



RESOLUTION 2025-13

A RESOLUTION ADOPTING A PROFESSIONAL SERVICES AGREEMENT FOR THE ADMINISTRATION OF THE C-PACE PROGRAM IN MIDWAY CITY.

WHEREAS, Utah Code Title 11, chapter 42a (the “C-PACE Act”) authorizes cities to create an energy assessment area (“C-PACE Area”) and levy an assessment on a private property to cover the costs of an energy efficiency upgrade, a renewable energy system, or an electric vehicle charging infrastructure; and

WHEREAS, cities may delegate their administrative powers to a third party to administer its C-PACE program in accordance with the C-PACE Act and other relevant codes; and

WHEREAS, Midway City (City) desires that Sustainable Real Estate Solutions, Inc. (SRS) act as a consultant to assist the City in administering any energy assessment areas that the City may create during the term of the Agreement; and

WHEREAS, SRS is qualified and desires to assist the City in the City’s administration of any energy assessment areas that the City may create during the term of the Agreement.

NOW THEREFORE, be it hereby **RESOLVED** by the City Council of Midway City, Utah as follows:

Section 1: The Midway City Council hereby approves the Professional Services Agreement, attached as Exhibit A, and authorizes the Midway City Mayor to execute it on behalf of the City.

PASSED AND ADOPTED by the Midway City Council on the _____ day of _____, 2025.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

DRAFT

Exhibit A

DRAFT

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THIS PROFESSIONAL SERVICES AGREEMENT is between _____, a Utah City, and SUSTAINABLE REAL ESTATE SOLUTIONS, INC., a Delaware corporation, whose address is 179 Main St. #61, Monroe, CT 06468 (“SRS”, and collectively with the City, the “Parties”), and is dated as of the date that the _____ City Recorder attests the applicable City signature (“Effective Date”).

RECITALS

A. Utah Code Title 11, chapter 42a (the “C-PACE Act”) authorizes the City to create an energy assessment area (“C-PACE Area”) and levy an assessment on a private property to cover the costs of an energy efficiency upgrade, a renewable energy system, or an electric vehicle charging infrastructure.

B. The City may delegate its administrative powers to a third party to administer its C-PACE program in accordance with the C-PACE Act and other relevant codes;

C. The City desires that SRS act as a consultant to assist the City in administering any energy assessment areas that the City may create during the term of the Agreement.

D. SRS is qualified and desires to assist the City in the City’s administration of any energy assessment areas that the City may create during the term of the Agreement.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the Parties agree as follows:

1. Scope of Services: City agrees to engage SRS and SRS agrees to provide its professional and technical services as shown on the Scope of Services attached hereto as **Exhibit A**.

2. Compensation and Method of Payment: SRS’ sole compensation for the Scope of Services it provides under the terms of this Agreement shall be a program administration fee charged against each project that is financed. The fee is set at 3.0 percent of the total amount of C-PACE financing, not to exceed \$90,000 per project. Upon financial closing, the capital provider will send the total fee (3.0 percent of the total amount of C-PACE financing, not to exceed \$90,000) to SRS. SRS acknowledges and agrees that SRS would not be able to participate in C-PACE financing without the City’s cooperation, and therefore the City has no financial obligation to SRS for the services it provides under the terms of this Agreement, whether any or all project(s) do or do not close.

3. Term: This Agreement shall commence on the Effective Date and terminate **three/five** years thereafter (“**Term**”), unless terminated earlier by either party. SRS shall perform its services in a timely manner, in accordance with the best professional standards of practice, and in accordance with any schedule in the Scope of Services.

4. Amendments: Any change in this Agreement shall be mutually agreed upon by the City and the SRS and shall be set forth in a written amendment to this Agreement.

5. Subconsultant Agreements: All of the services required hereunder will be performed by SRS or under its supervision and all personnel engaged in providing the services shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

6. City's Obligations: The City shall provide, at no expense to SRS, such books, maps, records, plans, reports, statistics or other data or information, that are existing, as may be reasonably required by SRS to perform the tasks or services. The City makes no representation that such information will be provided or that review of any information submitted by SRS to the City will be made within any given timeframe. City shall not be liable in any manner whatsoever for any loss or damage of any kind incurred by SRS related to the City's review of any information submitted to or requested from the City.

