law, and will use reasonable efforts to provide such cooperation as Disclosing Party shall reasonably request and at Disclosing party’s expense, until an appropriate protective order or motion to quash may be sought or obtained, a waiver of compliance with this Agreement may be granted or other appropriate and applicable remedy or solution is achieved. If, in the absence of a protective order, other legal protection, the receipt of a waiver hereunder or other remedy or solution as described above, Recipient is, in the opinion of its legal counsel, legally required to disclose Confidential Information, then Recipient may disclose, without liability hereunder, only that portion of the Confidential Information that is legally required to be disclosed, provided that Recipient uses commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the said Confidential Information. Service Provider acknowledges that the Seven County Infrastructure Coalition (“the COALITION”) is a political subdivision and public body of the State of Utah and is subject to the requirements of the Utah Government Records Access Management Act, Title 63G, Chapter 2 of the Utah Code (“GRAMA”). Service Provider hereby claims business confidentially under Section 305 subsections (1) and (2) of Title 63G, Chapter 2 of the Utah Code as the Confidential Information it may disclose subject to this Agreement includes trade secrets and confidential commercial information the disclosure of which could reasonably be expected to result in harm or injury to the competitive interests of Service Provider and would prevent it from further disclosing information to the Seven County Infrastructure Coalition. Service Provider has a greater interest in prohibiting access to the Confidential Information than the public has in such information. In addition, the Seven County Infrastructure Coalition claims that its Confidential Information is protected under GRAMA, in particular Section 305 subsection (3) in that it contains commercial and/or financial information acquired or prepared by the COALITION that would likely lead to speculation in securities or commodities that will interfere in a planned transaction by the COALITION, or cause harm to the COALITION or the economy of the State of Utah. Consistent with the foregoing, the Confidential Information of both the Disclosing Parties and the Recipients shall be classified by the COALITION as protected under GRAMA.

8. Term, Termination and Survival.

8.1. This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under all Task Orders, unless sooner terminated pursuant to Section 8.2.

8.2. Either party may terminate this Agreement, effective upon written notice to the other party (the “Defaulting Party”), if the Defaulting Party:

(a) Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach.
(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within 7 days or is not dismissed or vacated within 45 days after filing.

d) Is dissolved or liquidated or takes any corporate action for such purpose.

e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8.3. The rights and obligations of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

9. Limitation of Liability.

9.1. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE

9.2. IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED TWO TIMES THE AGGREGATE AMOUNTS PAID TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Entire Agreement. This Agreement, including and together with any related Task Orders, exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter. The parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Task Order, the terms and conditions of this Agreement shall supersede and control.

12. Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a “Notice”, and with the correlative meaning “Notify”) must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or
registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 12.

Notice to Customer:

Seven County Infrastructure Coalition
Attn: Mr. Michael J. McKee
294 E. 100 S.
Price, Utah 84501

Notice to Service Provider:

Colliers International
1230 Peachtree Street NE
Atlanta, Georgia 30309
Attention: Scott Nelson

13. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

14. **Amendments.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

15. **Waiver.** No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. **Assignment.** Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Service Provider. Service Provider acknowledges that Customer is a political subdivision of the State of Utah and that certain rights and intellectual property interests belonging to Customer shall be owned or controlled by the State of Utah or its agencies. Any purported assignment or delegation in violation of this Section 16 shall be null and void. No assignment or delegation shall relieve the Customer of any of its obligations under this Agreement. Service Provider may assign any of its rights or delegate (or subcontract) any of its obligations to any affiliate, third party or to any person acquiring all or substantially all of service provider’s assets without Customer’s consent.

17. **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

18. **No Third-Party Beneficiaries.** This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

19. **Choice of Law.** This Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement, and all matters arising out of or relating to this Agreement, are governed by,
and construed in accordance with, the laws of the State of Utah, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Utah.

20. **Choice of Forum.** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement, and all contemplated transactions, in any forum other than the courts of the State of Utah and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the courts of the State of Utah. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

21. **Non-Solicitation.** Customer agrees that it shall not, directly or indirectly, hire or engage, or arrange for or attempt to arrange for, or persuade any other person to hire or engage, any employee of Service Provider while such employee is employed by Service Provider and for a period of one (1) year after the termination of such person's employment by Service Provider; including, without limitation, engaging such Service Provider employee or former employee as an independent contractor or as an employee of any person other than Service Provider or any affiliate of Service Provider. In addition to all other remedies available to Service Provider for breach of this provision, Customer agrees to pay Service Provider, as liquidated damages and not as a penalty, the agreed upon sum equal to six (6) months' base salary or wages (measured using the employee's rate of salary or wages as of his or her last day of employment with Service Provider) of each employee hired directly or indirectly by Customer or any other person in violation of this Section 21.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SEVEN COUNTIES INFRASTRUCTURE COALITION

By [Signature]
Name: Michael J. Metz
Title: Executive Director

COLLIERS INTERNATIONAL WA, LLC

By [Signature]
Name: Scott Nelson
Title: Vice President
Nov 18, 2020
Exhibit A

Task Order #1

The Seven County Infrastructure Coalition has requested Colliers International to assist in consulting for both the community of Salina, Utah, specifically, as well as the greater Seven County region of eastern and central Utah (including Carbon, Daggett, Duchesne, Emery, San Juan, Sevier, and Uintah Counties). It will result in the development of a conceptual plan for the Salina business park as well as general marketing plan to drive growth with industrial user groups for the larger rural region of Utah.

The tasks to be considered as part of the scope for Salina and/or the Greater Seven Counties include:

1) An analysis of the current Salina industrial park site in respect to physical attributes, infrastructure, potential user types and site positioning in respect to differentiators to drive industrial investment,

2) Identify key industries which could benefit from sites such as Salina as well as other designated communities within the Greater Seven Counties,

3) Develop a high-level conceptual plan for the Salina site to attract the optimal mix of product types, potential industries and users,

4) Identify high-level incentive programs that both Salina as well the Greater Seven County region should consider to promote industrial growth,

5) Identify specific trade associations that the City of Salina and the Greater Seven Counties should coordinate efforts with to promote industrial development within the region,

6) Develop a go-to-market strategy and plan for the Salina industrial site as well as other designated communities identified in the Greater Seven Counties,

7) Working with Colliers’ brokerage arm, identify and pursue specific companies and industries to promote development in the Greater Seven County region.

Specific to the Utah Inland Port rural satellite opportunities within the Seven County Infrastructure Coalition member counties, the tasks include:

1) Identify and review current federal, state, and local plans, policies and data relating to the distributed logistics concept in rural Utah,

2) Outline ways in which rural satellite facilities may be authorized

3) Compile an outline of strategic requirements, including local ordinances and policies, to properly and efficiently implement a rural satellite facility

4) Outline of critical steps to implement a satellite facility at any location within the Coalition or rural Utah.

This task list is not comprehensive and may include other additional customer requested analysis mutually agreed upon, potentially to be included in the scope of the project as currently defined, or other additional tasks that may be out of scope and need to be addressed separately.

The proposed timeline to support this project is attached below and should be used as a reference point for proposed process. Delays may be incurred based on availability of key personnel for interviews or data collection, or holidays/events.
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The agreed upon renumeration for the work outlined above is: $46,250 USD.