7. Assignment: SRS shall not assign any obligation under this Agreement without City's written consent, which may be withheld in City's sole discretion.

8. Discrimination: SRS shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin.

9. Ownership of Materials: All materials and other documentation prepared for public consumption pursuant to this Agreement (whether completed or uncompleted, or draft or final) shall become the property of the City upon expiration of the Term. The City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. Credits for work prepared by SRS shall be included with all documents issued by the City. SRS retains the right to duplicate and retain copies of all reports and other documents it prepared in providing services pursuant to this Agreement.

10. Independent Contractor Relationship: The legal relationship of the SRS to the City with respect to the services required under this Agreement shall be that of an independent contractor and not that of an agent or employee.

11. Notices: All notices under this Agreement shall be sent to the following address:

City: _____ City

Attention:

SRS: Sustainable Real Estate Solutions, Inc.
179 Main Street, #61
Monroe, CT 06468
Attention: Brian McCarter, CEO

Indemnification: SRS agrees to indemnify, save harmless and defend the City, its officers and employees, from and against all losses, claims, counterclaims, demands, actions, damages, costs,

charges and causes of action of every kind or character, including attorney's fees, costs, and expenses, arising out of SRS's intentionally wrongful, reckless, or negligent performance hereunder. SRS's duty to defend City shall exist regardless of whether City or SRS may ultimately be found to be liable for anyone's negligence or other conduct. If the City's tender of defense, based upon this indemnity provision, is rejected by SRS, and SRS is later found by a court of competent jurisdiction to have been required to indemnify the City, then in addition to any other remedies the City may have, SRS shall pay the City's reasonable costs, expenses and attorney's fees incurred in proving such indemnification, defending itself or enforcing this provision. Nothing herein shall be construed to require SRS to indemnify the City against the City's own negligence.

12. Termination: City may terminate this Agreement at any time, for any reason, by providing SRS at least thirty days (30) business days written notice of its intent to terminate the Agreement. In such event, all finished or unfinished documents, data, studies, and reports prepared by SRS or SRS's subconsultants under this Agreement shall, at the option of the City, be delivered to City within three (3) days after the effective date of termination. Notwithstanding the above, SRS shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by SRS, and the City may withhold any payments, if any, otherwise due to the SRS until such time as the exact amount of damages due to the City from SRS is determined.

13. Compliance with laws and regulations: SRS shall obey all laws, ordinances, regulations and rules of the federal, state, county and municipal governments that may be applicable to its operations. Said laws include, but are not limited to, equal employment opportunity laws (including without limitation, the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967), the Fair Labor Standards Act, Occupational Safety & Health Administration (OSHA) laws, the Utah Immigration Accountability and Enforcement Act, and all applicable building codes. Any violation of applicable law shall constitute a breach of this Agreement and SRS shall hold the City harmless from any and all liability arising out of, or in connection with, said violations including any attorneys' fees and costs incurred by the City as a result of such violation.

14. Standard of Care: All services provided by SRS and SRS's subconsultants hereunder shall be performed in accordance with the professional standards of licensed professionals of their respective disciplines experienced, competent and specializing in the services being provided to the project (whether licensed and/or practicing in the jurisdiction where the project is located or elsewhere).

15. Insurance: SRS, at its own cost, shall secure and maintain during the term of this Agreement, including all renewal terms, the following minimum insurance coverage:

a. Worker's compensation and employer's liability insurance sufficient to cover all of SRS's employees under Utah law. In the event SRS subcontracts any work under this Agreement, SRS shall require its subcontractor(s) similarly to provide worker's compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

b. Commercial general liability (“CGL”) insurance with a policy endorsement naming City as an additional insured on a primary and non-contributory basis in comparison to all other insurance including the City’s own policy or policies of insurance, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate. The policy shall include contractual liability insurance for the indemnity provided under this Agreement. These limits can be covered either under a CGL insurance policy alone, or a combination of a CGL insurance policy and an umbrella insurance policy and/or a CGL insurance policy and an excess insurance policy. The policy shall protect the City, SRS, and any subcontractor from claims for damages for bodily injury, including accidental death, and property damage that may arise from SRS’s operations under this Agreement, whether performed by SRS itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and products-completed operations.

c. Professional liability insurance in the minimum amount of \$1,000,000 per claim made with a \$1,000,000 annual aggregate limit.

d. Any insurance coverage required herein that is written on a “claims made” form rather than on an “occurrence” form shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (ii) be maintained for a period of three (3) years following the end of the term of this Agreement or contain a comparable “extended discovery” clause for “tail coverage.”

e. All policies of insurance provided shall be issued by insurance companies licensed to do business in the State of Utah and either (i) currently rated A- or better by A.M. Best Company or (ii) listed in the United States Treasury Department’s current *Listing of Approved Sureties (Department Circular 570)*, as amended.

f. SRS shall, upon the City’s request, furnish certificates of insurance, acceptable to the City, verifying the foregoing matters concurrent with the execution hereof, at each renewal, and thereafter as required.

16. Jurisdiction: This Agreement and all transactions contemplated hereunder shall be governed by, construed under, and enforced in accordance with the internal laws of the State of Utah without giving effect to any choice of law or conflict of law rules or provisions.

17. Entire Agreement: This Agreement contains all of the agreements, representations and understandings of the Parties hereto relating to the subject matter of this Agreement and supersedes any previous understandings, commitments, proposals, or agreements whether oral or written.

18. Representation Regarding Ethical Standards: SRS represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of

securing business; (3) knowingly breached any of the ethical standards set forth in City's conflict of interest ordinance; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in City's conflict of interest ordinance.

(Signatures Begin on Following Page)

IN WITNESS WHEREFORE, the parties are signing this Agreement as of the Effective Date.

CITY:

_____, a Utah municipality

By _____

Name: _____

Title: _____

ATTEST & COUNTERSIGN:

Recorder's Office

City Recorder

APPROVED AS TO FORM:

Attorney's Office

City Attorney
Date _____

SRS:

SUSTAINABLE REAL ESTATE SOLUTIONS,
INC., a Delaware Corporation

By: _____

Name: Brian McCarter

Title: CEO

**EXHIBIT A
TO
CONSULTING SERVICES AGREEMENT**

(Scope of Services)

The SRS shall perform the following services as requested by City:

Section 1 – Services Provided by SRS.

1.1 SRS will provide the following services for the City:

- a) Program Administration Services,
- b) Financial Services, and
- c) Education and Outreach Services.

1.2 SRS Program Administration Services include the following:

- a) Managing all aspects of C-PACE project pre-applications and applications, including verification of project eligibility against statute.
- b) Coordinating communication between the City and program participants, and tracking progress of projects through origination, development, and finance agreement execution.
- c) Educating property owners and mortgage holders about C-PACE mortgage holder consent; disseminating the mortgage holder consent agreement to C-PACE stakeholders; meeting with mortgage holders; and tracking mortgage holder consent agreements through to execution.
- d) Managing all aspects of the C-PACE contractor and capital provider communications.
- e) Coordinating with City to facilitate City activities such as recording energy assessment liens and assigning such liens to project capital providers.
- f) Maintaining C-PACE Area template agreements and forms.

1.3 SRS Financial Services include the following:

- a) All financial services for the C-PACE Area.
- b) Conducting financial services in a transparent manner, which include periodic reporting and providing the City with access to all program materials.
- c) Mitigating potential conflicts of interest and ensuring competition within the City's C-PACE program to keep project financing competitive in an open market structure.
- d) Working with capital providers to collect applicable program administration fees.
- e) Advising the City and C-PACE stakeholders on national C-PACE best

practices and Utah statute throughout the project lifecycle and financing decision points.

1.4 SRS Education and Outreach Services include the following:

- a) Periodic outreach events for C-PACE stakeholders (i.e., contractors, building owners and capital providers) to realize new C-PACE projects and ensure that C-PACE stakeholders have relevant program information.
- b) Maintaining C-PACE Area templates, forms, and agreements.
- c) Responding to inquiries about C-PACE Areas.
- d) Developing case studies and success stories of completed C-PACE projects.
- e) All Education and Outreach Services shall be based on C-PACE best practices and be in accordance with Utah statute.